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FEDERAL DRUG SENTENCING: AN EVALUATION OF  
THE CONSISTENCY, PROPORTIONALITY,  
AND FAIRNESS WITHIN CASES

A Thesis

Submitted to the McAnulty College and  
Graduate School of Liberal Arts

Duquesne University

In partial fulfillment of the requirements for  
the degree of Master of Arts

By

Lindsay R. Barron

December 2011

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Lindsay R. Barron

2011

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THE CONSISTENCY, PROPORTIONALITY,  
AND FAIRNESS WITHIN CASES

By

Lindsay R. Barron

Approved April 27, 2011

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Ann Marie Popp, Ph.D.,  
Assistant Professor of Sociology  
(Committee Chair)

---

Norman Conti, Ph.D.,  
Associate Professor of Sociology  
(Committee Member)

---

Christopher Duncan, Ph.D., Dean  
McAnulty College and Graduate  
School of Liberal Arts /  
James Swindal, Ph.D., Acting Dean

---

Joseph Yenerall, Ph.D., Director  
Graduate Center for Social and  
Public Policy

## ABSTRACT

# FEDERAL DRUG SENTENCING: AN EVALUATION OF THE CONSISTENCY, PROPORTIONALITY, AND FAIRNESS WITHIN CASES

By

Lindsay R. Barron

December 2011

Thesis supervised by Dr. Ann Marie Popp and Dr. Norman Conti

National drug policy has contributed to prison population growth in the United States. Blacks and Hispanics are minorities in the population, but are overrepresented as defendants in criminal courts and as inmates in prison. The purpose of this research is to evaluate fairness in federal drug sentencing. The current study uses data compiled by the United States Sentencing Commission (USSC) to examine the sentence lengths of federal drug defendants sentenced in 2008. Linear ordinary least squares (OLS) regression is used to model the relationship between race/ethnicity and sentence lengths. The analysis of this research is framed by the focal concerns theory of judicial decision-making, first articulated by Steffensmeier (1980). The current study finds that defendants' race/ethnicity does not influence sentence lengths after legally relevant guideline

variables are controlled. Legally relevant variables are the most important predictors of sentence lengths. After discussing the implications of the findings, policy recommendations are proposed.

## DEDICATION

*This thesis is dedicated to the memory of my grandparents:*

*Frances Burek (1919-2005),*

*Mary Barron (1922-2005),*

*Ernest Barron (1919-1993),*

*and John Burek (1914-1962),*

*in the hope that they would be proud of the person I have become.*

## ACKNOWLEDGEMENT

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In addition, I would like to thank the graduate students in the Graduate Center for Social and Public Policy with whom I had the opportunity to grow and learn. The academic and social support of those colleagues was incredible. My fellow graduate students frequently went above and beyond what could be expected between friends. For this reason, I thank them for their intellectual and personal support throughout the past two years. I especially thank Erin Fink, Luke Moos, and Dennis Lee because I am certain that my graduate school experience would not have been the same without them.

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I would like to extend my appreciation and love to my family, roommate, and friends who continually provided me with moral support and motivation during my graduate studies. Most of all, I thank my parents. While I could never express my love and gratitude in words, my parents are the two people I admire most.

## TABLE OF CONTENTS

	Page
Abstract.....	iv
Dedication.....	vi
Acknowledgements.....	vii
List of Abbreviations.....	xi
Introduction.....	1
Literature Review.....	4
Overview of Federal Anti-Drug Legislation.....	4
Federal Sentencing Guidelines and Mandatory Minimum Statutes.....	9
Theoretical Framework.....	19
Consequences of Federal Sentencing Guidelines and Mandatory Minimum Statutes.....	22
Previous Research Studies.....	32
The Current Study.....	57
Research Hypotheses.....	57
Methodology.....	59
Data.....	59
Research Design.....	60
Dependent Variables.....	61
Extralegal Variables.....	62
Legal Variables.....	62
Results.....	65

Univariate Analysis.....	65
Bivariate Analysis.....	67
Multivariate Analysis.....	70
Research Hypotheses.....	74
Discussion.....	75
Findings.....	75
Limitations.....	82
Future Research.....	84
Policy Recommendations.....	85
Conclusion.....	89
References.....	91
Appendix.....	102

## LIST OF ABBREVIATIONS

BJS	Bureau of Justice Statistics
BOP	Bureau of Prison
CBO	Congressional Budget Office
CHC	Criminal History Category
CSA	Controlled Substances Act
DEA	Drug Enforcement Administration
FDA	Food and Drug Administration
FSA	Fair Sentencing Act
FSGM	Federal Sentencing Guidelines Manual
<i>Guidelines</i>	Federal Sentencing Guidelines
HHS	Department of Health and Human Services
<i>Mandatory Minimums</i>	Federal Mandatory Minimum Statutes
MFCS	Monitoring of Federal Criminal Sentences
MTF	Monitoring the Future
NCVS	National Crime Victimization Survey
NIDA	National Institute of Drug Abuse
NSDUH	National Survey on Drug Use and Health
OLS	Ordinary Least Squares
PCS	Pennsylvania Commission on Sentencing
PROTECT	Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today

UCR	Uniform Crime Report
U.S.	United States
USSC	United States Sentencing Commission

## Introduction

National drug policy has contributed to prison population growth in the United States. The federal prison population has grown from 24,252 in 1980 to 209,609 in 2011 (Bureau of Justice Statistics, 2007; Bureau of Prisons, 2011). Drug offenders represent more than half (51.3 percent) of all federal prisoners, which is a drastic increase from 25 percent in 1980 (Bureau of Prisons, 2011). Comparatively, drug offenders represent 18 percent of state prisoners (Bureau of Prisons, 2011). Since the 1970s, the federal government and almost all state legislatures enacted mandatory minimum sentencing policies that primarily target drug offenses.

In response to the national drug problem, the United States Sentencing Commission (USSC) was established in 1984 and the Federal Sentencing Guidelines Manual (FSGM) was subsequently enacted in 1987. The intended purpose of federal sentencing guidelines (*Guidelines*) is to prescribe appropriate sentences for offenders convicted of federal crimes, while reducing judicial discretion and unwarranted disparity by establishing uniform sentences for comparable defendants convicted of similar offenses (USSC, 2010). The federal mandatory minimum statutes (*Mandatory Minimums*), another set of laws that came into effect in 1986, further constrains judicial discretion in sentencing practices (Gahlinger, 2003; Weinstein, 2003). When a defendant has been convicted of an offense with a mandatory minimum sentence, the judge can lessen the defendant's sentence in two ways. First, the defendant may be eligible for a sentence reduction through the safety valve provision if the defendant is a first time offender and meets other conditions. Second, if the defendant does not qualify for the

safety valve provision, cooperation in the investigation is could result in a sentence reduction (USSC, 2010; Weinstein, 2003).

Between October 1, 2006 and September 30, 2007, 26,294 federal offenders were sentenced for drug offences. Of these convicted offenders, 93 percent were sentenced to incarceration; 3.3 percent were sentenced to probation; and .03 percent received a fine (Federal Justice Statistics, 2007). The average length of incarceration imposed for drug offenses was 88.3 months, and the average length of probation imposed for drug offenses was 41.9 months (Federal Justice Statistics, 2007).

Despite the intended purpose of the *Guidelines* and *Mandatory Minimums*, current literature indicates that disