

RACIAL STEREOTYPES, GENDERED CRIMES, AND JUDICIAL DISCRETION: A  
MULTI-LEVEL EXAMINATION OF THE EFFECT OF RACE AND GENDER ON  
SENTENCING DISPARITIES

---

A Dissertation

Presented to

The Faculty of the Department Criminal Justice and Criminology

Sam Houston State University

---

In Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

---

by

Tri Keah S. Henry

May, 2020

RACIAL STEREOTYPES, GENDERED CRIMES, AND JUDICIAL DISCRETION: A  
MULTI-LEVEL EXAMINATION OF THE EFFECT OF RACE AND GENDER ON  
SENTENCING DISPARITIES

by

Tri Keah S. Henry

---

APPROVED:

Travis Franklin, PhD  
Committee Director

Elisa Toman, PhD  
Committee Member

William King, PhD  
Committee Member

Phillip Lyons, PhD  
Dean, College of Criminal Justice

## **DEDICATION**

For my mother, Schyrel Estell Henry, and grandmother, Eula Fay Henry.

Black women. Strong women. Proud women.

Thank you for loving me in and out of time.

## ABSTRACT

Henry, Tri Keah S., *Racial stereotypes, gendered crimes, and judicial discretion: a multi-level examination of the effect of race and gender on sentencing disparities*. Doctor of Philosophy (Criminal Justice and Criminology), May, 2020, Sam Houston State University, Huntsville, Texas.

The American justice system is predicated on the assumption of equality under the law. Central to this assumption is the impartiality of judges. Notably, this decision-making process is performed in situational and environmental contexts with unique goals and normative procedural patterns. As such, it is reasonable to assume that a variety of individual case and offender characteristics, as well as, court and county level factors interact to influence judicial decision making. While decades of research has examined the relationship between extralegal factors like race/ethnicity and gender on sentencing outcomes, this line of inquiry has almost exclusively focused on offender characteristics, neglecting the role that judicial attributes and other indicators of racial and gender inequality may play in these decisions. Thus, the current study extends this line of research by examining the effect of judicial attributes and county level characteristics on sentencing outcomes. Using 2013-2015 Pennsylvania Commission on Sentencing data, the current study investigates the extent to which racial and gender disparities exist among stereotypically racialized and gendered offenses. Additionally, this study examines whether judicial race and gender, as well as measures of county race and gender equity influences disparate treatment in the incarceration and sentence length decisions. Moreover, this study explores whether the effect of offender characteristics is conditioned by these contextual level factors. Findings suggest that disparate treatment may be more pronounced in racialized and gendered offenses. However, sentencing severity may be moderated by contextual factors associated with the sentencing process.

Specifically, the extent to which racial and gender disparities are observed may be a consequence of judge background experiences, as well as, sociopolitical county characteristics.

**KEY WORDS:** Sentencing, Race, Gender, Judicial discretion, Judge demographics, Women's absolute status, Black absolute status, Disparate treatment

## **ACKNOWLEDGEMENTS**

The completion of this dissertation would not have been possible without the support of so many individuals. First, I am extremely grateful to my committee members for their assistance and encouragement during this process. I am eternally grateful to my chair, Dr. Travis Franklin, for being so supportive during my entire graduate career. Without his encouragement, I likely would have not pursued a doctoral degree. Dr. Franklin helped me realize that I had a place in academia and that my ideas were important. Through his mentorship, I have become a better scholar. I would also like to thank Dr. Bill King for all his advice and encouragement throughout this process. I could always count on Dr. King to be honest, thoughtful, and reassuring. Agreeing to sit on my committee even after leaving the university is a testament to how much you believe in ensuring the success of students. I am also very grateful to have worked with Dr. Elisa Toman during my dissertation. Dr. Toman's invaluable advice about graduate school, the dissertation process, and life generally helped to ease my anxiety and frustrations about this process. I am very thankful for her kindness and support.

Moreover, I would like to thank the faculty and staff in the Department of Criminal Justice and Criminology at Sam Houston State University for their mentorship and assistance during my tenure as a graduate student. Thank you to Dr. Danielle Boisvert for constantly advocating for students like myself and helping to ensure their success. With her support, I received a well-rounded graduate experience. Similarly, I would like to thank Mrs. Doris Powell-Pratt for her constant support and encouragement during my time in the graduate program. There was never a question Mrs. Doris did not have an answer to which made navigating the program much easier. I would also like to

thank Dr. Bill Wells for his advice and support of my career. He greatly influenced my ability to work with practitioners and think critically about the policy implications of research. Moreover, I would like to thank Dr. Melinda Tasca for supporting my dissertation research and providing the technical assistance necessary to the success of the project.

Additionally, I am sincerely grateful to those in the Graduate School for all their support and mentoring. I cannot express how appreciative I am to Dr. Stephanie Bluth who was always willing to counsel and encourage me when I second guessed my abilities. She has been instrumental to my overall success, acting as one of my fiercest advocates. I am eternally grateful for our long conversations, her thoughtfulness, and our friendship. Likewise, I would like to thank Leo Queen, who gave me a place to sit and write without distractions through the Graduate School's writing support service programs. In addition to his professional help, I am also grateful for his support and friendship. Moreover, I would like to recognize Dr. Ken Hendrickson, Dean of the Graduate School, who has supported a number of programs through the Graduate School which undoubtedly influenced my graduate success, including the A.S.P.I.R.E and R.O.A.D to PhD programs.

Finally, I would like to thank my friends and family for their unconditional love and support during this journey. My deepest appreciation goes to my mother, Schyrel, whose love, strength, and power has sustained me my entire life. When I am at my lowest, I remember that I am her daughter and am capable of whatever I set my mind to. I am also truly grateful for all that my grandparents, Oby and Eula Fay, have done for me. There has never been a time when I had to worry because I've always known that granny

and papa would be there to provide, protect, and pray for me when I couldn't do it myself. Likewise, I would like to thank my aunts, Doris and Pam, and uncles, Kenneth, Greg, and Clyde for all that they've done to support me over the years. I am also truly grateful to my godmother, Cassandra, who, in her own special way, has shaped me into the woman I am today. Moreover, there aren't enough words to describe how much I appreciate my cousins and siblings. They have helped me laugh, cry, and dance my way through this process. They are truly the leaders of my cheer squad. Thank you, Jessica, Ashli, Ondrea, and Crystal for all the times you made me smile. I would also like to thank my siblings Brittany, Kris, and Kortney for helping me remember that work isn't life and that there's always time for fun.

Lastly, I could not have done any of this without the best group of friends anyone could ask for. They have shared my frustrations, seen me through disappointments, and celebrated my biggest wins in ways that only true friends can. Thank you, Brianna, Alicia S., Rita, Alicia G, Kenyatta, and Twilight for being my friends well after those awkward teenage years. Moreover, I am truly grateful for my line sisters, Vanescia, Marjorie, and Brittany who have been the irons to sharpen my iron. From undergrad to grad school, they inspired me to always be my best. Thank you for never letting my ivy wilt. Finally, I would like to thank all my friends from the graduate program who have been there every step of the way. Thanks to Amanda, Alicia, Kate, Alondra, Shamika, and Pat for holding me accountable, sharing your advice and expertise, and listening to my ideas. The long writing sessions, endless stress, and constant anxiety was much more bearable because of you.



## TABLE OF CONTENTS

	Page
DEDICATION .....	iii
ABSTRACT.....	iv
ACKNOWLEDGEMENTS .....	vi
TABLE OF CONTENTS.....	ix
LIST OF TABLES .....	xi
LIST OF FIGURES .....	xiii
CHAPTER I: INTRODUCTION .....	1
The Current Focus .....	9
The Plan of the Dissertation .....	12
CHAPTER II: LITERATURE REVIEW .....	14
Introduction.....	14
Theoretical Explanations and Empirical Evidence of Disparate Treatment in Sentencing.....	16
CHAPTER III: DATA AND METHODOLOGY .....	99
Data.....	99
Study Site.....	100
Sample .....	102
Measures .....	103
Analytic Strategy .....	109
CHAPTER IV: RESULTS .....	114
Descriptive Analysis .....	115

Assessment of Racialized Offenses .....	120
Assessment of Gendered Offenses .....	138
Summary of Findings .....	155
CHAPTER V: DISCUSSION AND CONCLUSION.....	158
Theoretical Implications .....	159
Research Implications.....	168
Policy Implications .....	173
Limitations .....	175
Conclusion .....	177
REFERENCES .....	179
APPENDIX A.....	218
APPENDIX B .....	220
APPENDIX C .....	221
VITA.....	222

## LIST OF TABLES

Table	Page
1 Coding and Descriptions of Dependent and Independent Variables .....	107
2 Descriptive Statistics for Full Drug Offense Sample (n = 58,986).....	116
3 Descriptive Statistics for Non-Drug Offense Sample (n = 189,917) .....	117
4 Descriptive Statistics for Gendered Offense Sample (n = 4,294).....	119
5 Descriptive Statistics for Non-Gendered Offense Sample (n = 251,610).....	120
6 Three-Level HLM Models Examining the Effect of Race on Sentencing Outcomes for Drug and Non-Drug Offenses (Individual Level Fixed Effects) .	123
7 Three-Level HLM Models Examining the Effect of Race on Sentencing Outcomes for Drug and Non-Drug Offenses (Individual Level Random Effects) .....	127
8 Three-Level HLM Models Examining the Effects of Judge Race and Black Absolute Status on Sentencing Outcomes for Drug Offenses (n= 58,986) .....	129
9 Three-Level HLM Models Examining the Cross-Level Effects of Judge Race on Sentencing Outcomes for Drug Offenses (n= 58,986).....	132
10 Three-Level HLM Models Examining the Cross-Level Effects of County Characteristics (Black Absolute Status) on Sentencing Outcomes for Drug Offenses (n= 58,986) .....	135
11 OLS and Logistic Regression Models Examining the Effect of Gender on Sentencing Outcomes for Gendered and Non-Gendered Offenses.....	141

12	OLS and Logistic Regression Models Examining the Effects of Judge Gender and Women’s Absolute Status on Sentencing Outcomes for Gendered Offenses (n = 4,294) .....	145
13	OLS and Logistic Regression Models Examining the Conditioning Effects of Judge Gender and Women’s Absolute Status on Sentencing Outcomes for Gendered Offenses (n = 4,294) .....	149
14	Support for Theoretical Predictions of Contextual Effects in Sentencing .....	157

## LIST OF FIGURES

	Page
1 Effects of Judge Race on Incarceration Decision.....	134
2 Effects of Judge Race on Sentence Length Decision .....	134
3 Effects of Black Absolute Status on Incarceration Decision.....	137
4 Effects of Black Absolute Status on Sentence Length Decision .....	138
5 Effects of Judge Gender on Incarceration Decision .....	151
6 Effects of Judge Gender on Sentence Length Decision .....	152
7 Effects of Women's Absolute Status on Incarceration Decision .....	153
8 Effects of Women's Absolute Status on Sentence Length Decision.....	154

## **CHAPTER I**

### **Introduction**

As a central tenet of the American justice system, equality under the law is a revered ideal. The concepts of fairness and impartiality are woven into the fabric of the American conscious. While the practical functions of the justice system have evolved, these beliefs have remained the cornerstone of the American justice system. In practice, however, these ideals may be less attainable. According to Kleck (1981), “the legitimacy of the legal systems of modern democracies depends heavily on the degree to which the systems operate in a manner consistent with their own stated procedural standards of justice” (p. 783). When citizens perceive inequality of distributive justice, proportionality, and consistency in outcomes, a legitimacy crisis may ensue (Fagan, 2008; Tyler & Hou, 2002). Regardless of its promise and intent, the legitimacy of the U.S. justice system has faced significant scrutiny for several decades (Bobo & Thompson, 2006; Franklin, 2018; Kleck, 1981).

While a number of factors influence perceptions of legitimacy, many of these concerns stem from the decision-making of key criminal justice actors, particularly judges. Judges are endowed with substantial discretionary decision-making power. In exchange for this latitude, they are expected to interpret and uphold the law without bias or prejudice. As such, the legitimacy of the justice system is directly related to the impartiality of judges. For decades, researchers have assessed the degree to which judges have attained neutrality and fairness in the decision-making process (see Mitchell, 2005; Spohn, 2000; 2015). The expansive body of knowledge developed in this area suggests that judges oftentimes fail to achieve neutrality, specifically as it relates to two

substantive extralegal factors: race/ethnicity and gender (see Bontrager, Barrick, & Stupi, 2013; Franklin, 2018).

Racial and gender disparities have been contentious matters of debate in the criminal justice literature for several years. These disparities highlight a difference in kind and degree. Critical race scholars have argued that the justice system is inherently biased at all levels and negatively impacts people of color through overt individual prejudice, institutional racism, or a combination of both (Bobo, Kluegel, & Smith, 1997; Bonilla-Silva, 2003; Brewer & Heitzeg, 2008; Daly, 1994; Davis, 1996; Schlesinger, 2011). Historically, these biases can be traced to the end of the 19th century (Mancini, 1996; Turner, Giacomassi, & Vandiver, 2006). Politically expedient practices such as convict leasing and the passing of “Black Codes” disproportionately impacted newly franchised African Americans, relegating them back to second class citizenry (Davis, 2000; DuBois, 2004; Lichtenstein, 1993; Stewart, 1997). Such overt tactics of discrimination eventually evolved into a series of policies and practices that, at face value were racially neutral, but “inevitably produce distorted outcomes in justice” (Stevenson, 2017: p. 33). These include, but are not limited to, stop and frisk searches, order maintenance policing, the War on Drugs, mandatory minimums, and mass incarceration (Bobo & Thompson, 2006; Mauer, 2004; Petersilia, 1985; Tonry, 2010). Today, while accounting for only 13.4% of the population, African Americans make up approximately 33% of offenders in state and federal prison (Carson, 2018).

The pronounced nature of these disparities have led researchers to closely examine the decision-making processes of those authorities with discretionary power, particularly judges. The earliest advances in this area focused primarily on the effects of

race on sentencing decisions (see, Kleck, 1981; Spohn, 2000). Findings from this era supported anecdotal evidence of racial disparities resulting from unchecked judicial discretion (Sellin, 1935). However, early sentencing research lacked key control measures for legally relevant factors, primarily offense severity and criminal history; factors that undoubtedly influence judicial decision-making (Blumstein, Cohen, Martin, & Tonry, 1983; Kleck, 1981; Klepper, Nagin, & Tierney, 1983). Accounting for these factors led to a reduction (and in some studies, elimination) of the direct impact of race on sentencing outcomes (Hagan, 1973; Kleck, 1981). However, race effects are still evident in a number of contexts, including cases adjudicated in the south (Chiricos & Crawford, 1995, Mitchell, 2005), in jurisdictions with lower minority representation (Farrell, Ward, & Rousseau, 2009; King, Johnson, & McGeever, 2010), in cases with less severe offenses (Crawford, Chiricos, & Kleck, 1998, Hester & Hartman, 2017), when offenders are young males (Doerner & DeMuth, 2010; Steffensmeier, Ulmer, & Kramer, 1998, Warren, Chiricos, & Bales, 2012), and when offenders have more extensive criminal histories (Spohn & Spears, 2000).

In addition to racial disparities, scholars also highlight the gendered nature of crime and its impact on the justice system (Kruttschnitt, 2013; Simpson, 1989; Smith & Paternoster, 1987). One of the most widely accepted truths in criminology and criminal justice is that males offend at higher rates than females (Heimer, 2000; Steffensmeier & Allan, 1996). While women account for approximately 25 percent of those arrested, they constitute a much smaller proportion of the incarcerated population (Snyder, 2012). According to the U.S. Department of Justice, approximately 93 percent of offenders in state or federal prison were male, while 7 percent were female (Carson & Anderson,



2016). While there is some dispute as to whether the gender gap found in arrest and offending rates has narrowed or remained stable over time (Heimer, 2000; Lauritsen, Heimer, & Lynch, 2009; O'Brien, 1999; Steffensmeier, 1993; Steffensmeier, Schwartz, Zhong, & Ackerman, 2005; Steffensmeier, Zhong, Ackerman, Schwartz, & Agha, 2006), the differences in sentencing outcomes has not. Male offenders receive significantly more punitive sentences than their female counterparts (Daly, 1995; Daly & Bordt, 1995; Daly & Tonry, 1997; Doerner & Demuth, 2010, 2014). As an example, Franklin and Henry (2019) found that among federal offenders, males were 1.4 times more likely to be incarcerated than female offenders and received terms of incarceration that were approximately 19 percent longer. Findings such as these are not atypical (see Bontrager, Barrick, and Stupi, 2013).

While the magnitude of these differences are great, these disparities may be compounded when considering additional extralegal factors, specifically victim gender. Although some research suggests that victim gender has no impact on sentencing outcomes (Myers, 1979; Spohn, 1994), more recent studies have found that crimes perpetrated against women are likely to result in much more severe sanctions (Auerhahn, 2007; Curry, Lee, & Rodriguez, 2004; Franklin & Fearn, 2009; Glaeser & Sacerdote, 2003). This is especially evident for male offenders (Baumer, Messner, & Felson, 2000; Curry et al., 2004; Felson & Phillippe-Pare, 2007; Franklin & Fearn, 2008). Though patterns of increased severity have emerged in a number of studies, some scholars suggest that this outcome is reserved for specific crimes, notably the most severe (e.g. homicide). In contrast, offenders accused of domestic violence or sexual assault may be

subject to shorter terms of incarceration or nonincarcerative sentences (Bond & Jeffries, 2014; Koss, 2000).

Reactions to racial and gender disparities in sentencing have garnered unique responses from social scientists and policy makers. For example, policy responses to these respective disparities have received varying levels of attention. Attempts to curtail racial disparity have resulted in the adoption of state and federal sentencing guidelines, which restrict the discretion historically afforded to judges (see Stith & Cabranes, 1998; Ulmer & Kramer, 1996). Policy organizations like The Sentencing Project and ACLU advocate sentencing reform, highlighting the impact of race neutral policies (ACLU, 2014; Mauer & King, 2007). While no such sweeping changes have occurred to address gender disparities specifically, limitations on judicial discretion through guidelines may work to decrease differences in sentencing between men and women.

On the other hand, several theoretical explanations have been developed to understand discretionary decision-making by judges in each context. Focal concerns theory, which illustrates how judges adapt to the constraints of a rational decision-making process, along with the liberation hypothesis, stereotype congruency, and disparity correction perspectives, have been the theoretical bases for how we understand the relationship between race and judicial decision-making at the individual level (Franklin & Henry, 2019; Spohn & Cederblom, 1991; Steffensmeier, Ulmer, & Kramer, 1998). In contrast, two lines of thought have been posited to explain the gender gap in sentencing outcomes. The chivalry/paternalism hypotheses and gender conflict theory suggest that judges make decisions that preserve the status quo of patriarchy through their respective

mechanisms (Curry et al., 2004; Daly, 1989; Holcomb, Williams, & Demuth, 2004; Visser, 1983; Zatz, 2000).

The substantial body of literature that has developed examining race and gender disparities in sentencing is noteworthy. However, recent calls to explore the nuances of judicial decision-making have led researchers to reframe discussions of the sentencing process (Baumer, 2013). In an in-depth review on the state of sentencing research, Ulmer (2012) identifies several avenues in need of progress, including exploring variations in sentencing across individual judges, examining the moderating relationship between offender and case characteristics, and integrating advanced statistical and methodological techniques to address research questions. Additionally, Ulmer (2012) suggests the need to more adeptly address the contextual factors that influence sentencing outcomes stating, “the relationship between local racial and ethnic composition and minority sentencing is not exhausted, but we should move beyond looking for simple, linear relationships and simplistic interpretations of racial threat theory” (pg. 30). To date, few studies have directly addressed these gaps in the literature.

In general, very few studies have examined the effect of race and gender on sentencing outcomes beyond the context of the individual offender (Farrell, Ward & Rousseau, 2009; Gruhl, Spohn, & Welch, 1981; Haynes, Ruback, Cusick, 2010; Johnson, 2006, 2014). As Ulmer (2012) suggests, a dearth of research exists exploring broader contextual conceptualizations of race and gender, specifically at the judicial and community level. In the judicial context, this is not surprising as many jurisdictions, including the U.S. federal court system, are hesitant to release information about judges who preside over cases. As a result, researchers know very little about how these

characteristics may influence sentencing outcomes outside of a handful of jurisdictions (Anderson & Spohn, 2010; Farrell et al., 2009; Gruhl, 1981; Haynes et al., 2010; Johnson, 2006, 2014). Notably, the Pennsylvania Commission on Sentencing (PCS) is one of the guidelines systems that provides information on the presiding judge (i.e. judge's name) in their sentencing data (Kauder & Ostrom, 2008; Ulmer, 2012). This data has been integral in establishing whether judge background characteristics influences discretionary decision-making (Johnson, 2006; Johnson, 2014; Mulhausen, 2004; Steffensmeier & Britt, 2001; Steffensmeier & Herbert, 1999).

In contrast, data capturing gender and racial demographics is much more readily available in the broader community context, specifically at the county level. As such, researchers have begun to account for a variety of contextual factors including percent Black and Latino (Caravelis, Chiricos, & Bales, 2011; Crow & Johnson, 2008; Feldmeyer & Ulmer, 2011; Johnson, 2006; Kautt, 2002; Ulmer & Johnson, 2004) and ethnic heterogeneity (Britt, 2000). As previously noted however, the effect of racial and ethnic composition on sentencing outcomes across jurisdictions has yet to be fully fleshed out. This may be the result of a limited application of the racial threat hypothesis and the conceptualization of measures capturing racial threat. Here, it is argued that this observation can also be applied to gender composition. Few studies account for gender composition at the county level (see Nowacki & Windsong, 2019), and too often it is treated only as a control measure or subsumed into measures of disadvantage (i.e., female-headed households) (Rodriguez, 2013; Wooldredge, 2007).

Finally, unlike models examining the individual effects of offender race and gender on sentencing outcomes, the moderating effects of contextual measures of these

demographics are rarely examined. Specifically, few studies have investigated the relationship between judicial demographic characteristics and legal and extralegal factors on sentencing outcomes (Anderson & Spohn, 2010; Farrell et al., 2009; Gruhl et al., 1981; Haynes et al., 2010; Johnson, 2006; 2014). Studies at the individual level suggest that extralegal factors moderate the effects of legally relevant case processing factors (Franklin, 2017; Mitchell, 2005; Spohn, 2000). For example, criminal history has been shown to moderate the effect of offender race on the decision to incarcerate and sentence length (Crow, 2008; Franklin, & Henry, 2019; Hester & Hartman, 2017; Miethe & Moore, 1986; Mustard, 2001; Spohn & Cederblom, 1991; Spohn & DeLone, 2000; Ulmer & Kramer, 1996; Ulmer & Laskorunsky, 2016; Ulmer, Light, & Kramer, 2011; Ulmer, Painter-Davis, & Tinik., 2016; Wooldredge, 1998). Moreover, offense type has also been shown to moderate the effects of offender characteristics on sentencing outcomes (Caravelis, Chiricos, & Bales, 2011; Doerner, 2015; Kaut & Spohn, 2002; Lehman, Chiricos, & Bales, 2017; Logue, 2011; Lynch & Omori, 2014; Nicosia, MacDonald, & Licardo Pacula, 2017; Spohn et al., 2014; Spohn & Belenko, 2014). Specifically, the effects of offender race and gender on sentencing outcomes have been shown to be more pronounced in combination with offenses that may be stereotypically linked to offender characteristics (Brennan & Spohn, 2009; Crow & Kunselman, 2009; Demuth, 2002; Doerner, 2015; Embry & Lyons, 2012; Freiburger & Romain, 2018; Henning & Feder, 2005; Kaut, 2002; Koons-Witt, Sevigny, Burrow, & Hester, 2014). Such offenses may include drug offenses for African Americans or gendered offenses for males. Notably, similar effects have yet to be fully explored among judges. For example, only one study

has examined whether offense type moderates the effects of judicial demographics on sentencing outcomes for specific offenders (Lim, Bernardo, & Snyder, 2016).

### **The Current Focus**

To address these shortcomings, the current study will examine the effects of race and gender across analytical levels (i.e. offender, judicial, and county) on two sentencing outcomes - the incarceration and sentence length decisions. Importantly, these decisions will be in the context of racialized and gendered offenses, as these specific contexts provide a potential ‘hotbed’ in which disparities may flourish. In this instance, racialized offenses are limited to drug crimes. Historically, communities of color have been subject to patterns of practice, legislation, and policy decisions that systematically disenfranchises individuals associated with these groups, leading to unwarranted disparity (Mauer, 2004; Tonry, 2010). These patterns of bias may be most evident among drug policies and enforcement, as evidenced by heavy handed targeting of open-air drug markets, mandatory minimums for drug crimes, and disparate sentencing policies for crack versus cocaine offenses (Alexander, 2012). As such, examining the effect of racial characteristics among drug offenses may offer a more nuanced understanding of disparities across sentencing outcomes.

Gendered offenses, on the other hand, are understood as male violence that is typically (but not always) perpetrated against women (see Kelly, 1988). This includes offenses such as stalking, domestic violence, intimate partner violence, sexual assault, and rape. According to a national study conducted by the National Center for Injury Prevention and Control, under the Center for Disease Control, 43.6 percent of women in the U.S. have experienced some form of sexual violence in their lifetime, one in six have

been victims of stalking, and 36.4 percent have been victims of intimate partner violence (IPV) (Smith, Zhang, Basile, Merrick, Wang, Krensnow, & Chen, 2018). While rates among men have been evidenced, the overwhelming majority of victims are women, with women experiencing significantly greater negative lifetime impacts (25.1%).<sup>1</sup> Moreover, when women are victims of these offenses, their perpetrators are almost always men (Walters, Chen, & Breiding, 2013). For example, 85.2% of lesbian women, 87.5% of bisexual women, and 94.7% of heterosexual women experiencing some form of sexual violence other than rape reported having a male perpetrator. These rates increased when considering rape, with 98.3% of bisexual women and 99.1% of heterosexual women reporting having male offenders. Similar incidences were reported for women experiencing IPV (i.e., rape, physical violence, and/or stalking), with males accounting for 89.5% and 98.7% of perpetrators among bisexual and heterosexual women, respectively (Walters et al., 2013). As previously noted, prior research suggests that gender disparities may be compounded by victim-offender characteristics and crime type. Therefore, it is important to highlight the impact of other potential gender factors.

As such, ten research questions will be addressed in this study:

1. What effect does race/ethnicity of offenders have on sentencing outcomes in stereotypically racialized (i.e., drug) offenses?
2. What effect does gender of offenders have on sentencing outcomes in stereotypically gendered (e.g., sexual assault, stalking, harassment) offenses?

---

<sup>1</sup> Approximately 24.8% of men have experienced some form of sexual violence in their lifetime. Additionally, 5.8% of males have been victims of stalking and 33.6% have experienced intimate partner violence (Smith et al., 2018).

3. What effect does race of judges have on sentencing outcomes in stereotypically racialized (i.e., drug) offenses?
4. What effect does gender of judges have on sentencing outcomes in stereotypically gendered (e.g., sexual assault, stalking, harassment) offenses?
5. What effect do measures of racial contextual factors (i.e., Black absolute status) have on sentencing outcomes in stereotypically racialized (i.e., drug) offenses?
6. What effect do measures of gender contextual factors (i.e., women's absolute status) have on sentencing outcomes in gendered (e.g., sexual assault, stalking, harassment) offenses?
7. Is the effect of offender race on sentencing outcomes conditioned by judge race for stereotypically racialized offenses?
8. Is the effect of offender gender on sentencing outcomes conditioned by judge gender for stereotypically gendered offenses?
9. Is the effect of offender race on sentencing outcomes conditioned by racialized contextual factors for stereotypically racialized offenses?
10. Is the effect of offender gender on sentencing outcomes conditioned by judge gender for stereotypically gendered offenses?

By answering these questions, this dissertation aims to further contextualize the conditions under which race and gender impact decision-making, specifically as it relates to disparate treatment in sentencing severity. This process is explored in several ways. First, this study examines whether the effects of offender characteristics are more pronounced based on the type of offense perpetrated. Doing so highlights the nuanced nature of race and gender effects on sentencing and identifies when these factors may



matter most. Second, this study explores whether judicial demographics and cultural experiences impact their decision-making for a unique group of offenses. As such, this study will address gaps in prior literature that have failed to take these factors into account as it relates to decision-making. Moreover, this study situates these decisions in a broader community context, addressing the potential for local norms to impact the perceptions of offenses and punishment philosophies of those involved in the sentencing process; drawing on novel theoretical frameworks to explain these relationships. Finally, this dissertation addresses limitations of prior research by exploring whether the effects of individual offender characteristics are further conditioned by the environment in which sentencing occurs. In sum, this research will build on our understanding of *when*, or under what circumstances, these extralegal factors matter in justice processing.

### **The Plan of the Dissertation**

Considering the proposed research questions in the current study, this dissertation proceeds as following. Chapter 2 discusses the current state of the literature related to judicial decision-making, relying on theoretical developments to explain why and when disparate treatment may be most pronounced. This chapter first addresses the impact of offender demographic factors on decision-making, generally and in the context of unique offenses, highlighting evidence from key empirical findings. Next, an overview of the impact of judicial characteristics on sentencing outcomes is discussed, followed by an examination of the relationship between community context, sentencing severity, and disparate treatment. Here, arguments to advance our conceptualization and measurement of contextual factors are proposed. A series of hypotheses are developed based on the theoretical and empirical relationships advanced.

Chapter 3 provides a detailed explanation of the data, methodological approach, and statistical techniques used to address the proposed research questions and hypotheses. This chapter outlines the sample and structure of the data used for analyses, the conceptualization and measurement of the primary dependent and independent variables, and explanations of appropriate analytic strategy. Chapter 4 presents the results of the current study in two stages. First, the direct effects of race and gender across varying contextual levels (i.e., offender, judge, and county) on sentencing severity are reported. Second, cross-level interaction effects between judge, county, and offender characteristics are presented. Finally, Chapter 5 summarizes findings from the analyses presented in the previous chapter and discusses a series of theoretical, research, and policy implications related to the study's results, as well as highlighting avenues for future research.

## **CHAPTER II**

### **Literature Review**

#### **Introduction**

Contemporary theories of sentencing highlight the need to examine judicial decision-making across contexts. Early attempts to clarify this process emphasized the effects of situational factors, particularly legally relevant (e.g., offense severity and criminal history) and extralegal factors (e.g., race, gender, and age), associated with individual cases (Blumstein, Cohen, Martin, & Tonry, 1983; Kleck, 1981; Klepper, Nagin, & Tierney, 1983). Efforts to explain the weight judges place on these factors suggests that decision-making is facilitated by causal attributions and rational decision-making processes (Albonetti, 1991; Steffensmeier et al., 1998). The individual experiences of judges, their beliefs, and attitudes may condition the importance placed on these factors. As this substantive process is acted out in a unique court context, with varying goals and norms (see Eisenstein et al., 1988), judges' reactions to these normative processes may also exacerbate differences in sentencing patterns. Sentencing scholars also note that these decisions are the product of larger social environments, emphasizing the effect of structural elements on outcomes (Ulmer, 1997). Attempts to fully examine judicial decision-making must take each context, and its related factors, into consideration, as decision-making in each context may have significant implications for justice-involved persons.

The current chapter reviews the established theoretical and empirical research describing the processes by which judicial decision-making is carried out. Beginning with an assessment of case level factors determined to influence judicial discretion, this review

then addresses the embedded nature of these factors. Specifically, this chapter will outline Albonetti's (1991) uncertainty avoidance and causal attributions perspectives, underscoring the context in which judges must make decisions and the factors that influence those outcomes. Moreover, a discussion of Steffensmeier and colleagues' (1998) focal concern perspective will further develop our understanding of the limitations of the judicial decision-making process and the ways in which judges attempt to manage those shortcomings. In doing so, special attention will be given to how these perspectives consider the role race and gender play in judicial decision-making. Building on this perspective, this section will also highlight the theoretical relationship between offender stereotypes (related to race and gender) and criminality, emphasizing its underlying impact on judicial responses.

After reviewing prior case-level theoretical and empirical literature, a broader discussion of the embedded nature of focal concerns will be established. Specifically, an introduction into the ways in which focal concerns may be expressed across varying judicial and community contexts is assessed. First, representative bureaucracy (Mosher, 1968) is reviewed to explain the theoretical connections between judge cultural/background characteristics and discretionary behaviors. Empirical evidence is presented to explain the effects of representation on sentencing outcomes in general, as well as, for specific offenses.

Finally, Blalock's (1967) racial threat hypothesis will be reviewed, establishing the theoretical links between community context and punitive criminal justice responses. Empirical evidence for this perspective is also reviewed. However, hypotheses for the effects of community contextual factors on disparate treatment will be derived from the

absolute status framework. Arguments presented suggest that this theoretical perspective provides a more nuanced understanding of the ways in which community characteristics may influence decision-making, and subsequently impact the disparate treatment of offenders. Taken together, this chapter provides a comprehensive assessment of the theoretical links between case, judge, and community level contexts related to discretionary decision-making and sentencing outcomes.

## **Theoretical Explanations and Empirical Evidence of Disparate Treatment in Sentencing**

### ***Casual Attributions***

According to Simon (1957), rational decisions can only be achieved after the consideration of all possible alternatives, based on a full set of facts. It is assumed that complete knowledge of an issue eliminates any uncertainty about the decision-making process and subsequent outcomes. While ideal, possessing complete information on an issue is rarely the norm and this is particularly true for court actors. In most instances, judges rely on situationally developed habits and social structures to reduce uncertainty about an offender's future behavior. This results in a decision-making process that emphasizes the use of "bounded rationality" where decisions involve patterned responses, influenced by past experiences, stereotypes, and other prejudices (Clegg & Dunkerley, 1980).

These patterned responses are linked to causal attributions of responsibility (Carroll & Payne, 1976; Hawkins, 1980; Shaver, 1975). Decision-makers may perceive these attributes as static or dynamic. Static characteristics may be viewed more negatively, and suggest the inability of an individual to change, while dynamic factors

contribute to perceptions of amenability. The perceived nature of these attributions may also be influenced by behavioral stereotypes, which can have implications for what decision-makers view as appropriate responses to behavior (Shaver, 1975).

Drawing on these structural organizational theories and social psychologist perspectives on attribution, Albonetti (1991) argued that uncertainty avoidance and causal attribution are the primary mechanisms by which judges make decisions. Uncertainty in judicial decision-making is due to the limitations of accurately predicting future offending. Judges attempt to manage uncertainty in sentencing decisions by developing patterned responses based on defendant characteristics, situational elements of the offense, and case processing outcomes. Static and enduring attributions work to increase sentence severity, while those perceived as dynamic should theoretically decrease severity. With this reconceptualization of sentencing research, Albonetti (1991) suggested that the disparities evidenced in prior sentencing research may be a product of judicial attempts to achieve bounded rationality, premised on stereotypes of offenders.

### ***Focal Concerns Theory***

Building upon Albonetti's (1991) work, Steffensmeier and colleagues (1998) posited that judges make decisions based on three universally held focal concerns: offender blameworthiness, protection of the community (i.e., offender dangerousness), and practical constraints associated with sentencing. Blameworthiness, generally associated with offender culpability and degree of injury to the victim, is typically operationalized as the seriousness of the offense. Notably, this factor is considered the most important aspect of the sentencing process as it directly relates to the offense at hand. While this concept is clearly set forth in the law, it may also be interpreted

subjectively based on judges' perceptions of an offense, as well as universally held perceptions of wrongfulness and harmfulness (Farrell & Holmes, 1991; Miller, 1994). Beyond offense severity, aggravating factors (e.g., criminal history) and mitigating factors (e.g., prior victimization of offender), as well as, the role an offender plays in an offense, also influences perceptions of blameworthiness. This focal concern is primarily concerned with achieving retributive justice, highlighting the influence of just deserts in the sentencing process (see von Hirsch, 1976).

Protection of the community, in contrast, emphasizes incapacitation and/or deterrence as the primary goal of sentencing. Like blameworthiness, offender dangerousness (i.e., risk of future harm) is assessed based on causal attributes associated with the type of offense committed (e.g., violent vs. nonviolent) and criminal history. For example, an offender convicted of a nonviolent drug crime may be perceived as less threatening and therefore, deserving of greater leniency during the punishment phase compared to an individual sentenced for sexual assault. Judges may view this offense as posing greater risk to the broader community, warranting a more punitive sanction. Moreover, perceptions of dangerousness may be compounded when considering an offender's criminal history. Judges may view recidivists as deserving of more severe punishment as they represent persistent threats to society (Franklin & Henry, 2019; Ulmer & Laskorunsky, 2016; Ulmer et al., 2016). Beyond these legally relevant factors, status linked attributes like offender race, sex, education status, age, and employment, may also shape interpretations of offender dangerousness (Johnson & DiPietro, 2012; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2000, 2001). Subjective evaluations

of who represents a dangerous criminal based on extralegal characteristics may potentially influence perceptions of deservedness.

Finally, practical constraints associated with sentencing are evaluated at the individual and organizational level. Offender's "ability to do time" may have significant implications for judicial decision-making (see Sykes, 1958). Again, these assessments may also be based on status linked attributes associated with extralegal factors (Daly, 1987; Steffensmeier, Kramer, & Ulmer, 1995). For example, judges may perceive older offenders and women as less capable of dealing with the harsh realities of prison, while male and minority offenders may be perceived as more readily amenable to the hardships of prison life. Additionally, offender's health, costs associated with incarceration, and the disruption of family ties may also influence judicial decision-making for individual offenders. Judges may also be concerned with organizational pressures that impact sentencing decisions. While judges are the primary arbiters of the court, they make decisions in the context of a broader social world or court community (Eisenstein et al., 1988). Therefore, they must work to maintain organizational relationships with other courtroom workgroup actors (i.e., prosecutors and defense attorneys). Furthermore, judges may also be mindful of the impact of their decisions on downstream correctional processes (e.g., correctional resources). While not of primary interest, judges may be called to balance deservedness with correctional practicality (Dixon, 1995; Flemming, Nardulli, & Eisenstein, 1992; Steffensmeier Kramer, & Streifel, 1993; Ulmer, 1995; Ulmer & Kramer, 1996). For instance, the decision to incarcerate an offender or assign a more lenient sentence (e.g., intermediate sanction) may be a function of correctional overcrowding as opposed to deservedness. Moreover, judges must also be aware of other



organizational constraints related to the sentencing process. At times, judicial discretion may be limited statutorily through policies such as sentencing guidelines or mandatory minimums.

Like Albonetti (1991), Steffensmeier et al., (1998) argued that while judges strive for a completely rational decision-making process, they often lack the prerequisites necessary for a fully rational process due to various organizational constraints (e.g., caseload pressures and insufficient offender information). Judges respond to these constraints by engaging in a process that allows for decision-making through “bounded rationality.” As limited information is available to accurately assess these focal concerns, judges may rely on perceptual shorthands to make decisions. While legally relevant factors like offense severity and criminal history drive the development of these shorthands, Steffensmeier and colleagues (1998) argue that these patterned responses may also be influenced by stereotypes related to race/ethnicity and sex.

Moreover, these stereotypes may be amplified when observed in combination with specific offense types. Building on prior sentencing theory, scholars argue that offenders who engage in behaviors that are congruent to racial/gender stereotypes associated with group membership may face increased punishment severity (Franklin & Henry, 2019; Ulmer & Laskorunsky, 2016). For example, prior research suggests that minority offenders with more extensive criminal histories may face more punitive sanctions as offenders “with greater criminal histories might be seen as particularly dangerous or crime-prone . . .” (Ulmer & Laskorunsky, 2016; p. 12). Additionally, the importance placed on these factors when assigning punishment may vary across racial/ethnic groups. Similar assumptions can be made when considering the type of

offense committed. Offenders engaged in stereotypically racialized or gendered offenses may be viewed as more dangerous or crime-prone, and therefore, deserving of greater punishment.

### ***Racial Stereotypes and Criminality***

The criminality of Black Americans has been of interests to scholars for decades. Sociologists in the early 19<sup>th</sup> century linked African American offending to biological determinants of behavior citing the “natural criminal tendencies of blacks” (Hawkins, 1995: p.14). Scholars and politicians alike pointed to higher crime rates among free northern Blacks, in comparison to Whites and enslaved Blacks in the South as evidence of this assumption. These observations were often used to advocate for the preservation of the institution of slavery as a mechanism for social control among the enslaved (Hoffman, 1896). In contrast, other scholars suggested that crime among African Americans was not a result of their genetic makeup, but instead a product of sociological factors. In his work examining crime rates in Philadelphia and Georgia, DuBois (2004) argued that the rate of crime committed by Blacks in these areas could largely be attributed to attempts to reassert social control. He suggests that “crime was a *natural* product not of their genetic makeup but of the degradation and social disruption of slavery” (Hawkins, 1995: p. 15). Nevertheless, stereotypes of newly freed Blacks were cemented into the American narrative of who is most likely to be a criminal.

African Americans continued to be stereotyped as dangerous and violent well into the 20<sup>th</sup> century (Drummond, 1990; Kennedy, 1997; Mauer, 1999; Russell, 2002). However, in the 1970s and early 1980s, the association between crime and Blackness was inextricably linked (Barlow, 1998). Whereas Black crime was once synonymous with

petty theft or occasional violence against White women, the late 20<sup>th</sup> century ushered in a more ominous ‘dark figure’ (Welch, 2007). Russell (2002) refers to this new stereotype as the *criminalblackman*: young black males who are perceived as more threatening with latent tendencies to engage in criminal behavior. Overtime, the association between race and crime has been reinforced so that “talking about race *is* talking about crime” (Barlow, 1998: p. 151).

Scholars point to two causes of this formative transition. First, they suggest that the strengthening of stereotypes was a response to political gains made during the Civil Rights movement of the 1960s (Barlow, 1998). Subsequent riots and civil unrest occurring near the end of this political movement allowed politicians, law enforcement officials, and the news media to frame these acts of violence as a major social problem (Chambliss, 1995). As a result, a new moral panic ensued and the racialization of crime proliferated. Additional scholarship points to the War on Drugs as a major contributor to the *criminalblackman* stereotype. The adoption of draconian sentencing policies that disproportionately impacted Black offenders and widespread media attention of the crack cocaine epidemic made African Americans the face of the drug problem in the United States (Bobo & Thompson, 2006). At the height of this policy initiative, approximately 25% of African Americans in state prison were incarcerated due to drug offenses (Beck & Mumola, 1999). Today, Black Americans, particularly young black males, are still plagued with negative drug and violent characterizations (Johnson & DiPietro, 2012; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2000, 2001).

### ***Race Effects in Sentencing***

Research examining the impact of race on sentencing has proliferated over the last four decades providing modest support of the effects of race on sentencing outcomes (see Spohn, 2000; Mitchell, 2005; Franklin, 2018). A number of studies suggest that disparate treatment in the sentencing process is, in part, due to the ways in which judges perceive offender race in relation to legally relevant factors (Abrams, Bertrand, & Mallainathan, 2010; Bales & Piquero, 2012; Burch, 2015; Bushway & Piehl, 2001; Crow, 2008; Crow & Bales, 2006; Crow & Gertz, 2008; Engen & Gainey, 2000; Fearn, 2005; Feldmeyer, Warren, Siennick, & Neptune, 2015; Freiburger & Hilinski-Rosick, 2013; Griffin & Wooldredge, 2006; Hawkins, 2005; Helms, 2009; Holleran & Spohn, 2004; King, Johnson, & McGeever, 2010; Koons-Witt, 2002; Koons-Witt, Sevigny, Burrow, & Hester, 2012; Kutateladze, Andiloro, Johnson, & Spohn, 2014; Rodriguez, Curry, & Lee, 2006; Sacks & Ackerman, 2014; Spohn & Beichner, 2000; Steen, Engen, & Gainey, 2005; Steffensmeier & Demuth, 2001; 2006; Sutton, 2010; Tartaro & Sedelmaier, 2009; Ulmer, Bader, & Gault, 2008; Ulmer & Johnson, 2004; Ulmer, Painter-Davis, & Tinik, 2016; Vigorita, 2001; Wang & Mears, 2010; Wang, Mears, Spohn & Dario, 2012; Wooldredge, 2007; 2012; Wooldredge, Griffin, & Rauschenberg, 2005). However, these effects are not always observed (Auerhahn, 2007; Blair, Judd, & Chapleau, 2004; Brennan, 2006; Engen & Gainey, 2000; Fearn, 2005; Feldmeyer et al., 2015; Franklin & Fearn, 2008; Freiburger & Hilinski-Rosick, 2013; Griffin & Wooldredge, 2006; Helms & Constanza, 2010; Holleran & Spohn, 2009; Johnson & King, 2017; Koons-Witt, 2002; Koons-Witt et al., 2012; Leiber & Blowers, 2003; Maxwell, Robinson, & Post, 2003; Pizzi, Blair, & Judd, 2004; Rodriguez et al., 2006; Sacks & Ackerman, 2014; Spohn &

Beichner, 2000; Steen et al., 2005; Tarato & Sedelmaier, 2009; Wang et al., 2013; Wooldredge, 2007). These findings may be dependent on the outcome in question (e.g., the incarceration vs. sentence length), the limitations placed on judicial discretion (i.e., guideline vs. non-guideline statutes), or the context in which punishment occurs.

For example, using data from the Cook County circuit court of Illinois on cases adjudicated between 1995-2001, Abrams and colleagues (2010) explored the effect of race on sentencing outcomes. Researchers argued that sentencing in this particular context was unique given the ability to randomly assign cases to judges. Findings from this study indicated that Black defendants were more likely to be incarcerated compared to White offenders. However, no such differences were found for the length of time offenders were incarcerated. In contrast, Burch (2015) found that Black offenders in Georgia received sentences that were, on average, 4.5% longer than Whites among first time offenders, even after controlling for legally relevant factors. Hawkins (2005) also found significant race effects across traditional sentencing outcomes (i.e., in/out and sentence length decisions). Using data derived from Michigan's 54 circuit courts, the researcher found that Black offenders were 1.29 times more likely to be incarcerated and received significantly longer terms of incarceration, in comparison to White offenders.

Similar findings have been evidenced across New York county district courts (Kutateladze et al., 2014), a random sample of convicted offenders in Texas (Rodriguez et al., 2006), across New Jersey's 21 counties (Sacks & Ackerman, 2014), and in large metropolitan cities like Chicago, Miami, and Kansas City (Spohn & Beichner, 2000). Kutateladze and colleagues (2014) examined the impacts cumulative disadvantage may have on minority defendants. Specifically, they hypothesized that Black offenders would

face outcome specific, as well as, cumulative disadvantage resulting in more punitive outcomes across criminal case processing. Of the 185,275 offenders processed through New York district courts in 2010-2011, Black offenders were 1.3 times more likely to be incarcerated (as well as more likely to be detained, given a custodial plea offer).

Rodriguez and colleagues (2006) explored whether the race-sentencing association would vary by offense severity in a sample of Texas defendants and found that among 7,729 offenders, Black offenders were more likely to be incarcerated, compared to receiving a deferred adjudication. However, they were not more likely to be incarcerated as opposed to receiving probation compared to similarly situated Whites.

In examining a small sample of cases ( $n=634$ ) from a randomly selected week in 2004, Black defendants in New Jersey were no more likely to be incarcerated, but did receive significantly longer terms of incarceration. Spohn and Beichner (2000) further highlight the differing impact of race across jurisdictions in comparing three major metropolitan cities. Results from this study suggested that Black offenders adjudicated in 1993-1994 were 1.47 and 1.24 times more likely to be incarcerated in Chicago and Miami-Dade, Florida, respectively. However, unlike the other jurisdictions, no significant differences were found between Black and White offenders in Kansas City.

Notably, sentencing in some of these contexts are not governed by sentencing guidelines or grids, allowing judges much more latitude in their decision-making. Policymakers suggest that the implementation of sentencing guidelines should aid in limiting the level of discretion judges may employ, thereby reducing the amount of disparity in the system. Scholars have explored the utility of guidelines to curb variation in sentencing outcomes and have found that guidelines reduce, but do not completely

eliminate disparity. For example, Bushway and Piehl (2001) found that among offenders sentenced in Maryland, African Americans were more likely to be incarcerated and received terms of incarceration that were approximately 20% longer compared to Whites. This disparity was most pronounced when sentencing offenders with longer recommended sentences according to the guidelines grid. In an effort to explore factors influencing disparate treatment, Koons-Witt (2002) examined the impact on the introduction of the Minnesota sentencing guidelines on racial disparities. Results indicated that these guidelines significantly reduced racial disparities after implementation. During the pre (1978) and early (1980-1984) guideline periods, nonwhite offenders were less likely to be incarcerated. However, this effect was completely eliminated during the later guidelines (1994), where non-White and White offenders were incarcerated at similar rates. A different effect was produced under South Carolina's brief utilization of sentencing guidelines which were in use from 1982-2003. Scholars found that Black offenders sentenced under the guidelines in 1995-2001 were more likely to be incarcerated but received similar terms of incarceration (Koons-Witt et al., 2012). Engen and Gainey (2009) also explored judicial decision-making in the context of sentencing guidelines in a northwestern state. Using data from felony offenses adjudicated in 1990-1992 in Washington State, the researchers found that Black offenders are sentenced to significantly longer terms of incarceration, in comparison to White offenders. Notably, this effect may have been contingent on how offense severity and criminal history were captured.

Additionally, racial disparities in felony offenses have been examined under the Ohio sentencing guidelines using data from 5,573 offenders sentenced during Ohio's pre-

guideline (1995-1996) and post-guideline (1997) eras (Wooldredge et al., 2005). Under these circumstances, judges were more likely to incarcerate Black offenders during the post-guideline time period, but issued shorter terms of incarceration during both time periods. Wooldredge and Griffin (2006) found mirroring effects in a subsequent study. Here, Black offenders were more likely to be incarcerated after the introduction of the sentencing guidelines. Notably, no significant effect for sentence length outcomes were evidenced during the pre-guideline era, but Black offenders received significantly shorter sentences post-guidelines. Building on this line of inquiry, Wooldredge (2007) explored the effect of race on sentence outcomes at the neighborhood census tract level using data derived from the Ohio Department of Rehabilitation and Corrections. In contrast to the prior study, Black offenders residing within the 1,021 census tracts examined were no more likely to be incarcerated compared to Whites, but still received significantly shorter terms of incarceration.

Crow and Bales (2006) found similar disparate treatment using data derived from a different guideline state. In an attempt to explore the impact of policy changes on sentencing disparity, these researchers used data from the Florida Department of Corrections spanning from 1990-1999. This data covered two unique time points in Florida's use of the guideline system: sentencing under the 1983 guidelines and sentencing under the 1994 guidelines system. Results indicated that Black offenders were 1.72 times more likely to be incarcerated across all timepoints and received significantly longer sentences. Additionally, Black offenders were treated more severely under the 1983 guidelines. Black and White offenders were sentenced to similar terms of incarceration under the 1983 guidelines, but Black offenders faced sentence lengths that



were approximately four months longer under the revised statute. Building on this line of inquiry, Crow and Gertz (2008) explored additional adaptations of Florida's sentencing guidelines and their impact on racial disparity in a later study exploring the effect of race on 661,481 felony offenders sentenced under the 1994 guidelines and Florida's Criminal Punishment Code. Findings indicated that Black offenders were 1.51 times more likely to be incarcerated and receive sentences that were significantly longer. These effects were similar across policy type. Feldmeyer and colleagues (2014) found somewhat contrasting results using 2000-2006 Florida Department of Corrections data, for 501,027 offenders sentenced across 67 counties. While Black defendants were more likely to receive jail and prison sentences in comparison to a non-custodial sanction, they did not receive significantly longer terms of incarceration.

Moreover, Bales and Piquero (2012) examined whether findings related to race were a consequence of the type of methodology employed in prior research. Specifically, they explored whether evidence of disparate treatment faced by Black defendants sentenced in Florida was dependent on the use of traditional regression or precision matching methods. Data from offenders sentenced in 1994-2006 suggested that Black offenders faced more punitive sanctions regardless of analytic technique. Specifically, Black offenders were 1.45 times more likely to be incarcerated in jail or prison using traditional techniques and 8.5% greater odds using matching techniques.

Pennsylvania has also employed a guideline sentencing structure in an attempt to reduce disparate treatment of minority offenders. Again, the utility of the guidelines to curb discretion and the proliferation of racial disparities is limited. For example, Holleran and Spohn (2004) examined sentencing data from Philadelphia County, PA in 1998 and

found that Black defendants are no more likely to be sentenced to jail or prison in comparison to Hispanic defendants. In contrast, Steffensmeier and Demuth (2001) found that among a sample of male defendants sentenced in 1991-1994, African Americans were more likely to be incarcerated and received significantly longer terms of incarceration. However, in a study centered on the impact of judicial characteristics on discretion and employing the same data, Steffensmeier & Britt (2001) found that while Black offenders were approximately 1.3 times more likely to be incarcerated, they received significantly shorter prison sentences. Ulmer and colleagues (2008) found similar results using more recent data. Black offenders sentenced in Pennsylvania between 1997-2000 were 1.51 times more likely to be incarcerated. Black offenders were similarly disadvantaged when sentenced in 1997-1999 (Ulmer & Johnson, 2004). Here, the odds of incarceration for Black offenders were 1.65 times higher, in comparison to White offenders. They also faced significant disadvantage in the sentence length decision. Findings from these studies suggest that the utility of guidelines in limiting judicial discretion and disparate treatment may fall short of accomplishing this goal.

Beyond examining the impacts of race across individual states, scholars have also explored the extent of racial disparities across using large aggregate multi-state datasets. For example, Fearn (2005) explores the impact of race across 39 counties among 17 states using data from the 1998 State Court Processing Statistics (SCPS). Results from this study indicated that Black defendants were more likely to receive a prison or jail sentence compared to a non-custodial sanction, but were no more likely to be sentenced to jail than prison. Steffensmeier and Demuth (2006) examined the main effects of race using data derived from the 1990-1996 SCPS. Among the 24,254 offenders examined,

Black defendants were approximately 1.3 times more likely to be incarcerated and received significantly longer terms of incarceration. Results from later iterations of SCPS data reveal similar patterns. In comparison to White offenders, Black defendants adjudicated in 1999-2002 were more likely to be incarcerated and receive longer sentences (King et al., 2010).

These findings are replicated across studies using SCPS data. For example, Wang and Mears (2010) and Sutton (2013) found that in comparison to probation, Black offenders are more likely to be sentenced to jail and prison. Notably, Wang and colleagues (2012) suggest that these effects may be dependent on whether these offenders were sentenced in guideline or non-guideline states. In their study examining the impact of race across sentencing policies, they found that Black offenders were more likely to be sentenced to jail and prison in non-guideline states, more likely to be sentenced to jail but not prison in states with voluntary guidelines, and were sentenced similarly to White offenders in states with presumptive sentencing guidelines. Terms of incarceration were not dependent on the type of guideline policy governing sentencing practices.

#### *Racial Disparities in Federal Sentencing*

While much of the sentencing scholarship has examined these disparities using data derived at the state level, a significant body of research also explores the sentencing patterns of federal judges. Evidence from these studies somewhat mirror those at the state level, providing moderate support for race effects in some cases (Demuth, 2002; Everett & Wojtkiewicz, 2002; Farrell, Ward & Rousseau, 2009; 2010; Feldmeyer & Ulmer, 2011; Mustard, 2001; Nowacki, 2017; Spohn & Sample, 2013; Steffensmeier & Demuth, 2000; Spohn, 2013; Ulmer & Johnson, 2010; Valdez & Wang, 2017; Ward, Farrell, &

Rousseau, 2010; Yang, 2013), but not in all. For example, Everett and Wojtkiewicz (2002) examined the extent to which racial disparities persisted after the implementation of the federal sentencing guidelines using data derived from the 1991-1993 USSC Monitoring Federal Criminal Sentencing for petty offenses. Controlling for offense-related factors, the researchers found that Black defendants were more likely to receive significantly harsher sentences. Similarly, Farrell, Ward, and Rousseau (2009) explored how minority representation in courtroom workgroups may impact the disparate treatment of Black offenders. Using data from the 2000-2002 Monitoring Federal Criminal Sentencing available through the USSC, results suggest that Black offenders had 13.2% higher odds of being incarcerated compared to White offenders. Farrell and colleagues (2010) replicated these results in a subsequent study of 89,269 cases where Black offenders were 1.16 times more likely to be incarcerated and receive significantly longer terms of incarceration. Notably, among a sample of 55,992 felony offenders sentenced between 2000 – 2002, Ward, Farrell, and Rousseau (2009) found that Black offenders were 1.13 times more likely to be incarcerated but did not receive significantly longer sentences.

Feldmeyer and Ulmer (2011) also used USSC data spanning fiscal years 2000-2002 to investigate racial disparities prior to the *Booker/Fanfan* decisions<sup>2</sup>. Limiting their analysis to the sentence length decision point, given that 82% of offenders in their sample were incarcerated, they found that Black offenders received prison sentences that were approximately 6% longer than White offenders. Ulmer & Johnson (2010) also found that

---

<sup>2</sup> In *United States v Booker* (2005) and joined case *United States v Fanfan* (2004), the Supreme Court ruled that the mandatory nature of the USSC's federal sentencing guidelines were unconstitutional, violating the 6<sup>th</sup> Amendment, thereby making the guidelines advisory rather than presumptive (see Ulmer, Light & Kramer, 2011).

Black offenders were given terms of incarceration that were significantly longer than White offenders using data from the 2000 – 2002 USSC standardized research files. Similar results were evidenced using data from earlier guideline time periods as well. Black offenders sentenced in federal courts between 1991 – 1994 received significantly more punitive sentences (Mustard, 2001). Among a sample of all male defendants adjudicated in 1993 – 1996, Black males accused of committing non-drug offenses were more likely to be incarcerated but did not receive significantly longer terms of incarceration (Steffensmeier & Demuth, 2000). In sum, findings from these studies suggest that while federal sentencing guidelines have reduced some of the disparate treatment faced by racial minorities, a significant amount of discretion is still available to judges. This discretion in turn has led to more punitive outcomes for Black offenders.

*Conditioning Effects of Race and Other Extralegal Factors on Sentencing Outcomes*

A burgeoning body of research suggests that race effects may be more pronounced when examined in conjunction with other demographic factors, primarily age and gender (Auerhahn, 2007; Brennan, 2006; Brennan & Spohn, 2009; Burch, 2015; Crow, 2008; Crow & Kunselman, 2009; Flavin, 2001; Frieburger & Hilinski-Rosick, 2013; Griffin & Wooldredge, 2006; Helms & Jacobs, 2002; Kempf-Leonard & Sample, 2001; LaFrentz & Spohn, 2006; Leiber & Blowers, 2003; Mustard, 2001; Nowacki, 2017; Sharp, Braley, & Marcus-Mendoza, 2000; Spohn, 2009; Steen et al., 2005; Steffensmeier & Demuth, 2006; Steffensmeier et al., 1998; Ulmer et al., 2016). In these studies, Black males, particularly young Black males face significantly more punitive sanctions than their White counterparts. Black females are at times treated more punitively than White

females, however, they are also treated less severely than Black males. Recently, scholars have moved beyond examining just the nominal effects of race on judicial discretion. New directions in race and sentencing scholarship have begun to explore how the presence of stereotypically Afrocentric features on offenders may impact racial disparities in justice processing (Blair et al., 2004; Burch, 2015; Johnson & King, 2017; Pizzi et al., 2004).

Pizzi and colleagues (2004) used a random sample of 216 18 – 24 year old inmates sentenced under the State of Florida's Department of Corrections in 1998 – 2001 to explore the effects of feature based stereotyping on judicial discretion. After reviewing offender profile photos matched with offense records, results indicated that Black and White offenders were given equivalent terms of incarceration. However, those offenders with more pronounced Afrocentric features received significantly harsher sentences. Similarly, Burch (2015) examined whether race in general impacts sentencing severity or if this is conditioned by skin tone. Using data derived from the 2003 Georgia Department of Corrections, Burch found that Black offenders received sentences that were approximately 4.25% longer compared to White offenders. Additionally, while medium- and dark-skinned African Americans received sentences 4.8% longer than Whites, lighter-skinned Black offenders were not sentenced statistically different from White offenders. Johnson and King (2017) further explore these effects using a sample of offenders sentenced in Hennepin and Ramsey county, Minnesota. A random sample of 1,119 cases were connected with booking photos to determine the impact of physical appearance and perceptions of threat on sentencing severity. Unlike prior studies, Black offenders were no more likely to be incarcerated, nor were these effects moderated by

perceived threatening appearances or other physical attributes. These innovative ways to explore racial disparities suggest that the ways in which race is perceived by discretionary decision-makers may be even more nuanced than previously suggested.

In sum, prior research has shown that Black offenders do incur more punitive sanctions during the sentencing process as compared to similarly situated White offenders. This disparate treatment has been evidenced in non-guideline states, where judges are afforded much more decision-making power, as well as in guideline sentencing structures. The odds of incarceration for Black offenders may range from 1.13 to 2.9 times greater than White offenders, with terms of incarceration upwards of 6% longer. While small, these effects may have demonstrable effects on offenders who incur them. Scholars have argued that sentencing outcomes may be more severe for those whose criminal behavior is *congruent* with stereotypes associated with group membership (Franklin & Henry, 2019; Ulmer & Laskorunsky, 2016). As criminal offending stereotypes for African Americans are closely linked to drug crime, offense type could exacerbate disparate treatment among Black offenders. Black offenders convicted of drug crimes may face more severe sanctions as these offenses support prevalent negative mischaracterizations. The following section will review research addressing whether Black offenders convicted of drug offenses face more punitive sanctions for such offenses.

### ***Race Effects in the Context of Drug Offending***

Prompted by the War on Drugs and the adoption of determinate sentencing schemes, scholars explored whether offense type conditioned the effects of race on sentencing outcomes. As a result, a large body of literature examining the circumstances

under which race influences judicial decision-making proliferated (see Spohn, 2000; Mitchell, 2005). Early researchers examined disparate treatment of minority drug offenders under both determinate and indeterminate sentencing systems and found varied support for the moderating effects of offense type on race (Albonetti, 1997; Barnes & Kingsnorth, 1996; Klein, Petersilia, & Turner, 1990; Kramer & Steffensmeier, 1993; Mauer, Potler, & Wolf, 1999; Myers, 1989; Spohn & DeLone, 2000; Spohn & Spears, 2000; Unnever, 1982; Unnever & Hembroff, 1988).

At times, Black offenders were subject to more severe punishment outcomes in comparison to White offenders. For example, providing one of the earliest examinations of differential treatment across racial/ethnic groups for drug offenses, Unnever (1982) examined a sample of 313 male drug offenders sentenced in Miami, FL. He found that Black offenders were significantly more likely to be incarcerated in comparison to White offenders. Similarly, Myers (1989) also found that African Americans received more severe sanctions. In response to changing legal contexts and the law, Black drug trafficking offenders sentenced in Georgia were more likely to be imprisoned. Barnes and Kingsnorth's (1996) study of felony drug offenders in Sacramento, CA also supported these conclusions. Again, Black offenders were incarcerated more often and received longer prison sentences in comparison to both White and Latino offenders. The researchers suggested that these differences may be due to the penalty structures in place for different types of drugs. In this instance, disparate treatment was a result of a penal code that offered less severe punishments for stereotypically 'white' drugs (i.e., methamphetamine) in comparison to crack cocaine, which is more likely to be associated with black offenders.



While these studies provide evidence that race effects may be prevalent when examining drug offenses, other studies provide counter evidence. Klein and colleagues (1990) examined sentencing outcomes for drug offenders across 12 counties in California and found that African Americans faced no greater odds of incarceration as compared to Whites. Latino offenders, however, were much more likely to be incarcerated. Similarly, Kramer and Steffensmeier (1993) found that the effect of drug offense on sentencing outcomes were virtually identical for Black and White offenders among a sample of Pennsylvanian defendants. Comparable findings were evidenced across large metropolitan cities, including Chicago, Miami, FL, and Kansas City (Spohn, 1999; Spohn & Spears, 2000).

Although informative, these early studies were subject to several methodological limitations, including restricted sample sizes and unrefined measures for legally relevant factors (i.e., offense severity and criminal history). The next generation of studies examining race-by-offense-type effects on sentencing outcomes addressed these shortcomings by further refining the circumstances under which offense type might moderate the impact of offender race. These studies offer more consistent support for the relationship between race and offense type on punishment severity (Albonetti, 2002; Brennan & Spohn, 2009; Crow & Kunselman, 2009; Demuth, 2002; Doerner, 2015; Kaut, 2002; Mustard, 2001; Pasko, 2002). Notably, disparities are most evident within studies examining federal offender populations. For instance, Demuth (2002) examined United States Sentencing Commission (USSC) data from 1996-1999 and found that the effect of race varied significantly by drug offenses. Although the purpose of the study was to examine the effect of citizenship status on sentencing outcomes, Demuth (2002)

found that Black defendants received sentences that were 1.4 months longer and were incarcerated 7% more often for drug offenses, in comparison to White offenders.

Likewise, Mustard (2001) examined a large sample of federal offenders sentenced under the Sentencing Reform Act of 1984 and found that the greatest disparity between Black and White offenders occurs for those convicted of drug trafficking. Specifically, African Americans receive significantly longer sentences for drug trafficking and are less likely to receive a community-based sanction, as opposed to incarceration. Moreover, Steffensmeier and Demuth (2000) drew similar conclusions among a large dataset of male offenders convicted in federal courts. Results from this study also indicated that Black offenders were more likely to be incarcerated and given significantly longer sentences when convicted of drug offenses. Valdez and Wang (2017) also explore the differential effects of race on a sample of drug offenders sentenced in U.S. district courts. Specifically, they investigated whether the impacts of citizenship and legal status were moderated by race of offenders among a sample of drug offenders sentenced in 2006-2008. Findings related to the direct effects of race indicate that Black offenders were 1.26 times more likely to be incarcerated and received significantly longer terms of incarceration. These effects were moderated by citizenship status where Black citizens were 80% less likely to be incarcerated, compared to Black non-citizens. Yang (2013) further highlights this differential treatment using USSC data spanning over a decade (1994 – 2009). Again, evidence of disparate severity is provided, particularly at the sentence length outcome. Black offenders convicted of drug offenses received terms of incarceration that were approximately 2 months longer compared to White offenders.

Similar findings have been replicated across state and local jurisdictions (Kutateladze et al., 2014; Steffensmeier & Demuth, 2000; 2001; Valdez & Wang, 2017; Yang, 2013). Among offenders sentenced in New York county district courts, Black offenders were more likely to be incarcerated for felony and misdemeanor drug offenses compared to White offenders (Kutateladze et al., (2014). Disparate treatment of Black offenders convicted of drug offenses have also been found among male defendants in Pennsylvania where Black defendants sentenced between 1991- 1994 were more likely to be incarcerated and received longer sentences for both drug and non-drug offenses. Notably, the probability of incarceration was higher for drug offenses (Steffensmeier & Demuth, 2001). Similarly, Crow (2008) explores this relationship among a sample of Florida offenders. While Black offenders were more likely to be convicted of other crimes (violent and property offenses), the greatest disparity occurred among drug offenses where Black offenders were 2.26 times more likely to be incarcerated. This difference increased among Black offenders with no prior record to approximately 3 times that of White offenders.

Doerner (2015) builds on these studies by exploring interactions between race and gender across drug and non-drug offenses. Findings suggest that being sentenced to drug offense (compared to non-drug offense) increases sentence length for all offenders, however the effect is stronger for Blacks as compared to Whites. Additionally, Black female drug offenders face odds of incarceration that are roughly 49% lower than Black males and received sentences that are approximately 14% shorter. Crow and Kunselman (2009) found similar results among a sample of female drug offenders convicted in Florida. Black female offenders were more likely to be incarcerated under Florida's early

guidelines system. This disparity increased under the revised sentencing structure.

Brennan and Spohn (2009) explore these effects among drug offenders sentenced across three U.S. federal district courts (Minnesota, Nebraska, and the Southern District of Iowa) from 1998 – 2000. They found some support for their hypotheses related to the conditioning effects of race and gender on the length of incarceration decision.

Specifically, Black male drug offenders received sentences that were approximately 11% longer than White male offenders, whereas there were no significant differences between Black and White females. Within race groups, Black women received sentences that were significantly shorter than Black males. This finding is reiterated in a future study using the same dataset (Spohn, 2013). These findings suggest that race effects are not only conditioned by offense type, but by offender gender as well.

Moreover, research suggests that these effects may be further compounded by the type of drug associated with the offense. For example, Albonetti (2002) analyzed three years of federal sentencing data to examine the effects of race and ethnicity on punishment severity for a sample of defendants convicted of drug trafficking and manufacturing. She found that Black males received significantly longer sentences. However, this finding is conditioned by the type of drug. Trafficking crack cocaine led to more severe punishment for Black males, while marijuana offenses decreased sentence lengths for both Black males and females. Hawkins (2005) also found Black offenders sentenced during the early 1990s in Michigan's circuit courts were less likely to be incarcerated for possession of less than 50 grams of narcotics but received longer terms of incarceration for possession and marijuana offenses. Crow and Kunselman (2009) also found that Black women have the highest odds of incarceration across type of offense,

where minority females were approximately 20 times more likely to be incarcerated for first degree felony drug trafficking, compared to White women. Black women with a history of crack-cocaine use were also more likely to be incarcerated (Sharp, Braley, & Marcus, 2000). Similarly, Kautt and Spohn (2002) examined the relationship between race, drug type, and sentencing strategy on the length of incarceration for offenses with mandatory minimums, those that were eligible for a mandatory minimum but it was not applied, and simple guideline cases. Under the mandatory minimum statute, they found that Black offenders with higher amounts of crack cocaine received longer sentences, compared to White offenders. In contrast, those who did not meet the mandatory minimum threshold received significantly shorter sentences for crack cocaine. Using overlapping data (1997-1999 vs 1998-1999, respectively), Kautt (2002), however, found no difference between White and Black offenders on sentence length, when accounting for the type of drug associated with the offense. Importantly, this study did not account for the sentencing strategy under which the case was processed. Overall, these studies suggest that while African Americans face disparate treatment for drug crimes in general, these effects may be more pronounced for specific types of drug offenses.

#### *Stereotypes, Race, and Sentencing Outcomes*

In an effort to move beyond direct examinations of race, scholars began to investigate whether combinations of legal and extralegal characteristics make offenders more or less susceptible to increased severity in sentencing. Steen, Engen, and Gainey (2005) suggest “judges’ interpretations and sentencing decisions will depend in part upon whether the constellation of offender and offense characteristics in individual cases conforms to stereotypes of ‘normal’ offending (Sudnow, 1965) or is seen as an exception

to these stereotypes” (p.436). These “constellations” may be influenced by race-related stereotypes about criminality, and further enhanced in the context of drug crimes. Using Washington State sentencing data from felony drug offenders, Steen and colleagues (2005) tested whether cases that match the “dangerous drug offender” stereotype (i.e., male drug dealer with a prior record) will be sentenced more harshly than those that do not. They found that Black offenders, in general, as well as Black males with a prior record and those charged with distribution offenses were more likely to be incarcerated and received longer sentences. Notably, Black offenders who least resembled the dangerous drug offender stereotype were subject to less punitive outcomes. Spohn and Sample (2013) extend the dangerous offender stereotype to include male drug trafficking offenders with prior trafficking convictions who used a weapon to commit the current offense. Additionally, they suggested that the stereotype would only impact cases in which the offender engaged in stereotypical drug trafficking patterns (i.e., Whites and Latinos who traffic methamphetamine and Blacks who traffic crack cocaine). Findings lend support for their hypotheses. Those who matched drug offender stereotypes received significantly longer sentences. This was especially true for Black offenders sentenced for trafficking cocaine. Similarly, Curry and Corral-Camacho (2008) examined the nature of racial disparities in a non-guideline state and found that young black males convicted of drug crimes faced the greatest penalty. Attributional stereotypes have also been applied to juvenile offenders, adding additional support to the impact of stereotype congruency on sentencing outcomes (Leiber, Peck, Lugo, & Bishop, 2017). Ultimately, these findings suggest that perceptions of dangerousness may be limited to particular groups.

*Conditioning Effects of Offense Type on Race Across Sentencing Outcomes*

While primarily concerned with traditional sentencing outcomes, scholars also explored whether offense type conditioned the effects of offender race across other outcomes. Evidence of the conditioning effects of offense type on race have been found in the context of habitual offenders (Caravelis, Chiricos, & Bales, 2011), sentencing departures (Doerner, 2015; Logue, 2011; Spohn et al., 2014; Spohn & Belenko, 2014), mandatory minimums (Kaut & Spohn, 2002; Lynch & Omori, 2014), diversion programs (Nicosia, MacDonald, & Licardo Pacula, 2017), juvenile transfers (Lehman, Chiricos, & Bales, 2017), and deferred adjudication (Rodriguez et. al., 2006). These studies highlight the salience of conditioning effects for race and offense type across the sentencing process and other critical decision points.

Notably, a handful of studies have found that the impacts of race are not conditioned by offense type or produced findings that were contrary to theoretical assumptions (Engen & Steen, 2000; Helms & Constanza, 2010; Kautt & Delone, 2006; Kempf-Leonard & Sample, 2001; Pasko, 2002; Stacey & Spohn, 2006). For example, when analyzing the sentencing of drug offenders in Washington State (i.e., possession or delivery of schedule 1 or 2 narcotics) in 1986 – 1995, Engen and Steen (2000) found that Black offenders were incarcerated at similar rates as White offenders. They also received terms of incarceration that were similar in length. Similarly, Helms and Constanza (2010) examined race differences in sentencing outcomes among a random sample of felony drug offenders convicted in Minnesota, Missouri, Nebraska, New Jersey, New York, Pennsylvania, and Virginia during 1990. Results from this study indicated that Black drug offenders did not receive significantly longer sentences and were actually less likely to be incarcerated.

Kautt and Delone (2006) also failed to find race differences in the sentencing of drug offenders using 1997 – 1998 USSC data. Regardless of whether offenders were sentenced under mandatory minimum or guideline sentencing structures, Black offenders were punished no differently than White offenders. Kempf-Leonard and Sample (2001) found similar results among federal drug offenders sentencing in the 8<sup>th</sup> circuit in 1993 – 1994. While the researchers did not differentiate between Black and other minority groups, they found that non-white offenders were not incarcerated at different rates nor did they receive statistically different prison lengths. Pasko (2002) also found that Black drug offenders did not receive longer sentences using 1995 USSC data.

### ***Relevance to the Current Study***

Sentencing theory suggests that judges rely on a number of factors when deciding the appropriate punishment for offenders. Key to this decision-making process are legally relevant factors associated with an offense, particularly the severity of an offense and an offender's criminal history. These two factors speak to the blameworthiness of an offender and the danger or threat they may pose to society. The importance of these factors is widely supported by prior research on judicial discretion. However, scholars also suggest that extralegal factors may also influence the decision-making process. Of particular concern is the impact of offender race on these decisions. Sentencing scholars suggest that offenders from particular racial and ethnic backgrounds may be perceived as more culpable and therefore, deserving of more punitive sanctions. These perceptions of deservedness may increase when offenders engage in behaviors stereotypically associated with this group. A review a prior research suggests that Black offenders are perceived as more dangerous, particularly when engaged in drug crimes, an activity that historically



been associated with this group. This association has frequently resulted in more punitive sanctions for Black offenders.

Given the enduring stereotypes linked with race and drug crimes, I hypothesize the following:

*Hypothesis 1: In comparison to White offenders, Black offenders are more likely to be incarcerated and receive longer sentences for both drug and non-drug offenses. However, disparities will be more pronounced in drug offenses.*

### ***Gender Stereotypes and Criminality***

Offender race is just one characteristic with links to perceptual shorthands employed by court actors during sentencing. Scholars have long acknowledged that males offend at higher rates than females (Heimer, 2000; Steffensmeier & Allan, 1996). With few exceptions, men consistently receive sentences that are harsher than those given to their female counterparts (Daly & Bordt, 1995; Spohn & Holleran, 2000; Steffensmeier et al., 1998). Notably, some scholars suggest that gender may be the most influential and robust extralegal factor associated with sentencing outcomes (Steffensmeier et al., 1998; Spohn & Holleran, 2000). As such, attitudes and perceptions toward male offenders may be more negative. Judges concerned with protection of the community, culpability, and practical constraints may rely on stereotypes related to male offenders when assessing these concerns. Unlike women who engage in deviant behavior, maleness may be associated with higher criminality. Specifically, male offenders may be perceived as particularly dangerous and blameworthy by judges (Baumer, Messner, & Felson, 2000). They may also be viewed as more amenable to the conditions of incarceration and

therefore, capable of ‘doing time’. These assumptions may lead to more severe punishments for male offenders in comparison to females.

In general, these assumptions are borne out in prior sentencing scholarship. Bontrager, Barrick, and Stupi (2013) conducted a comprehensive examination of gender differences in sentencing outcomes from research published after 1990. This meta-analysis built on the work of Daly and Bordt’s (1995) review of sentencing research published from 1960 to 1990, in order to assess whether the male-female severity gap in sentencing has been reduced. In examining 58 studies published between 1991 – 2011, Bontrager and colleagues (2013) found that women remain advantaged during the sentencing process. Specifically, their findings indicated that 75% of the studies reviewed supported the hypothesis that males were more likely to be incarcerated and 66% showed that they received significantly longer terms of incarceration.

Further evidence of these disparities have also been established at the state (Bales & Piquero, 2012; Blackwell et al., 2008; Bushway & Piehl, 2001; Crow, 2008; Crow & Bales, 2006; Crow & Gertz, 2008; Curry et al., 2004; Engen & Gainey, 2000; Engen & Steen, 2000; Fearn, 2005; Feldmeyer et al., 2015; Flavin, 2001; Franklin & Fearn, 2008; Hawkins, 2005; Helms, 2009; Helms & Jacobs, 2002; Holleran & Spohn, 2004; King et al., 2010; Koons-Witt et al., 2012; Kutateldaze et al., 2014; Leiber & Blowers, 2003; Rodriguez et al., 2006; Spohn & Beichner, 2000; Steen et al., 2005; Steffensmeier & Demuth, 2006; Steffensmeier & Britt, 2001; Vigorita, 2001; Ulmer et al., 2008; Ulmer & Johnson, 2004; Wang & Mears, 2010; Wooldredge, 2012) and federal level (Brennan & Spohn, 2009; Doerner & Demuth, 2010; Everett & Wojtkiewicz, 2002; Farrell et al., 2009; Farrell et al., 2010; Feldmeyer & Ulmer, 2011; Kautt & Delone, 2006; LaFrentz &

Spohn, 2006; Mustard, 2001; Nowacki, 2017; Spohn, 2005; 2009; 2013; Spohn & Sample, 2013; Stacey & Spohn, 2006; Ulmer & Johnson, 2010; Valdez & Wang, 2017; Ward et al., 2009).

For example, using traditional logistic regression modeling techniques, Bales and Piquero (2012) found that male offenders sentenced in Florida between 1994 – 2006 were 1.56 times more likely to be incarcerated. Similarly, Crow and Bales (2006) found that male offenders were approximately two times more likely to be incarcerated when sentenced under Florida's 1983 or revised 1994 guidelines. Male offenders were also significantly disadvantaged in the sentence length outcome, with the greatest severity found for those offenders sentenced under the 1994 guidelines. Crow and Gertz (2008) again examined how guideline reforms may impact gender disparities by comparing sentencing patterns in Florida's 1994 guideline system to the states updated Criminal Punishment Code. Results indicated that the disadvantages faced by male offenders were significantly different across policies. Males were approximately 2.13 times more likely to be incarcerated and received significantly longer terms of incarceration under each policy. Moreover, Feldmeyer and colleagues (2014) found that male offenders sentenced during the early 2000s (2000-2006) were more likely to receive a jail or prison sanction, as opposed to a non-custodial sanction. They also received significantly longer sentences to both jail and prison. Evidence of gender disparities in Florida have also been found across offense type (Crow, 2008). Among a sample of 567,061 offenders sentenced between 1994 - 2002, male offenders were 2.67, 1.74, and 2.52 times more likely to be incarcerated for violent, drug, and property offenses, compared to female offenders.

Similar findings have been found using data derived from the Pennsylvania Commission on Sentencing. Steffensmeier and Britt (2001) use data from the 1991-1994 PCS in order to explore the conditioning effects of judge race on sentencing outcomes. While not the main focus of their study, results indicated that female offenders were 34% less likely to be incarcerated and received sentences that were approximately 3 months shorter compared to males. A similar rate of incarceration was found in Ulmer and colleagues (2008) study examining the effect of religiosity on sentencing outcomes. Here, female offenders sentenced between 1997-2000 were 36% less likely to be incarcerated. Ulmer and Johnson (2004) illustrated a similar pattern using data from offenders sentenced in 1997-1999. Results from this study found that female offenders were approximately 38% less likely to be incarcerated and received sentences that were about 2 months shorter. In an attempt to disaggregate the impacts of extralegal factors across the incarceration decision, Holleran and Spohn (2004) examined whether gender differences occurred across jail and prison incarceration decisions. Using data from the 1998 PCS they found that male offenders were more likely to be sentenced to jail, as well as, prison rather than probation. Steffensmeier and Britt (2001) did not disaggregate the incarceration decision, and found that female offenders were 36% less likely to be incarcerated and received sentences that were approximately 3 months shorter.

Male offenders sentenced under Washington State's guideline system during the early 1990s also faced more punitive sanctions. Engen and Gainey (2009) examined whether the ways in which legally relevant factors are measured would impact disparities found across terms of incarceration. In a sample of offenders sentenced between 1990-1992, male offenders received significantly longer terms of incarceration compared to

females. Engen and Steen (2000) also found that male offenders face more punitive sanctions during the decision to incarcerate as well as sentence length assigned. Compared to female drug offenders sentenced between 1986 and 1995, male offenders convicted of possession or intent to deliver offenses in Washington State were much more likely to be incarcerated and received significantly longer terms of incarceration. This pattern persists among felony drug offenders sentenced between 1995 – 1998. Widening the types of drug offenses examined in their analysis to include manufacturing, delivery, possession with intent to manufacture or deliver, and possession of controlled substances, Steen and colleague's (2005) found that male offenders were 1.57 times more likely to be incarcerated and received significantly longer terms of incarceration.

Female offenders sentenced under Maryland's sentencing guidelines were less likely to be incarcerated and receive shorter sentence lengths (Bushway & Piehl, 2001). Notably, this pattern was further evidenced among offenders convicted of person offenses. Female offenders sentenced in South Carolina prior to the disbanding of the state's sentencing commission also received favorable treatment. Compared to male offenders, female offenders sentenced between 1995-2001 had significantly lower chances of being incarcerated. Additionally, female offenders received terms of incarceration that were approximately 12.8 months shorter than male offenders (Koons-Witt et al., 2012). Wooldredge (2012) found similar effects among male felony defendants incarcerated in a large urban district in Ohio. Among 5,905 individuals processed through the justice system, male offenders were significantly more likely to be incarcerated, even after controlling for legally relevant factors.

#### *Gender Disparities in Non-Guideline States*

To this point, the studies reviewed highlight disparities among states in which judges rely on sentencing guidelines to make decisions. As previously mentioned, guidelines are designed to decrease the amount of disparity found in the system. Therefore, it may be assumed that non-guideline states or those whose guidelines are advisory may also produce these differences. A review of prior research supports this assertion. For example, analyses that used SCPS data routinely found that male offenders are sentenced more punitively than female offenders. Fearn (2005) found that among offenders included in the 1998 SCPS, male defendants were more likely to receive a prison sentence compared to a non-custodial sentence, more likely to be sentenced to jail (compared to non-custodial), and are more likely to be sentenced to prison than jail. Similarly, Franklin and Fearn (2005) identified offenders convicted of homicides in the SCPS involving only one victim and found that among these offenders, male offenders received significantly longer terms of incarceration. Notably, these effects were conditioned by the victim's gender, where male offenders who were convicted of killing other males received shorter sentences (compared to male offender-female victim scenarios). Steffensmeier and Demuth (2006) also examine gender disparities using SCPS data from 1990-1996 and found that male offenders were approximately 1.7 times more likely to be incarcerated and received longer sentences. Following Holleran and Spohn's (2004) decision to disaggregate the in/out decision, Wang and Mears (2010) also explored gender differences in the likelihood of being sentenced to jail, prison, or receiving a non-custodial sanction. They found that male defendants were significantly more likely to be sentenced to jail and prison, as opposed to a non-incarcerative punishment. Similar findings have been evidenced using data from Michigan's 54 circuit

courts (2005), randomly selected felony offenders across Minnesota, Missouri, Nebraska, New Jersey, New York, Pennsylvania, and Virginia (Helms, 2009; Helms & Jacobs, 2002), New York County (Kutateladze et al., 2014), Texas felony courts (Rodriguez et al., 2006), and large urban cities (i.e., Chicago, Michigan, and Kansas City) (Spohn & Beichner, 2000).

### *Gender Disparities in Federal Sentencing*

Patterns of gender disparity in sentencing decisions are also present in studies using data derived from the federal sentencing system. In their examination of the independent and joint effects of extralegal factors on sentencing outcomes, Doerner and Demuth (2010) use data from the 2001 Monitoring of Federal Criminal Sentences (MFCS) made available by USSC. Results of this study indicated that female defendants were 42% less likely to be incarcerated and received sentences that were approximately 25% shorter than males. Similarly, Everett and Wojtkiewicz (2002) found that male offenders sentenced between 1991-1993 were more likely to receive sentences falling within the higher range of sentencing severity. Mustard (2001) also found that female offenders sentenced between 1991-1994 were less likely to be incarcerated and received shorter terms of incarceration. Kautt and Delone (2006) examined federal drug cases adjudicated between 1997-1998 and found that female offenders were less likely to be incarcerated and received significantly longer sentences when sentenced under both mandatory minimum and guideline strategies. Notably, greater disparity was present for female offenders sentenced under the mandatory minimum strategy. Valadez and Wang (2017) found further support of gender differences in the sentencing of drug offenders.

Using 2006-2008 USSC data they found that male offenders were almost 2 times as likely to be incarcerated and received significantly longer terms of incarceration.

A series of studies used data derived from three U.S. federal district courts (i.e., Minnesota, Nebraska, and the Southern District of Iowa) of felony drug offenders sentenced between 1998-2000 and found that female offenders are consistently treated more leniently (Brennan & Spohn, 2009; LaFrentz & Spohn, 2006; Spohn, 2005; Spohn & Sample, 2013; Stacey & Spohn, 2006). Examining gender disparities in terms of incarceration, Brennan and Spohn (2009) found that female offenders received terms of incarceration that were approximately 11% shorter than male offenders. LaFrentz and Spohn (2006) and Spohn and Sample (2013) also found similar effects. Spohn (2005) and Stacey and Spohn (2006) further explored uniformity in sentencing using this data across the incarceration, sentence length, and the likelihood of receiving a substantial assistance departure and found additional evidence of the severity discount female offenders receive. Female offenders were less likely to be incarcerated and received significantly shorter terms of incarceration. Specifically, female offenders in Stacey and Spohn's (2006) study received terms of incarceration that were approximately 10 months shorter than male offenders.

Similarly, using data derived from the 2000-2002 MFCS, Farrell and colleagues (2009; 2010), Ward and colleagues (2009), Feldmeyer and Ulmer (2011), and Ulmer, Eisenstein, and Johnson (2010) also found significant differences in the treatment of female offenders. Only examining the incarceration decision, Farrell et al., (2009) found that female offenders were less likely to be incarcerated. Farrell et al., (2010) examined both the incarceration and sentence length decisions and found that female offenders



were 26% less likely to be incarcerated and received significantly shorter terms of incarceration. Results from Ward and colleagues (2009) and Feldmeyer and Ulmer's (2011) analyses mirrored these effects.

Notably, a handful of studies have failed to find significant differences in levels of severity for male and female offenders (Helms & Constanza, 2010; Koons-Witt, 2002; Pasko, 2002; Wooldredge, 2007). For example, among a random sample of felony drug offenders sentenced in 1990 across seven U.S. states, Helms and Constanza (2010) found that women were no more likely to be incarcerated nor did they receive significantly longer terms of incarceration compared to men. Findings from a sample of federal drug offenders sentenced in 1995 also found little difference in punishment severity for males and females. Although female offenders received shorter terms of incarceration, these differences failed to reach statistical significance (Pasko, 2002). Koons-Witt (2002) also found little evidence of gender disparities when examining offenders sentenced of drug and property offenses in Minnesota's Ramsey and Hennepin counties. Specifically, no significant differences were observed for female offenders sentenced before or after the implementation of Minnesota's sentencing guidelines. Wooldredge (2007) also failed to find differences in judge's assessments of gender. In examining the sentencing outcomes for approximately 3,000 offenders belonging to 1,021 census tracts in Ohio, results indicated that males were incarcerated at similar rates and received similar sentence lengths.

Other studies only provide partial support for this assumption (Freiburger & Hilinksi-Rosick, 2013; Griffin & Wooldredge, 2006; Sacks & Ackerman, 2014; Wang et al., 2013). When examining if gender differences existed among a sample of offenders

sentenced in a large urban county in Michigan, Freiburger & Hilinski-Rosick (2013) found that the odds of male offenders receiving probation as opposed to jail was approximately 60% lower, compared to females. However, male and female offenders were sentenced to jail and prison at similar rates. Additionally, male offenders received significantly longer terms of incarceration when sentenced to jail, but not prison. Similarly, female offenders convicted of felony offenses between 1995 – 1997 in Ohio were less likely to be incarcerated. However, offenders who were incarcerated received similar sentence lengths regardless of sex (Griffin & Wooldredge, 2006). These patterns were evidenced prior to (1995 – 1996) and after (1997) the implementation of Ohio's guideline system. The opposite effects were found in a sample of 634 New Jersey offenders (Sacks & Ackerman, 2014). While male and female offenders were incarcerated at similar rates, males received significantly longer terms of incarceration. Blackwell, Holleran, and Finn (2008) examined the influence of Pennsylvania's sentencing guidelines on gender disparities during pre-suspension (1986-1987), suspension (1987-1988) and post-suspension (1988- 1990) time periods. Results from this study indicated that female offenders were significantly less likely to receive a prison or jail sentence, compared to probation. However, women were no less likely to be sentenced to prison compared to jail. Additionally, male offenders received terms of incarceration that were approximately 3.6 and 4.9 months longer pre and post-suspension, respectively. Finally, using data from the 1998 – 1999 SCPS, Wang and colleagues (2013) found that differences in punitiveness for males and females were conditioned by the sentencing structure practiced in a jurisdiction. For example, male offenders were more likely to be sentenced to jail and prison in states with no guideline structure.

However, under voluntary and presumptive sentence structures, male offenders were only more likely to be sentenced to prison, but not jail. Additionally, male offenders received significantly longer sentences only when sentenced in non-guideline states. These findings suggest that guidelines may be useful in limiting gender disparities, particularly in determining appropriate terms on incarceration.

Overall, these findings suggest that male offenders face significantly more punitive outcomes in comparison to female offenders. This pattern is consistent across contexts (i.e., guideline vs. non-guideline systems and state vs. federal offenses). Moreover, these effects may also be conditioned by the type of offense committed, as well as victim characteristics. It is notable that male offenders are not *always* treated more harshly. Prior research provides some evidence of equity in outcomes. However, findings such as these are limited to a handful of studies.

### ***Gender Effects in Sentencing for Female Targeted Offenses***

Attributes of blameworthiness may be amplified in the context of gendered violence. According to the chivalry and paternalism arguments, cultural stereotypes about gender roles lead to preferential treatment of female offenders (Crew, 1991; Daly, 1987; Rafter & Stanko, 1982). In the context of sentencing, chivalry suggests that “the passivity, weakness, and dependence associated with females indicate that they are in need of protection rather than punishment from the criminal justice system” (Curry, Lee, & Rodriguez, 2004p. 323). However, Curry, Lee and Rodriguez (2004) argue that this hypothesis is also useful when considering the role victim gender plays in judicial decision-making. Characteristics of passivity and dependence may be even more salient for victims of violence perpetrated at the hands of male offenders. Traditional gender

norms suggest that males have a chivalrous desire to protect and defend women who are conventionally stereotyped as the delicate and more emotional sex, in need of defense (Crew, 1991; Daly, 1987). By engaging in violence against women, males fail to live up to these prescribed roles. As such, they may be singled out for their behavior. Judges are not exempt from these chivalrous attitudes. Perceptions of culturally acceptable behavior between males and females may influence the perceived gravity of offenses. In turn, judges may make gender-based decisions regarding the severity of punishments (Curry et al., 2004).

### ***Sex Effect and Gendered Offenses***

Unlike examinations of the conditioning effects for race and offense type on sentencing outcomes, evidence for the effect of gender by crime type has been less conclusive. Scholars have been unable to disentangle the relationships between victim-offender gender and offense type as information related to these measures are often unavailable. Instead, researchers must rely on collapsed offense categories (e.g., violent, property, drug, and other crime) which obscure the true nature of the offense and limit the implications which can be drawn from analyses (for examples see Johnson & King, 2017; Ulmer et al., 2016; Wang & Mears, 2010; Ward et al., 2009). Additionally, much of the literature on gendered offending focuses on outcomes at earlier decision points during case processing. An extensive body of literature has proliferated regarding law enforcement and prosecutor decision-making in the context of gendered crimes (see Spohn & Tellis, 2012). For example, researchers have widely examined officer decisions to arrest and charge individuals involved in incidents of intimate partner violence (IPV), domestic violence (DV), and sexual assault (Alderden & Ullman, 2012; Buzawa &

Austin, 1993; Dichter, Marcus, Morabito, 2011; Hoyle & Sanders, 2000; Kane, 1999; Morrow, Katz, & Choate, 2016; Robinson & Chandek, 2000; Schuller & Stewart, 2000; Tasca, Rodriguez, & Spohn, 2013). Similarly, a growing body of literature examines prosecutor decision-making in these contexts as well, given their influence over pretrial decisions (e.g., charging and case dismissals) (Frohmann, 1991; Kingsworth & MacIntosh, 2007; Messing, 2014; Spohn & Spears, 1997; Spohn & Holleran, 2001; Spohn, Tellis & O'Neal, 2014). However, scholars have failed to address these issues in the context of sentencing decisions. Few studies attempt to account for how the gendered nature of crimes may influence punishment outcomes for offenders. Instead, scholars attempt to address this limitation by accounting for the effect of victim gender on judicial discretion.

For example, Myers (1979) first attempts to address this issue by examining how victim behavior and attributes impact the severity of sanctions for offenders. Using a random sample of felony defendants convicted at trial, she found that individuals with female victims were more likely to be incarcerated than those who offend against males. Similar findings have also been established in the context of homicides. Particularly, defendants found guilty of murdering female victims faced greater disadvantage throughout case processing. Like Myers (1979), Baumer, Messner, and Felson (2000) also examined the effect of victim conduct and demographics on case dispositions and found that victim gender significantly impacts case processing. Specifically, defendants accused of killing female victims were more likely to be prosecuted, less likely to have charges dropped, and were convicted on the most serious offense. Similarly, Franklin & Fearn (2009) also found that male offenders who killed female victims received

significantly longer sentences in comparison to other victim-offender gender dyads. Beaulieu and Messner (1999) also found that defendants of femicide were less likely receive a charge reduction, however, victim gender did not impact the likelihood of conviction. Likewise, Glaeser and Sacerdote (2000) reported that vehicular homicides of female victims led to a 56% increase in sentence length. Curry and colleagues (2004) offer the most recent account of the impact of victim gender on discretionary decision-making. They assess the impacts of victim gender directly, as well as the conditioning effects of offender gender. Findings from a sample of felony offenders convicted of assault, robbery, or homicide indicate that offenses against female victims significantly increased the term of incarceration for offenders. Additionally, in comparison to female-victim/male-offender dyads, all other pairings received shorter sentences. Notably, these offenses were not ‘gendered’ in nature. Instead, they were offenses perpetrated against women, but lack the power and control characteristics necessary in gendered crimes (Bailey & Peterson, 1995; Whaley & Messner, 2002; Vieraitis, Kovandzic, & Britto 2008).

Crocker (2005) notes that “judges often rely on stereotypes and traditional notions of marriage, family, and femininity” when making decisions specifically in cases of violence against women (p.197). As such, examining the gendered nature of offenses provides a unique perspective on how such stereotypes impact judicial decision-making. Few studies, however, have tested the chivalry/paternalism hypothesis as described by Curry, Lee, and Rodriguez (2004). Those that have investigated gendered offenses and sentencing outcomes do so primarily in the context of domestic and intimate partner violence (Bond & Jefferies, 2014; Freiburger & Romain, 2018; Koons-Witt, Sevigney,

Burrow, & Hester, 2014; Kramer, 2016; Romain & Freiburger, 2013), as well as sex offenses (Embry & Lyons, 2012; Kautt & Mueller-Johnson, 2009; Kingsnorth, Lopez, Wentworth, & Cummings, 1998).

While several studies have examined the effect of gender on punishment severity in domestic and intimate partner violence offenses, findings related to these analyses have been relatively mixed. For instance, Freiburger and Romain (2018) found that male perpetrators of family violence were disadvantaged across several stages of justice system processing. Not only were male offenders 18 times more likely to be sentenced to prison (as opposed to jail) and received longer terms of incarceration, they were also more likely to be released on bail (as opposed to being released on one's own recognizance) and assigned higher bail bonds. Henning and Feder's (2005) study focusing on the impact of offender characteristics on misdemeanor and felony domestic violence offenses supports these findings. Compared to female perpetrators, male offenders served significantly longer sentences. Similarly, Koons-Witt and colleagues (2014) found that while being convicted of a domestic violence offense increased punishment severity for both males and females, male offenders received significantly longer sentences and were more likely to be incarcerated. Specifically, female offenders sentenced under the South Carolina sentencing guidelines received terms of incarceration that were approximately 13 months shorter than male offenders. In contrast, Bond and Jefferies (2014) found that perpetrators of domestic violence were sentenced more leniently in comparison to non-domestic violence cases. Using data from the Bureau of Crime Statistics and Research in New South Wales, Australia, they found that perpetrators of domestic violence were less likely to be incarcerated and received

significantly shorter sentences. Notably, some offenders do receive a “punishment cost” for engaging in acts of domestic violence. Specifically, older indigenous males were more likely to be incarcerated for domestic violence offenses in comparison to young indigenous males. In sum, the manner in which judges interpret gender dynamics in this context may be more nuanced than proposed in the chivalry hypothesis. Domestic violence, while primarily perpetrated by males, may also be committed by women. Additionally, the victims of this behavior may include those in intimate relationships, as well as children, parents, and other members of the household impacting the perceived ‘gendered’ relationship between offender and victim. Taken together, these factors may work to blur the gendered nature of the offense which could account for the mixed results.

The impact of sex on gendered crimes is more salient among sexual assault offenses as there is little ambiguity in the victim-offender relationship in this context. Embry and Lyons (2012) assess the strength of this proposition by examining the extent to which the ‘evil woman’ hypothesis applies to sex offenses. This hypothesis suggests that female offenders who engage in traditionally male or unfeminine offenses would be perceived more negatively, and therefore, punished more severely. While they hypothesize that female sex offenders would be punished more severely, they found that males receive longer terms of incarceration. Similarly, Kingsnorth and colleagues (1998) found that while committing violent sex crimes did not significantly impact the odds of incarceration, it did lead to longer sentence lengths. Prior research also suggests that those committing assault or robbery are less likely to be incarcerated, in comparison to sexual assault offenses (Maxwell et al., 2003). Only those convicted of homicide had



increased odds of incarceration. This effect was mirrored across sentence length outcomes. Taken together, these results suggest that sexual assault offenses are at times treated more severely and that these effects are more substantial for male offenders.

### ***Relevance to the Current Study***

Prior research has consistently shown that male offenders are treated more punitively across a variety sentencing outcomes, most notably the incarceration and sentence length decisions. Scholars suggest that these differences may be a consequence of the attributes judges assign to male and female offenders. While male offenders may be perceived as more culpable, dangerous, and capable of enduring punishment, female offenders may be viewed as less blameworthy and, therefore, less deserving of harsh treatment. Perceptions of male dangerousness may be amplified when offenders engage in crimes against those perceived as less capable of protecting themselves. This may include children, the elderly, and women. Crimes against women, particularly sex crimes, may be perceived as especially deserving of increased punishment as these offenses represent the failure of men to ‘protect’ women. Understanding sentencing decisions through this patriarchal framework may explain sentencing disparities for gendered offenses.

Considering the relationship between gender normative behavior and sentencing, the following is hypothesized:

*Hypothesis 2: In comparison to female offenders, male offenders are more likely to be incarcerated and receive longer sentences for gendered and non-gendered offenses. However, disparity will be greater in gendered offenses.*

### *The Embedded Nature of Focal Concerns*

The court community perspective suggests that legal organizations form unique social worlds in which participants share work environments, form relationships among the individuals who work there, and create legal and organizational norms by which those involved comply (Eisenstein et al., 1998; Ulmer, 1997). The formation of these local norms shapes the formal and informal policies related to justice system processing, including charging, plea bargaining, and sentencing decisions. Moreover, case processing and sentencing patterns are also informed by the emergence of local court communities' substantive rationalities, which can be as important to decision-makers as formal policies (Engen, Gainey, Crutchfield, & Weis. 2003; Savelsberg 1992; Ulmer and Kramer 1996). Kramer and Ulmer (2009) define substantive rationality in criminal sentencing as "a type of rationality that is oriented toward flexible and individualized decision-making in service of a potentially wide variety of extralegal goals" (p.5). These goals may include the protection of offenders and the community, crime control, or organizational efficiency. Notably, the latitude afforded decision-makers through substantive rationality may have unwarranted consequences, including the introduction of bias and discrimination in the sentencing process. As such, sentencing scholars suggest that variation in decision-making may be a consequence of the variation among cultural and organizational norms (Eisenstein et al., 1988; Ulmer & Kramer, 1996; Ulmer & Johnson, 2004).

Moreover, as decision-makers are embedded in local communities, the sentencing process and interpretations of sentencing criteria may also be a consequence of established cultural and organizational norms (Steffensmeier et al., 1998). Kautt

(2002) suggests that “the impact of case level factors should be conditioned by the characteristics of the court in which a case is adjudicated” (p.642). Essentially, the process by which judges’ substantive rationalities are shaped may be a consequence of the court community itself. Relatedly, assessments of focal concerns, as well as potential biases or disparate treatment may also be a product of the decision-making context.

Two theoretical avenues are useful for understanding how, exactly, focal concerns are differentially embedded across judges and communities. First, representative bureaucracy suggests the way in which judges assess focal concerns or adhere to stereotypes, may be a function of their unique attitudes and background experiences. Judges may draw on these attitudes and experiences to inform their decision-making (Mosher, 1968). Second, the absolute status framework builds on the assumption that court community norms are a function of established standards in the broader community (Eisenstein et al., 1988; Ulmer, 1997). For example, in jurisdictions with more conservative ideologies, judges may be more inclined to issue more severe sentences. As such, judicial decision-making may be a consequence of communal expectations. These perspectives are discussed in greater detail below.

### ***Judicial Attributes, Substantive Representation, and Sentencing Outcomes***

As of 2014, Black and female judges accounted for 7% and 30% of state trial judges in the U.S., respectively (George & Yoon, 2019). This disparity decreases slightly among the federal judiciary where as of 2019, female judges accounted for approximately 27% of federal judges, while White judges comprised 80% of judgeships (Root, Faleschini, & Oyenubi, 2019). These rates represent a significant gap in representation relative to the population. Regardless of this fact, policy makers, activists, and citizens

have long advocated increased diversity of the bench (Herman, 2002; Roots et al., 2019; U.S. Department of Justice, 2003). Proponents of race and gender inclusivity assume that increased diversity leads to substantive improvements in the administration of justice, as well as symbolic impacts on perceived system legitimacy. By diversifying the judiciary, the social distance between decision-makers and their charges is presumably decreased. Judges may draw on the “shared experience, language, and other cultural characteristics” of justice involved persons, incorporating these experiences into the traditional socialization process of judges and their decision-making (Ward, 2006: p. 70). Black and female judges may be more sensitive to issues of discrimination and the existence of injustice across the system (Claire & Winter, 2016; Welch, Combs, & Gruhl, 1988). As such, their decisions may be influenced by more liberal perspectives on punishment (Smith, 1983). Moreover, these concerns may ultimately benefit the most disadvantaged, including the poor, racial and ethnic minorities, and women. These assumptions have been promoted widely by policy makers through a number of U.S. Justice Department initiatives and state affirmative action programs (Goldman, 1979; Herman, 2002; U.S. Department of Justice, 2003).

Sentencing scholars also suggest that diversity of the bench should lead to more equitable outcomes, but fail to situate the effects of judicial diversity within a robust theoretical framework. Prior research examining the impact of judicial characteristics on sentencing outcomes has primarily pointed to the embedded nature of focal concerns to highlight differences in sentencing patterns across judges. For example, Johnson (2006) suggests the extent to which judges maintain “unique attitudes, beliefs, and background experiences, their situational interpretations of the relative import of different focal

concerns is likely to differ” (pg. 267). While this framework offers some insight into the ways in which judicial characteristics may influence decision-making, it primarily speaks to how these factors impact all offenders. A more robust perspective is needed to fully understand *why* increased diversity may lead to fairer treatment of offenders belonging to particular groups.

### ***Representative Bureaucracy***

Representative bureaucracy provides a useful framework for understanding why diversity may improve individual outcomes in sentencing. As outlined by Mosher (1968), bureaucracies can achieve representativeness in two ways. First, organizations may increase the membership of individuals belonging to specific groups. Doing so denotes passive or symbolic representation. As the number of representatives from groups becomes proportional to their share in the population, organizations may expect an increase in perceived legitimacy from its constituency. Members may view this increase in representation as an indication that the organization is sincerely concerned with their issues and an advocate for their interests. This may be especially true for underrepresented groups like women and minorities.

Passive representation may lead to active or substantive representation where decision-makers “press for the interests and desires of those whom he is presumed to represent” (Mosher, 1968: p.11). Those in power will make decisions that promote the interests of individuals who share their group identities. The socialization processes of decision-makers are often shaped by attitudes, values, and beliefs formed outside of their official roles. However, they may draw on these cultural perspectives when exercising

discretion (Krislov & Rosenbloom, 1981; Meier, 1993; Saltzstein, 1979). Substantive representation is a consequence of this shared identity.

It is necessary to address the linking function between passive and active representation, as there has been some debate in prior literature (Bradbury & Kellough, 2011; Lim, 2006; Meier & Nicholson-Crotty, 2006). Bureaucratic results that favor underrepresented groups (i.e., minorities and women) may be a result of other factors that have little to do with the purposeful efforts of individuals within the organization. Workgroup members who do not belong to these groups may act as surrogates, behaving in ways that lead to positive outcomes. For example, majority group members who are sensitive to issues facing minorities and women may advocate for their interests regardless of membership (Bradbury & Kellough, 2008; Selden, 1997a; 1997b; Selden, Brudney, & Kellough, 1998). The favorability of these outcomes may also be the result of modified client behavior, where the presence of workforce diversity impacts perceived legitimacy and leads to increased satisfaction regardless of the decision-makers' actual behavior (Dee, 2004; 2005; Meier & Nicholson-Crotty, 2006). As such, identifying the correct unit of analysis is critical to the application of this theory. Active representation is not merely a product of the proportion of individuals in an organization who represent a particular group. Instead, it is concerned with the actual decisions that these individuals make and how they impact their constituency (Bradbury & Kellough, 2011).

Representative bureaucracy and the concepts of active representation may be readily applied to judicial decision-making. Calls to increase minority and female representation on the bench not only represent an interest in improving court system

legitimacy through symbolic representation, but equity in sentencing outcomes through substantive representation as well.

### ***Black Judges and Representative Bureaucracy***

Presumably, Black judges will share cultural histories and be better able to understand the nuances of those in the Black community. The lived experiences of individuals from the same racial or ethnic groups are extremely varied and should not be viewed in a vacuum. However, sharing a racial background may act as the nexus for fostering shared values, language, traditions, and beliefs. In becoming judges, these individuals were likely afforded educational opportunities and economic resources not systematically available to all African Americans (Uhlman, 1977). In doing so, Black judges' lived experiences and social worlds may differ significantly from that of the individuals in which they encounter while acting in their official capacities. Regardless of the constraints on discretion through sentencing guidelines and organizational policies, legal training, and the judicial socialization process, however, cultural scripts may still act as a filter through which the day to day decision-making of judges occurs (Gibson, 1983). Goldman (1978) argues that a "judge who is a member of a racial minority...cannot help but bring to the bench a certain sensitivity – indeed, certain qualities of the heart and mind – that may be particularly helpful in dealing with racial...discrimination issues" (p. 494). These scripts may be particularly salient when presiding over cases in which the involved parties are African American. Black judges may be more inclined to protect the interests of Black victims, as well as Black defendants.

### ***Black Judges and the Collateral Consequences of the War on Drugs***

This may be most evident when considering the role judges played during the War on Drugs. At the height of the campaign, Black constituents urged elected officials to address the damaging effects of the crack cocaine epidemic in their communities, including calls to increase pretrial detention, increase terms of incarceration, and eliminate early release opportunities (Forman, 2017). While hindsight suggests that the epidemic should have been treated as a health crisis, official response came in the form of increased criminal justice sanctions that disproportionately impacted Black offenders (Forman, 2017). Black law enforcement officials, judges, and political representatives vigorously engaged in variety of tactics to ease constituents' concerns. As such, proposals to increase sentencing guidelines for drug offenses, with reduced penalties for possession and increased sanctions for trafficking and calls for mandatory minimums with significant penalties were championed by Black representatives with the support of Black citizens (Forman, 2017).

Contemporary scholarship recognizes the unfair application of drug laws and enforcement among Black offenders (see Alexander, 2012). Scholars often point to the punishment disparity between cocaine and crack-cocaine as a primary example of the differential treatment of Black offenders involved in the drug trade. Under the Anti-Drug Abuse Act of 1986, 100 grams of cocaine was considered equivalent to 1 gram of crack. Mandatory sentencing policies set punishment of offenders in possession of 500 grams of cocaine to a minimum of five years. In contrast, those convicted of five grams of crack were subject to the same sentence (Zimmerman, 2014). Policies such as these resulted in the disproportionate incarceration of young, low-income Black males, who accounted for the majority of prosecutions for crack offenses (Graham, 2010). While the crack-cocaine



ratio was later reduced to 18:1 under the 2010 Fair Sentencing Act, the consequences of this policy and those similar to it have been far-reaching. In line with this observation, Bobo and Thompson (2006) argued that the distinct rise in Black incarceration was not due to increases in violent or drug crimes, but instead driven by policy changes and enforcement of drug laws. While racially neutral at face value, drug policies established during the War on Drugs led to the disproportionate targeting of minority communities (Tonry, 1995).

Black judges, in particular, may be hypersensitive to the effects of these laws on Black offenders. Judges in general are aware of the disproportionate contacts and disparate treatment minority offenders face during justice system processing. This includes the disproportionate impact of drug laws (Clair & Winter, 2016). Black judges may be particularly attuned to these factors, particularly for Black offenders. Prior research suggests minority judges may be more willing to employ interventionist strategies at various points during case processing to ensure fair treatment of minority offenders (Clair & Winter, 2016). They may also be less inclined to rely on stereotypes of Black offenders as dangerous drug offenders, drawing on their familiarity with such offenders to account for their behavior. As such, they may be more proactive in ensuring equality in sentencing for drug offenses.

### ***Judge Race and Sentencing Outcomes***

While the number of studies examining the effects of judicial race on sentencing outcomes is relatively limited, available research in this area offers some insights into the way judicial decision-making may be impacted by their demographic characteristics (Ashenfelter, Eisenburg, & Schwab, 1995; Chew & Kelly, 2009; Johnson, 2006; 2014;

Kulik, Perry, & Pepper, 2003; Lim, Silveira, & Snyder, 2016; Muhlhausen, 2004; Spohn, 1990; Steffensmeier & Britt, 2001; Tiede, Carp, & Manning, 2010; Uhlman, 1978). In general, prior research suggests that Black judges confer less severe sentences to all offenders in comparison to White judges (Chew & Kelly, 2009; Johnson, 2006; 2014; Lim et al., 2016; Spohn, 1990). Spohn's (1990) study of judicial sentencing practices in Detroit provide early support for this finding. While similarities exist in the weight judges place on factors key to sentencing decisions (i.e., legally relevant factors), Black judges still sentenced offenders more leniently. The conclusions drawn from this early examination of the effect of judicial characteristics on decision-making must be viewed with caution. Like many early studies, Spohn (1990) examined cases in one jurisdiction and did not control for other relevant judicial characteristics. Moreover, this study did not account for the hierarchical nature of the data (see also Ashenfelter et al, 1995; Muhlhausen, 2004; Steffensmeier & Britt, 2001; Uhlman, 1978). This limitation may lead to biased standard errors, as the assumption of independence among variables is violated.

Johnson (2006) addresses this shortcoming by employing hierarchical linear modeling to account for the nested nature of criminal cases situated within judges. Using data drawn from 1999-2000 Pennsylvania Commission on Sentencing, Johnson (2006) investigated "the complex relationships among courtroom actor background characteristics, courtroom-level social contexts, and individual-level disparities in sentencing" (p. 260). While controlling for several judicial background characteristics (i.e., age, gender, marital status, military experience, judicial tenure, and prosecutorial experience), he found that minority judges were less likely to incarcerate offenders, along

with sentencing those who were incarcerated to shorter sentences. Johnson (2014) builds on this research by examining whether the effect of judicial characteristics on sentencing severity is more pronounced across modes of conviction. He posits that the effect of judicial race may be more prominent in situations where judges have greater latitude. Again, Johnson (2014) found that minority judges were less likely to incarcerate across modes of conviction. However, the length of incarceration was only decreased for negotiated plea bargains. Minority judges meted out significantly longer sentences for all other modes of conviction. Notably, these studies do not define the racial groups in which judges belong. Instead, judge race is measured as non-White judges (which may include Black, Latino, Asian or other race groups) compared to White judges. Therefore, the sentencing patterns of Black judges, in particular, are unclear. Lim, Silveira, and Snyder (2016), specifically, illuminate the decision-making of Black judges using data from Texas state district courts. Controlling for additional judicial characteristics, including judicial tenure, political affiliation, gender, total legal experience, and law practice, they found that Black judges were significantly less severe compared to White judges.

Although these studies provide support for the contention that Black judges possess less punitive sentencing philosophies, some evidence fails to corroborate this conclusion. Uhlman (1978) concludes that “black judges display behavioral diversity unrelated to their common racial background” (p. 884). The professional socialization process of court actors may work to inhibit the influence of personal schemas established prior to taking the bench. Few studies have offered support for this assumption. While some studies found no significant differences in the sentencing patterns of Black and White judges (Kulik et al., 2003; Tiede et al., 2010), others suggest that Black officials

may be more punitive (Ashenfelter et al., 1995; Muhlhausen, 2004; Steffensmeier & Britt, 2001). For example, Steffensmeier and Britt (2001) examined the individual and organizational factors that influence sentencing behavior. Particularly, they were interested in the extent to which Black judges were more lenient or severe in their decision-making. They found that severity of judges is dependent on the sentence outcome. Black judges were more likely to incarcerate offenders, but recommended sentence terms similarly to White judges. In contrast, Muhlhausen (2004) found that for offenders sentenced under the 1997 Pennsylvania Commission on Sentencing guidelines, Black judges were significantly more punitive; incarcerating offenders for longer terms of incarceration. In sum, early studies on judicial characteristics and discretion are relatively mixed, with some studies finding support for leniency, while others suggest that Black judges are significantly more punitive. Notably, these studies suffer from important methodological limitations. Later studies employ analytical techniques better suited to capture the multilevel structure of these decisions, providing more consistent evidence that minority judges, specifically Black judges, were more lenient.

*The Conditioning Effects of Black Judges on Black Offenders in Sentencing Outcomes*

What does this mean for Black defendants sentenced by Black judges? Prior research suggests that the interaction between judicial and offender race is more nuanced than theoretically posited. Evidence suggests that minority judges treat other minorities more leniently, or more equitably, during the sentencing process (Abrams, Bertrand, & Mullainathan, 2012; Holmes et al., 1993; Lim et al., 2016; Muhlhausen, 2004; Steffensmeier & Britt, 2001). Moreover, Black offenders may benefit from being sentenced under a Black judge (Johnson, 2006; Lim et al., 2016; Welch, Combs, & Gruhl,

1988). For example, using data from felony cases adjudicated in Texas district courts, Lim and colleagues (2016) found that Black judges sentence Black offenders more leniently based on a scale capturing judicial harshness. Welch et al., (1988) also measured severity using a harshness scale and found that while White judges sentenced Black and White defendants similarly, Black judges treated Black defendants more leniently. For the incarceration decision, however, the results were reversed. Black judges treated offenders more evenhandedly, while White judges were less likely to incarcerate White defendants. Muhlhausen (2004) also found support for more equitable treatment by Black judges for all offenders. Findings suggested that Black judges sentenced Black offenders to longer terms of incarceration. However, Black judges also sentenced Latinos and other racial/ethnic minorities to longer sentences. Steffensmeier and Britt (2001) also found that Black judges were equally punitive for Black and White defendants. In contrast, Johnson (2006) found mixed support for the leniency of minority judges. Black and Latino offenders sentenced by minority judges were incarcerated proximately 25% less often, however, they were significantly more likely to receive longer sentences. Similarly, Spohn (1990) found that both Black and White judges treated Black defendants more severely. Overall, these findings suggest that Black defendants may not automatically benefit from having their cases presided over by a Black judge. As Steffensmeier and Britt (2001) suggests, “the greater harshness of black judges suggests they may behave as ‘tokens’ or that they have greater sensitivity to the costs of crime, in particular, within black communities” (p. 749). While Black judges may be more sensitive to the concerns of the Black community, they may also be concerned with

ensuring equality of treatment. Evidence suggests that Black judges may be more equitable in their punitiveness.

### ***Judge Race and Sentence Outcomes for Drug Offenses***

Only two studies have examined the effect of judicial characteristics in the context of drug offenses. The lack of empirical evidence in this area is notable given the importance of examining the conditions in which the effects of race, specifically judge race, impacts sentencing outcomes. Steffensmeier and Britt (2001) examine the decision-making of ten Black male judges and 80 white male judges. They found that both Black and White judges were more likely to sentence drug offenders to terms of incarceration, relative to forgery-fraud offenders. In contrast, they assigned significantly shorter sentence lengths. Notably, coefficient comparison tests revealed no significant difference between the two judicial groups.

Lim and colleagues (2016) also investigated the impact of judicial background characteristics on those convicted of drug offenses. Unlike Steffensmeier and Britt (2001), they did not find evidence that Black judges sentence drug offenders more severely in general. Building on prior research, they examined whether this effect is further conditioned by the race of the defendant. While Black judges sentenced all drug offenders similarly to White Judges, Black drug offenders sentenced by Black judges received significantly more lenient sentences. These findings lend support to the assertion that the effect of offender race is conditioned by offense type, as well as judicial race. By utilizing data gathered after the height of the War on Drugs and long efforts to educate judges on the systemic differences in sentencing of drug offenders, this study may

account for changes in views by Black judges, in particular, and the way they view Black drug offenders.

### ***Relevance of the Current Study***

The focal concerns perspective suggests that judicial decision-making is primarily based on assessments of legally relevant factors associated with a case. However, these assessments are embedded in a broader court and community context. Representative bureaucracy theory informs decision-making in this context, particularly when considering the effect of demographic characteristics on sentencing decisions. According to this perspective, decision-making may be influenced by judicial characteristics. Specifically, judges may decide cases in ways that benefit individuals who share similar characteristics. The current study assesses the extent to which shared cultural backgrounds mitigates the punitiveness Black offenders face during sentencing. Given the cultural implications of the War on Drugs, it is hypothesized that:

*Hypothesis 3: Black judges will sentence all offenders convicted of drug offenses more leniently, relative to White judges.*

*Hypothesis 4: Black judges will sentence Black offenders convicted of drug offenses more leniently, relative to White judges.*

### ***Female Judges and Representative Bureaucracy***

Identity may also shape the worldview of female judges. Drawing on their experiences as women and the recognition of their marginal status within society and the judiciary, female judges may be better able to articulate the concerns of women, as opposed to their male counterparts. Specifically, they may be more sensitive to interests of justice involved women, specifically as it relates to gendered issues (Cook, 1981;

Miller & Maier, 2008; Peresie, 2004). Women judges may be keenly aware of factors that may lead women to engage in crime, as well as their potential for victimization. As previously noted, group membership does not necessarily indicate homogeneity of thought, experiences, or values. The intersectionality of women's identities negates the idea that women are similar simply by virtue of their gender (see Crenshaw, 1990). However, all women, to some degree, are subject to patriarchal oppression (Freedman, 2007). As such, they are at risk of experiencing gendered violence. Through this perspective, female judges may be more sympathetic to the issues facing female victims, specifically those who are victims of gendered violence.

Historically, the criminal justice response to gendered violence has been limited (see Barner & Carney, 2011; Koss, 2000). Such offenses have traditionally been viewed as "private family matters" that should be addressed within the home. Feminist movements in the 1960s and 1970s placed these issues at the forefront of the social conscious, pressuring justice officials to provide sustained resources addressing crimes against women (Daly, 1994). In response to these calls, state and federal governments increased funding efforts for violence against women programs. For example, the Law Enforcement Assistance Administration (LEAA) expanded funding for domestic violence initiatives during the late 1970s. Additionally, federal aid in support of shelters and health services was made available through a series of legislative efforts, most notably the Violence Against Women Act (Laney, 2010; Sewell, 1989).

Additionally, a series of laws addressing intimate partner violence, sexual assault, domestic violence and other gendered offenses (e.g., stalking and harassment) increased and became more inclusive. For example, statutory definitions of sexual assault and rape



expanded significantly to include victims regardless of gender, sexual orientation, or status (i.e., married women) (Carbon, 2012). While controversial, mandatory arrest laws for perpetrators of domestic violence were also enacted across jurisdictions. Moreover, a number of jurisdictions adopted laws penalizing less severe or non-violent gendered offenses like stalking and harassment. Whereas no states specifically recognized stalking as a criminal offense prior to 1990, this offense is now recognized in all fifty states (Beagle, 2011). Additionally, penalties for engaging in such behavior grew in severity.

Women, undoubtedly, benefited the most from changes in these laws, as they offered greater protection and criminal justice response to crimes that disproportionately impact them. As such, female judges may be more responsive to these changes. For example, female judges have been shown to support a number of gender specific political and social causes “such issues as rape shield laws, the introduction of a history of abuse for battered women who kill their abusive partners, stronger victim restitution programs, and a range of enhanced criminal justice and treatment responses to domestic violence” (Miller, & Maier, 2008: p.549). Moreover, female judges may better understand the social realities of justice involved women, exhibiting more compassion and patience, in comparison to their male counterparts. Prior research suggests that female judges recognize that gender can impact the contextual understanding of a case, emphasizing that “although gender should not result in a different decision it is possible that it does because of the sensitivity and experiences that women judges may have” (Miller, & Maier, 2008: p. 548). This may be most evident in gendered offenses where judges may be more attuned needs of victims. As such, they may scrutinize such cases more acutely, imparting sentences commensurate with the severity of the offense.

### ***Judge Sex and Sentence Outcomes***

Few studies examine the effect of judge's gender on sentencing outcomes. Researchers point to the limited number of female jurists and access to sufficient data accounting for judicial demographics as the primary reasons for this shortcoming (Steffensmeier & Hebert, 1999). Prior research suggests that female judges are more conservative when conferring punishment than theoretically expected. In some instances, female judges are no more lenient in sentencing outcomes as their male colleagues (Ashenfelter et al., 1995; Johnson, 2006; Lim et al., 2016; Spohn, 1991). For example, Johnson (2006) hypothesized that female judges would be less likely to incarcerate offenders and sentence offenders to shorter lengths of confinement in jail or prison. However, he found no significant differences between male and female judges' punitiveness. Similarly, Lim and colleagues (2016) found that female judges did not sentence offenders to harsher penalties in comparison to male judges.

At times, however, female judges may be more or less lenient given the sentencing outcome in question (Gruhl et al., 1981; Johnson, 2014; Kritzer & Uhlman, 1977). Gruhl and colleagues (1981) examined differences in judicial sentencing patterns across three outcomes: deciding guilt or innocence, the incarceration decision, and the sentence length decision. They found while female judges were more lenient when deciding guilt or innocence of offenders, they were more likely to incarcerate offenders. Female judges also sentenced offenders to similar terms of incarceration as male judges. Similarly, Johnson (2014) found that judicial gender had no significant effect for offenders convicted through negotiated or non-negotiated plea deals. However, those offenders whose cases went to trial were less likely to be incarcerated by female judges.

Female judges also sentenced all offenders (regardless of mode of conviction) more leniently, as well as those with negotiated pleas.

Moreover, female judges may be more stringent in the sentencing of offenders (Steffensmeier & Herbert, 1999; Tiede et al., 2010). Steffensmeier and Herbert (1999) hypothesize that the “sentencing practices of women and men judges are more noteworthy for their similarities than for their differences” (p. 1168). Yet, they suggest that women judges may be more severe in their sentencing than men. They found support for these assertions in that female judges were approximately 1.6 times more likely to incarcerate offenders and imparted sentences that were about 4 months longer than male judges. Tiede and colleagues (2010) examined judicial effects in the context of sentencing departures and also found support for increased punitiveness by female judges. They found that female judges were less likely to honor prosecutor’s request for a sentencing departure. This effect was further conditioned by the judge’s political affiliation, where republican appointed female judges were also less likely to depart. Muhlhausen (2004) provides an exception to this pattern. Upon examining the sentencing practices of 290 Pennsylvania judges, he found that female judges sentenced all offenders to shorter terms of incarceration. Furthermore, in comparison to male judge-offender dyads, female judges sentenced both women and men more leniently.

### ***Judge Sex and Sentence Outcomes for Gendered Offenses***

Building on this line of inquiry, researchers have also examined whether the effects of judicial gender is conditioned by the offense committed. Specifically, studies have addressed the extent to which gendered offenses may impact the sentencing of female judges (Gruhl et al., 1981; Kritzer & Uhlman, 1977; Kulik et al., 2003; Lim et al.,

2016; Steffensmeier & Herbert, 1999). Kritzer and Uhlman (1997) examined these potential effects using data from “Metro City” and hypothesized that female judges will be more likely to convict, jail, and sentence more severely those charged with rape. They found that compared to male judges, female judges were more likely to convict and jail those charged with rape; however, these effects were not statistically significant. On the other hand, Gruhl and colleagues (1981) provide mixed support for the impact of judicial demographics on sexual offenses. While female judges were more likely to convict offenders of rape, they were less likely to sentence offenders to prison or impart longer prison sentences. Steffensmeier and Herbert (1999) also suggest that offense type will influence the decision-making of judges. However, they hypothesized that female judges would exert more punitive sanctions for property crimes than for violent or sexual offenses. In contrast to these predictions, they found that while both male and female judges treat sexual assault offenders more severely, women judges were significantly more punitive. Similarly, Lim and co-authors (2016), found that female judges sentenced all offenders convicted of sexual assault more severely. Notably, no significant difference was found for female judges sentencing male offenders for sexual assault.

Taken together these findings suggest that the direct and conditional effects of judicial gender on sentencing outcomes is relatively mixed. To reiterate, several studies do not account for the hierarchical nature of data, including individual and judicial factors in the same analytic level (Ashenfelter et al., 1995; Gruhl et al., 1981; Kritzer & Uhlman, 1977; Spohn, 1999; Steffensmeier & Herbert, 1999). However, this may be due to number of female judges available for comparison. Even so, evidence from these studies suggest that the social identities of female judges may be less influential on the exercise

of discretion. Arguments for the judicial socialization process, as implied by Steffensmeier and Britt (2001), and its impact on discretion, may be most aptly applied to female judges. Given the dearth of literature in this area, however, conclusions drawn from prior research must be measured.

### ***Relevance to the Current Study***

As prior research suggests, the decision-making processes of judges may be influenced by their background characteristics. Importantly, the effect of these characteristics may be moderated by case level factors. Drawing on assumptions detailed in Mosher's (1968) theory of representative bureaucracy, the current study explores judge's assessments of focal concerns in cases involving gendered offenses. Specifically, it examines to what extent judicial and offender background characteristics (i.e., gender) impacts sentencing severity for crimes primarily perpetrated against women. According to representative bureaucracy, female judges may be more attune to the potential consequences of such offenses and therefore, make decisions that reflect the severity of such acts. As such, the following hypotheses related to judicial attributes and offense type are presented:

*Hypothesis 5: Female judges will sentence all offenders convicted of gendered offenses more severely, relative to male judges.*

*Hypothesis 6: Female judges will sentence male offenders convicted of gendered offenses more severely, relative to male judges.*

### ***Racial Threat and Power Dynamics in the County Context***

According to the courtroom community perspective, a court's location has a significant impact on system processes and the behavior of decision-makers (Eisenstein

et al., 1988; Nardulli et al., 1988; Ulmer, 1997). As courts function within a broader societal context, the norms, organizational culture, and priorities of court actors may be a consequence of characteristics from the greater communal environment (Johnson, 2005). Specifically, the ways in which decision-makers, particularly judges, assess factors related to sentencing is likely to depend on dynamic characteristics of a community. Moreover, the impact of these assessments on individual offenders may also be a function of the societal context in which they are sentenced. One community characteristic scholars have suggested may impact judicial assessments of focal concerns are perceptions of minority threat, specifically increases in the Black population.

### ***Traditional Conceptions of Threat***

Blalock (1967) asserts that perceived threat is primarily manifested in two ways: threats to political power and economic threat. The political threat hypothesis suggests perceptions of minority group political threat is positively correlated with growth in the group's population size. Specifically, Blalock suggests that as the number of marginalized individuals in society increases, the majority will view this growth as a threat to the political status quo. In response, the majority will rely on mechanisms of social control to maintain their dominant position. Notably, Blalock suggests that the relationship between population and social control is curvilinear, rather than linear. As the minority group increases in size, efforts to combat their potential political threat will increase accordingly. However, this response would decline if the minority overtakes the majority. Significant gains in political power should diminish the level of social control applied to the minority group. Presumably, this threshold reflects an increase in political bargaining power and the ability to mobilize collectively to promote their interests.

Furthermore, the economic threat hypothesis suggests that the competition for resources between ingroup and outgroup members will also lead to increased social control. Economic resources, such as jobs, financial services, technology, and other highly coveted commodities may be perceived as limited in supply. As such, infringement on such goods and services may lead majority group members to employ mechanisms of control, limiting their availability to the marginalized. The relationship between economic threat and minority group population size is also positive, but curvilinear. Blalock suggests that the relationship between economic threat and social control should decrease as threat increases, or what is termed a decelerating effect (Wang & Mears, 2010a). Taken together, these two perspectives outline the mechanisms at work in the power threat hypothesis.

Blalock (1967) originally used these hypotheses to account for discrimination of Black Americans. Given the historical shifts in Black political and economic agency during 1960s, Blalock proposed that the White majority would view this power expansion as a threat to the political status quo. Researchers have since used the power threat hypothesis to primarily explain adverse outcomes experienced by African Americans (see Stults & Baumer, 2007). In doing so, scholars have neglected its useful application to other marginalized groups. Recent research has attempted to expand its focus by examining the effect of ethnic threat on marginalized groups from other cultural backgrounds, primarily Latinos (Caravelis et al., 2011; Feldmeyer et al., 2015; Feldmeyer & Ulmer, 2011; Kautt, 2002; Ulmer & Johnson, 2004; Wang & Mears, 2010a). Even so, focusing on racial/ethnic groups neglects other majority-minority power conflicts (e.g., patriarchal power dynamics).

Moreover, threat has traditionally been conceptualized as minority population size relative to the majority or, in some instances, minority population growth (see Caravelis et al., 2011; Chamlin 1989; Johnson et al., 2011). Indeed, Blalock (1967) denotes population as the primary indicator of threat in his original iteration of the theory. However, this conceptualization of threat is limited. The presence of a large population does not summarily equate to political power or economic vitality. Black majorities (or near majorities) have existed across the southern United States at various times throughout history, and few have argued that Black Americans have successfully rested power from the White majority for any significant period of time. This narrow measure may explain the limited success in accounting for the negative impacts of social control of minority groups. Scholars have highlighted the need to move beyond this conceptualization and create a more comprehensive measure of political and economic threat (Dixon, 2006; Eitle et al., 2002; Wang & Mears, 2010). For example, research has conceptualized threat as the ratio of White to Black unemployment rate, the ratio of Black to White voters, concentrated disadvantage (e.g., female-headed households, population in poverty, proportion of Black residents, percent unemployed), income inequality, the strength of the conservative political party, and Black voter disenfranchisement (Beck, Massey, & Tolnay, 1989; Bontrager et al., 2005; Crow & Johnson, 2008; Eitle et al., 2002; Jacob & Helms, 1999; Wang & Mears, 2010). Recent conceptualizations have worked to advance our understanding of threat. Even so, scholars have yet to consistently employ a comprehensive measure of political and economic threat.



### ***Racial Threat and Sentence Outcomes for Racial Minorities***

Scholars have examined the utility of Blalock's (1967) racial threat hypothesis in explaining sentencing disparities for racial and ethnic minorities across a variety of sentencing outcomes including adjudication decisions (Bontrager, Bales, & Chiricos, 2005), habitual offenders (Caravelis, Chiricos, & Bales, 2011; Crawford, Chiricos, & Kleck, 1998), departures (Johnson, 2003; 2005; 2006), and incarceration and sentence length decisions (Britt; 2000; Fearn, 2005; Feldmeyer & Ulmer, 2011; Feldmeyer, Warren, Siennick, & Neptune, 2015; Helms & Jacobs, 2002; Johnson, 2006; Kautt, 2002; Myers & Talarico, 1987; Wang & Mears, 2010a; 2010b; Ulmer, 1997; Wang & Mears, 2004; 2010; Weidner, Frase, & Pardoe, 2004; Weidner, Frase, & Schultz, 2005). Studies detailing the impact of threat on modal sentencing outcomes using traditional conceptualizations (i.e., measures of racial threat) provide inconsistent evidence of its effect.

For example, a handful of studies offer partial support for the effects of racial threat on sentencing outcomes (Feldmeyer et al., 2015; Johnson, 2006, Wang & Mears, 2010a; 2010b; Weidner, 2005). Weidner and colleagues (2005) examined the contextual factors that may influence sentence severity across 39 large urban jurisdictions. They hypothesize that offenders are more likely to be incarcerated in counties with higher percentages of African Americans. Results indicated that as the percent of Blacks in the population increases, so did the odds of incarceration. Similarly, Johnson (2006) also suggests that increased minority presence in a community leads to more punitive sanctions. Specifically, Johnson (2006) found that as the population of Latinos in Pennsylvanian counties increases, all offenders received significantly longer terms of

incarceration. Wang and Mears (2010a) add to this line of inquiry by examining the linear and nonlinear effects of racial and ethnic threat on jail and prison incarceration decisions; they assert that linear and curvilinear examinations of the size of the Black population differentially impact sentencing outcomes. Linear measures of the Black population demonstrated that the percent of Black citizens in a population significantly decreased the odds of receiving a jail sentence (in comparison to a noncustodial outcome). In contrast, curvilinear effects suggest that the odds of incarceration were increased for both jail in prison. Specifically, as the Black population increases, the odds of being incarcerated increases at a higher rate. Notably, these studies do not examine a key component of the threat hypothesis. Increases in minority population should not only result in negative consequences for all offenders, but specifically for Black offenders.

Feldmeyer and colleagues (2015) address this limitation. Here, researchers examined the impact of changes in racial, ethnic, and immigrant populations on the decision to incarcerate offenders. Using data derived from the Florida Department of Corrections during 2000-2006 and U.S. Census data from 1999 and 2000, they hypothesize that the effects of racial and ethnic threat will be more pronounced in counties with growing Black and Latino populations. In this instance, racial threat is conceptualized as a dynamic factor, measured as the growth in population. They found no significant direct effects of racial threat. However, Black offenders were more likely to be sentenced to prison and received longer sentence lengths in counties with growing Black populations. This finding suggests that Black offenders may face greater disadvantage in counties with rising Black populations, providing support for the racial threat hypothesis. Wang and Mears (2010b) also examined whether changes in minority

population conditioned sentencing outcomes for Black offenders. Using State Court Processing Statistics data, they found no direct effect for threat change. However, the extent to which changes in racial composition affect sentencing severity was conditioned by the baseline Black population. Increases in population with already high proportions of African Americans increased the odds of receiving a prison sentence. In contrast, offenders in low threat areas were more likely to receive a noncustodial sanction. Notably, they found no evidence that Black offenders faced more severe consequences under either condition.

Several studies also provide mixed support for the assumptions laid out in the racial threat hypothesis (Britt, 2000; Ulmer & Johnson, 2004). Britt (2000) tested four hypotheses examining the relationship between urbanization, racial threat, economic threat, crime control, and punishment. Here, racial threat was measured as the proportion of African Americans within a county. Britt (2000) also accounts for levels of diversity by measuring ethnic heterogeneity. Findings suggested that counties with higher concentrations of Black residents had increased odds of incarceration but did not significantly impact sentence terms. Measures of ethnic heterogeneity were also unrelated to sentencing severity. Additionally, no cross-level interactions were significant, suggesting that these measures do little to explain disparate treatment. Black offenders sentenced in counties with higher concentrations of Black residents did not face more punitive sanctions, compared to White offenders. In contrast, Ulmer & Johnson (2004) found the opposite effect for offenders sentenced in Pennsylvania during the late 1990s (1997-1999). Accounting for political concentration and traditional measures of racial and ethnic threat, they found no direct relationship between the size of the Black

population and sentencing outcomes for all offenders (i.e., incarceration or sentence length). However, African Americans sentenced in counties with high Black populations received significantly longer terms of incarceration. Similar effects were not demonstrated in the incarceration decision.

Moreover, some studies have found no links between minority population size and punitiveness (Fearn, 2005; Feldmeyer & Ulmer, 2011; Helms & Jacobs, 2002; Kautt, 2002, Weidner et al, 2004). Examining the effects of contextual factors on convicted felony offenders across multiple state jurisdictions, Fearn (2005) found that the percentage of Black citizens in a county had no discernable effects on the odds of receiving a noncustodial, jail, or prison sentence. Similarly, the level of Black population across federal jurisdiction was also statistically unrelated to sentencing outcomes pre-*Booker/Fanfan* (Feldmeyer & Ulmer, 2011; Kautt, 2002). Offenders in general were treated no differently in jurisdictions with higher concentrations of African Americans, nor were outcomes for Black offenders conditioned by minority population size. Helms and Jacobs (2002) found that the Black population did not directly influence the length of incarceration offenders were sentenced to. Only Black offenders sentenced in more conservative counties received more severe sanctions.

As indicators of population size have traditionally been used to measure threat, few studies account for differences in economic well-being or political engagement as a predictor of disparate treatment. Blalock (1967) suggested that increases in minority population would result in competition for economic resources and political power previously reserved for the White majority. Britt (2000) reconceptualizes economic threat linking the nexus between perceptions of crime with the economically disadvantaged. He

posits that, “communities suffering problems such as high or increasing unemployment also may be particularly punitive to minority offenders, who may be at greater risk of unemployment or more likely to be poor, and consequently may be viewed as a greater threat to the community” (Britt, 2000; p.712). Building on this interpretation of threat, researchers have measured economic threat as white-black unemployment ratio (Wang & Mears, 2010a), racial income inequality (Britt, 2000; Fearn, 2005), unemployment rate (Britt, 2000; Feldmeyer et al., 2015; Helms & Jacobs, 2006; Johnson, 2006; Kautt, 2002), trends in unemployment (Britt, 2000), and indexes of social disorder and disadvantage (Weidner et al, 2004; 2005; Wooldredge, 2007; Wooldredge & Thistlewaite, 2004).

Like measures of racial threat, the impact of economic threat on sanction severity has produced mixed results. Britt (2000) includes a series of indicators designed to measure economic threat (i.e., racial income inequality, average unemployment, and trends in unemployment). Results indicated that economic outcomes were not directly related to the decision to incarcerate offenders. Trends in unemployment, however, do increase sentence length for all offenders. Importantly, the effects of offender race were not conditioned by measures of economic threat. Fearn (2005) did find significant relationships between income inequality and the odds of receiving a prison or jail sentence. Specifically, income inequality significantly increased the odds of receiving a prison sentence as opposed to jail. Wooldredge (2007) and Wooldredge and Thistlewaite (2004) also found support that measures of economic threat across jurisdictions increased punitiveness using a composite measure of socioeconomic disadvantage (i.e., proportion of Black population, nonfamily households, female headed households, males without high school degree, unemployed males, and median household income). However, it is

difficult to disentangle how much of these effects could be attributed to unemployment and income measures. In contrast to these findings, a series of studies produce little evidence in support of economic threat (Feldmeyer et al., 2015; Helms & Jacobs, 2002; Johnson, 2006; Kautt, 2002; Wang & Mears, 2010a; Weidner et al., 2004; 2005).

Notably, few studies measure political threat by accounting for voter engagement in the political process. Prior research includes indicators of conservatism (i.e., percent of electorate voting Republican in elections) which is associated with punitiveness (Feldmeyer et al., 2015; Helms & Jacobs, 2002; Johnson, 2006; Ulmer & Johnson, 2004; Weidner et al., 2005;). However, this measure offers little clarification on perceived threats to political power. Wang and Mears (2010a) address this limitation by measuring the ratio of Black-to-White voters in the 2000 presidential election to directly examine political threat. They found that as Black voter engagement increased, the odds of jail incarceration decreased (no significant differences for prison incarceration). In line with Blalock's (1967) threat hypothesis however, the quadratic effect of Black voter participation increased the odds of jail and prison incarceration. These effects are more pronounced at higher levels of threat.

Taken together, it is unclear why the findings related to racial threat are so mixed. While some studies finding support have expanded the ways in which racial threat is measured (i.e., static vs. dynamic measures of population), it may be that the conceptualization of threat as population size does not adequately account for other factors that could be considered threat. Even accounting for measures of economic and political threat separately may not capture the totality of a group's 'threat' to the

majority. This may be better accomplished using a composite measure of various indicators of economic strength, political power, and overall social advancement.

### ***The Absolute Status Framework and Race***

The absolute status framework offers a unique mechanism for advancing the power threat perspective. Rooted in structural equity, this construct suggests that an individual's position within society will impact the levels of structural inequality they face. Increases in social status should result in more protection, opportunity, and power. Prior research has operationalized absolute status using four structural indicators of social status: percent of individuals with a bachelor's degree, percent of those in professional occupations, workforce composition, and median income (Vieraitis, Britto, & Kovandzic 2007; Whaley, 2001). Essentially, absolute status measures social mobility and economic strength of marginalized groups, offering a more comprehensive measure of threat. Additionally, the absolute status framework builds on the racial threat perspective in several notable ways. First, absolute status moves beyond arbitrary indicators of population to measure perceived challenges to power. Second, absolute status does not assume that increases in population leads to better quality of life for minority groups. Moreover, absolute status includes measures of social status which may clarify various aspects of threat that population size fails to capture.

Absolute status has conventionally been examined within the contexts of the backlash and ameliorative perspectives. The backlash perspective suggests that as marginalized groups gain economic, social, and interpersonal power, perceptions of threat will increase. In response to these advances, majority groups will activate social control mechanisms to regulate such progress (Messerschmidt, 1993). In essence, the

backlash perspective is an extension of Blalock's (1967) racial threat hypothesis. As such, increases in Black absolute status may be perceived as threatening to the economic and social dominance of the majority group. In response, judges may rely on more punitive sanctions to control such advancements, negatively impacting all offenders. Such responses may be amplified in the context of drug offenses, where judges may associate drug offenses with the Black community, generally. Alternatively, the ameliorative perspective suggests that as minority groups make strides toward equality, they should face fewer formalized social control barriers. The accumulation of social capital and resources should act as a protective factor against efforts to control upward mobility. Again, this perspective draws on Blalock's (1967) assertion that once populations reach a tipping point, or saturation level, they become immune to the majority's attempts at social control. Moreover, increases in Black absolute status may signal a shift in the reliance of conservative politics, as African American are more ideologically aligned with liberal social policies (Kidd, Diggs, Farooq, & Murray (2007). In response, communities may adopt more liberal policies, resulting in less severe outcomes for all offenders. To date, no study has conceptualized racial threat through the lens of absolute status.

Based on evidence from prior research, the following is hypothesized:

*Hypothesis 7: In support of the ameliorative hypothesis, offenders in counties with higher Black absolute status will receive less punitive sentencing outcomes.*

*Hypothesis 8: In support of the ameliorative hypothesis, Black offenders in counties with higher Black absolute status will receive less punitive sentencing outcomes.*

In contrast, the backlash and traditional threat perspective suggests that:



*Hypothesis 9: Offenders in counties with higher Black absolute status will receive more punitive sentencing outcomes.*

*Hypothesis 10: Black offenders in counties with higher Black absolute status will receive more punitive sentencing outcomes.*

### ***Women's Absolute State and Sentence Outcomes***

In contrast to Blalock's (1967) conceptualization of threat, which has been exclusively applied to racial minorities, absolute status has been used to explain trends in women's victimization (i.e., rape and homicide). Jaggar (1983) suggests that structural measures of women's position in society could be used to explain rates of female victimization. Structural status attributes of men and women are traditionally rooted in patriarchal socialization processes and gendered expectations of men and women. Proponents of absolute status suggests that when women have more economic power, they will face less oppression. Although feminist scholars have extolled the necessity of accounting for aggregate gendered social conditions in examinations of criminal justice outcomes for women (see Chesney-Lind, 2006; Connell, 2002), few have examined this phenomenon empirically. Ryon (2013) laments that "scholars have failed to explore the possibility that the rapidly changing role of women in society may (or may not) represent threat and activate social control measures- specifically a more pronounced use of the criminal justice system to address the threat presented by increasingly independent and powerful women" (p. 429).

The dearth of studies examining the impact of gendered structural equality on sentencing outcomes is considerable. To date, only three studies have explored the effects of gender equality on gender disparities for any case processes outcome (Bridges &

Beretta, 1994; Nowacki & Windsong, 2019, Ryon, 2013). Bridges and Beretta (1994) offers the earliest examination of the impact of gendered contextual factors on case processing outcomes. Here, researchers analyze the relationship between state characteristics (e.g., criminal laws, availability of mental health services, and women's economic standing) and incarceration trends. Sex and race specific data were collected from all U.S. states in 1982, as well as data on crime patterns, justice processing and mental health, factors related to gender social status, and the demographic composition of states in 1980. Data was subsequently aggregated to the state level, providing indicators of male and female rates on imprisonment, sex-specific rates of institutionalization for mental hospitals, and crime rates. They found a positive relationship between women's labor force participation and rates of incarceration. Increased participation in the labor force by women led to significant increases in prison rates for female offenders. In contrast, macro-level indicators of familial responsibility (i.e., percent of women with childcare responsibilities) did not influence rates of incarceration. Ryon (2013) builds on this research by examining gender dynamics in the context of an understudied decision-making point. Specifically, she explores the effect of gender threat on the odds of withholding adjudication for a sample of convicted felony probationers ( $n=110,419$ ) sentenced under the Florida sentencing guidelines during 2000-2002. Gender threat is measured as the average adult female earnings and the percent of female households without husbands or children within a county. According to Ryon (2013), these measures should reflect female independence, autonomy, and economic freedom which may be perceived as threatening in a traditionally male dominated society. Using hierarchical generalized linear modeling, results indicated that both structural indicators of female

status are significantly related to withholding adjudication but in divergent ways. Cross-level interactions revealed that as female earnings increased, the odds of withholding adjudication for female offenders also increased. In contrast, female offenders in counties with higher percentages of female independent households were less likely to have adjudication withheld. These findings suggest indicators of structural gender equality may have differential impacts for justice involved women.

Nowacki & Windsong (2019) provides the only study examining how contextual measures of gender equality influences sentencing outcomes. Specifically, they test the extent to which measures of structural gender inequality supports the ameliorative and backlash hypotheses in the context of gender disparities in sentencings. Researchers present two conflicting hypotheses. First, gender equality will support the ameliorative hypothesis if indicators of gender equality increases leniency afforded to female offenders during sentencing. In contrast, the indicators of gender equality will support the backlash effect if female offenders are sentenced more severely. They test these hypotheses using data derived from the US Sentencing Commission for fiscal years 1999-2003. Notably, this sample is limited to female offenders. Three indicators of women's *relative status* are included in the analysis: a ratio of men to women in the labor force, a ratio of men to women in in professional occupations, and a ratio of men to women with bachelor's degrees. Using hierarchical linear modeling techniques, they found that increases in female labor force relative to males decreases sentencing severity. In contrast, relative increases of women with professional occupations and educational attainment increases sentence length. These findings provide support for both

ameliorative and backlash hypotheses. Like Ryon (2013), the indicators of female status differentially impact punitiveness.

While these studies offer insights into the study of gender equality and social control through criminal justice processing, it is evident that this area of research deserves further examination. The limited number of studies on this issue supports the need to advance research in this area. Moreover, evidence suggests that structural gender equality does influence justice outcomes and may act as a form of social control. The application of these concepts in the context of sentencing outcomes have been limited to only one study. While informative, there are ample opportunities to build on this research. First, Nowacki and Windsong (2019), examine this issue in the context of U.S. district courts. Geographically, these districts cover a much larger area and may be unable to fully account for more local nuances and cultural differences in gender dynamics. Additionally, it may be important to account for potential interaction effects between measures of gender equity and offense type. Ryon (2013) found evidence that the impact of gender equity does vary across offense types. Specially, for drug offenders, female earnings and the percent of female households increased the odds of adjudication withholdings. Effects across offense type may be even more evident in the context of gendered offenses.

Research advanced in this study seeks to address these shortcomings by examining the effects of absolute status across gendered offenses. Moreover, this study will explore whether the effect of individual offender characteristics is conditioned by gains in female social mobility. As traditionally applied to women's victimization, the ameliorative hypothesis suggests that as women make strides towards equality, they

should face fewer patriarchal mechanisms of social control. Moreover, these social advancements may also lead to increased awareness of issues important to women. This may be particularly important in regards to criminal justice responses to the victimization of women. As such, perpetrators of gendered violence may face more punitive sanctions in communities with higher women's absolute status as such offenses may be viewed with more condemnation. In contrast, the backlash perspective suggests that female advancement in society would be perceived as a threat to patriarchal systems. In response, the severity of violence against women may be discounted, resulting in less punitive sanctions for such offenses. As such, the following hypotheses are addressed:

*Hypothesis 11: In support of the ameliorative hypothesis, offenders in counties with higher women's absolute status will receive more punitive sentencing outcomes.*

*Hypothesis 12: In support of the ameliorative hypothesis, male offenders in counties with higher women's absolute status will receive more punitive sentencing outcomes.*

However, if advancements in women's status triggers perceptions of threat, it is hypothesized that:

*Hypothesis 13: Offenders in counties with greater gender equality will receive less punitive sentencing outcomes.*

*Hypothesis 14: Male offenders in counties with greater gender equality will receive less punitive sentencing outcomes.*

### ***Purpose and Contributions of the Current Study***

To date, a large body of sentencing literature suggests that extralegal factors, specifically race and gender, impact judicial decision-making. Prior research also

recognizes that the extent to which these factors influence judicial assessments of deservedness and subsequent sentencing outcomes may hinge on other factors. As such, it is necessary to explore not only if race and gender impact discretionary decision-making, but *when* or *under what circumstances* these characteristics may be most prevalent. The current study contributes to this line of inquiry in several notable ways.

First, this study examines the ways in which the effects of race and gender are conditioned by legally relevant and extralegal factors. Specifically, the current study explores whether the effect of race and gender are contingent on offenses stereotypically associated with racial minorities and men. As a *legally relevant* factor, offense type is presumably an unbiased consideration of sentencing decisions. However, examining this measure in conjunction with extralegal factors highlights the ways in which even legally relevant factors may lead to disparate treatment.

Building on the impact of these effects in this context, this study also addresses the extent to which punishment severity for these offenses are moderated by characteristics of individuals in the courtroom workgroup (i.e., judges), as well as communal attributes in which a case is adjudicated (i.e., absolute status). Again, examining these moderating effects highlights how race and gender may be a function of the sentencing context. Doing so reiterates the importance of considering the embedded nature of decision-making, rather than just factors that would traditionally be considered relevant to the sentencing process.

Second, the current study builds on established theoretical frameworks for understanding the embedded nature of judicial decision-making. Sentencing scholars suggest that judge's assessments of focal concerns may be influenced by factors

indirectly related to the case. While prior research has highlighted these associations empirically, further theoretical development is necessary. Specifically, few studies employ established theoretical frameworks to explain the relationships between judicial characteristics and sentencing outcomes. By relying on theoretical frameworks previously unapplied to sentencing scholarship, this study allows for a theoretically driven discussion of the dyadic relationship between judges and offenders. Doing so advances our understanding of decision-making and allows for more meaningful conclusions to be drawn regarding these relationships.

Finally, this study offers an innovative way to explore the ways in which macro-level community factors may influence judicial decision-making. Prior research has extensively relied on measures of population and population growth to capture perceived threat at higher intervals. In doing so, scholars have failed to address the nuanced nature of threat. Additionally, conceptualizing threat in this way has produced inconsistent empirical evidence. The current study argues that indicators of absolute status address both of these limitations. As absolute status offers a more comprehensive measure of threat, it may lead to more consistent evidence on the impact of perceived threat and sentencing decisions.

## CHAPTER III

### Data and Methodology

#### Data

Data for the current analysis was derived from three primary sources. First, characteristics of individual offenses were made available through the Pennsylvania Commission on Sentencing (PCS) for fiscal years 2013-2015. First established in 1978 to address unwarranted disparities in the sentencing process, the PCS is tasked with creating sentencing policy, adopting sentencing guidelines, and collecting data on all felony and misdemeanor offenses sentenced in the Pennsylvania Court of Common Pleas and reported to the PCS within a given fiscal year.<sup>3</sup> Beginning in 1982, the PCS has collected relevant information regarding sentences imposed on offenders. Mandated by Pennsylvania statute 42 Pa.C.S. §2153(a)(14), criminal court judges must report information related to the offender and case identification, conviction, previous convictions, sentence recommendations (including enhancements and mandatory provisions), and case disposition. Currently in its 7<sup>th</sup> iteration, this dataset provided information on legally relevant (e.g., criminal history and offense severity) and extralegal factors (e.g., race/ethnicity and gender) associated with the sentencing process, as well as, details on the presiding judge for individual cases (i.e., name of judge and caseload).

As outlined by the commission, the court considers all offenses within a judicial proceeding. These proceedings include all offenses (i.e., criminal incidents) for which an offender has been convicted and is pending sentencing at the same time. In determining

---

<sup>3</sup> Importantly, not all sentences are reported to the PCS (including cases sentenced in the Philadelphia Municipal Court, those sentenced by magisterial district judges, and offenses subject to life/death penalty sentences), and there is no system in place to determine the extent to which non-reporting occurs.



the appropriate guideline score, the court relies on the most serious offense within a judicial proceeding, along with an offender's prior record score, to inform the recommended sentence. Importantly, as a judicial proceeding may include multiple criminal incidents, a criminal incident may also contain multiple offenses.

Second, judicial and court attribute data were derived from the Administrative Office of Pennsylvania Courts and open source archival data (e.g., annual judicial district reports). These reports provide demographic characteristics of judges and caseload information for Pennsylvania's judicial districts. Finally, county descriptives were available through the U.S. Census Bureau's 2011-2015 American Community Survey. Relevant information related to a county's race and gender distribution, workforce, and economic status, were made available through this source.

### **Study Site**

Pennsylvania offers a unique context for examining disparate treatment in sentencing. First, the state operates under sentencing guidelines that promote uniformity in punishment outcomes. In an attempt to avoid introducing mandatory minimum legislation that would significantly restrain judicial discretion, the PCS was formed in an effort to curtail leniency of judges during sentencing, while also allowing judges to maintain discretion. Sentencing guidelines produced by the PCS were first adopted in 1982. Following the initial adoption, the guidelines underwent several major revisions. The first change followed a 1987 ruling by the Pennsylvania Supreme Court that found the guidelines to be unconstitutional due to a procedural error. Following this decision, the 1988 guidelines were introduced and adopted which included provisions for mandatory minimum sentencing for drug offenses. The PCS later revised guidelines in

1994 and again in 1997 to account for the sentencing severity for serious violent offenses and the adoption of diversionary and intermediate sanction sentencing options. Finally, in 1998 the PCS decided to make judge by judge sentencing information publicly available. Subsequent revisions have been adopted following the 1997 guidelines, but changes in the 2005 and 2008 guidelines have been relatively minor. Importantly, no changes were made to the guidelines during the current study's time period.

As previously noted, the court must consider the guidelines for all felony and misdemeanor convictions. Notably, the guidelines do not apply to accelerated rehabilitative dispositions, dispositions in lieu of trial, contempt of court, violations of protective orders, or revocations of parole, probation, or intermediate sanctions. When determining an appropriate sentence, judges must provide a statement of reason as to why the sentence was imposed. As the primary goal of sentencing under the guidelines is retribution, the presumptive sentence is based on the severity of an offense (as determined by the offense gravity score) and an offender's prior record score (Pennsylvania Commission on Sentencing, 2012). Judges also have the option to deviate from the presumptive sentence and assign sanctions that fall above or below the guideline range. If a departure occurs, the PCS requires that the judge provides a written statement regarding the reason for the deviation. Deviations are often the result of aggravating or mitigating circumstances, which may include unusual harm to a victim, cooperation with law enforcement, or culpability of the offender. Use of these guidelines allows judges to maintain discretion in sentencing while striving for uniformity.

Second, Pennsylvania is also characterized by significant variation in local contextual characteristics. For example, Pennsylvania is home to two of the largest

metropolitan cities in the U.S. (i.e., Philadelphia and Pittsburgh). It is also home to several mid-sized cities and townships, as well as a number of small rural communities. In addition to variation in community size, Pennsylvania is also politically, economically, and racially diverse. Areas in central Pennsylvania are more ideologically conservative, less racially diverse, and traditionally vote Republican. On the other hand, Eastern and Western Pennsylvania maintain greater cultural diversity with politically liberal ideologies (Kramer & Ulmer, 2009). Given the sociopolitical variation across these contexts in combination with the guideline structure, Pennsylvania provides a valuable study site for examining factors that may impact disparate treatment of offenders.

### **Sample**

These sources provided information on 430,456 cases, sentenced among 524 judges, across 67 counties<sup>4</sup>. As the purpose of the current study was to examine the effect of race and gender on stereotyped offenses, the analysis only included offenses that met those qualifications. For the current study, that included felony and drug offenses, as well as gendered offenses<sup>5</sup>. Additionally, Latino offenders were not included in the current analysis, given the relatively small number of these offenders in the full sample ( $n=3,767$ ; 1%). The total sample of drug offenses include 93,903 offenses, 362 judges, and 60 jurisdictions. Gendered offenses include 8,374 cases, 311 judges, and 60 jurisdictions. Following prior research, only the most severe offense committed by an offender within a judicial proceeding is included in the analysis (Cassidy & Rydenberg, 2020; Johnson,

---

<sup>4</sup> Fourteen of Pennsylvania's 67 counties represent small, rural communities that share the same set of judges. These counties include: Snyder-Union, Colombia-Montour, Forest-Warren, Franklin-Fulton, Perry-Juniata, Wyoming-Sullivan, and Cameron-Elk counties. To account for the size and structure of these courts, counties are grouped within 60 judicial districts, which act as the county-level analysis.

<sup>5</sup> Gendered offenses include felony indecent assault, misdemeanor indecent assault, aggravated indecent assault, involuntary deviate sexual intercourse (IDSI), rape, sexual assault, statutory sexual assault, felony stalking, misdemeanor stalking, and harassment.

2003; 2006; 2014; Painter-Davis & Ulmer, 2019; Steffensmeier et al., 2017; Ulmer et al., 2016). Moreover, the judicial sample size was further limited to include judges who had sentenced a minimum of fifteen cases during the three-year period (Johnson, 2006). Finally, cases missing information on key variables were also excluded from the analyses. As such, the final analytic sample size for stereotypically racialized offenses included 58,986 cases, sentenced among 354 judges, across 59 jurisdictions. In comparison, non-drug offenses accounted for 195,370 cases. The final analytic sample for the gendered analysis included 4,291 offenses, 322 judges, across 60 jurisdictions, while non-gendered offenses included 251,610 cases. Descriptive statistics for all samples are displayed in Tables 2-5.

## **Measures**

### ***Dependent Measure***

Prior research suggests that sentencing is primarily a two-stage process in which judges must first decide whether an offender should be incarcerated (Johnson, 2014; Ulmer et al., 2016; see also Wheeler, Weisburd, and Bode, 1982). If incarceration is deemed appropriate, then judges must determine how long the accused should be remanded to jail/prison. Incarceration, or the *in/out* decision, measures whether an offender receives some form of community sanction (coded 0) or receives a jail/prison sentence (coded 1). *Sentence length* is a continuous measure capturing the number of months an offender was sentenced to serve. Preliminary statistical diagnostics indicated that sentence lengths for offenses were not normally distributed. Following prior research, the measure was transformed using the natural log, allowing for a normal distribution (Cassidy & Rydberg, 2019; Steffensmeier et al., 2016).

### *Case-Level Measures*

The primary measures of interest for the current analyses are race and gender. At the individual offender level, race is operationalized using a set of dummy variables (0= no; 1= yes), indicating whether the offender was *White* (reference) or *Black*. Offender sex was measured dichotomously, capturing whether the offender was *female* (coded 0) or *male* (coded 1). In addition to these extralegal factors, *age* of the offender is also included in the analysis as a continuous variable, measuring how old the offender was in years at the time of the sentencing.

Several legally relevant and case processing factors are also included in the analysis. First, the *offense gravity score* (OGS) is defined by the PCS and captured on a scale ranging from 1-15, with higher scores indicating more severe offenses<sup>6</sup>. For example, offenders with a level 1 OGS may be convicted of harassment or misdemeanor marijuana offenses, while those with higher OGSs may be convicted of rape or possession to with intent to deliver controlled substances. Additionally, an offender's *criminal history*, which may range from 0-8, is a weighted measure of an offender's prior record taking into account the number and severity of past offenses as set forth in the sentencing guidelines. Higher scores indicate a more extensive criminal history. For example, an offender with no prior record may receive a 0-point criminal history score, while someone with a 5-point score may have a more extensive criminal record (and/or more severe prior offenses). The *presumptive sentence* is a continuous measure which captures the minimum number of months an offender may be incarcerated as prescribed

---

<sup>6</sup> Preliminary diagnostics indicated that offense gravity score was highly correlated with the presumptive sentence, resulting in issues of multicollinearity in the gender analysis. This is not surprising given that the presumptive sentence takes into account offense severity in its calculations. As such, offense gravity score was not included in the gendered models.

by the sentencing guidelines. Dichotomous measures for *trial* and *multiple counts* were also included in the analyses indicating whether the offender was adjudicated during a bench trial or convicted of multiple charges (0= no; 1= yes). Dummy variables for the fiscal year of sentencing are also included.

Offense types were measured using a series of dummy variables. Drug offenses include: *heroin*, *cocaine*, *felony marijuana*, *misdemeanor marijuana* (i.e., possession of a small amount of marijuana), *methamphetamine*, *simple possession*, *felony other drug offenses* (e.g., possession with intent to deliver Schedule I or II drugs), *misdemeanor other drug offenses* (e.g., possession of drug paraphernalia), and *other narcotics* (e.g., possession with intent to deliver prescription drugs) (0= no; 1= yes). Gendered offense types include *felony indecent assault*, *misdemeanor indecent assault*, *aggravated indecent assault*, *involuntary deviate sexual intercourse (IDSI)*, *rape*, *sexual assault*, *statutory sexual assault*, *felony stalking*, *misdemeanor stalking*, and *harassment* (see Appendix A for definitions of gendered offenses). Non-drug and non-gender offenses are captured as a series of dummy variables (0= no; 1= yes) including *property* (reference), *drug*<sup>7</sup>, *violent offenses*, and *other crime*.

### ***Judge-Level Measures***

Judicial race and gender are the primary variables of interest at the second level of analysis. Like the individual level, judicial race is captured using a set of dummy variables (0= no; 1= yes), for *White judges* (reference) and *Black judges*. Judicial sex is measured dichotomously, with *female judges* (coded 1) and male judges (coded 0). Notably, this coding procedure was chosen as the primary interest of this analysis is to

---

<sup>7</sup> Drug offenses are only included in the non-drug offense models.

examine the decision-making processes of female judges presiding over gendered offenses. In addition to these factors, several other judicial characteristics were examined. *Legal experience* is measured as the number of years a judge has been practicing law since passing the state qualifying bar exam. Judicial *caseload* is captured as the average number of cases sentenced by a judge in a year<sup>8</sup>.

### ***County-Level Measures***

Finally, a series of measures were used to capture race and gender effects at the county level. *Black absolute status* (BAS) is a composite measure including four factors: 1) percent of African American's in the workforce, 2) percent of those in professional careers (as characterized by the Census), 3) percent of African Americans 25 or older with a bachelor's degree, 4) and median income. Z-scores for each item were created to standardize these factors. A principal components factor analysis was then conducted, producing a single factor (Cronbach's  $\alpha = .85$ ). *Women's absolute status* (WAS) was measured similarly including: 1) percent of women in the workforce, 2) percent of women in professional careers, 3) percent of women 25 or older with a bachelor's degree, 4) and median income. Again, each item was standardized prior to a factor analysis which produced a single factor (Cronbach's  $\alpha = .81$ ). Due to the analytic modeling strategy for gender offenses (discussed below), WAS was recoded into a three-category measure, capturing levels of *low WAS* (scores below the 25<sup>th</sup> percentile), *average* (scores between the 25<sup>th</sup> and 75<sup>th</sup> percentile) and *high WAS* (scores above the 75<sup>th</sup> percentile).

---

<sup>8</sup> In accord with prior research (see Johnson, 2006; 2014), cases were limited to judges who sentenced a minimum of 15 cases across the three-year time period. Doing so eliminated 153 judges across 647 cases, accounting for .15% of the total cases sentenced across three years.

Several additional measures are also included to control for county- and court-level processes. *County diversity* is measured using the following equation: ethnic heterogeneity =  $1 - [(p_w)^2 + (p_b)^2 + (p_a)^2 + (p_{na})^2]$ , where  $p_w$  refers to the proportion of the population identified as White,  $p_b$  is the proportion of the population identified as Black,  $p_a$  is the proportion of the population identified as Asian, and  $p_{na}$  the proportion of the population identified as Native American (Osgood & Chambers, 2000). Homogenous counties have a minimum value of 0, while maximum heterogeneity is achieved when ethnic proportionality is met. *Racial income inequality* is measured as the difference between White and Black per capita income in 2010. *Concentrated disadvantage* captures a series of socioeconomic status measures including the percent of female-headed households in a county, percent of individuals below the poverty line, and percent of unemployed individuals (Cronbach's  $\alpha = .73$ ). Finally, *property offenses*, *drug offenses*, and *violent offenses* captures the average caseload for these offenses processed in each county across three years. See Table 1 for a summary of coding and descriptions for all dependent and independent variables.

Table 1

*Coding and Descriptions of Dependent and Independent Variables*

Variables	Coding	Description
<b><i>Dependent Variables</i></b>		
Incarceration (jail and prison)	0= not incarcerated; 1= incarcerated	Dichotomous variable for incarceration sentences compared to probation
Sentence length	Number of months	The minimum number of months of incarceration
<b><i>Individual-level Predictors</i></b>		
Black Offender	0= no; 1= yes	Two dummy variables for White (reference) or Black offenders
Male Offender	0= no; 1= yes	Dichotomous variable for sex of the offender



Age	Number of years	Continuous variable for age of the offender at time of sentencing
Offense Gravity Score (OGS)	1-15	OGS measured on a 15-point scale
Criminal History	0-8	Prior record score measured on an 8-point scale
Presumptive Sentence	Number of months	Minimum number of months of incarceration outlined in the sentencing guidelines
Trial	0= no; 1= yes	Dichotomous variable for jury trials in comparison to other modes of conviction
Offense Type	0= no; 1= yes	20 dummy variables of drug or gendered offenses
Multiple Counts	0= 1; 1= more than 1	Dichotomous variable for the number of convictions
<b><i>Judge-level Predictors</i></b>		
Black Judge	0= no; 1= yes	Dummy variable identifying cases sentenced by a Black judge
Female Judge	0= no; 1= yes	Dummy variable identifying cases sentenced by a female judge
Legal Experience	Number of years	Continued variable measured as the number of years since a judge passed the Pennsylvania bar
Caseload	Number of cases/3	Average number of criminal cases sentenced by a judge (divided by 100)
<b><i>County-level Predictors</i></b>		
County Diversity	Proportion of population	$1 - [(p_W)^2 + (p_B)^2 + (p_A)^2 + (p_{NA})^2]$
Racial Income Inequality	Number of dollars	Difference between White and Black per capita income in 2010
Black Absolute Status (BAS)		Combined measure of percent of African American's in the workforce, in professional careers, those 25 or older with a bachelor's degree, and their median income
Women's Absolute Status (WAS)		Combined measure of percent of women in the workforce, with professional careers, those 25 or older with a bachelor's degree, and median income
Concentrated Disadvantage		Combined measure of percent of female-headed households

County Caseloads	Percent of caseloads/3	in a county, percent of individuals below the poverty line, and percent of unemployed individuals Percentage of property, drug, and violent offenses processed across counties
------------------	------------------------	---

---

### **Analytic Strategy**

To account for the hierarchical structure of the data (i.e., individuals nested within judges, nested within counties), multilevel modeling techniques were considered the preferred strategy for examining the proposed research questions. This modeling strategy was employed to examine each question pertaining to the sentencing of stereotypically racialized crimes. However, as shown in Table 4, female offenders accounted for only 7% of all gendered offenses, representing too few cases for employing multilevel modeling. Given this limitation, two separate modeling strategies were employed to address the hypotheses related to drug and gendered offenses. Hierarchical models were used to estimate racial disparities in the context of drug offenses, while traditional regression strategies were used to estimate gender disparities in the context of gendered offenses.

### ***Racialized Offenses Modeling Strategy***

Where possible, employing hierarchical statistical techniques provide several advantages in comparison to traditional ordinary least squares and logistic regression analyses (Raudenbush & Bryk, 2002). For example, due to the nested nature of cases, it can be assumed that similarities exist between cases sentenced within the same judge and/or county. These similarities suggest that cases may not be independent of one another, subsequently violating a key assumption of OLS regression. Hierarchical

modeling accounts for the independence among error terms which may result in the downward biasing of standard errors, increasing the possibility of a Type I error. Additionally, hierarchical modeling also allows for appropriate degrees of freedom to be maintained by basing tests of statistical significance at the appropriate level of analysis. Doing so reduces the potential for biased standard errors. Finally, multilevel modeling techniques allows for the examination of both fixed and randomly varying effects across analytic levels. For example, the effect of offender race and gender may be examined, while simultaneously accounting for whether its effect on sentencing outcomes differs across judicial demographics and county characteristics.

Due to the natures of the dependent variables, hierarchical linear modeling (HLM) (for the sentence length decision) and hierarchical generalized linear modeling (HGLM) (for the incarceration decision) were used to analyze the effect judicial and contextual factors on sentencing outcomes. Below is a simple three-level linear model illustrating the sentence length decision, which is also applicable to the incarceration decision.

$$Y_{ijk} = \Pi_{0jk} + \Pi_{1jk} (A_{ijk} - \bar{A}_{...}) + e_{ijk} \text{ where} \quad (1)$$

$$\Pi_{0jk} = \beta_{00k} + \beta_{01k} (X_{jk} - \bar{x}_{...}) + r_{0jk} \text{ and} \quad (2)$$

$$\beta_{00k} = \gamma_{000} + \gamma_{001} (\mathbf{W}_k - \mathbf{W}) + u_{00k} \quad (3)$$

In Equation (1),  $Y_{ijk}$  represents the minimum number of months of incarceration that the  $i$ th offender is sentenced to by the  $j$ th judge in the  $k$ th county.  $\Pi_{0jk}$  is the individual level intercept,  $\Pi_{1jk}$  is a vector of individual level variables centered around the grand mean ( $A_{ijk}$ ), and  $e_{ijk}$  is the level 1 residual error term. These parameters are replicated at higher levels of analysis using judge and county level indicators. In Equation

(2) variation in the individual level intercept ( $\Pi_{0jk}$ ), is modeled as a judge level intercept ( $\beta_{00k}$ ) and covariates ( $X_{jk}$ ), centered on the grand means. Here,  $\beta_{01k}$  represents the effects of judicial background characteristics on the sentence length after controlling for individual level factors, and  $r_{0jk}$  indicates the judge-specific error term. Finally, county characteristics ( $W_k$ ) centered on their grand means are included to model variation in  $\beta_{00k}$ , where  $\gamma_{001}$  represents the effect of county characteristics on the sentencing decision, and  $u_{00k}$  is the county error term.

Prior research using multilevel modeling techniques have relied on both group mean (Britt, 2000) and grand mean (Ulmer & Johnson, 2004) centering. Given the nature of the research questions addressed, the current analyses rely on both of these centering techniques. When examining the direct effects of individual, judicial, and county predictors on sentencing outcomes, variables are grand mean centered. Doing so allows for potential differences among counties to be observed. However, when estimating the cross-level interactions, individual-level measures were group mean centered, while judge and county level factors were centered around the grand mean (Bauer & Curran, 2005).

To address the proposed hypotheses, a series of models were estimated. First, unconditional random intercepts models for drug and non-drug samples were examined to determine if variation in sentencing outcomes exists across judge and county levels of the analysis. Review of these preliminary diagnostics indicated that HLM techniques were appropriate for analyzing drug offenses. Variance components in the baseline model were significant, indicating that judicial decision-making for these offenses varied across judges or counties.

After specifying the unconditional models for racialized and non-racialized offenses (i.e., drug and non-drug offenses), baseline fixed effects random intercepts models were estimated including all case level predictors. Doing so allows for a comparison between the effect of offender race across offense types. Additionally, this step in the analysis highlights the proportion of variation within sentencing outcomes that may be attributed to case, judicial, and county level factors. Next, three-level random coefficient models were estimated to determine the direct effects of case, judicial, and county level factors on the incarceration and sentence length decisions. As offender race was the primary variable of interest in these models, it was the only measure allowed to vary across contexts. Doing so allowed for the retention of appropriate degrees of freedom across variance components. Additionally, this procedure highlights whether the effect of race on these sentencing decisions is contingent on a particular judge or court community. Finally, cross-level interactions are specified to assess whether judicial and county characteristics conditions the effect of offender race on sentencing outcomes.

### ***Gendered Offenses Modeling Strategy***

As noted previously, variation in the offenders' genders restricted the type of analysis appropriate for the gender sample. Therefore, logistic regression and ordinary least squares regression (OLS) were used to examine the in/out and sentence length decisions, respectively. The analysis was conducted in three primary stages (mirroring the drug offense modeling strategy). First, a baseline model was estimated to determine the effect of offender gender on sentencing outcomes in gendered and non-gendered offenses. Again, this step demonstrates whether the effect of gender is more pronounced in certain types of offenses. Next, baseline models were re-estimated to include judge and

county level effects (i.e., WAS). Notably, these models do not account for the nested nature of the data. Finally, interaction terms between offender gender, judge gender, and WAS were estimated to observe the conditioning effects of these factors. After estimating these effects, predicted probabilities for each effect were examined to allow for better interpretation of the moderating relationship between judge and offender gender, as well as WAS and offender gender (see Long and Mustillo, 2018; Mize, 2019).

## CHAPTER IV

### Results

The current chapter details the results of several analyses examining the context specific effects of race and gender on judicial decision-making. The first section of this chapter presents a descriptive analysis of the measures included in the subsample of drug/non-drug and gendered/non-gendered offenses. The second section describes a series of models examining racial disparities in drug offenses. First, baseline models addressing the extent to which racial disparities are more pronounced in stereotyped offenses is estimated. Race effects in drug and non-drug offense samples are compared to determine whether disparate treatment is a function of offense type. Next, this section addresses the direct effects of judge characteristics (i.e., judge race) and county characteristics (i.e., Black absolute status) on the incarceration and sentence length decisions. Moreover, the degree to which offender race effects vary across judges and counties in drug offenses is also examined in these models. Doing so acts as a preliminary diagnostic to determine whether estimating cross-level interactions are appropriate. Finally, a series of cross-level interactions are examined to assess whether judge race conditions the impact of offender characteristics (i.e., offender race) within the context of racialized (i.e., drug) offenses.

Part three of this chapter examines gender disparities in sentencing outcomes for those convicted of traditionally gendered offenses. First, OLS and logistic regression baseline models are examined to compare gender effects in gendered and non-gendered offenses. Second, the effects of judge characteristics (i.e., judge's gender) and county level factors (i.e., women's absolute status) on sentence severity is assessed. Notably, due

to the analytic strategy used to examine these relationships, gender models do not account for the variation among judges and counties. Finally, interaction effects are estimated to examine the extent to which offender characteristics (i.e., gender) is conditioned by these effects (i.e., judge race and WAS) in the context of gendered offenses (i.e., offense that stereotypically target women).

### **Descriptive Analysis**

Descriptive statistics for each subsample are displayed in Tables 2 – 5.

Approximately 36% of drug offenders were incarcerated and received terms of incarceration of 11.47 months on average (see Table 2). Moreover, 67% of drug offenders were White, while 32% were Black. The majority of these offenders were male (80%) and relatively young, with an average age of 32. On average, drug offenders maintained relatively moderate offense gravity scores (3.62) and had fairly low prior record scores (1.72). Additionally, 35% of drug offenders were convicted on multiple counts, while only 2% of offenders went to trial. Heroin offenses accounted for a plurality of felony drug offenses (13%), while simple possession was the most common misdemeanor conviction. Examining judge-level characteristics, Black judges accounted for 6% of the judges included in the drug-only subsample. Female judges comprised 22% of the subsample. Moreover, judges presiding over drug cases had an average of 37 years of legal experience, as well as an average caseload of approximately 400 cases per year. Additionally, *BAS* ranged from -3.02 (i.e., Sullivan County) – 18.79 (i.e., Philadelphia County) with an average of .18. The average level of concentrated disadvantage among counties was 23.86. Moreover, levels of racial income inequality ranged from fairly low



levels (\$2, 495.00) to much greater disparities (\$22, 141.00). Finally, approximately one-fifth of cases processed across county courts were drug offenses.

Table 2

*Descriptive Statistics for Full Drug Offense Sample (n = 58,986)*

Variables	Mean	SD	Min	Max
<i>Outcome Measures</i>				
In/Out	.36	.48	0	1
Sentence Length	11.47	12.72	.03	144
Ln Sentence Length	1.74	1.45	-3.41	4.97
<i>Individual Characteristics</i>				
White (reference)	.67	.47	0	1
Black	.32	.47	0	1
Male	.80	.40	0	1
Age	31.73	10.21	17	94
Offense Gravity Score (OGS)	3.62	2.40	1	13
Prior Record	1.72	2.00	0	8
Presumptive Sentence	5.01	9.80	1	180
Multiple Counts	.35	.48	0	1
Trial	.02	.13	0	1
Heroin (reference)	.13	.34	0	1
Cocaine	.11	.31	0	1
Marijuana (felony)	.07	.25	0	1
Marijuana (misdemeanor)	.03	.18	0	1
Meth	.01	.12	0	1
Other Drug (felony)	.03	.18	0	1
Other Drug (misdemeanor)	.25	.43	0	1
Other Narcotic	.04	.19	0	1
Simple Possession	.30	.46	0	1
FY 2013	.32	.47	0	1
FY 2014	.34	.48	0	1
FY 2015	.33	.47	0	1
<i>Judge Characteristics (n = 354)</i>				
Black Judge	.06	.24	0	1
Female Judge	.22	.41	0	1
Legal Experience	36.94	8.59	14	56
Caseload	3.96	3.54	.05	24.10
<i>District Characteristics (n = 59)</i>				
Black Absolute Status	.18	3.49	-3.02	18.79
Concentrated Disadvantage	23.86	5.07	15.53	49.75
Property Offenses	27.42	4.62	11.73	37.42
Drug Offenses	19.49	5.09	8.87	29.80
Violent Offenses	14.31	3.27	10.18	29.51
Diversity Index	.18	.13	.04	.56
Racial Income Inequality	13,510.68	4,553.91	2,495.00	22,141.00

The sample characteristics of the non-drug sample are somewhat different (see Table 3). While 48% of non-drug offenders were incarcerated, they received terms of incarceration that were slightly shorter than drug offenders (approximately 10.86 months). Additionally, 74% of the non-drug sample were White offenders, while Black offenders accounted for 25% of the sample. Notably, Black offenders seem to be overrepresented in the drug offender sample. Male offenders still account for the majority of offenders (77%) but are slightly older (~35 years old) in the non-drug sample. The average offense gravity score for non-drug offenders was approximately 3.51, indicating a moderate level of severity. On average, offenders maintained relatively low criminal history scores. Moreover, about 30% of offenders were convicted on multiple counts and an overwhelming majority were convicted via plea-bargaining (98%). Finally, property offenses accounted for 29% of non-drug offenses, followed by violent offenses (17%). Other criminal offenses constituted the majority of these offenses (54%).

Table 3

*Descriptive Statistics for Non-Drug Offense Sample (n = 189,917)*

Variables	Mean	SD	Min	Max
<i>Outcome Measures</i>				
In/Out	.48	.50	0	1
Sentence Length	10.86	24.94	.03	600
Ln Sentence Length	.89	2.02	-3.41	6.40
<i>Individual Characteristics</i>				
White (reference)	.74	.44	0	1
Black	.25	.43	0	1
Male	.77	.42	0	1
Age	34.62	11.68	14	95
Offense Gravity Score (OGS)	3.51	2.52	0	15
Prior Record	1.56	1.99	0	8
Presumptive Sentence	5.42	15.54	1	492
Multiple Counts	.30	.46	0	1
Trial	.02	.15	0	1
Property	.29	.45	0	1
Violent	.17	.38	0	1
Other Crime	.54	.50	0	1

FY 2013	.34	.48	0	1
FY 2014	.34	.47	0	1
FY 2015	.32	.46	0	1

Note: Judge- and county-level descriptive statistics are not reported here, but remain the same as those reported in Table 2.

Descriptive statistics for gendered offense are displayed in Table 4. The majority of offenders convicted of gender-based offenses were incarcerated (65%) and received terms of incarceration of approximately 41.43 months. Approximately three-fourths of offenders in the sample were White, while Black offenders accounted for 23% of those convicted. The overwhelming majority of these offenders were male, accounting for 93% of the sample, and were on average older (~38 years old). While offenders had an average prior record score of 1.30, indicating few prior criminal convictions, the average offense gravity score was approximately 6.32, highlighting the severity of such offenses. Nearly half of these offenders were convicted of multiple charges. Moreover, 9% of offenders went to trial, which is notable in the current context of criminal justice case processing where the system is dominated by plea-bargaining. Harassment offenses accounted for 24% of all gendered offenses, followed by misdemeanor indecent assault (15%), and misdemeanor stalking offenses (13%). Involuntary deviant sexual intercourse (IDSI) was the most prevalent felony gendered offense (12%), followed by statutory sexual assault (11%), rape (10%), and aggravated indecent assault (7%). Felony indecent assault, sexual assault, and felony stalking comprised 4%, 3%, and 2% of the sample, respectively. Finally, women accounted for 28% of judges in the sample, while Black judges accounted for 3% of the gendered sample. Judges had an average of 37 years of experience with approximately 700 cases per year. At the county level, the majority of counties fell within the low absolute status category (1.05), with moderate levels of concentrated disadvantage (25.83).

Table 4

*Descriptive Statistics for Gendered Offense Sample (n = 4,294)*

Variables	Mean	SD	Min	Max
<i>Outcome Measures</i>				
In/Out	.65	.48	0	1
Sentence Length	41.43	50.19	.03	300
Ln Sentence Length	2.87	1.52	-3.41	5.70
<i>Individual Characteristics</i>				
White (reference)	.75	.43	0	1
Black	.23	.42	0	1
Male	.93	.25	0	1
Age	37.68	13.84	18	92
Offense Gravity Score (OGS)	6.32	4.38	1	14
Prior Record	1.30	1.92	0	8
Presumptive Sentence	23.50	39.63	0	300
Multiple Counts	.49	.50	0	1
Trial	.09	.28	0	1
Statutory Sexual Assault (reference)	.11	.32	0	1
Indecent Assault- Agg	.07	.26	0	1
IDSI	.12	.32	0	1
Harassment	.24	.43	0	1
Indecent Assault (felony)	.04	.18	0	1
Indecent Assault (misdemeanor)	.15	.36	0	1
Sexual Assault	.03	.18	0	1
Rape	.10	.29	0	1
Stalking (felony)	.02	.13	0	1
Stalking (misdemeanor)	.13	.34	0	1
FY 2013	.34	.48	0	1
FY 2014	.34	.48	0	1
FY 2015	.31	.46	0	1
<i>Judge Characteristics (n = 123)</i>				
Female Judge	.28	.45	0	1
Black Judge	.03	.18	0	1
Legal Experience	36.55	7.67	14	56
Caseload	6.58	3.73	.06	24.10
<i>District Characteristics (n = 43)</i>				
Women's Absolute Status	1.05	.71	0	2
Concentrated Disadvantage	25.83	8.23	16.03	49.75
Property Offenses	27.61	4.07	20.24	38.19
Drug Offenses	20.71	5.43	8.87	29.80
Violent Offenses	15.42	4.91	10.18	29.51

Non-gendered offenders were much less likely to be incarcerated (45%) and received much shorter sentences (10.22 months). Demographic characteristics of offenders in this sample mirrored those convicted of gendered offenses, where 72% of

offenders were White, 26% were Black, and 77% were male, with an average age of approximately 34. Non-gendered offenders also had much lower offense gravity scores (3.49) but did have slightly more extensive criminal histories (1.61). Moreover, 31% of offenders were convicted on multiple charges, but only 2% of cases went to trial. Violent, drug, and property crimes, accounted for 12%, 24% and 22% of offenses included in the sample, while the remaining 42% were other types of offenses.

Table 5

*Descriptive Statistics for Non-Gendered Offense Sample (n = 251,610)*

Variables	Mean	SD	Min	Max
<i>Outcome Measures</i>				
In/Out	.45	.50	0	1
Sentence Length	10.22	21.46	.03	600
Ln Sentence Length	1.01	1.94	-3.41	6.40
<i>Individual Characteristics</i>				
White (reference)	.72	.45	0	1
Black	.26	.44	0	1
Male	.77	.42	0	1
Age	33.87	11.36	14	95
Offense Gravity Score (OGS)	3.49	2.42	0	15
Prior Record	1.61	1.99	0	8
Presumptive Sentence	5.02	13.33	0	492
Multiple Counts	.31	.46	0	1
Trial	.02	.15	0	1
Property	.22	.42	0	1
Violent	.12	.32	0	1
Drug	.24	.43	0	1
Other Crime	.42	.49	0	1
FY 2013	.34	.47	0	1
FY 2014	.34	.48	0	1
FY 2015	.32	.47	0	1

Note: Judge- and county-level descriptive statistics are not reported here but remain the same as those reported in Table 4.

### **Assessment of Racialized Offenses**

#### ***The Effect of Offender Race in Drug and Non-Drug Offenses***

To begin, fixed effects with random intercepts models are estimated to establish baseline differences in the effect of race across offense type. These three level

hierarchical models include only level-one predictors, while simultaneously allowing judge and county level intercepts to vary. This modeling strategy addresses the nested nature of the data, while highlighting whether Black offenders are subject to more punitive sanctions when convicted of offenses that are congruent with racial stereotypes related to criminality (i.e., drug offenses). Results presented in Table 6 Columns 1 and 2 display the effect of race on the incarceration and sentence length decisions for drug offenses. Compared to White offenders, Black offenders were approximately 1.4 times more likely to be incarcerated for drug offenses. Several additional extralegal factors were also associated with the incarceration decision. Like Black offenders, male drug offenders were also more likely to be incarcerated. Specifically, male offenders were 1.3 times more likely to be incarcerated, compared to female offenders. In contrast, older offenders were slightly advantaged at the incarceration decision, where they were less likely to be sentenced to jail or prison.

As suggested by the focal concerns perspective, legally relevant and case processing factors also greatly influenced judicial discretion. Those convicted of more severe offenses, offenders with more extensive prior records, and offenders who went to trial (as opposed to negotiating a plea) were all more likely to be incarcerated. As the offense gravity score increased, offenders were 1.27 times more likely to be given an imprisonment sentence. Moreover, an imprisonment sentence was approximately 1.5 times more likely for offenders with a greater criminal history. Those who went to trial also received more punitive sanctions; offenders were 2.19 times more likely to be incarcerated. However, the presumptive sentence and convictions on multiple counts were not significantly associated with the incarceration decision. Additionally, the odds

of receiving a custodial sanction was contingent on the type of drug offense. For example, those convicted of marijuana, simple possession, other narcotic, and other drug offenses were all less likely to be incarcerated, compared to those convicted of possession with intent to deliver heroin. Notably, the magnitude of these differences were contingent on the felony/misdemeanor status of the offense. Finally, neither cocaine nor methamphetamine offenses received sentences that were significantly different than heroin offenses.

African Americans also faced more punitive sanctions in the sentence length decision. Specifically, Black offenders received terms of incarceration that were approximately 5.6% longer compared to White offenders. The effects of other extralegal and legally relevant factors on the sentence length decision mirrored those found for the incarceration decision. Male offenders were assigned terms of incarceration that were 21.3% longer than female offenders. Unlike the incarceration decision, age of offenders was not significantly associated with sentence length. Again, legally relevant and case processing factors accounted for a significant proportion of the variation in this outcome. Offenders with higher offense gravity scores received terms of incarceration that were 23.7% longer, while those with prior records received sentences that were approximately 19% longer. Moreover, being convicted on multiple counts as well as going to trial led to more punitive sanctions. Offenders who went to trial faced a significant trial penalty, increasing sentence lengths by approximately 35% compared to those convicted by way of plea bargaining. Finally, the type of drug offense significantly influenced the sentence length decision. All offenses, with the exception of methamphetamine convictions, received shorter terms of incarceration compared to heroin offenses.

Table 6

*Three-Level HLM Models Examining the Effect of Race on Sentencing Outcomes for Drug and Non-Drug Offenses (Individual Level Fixed Effects)*

Variables	Drug (n= 58,986)					Non-Drug (n= 189,917)				
	In/out		Ln Sentence Length			In/Out		Ln Sentence Length		
	<i>b</i>	SE	OR	<i>Beta</i>	SE	<i>b</i>	SE	OR	<i>Beta</i>	SE
Intercept	-.330**	.113	.719	1.779**	.026	.240†	.138	1.271	.974**	.032
White (reference)	---	---	---	---	---	---	---	---	---	---
Black	.331**	.050	1.392	.054**	.013	.048	.040	1.049	-.047*	.020
Male	.270**	.051	1.310	.193**	.028	.425**	.023	1.529	.108**	.019
Age	-.013**	.002	.987	-.001	.001	-.007**	.001	.993	-.002**	.001
OGS	.235**	.049	1.265	.213**	.020	.148**	.028	1.159	.489**	.020
Prior Record	.385**	.033	1.470	.170**	.016	.265**	.017	1.303	.282**	.011
Presumptive Sentence	.008	.007	1.008	.009**	.003	.049**	.010	1.050	-.010**	.001
Multiple Counts	.065	.048	1.067	.134**	.027	.094†	.053	1.099	.322**	.023
Trial	.782**	.075	2.186	.299**	.027	.534**	.031	1.705	.230**	.050
Heroin (reference)	---	---	---	---	---	---	---	---	---	---
Cocaine	-.030	.039	.971	-.037*	.016	---	---	---	---	---
Marijuana (felony)	-.662**	.155	.516	-.227**	.044	---	---	---	---	---
Marijuana (misd.)	-2.385**	.313	.092	-2.221**	.180	---	---	---	---	---
Meth	.050	.124	1.051	-.003	.047	---	---	---	---	---
Other Drug (felony)	-.671**	.142	.511	-.251**	.033	---	---	---	---	---
Other Drug (misd.)	-2.196**	.230	.111	-.991**	.068	---	---	---	---	---
Other Narcotic	-.998**	.174	.369	-.327**	.049	---	---	---	---	---
Simple Possession	-1.565**	.184	.209	-.800**	.065	---	---	---	---	---
Property (reference)	---	---	---	---	---	---	---	---	---	---
Violent	---	---	---	---	---	.422**	.041	1.525	-.063*	.029
Other Crime	---	---	---	---	---	.532**	.095	1.703	-.535**	.033

†  $p < .10$ , \*  $p < .05$ ; \*\*  $p < .01$

Note: Coefficients for *fiscal year* are included in the analysis but not shown. All variables are grand mean centered with robust standard errors presented.



In order to assess assumptions presented in Hypothesis 1, non-drug offense models were estimated to compare the variation in race effects across offense type. Results are presented in columns 3 and 4 of Table 6. In contrast to Black drug offenders, African Americans convicted of non-drug offenses did not appear to face the same sentence disadvantages, relative to White offenders. Specifically, Black offenders were no more likely to receive a custodial sanction than White offenders. However, the influence of other extralegal and legally relevant factors mirrored the effects described in the drug offense model. For example, male offenders were approximately 1.5 times more likely to be incarcerated for non-drug offenses, while older offenders faced lower odds of incarceration. Additionally, higher offense gravity scores, presumptive sentences, more extensive criminal histories, and going to trial all increased the odds of incarceration. Furthermore, those convicted of violent and other offenses were 1.5 and 1.7 times more likely to receive custodial sanctions, respectively.

Moreover, whereas Black drug offenders received significantly longer sentences (compared to White offenders), those convicted of non-drug sentences received significantly shorter terms of incarceration, relative to similarly situated White offenders. As in the incarceration model, extralegal factors such as gender and age were also significantly related to the sentence length decision. Male offenders received longer terms of incarceration while older offenders were given shorter sentences. Furthermore, legally relevant and case processing factors also increased sentence severity. Offenders with more extensive prior records, as well as, those convicted of more serious offenses received significantly longer terms of incarceration. Additionally, offenders also faced a trial penalty, where those who went to trial were significantly disadvantaged during the

sentencing phase. Overall, these findings highlight the disparate treatment Black offenders face during the punishment phase of justice system processing. Moreover, results also offer partial support for Hypothesis 1. The sentence disadvantages faced by Black offenders appear to be concentrated among drug offenders, consistent with stereotypical images associated with race and crime.

### ***Examining Sentence Variations across Judges and Counties***

While the results from Table 6 suggest that racial disparities may be concentrated among drug offenses, they also demonstrate that the likelihood of incarceration and sentence lengths vary across both judges and counties. After controlling for individual level factors, results from the random intercepts portion of the model indicate significant variation remains across judges and counties (see Table 7). This suggests that significant variation in sentencing outcomes may be accounted for at the judicial and county level. Specifically, approximately 9% of variation in the incarceration decision can be attributed to judges, while judge-level characteristics account for 6% of the variation in sentence length outcomes. Additionally, roughly 7% of variation in the odds of incarceration is due to county-level factors, while these same factors account for 8% of variation in sentence lengths. In the context of non-drug offenses, judge characteristics account for 5% of the variation in incarceration decisions and approximately 10% of the sentence length decision. Moreover, 7% of the variation in the in/out decision and 6% in the sentence length decision result from differences across counties. In light of this variation, a series of models were estimated to explain differences in sentencing practices across judges and counties. Since a key focus of this study is understanding racial disparity,

analyses focus on drug offenders, where race appears to play a stronger role in the punishment process.

Table 7

*Three-Level HLM Models Examining the Effect of Race on Sentencing Outcomes for Drug and Non-Drug Offenses (Individual Level Random Effects)*

Drug						Non-Drug					
Incarceration			Sentence Length			Incarceration			Sentence Length		
Fixed Effects	<i>b</i>	SE	Fixed Effects	<i>b</i>	SE	Fixed Effects	<i>b</i>	SE	Fixed Effects	<i>b</i>	SE
Intercept	-.330**	.113	Intercept	1.779**	.026	Intercept	.240†	.178	Intercept	.974**	.032
Random Effects	Variance	SD	Random Effects	Variance	SD	Random Effects	Variance	SD	Random Effects	Variance	SD
Level 1	---	---	Level 1	.765	.875	Level 1	---	---	Level 1	1.134	1.065
Level 2	.414**	.643	Level 2	.027**	.163	Level 2	.215**	.464	Level 2	.038**	.195
Level 3	.581**	.762	Level 3	.027**	.163	Level 3	.410**	.640	Level 3	.042**	.206
ICC Judge	.092			.057			.054			.095	
ICC County	.068			.081			.071				.061

†  $p < .10$ , \*  $p < .05$ ; \*\*  $p < .01$

### *The Effect of Judge and County-Level Factors in Drug Offenses*

The next set of analyses address the extent to which judge characteristics influence discretionary decision-making. Central to this study is an examination of the impact that judicial race has on sentencing severity. Results highlighting the relationship between judge race and sentence outcomes for drug offenses are presented in Table 8. In comparison to White judges, African American judges were less likely to incarcerate all offenders. Specifically, Black judges were approximately 31% less likely to incarcerate drug offenders. Notably, neither judge gender nor the amount of legal experience significantly influenced the decision to incarcerate offenders. However, as judges' caseloads increased, the odds of receiving a custodial sanction decreased.

In contrast, judge level characteristics did not impact sentence length decisions. For example, African American judges assigned terms of incarceration similarly to White judges for all drug offenders. Additionally, other judicial demographic characteristics (i.e., gender and legal experience) were not significantly related to the sentence length decision. Only a judge's caseload level was marginally associated with the sentence length outcome ( $p = .074$ ). As with the incarceration decision, judges with higher caseloads assigned significantly shorter terms of incarceration. Overall, these results offered partial support for Hypothesis 3, where the leniency of African American judges was limited to the incarceration decision.

Table 8

*Three-Level HLM Models Examining the Effects of Judge Race and Black Absolute**Status on Sentencing Outcomes for Drug Offenses (n= 58,986)*

Variables	In/Out			Ln Sentence Length		
<i>Individual Characteristics</i>	<i>b</i>	SE	OR	<i>Beta</i>	SE	
White (reference)	---	---	---	---	---	
Black	.373**	.054	1.451	.065**	.020	
Male	.265**	.051	1.303	.190**	.027	
Age	-.013**	.002	.987	-.001	.001	
OGS	.236**	.050	1.266	.213**	.020	
Prior Record	.387**	.033	1.472	.169**	.016	
Presumptive Sentence	.008	.007	1.008	.009**	.003	
Multiple Counts	.066	.048	1.068	.134**	.027	
Trial	.785**	.073	2.191	.298**	.027	
Heroin (reference)	---	---	---	---	---	
Cocaine	-.021	.041	.979	-.032*	.016	
Marijuana (felony)	-.650**	.157	.522	-.224**	.046	
Marijuana (misdemeanor)	-2.392**	.317	.091	-2.239**	.180	
Meth	.071	.124	1.073	.002	.047	
Other Drug (felony)	-.651**	.141	.522	-.247**	.033	
Other Drug (misdemeanor)	-2.185**	.232	.112	-.990**	.067	
Other Narcotic	-.098**	.174	.375	-.320**	.050	
Simple Possession	-1.557**	.184	.211	-.796**	.065	
<i>Judge Characteristics</i>						
Black Judge	-.378*	.171	.685	.027	.043	
Female Judge	-.005	.052	.995	.019	.023	
Legal Experience	-.010	.007	.990	.001	.002	
Caseload	-.053*	.021	.948	-.011†	.006	
<i>District Characteristics</i>						
Black Absolute Status	-.075	.045	.928	-.037**	.010	
Concentrated Disadvantage	.011	.020	1.011	-.001	.006	
Property Offenses	-.038†	.022	.963	-.002	.006	
Drug Offenses	-.036†	.020	.965	.007	.006	
Violent Offenses	-.016	.037	.984	.003	.008	
Diversity Index	1.430	1.136	4.178	.901**	.196	
Racial Income Inequality	-.000	.000	1.000	-.000†	.000	
Intercept	-0.325**	.096	.723	1.794†	.024	
Random Effects						
<i>Judge-level</i>	Variance	df	X <sup>2</sup>	Variance	df	X <sup>2</sup>
Level 1 intercept				.763	---	--
Level 2 intercept	.386	264	2114.17**	.025	242	680.39**
Black	.069	268	324.57**	.007	246	264.49
<i>County-level</i>						
Level 3 intercept	.398	51	358.19**	.017	50	189.94**
Black	.050	58	106.29**	.002	57	74.00†

† p &lt; .10, \* p &lt; .05; \*\* p &lt; .01

Note: Coefficients for *fiscal year* are included in the analysis but not shown. All variables are grand mean centered with robust standard errors presented. Additionally, offender race was allowed to vary across judge race and Black absolute status.

Table 8 also describes the direct effects of BAS and other county-level contextual measures on the incarceration decision. Results indicate that the social status of African Americans within a county was not significantly related to the odds of incarceration for all drug offenders. Additionally, measures of concentrated disadvantage, the percent of violent offenses processed through a court, levels of diversity, and racial income inequality were not significantly related to the incarceration decision. However, the percent of drug and property cases assessed within a county were marginally associated with the decision to grant custodial vs. non-custodial sanctions ( $p = .073$  and  $p = .088$ , respectively).

While direct effects of BAS on the incarceration decision were not statistically significant, BAS was related to the terms of incarceration offenders received. Specifically, each one unit increase in BAS decreased sentence lengths by approximately 4%. Moreover, other contextual level factors also influence this decision. For example, as diversity increased, offenders were subject to longer terms of incarceration. However, as racial income inequality increased sentences were significantly shorter ( $p = .084$ ). Notably, concentrated disadvantage and the percentage of property, violent, and drug cases processed within a court were not significantly related to the sentence length decision. These findings offer partial support for Hypothesis 7, in that increases in minority status may lead to less punitive sanctions, at least for the sentence length decision. Counties where African Americans experience greater social status may be

consequential to the punitiveness of criminal justice processing, particularly as it relates to the handling of drug offenses.

### ***Variation of Offender Race across Judges and Counties***

Importantly, the effect of offender race on each sentence outcome was allowed to vary across judges and counties in the previous models. Doing so assessed the extent to which the effect of offender race was dynamic across contexts. Results from this portion of the analysis are displayed in Table 8. Findings indicate that the effect of offender race varies significantly across judges for the incarceration decision, but not the sentence length decision. Moreover, significant variation in the effect of offender race exists across counties for the incarceration decision, though variation across the sentence length decision is marginally significant ( $p = .06$ ). These findings suggest that the effect of offender's race may be more or less pronounced based on specific judge (e.g., race) or county (e.g., BAS) characteristics. The extent to which this assumption is supported is examined in subsequent cross-level interaction models discussed below.

### ***Explaining Variation in the Effect of Offender Race across Judges and Counties***

#### ***Judge Level Effects***

Of primary interest to the current study was examining the extent to which judge race may moderate the effect of offender characteristics, particularly race. While the direct effect of judicial race was inconsistent across outcomes, judge by offender cross-level interactions suggest that Black offenders (relative to white offenders) were significantly advantaged when sentenced by Black judges. For example, results displayed in Table 9 indicate that Black offenders convicted of drug crimes were approximately 1.45 times more likely to be incarcerated. However, the odds of incarceration for Black



offenders was reduced by 16% when sentenced by a Black judge. Moreover, this effect was illustrated further in the sentence length outcome. Again, Black drug offenders received terms of incarceration that were approximately 6% longer compared to white offenders. Yet, Black offenders received sentences that were approximately 8% shorter when sentenced by a Black judge, compared to a White judge. As such, these results offer support for Hypotheses 4. The punitiveness Black offenders face, generally, is moderated by the decision-making processes of Black judges.

Table 9

*Three-Level HLM Models Examining the Cross-Level Effects of Judge Race on Sentencing Outcomes for Drug Offenses (n= 58,986)*

Variables	In/Out		Ln Sentence Length		
	<i>b</i>	SE	OR	<i>Beta</i>	SE
Intercept	-.583**	.100	.558	1.623**	.056
<i>Interaction Effect</i>					
Judge Race X Offender Race	-.171*	.085	.843	-.081**	.024
<i>Individual Characteristics</i>					
White (reference)	---	---	---	---	---
Black	.370**	.051	1.447	.057**	.019
Male	.262**	.050	1.300	.193**	.027
Age	-.013**	.002	.987	-.001	.001
OGS	.235**	.049	1.264	.208**	.020
Prior Record	.387**	.033	1.473	.196**	.016
Presumptive Sentence	.008	.007	1.008	.010**	.003
Multiple Counts	.066	.048	1.068	.132**	.028
Trial	.764**	.075	2.146	.308**	.026
Heroin (reference)	---	---	---	---	---
Cocaine	-.022	.039	.979	.032*	.016
Marijuana (felony)	-.654**	.156	.520	-.231**	.045
Marijuana (misdemeanor)	-2.412**	.316	.090	-2.227**	.182
Meth	.084	.127	1.088	.008	.048
Other Drug (felony)	-.656**	.141	.519	-.242**	.033
Other Drug (misdemeanor)	-2.197**	.231	.111	-.999**	.068
Other Narcotic	-.971**	.181	.379	-.312**	.053
Simple Possession	-1.569**	.185	.208	-.796**	.065
<i>Judge Characteristics</i>					
Black Judge	-.420**	.085	.657	.026	.178
Female Judge	.105	.073	1.110	.076†	.041
Legal Experience	-.005	.006	.995	.003	.003

Caseload	-.058*	.027	.944	.015	.015
<i>District Characteristics</i>					
Black Absolute Status	-.057	.047	.945	-.041	.027
Concentrated Disadvantage	.030	.022	1.031	.002	.013
Property Offenses	-.033	.026	.968	.022	.015
Drug Offenses	-.028	.023	.972	.020	.014
Violent Offenses	.048	.036	1.049	.043†	.024†
Diversity Index	2.181	1.347	8.854	1.370*	.643
Racial Income Inequality	-.000	.000	1.000	-.000	.000

† p < .10, \* p < .05; \*\* p < .01

Note: Coefficients for *fiscal year* are included in the analysis but not shown. Level 1 variables are group mean centered. All other variables are grand mean centered with robust standard errors presented.

In order to fully assess the magnitude of these interactions, the probability of imprisonment and sentence length are estimated for each race category across categories of judicial race. Figures 1 and 2 report the findings from these analyses. As depicted in Figure 1, compared to White drug offenders, Black offenders were more likely to be incarcerated, regardless of the presiding judge's race. However, the odds of incarceration for Black offenders was significantly reduced under Black judges. Moreover, Black judges sentenced all offenders more leniently compared to White judges. Figure 2 further highlights the differences in sentencing patterns across judges. Relative to White judges, Black judges sentenced Black drug offenders to significantly shorter terms of incarceration. Notably, African American judges sentenced Black offenders to shorter terms of incarceration than White offenders. In contrast, the disparity in sentence severity was most pronounced among White judges sentencing Black offenders.

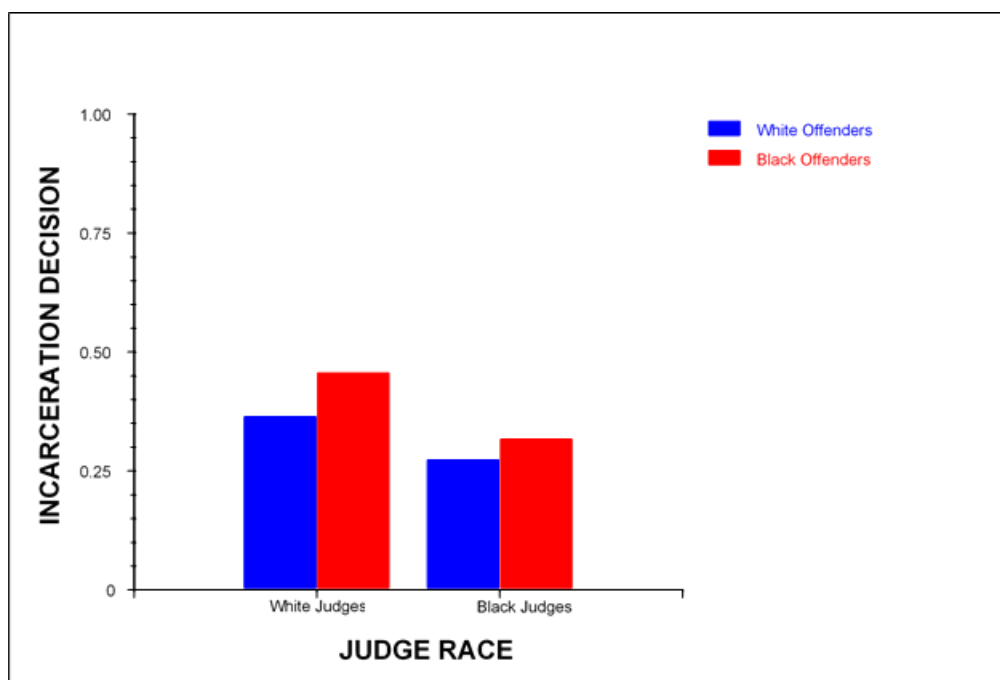


Figure 1

*Effects of Judge Race on Incarceration Decision*

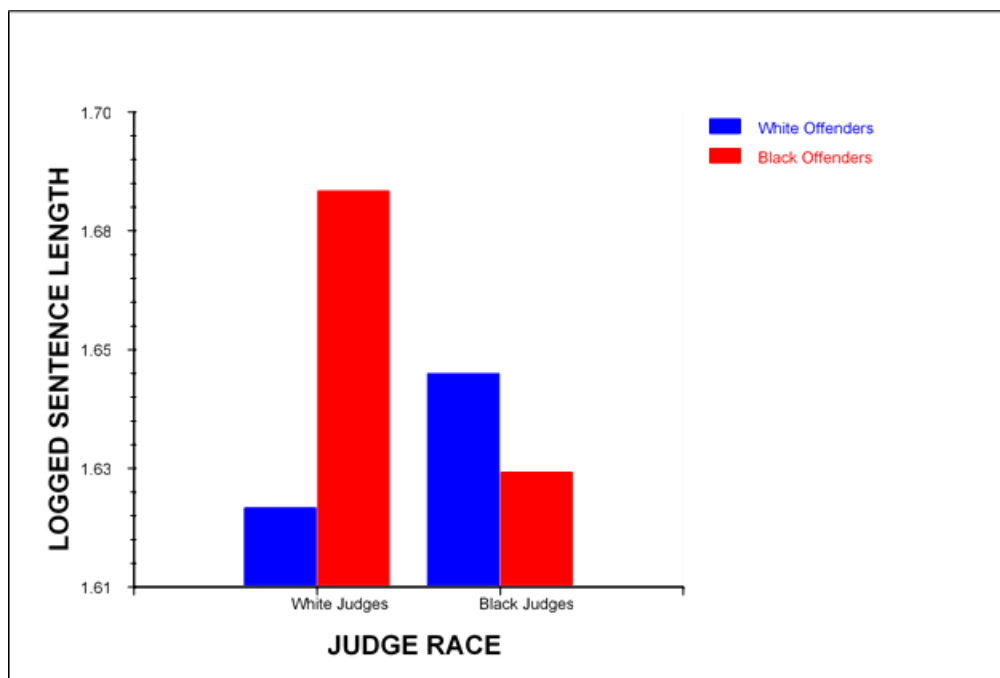


Figure 2

*Effects of Judge Race on Sentence Length Decision*

### *County Level Effects*

In examining the conditioning effects of contextual characteristics on the sentencing severity of Black offenders, results indicate that Black offenders may be treated less punitively in counties with higher BAS (see Table 10). For example, Black offenders were approximately 2% less likely to be incarcerated as BAS increases. However, BAS did not moderate the effects of offender race in the sentence length decision. Black offenders faced similar terms of incarceration regardless of macro-level indicators of social status. This finding is not surprising, however, given that variance components (displayed in Table 8 and discussed earlier) indicated that the variance of race across counties was only marginally significant. These results provide partial support for Hypothesis 12 and the ameliorative perspective.

Table 10

*Three-Level HLM Models Examining the Cross-Level Effects of County Characteristics (Black Absolute Status) on Sentencing Outcomes for Drug Offenses (n= 58,986)*

Variables	In/Out			Ln Sentence Length	
	<i>b</i>	SE	OR	<i>Beta</i>	SE
Intercept	.581**	.100	.559	1.621**	.056
<i>Interaction Effect</i>					
BAS X Offender Race	-.020**	.007	.980	-.004	.003
<i>Individual Characteristics</i>					
White (reference)	---	---	---	---	---
Black	.418**	.055	1.519	.071*	.028
Male	.262**	.049	1.299	.191**	.027
Age	-.013**	.002	.987	-.001	.001
OGS	.234**	.049	1.264	.207**	.020
Prior Record	.378**	.033	1.473	.169**	.016
Presumptive Sentence	.008	.007	1.008	.010**	.003
Multiple Counts	.066	.048	1.068	.132**	.028
Trial	.767**	.075	2.152	.309**	.026
Heroin (reference)	---	---	---	---	---
Cocaine	-.020	.039	.980	-.031*	.016
Marijuana (felony)	-.654**	.156	.520	-.230**	.045
Marijuana (misdemeanor)	-2.411**	.315	.090	-2.227**	.182
Meth	.874	.127	1.091	.010	.0448

Other Drug (felony)	-.655**	.140	.520	-.242**	.033
Other Drug (misdemeanor)	-2.198**	.231	.111	-.999**	.068
Other Narcotic	-.969**	.182	.380	-.311**	.054
Simple Possession	-1.570**	.185	.208	-.796**	.065
<i>Judge Characteristics</i>					
Black Judge	-.417**	.093	.659	.015	.176
Female Judge	.107	.073	1.113	.076†	.041
Legal Experience	-.004	.007	.996	.002	.003
Caseload	-.058*	.027	.943	.015	.015
<i>District Characteristics</i>					
Black Absolute Status	-.062	.053	.940	-.037	.027
Concentrated Disadvantage	.027	.023	1.027	.002	.013
Property Offenses	-.031	.025	.969	.021	.015
Drug Offenses	-.027	.023	.973	.020	.014
Violent Offenses	.047	.037	1.048	.043†	.024
Diversity Index	2.292†	1.342	9.893	1.324*	.642
Racial Income Inequality	-.000	.000	1.000	-.000	.000

† p < .10, \* p < .05; \*\* p < .01

Note: Coefficients for *fiscal year* are included in the analysis but not shown. Level 1 variables are group mean centered. All other variables are grand mean centered with robust standard errors presented.

Cross-level interactions between Black offenders and BAS for the incarceration decision are displayed in Figure 3. Findings indicated that Black drug offenders were more likely to be incarcerated in counties with low levels of BAS. However, as BAS increased, the odds of incarceration decreased, so much so that differences in the probability of incarceration for Black and White offenders in counties with the highest BAS are nearly indistinguishable. Notably, Figure 3 also highlights the impact of BAS on White offenders. Regardless of race, offenders in counties with higher BAS were sentenced more leniently.

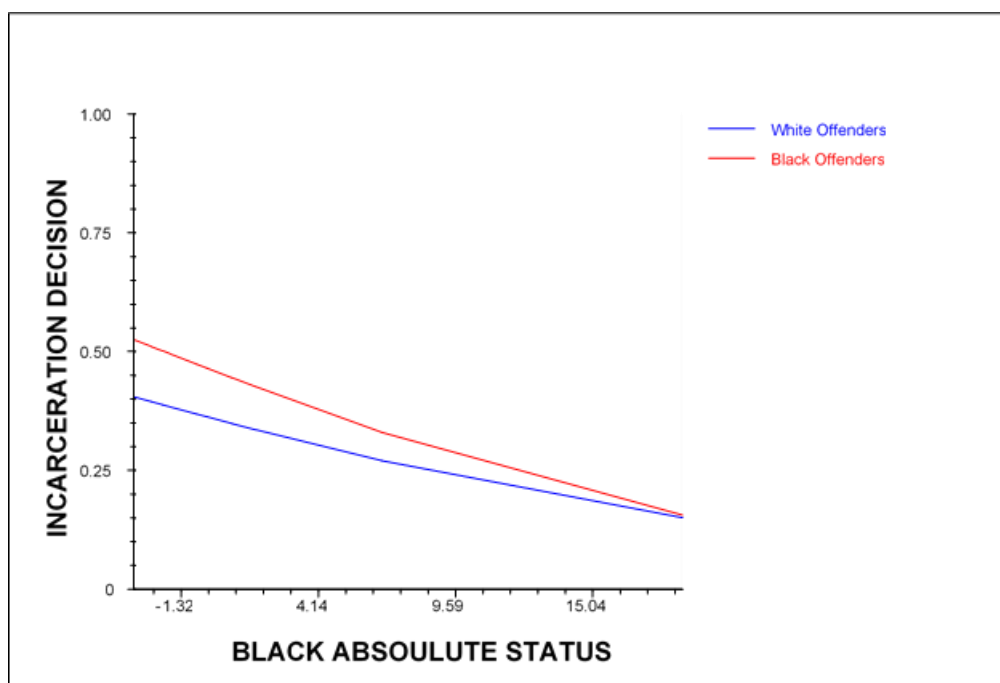


Figure 3

*Effects of Black Absolute Status on Incarceration Decision*

Results for the sentence length decision are displayed in Figure 4. Black drug offenders received the longest terms of incarceration in counties with low BAS. However, increases in BAS reduced sentence lengths for both Black and White offenders.

Again, Black and White drug offenders sentenced in counties with greater BAS received similar terms of incarceration. These findings suggest that disparate treatment for Black drug offenders appears to be most pronounced in counties where African Americans possess little political and economic influence.

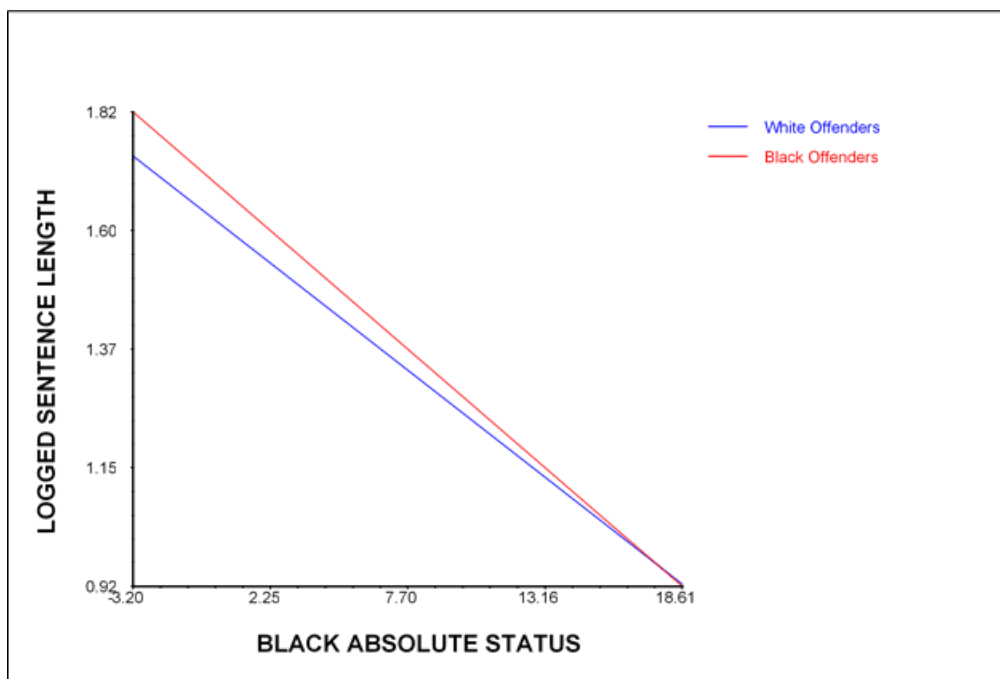


Figure 4

*Effects of Black Absolute Status on Sentence Length Decision*

## Assessment of Gendered Offenses

### *The Effect of Offender Sex in Gendered and Non-Gendered Offenses*

Due to the smaller sample of gendered offenses—and especially those gendered offenses involving female offenders—the following analyses relied on logistic and ordinary least squares (OLS) regression analyses. Table 11 displays results of the direct effects of offender's sex on severity of sentencing outcomes for gendered and non-gendered offenses. These analyses act as a baseline to examine the extent to which

gender effects vary by offense type. Results indicate that male offenders were approximately 2.1 times more likely to be incarcerated for committing gendered offenses, compared to female offenders. Several additional extralegal factors also influence judicial decision-making in this context. Compared to White offenders, Black offenders' odds of incarceration were approximately 20% lower. Older offenders were also less likely to be incarcerated. Moreover, several legally relevant factors also influenced the incarceration decision. Offenders with more extensive prior records were 1.3 times more likely to be incarcerated. However, the presumptive sentence and being convicted on multiple accounts were not significantly related to this decision-point. Notably, going to trial predicted the odds of incarceration, where offenders who chose trial, as opposed to a plea negotiation, were approximately 1.6 times more likely to be incarcerated. The type of gendered offense committed also greatly influenced the odds of incarceration. Compared to those convicted of statutory sexual assault, offenders who were charged with aggravated indecent assault, IDSI, and rape were all more likely to be incarcerated. Specifically, offenders convicted of rape were approximately 7 times more likely to be incarcerated, while those convicted of aggravated indecent assault and IDSI were approximately 4 and 3.6 times more likely to be sentenced to jail/prison, respectively. In contrast, offenders who were convicted on less severe gendered offenses were significantly less likely to receive a term of incarceration. For example, those convicted of misdemeanor indecent assault, harassment, and felony/misdemeanor stalking were less likely to be incarcerated. Notably, those convicted of felony indecent assault and sexual assault were sentenced no differently than statutory sexual assault offenders.



Results for the sentence length outcome mirror those of the incarceration decision. Male offenders received terms of incarceration that were approximately 45.2% longer than female offenders. As with the incarceration decision, Black offenders received sentences that were significantly shorter compared to White offenders. However, older offenders received significantly longer terms of incarceration. Legally relevant factors greatly influenced the sentence length decision. For example, offenses with higher presumptive sentences, offenders with greater criminal histories, and those convicted on multiple counts received longer sentences. Offenders who went to trial also faced a trial penalty, receiving terms of incarceration that were approximately 26% longer. Finally, those offenders convicted of more severe offenses also faced more severe penalties. Those found guilty of aggravated indecent assault, IDSI, sexual assault, and rape received significantly longer terms of incarceration, as compared to statutory sexual assault offenders. As expected, those convicted of misdemeanor offenses received much shorter terms of incarceration. Notably, felony indecent assault and felony stalking offenders received sentences that were comparable to statutory assault offenders.

Table 11

*OLS and Logistic Regression Models Examining the Effect of Gender on Sentencing Outcomes for Gendered and Non-Gendered Offenses*

Variables	Gendered (n = 4,294)					Non-Gendered (n = 251,610)				
	In/Out		Ln Sentence Length			In/Out		Ln Sentence Length		
	<i>b</i>	SE	OR	<i>B</i>	SE	<i>b</i>	SE	OR	<i>B</i>	SE
White (reference)	---	---	---	---	---	---	---	---	---	---
Black	-.227*	.113	.797	-.109**	.035	-.018†	.010	.982	.102**	.010
Male	.725**	.183	2.065	.373**	.080	.398**	.011	1.489	.253**	.012
Age	-.007*	.003	.993	.004**	.001	-.006**	.000	.994	-.007**	.000
Prior Record	.255**	.026	1.290	.088**	.008	.152**	.003	1.164	.165**	.002
Presumptive Sentence	.001	.004	1.001	.007**	.001	.087**	.001	1.091	.041**	.000
Multiple Counts	.081	.094	1.084	.205**	.031	.148**	.010	1.160	.783**	.009
Trial	.445†	.237	1.560	.227**	.046	.568**	.035	1.765	.222**	.023
Statutory Sexual Assault (ref)	---	---	---	---	---	---	---	---	---	---
Indecent Assault- Agg	1.377**	.408	3.962	.892**	.059	---	---	---	---	---
IDS	1.275**	.409	3.580	1.274**	.062	---	---	---	---	---
Harassment	-3.807**	.188	.022	-1.993**	.067	---	---	---	---	---
Indecent Assault (felony)	-.159	.316	.853	-.017	.076	---	---	---	---	---
Indecent Assault (mis)	-1.646**	.184	.193	-.630**	.053	---	---	---	---	---
Sexual Assault	-.039	.331	.962	.615**	.076	---	---	---	---	---
Rape	1.952**	.539	7.045	1.310**	.064	---	---	---	---	---
Stalking (felony)	-2.043**	.297	.130	-.196†	.116	---	---	---	---	---
Stalking (mis)	-2.474**	.185	.084	-1.223**	.060	---	---	---	---	---
Property (ref)	---	---	---	---	---	---	---	---	---	---
Violent	---	---	---	---	---	.316**	.016	1.372	.015	.015
Drug	---	---	---	---	---	-.400**	.013	.670	.074**	.013
Other Crime	---	---	---	---	---	.439**	.012	1.552	-1.007**	.011
R-Square	.561			.769		.209			.476	

†  $p < .10$ , \*  $p < .05$ ; \*\*  $p < .01$

In order to address Hypothesis 2, a series of models were estimated to examine gender effects among non-gendered offenses. Doing so highlights the circumstances in which the effects of offender sex may be more pronounced. As in the gender-only offense model, male offenders received significantly more punitive sanctions, compared to females. However, the strength of this association was less pronounced in non-gendered offenses. While male offenders convicted of gendered offenses were 2.1 times more likely to be incarcerated, those sentenced for non-gendered offenses were only 1.5 times more likely to be incarcerated, compared to females. This finding is consistent with Hypothesis 2. While male offenders are treated more punitively as compared to female offenders, regardless of offense type, those convicted of gendered offenses face increased penalties.

Moreover, the effects of other legally relevant and extralegal factors differ across gendered and non-gendered offenses. For example, offender race was only marginally related to the incarceration decision in non-gendered offenders. However, older offenders in both models were less likely to be incarcerated. Notably, legally relevant factors appear to be of greater consequence in non-gendered offenses. While only prior record was significantly related to the incarcerated decision of gendered offenses, offenders with more extensive criminal histories, a higher presumptive sentence, those charged on multiple counts, and offenders who went to trial were all significantly more likely to be incarcerated. Finally, the effects of property, violent, drug, and other crime types were estimated in the non-gendered model. In comparison to property offenses, violent and other criminal offenses were more likely to be incarcerated, while drug offenders were approximately 33% less likely to receive a custodial sanction.

Similar patterns emerge in the sentence length decision. While male offenders received sentences that are approximately 29% longer than female offenders for non-gendered offenses, those who engage in gendered offenses received terms of incarceration that are approximately 45% longer. Again, these findings offer additional support for the assumptions presented in Hypothesis 2. Furthermore, Black offenders received significantly longer terms of incarceration for gendered offenses and older offenders were sentenced to shorter sentences, the opposite pattern evidenced for gendered offenses. Additionally, as with the incarceration decision, legally relevant factors appear to significantly impact decision-making for non-gendered offenses. Specifically, offenders with a more extensive prior record received sentences that were on average 18% longer. Offenders also faced a significant trial penalty, increasing terms of incarceration by approximately 25%. Moreover, those convicted on multiple counts faced the greatest sentence severity. Lastly, while drug offenders sentenced to jail or prison received significantly longer sentences, those convicted of other types of crimes received shorter terms of incarceration. Violent offenses were sentenced no differently than property crimes.

### ***The Effects of Judge Gender and Women's Absolute Status on Sentences***

Results displaying the direct effects of judge's gender on sentencing severity for gendered offenses are displayed in Table 12<sup>9</sup>. Findings indicate that judge's gender was significantly related to decision-making in gendered offenses. Compared to male judges, female judges were less likely to incarcerate offenders. Specifically, the odds of

---

<sup>9</sup> As noted previously, traditional OLS and logistic regression models are estimated to examine the effects of judge and county level factors on sentencing outcomes. However, supplemental HLM analyses were also conducted for gendered models up to this point. Similar findings were produced in the HLM and traditional regressions for the direct effects of judicial and county characteristics.

incarceration for traditionally gendered offenses decreases by 29% when an offender is sentenced by a female judge. Several other judicial characteristics also influenced the incarceration decision. Black judges were 56% less likely to incarcerate those convicted of gendered offenses. Additionally, as judges' caseloads increased, they were less likely to give offenders a custodial sanction. Notably, judge's legal experience was not significantly related to the incarceration decision.

Similar to the incarceration decision, female judges also assigned terms of incarceration that were approximately 9% shorter than male judges, a difference which is statistically significant. Unlike the incarceration decision, other judge related factors were not significantly related to the terms of incarceration assigned by judges. Specifically, judge race, their legal experience, and the number of cases on their docket did not impact decision-making. Taken together, these findings fail to support Hypothesis 5. In contrast to expectations, female judges do not treat individuals convicted of gendered offenses more punitively.

Table 12

*OLS and Logistic Regression Models Examining the Effects of Judge Gender and Women's Absolute Status on Sentencing Outcomes for Gendered Offenses (n = 4,294)*

Variables	In/Out			Ln Sentence Length		In/Out			Ln Sentence Length	
	<i>b</i>	SE	OR	<i>Beta</i>	SE	<i>b</i>	SE	OR	<i>Beta</i>	SE
<i>Individual Characteristics</i>										
White (reference)	---	---	---	---	---	---	---	---	---	---
Black	-.034	.116	.967	-.079*	.035	.109	.121	1.115	-.069†	.038
Male	.737**	.184	2.090	.386**	.079	.765**	.185	2.149	.383**	.079
Age	-.007*	.003	.993	.004**	.001	-.006†	.003	.994	.004**	.001
Prior Record	.271**	.027	1.312	.088**	.008	.258	.027	1.294	.090**	.008
Presumptive Sentence	.002	.005	1.002	.007**	.001	.003**	.005	1.003	.007**	.001
Multiple Counts	.145	.096	1.156	.213**	.030	.171†	.096	1.187	.221**	.031
Trial	.498*	.243	1.645	.227**	.046	.526*	.245	1.692	.216**	.046
Statutory Sexual Assault (ref)	---	---	---	---	---	---	---	---	---	---
Indecent Assault- Agg	1.329**	.413	3.778	.889**	.058	1.319**	.414	3.741	.879**	.059
IDSII	1.355**	.435	3.878	1.276**	.062	1.315**	.440	3.724	1.274**	.063
Harassment	-3.867**	.193	.021	-1.995**	.066	-3.814**	.193	.022	-1.989**	.067
Indecent Assault (felony)	.001	.321	1.001	-.017	.075	-.038	.320	.963	-.021	.076
Indecent Assault (misd.)	-1.638**	.187	.194	-.628**	.052	-1.636**	.187	.195	-.631**	.053
Sexual Assault	-.051	.337	.951	.673**	.076	.035	.339	1.036	.609**	.076
Rape	1.969**	.556	7.167	1.322**	.063	1.933**	.559	6.913	1.315**	.064
Stalking (felony)	-1.886**	.304	.152	-.194†	.114	-1.941**	.302	.144	-.182	.115
Stalking (misd.)	-2.407**	.188	.090	-1.227**	.060	-2.383**	.188	.092	-1.229**	.061
<i>Judge Characteristics</i>										
Female Judge	-.343**	.109	.710	-.085*	.034	---	---	---	---	---
Black Judge	-.818**	.298	.441	-.043	.080	---	---	---	---	---
Legal Experience	-.006	.006	.994	.001	.002	---	---	---	---	---
Caseload	-.097**	.013	.908	.003	.004	---	---	---	---	---
<i>District Characteristics</i>										

WAS	---	---	---	---	---	-.394**	.073	.674	-.004	.021
Concentrated Disadvantage	---	---	---	---	---	.014	.012	1.014	.020**	.023
Property Offenses	---	---	---	---	---	-.045**	.014	.956	.014	.004
Drug Offenses	---	---	---	---	---	-.048**	.012	.953	.004	.004
Violent Offenses	---	---	---	---	---	-.056**	.019	.946	-.006**	.004
R-Square	.578			.774		.576			.771	

† p < .10 \* p < .05 \*\* p < .01

Table 12 also displays the effects of gender characteristics at the county level on sentencing disparities for gendered offenses. Again, county-level measures were significantly related to sentence outcomes. Specifically, in counties where women's absolute status was higher, offenders were less likely to be incarcerated. This finding is contrary to what is predicted under the ameliorative perspective. The odds of incarceration for all offenders decreased by approximately 33% as WAS increased. Additionally, the average number of property, drug, and violent cases processed through a county court significantly impacts judges' decisions to incarcerate offenders. Those sentenced in counties with greater frequencies of property, drug, and violent cases were less likely to be incarcerated. In contrast, levels of concentrated disadvantage were not significantly related to the incarceration decision.

A similar pattern emerges for the sentence length decision. Judges assigned shorter terms of incarceration in counties with higher WAS. However, this relationship was not statistically significant. Additionally, unlike the incarceration decision, concentrated disadvantage was significantly related to terms of incarceration offenders received. As concentrated disadvantage increased, offenders received sentences that were approximately 2% longer. Moreover, those convicted in counties that processed higher levels of violent offenses received significantly shorter sentences. Overall, these findings offer partial support for Hypothesis 13 and the backlash perspective. Specifically, offenders convicted of gendered offenses face less punitive sanctions in counties with greater gender equity.



*The Conditioning Effects of Judge Gender and WAS on Offender Gender*

As previously discussed, male offenders who engage in gendered offenses may be viewed as significantly more threatening and deserving of punishment, particularly for crimes that are perceived as gendered in nature. While female judges may sentence all offenders convicted of gendered offenses more leniently compared to male judges, they may be particularly punitive when sentencing male offenders. This assumption is examined and results for the moderating effects of judge gender on offender's gender are presented in Table 13. Results from this analysis fail to find a significant moderating effect on the incarceration decision. Female judges incarcerated male offenders convicted of gendered crimes no differently than male judges. Additionally, female judges did not assign significantly longer terms of incarceration to male offenders than their male counterparts. Overall, these findings suggest that male and female judges may perceive the dangerousness or culpability of male offenders who commit gendered offenses similarly.

Table 13

*OLS and Logistic Regression Models Examining the Conditioning Effects of Judge Gender and Women's Absolute Status on*

*Sentencing Outcomes for Gendered Offenses (n = 4,294)*

Variables	In/Out			Ln Sentence Length		In/Out			Ln Sentence Length	
	<i>b</i>	SE	OR	<i>Beta</i>	SE	<i>B</i>	SE	OR	<i>Beta</i>	SE
<i>Interaction Effects</i>										
Judge X Offender Gender	-.385	.456	.680	.000	.203	---	---	---	---	---
WAS X Offender Gender	---	---	---	---	---	-.584**	.247	.558	-.224†	.113
<i>Individual Characteristics</i>										
White (reference)	---	---	---	---	---	---	---	---	---	---
Black	-.033	.116	.968	-.079*	.035	.110	.121	1.116	-.069†	.038
Male	.810**	.205	2.248	.386**	.087	1.382**	.327	3.982	.622**	.144
Age	-.007*	.003	.993	.004**	.001	-.006†	.003	.994	.004**	.001
Prior Record	.271**	.027	1.312	.088**	.008	.260**	.027	1.287	.090**	.008
Presumptive Sentence	.002	.005	1.002	.007**	.001	.003	.005	1.003	.007**	.001
Multiple Counts	.145	.096	1.156	.213**	.030	.169†	.096	1.185	.219**	.031
Trial	.498*	.244	1.645	.227**	.046	.522*	.244	1.685	.215**	.046
Statutory Sexual Assault (ref)	---	---	---	---	---	---	---	---	---	---
Indecent Assault- Agg	1.328**	.413	3.775	.889**	.058	1.316**	.414	3.730	.877**	.059
IDS1	1.364**	.434	3.911	1.276**	.062	1.327**	.439	3.769	1.275**	.063
Harassment	-3.870**	.193	.021	-1.995**	.066	-3.824**	.193	.022	-1.998**	.067
Indecent Assault (felony)	.005	.321	1.005	-.017	.075	-.030	.320	.970	-.020	.076
Indecent Assault (mis)	-1.639**	.187	.194	-.628**	.052	-1.640**	.187	.194	-.632**	.053
Sexual Assault	-.031	.338	.970	.673**	.076	.058	.338	1.060	.610**	.076
Rape	1.977**	.556	7.219	1.322**	.063	1.952**	.558	7.046	1.317**	.064
Stalking (felony)	-1.885**	.304	.152	-.194†	.114	-1.942**	.302	.143	-.186	.115
Stalking (mis)	-2.408**	.188	.090	-1.227**	.060	-2.381**	.189	.092	-1.228**	.061
<i>Judge Characteristics</i>										
Female Judge	.023	.446	1.023	-.085	.201	---	---	---	---	---

Black Judge	-.818**	.298	.441	-.043	.080	---	---	---	---	---
Legal Experience	-.006	.006	.994	.001	.002	---	---	---	---	---
Caseload	-.096**	.013	.908	.003	.004	---	---	---	---	---
<i>County Characteristics</i>										
WAS	---	---	---	---	---	.149	.241	1.160	.237*	.111
Concentrated Disadvantage						.013	.012	1.013	.014**	.004
Property Offenses						-.045**	.014	.956	.004	.004
Drug Offenses						-.047**	.012	.954	-.006	.004
Violent Offenses						-.056**	.019	.946	-.028**	.005
R-Square	.578			.774		.577			.772	

† p < .10 \* p < .05 \*\* p < .01

Figures 5 and 6 clarify the moderating effects of judge gender on sentencing severity. Results in Figure 5 suggest that while female and male judges incarcerated female perpetrators of gendered violence similarly, the odds of incarceration for male offenders was significantly higher when sentenced by a male judge. While male offenders were still more likely to be incarcerated compared to female offenders, this difference is not statistically significant.

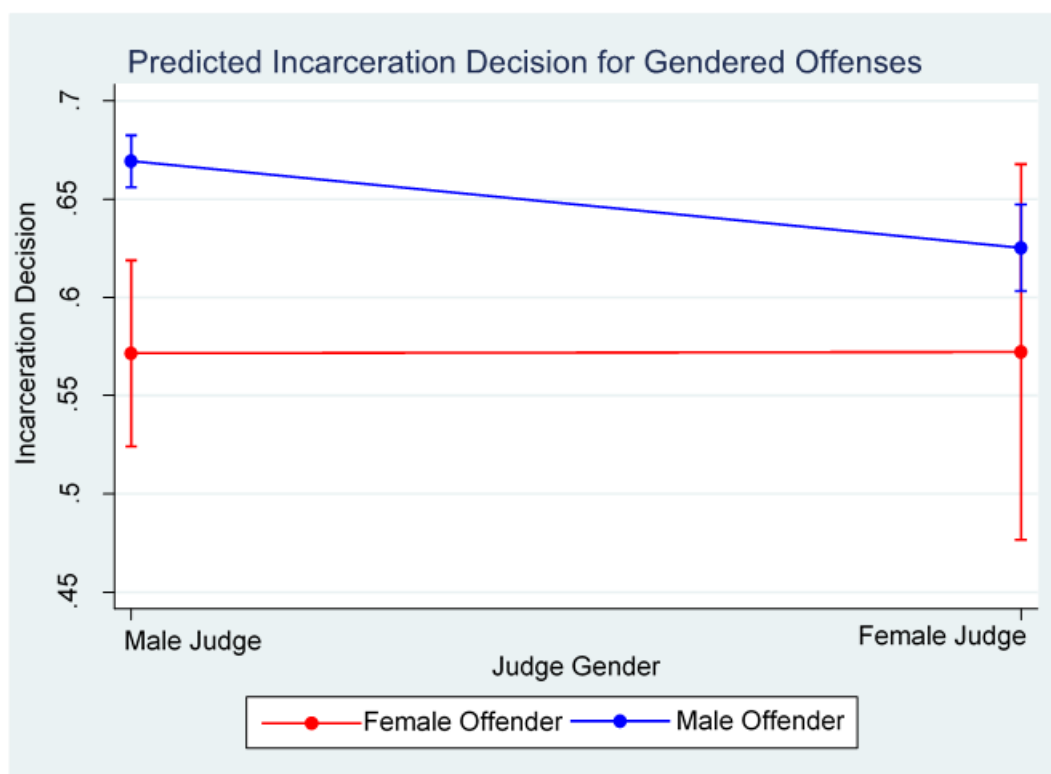


Figure 5

*Effects of Judge Gender on Incarceration Decision*

A similar pattern emerges during the sentence length decision displayed in Figure 6. Again, male judges sentenced male offenders more punitively, assigning significantly longer terms of incarceration to male offenders as opposed to female offenders. Female judges also sentenced male offenders to longer custodial sentences, however these

differences were not statistically different. Moreover, female judges sentenced both male and female offenders to slightly shorter terms of incarceration. Results suggest that female judges assign less punitive, more equitable sentences, in comparison to their male colleagues.

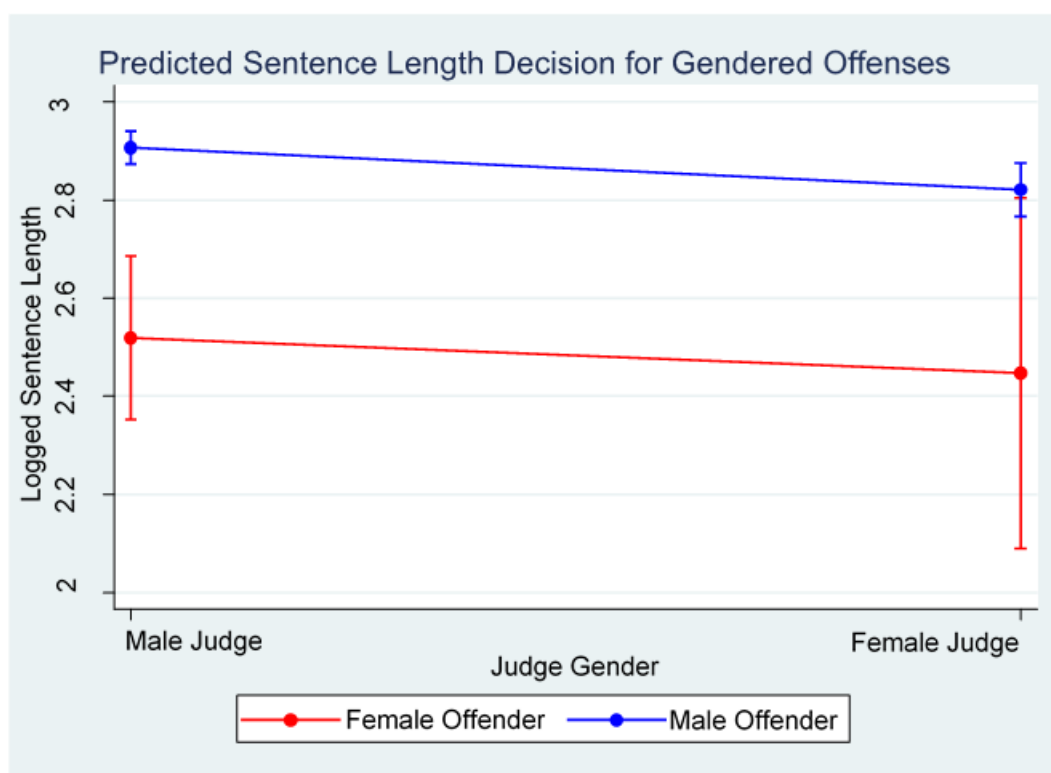


Figure 6

*Effects of Judge Gender on Sentence Length Decision*

Finally, findings in Table 13 also address assumptions put forth in Hypotheses 12 and 14. Specifically, these models examine whether the effect of offender sex on sentencing severity is moderated by county-level factors. The results indicate males sentenced in counties with higher WAS were sentenced more leniently, compared to those sentenced in low WAS counties. Specifically, male offenders were less likely to be incarcerated in counties where women have high social status. In contrast, male offenders

convicted of gendered offenses received shorter terms of incarceration as WAS increased. Notably, this relationship was marginally significant ( $p=.050$ ).

Figures 7 and 8 more clearly illustrate the relationship between offender sex and WAS on sentencing outcomes for gendered offenses. Beginning with Figure 7, results indicate that the greatest disparity occurs in counties with low WAS.

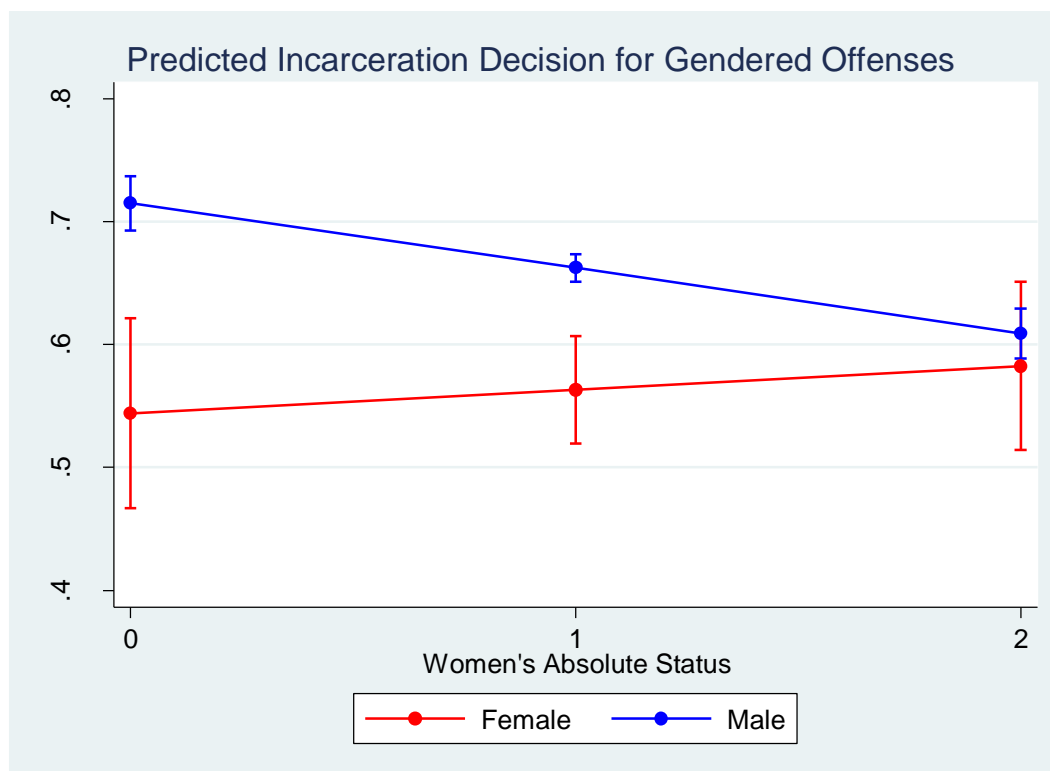


Figure 7

*Effects of Women's Absolute Status on Incarceration Decision*

Specifically, male offenders convicted in counties within the 25<sup>th</sup> percentile of WAS, were significantly more likely to be incarcerated, as compared to female offenders. However, as WAS increased, the magnitude of this disparity decreased. Significant differences remained for male offenders sentenced in counties with moderate levels of WAS. However, the odds of incarceration for those sentenced in counties with the

highest levels of WAS were not statistically different than female offenders<sup>10</sup>. Notably, an interesting sentencing pattern is also found for female offenders. Female perpetrators of gendered violence have the lowest odds of incarceration in counties with low WAS. As social status increased, however, the odds of incarceration for female offenders also increased.

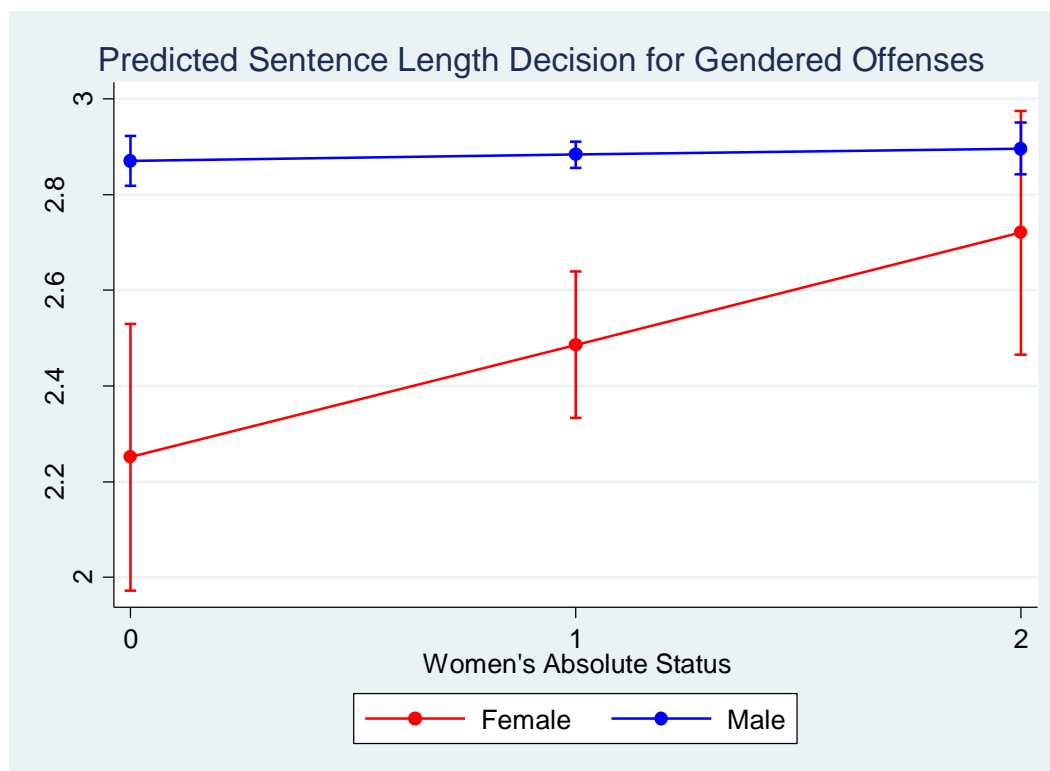


Figure 8

*Effects of Women's Absolute Status on Sentence Length Decision*

This trend is replicated in the sentence length outcome. Whereas male offenders similar received terms of incarceration regardless of the level of WAS, female offenders receive more punitive sanctions as WAS increased. Specifically, female offenders

<sup>10</sup> Differences between gender groups on the probability of imprisonment and sentence length (i.e., marginal effects) across WAS were examined to determine statistical significance.

received the shortest terms of incarceration in counties with low WAS. However, as absolute status increased, female offenders were subject to longer sentences. These findings suggest that WAS may moderate sentencing leniency for female offenders, as opposed to increasing punitiveness for male offenders. As such, the backlash perspective may be less useful for explaining this relationship.

### **Summary of Findings**

To summarize, the current study examined the conditions under which race and gender influence sentencing outcomes. Specifically, this study explored whether the effects of race and gender would be more pronounced in stereotypically associated offenses, as well as, the extent to which these effects would be conditioned by the sentencing context. A summary of support for the theoretical expectations described previously is provided in Table 14. First, Hypotheses 1 and 2 suggest that disparate treatment is a function of offense type. Specifically, Hypothesis 1 posits that in comparison to White offenders, Black offenders will face more punitive sanctions regardless of offense, however, Black offenders will receive more severe punishments for stereotypical offenses (i.e., drug offenses). Findings presented in Table 6 offer partial support for this hypothesis. Hypothesis 2 presents similar assumptions for male offenders who commit gendered offenses. Unlike the drug models, hypotheses related to male offenders are fully supported. As described in Table 11, male offenders were more likely to be incarcerated and received longer terms of incarceration for all offenses, but disparities were most pronounced in gendered offenses.

The next set of hypotheses highlights the effects of judge characteristics on sentencing outcomes for stereotypically racialized and gendered offenses. These



hypotheses are concerned with the direct and conditioning effects of judge race and gender on discretionary decision-making. Hypotheses 4 and 5 suggest that Black judges will be more lenient when sentencing all drug offenders, and this leniency will be most pronounced among Black drug offenders. Overall, these hypotheses were supported. Results displayed in Tables 8 and 9 indicated that Black judges were more lenient when sentencing all offenders (with exception of the sentence length decision), and particularly lenient when sentencing Black offenders. In contrast, Hypotheses 5 and 6 were not supported. As presented in Tables 12 and 13, female judges were neither more punitive when sentencing offenders convicted of gendered offenses, nor when sentencing male offenders, as predicted.

The final set of hypotheses proposed that county-level variation in the social status of marginalized groups would significantly impact judicial discretion and sentencing outcomes. Notably, two competing explanations were presented to address these assumptions. For example, Hypotheses 7 and 8 suggest that higher Black absolute status will result in greater leniency of all drug offenders, and moderate sentencing severity for Black offenders. In contrast, Hypotheses 9 and 10 propose the opposite relationship (i.e., more punitive sanctions). Results presented in Tables 8 and 10 offer partial support for the former, and no support for the latter hypotheses. The opposite pattern is illustrated in the context of gendered offenses. As outlined in Hypotheses 11 and 12, those convicted of gendered offenses, generally, would receive more severe sanctions when sentenced in counties with higher women's absolute status. These effects would be more pronounced for male offenders. Conversely, Hypotheses 1 and 14 presented the inverse relationship, where gendered offenders would fare more favorably

under these conditions. Findings presented in Tables 12 and 13 provided support for Hypotheses 13 and 14. Overall, the analyses presented above help to highlight *when* race and gender matter.

Table 14

*Support for Theoretical Predictions of Contextual Effects in Sentencing*

Hypotheses	Supported	
	In/Out	Sentence Length
1. In comparison to White offenders, Black offenders are more likely to be incarcerated and receive longer sentences for both drug and non-drug offenses. However, disparities will be more pronounced in drug offenses.	Yes	No
2. In comparison to female offenders, male offenders are more likely to be incarcerated and receive longer sentences for gendered and non-gendered offenses. However, disparity will be greater in gendered offenses.	Yes	Yes
3. Black judges will sentence all offenders convicted of drug offenses more leniently, relative to White judges.	Yes	No
4. Black judges will sentence Black offenders convicted of drug offenses more leniently, relative to White judges.	Yes	Yes
5. Female judges will sentence all offenders convicted of gendered offenses more severely, relative to male judges.	No	No
6. Female judges will sentence male offenders convicted of gendered offenses more severely, relative to male judges.	No	No
7. Offenders in counties with higher Black absolute status will receive less punitive sentencing outcomes.	No	Yes
8. Black offenders in counties with higher Black absolute status will receive less punitive sentencing outcomes.	Yes	No
9. Offenders in counties with higher Black absolute status will receive more punitive sentencing outcomes.	No	No
10. Black offenders in counties with higher Black absolute status will receive more punitive sentencing outcomes.	No	No
11. Offenders in counties with higher women's absolute status will receive more punitive sentencing outcomes.	No	No
12. Male offenders in counties with higher women's absolute status will receive more punitive sentencing outcomes.	No	No
13. Offenders in counties with greater gender equality will receive less punitive sentencing outcomes.	Yes	No
14. Male offenders in counties with greater gender equality will receive less punitive sentencing outcomes.	Yes	Yes

## CHAPTER V

### Discussion and Conclusion

Disparate treatment in justice related outcomes have been a significant concern of sentencing scholars (see Mitchell, 2005; Spohn, 2000; 2015). Recognizing the fallibility of judges and the structural biases inherent in some institutions, scholars have highlighted the importance of examining the impact of extralegal factors on sentencing outcomes. Specifically, researchers have been keenly aware of the potential influence of offender race and gender on sentencing punitiveness (see Bontrager, Barrick, & Stupi, 2013; Franklin, 2018). While prior research suggests that judges may consider these factors when determining appropriate sentencing severity, their influence on decision-making is not universal. In an attempt to understand these inconsistencies, scholars reframed the narrative surrounding the effects of race and gender on sentencing outcomes to better understand the nature of disparities.

In doing so, they highlighted the importance of accounting for the intersections of identity and how constellations of case characteristics may influence decision-making. As a result, scholars have amassed an extensive body of literature suggesting that race and gender effects are most pronounced in combination with other extralegal and legally relevant factors (Doerner & DeMuth, 2010; Farrell, Ward, & Rousseau, 2009; Franklin & Henry, 2019; King, Johnson, & McGeever, 2010; Steffensmeier, Ulmer, & Kramer, 1998, Warren, Chiricos, & Bales, 2012). Moreover, researchers have also argued that in order to obtain a more complete picture of disparate treatment, scholars should take into consideration factors that may influence decision-making outside of offender and case characteristics. Specifically, researchers highlight the need to explore the extent to which

decision-making may be a consequence of judicial attitudes and backgrounds, as well as, community norms (Baumer, 2013). Additionally, prior research suggests that it is important to situate these effects in the context of specific offenses, as doing so may have implications for the decision-making process. Notably, little research has examined the extent to which these conditioning effects occur (see Lim et al., 2016).

The current study sought to remedy this shortcoming in four ways by: 1) examining whether the effects of offender characteristics are more pronounced for certain offenses, 2) exploring whether judicial demographics and cultural experiences impact decision-making, 3) situating these decisions in a broader community context, and 4) highlighting the extent to which individual offender characteristics are further conditioned by the environment in which sentencing occurs. Findings suggest that the influence of race and gender are more pronounced for racialized and gendered offenses. Moreover, the ways in which these factors are assessed are contingent on judge and community characteristics. The theoretical, research, and policy implications of these findings are discussed below.

### **Theoretical Implications**

The results of this study provide several implications for advancing our theoretical understanding of the conditions in which race and gender influence judicial decision-making. First, this study offers support for the focal concerns perspective, highlighting the relationship between race, gender, and decision-making. Proponents of the focal concerns framework suggests that while judges make decisions primarily based on universally held focal concerns related to offender dangerousness, culpability, and situational contexts, these focal concerns may also be influenced by stereotypes related to

criminality (Steffensmeier et al., 1998). Specifically, negative stereotypes related to offender race and gender may lead to more punitive outcomes for minority and male offenders. Baseline models examining the impact of offender race and gender in non-stereotypical offenses offers partial support for this assertion. Whereas male offenders received significantly more punitive sanctions in non-gendered offenses across both sentencing outcomes, Black offenders were no more likely to be incarcerated and received significantly shorter terms of incarceration for non-drug offenses. These findings 1) affirm the contention that offender sex may be the most robust extralegal factor influencing sentencing decisions (Bontrager et al., 2013; Daly & Bordt, 1995) and 2) add to the somewhat inconclusive evidence related to the impact of race on sentencing outcomes.

As suggested by the stereotype congruency perspective, however, these effects may be more pronounced when examined in combination with factors that amplify stereotypes associated with offending. Results examining the extent to which offense type moderates the effect of race on sentence severity offers support for the stereotype congruency framework. While Black offenders convicted of non-stereotypical (i.e., non-drug) offenses faced less severe outcomes, those who met the *dangerous drug offender* stereotype were significantly more likely to be incarcerated and received longer terms of incarceration, compared to White offenders. As judges make decisions under organizational constraints, they may adopt patterned responses to increase efficiency. However, reliance on these patterned responses may reinforce negative stereotypes associated with Black offenders, particularly those engaged in drug offending. Judges may view Black drug offenders as deserving of more punishment, as this most clearly

exemplifies a dangerous offender. These findings are consistent with more recent research examining the effect of race in the context of drug offending which suggests that Black offenders face a significant penalty for engaging in stereotypical behavior (Crow, 2008; Demuth, 2002; Kutateladze et al., 2014; Mustard, 2001; Steffensmeier & Demuth, 2000; 2001; Valdez & Wang, 2017; Yang, 2013).

Moreover, while male offenders received more severe sanctions regardless of offense type, punishment severity was amplified for those who engaged in gendered offenses, providing additional support for the stereotype congruency perspective. Assumptions regarding gender and behavior may influence the ways in which judges perceive the severity of offenses, particularly when males engage in gendered violence. Results from the current study suggest that judges may subscribe to traditional gender norms that promote the chivalrous desire to protect victims of gendered violence, resulting in a decision-making process subject to gender-based assumptions. These results help corroborate findings from prior research, particularly as it relates to males who perpetrate sexual assault (Embry & Lyons, 2012; Kingsnorth et al., 1998).

Second, proponents of representative bureaucracy suggest that as organizations become more diverse, constituents will view the organization as more legitimate. Moreover, decision-makers from underrepresented groups should act in ways that would promote the concerns of the groups they represent (Mosher, 1968). Findings from the current study help to clarify the ways in which judicial attributes influence decision-making. For example, in the context of drug offenses, evidence suggests that Black judges were more lenient (or more equitable), than white judges, when sentencing all offenders. Specifically, Black judges were less likely to incarcerate offenders convicted

of drug crimes and assigned Black and White offenders to similar terms of incarceration. Consistent with prior research, this finding suggests that Black judges may, to some extent, maintain less punitive sentencing philosophies and be more proactive in ensuring equity in sentencing for all justice-involved persons (Chew & Kelly, 2009; Johnson, 2006; 2014; Lim et al., 2016; Spohn, 1990).

Moreover, results also indicate that Black offenders are significantly advantaged when sentenced by a Black judge, corroborating the results found by Lim and colleagues (2016). While Black drug offenders (compared to White offenders) are more likely to be incarcerated by both Black and White judges, the odds of incarceration are significantly reduced when the presiding judge is Black. These differences are amplified for the sentence length decision. As with the incarceration decision, Black judges sentence Black offenders more leniently than White judges. However, the ways in which these disparities are expressed require greater discussion. Under Black judges, Black offenders receive shorter terms of incarceration compared to White offenders. In contrast, the advantage white offenders receive when sentenced by White judges exemplifies the disproportionality in severity Black offenders face during the sentencing process. White offenders sentenced by White judges receive the shortest terms of incarceration of any other judge-offender racial dyad.

This pattern may have occurred for several reasons. First, Black judges may be less likely to rely on stereotypes depicting African Americans as dangerous drug offenders. As such, they may be less compelled to mete out increasingly punitive sanctions to Black offenders. In contrast, the effects of stereotype congruency may be greatest when Black offenders are sentenced by White judges. As the social distance

between White judges and Black offenders is greater, White judges may be more reliant on racial stereotypes related to criminality and impose sentences that result in greater disparity. Additionally, Black judges may be highly aware of the disproportionate contact and disparate treatment faced by African Americans in the criminal justice system. In response, they may be actively engaged in disparity correction (see Clair & Winter, 2016), specifically for those offenders convicted of drug crimes, as Black judges also recognize the disproportionate targeting of Black offenders for these types of crimes.

In addition to judge race, judge sex also significantly influences decision-making for particular offenses. Contrary to expectations, female judges were less likely to incarcerate offenders convicted of gendered offenses and assigned significantly shorter terms of incarceration, compared to male judges. These findings add to the inclusive evidence regarding the extent to which judge gender influences decision-making in the context of gendered offenses (Gruhl et al., 1981; Kritzer & Uhlman, 1977; Kulik et al., 2003; Lim et al., 2016; Steffensmeier & Herbert, 1999). While surprising, these results suggest that female judges may adhere to less punitive sentencing ideologies overall, resulting in less punitive sanctions, regardless of offense type. This assumption is bolstered by the findings demonstrated in the interaction effects between judge and offender sex.

Results indicate that female judges did not treat male offenders more punitively. Again, this relationship is better illustrated by graphing the interaction effects. For example, graphic depictions of the moderating effects suggest that male judges are more likely to differentiate between male and female offenders convicted of gendered offenses. Specifically, male judges are more likely to incarcerate male offenders. In contrast,



female judges incarcerate all offenders convicted of gendered crimes similarly. A similar pattern is shown for the term of incarceration. The sentence length assigned to male and female perpetrators of gendered offenses is relatively stable across male and female judges. However, male judges assign male offenders to longer terms of imprisonment. Male judges may more closely adhere to traditional gender norms and patriarchal assumptions regarding the need to protect female victims, particularly those who experience gendered offenses. As such, they may view male perpetrators of gendered violence as more dangerous and/or blameworthy, and therefore sentence them more severely. Moreover, male judges may be less inclined to take gendered violence perpetrated by women as seriously, drawing on the same misconceptions of gender norms, where women are depicted as the weaker, more vulnerable sex. As such, male victims may be perceived as needing less protection. On the other hand, female judges may be less inclined to rely on gendered stereotypes when making decisions, which could explain the null findings. In sum, the extent to which stereotype congruency influences judicial decision-making may be more pronounced among male judges, as opposed to female judges.

Finally, scholars suggest that the ways in which focal concerns and stereotypes are assessed may be a function of larger cultural norms and environmental structures (Johnson, 2005; Kautt, 2002; Steffensmeier et al., 1998). Scholars often rely on the racial threat hypothesis to examine the extent to which structural factors, primarily minority population, influences judicial decision-making (Britt, 2000; Fearn, 2005; Feldmeyer & Ulmer, 2011; Feldmeyer, Warren, Siennick, & Neptune, 2015; Helms & Jacobs, 2002; Johnson, 2006; Kautt, 2002; Myers & Talarico, 1987; Wang & Mears, 2010a; 2010b;

Ulmer, 1997; Wang & Mears, 2004; 2010; Weidner, Frase, & Pardoe, 2004; Weidner, Frase, & Schultz, 2005). The current study sought to advance the theoretical application of the threat hypothesis by examining racial and gender structural equity using measures that better clarify theoretical assumptions. In doing so, findings suggest that measures of race and gender absolute status better illustrate the relationship between social status, perceived threat, and criminal justice response. Specifically, findings offered relatively consistent support for the impact of structural factors on marginalized groups using measures of absolute status help to clarify components of economic and political threat.

Among all drug offenders, Black absolute status primarily influenced the sentence length outcome. Specifically, drug offenders sentenced in counties with higher BAS received significantly shorter terms of incarceration. Moreover, BAS decreased the odds of incarceration, although this effect failed to reach statistical significance. Additionally, BAS helped to moderate the sentencing disparities between Black and White drug offenders. While African Americans were more likely to be incarcerated generally, the odds of incarceration were significantly reduced for Black offenders sentenced in counties with higher Black social status. Notably, this effect was not statistically significant for the sentence length decision, however, direction and trend of the effect mirrors the incarceration decision. Black offenders in counties with low BAS received longer terms of incarceration, but these differences decreased as BAS increased. In general, these findings offer support for the ameliorative perspective. Drug offenders may fair better in counties where African Americans are more politically, socially, and economically powerful. It may be the case that as African Americans gain more political and economic power, they may be better positioned to support policies and political

agendas that reflect their wishes. In the context of drug offenses, these may include the decriminalization of certain drugs, increases in diversionary sentencing and social programs, and changes in the overall punitiveness for drug offenses. Ultimately, these changes would benefit all drug offenders, but as African Americans are generally linked to drug crimes, the potential advantages for Black offenders may be profound.

Like black absolute status, women's absolute status also highlights the embedded nature of focal concerns and the extent to which stereotypes about offenders influence discretionary decision-making. For gendered offenses, those sentenced in counties with higher WAS were less likely to be incarcerated. However, WAS had no significant effect on the sentence length decision. At face value, these results offer support for the backlash perspective. Perpetrators of gendered violence may receive a reprieve during punishment as those in the majority (i.e., males) attempt to maintain the patriarchal status quo. In the context of gendered offenses, this may include maintaining traditional patriarchal views on rape myths, gendered violence, and appropriate responses (or non-response) by the criminal justice system. Considering the results of the moderating relationship between WAS and offender sex, however, suggests that this relationship is more nuanced.

For example, in counties with low WAS, males are more likely to be incarcerated, compared to female offenders. However, as WAS increases, there is a decrease in punitiveness for male offenders and an increase in sentence severity for female perpetrators until the odds of incarceration are no longer statistically different. For the sentence length decision, male offenders receive relatively consistent terms of incarceration regardless of women's social status. Notably, female perpetrators of gendered violence in low WAS counties receive significantly shorter terms of

incarceration. However, as women's status increases, they receive sentence lengths that more closely resemble those given to male offenders. Contrary to what is suggested by the backlash perspective, these results suggest that increases in WAS may lead to more equitable outcomes for all offenders engaged in gendered violence, regardless of who perpetrates the offense. It may be that cultural expectations of equity have a greater impact on women who engage in such offenses as opposed to males. Stereotype congruency may be most influential in counties that more strongly adhere to traditionally, conservative gender norms.

An alternative explanation for these findings more closely aligns with the backlash perspective. The evil women's hypothesis has been previously used to explain the punitiveness female offenders face during justice system processing (Crew, 1991; Embry & Lyon, 2012; Farnsworth & Teske, 1995; Mustard, 2001; Rodriguez et al., 2006; Spohn, 1999; Steffensmeier et al., 1993). This perspective suggests that when women engage in offenses that are deemed outside the bounds of appropriate female behavior, or uniquely grotesque, they will be punished more severely (see Boritch, 1992; Chesney-Lind, 1977). When examining female offenders in isolation, results appear to support this assumption. However, the majority of female perpetrators of gendered offenses were convicted of misdemeanor harassment and stalking offenses (see Appendix B). Arguably, these offenses would not qualify as uncharacteristic or outside the bounds of femininity suggested by the evil woman hypothesis. Taken together, these findings suggest that examining measures of gender equity offer a unique opportunity for understanding the ways in which gender disparity manifests during the sentencing process.

## Research Implications

The findings presented in this study also offer several important implications for advancing research examining racial and gender disparities in sentencing. First, prior research has demonstrated the need to move beyond simply examining the direct effects of race and gender on sentencing outcomes (see Baumer 2013; Ulmer, 2012). While isolating the degree to which these effects matter, it is unlikely that judges rely solely on one factor when making assessments. Instead, it is likely a constellation of case and offender characteristics that drive judicial decision-making. This assumption has been supported in a number of studies across traditional sentencing outcomes, as well as, more ‘hidden’ decision points (Auerhahn, 2007; Brennan, 2006; Brennan & Spohn, 2009; Burch, 2015; Crow, 2008; Crow & Kunselman, 2009; Flavin, 2001; Franklin, Dittmann, & Henry, 2017; Frieburger & Hilinski-Rosick, 2013; Griffin & Wooldredge, 2006; Helms & Jacobs, 2002; Kempf-Leonard & Sample, 2001; LaFrentz & Spohn, 2006; Leiber & Blowers, 2003; Mustard, 2001; Nowacki, 2017; Sharp, Braley, & Marcus-Mendoza, 2000; Spohn, 2009; Steen et al., 2005; Steffensmeier & Demuth, 2006; Steffensmeier et al., 1998; Ulmer et al., 2016). Doing so may be particularly important when examining the extent to which these intersections influence outcomes in stereotypical offenses. For example, Steen and colleagues (2005) and Spohn and Sample (2013) examined whether offenders who met the “dangerous drug offender” stereotype influenced sentencing punitiveness using a combination of legally relevant and extralegal factors. The current study builds on this line of research by focusing on the dyadic relationships between offenders, judges, and the sentencing environment. To date, few studies have explored the nuances of decision-making in this manner. Future research

should continue to assess the ways in which other constellations of case characteristics influences judicial discretion. Doing so would provide more consistent results highlighting *how* combinations of extralegal and legal factors influence judicial decision-making.

Relatedly, the current study highlights two contexts in which racial and gender disparities may be most pronounced. Specifically, this study outlines why drug and gendered offenses (primarily those of a sexual nature) may act as ‘hotbeds’ for disparate treatment. Evidence from this study highlights the importance of considering offense type when examining disparities. Notably, this study’s conceptualization of gendered and racialized offenses was limited. However, additional offense types may also be regarded as racialized or gendered. For example, the War on Drugs was not only characterized by drug abuse and drug trafficking, it also ushered in high levels of violence (Werb et al., 2010). Increases in the violent crime rate during the late 1980s and 1990s was often attributed to young minority males affiliated with street gangs (Blumstein, 1995; Brownstein, Crimmins, & Spunt, 2000; Donohue III & Levitt, 1998; Goldstein, Brownstein, Ryan, & Bellucci, 1989; Guerrero, 1998). As such, violent offenses may also be considered racialized. Moreover, feminist scholars contend that intimate partner violence (IPV) is also a gendered offense (Kelly, 1988). However, scholars also note that perpetrators of IPV may potentially be more diverse than sexual assault offenses. As such, the conditioning effects of judge and county characteristics may be different in these contexts, as opposed to the drug and sexual gendered offenses examined. Future research should assess the extent to which similar conditioning effects are evidenced in other stereotypical offenses.

Third, the current study suggests that judges' assessments of cases are influenced by their unique backgrounds and experiences. Particularly, a judge's racial background may shape the way they interpret facts of a case. Given the jurisdiction in which this study was conducted, the diversity of judges included in this sample was limited. Only Black-White comparisons were addressed. However, a growing body of research highlights the need to move beyond these comparison, as other racial and ethnic groups have their own unique histories with the justice system and are subject to disparate treatment during justice system processing (Everett & Wojtkiewicz, 2002; Franklin, 2013; Franklin & Fearn, 2015; Johnson & Betsinger, 2009; Kutateladze et al., 2014). For example, prior research suggests that Latino and Native American offenders are also at risk for receiving more punitive sanctions during the sentencing process (Alvarez & Bachman, 1996; Franklin, 2013; Franklin & Henry, 2018; Mitchell, 2005; Spohn, 2000; Ulmer, 2012; Wilmot & DeLone, 2010). Although Pennsylvania offers a unique context for studying the influence of judicial characteristics on decision-making, neither the judiciary nor the population of offenders is diverse enough to examine potential moderating effects for these groups. Therefore, researchers should explore these effects in other contexts wither greater representation of minority offenders and judges. For example, using samples drawn from jurisdictions in the Southwest United States may provide a better context for addressing similar research questions across other racial/ethnic groups.

Fourth, future research must address the extent to which the mode of conviction influences sentencing outcomes. As the reliance on the plea-bargaining process has grown, researchers have highlighted the shift in discretionary decision-making power

from the judicial arena to prosecutors (see Johnson, 2014). Therefore, it is important to consider the extent to which prosecutors' backgrounds and characteristics may also influence their decision-making. Like judges, prosecutors' offices are often unwilling to release demographic information related to attorneys representing the state. However, given the discretion prosecutors maintain throughout system processing and as the overwhelming majority of cases are decided via plea-bargains, future research should assess the influence of prosecutor's characteristics on sentencing outcomes. The degree to which prosecutors' focal concerns differ from judges may have significant implications for how researchers understand sentencing disparities.

Fifth, as this study offers an innovative way to measure threat, future research should attempt to replicate the effects of Black absolute status and women's absolute status across sentencing outcomes. As this study is the first to contextualize racial threat within the absolute status framework, it is important to assess the reliability of this measure. Moreover, although women's absolute status has been used to explain other criminological related outcomes, the current study is one of a few to assess its utility in explaining discretionary decision-making. Notably, both concepts were examined in the context of unique offenses. Future research should determine whether BAS and WAS predict decision-making more generally. Additionally, future research should continue to develop more comprehensive measures of threat. For example, relative measures of threat may also be examined to determine the extent to which *inequality* influences discretionary decision-making (Nowacki & Windsong, 2019).

Finally, a series of conceptual and methodological critiques have been levied against the focal concerns perspective as it is currently applied (see Lynch, 2019).



Specifically, scholars argue that sentencing research has failed to fully develop the theoretical mechanisms that drive decision-making. In doing so, “focal concerns theory as an explanation for demographic disparities in sentencing mischaracterizes the process by which sentence outcomes are produced (Lynch, 2019: p. 1149). Lynch argues that this mischaracterization has consequences for the operationalization of important measures. Central to this critique are calls to draw on psychological and socio-cultural theories (such as social identity and aversive racism theories) to better understand the interpersonal dynamics of court processes. Moreover, true tests of the focal concerns perspective would engage analytic strategies that allow for the direct and indirect measurement of the cognitive processes of judges, as well as, accounting for both individual and group level processing detailed in the framework. The current study addresses some of these critiques by directly accounting for judge characteristics and situating their decisions in a broader community context. However, future research can continue to address these conceptualization and measurement concerns by accounting for decision-making of courtroom workgroup actors (rather than focusing on the autonomy of judges), exploring the extent to which race varies across legally relevant factors which may have significant implications for sentencing outcomes, and directly examining how decision-makers view their role in justice system processing and the factors they employ when making decisions. A return to qualitative research and mixed methods techniques may help flesh out the decision-making process and illuminate *how* disparities proliferate in the context of sentencing.

## **Policy Implications**

Building on the theoretical and research implications, the current study also lends itself to several important practical implications, particularly related to achieving equity in sentencing outcomes for racial and ethnic minorities, as well as, male and female offenders. First, findings from this study suggest that the extent to which male and minority offenders face increased punitiveness is a function of the type of offense perpetrated. Specifically, relative to female offenders, male offenders receive more severe sanctions when convicted of gendered offenses, while Black offenders are subject to harsher punishment when convicted of drug offenses, compared to White offenders. Prior research suggests that judges are aware of the influence race and gender may have on decision-making generally (see Clair & Winter, 2016; Miller & Maier, 2008; Rachlinski et al., 2008), but it is unclear the extent to which they understand how bias may be more pronounced when these characteristics are examined in combination with other factors that may enhance perceived stereotypes. Therefore, it is important to educate judges on this potential reality. Raising judicial awareness on these issues could lead judges to actively resist the influence of stereotypes and bias on decision-making. For example, Rachlinski and colleagues (2008) study of implicit bias among judges found that judges may attempt to compensate for potential biases once they are made aware of such influences. State legislatures may enact policies that require judges and other courtroom workgroup members to participate in bias trainings. Similar practices have been adopted to reduce racial profiling and stereotyping among other criminal justice actors (i.e., law enforcement) (Fridell, 2013, 2016; Fridell & Brown, 2015; Smith,

2015). While effectiveness of such trainings has yet to be fully examined, participation may facilitate critical discussions, that otherwise may not be possible.

To further ensure equitable decision-making, judicial and prosecutorial decisions should be made publicly available and open to review. As noted previously, Pennsylvania was chosen as an appropriate study site, given the ability to link cases to presiding judges. Notably, only a handful of states allow the general public to access such information. Doing so may help increase the accountability of judges and prosecutors. Furthermore, jurisdictions may also consider the creation of judicial review boards at the local level. Drawing on efforts undertaken by advocates for police accountability and reform, community review boards may assess the decisions of judges and determine the extent to which they are fair, just, and in line with community standards. In turn, judges may receive a “report card” indicating the degree to which they are engaged in equitable decision-making.

Moreover, legal organizations may benefit from creating policies that set clear standards and goals for organizations related to disparate treatment of certain groups. This may be particularly important for drug policies. Historically, drug policies have been promoted as “race neutral.” However, research suggests that these policies disproportionately impact minority communities (Bobo & Thompson, 2006; Mauer & King, 2007; Schlesinger, 2011). As such, legal organizations should work to ensure that policies related to sentencing do not implicitly disadvantage minority offenders. This may be accomplished by conducting race-specific evaluations of policy. Doing so would offer a nuanced understanding of potential consequences of policies and may ultimately lead to the creation of more equitable procedures.

Finally, criminal justice researchers, policymakers, and activists have all championed attempts to diversify the judicial system. This study supports the assumption that increased race and gender representation on the bench can have positive outcomes for offenders in general, as well as minority offenders specifically. Results suggest that Black and female judges are less likely to rely on stereotypes when making decisions and are more equitable in their treatment of all offenders. As such, efforts should be made to recruit and retain minority and female judges. Not only would increasing judicial diversity have significant implications for the administration of justice, it may also have a symbolic effect, amplifying perceptions of legitimacy and fairness regardless of the actual outcomes (Mosher, 1968). Doing so would help increase the overall credibility of the criminal justice system and those involved in case processing.

### **Limitations**

While instructive, the current study is not without limitations. As briefly described above, this study only examines two forms of gendered (primarily sexual offenses) and racialized (i.e., drug) offenses. Moreover, only Black-White offender and judicial comparisons were examined in this study, limiting the types of judge-by-offender racial dyads that could be investigated. Furthermore, the current study only examined data from one state, with a distinct sentencing structure. As such, the generalizability of these findings to other contexts, particularly those that do not operate under sentencing guidelines, is limited.

Additionally, the current study was unable to account for demographic characteristics of victims. This may be particularly important in the context of gendered offenses. Male-offender/female-victim dyads may be perceived differently than other

victim-offender relationships. Although the PCS data do provide some information regarding victim characteristics (i.e., victim's age), this information is not consistently reported, which has significant implications for missing data. While this limitation is primarily a consequence of the data, it still constrains the ability to draw conclusions regarding the conditions in which race and gender effects are most pronounced.

Furthermore, sample size limitations also impacted the type of conclusions that could be drawn from the study, particularly as it relates to the gendered offense sample. While the current study is unique in its ability to explore these relationships among a fairly large sample of gendered offenses at the individual level, the limited number of female offenders in the subsample prevented the use hierarchical modeling techniques to assess the proposed research questions. Specifically, too few female offender cases were available to evaluate variation across judges and counties using HLM random coefficient models. The current study also fails to control for several factors that may influence decision-making at the judicial and county levels. For example, the analysis may have been improved by accounting for a judge's political affiliation, age, and other demographic characteristics. Notably, it is difficult to ascertain this information for several reasons. First, Pennsylvania judges are elected to ten-year terms and may seek retention thereafter, on a non-partisan ballot. Second, judge's age is not generally publically available information. Similarly, political affiliation was not captured at the county level. This measure may have significant implications for the embedded nature of focal concerns. Specifically, political affiliation may indicate the conservativeness of a county, which may in turn influence sentencing punitiveness. Moreover, the study was

unable to account for changes in public policies enacted by prosecutors or local legislation that may influence the way gendered and drug offenses are processed.

In sum, these limitations are primarily a consequence of data. As such, findings from this study must be replicated using more robust data sources. At the same time, the limitations noted here also highlight future directions for sentencing research.

## **Conclusion**

The purpose of the current study was to highlight the circumstances in which racial and gender disparities may be most pronounced. Moreover, this study explored important questions regarding the extent to which these relationships may be moderated by the decision-making context. This issue is particularly important as researchers recognize that judicial decision-making is not carried out in a vacuum, but influenced by the attitudes and backgrounds of judges themselves, as well as the established societal and cultural norms of a community. Few studies have addressed the embedded nature of decision-making across judicial and community contexts. The current study builds on this body of literature by highlighting these relationships in the context of unique offenses, emphasizing the nuanced nature of these connections, and addressing measurement issues that have limited our theoretical understanding of disparities by relying more nuanced conceptualizations of measures.

Specifically, this study demonstrated that considering judicial characteristics and the community context are vital for understanding sentencing disparities across race and gender. The ways in which judges use their discretion is a function of their race and gender. Primarily, these factors influence the extent to which equitable outcomes are produced across offenders. Furthermore, factors such as women's and Black absolute

status are key to understanding the disparate treatment of some groups, particularly as it relates to sentencing severity for racialized and gendered crimes. Evidence of equality in the broader community is reflected during judicial proceedings. These findings suggest that the sentencing process must be understood as a microcosm of an offender's identity as it relates to legally relevant factors, judicial attitudes and experiences, and various community attributes. Neglecting to do so would impede our ability to fully understand the causes of disparate treatment.

## REFERENCES

- Abrams, D. S., Bertrand, M., & Mullainathan, S. (2012). Do judges vary in their treatment of race?. *The Journal of Legal Studies*, 41(2), 347-383.
- Alexander, M. (2012). *The new Jim Crow: Mass incarceration in the age of colorblindness*. The New Press.
- Albonetti, C. A. (1991). An integration of theories to explain judicial discretion. *Social Problems*, 38(2), 247-266.
- Albonetti, C. A. (1997). Sentencing under the federal sentencing guidelines: Effects of defendant characteristics, guilty pleas, and departures on sentence outcomes for drug offenses, 1991-1992. *Law and Society Review*, 789-822.
- Albonetti, C. A. (2002). The joint conditioning effect of defendant's gender and ethnicity on length of imprisonment under the federal sentencing guidelines for drug trafficking/manufacturing offenders. *J. Gender Race & Just.*, 6, 39.
- Alderden, M. A., & Ullman, S. E. (2012). Creating a more complete and current picture: Examining police and prosecutor decision-making when processing sexual assault cases. *Violence against women*, 18(5), 525-551.
- American Civil Liberties Union. (2014). Racial Disparities in Sentencing. Available at <https://www.aclu.org/other/aclu-submission-inter-american-commission-human-rights-racial-disparities-sentencing>.
- Anderson, A. L., & Spohn, C. (2010). Lawlessness in the federal sentencing process: A test for uniformity and consistency in sentence outcomes. *Justice Quarterly*, 27(3), 362-393.



- Ashenfelter, O., Eisenberg, T., & Schwab, S. J. (1995). Politics and the judiciary: the influence of judicial background on case outcomes. *The Journal of Legal Studies*, 24(2), 257-281.
- Auerhahn, K. (2007). Adjudication outcomes in intimate and non-intimate homicides. *Homicide Studies*, 11(3), 213-230.
- Bailey, W. C., & Peterson, R. D. (1995). Gender inequality and violence against women: The case of murder. In J. Hagan & R. D. Peterson (Eds.), *Crime and inequality* (pp. 174-205). Stanford, CA: Stanford University Press.
- Bales, W. D., & Piquero, A. R. (2012). Racial/ethnic differentials in sentencing to incarceration. *Justice Quarterly*, 29(5), 742-773.
- Barlow, M. H. (1998). Race and the problem of crime in Time and Newsweek cover stories, 1946 to 1995. *Social Justice*, 25, 149-183.
- Barner, J. R., & Carney, M. M. (2011). Interventions for intimate partner violence: A historical review. *Journal of family violence*, 26(3), 235-244.
- Barnes, C. W., & Kingsnorth, R. (1996). Race, drug, and criminal sentencing: Hidden effects of the criminal law. *Journal of Criminal Justice*, 24(1), 39-55.
- Bauer, D. J., & Curran, P. J. (2005). Probing interactions in fixed and multilevel regression: Inferential and graphical techniques. *Multivariate behavioral research*, 40(3), 373-400.
- Baumer, E. P. (2013). Reassessing and redirecting research on race and sentencing. *Justice Quarterly*, 30(2), 231-261.
- Baumer, E. P., Messner, S. F., & Felson, R. B. (2000). The role of victim characteristics in the disposition of murder cases. *Justice Quarterly*, 17(2), 281-307.

- Beaulieu, M., & Messner, S. F. (1999). Race, gender, and outcomes in first degree murder cases. *Journal of Poverty*, 3(1), 47-68.
- Beck, E. M., Massey, J. L., & Tolnay, S. E. (1989). The gallows, the mob, and the vote: Lethal sanctioning of blacks in North Carolina and Georgia, 1882 to 1930. *Law & Soc'y Rev.*, 23, 317.
- Beck, A.J., & Mumola, C.J. (1999). Prisoners in 1998. *Bureau of Justice Statistics Bulletin*. U.S. Department of Justice.
- Beagle, A. N. (2010). Modern stalking laws: A survey of state anti-stalking statutes considering modern mediums and constitutional challenges. *Chap. L. Rev.*, 14, 457.
- Blackwell, B. S., Holleran, D., & Finn, M. A. (2008). The impact of the Pennsylvania sentencing guidelines on sex differences in sentencing. *Journal of Contemporary Criminal Justice*, 24(4), 399-418.
- Blair, I. V., Judd, C. M., & Chapleau, K. M. (2004). The influence of Afrocentric facial features in criminal sentencing. *Psychological science*, 15(10), 674-679.
- Blalock, H. M. (1967). *Toward a theory of minority-group relations* (Vol. 325). New York: Wiley.
- Blumstein, A., Cohen, J., Martin, S. E., & Tonry, M. H. (Eds.). (1983). *Research on sentencing: The search for reform* (Vol. 1). Washington, DC: National Academies Press.
- Bobo, L., Kluegel, J., & Smith, R. (1997). Laissez-faire racism: The crystallization of a “kinder, gentler” anti-Black ideology. In S. A. Tuch & J. K. Martin (Eds.), *Racial*

*attitudes in the 1990s: Continuity and change* (pp. 15-44). Westport, CT: Greenwood.

Bobo, L. D., & Thompson, V. (2006). Unfair by design: The war on drugs, race, and the legitimacy of the criminal justice system. *Social Research: An International Quarterly*, 73(2), 445-472.

Bond, C. E., & Jeffries, S. (2014). Similar punishment? Comparing sentencing outcomes in domestic and non-domestic violence cases. *British Journal of Criminology*, 54(5), 849-872.

Bonilla-Silva, E. (2003). *Racism without racists: Colorblind racism and the persistence of racial inequality in the United States*. Lanham, MD: Rowman & Littlefield.

Bontrager, S., Bales, W., & Chiricos, T. (2005). Race, ethnicity, threat and the labeling of convicted felons. *Criminology*, 43(3), 589-622.

Bontrager, S., Barrick, K., & Stupi, E. (2013). Gender and sentencing: A meta-analysis of contemporary research. *J. Gender Race & Just.*, 16, 349.

Bradbury, M. D., & Kellough, J. E. (2008). Representative bureaucracy: Exploring the potential for active representation. *Journal of Public Administration Research and Theory*, 18, 697-714.

Bradbury, M., & Kellough, J. E. (2011). Representative bureaucracy: Assessing the evidence on active representation. *The American Review of Public Administration*, 41(2), 157-167.

Brennan, P. K. (2006). Sentencing female misdemeanants: An examination of the direct and indirect effects of race/ethnicity. *Justice Quarterly*, 23(1), 60-95.

- Brennan, P. K., & Spohn, C. (2009). The joint effects of offender race/ethnicity and sex on sentence length decisions in federal courts. *Race and Social Problems, 1*(4), 200-217.
- Brewer, R. M., & Heitzeg, N. A. (2008). The racialization of crime and punishment: Criminal justice, color-blind racism, and the political economy of the prison industrial complex. *American Behavioral Scientist, 51*(5), 625-644.
- Bridges, G. S., & Beretta, G. (1994). Gender, race, and social control: Toward an understanding of sex disparities in imprisonment. *Inequality, crime, and social control, 158-175*.
- Britt, C. L. (2000). Social context and racial disparities in punishment decisions. *Justice Quarterly, 17*(4), 707-732.
- Burch, T. (2015). Skin color and the criminal justice system: Beyond black-white disparities in sentencing. *Journal of Empirical Legal Studies, 12*(3), 395-420.
- Bushway, S. D., & Piehl, A. M. (2001). Judging judicial discretion: Legal factors and racial discrimination in sentencing. *Law and Society Review, 733-764*.
- Buzawa, E. S., & Austin, T. (1993). Determining police response to domestic violence victims: The role of victim preference. *American Behavioral Scientist, 36*(5), 610-623.
- Caravelis, C., Chiricos, T., & Bales, W. (2011). Static and dynamic indicators of minority threat in sentencing outcomes: A multi-level analysis. *Journal of Quantitative Criminology, 27*(4), 405-425.

- Carroll, J. S., & Payne, J. W. (1976). "The psychology of the parole decision process: A joint application of attribution theory and information processing psychology." In *Cognition and Social Behavior*, ed. John S. Carroll and John W. Payne, 109-123, Hillsdale, N.J.: Erlbaum.
- Carson, E. A. (2018). Prisoners in 2016 (NCJ 251149). *Washington, DC: Bureau of Justice Statistics*.
- Carson, E. A., & Anderson, E. (2016). Prisoners in 2015 (NCJ 250229). *Washington, DC: Bureau of Justice Statistics*.
- Cassidy, M., & Rydberg, J. (2020). Does Sentence Type and Length Matter? Interactions of Age, Race, Ethnicity, and Gender on Jail and Prison Sentences. *Criminal Justice and Behavior*, 47(1), 61-79.
- Chambliss, W. J. (1995). Crime control and ethnic minorities: Legitimizing racial oppression by creating moral panics. *Ethnicity, race, and crime: Perspectives across time and place*, 235-258.
- Chamlin, M. B. (1989). A macro social analysis of change in police force size, 1972–1982: Controlling for static and dynamic influences. *Sociological Quarterly*, 30(4), 615-624.
- Chesney-Lind, M. (2006). Patriarchy, crime, and justice: Feminist criminology in an era of backlash. *Feminist criminology*, 1(1), 6-26.
- Chew, P. K., & Kelley, R. E. (2008). Myth of the color-blind judge: An empirical analysis of racial harassment cases. *Wash. UL Rev.*, 86, 1117.

- Chiricos, T. G., & Crawford, C. (1995). Race and imprisonment: A contextual assessment of the evidence. *Ethnicity, race, and crime: Perspectives across time and place*, 13, 281-309.
- Clair, M., & Winter, A. S. (2016). How judges think about racial disparities: Situational decision-making in the criminal justice system. *Criminology*, 54(2), 332-359.
- Clegg, S. & Dunkerley, D. (1980) Organization, Class and Control. Boston: Routledge and Kegan Paul.
- Connell, R. W. (2013). *Gender and power: Society, the person and sexual politics*. John Wiley & Sons.
- Cook, B. B. (1981). Will Women Judges Make a Difference in Women's Legal Rights. *Women, power, and political systems*, 216.
- Crawford, C., Chiricos, T., & Kleck, G. (1998). Race, racial threat, and sentencing of habitual offenders. *Criminology*, 36(3), 481-512.
- Crenshaw, K. (1990). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stan. L. Rev.*, 43, 1241.
- Crew, B. K. (1991). Sex differences in criminal sentencing: Chivalry or patriarchy? *Justice Quarterly*, 8, 59-83.
- Crocker, D. (2005). Regulating intimacy: Judicial discourse in cases of wife assault (1970 to 2000). *Violence against women*, 11(2), 197-226.
- Crow, M. S. (2008). The complexities of prior record, race, ethnicity, and policy: Interactive effects in sentencing. *Criminal Justice Review*, 33(4), 502-523.

- Crow, M. S., & Bales, W. (2006). Sentencing guidelines and focal concerns: The effect of sentencing policy as a practical constraint on sentencing decisions. *American Journal of Criminal Justice*, 30(2), 285-304.
- Crow, M. S., & Gertz, M. (2008). Sentencing policy and disparity: Guidelines and the influence of legal and democratic subcultures. *Journal of Criminal Justice*, 36(4), 362-371.
- Crow, M. S., & Johnson, K. A. (2008). Race, ethnicity, and habitual-offender sentencing: A multilevel analysis of individual and contextual threat. *Criminal Justice Policy Review*, 19(1), 63-83.
- Crow, M. S., & Kunselman, J. C. (2009). Sentencing female drug offenders: Reexamining racial and ethnic disparities. *Women & Criminal Justice*, 19(3), 191-216.
- Curry, T. R., & Corral-Camacho, G. (2008). Sentencing young minority males for drug offenses: Testing for conditional effects between race/ethnicity, gender and age during the US war on drugs. *Punishment & Society*, 10(3), 253-276.
- Curry, T. R., Lee, G., & Rodriguez, S. F. (2004). Does victim gender increase sentence severity? Further explorations of gender dynamics and sentencing outcomes. *Crime & Delinquency*, 50(3), 319-343.
- Daly, K. (1987). Discrimination in the criminal courts: Family, gender, and the problem of equal treatment. *Social Forces*, 66, 152-175.
- Daly, K. (1989). Rethinking judicial paternalism: Gender, work-family relations, and sentencing. *Gender & Society*, 3(1), 9-36.

- Daly, K. (1994). *Gender, crime, and punishment*. Yale University Press.
- Daly, K. (1995). Gender and Sentencing: What We Know and Don't Know from Empirical Research. *Federal Sentencing Reporter*, 8(3), 163-168.
- Daly, K., & Bordt, R. L. (1995). Sex effects and sentencing: An analysis of the statistical literature. *Justice Quarterly*, 12(1), 141-175.
- Daly, K., & Tonry, M. (1997). Gender, race, and sentencing. *Crime and justice*, 22, 201-252.
- Davis, A. J. (1996). Benign Neglect of Racism in the Criminal Justice System.
- Davis, A. Y. (2000). From the convict lease system to the super-max prison. In *States of confinement* (pp. 60-74). Palgrave Macmillan, New York.
- Dee, T. S. (2004). Teachers, race, and student achievement in a randomized experiment. *Review of Economics and Statistics*, 86, 195-210.
- Dee, T. S. (2005). A teacher like me: Does race, ethnicity, or gender matter? *American Economic Review*, 95, 158-165.
- Demuth, S. (2002). The effect of citizenship status on sentencing outcomes in drug cases. *Federal Sentencing Reporter*, 14(5), 271-275.
- Dichter, M. E., Marcus, S. C., Morabito, M. S., & Rhodes, K. V. (2011). Explaining the IPV arrest decision: Incident, agency, and community factors. *Criminal Justice Review*, 36(1), 22-39.
- Dixon, J. (1995). The organizational context of criminal sentencing. *American journal of sociology*, 100(5), 1157-1198.
- Dixon, J. C. (2006). The ties that bind and those that don't: Toward reconciling group threat and contact theories of prejudice. *Social Forces*, 84(4), 2179-2204.



- Doerner, J. K. (2015). The joint effects of gender and race/ethnicity on sentencing outcomes in federal courts. *Women & Criminal Justice*, 25(5), 313-338.
- Doerner, J. K., & Demuth, S. (2010). The independent and joint effects of race/ethnicity, gender, and age on sentencing outcomes in US federal courts. *Justice Quarterly*, 27(1), 1-27.
- Doerner, J. K., & Demuth, S. (2014). Gender and sentencing in the federal courts: Are women treated more leniently?. *Criminal Justice Policy Review*, 25(2), 242-269.
- Drummond, W. J. (1990). About Face: From Alliance to Alienation. Blacks and the News Media. *The American Enterprise*, 1(4), 22-29.
- DuBois, W. E. B. (2004). The black codes. *Race, class, and gender in the United States: An integrated study*, 474.
- Eisenstein, J., Flemming, R. B., & Nardulli, P. F. (1988). *The contours of justice: Communities and their courts*. Boston, MA: Little, Brown.
- Eitle, D., D'Alessio, S. J., & Stolzenberg, L. (2002). Racial threat and social control: A test of the political, economic, and threat of black crime hypotheses. *Social Forces*, 81(2), 557-576.
- Embry, R., & Lyons Jr, P. M. (2012). Sex-based sentencing: Sentencing discrepancies between male and female sex offenders. *Feminist Criminology*, 7(2), 146-162.
- Engen, R. L. (2009). Assessing determinate and presumptive sentencing-Making research relevant. *Criminology & Pub. Pol'y*, 8, 323.
- Engen, R. L., & Gainey, R. R. (2000). Modeling the effects of legally relevant and extralegal factors under sentencing guidelines: The rules have changed. *Criminology*, 38(4), 1207-1230.

- Engen, R. L., Gainey, R. R., Crutchfield, R. D., & Weis, J. G. (2003). Discretion and disparity under sentencing guidelines: The role of departures and structured sentencing alternatives. *Criminology*, 41(1), 99-130.
- Engen, R. L., & Steen, S. (2000). The power to punish: Discretion and sentencing reform in the war on drugs. *American Journal of Sociology*, 105(5), 1357-1395.
- Everett, R. S., & Wojtkiewicz, R. A. (2002). Difference, disparity, and race/ethnic bias in federal sentencing. *Journal of Quantitative Criminology*, 18(2), 189-211.
- Fagan, J. (2008). Legitimacy and criminal justice-introduction. *Ohio St. J. Crim. L.*, 6, 123.
- Farrell, R. A., & Holmes, M. D. (1991). The social and cognitive structure of legal decision-making. *The Sociological Quarterly*, 32(4), 529-542.
- Farrell, A., Ward, G., & Rousseau, D. (2009). Race effects of representation among federal court workers: Does black workforce representation reduce sentencing disparities?. *The Annals of the American Academy of political and social science*, 623(1), 121-133.
- Farrell, A., Ward, G., & Rousseau, D. (2010). Intersections of gender and race in federal sentencing: Examining court contexts and effects of representative court authorities. *J. genDer race & JuSt.*, 14, 85.
- Feldmeyer, B., & Ulmer, J. T. (2011). Racial/ethnic threat and federal sentencing. *Journal of Research in Crime and Delinquency*, 48(2), 238-270.
- Felson, R. B., & Pare, P. P. (2007). Does the criminal justice system treat domestic violence and sexual assault offenders leniently? *Justice Quarterly*, 24(3), 435-459.

- Fearn, N. E. (2005). A multilevel analysis of community effects on criminal sentencing. *Justice Quarterly*, 22(4), 452-487.
- Feldmeyer, B., & Ulmer, J. T. (2011). Racial/ethnic threat and federal sentencing. *Journal of Research in Crime and Delinquency*, 48(2), 238-270.
- Feldmeyer, B., Warren, P. Y., Siennick, S. E., & Neptune, M. (2015). Racial, ethnic, and immigrant threat: Is there a new criminal threat on state sentencing?. *Journal of Research in Crime and Delinquency*, 52(1), 62-92.
- Flavin, J. (2001). Of punishment and parenthood: Family-based social control and the sentencing of black drug offenders. *Gender & Society*, 15(4), 611-633.
- Flemming, R. B., Nardulli, P. F., & Eisenstein, J. (1992). *The craft of justice: Politics and work in criminal court communities* (p. 75). Philadelphia: University of Pennsylvania Press.
- Forman Jr, J. (2017). *Locking up our own: Crime and punishment in Black America*. Farrar, Straus and Giroux.
- Franklin, C. A., & Fearn, N. E. (2008). Gender, race, and formal court decision-making outcomes: Chivalry/paternalism, conflict theory or gender conflict?. *Journal of criminal justice*, 36(3), 279-290.
- Franklin, C. A., & Franklin, T. W. (2009). Predicting fear of crime: Considering differences across gender. *Feminist Criminology*, 4(1), 83-106.
- Franklin, T. W. (2017). Sentencing outcomes in US district courts: Can offenders' educational attainment guard against prevalent criminal stereotypes? *Crime & Delinquency*, 63, 137-165.

- Franklin, T. W. (2018). The state of race and punishment in America: Is justice really blind?. *Journal of Criminal Justice*, 59, 18-28.
- Franklin, T. W., & Henry, T. K. S. (2019). Racial Disparities in Federal Sentencing Outcomes: Clarifying the Role of Criminal History. *Crime & Delinquency*, 0011128719828353.
- Freedman, E. (2007). *No turning back: The history of feminism and the future of women*. Ballantine Books.
- Freiburger, T. L. (2010). The effects of gender, family status, and race on sentencing decisions. *Behavioral sciences & the law*, 28(3), 378-395.
- Freiburger, T. L., & Hilinski, C. M. (2013). An examination of the interactions of race and gender on sentencing decisions using a trichotomous dependent variable. *Crime & Delinquency*, 59(1), 59-86.
- Freiburger, T. L., & Romain, D. (2018). An examination of the impacts of gender, race, and ethnicity on the judicial processing of offenders in family violence cases. *Crime & Delinquency*, 64(13), 1663-1697.
- Fridell, L. (2013). This is not your grandparents' prejudice: the implications of the modern science of bias for police training. *Translational Criminology*, 5, 10-11.
- Fridell, L. A. (2016). Racial aspects of police shootings: Reducing both bias and counter bias. *Criminology & Pub. Pol'y*, 15, 481.
- Fridell, L., & Brown, S. (2015). Fair and impartial policing: A science-based approach. *The Police Chief*, 82(6), 20-25.
- Frohmann, L. (1991). Discrediting victims' allegations of sexual assault: Prosecutorial accounts of case rejections. *Social problems*, 38(2), 213-226.

- George, T. E., & Yoon, A. H. (2019). The Gavel Gap: Who Sits in Judgement on State Courts. *American Constitution Society for Law and Policy*.
- Gibson, J. L. (1983). From simplicity to complexity: The development of theory in the study of judicial behavior. *Political Behavior*, 5(1), 7-49.
- Glaeser, E. L., & Sacerdote, B. (2003). Sentencing in homicide cases and the role of vengeance. *The Journal of Legal Studies*, 32(2), 363-382.
- Goldman, S. (1978). Should there be affirmative action for the judiciary. *Judicature*, 62, 488.
- Graham, K. (2010). Sorry seems to be the hardest word: The Fair Sentencing Act of 2010, crack, and methamphetamine. *U. Rich. L. Rev.*, 45, 765.
- Griffin, T., & Wooldredge, J. (2006). Sex-based disparities in felony dispositions before versus after sentencing reform in Ohio. *Criminology*, 44(4), 893-923.
- Gruhl, J., Spohn, C., & Welch, S. (1981). Women as policymakers: The case of trial judges. *American Journal of Political Science*, 308-322.
- Hagan, J. (1973). Extra-legal attributes and criminal sentencing: An assessment of a sociological viewpoint. *Law & Soc'y Rev.*, 8, 357.
- Hawkins, D. F. (1980). Perceptions of punishment for crime. *Deviant Behavior*, 1(2), 193-215.
- Hawkins, D. F. (1995). Ethnicity, race, and crime: A review of selected studies. *Ethnicity, race, and crime: Perspectives across time and place*, 11-45.
- Hawkins, H. C. (2005). Race and sentencing outcomes in Michigan. *Journal of Ethnicity in Criminal Justice*, 3(1-2), 91-109.

- Haynes, S. H., Ruback, B., & Cusick, G. R. (2010). Courtroom workgroups and sentencing: The effects of similarity, proximity, and stability. *Crime & Delinquency*, 56(1), 126-161.
- Heimer, K. (2000). Changes in the gender gap in crime and women's economic marginalization. *Criminal justice*, 1, 427-483.
- Helms, R. (2009). Modeling the politics of punishment: A conceptual and empirical analysis of 'law in action' in criminal sentencing. *Journal of Criminal Justice*, 37(1), 10-20.
- Helms, R., & Costanza, S. E. (2010). Modeling the politics of punishment: A contextual analysis of racial disparity in drug sentencing. *Criminal justice review*, 35(4), 472-491.
- Helms, R., & Jacobs, D. (2002). The political context of sentencing: An analysis of community and individual determinants. *Social forces*, 81(2), 577-604.
- Henning, K., & Feder, L. (2005). Criminal prosecution of domestic violence offenses: An investigation of factors predictive of court outcomes. *Criminal justice and behavior*, 32(6), 612-642.
- Herman, M. M. (2002). Race and Ethnic Bias Trends in 2002: Diversity in the Courts. *Report on Trends in the State Courts*.
- Hessick, C. B. (2010). Race and gender as explicit sentencing factors. *J. Gender Race & Just.*, 14, 127.
- Hester, R., & Hartman, T. K. (2017). Conditional race disparities in criminal sentencing: a test of the liberation hypothesis from a non-guidelines state. *Journal of quantitative criminology*, 33(1), 77-100.

- Hoffman, F. L. (1896). *Race traits and tendencies of the American Negro* (Vol. 11, No. 1-3). American Economic Association.
- Holcomb, J. E., Williams, M. R., & Demuth, S. (2004). White female victims and death penalty disparity research. *Justice Quarterly*, 21(4), 877-902.
- Holleran, D., & Spohn, C. (2004). On the use of the total incarceration variable in sentencing research. *Criminology*, 42(1), 211-240.
- Holmes, M. D., Hosch, H. M., Daudistel, H. C., & Perez, D. A. (1993). Judges' ethnicity and minority sentencing: Evidence concerning Hispanics. *Social Science Quarterly*.
- Hoyle, C., & Sanders, A. (2000). Police response to domestic violence. *British journal of criminology*, 40(1), 14-36.
- Jacobs, D., & Helms, R. (1999). Collective outbursts, politics, and punitive resources: Toward a political sociology of spending on social control. *Social Forces*, 77(4), 1497-1523.
- Jaggar, A. M. (1983). *Feminist politics and human nature*. Rowman & Littlefield.
- Johnson, B. D. (2003). Racial and ethnic disparities in sentencing departures across modes of conviction. *Criminology*, 41(2), 449-490.
- Johnson, B. D. (2005). CONTEXTUAL DISPARITIES IN GUIDELINES DEPARTURES: COURTROOM SOCIAL CONTEXTS, GUIDELINES COMPLIANCE, AND EXTRALEGAL DISPARITIES IN CRIMINAL SENTENCING 1. *Criminology*, 43(3), 761-796.
- Johnson, B. D. (2006). The multilevel context of criminal sentencing: Integrating judge- and county-level influences. *Criminology*, 44(2), 259-298.

- Johnson, B. D. (2014). Judges on trial: A reexamination of judicial race and gender effects across modes of conviction. *Criminal Justice Policy Review*, 25(2), 159-184.
- Johnson, B. D., & DiPietro, S. M. (2012). The power of diversion: Intermediate sanctions and sentencing disparity under presumptive guidelines. *Criminology*, 50(3), 811-850.
- Johnson, B. D., & King, R. D. (2017). Facial profiling: Race, physical appearance, and punishment. *Criminology*, 55(3), 520-547.
- Johnson, B. D., Stewart, E. A., Pickett, J., & Gertz, M. (2011). RETRACTED: ETHNIC THREAT AND SOCIAL CONTROL: EXAMINING PUBLIC SUPPORT FOR JUDICIAL USE OF ETHNICITY IN PUNISHMENT. *Criminology*, 49(2), 401-441.
- Kane, R. J. (1999). Patterns of arrest in domestic violence encounters: Identifying a police decision-making model. *Journal of criminal justice*, 27(1), 65-79.
- Kauder, N. B., & Ostrom, B. J. (2008). *State sentencing guidelines: Profiles and continuum*. National Center for State Courts.
- Kautt, P. M. (2002). Location, location, location: Interdistrict and intercircuit variation in sentencing outcomes for federal drug-trafficking offenses. *Justice Quarterly*, 19(4), 633-671.
- Kautt, P. M., & DeLone, M. A. (2006). Sentencing outcomes under competing but coexisting sentencing interventions: Untying the Gordian knot. *Criminal Justice Review*, 31(2), 105-131.



- Kautt, P. M., & Mueller-Johnson, K. (2009). Cross-jurisdictional disposition variability under sentencing guidelines: The example of equivalent sex offenses. *Criminal Justice Review*, 34(3), 350-381.
- Kautt, P., & Spohn, C. (2002). Crack-ing down on black drug offenders? Testing for interactions among offenders' race, drug type, and sentencing strategy in federal drug sentences. *Justice Quarterly*, 19(1), 1-35.
- Kelly, L. (1988). *Surviving sexual violence*. Minneapolis: University of Minnesota Press.
- Kempf-Leonard, K., & Sample, L. L. (2001). Have federal sentencing guidelines reduced severity? An examination of one circuit. *Journal of Quantitative Criminology*, 17(2), 111-144.
- Kennedy, R. (1997). *Race, crime and the law*. New York: Vintage
- Kidd, Q., Diggs, H., Farooq, M., & Murray, M. (2007). Black voters, black candidates, and social issues: Does party identification matter?. *Social Science Quarterly*, 88(1), 165-176.
- King, R. D., Johnson, K. R., & McGeever, K. (2010). Demography of the legal profession and racial disparities in sentencing. *Law & Society Review*, 44(1), 1-32.
- Kingsnorth, R., Lopez, J., Wentworth, J., & Cummings, D. (1998). Adult sexual assault: The role of racial/ethnic composition in prosecution and sentencing. *Journal of Criminal Justice*, 26(5), 359-371.
- Kingsnorth, R. F., & MacIntosh, R. C. (2007). Intimate partner violence: The role of suspect gender in prosecutorial decision-making. *Justice Quarterly*, 24(3), 460-495.

- Kleck, G. (1981). Racial discrimination in criminal sentencing: A critical evaluation of the evidence with additional evidence on the death penalty. *American Sociological Review*, 46, 783-805.
- Klein, S., Petersilia, J., & Turner, S. (1990). Race and imprisonment decisions in California. *Science*, 247(4944), 812-816.
- Klepper, S., Nagin, D., & Tierney, L. J. (1983). Discrimination in the criminal justice system: A critical appraisal of the literature. *Research on sentencing: The search for reform*, 2, 55-128.
- Koons-Witt, B. A. (2002). The effect of gender on the decision to incarcerate before and after the introduction of sentencing guidelines. *Criminology*, 40(2), 297-328.
- Koons-Witt, B. A., Seigny, E. L., Burrow, J. D., & Hester, R. (2014). Gender and sentencing outcomes in South Carolina: Examining the interactions with race, age, and offense type. *Criminal Justice Policy Review*, 25(3), 299-324.
- Koss, M. P. (2000). Blame, shame, and community: Justice responses to violence against women. *American psychologist*, 55(11), 1332.
- Kritzer, H. M., & Uhlman, T. M. (1977). Sisterhood in the courtroom: Sex of judge and defendant in criminal case disposition. *Social Science Journal*, 14(2), 77-88.
- Kramer, R. (2016). Differential punishment of similar behaviour: Sentencing assault cases in a specialized family violence court and 'regular sentencing' courts. *British Journal of Criminology*, 56(4), 689-708.
- Kramer, J., & Steffensmeier, D. (1993). Race and imprisonment decisions. *The Sociological Quarterly*, 34(2), 357-376.

- Kramer, J. H., & Ulmer, J. T. (2009). *Sentencing guidelines: lessons from Pennsylvania* (p. 120). Boulder, CO: Lynne Rienner Publishers.
- Krislov, S., & Rosenbloom, D. H. (1981). 1987. Representative Bureaucracy and the American Political System. *Classics of Public Administration*.
- Kruttschnitt, C. (2013). Gender and crime. *Annual Review of Sociology*, 39, 291-308.
- Kulik, C. T., Perry, E. L., & Pepper, M. B. (2003). Here comes the judge: The influence of judge personal characteristics on federal sexual harassment case outcomes. *Law and Human Behavior*, 27(1), 69-86.
- Kutateladze, B. L., Andiloro, N. R., Johnson, B. D., & Spohn, C. C. (2014). Cumulative disadvantage: Examining racial and ethnic disparity in prosecution and sentencing. *Criminology*, 52(3), 514-551.
- LaFrentz, C. D., & Spohn, C. (2006). Who is punished more harshly in federal court? The interaction of race/ethnicity, gender, age, and employment status in the sentencing of drug offenders. *Justice Research and Policy*, 8(2), 25-56.
- Laney, G. P. (2010). *Violence against women act: History and federal funding*. Congressional Research Service. Washington.
- Lauritsen, J. L., Heimer, K., & Lynch, J. P. (2009). Trends in the gender gap in violent offending: New evidence from the National Crime Victimization Survey. *Criminology*, 47(2), 361-399.
- Lehmann, P. S., Chiricos, T., & Bales, W. D. (2017). Sentencing transferred juveniles in the adult criminal court: The direct and interactive effects of race and ethnicity. *Youth violence and juvenile justice*, 15(2), 172-190.

- Leiber, M. J., & Blowers, A. N. (2003). Race and misdemeanor sentencing. *Criminal Justice Policy Review*, 14(4), 464-485.
- Leiber, M. J., Peck, J. H., Lugo, M., & Bishop, D. M. (2017). Understanding the link between race/ethnicity, drug offending, and juvenile court outcomes. *Crime & Delinquency*, 63(14), 1807-1837.
- Lichtenstein, A. (1993). Good Roads and Chain Gangs in the Progressive South: "The Negro Convict is a Slave". *The Journal of Southern History*, 59(1), 85-110.
- Lim, H.-H. (2006). Representative bureaucracy: Rethinking substantive effects and active representation. *Public Administration Review*, 66, 193-204.
- Lim, C. S., Silveira, B. S., & Snyder, J. M. (2016). Do judges' characteristics matter? ethnicity, gender, and partisanship in texas state trial courts. *American Law and Economics Review*, 18(2), 302-357.
- Logue, M. A. (2011). Downward departures in US federal courts: do family ties, sex, and race/ethnicity matter?. *Ethnic and Racial Studies*, 34(4), 683-706.
- Long, J. S., & Mustillo, S. A. (2018). Using predictions and marginal effects to compare groups in regression models for binary outcomes. *Sociological Methods & Research*, 0049124118799374.
- Lynch, M. (2019). Focally Concerned About Focal Concerns: A Conceptual and Methodological Critique of Sentencing Disparities Research. *Justice Quarterly*, 36(7), 1148-1175.
- Lynch, M., & Omori, M. (2014). Legal change and sentencing norms in the wake of Booker: The impact of time and place on drug trafficking cases in federal court. *Law & Society Review*, 48(2), 411-445.

- Mancini, M. J. (1996). *One dies, get another: Convict leasing in the American South, 1866-1928*. Univ of South Carolina Press.
- Mauer, M. (1999). *Race to incarcerate*. New York: New Press
- Mauer, M. (2004). Race, Class, and the Development of Criminal Justice Policy 1. *Review of Policy Research*, 21(1), 79-92.
- Mauer, M., & King, R. S. (2007). Uneven justice: State rates of incarceration by race and ethnicity.
- Mauer, M., Potler, C., & Wolf, R. (1999). *Gender and justice: Women, drugs, and sentencing policy*. Washington, DC: Sentencing Project.
- Maxwell, C. D., Robinson, A. L., & Post, L. A. (2003). The impact of race on the adjudication of sexual assault and other violent crimes. *Journal of Criminal Justice*, 31(6), 523-538.
- Meier, K. J. (1993). Latinos and representative bureaucracy testing the Thompson and Henderson hypotheses. *Journal of Public Administration Research and Theory*, 3(4), 393-414.
- Meier, K. J., & Nicholson-Crotty, J. (2006). Gender, representative bureaucracy, and law enforcement:  
The case of sexual assault. *Public Administration Review*, 66, 850-860.
- Messerschmidt, J. W. (2005). Men, masculinities, and crime. *Handbook of studies on men & masculinities*, 196-212.
- Messing, J. T. (2014). Evidence-based prosecution of intimate partner violence in the post-Crawford era: A single-city study of the factors leading to prosecution. *Crime & Delinquency*, 60(2), 238-260.

- Miethe, T. D., & Moore, C. A. (1986). Racial differences in criminal processing: The consequences of model selection on conclusions about differential treatment. *Sociological Quarterly*, 27, 217-237.
- Miller, J. L. (1994). Variation in Judgments of Criminal Sanctions: An Application of “Schema Theory”. *Sociological Focus*, 27(3), 257-279.
- Miller, S. L., & Maier, S. L. (2008). Moving beyond numbers: What female judges say about different judicial voices. *Journal of Women, Politics & Policy*, 29(4), 527-559.
- Mitchell, O. (2005). A meta-analysis of race and sentencing research: Explaining the inconsistencies. *Journal of Quantitative Criminology*, 21, 439-466.
- Mize, T. D. (2019). Best practices for estimating, interpreting, and presenting nonlinear interaction effects. *Sociological Science*, 6, 81-117.
- Morrow, W. J., Katz, C. M., & Choate, D. E. (2016). Assessing the impact of police body-worn cameras on arresting, prosecuting, and convicting suspects of intimate partner violence. *Police quarterly*, 19(3), 303-325.
- Mosher, F. C. (1968). *Democracy and the public service*. Oxford, England: Oxford University Press.
- Muhlhausen, D. (2004). The Determinants of Sentencing in Pennsylvania: Do the Characteristics of Judges Really Matter?.
- Mustard, D. B. (2001). Racial, ethnic, and gender disparities in sentencing: Evidence from the US federal courts. *The Journal of Law & Economics*, 44, 285-314.
- Myers, M. A. (1979). Offended parties and official reactions: Victims and the sentencing of criminal defendants. *The Sociological Quarterly*, 20(4), 529-540.

- Myers, M. A. (1988). Social background and the sentencing behavior of judges. *Criminology*, 26(4), 649-676.
- Myers, M. A., & Talarico, S. M. (1987). *The social contexts of criminal sentencing*. Springer-Verlag
- Nardulli, P. F., Eisenstein, J., & Flemming, R. B. (1988). *The tenor of justice: Criminal courts and the guilty plea process*. University of Illinois Press.
- Nicosia, N., MacDonald, J. M., & Pacula, R. L. (2017). Does mandatory diversion to drug treatment eliminate racial disparities in the incarceration of drug offenders? An examination of California's Proposition 36. *Journal of quantitative criminology*, 33(1), 179-205.
- Nowacki, J. S. (2017). An intersectional approach to race/ethnicity, sex, and age disparity in federal sentencing outcomes: An examination of policy across time periods. *Criminology & Criminal Justice*, 17(1), 97-116.
- Nowacki, J. S., & Windsong, E. A. (2019). Structural Gender Equality and Federal Sentencing Outcomes: A Test of the Ameliorative and Backlash Hypotheses. *Feminist Criminology*, 14(1), 45-64.
- O'brien, R. M. (1999). Measuring the convergence/divergence of "serious crime" arrest rates for males and females: 1960–1995. *Journal of Quantitative Criminology*, 15(1), 97-114.
- Osgood, D. W., & Chambers, J. M. (2000). Social disorganization outside the metropolis: An analysis of rural youth violence. *Criminology*, 38(1), 81-116.
- Painter-Davis, N., & Ulmer, J. T. (2019). Discretion and Disparity under Sentencing Guidelines Revisited: The Interrelationship between Structured Sentencing

- Alternatives and Guideline Decision-making. *Journal of Research in Crime and Delinquency*, 0022427819874862.
- Pasko, L. (2002). Villain or victim: Regional variation and ethnic disparity in federal drug offense sentencing. *Criminal Justice Policy Review*, 13(4), 307-328.
- Pennsylvania Commission on Sentencing (2012). *Sentencing Guidelines Implementation Manual: 7<sup>th</sup> Edition*. Retrieved from <http://pcs.la.psu.edu/>
- Peresie, J. L. (2004). Female judges matter: Gender and collegial decisionmaking in the federal appellate courts. *Yale LJ*, 114, 1759.
- Petersilia, J. (1985). Racial disparities in the criminal justice system: A summary. *Crime & Delinquency*, 31(1), 15-34.
- Pizzi, W. T., Blair, I. V., & Judd, C. M. (2004). Discrimination in sentencing on the basis of Afrocentric features. *Mich. J. Race & L.*, 10, 327.
- Rafter, N. H., & Stanko, E. A. (1982). Introduction. In N. H. Rafter and E. Anne Stanko (Eds.), *Judge, lawyer, victim, thief* (pp. 1-26). Boston: Northeastern University Press.
- Raudenbush, S. W., & Bryk, A. S. (2002). *Hierarchical linear models: Applications and data analysis methods* (Vol. 1). Sage.
- Robinson, A. L., & Chandek, M. S. (2000). The domestic violence arrest decision: Examining demographic, attitudinal, and situational variables. *Crime & Delinquency*, 46(1), 18-37.



- Rodriguez, N. (2013). Concentrated disadvantage and the incarceration of youth: Examining how context affects juvenile justice. *Journal of Research in Crime and Delinquency*, 50(2), 189-215.
- Romain, D. M., & Freiburger, T. L. (2013). Prosecutorial discretion for domestic violence cases: An examination of the effects of offender race, ethnicity, gender, and age. *Criminal Justice Studies*, 26(3), 289-307.
- Root, D., Faleschini, J., & Oyenubi, G., (2019). Building a More Inclusive Federal Judiciary. *Center for American Progress*. Derived from <https://www.americanprogress.org/issues/courts/reports/2019/10/03/475359/building-inclusive-federal-judiciary>.
- Russell, K. K. (2002). The racial hoax as crime: The law as affirmation. In S. L. Gabbidon, H. T. Greene, & V. D. Young (Eds.), *African American classics in criminology and criminal justice* (pp. 349-376). Thousand Oaks, CA: Sage.
- Rodriguez, S. F., Curry, T. R., & Lee, G. (2006). Gender differences in criminal sentencing: Do effects vary across violent, property, and drug offenses?. *Social Science Quarterly*, 87(2), 318-339.
- Ryon, S. B. (2013). Gender as social threat: A study of offender sex, situational factors, gender dynamics and social control. *Journal of Criminal Justice*, 41(6), 426-437.
- Sacks, M., & Ackerman, A. R. (2014). Bail and sentencing: Does pretrial detention lead to harsher punishment?. *Criminal Justice Policy Review*, 25(1), 59-77.
- Saltzstein, G. (1979). Representative bureaucracy and bureaucratic responsibility: problems and prospects. *Administration & Society*, 10(4), 465-475.

- Savelsberg, J. J. (1992). Law that does not fit society: Sentencing guidelines as a neoclassical reaction to the dilemmas of substantivized law. *American Journal of Sociology*, 97(5), 1346-1381.
- Schlesinger, T. (2011). The failure of race neutral policies: How mandatory terms and sentencing enhancements contribute to mass racialized incarceration. *Crime & Delinquency*, 57(1), 56-81.
- Schuller, R. A., & Stewart, A. (2000). Police responses to sexual assault complaints: The role of perpetrator/complainant intoxication. *Law and human behavior*, 24(5), 535-551.
- Selden, S. C. (1997a). *The promise of representative bureaucracy: Diversity and responsiveness in a government agency*. Armonk, NY: M. E. Sharpe.
- Selden, S. C. (1997b). Representative bureaucracy: Examining the linkage between passive and active representation in the Farmers home administration. *American Review of Public Administration*, 27, 22-42.
- Selden, S. C., Brudney, J. L., & Kellough, J. E. (1998). Bureaucracy as a representative institution: Toward a reconciliation of bureaucratic government and democratic theory. *American Journal of Political Science*, 42, 717-744.
- Sellin, T. (1935). Race prejudice in the administration of justice. *American Journal of Sociology*, 41(2), 212-217.
- Sewell, B. D. (1989). History of Abuse: Societal, Judicial, and Legislative Responses to the Problem of Wife Beating. *Suffolk UL Rev.*, 23, 983.

- Sharp, S. F., Braley, A., & Marcus-Mendoza, S. (2000). Focal concerns, race & sentencing of female drug offenders. *Free Inquiry in Creative Sociology*, 28(2), 3-16.
- Shaver, K. G. (1975). *An Introduction to Attribution Process*. Cambridge, Mass.: Winthrop.
- Simon, Herbert A. (1957) *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organizations*. New York: Macmillian.
- Simpson, S. S. (1989). Feminist theory, crime, and justice. *Criminology*, 27(4), 605-632.
- Smith, M. (1983). *Race versus the Robe: The Dilemma of Black Judges*. New York: National University Publications.
- Smith, R. J. (2015). Reducing Racially Disparate Policing Outcomes: Is Implicit Bias Training the Answer. *U. Haw. L. Rev.*, 37, 295.
- Smith, D. A., & Paternoster, R. (1987). The gender gap in theories of deviance: Issues and evidence. *Journal of Research in Crime and Delinquency*, 24(2), 140-172.
- Smith, S. G., Zhang, X., Basile, K. C., Merrick, M. T., Wang, J., Kresnow, M. J., & Chen, J. (2018). National Intimate Partner and sexual violence survey: 2015 data brief. *Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention*.
- Snyder, H. N. (2012). Arrest in the United States, 1990-2010 (NCJ239423). *Washington, DC: Bureau of Justice Statistics*.
- Spohn, C. (1990). The sentencing decisions of black and white judges: Expected and unexpected similarities. *Law & Soc'y Rev.*, 24, 1197.

- Spohn, C. (1991). Decision making in sexual assault cases: Do black and female judges make a difference?. *Women & Criminal Justice*, 2(1), 83-105.
- Spohn, C. (1994). Crime and the social control of blacks: Offender/victim race and the sentencing of violent offenders. In *Inequality, crime, and social control* (pp. 249-268). Taylor and Francis.
- Spohn, C. (1999). Gender and sentencing of drug offenders: Is chivalry dead?. *Criminal Justice Policy Review*, 9(3-4), 365-399.
- Spohn, C. (2000). Thirty years of sentencing reform: The quest for a racially neutral sentencing process. In J. Horney (Ed.), *Policies, process, & decisions of the criminal justice system: Criminal justice 2000* (Vol. 3, pp. 427-501). Washington, DC: U.S. Department of Justice.
- Spohn, C. (2005). Sentencing decisions in three US district courts: Testing the assumption of uniformity in the federal sentencing process. *Justice Research and Policy*, 7(2), 1-27.
- Spohn, C. (2008). Race, sex, and pretrial detention in federal court: Indirect effects and cumulative disadvantage. *U. Kan. L. Rev.*, 57, 879.
- Spohn, C. (2013). The effects of the offender's race, ethnicity, and sex on federal sentencing outcomes in the guidelines era. 76 Law & Contemp. *PROBS*, 75, 80-81.
- Spohn, C. (2015). Evolution of sentencing research. *Criminology & Public Policy*, 14(2), 225-232.

- Spohn, C., & Beichner, D. (2000). Is preferential treatment of female offenders a thing of the past? A multisite study of gender, race, and imprisonment. *Criminal justice policy review*, 11(2), 149-184.
- Spohn, C., & Belenko, S. (2013). Do the drugs, do the time? The effect of drug abuse on sentences imposed on drug offenders in three US district courts. *Criminal Justice and Behavior*, 40(6), 646-670.
- Spohn, C., & Cederblom, J. (1991). Race and disparities in sentencing: A test of the liberation hypothesis. *Justice Quarterly*, 8(3), 305-327.
- Spohn, C. and DeLone, M. 2000. When does race matter? An analysis of the conditions under which race affects sentence severity. *Sociology of Crime, Law, and Deviance*, 2, 3-37.
- Spohn, C., & Holleran, D. (2000). The imprisonment penalty paid by young, unemployed black and Hispanic male offenders. *Criminology*, 38(1), 281-306.
- Spohn, C., & Holleran, D. (2001). Prosecuting sexual assault: A comparison of charging decisions in sexual assault cases involving strangers, acquaintances, and intimate partners. *Justice Quarterly*, 18(3), 651-688.
- Spohn, C. C., Kim, B., Belenko, S., & Brennan, P. K. (2014). The direct and indirect effects of offender drug use on federal sentencing outcomes. *Journal of quantitative criminology*, 30(3), 549-576.
- Spohn, C., & Sample, L. L. (2013). The dangerous drug offender in federal court: Intersections of race, ethnicity, and culpability. *Crime & Delinquency*, 59(1), 3-31.

- Spohn, C. C., & Spears, J. W. (1997). Gender and case processing decisions: A comparison of case outcomes for male and female defendants charged with violent felonies. *Women & Criminal Justice*, 8(3), 29-59.
- Spohn, C., & Spears, J. (2000). Sentencing of drug offenders in three cities: Does race/ethnicity make a difference? In D. F. Hawkins, S. L. Myers Jr., & R. N. Stone (Eds.), *Crime control and social justice: A delicate balance* (pp. 197-232). Westport, CT: Greenwood Publishing
- Spohn, C., & Tellis, K. (2012). The criminal justice system's response to sexual violence. *Violence against women*, 18(2), 169-192.
- Spohn, C., Tellis, K., & O'Neal, E. N. (2014). Policing and prosecuting sexual assault. *Critical Issues on Violence Against Women: International Perspectives and Promising Strategies*, 3, 93-103.
- Spohn, C., Welch, S., & Gruhl, J. (1985). Women defendants in court: The interaction between sex and race in convicting and sentencing. *Social Science Quarterly*, 66(1), 178.
- Stacey, A. M., & Spohn, C. (2006). Gender and the social costs of sentencing: An analysis of sentences imposed on male and female offenders in three US district courts. *Berkeley J. Crim. L.*, 11, 43.
- Steen, S., Engen, R. L., & Gaaney, R. R. (2005). Images of danger and culpability: Racial stereotyping, case processing, and criminal sentencing. *Criminology*, 43(2), 435-468.

- Steffensmeier, D. (1993). National trends in female arrests, 1960–1990: Assessment and recommendations for research. *Journal of Quantitative Criminology*, 9(4), 411-441.
- Steffensmeier, D., & Allan, E. (1996). Gender and crime: Toward a gendered theory of female offending. *Annual review of sociology*, 22(1), 459-487.
- Steffensmeier, D., & Britt, C. L. (2001). Judges' race and judicial decision making: Do black judges sentence differently?. *Social Science Quarterly*, 82(4), 749-764.
- Steffensmeier, D., & Demuth, S. (2000). Ethnicity and sentencing outcomes in US federal courts: Who is punished more harshly?. *American sociological review*, 705-729.
- Steffensmeier, D., & Demuth, S. (2001). Ethnicity and Judges' Sentencing Decisions: Hispanic-Black-White Comparisons. *Criminology*, 39(1), 145-178.
- Steffensmeier, D., & Demuth, S. (2006). Does gender modify the effects of race—ethnicity on criminal sanctioning? Sentences for male and female white, black, and Hispanic defendants. *Journal of Quantitative Criminology*, 22(3), 241-261.
- Steffensmeier, D., & Hebert, C. (1999). Women and men policymakers: Does the judge's gender affect the sentencing of criminal defendants?. *Social Forces*, 77(3), 1163-1196.
- Steffensmeier, D., Kramer, J., & Streifel, C. (1993). Gender and imprisonment decisions. *Criminology*, 31(3), 411-446.
- Steffensmeier, D., Kramer, J., & Ulmer, J. (1995). Age differences in sentencing. *Justice Quarterly*, 12(3), 583-602.

- Steffensmeier, D., Painter-Davis, N., & Ulmer, J. (2017). Intersectionality of race, ethnicity, gender, and age on criminal punishment. *Sociological Perspectives*, 60(4), 810-833.
- Steffensmeier, D., Schwartz, J., Zhong, H., & Ackerman, J. (2005). An assessment of recent trends in girls' violence using diverse longitudinal sources: Is this gender gap closing?. *Criminology*, 43(2), 355-406.
- Steffensmeier, D., Ulmer, J., & Kramer, J. (1998). The interaction of race, gender, and age in criminal sentencing: The punishment cost of being young, Black, and male. *Criminology*, 36, 763-798.
- Steffensmeier, D., Zhong, H., Ackerman, J., Schwartz, J., & Agha, S. (2006). Gender gap trends for violent crimes, 1980 to 2003: A UCR-NCVS comparison. *Feminist Criminology*, 1(1), 72-98.
- Stewart, G. (1997). Black codes and broken windows: The legacy of racial hegemony in anti-gang civil injunctions. *Yale LJ*, 107, 2249.
- Stith, K., & Cabranes, J. A. (1998). *Fear of judging: Sentencing guidelines in the federal courts*. University of Chicago Press.
- Stults, B. J., & Baumer, E. P. (2007). Racial context and police force size: Evaluating the empirical validity of the minority threat perspective. *American Journal of Sociology*, 113(2), 507-546.
- Sudnow, D. (1965). Normal crimes: Sociological features of the penal code in a public defender office. *Social problems*, 12(3), 255-276.
- Sutton, J. R. (2013). Structural bias in the sentencing of felony defendants. *Social Science Research*, 42(5), 1207-1221.



- Tartaro, C., & Sedelmaier, C. M. (2009). A tale of two counties: The impact of pretrial release, race, and ethnicity upon sentencing decisions. *Criminal Justice Studies*, 22(2), 203-221.
- Tasca, M., Rodriguez, N., Spohn, C., & Koss, M. P. (2013). Police decision making in sexual assault cases: Predictors of suspect identification and arrest. *Journal of Interpersonal Violence*, 28(6), 1157-1177.
- Tiede, L., Carp, R., & Manning, K. L. (2010). Judicial attributes and sentencing-deviation cases: Do sex, race, and politics matter?. *Justice System Journal*, 31(3), 249-272.
- Tonry, M. (1995). *Malign neglect: Race, crime, and punishment in America*. Oxford University Press.
- Tonry, M. (2010). The social, psychological, and political causes of racial disparities in the American criminal justice system. *Crime and justice*, 39(1), 273-312.
- Turner, K. B., Giacomassi, D., & Vandiver, M. (2006). Ignoring the past: Coverage of slavery and slave patrols in criminal justice texts. *Journal of Criminal Justice Education*, 17(1), 181-195.
- Tyler, T. R., & Huo, Y. (2002). *Trust in the law: Encouraging public cooperation with the police and courts*. Russell Sage Foundation.
- Uhlman, T. M. (1977). Race, recruitment, and representation: Background differences between black and white trial court judges. *Western Political Quarterly*, 30(4), 457-470.
- Uhlman, T. M. (1978). Black elite decision making: The case of trial judges. *American Journal of Political Science*, 884-895.

- Ulmer, J. T. (1995). The organization and consequences of social pasts in criminal courts. *The Sociological Quarterly*, 36(3), 587-605.
- Ulmer, J. T. (1997). *Social worlds of sentencing: Court communities under sentencing guidelines*. SUNY Press.
- Ulmer, J. T. (2012). Recent developments and new directions in sentencing research. *Justice Quarterly*, 29(1), 1-40.
- Ulmer, J. T., Bader, C., & Gault, M. (2008). Do moral communities play a role in criminal sentencing? Evidence from Pennsylvania. *The Sociological Quarterly*, 49(4), 737-768.
- Ulmer, J. T., Eisenstein, J., & Johnson, B. D. (2010). Trial penalties in federal sentencing: extra-guidelines factors and district variation. *Justice Quarterly*, 27(4), 560-592.
- Ulmer, J. T., & Johnson, B. (2004). Sentencing in context: A multilevel analysis. *Criminology*, 42(1), 137-178.
- Ulmer, J. T., & Kramer, J. H. (1996). Court communities under sentencing guidelines: Dilemmas of formal rationality and sentencing disparity. *Criminology*, 34, 383-408.
- Ulmer, J. T., & Laskorunsky, J. A. (2016). The role of juvenile adjudications in the disproportional incarceration of African-American and Hispanic defendants. *Journal of Crime & Justice*, 39, 9-27.
- Ulmer, J. T., Light, M. T., & Kramer, J. (2011). The “liberation” of federal judges’ discretion in the wake of the Booker/Fanfan decision: Is there increased disparity and divergence between courts? *Justice Quarterly*, 28, 799-837.

- Ulmer, J., Painter-Davis, N., & Tinik, L. (2016). Disproportional imprisonment of Black and Hispanic males: Sentencing discretion, processing outcomes, and policy structures. *Justice Quarterly*, 33(4), 642-681.
- Unnever, J. D. (1982). Direct and organizational discrimination in the sentencing of drug offenders. *Social Problems*, 30(2), 212-225.
- Unnever, J. D., & Hembroff, L. A. (1988). The prediction of racial/ethnic sentencing disparities: An expectation states approach. *Journal of research in crime and delinquency*, 25(1), 53-82.
- U.S. Department of Justice (2003) Justice Department Initiates New Diversity Program, Press Release (03070). Washington, D.C., February 5.
- Valadez, M., & Wang, X. (2017). Citizenship, legal status, and federal sentencing outcomes: examining the moderating effects of age, gender, and race/ethnicity. *The Sociological Quarterly*, 58(4), 670-700.
- Vieraitis, L. M., Britto, S., & Kovandzic, T. V. (2007). The impact of women's status and gender inequality on female homicide victimization rates: Evidence from US counties. *Feminist Criminology*, 2(1), 57-73.
- Vieraitis, L. M., Kovandzic, T. V., & Britto, S. (2008). Women's status and risk of homicide victimization: An analysis with data disaggregated by victim-offender relationship. *Homicide Studies*, 12(2), 163-176.
- Vigorita, M. S. (2001). Prior offense type and the probability of incarceration: The importance of current offense type and sentencing jurisdiction. *Journal of Contemporary Criminal Justice*, 17(2), 167-193.

- Visser, C. A. (1983). Gender, police arrest decisions, and notions of chivalry. *Criminology*, 21(1), 5-28.
- Walters, M.L., Chen J., & Breiding, M.J. (2013). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Findings on Victimization by Sexual Orientation. Atlanta, GA: *National Center for Injury Prevention and Control, Centers for Disease Control and Prevention*.
- Wang, X., & Mears, D. P. (2010). Examining the direct and interactive effects of changes in racial and ethnic threat on sentencing decisions. *Journal of Research in Crime and Delinquency*, 47(4), 522-557.
- Wang, X., & Mears, D. P. (2010). A multilevel test of minority threat effects on sentencing. *Journal of Quantitative Criminology*, 26(2), 191-215.
- Wang, X., Mears, D. P., Spohn, C., & Dario, L. (2013). Assessing the differential effects of race and ethnicity on sentence outcomes under different sentencing systems. *Crime & Delinquency*, 59(1), 87-114.
- Ward, G. K. (2006). Race and the justice workforce. *The many colors of crime: Inequalities of race, ethnicity, and crime in America*, 2, 67.
- Ward, G., Farrell, A., & Rousseau, D. (2009). Does racial balance in workforce representation yield equal justice? Race relations of sentencing in federal court organizations. *Law & Society Review*, 43(4), 757-806.
- Warren, P., Chiricos, T., & Bales, W. (2012). The imprisonment penalty for young Black and Hispanic males: A crime-specific analysis. *Journal of Research in Crime and Delinquency*, 49(1), 56-80.

- Weidner, R. R., Frase, R., & Pardoe, I. (2004). Explaining sentence severity in large urban counties: A multilevel analysis of contextual and case-level factors. *The Prison Journal*, 84(2), 184-207.
- Weidner, R. R., Frase, R. S., & Schultz, J. S. (2005). The impact of contextual factors on the decision to imprison in large urban jurisdictions: A multilevel analysis. *Crime & Delinquency*, 51(3), 400-424.
- Welch, K. (2007). Black criminal stereotypes and racial profiling. *Journal of contemporary criminal justice*, 23(3), 276-288.
- Welch, S., Combs, M., & Gruhl, J. (1988). Do black judges make a difference?. *American Journal of Political Science*, 126-136.
- Whaley, R. B. (2001). The paradoxical relationship between gender inequality and rape: Toward a refined theory. *Gender & Society*, 15(4), 531-555.
- Whaley, R. B., & Messner, S. F. (2002). Gender equality and gendered homicides. *Homicide Studies*, 6(3), 188-210.
- Wheeler, S., Weisburd, D., & Bode, N. (1982). Sentencing the white-collar offender: Rhetoric and reality. *American Sociological Review*, 641-659.
- Wooldredge, J. D. (1998). Analytical rigor in studies of disparities in criminal case processing. *Journal of Quantitative Criminology*, 14, 155-179.
- Wooldredge, J. (2007). Neighborhood effects on felony sentencing. *Journal of Research in Crime and Delinquency*, 44(2), 238-263.
- Wooldredge, J., & Thistlethwaite, A. (2004). Bilevel disparities in court dispositions for intimate assault. *Criminology*, 42(2), 417-456.

- Yang, C. S. (2015). Free at last? Judicial discretion and racial disparities in federal sentencing. *The Journal of Legal Studies*, 44(1), 75-111.
- Zatz, M. S. (2000). The convergence of race, ethnicity, gender, and class on court decision making: Looking toward the 21st century. *Criminal justice*, 3(1), 503-552.
- Zimmerman, K. (2014). The Unfair Sentencing Act: Racial Disparities and Fiscal Consequences of America's Drug Laws. *Themis: Research Journal of Justice Studies and Forensic Science*, 2(1), 10.

## APPENDIX A

### Pennsylvania Legal Statute Offense Definitions for Gendered Crimes

Offense Type	Definition
Indecent Assault	A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant.
Aggravated Indecent Assault	A person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures
IDSI	A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant.
Rape	A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant.
Sexual Assault	A person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.
Statutory Sexual Assault	A person commits a felony of the second degree when that person engages in sexual intercourse with a complainant to whom the person is not married who is under the age of 16 years
Stalking	A person commits the crime of stalking when the person either engages in a course of conduct or repeatedly commits acts toward or communicates with another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.
Harassment	A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same; follows the other person in or about a

	public place or places; engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose; communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures; communicates repeatedly in an anonymous manner; communicates repeatedly at extremely inconvenient hours; or communicates repeatedly in a manner other than specified in paragraphs.
--	--



**APPENDIX B****Gendered Offenses Committed by Male and Female Perpetrators**

	Male (n= 4006)		Female (n= 288)	
	Mean	SD	Mean	SD
Statutory Sexual Assault	.11	.32	.09	.29
Indecent Assault- Agg	.08	.27	.02	.14
IDSi	.12	.33	.04	.18
Harassment	.22	.41	.57	.50
Indecent Assault (felony)	.04	.19	.00	.06
Indecent Assault (misdemeanor)	.16	.37	.04	.19
Sexual Assault	.03	.17	.06	.24
Rape	.10	.30	.02	.13
Stalking (felony)	.02	.13	.01	.12
Stalking (misdemeanor)	.13	.33	.15	.35

## APPENDIX C

### Drug Offenses Committed by Black and White Offenders

	Black(n=19179)		White (n=39939)	
	Mean	SD	Mean	SD
Heroin	.17	.38	.11	.31
Cocaine	.22	.41	.05	.22
Marijuana (felony)	.09	.28	.06	.23
Marijuana (misdemeanor)	.08	.27	.04	.20
Meth	.01	.09	.04	.20
Other Drug (felony)	.02	.15	.31	.46
Other Drug (misdemeanor)	.13	.33	.02	.13
Other Narcotic	.04	.19	.04	.19
Simple Possession	.24	.43	.33	.47

## VITA

Curriculum Vitae  
Tri Keah S. Henry, M.A.

---

Department of Criminal Justice & Criminology  
Sam Houston State University P.O. Box 2296 Huntsville, TX 77341-2296

---

### EDUCATION

---

2015 – Present

Doctor of Philosophy, Criminal Justice & Criminology  
Sam Houston State University  
Dissertation: Racial Stereotypes, Gendered Crimes, and Judicial Discretion: A Multi-level Examination of the Effect of Race and Gender on Sentencing Disparities  
Chair: Travis Franklin  
Expected Graduation: May 2020

2013 – 2015

Master of Arts, Criminal Justice & Criminology  
Sam Houston State University  
Thesis: Examining Perceptions of Police Legitimacy in Street Stops: The Effects of Race, Class, and Procedural Justice  
Chair: Travis Franklin

2009 – 2013

Bachelor of Arts, Psychology  
Baylor University  
Minors: English & Criminal Justice

### RESEARCH INTERESTS

---

Discretionary decision-making; Racial and ethnic disparities in criminal justice processing; Procedural Justice and legitimacy in policing

### ACADEMIC POSTIONS

---

2017 – Present

Graduate Teaching Fellow, College of Criminal Justice, Sam Houston State University

2013 – 2017

Graduate Research Assistant, College of Criminal Justice, Sam Houston State University

#### REFEREED JOURNAL PUBLICATIONS

---

**Henry, T.S.**, Franklin, T.W., & Franklin, C.A. (Forthcoming). Facilitating Sexual Assault Reporting on the College Campus: The Role of Procedural Justice in Bystander Decisions to Provide Police Referrals Following a Hypothetical Disclosure. *Violence Against Women*.

Franklin, T. W., & **Henry, T. K. S.** (2019). Racial Disparities in Federal Sentencing Outcomes: Clarifying the Role of Criminal History. *Crime & Delinquency*, 0011128719828353.

**Henry, T. S.**, Hayes, B. E., Freilich, J. D., & Chermak, S. (2018) Comparison of Honor Killings to Anti-LGBTQ Homicides. *Journal of Aggression, Conflict and Peace Research*, <https://doi.org/10.1108/JACPR-09-2017-0318>

**Henry, T. K. S.**, & Franklin, T. W. (2017). Police Legitimacy in the Context of Street Stops: The Effects of Race, Class, and Procedural Justice. *Criminal Justice Policy Review*, 0887403417708334.

Franklin, T. W., & **Henry, T. K. S.** (2016). One Day Makes All the Difference: Denying Federal Offenders Access to “Good Time” Through Sentencing. *Crime & Delinquency*, 0011128716682227.

Franklin, T. W., Dittmann, L., & **Henry, T. K. S.** (2015). Extralegal Disparity in the Application of Intermediate Sanctions: An Analysis of U.S. District Courts. *Crime & Delinquency*, 0011128715607533.

#### *Manuscripts Under Review*

Franklin, T. W., & **Henry, T.S.** “Punishing Federal Offenders: Does National Origin Matter?”

**Henry, T.S.**, “Revolving Doors: Examining the Effect of Race and Ethnicity on Discretionary Decision-making in Parole Revocations.”

**Henry, T.S.**, & Jurek, A. “Identification, Corroboration, and Charging: Examining the use of DNA Evidence by Prosecutors in Sexual Assault Cases.”

### *Manuscripts in Progress*

**Henry, T.S.**, “Guilty Until Proven Innocent: Examining Racial Disparities in Bail Outcomes.”

**Henry, T.S.** “Six Degrees of Separation: The Influence of Direct and Indirect Contacts with Law Enforcement on Perceptions of Procedural Justice.”

### NON-REFEREED PUBLICATIONS

---

Bourgeois, J. W., **Henry, T. S.**, Kwende, M., & Henderson, H. (2019). An Examination of Prosecutorial Staff, Budgets, Caseloads and the Need for Change: In Search of a Standard. Center for Justice Research. Texas Southern University.

### RESEARCH EXPERIENCE

---

2016 Co-Principal Investigator, “Perceptions of Police Procedural Justice and Sexual Assault Reporting.” Co-Principal Investigators: Courtney Franklin and Travis Franklin.

### *Grants and Contracts*

2017 Research Assistant, “Suicide Risk Among Individuals Incarcerated in Jails: A Longitudinal Study of Biopsychosocial Factors and Adjustment to Jail Incarceration.” Principal Investigators: Brandy Blasko & Danielle Boisvert.

2016 Research Assistant, “Research and Evaluation of Houston Police Department’s Response to Sexual Assault and Domestic Violence Survivors.” Office on Violence Against Women, U.S. Department of Justice. Principal Investigators: Courtney A. Franklin.

2015 Research Assistant, “The LoneStar Project: Study of Offender Trajectories, Associations, and Reentry.” National Institute of Justice Funded.

2014 Research Assistant, “Biological and Environmental Factors Related to Stalking.” Co-Principal Investigator: Danielle Boisvert.

### *Unfunded Applications*

2019 **Henry, T. S.**, “Racial Stereotypes and Gendered Crimes: A Multi-level Examination of the Effect of Race and Gender on Sentencing Disparities.” Ford Fellowship Foundation.

### PROFESSIONAL CONFERENCE PRESENTATIONS

---

### *National Conference Presentations*

Henry, T. S.

- 2019 “Discretionary Decision-making and Parole Revocation: Examining the Effect of Race and Ethnicity.” Paper presented at the Academy of Criminal Justice Sciences, March, Baltimore, MD.

Henry, T. S.

- 2018 “Guilty Until Proven Innocent: Examining Racial Disparities in Bail Outcomes.” Paper presented at the American Society of Criminology, November, Atlanta, GA.

Henry, T. S., & Franklin, T. W.

- 2017 “Racial Disparities in Federal Sentencing Outcomes: Clarifying the Role of Criminal History.” Paper presented at the American Society of Criminology, November, Philadelphia, PA.

Freilich, J., Chermak, S., Hayes, B., & Henry, T.S.

- 2017 “Generalists or Specialists? A Comparison of Domestic Violence Across Ideologically Motivated Offenders in the United States.” Paper presented at the American Society of Criminology, November, Philadelphia, PA.

Henry, T.S., Franklin, C. A., & Franklin, T. W.

- 2017 “Trust, Respect, and Neutrality: The Role of Procedural Justice in Facilitating Sexual Assault Reporting on the College Campus.” Paper presented at the Academy of Criminal Justice Sciences, March, Kansas City, MO.

Henry, T. S., & Franklin, T. W.

- 2016 “One Day Makes All the Difference: Denying Federal Offenders Access to ‘Good Time’ Through Sentencing.” Paper presented at the American Society of Criminology, November, New Orleans, LA.

Henry, T. S., & Franklin, T. W.

- 2015 “Examining Perceptions of Police Legitimacy in Street Stops: The Effects of Race, Class, and Procedural Justice.” Paper presented at the American Society of Criminology, November, Washington D.C.

Henry, T. S.

- 2014 “The Equal Application of Stand Your Ground Law Defense Among Races.” Poster presented at the American Society of Criminology, November, San Francisco.

### ***Regional Conference Presentations***

Henry, T. S., & Franklin, T. W.

- 2017 “Six Degrees of Separation: The Influence of Direct and Indirect Contacts with Law Enforcement on Perceptions of Procedural Justice.” Paper presented at the Southern Criminal Justice Association, September, New Orleans, LA.

Henry, T.S., & Zhang, Y

- 2017 “Examining the Effects of Concentrated Illegal Weapons and its Relationship to Other Violent Crimes.” Paper presented at Southwest Division of the American Association of Geographer, September, Huntsville, TX.

### ***University Conference Presentations***

Henry, T.S.

- 2018 “I’m Locked Up, They Won’t Let Me Out: Racial Disparities in Bail Outcomes.” Presented at Sam Houston State University’s Three Minute Thesis (3MT) Competition.

Henry, T.S.

- 2017 “Policing by the Golden Rule.” Presented at Sam Houston State University’s Three Minute Thesis (3MT) Competition.

Henry, T.S.

- 2016 “Prosecutorial discretion and the charging decision: The effects of organizational factors.” Paper presented at The Woodlands, TX Center 3rd Annual Student Research Symposium.

## **TEACHING EXPERIENCE**

---

### ***Courses Taught***

3378 Introduction to Research Methods  
 3378 Introduction to Research Methods (online)  
 2364 Fundamentals of Criminal Law  
 2364 Fundamentals of Criminal Law (online)

### ***Acting Teaching Assistant***

2394 Courts and Criminal Procedure  
 4332 Legal Aspects of Corrections  
 4377 Civil Liabilities  
 3396 Juvenile Delinquency and Juvenile Justice

### ***Teaching Interests***

Sentencing and Criminal Courts  
 Race/Social Diversity and Crime  
 Policing  
 Research Methods

***Guest Lectures***

2018 Zheijang Police College (Hangzhou, China) – Criminology (2 Weeks)  
 2017 Sam Houston State University – Introduction to Research Methods (Survey Research)

**ACTIVITIES AND SERVICE**

---

***Professional Service***

2019

Office of Justice Programs' Bureau of Justice Assistance Peer Reviewer  
 ASC Division of Policing Awards Committee (San Francisco, CA)

2018

ACJS Student Volunteer for the Employment Exchange (New Orleans, LA)

2017

ASC Division of People of Color and Crime Student Volunteer (Philadelphia, PA)  
 Problem Oriented Policing (POP) Conference Volunteer (Houston, TX)  
 Panel Chair, ACJS, "Sexual Assault on Campus: Predictors & Procedures." (Kansas City, MO)

2016 – 2017

ASC Division of People of Color and Crime Student Member Collective Planning Committee

***Department & University Service***

2019

Undergraduate Research Mentor. SHSU Criminal Justice Graduate Student Organization  
 –Lambda Alpha Epsilon research partnership

2018 – 2019

Statistics Tutor. The Graduate School ASPIRE Program, SHSU

2017



Sothorn Criminal Justice Association (SCJA) Recruitment graduate students for the  
College of Criminal Justice, SHSU (New Orleans, LA)

2017 – 2018

College of Criminal Justice Academic Review Committee, SHSU  
President, Criminal Justice Graduate Student Organization, SHSU

2016 – 2017

Vice President, Criminal Justice Graduate Student Organization, SHSU

2016

Student Representative, Dean of the Graduate Studies search committee, SHSU

2015 - Present

Student Representative, Faculty Search Committee, College of Criminal Justice

Student Representative, Dean of the College of Criminal Justice search committee, SHSU

### ***Manuscript Reviewer***

Crime & Delinquency

Violence Against Women

## **PROFESSIONAL DEVELOPMENT**

---

2018

Teaching and Learning Conference, SHSU

Teaching Assistant Certification Series, SHSU

2017

ICPSR Introduction to Mixed Methods Research

Academy of Criminal Justice Sciences Doctoral Summit

Effective Strategies for Evaluating Student Writing

Blackboard Teaching Online Certification Series

## **AWARDS AND SCHOLARSHIPS**

---

### ***Awards***

2019

The Division on Women & Crime Larry J. Siegel Graduate Fellowship for the Study of  
Gender and Crime

2018

Norman White Outstanding Student Paper Award, ASC Division on People of Color and Crime

Recipient, Ravens Scholar Award, Who's Who Among Students

Three Minute Thesis (3MT) Competition Finalist

2016

Recipient, Outstanding Scholarly Performance Award, SHSU

Excellence in Writing Award, SHSU

### ***Scholarships***

2017 – Present

Recipient, ROAD to Ph.D. Scholarship. The Graduate School, SHSU

2017

Recipient, Summer Fellowship, College of Criminal Justice, SHSU

Recipient, ACJS, Doctoral Summit Scholarship Recipient

2016 – 2017

Recipient, Ellis-Gibbs Memorial Scholarship, College of Criminal Justice, SHSU

2016

Recipient, Summer Fellowship, College of Criminal Justice, SHSU

2015 – 2016

Recipient, Graduate Studies Bridge ASPIRE Program Scholarship, SHSU

2013 – Present

Recipient, Sam Houston State University Graduate Fellowship, SHSU

### **PROFESSIONAL AFFILIATIONS**

---

American Society of Criminology

Division of Women and Crime

Division on People of Color and Crime

Division of Policing

Division on Corrections and Sentencing

Academy of Criminal Justice Sciences

### **INTERNSHIPS**

---

2015

Children's Defense Fund, Houston, TX

2010 – 2013

Drug Enforcement Administration, Houston Division, Waco, TX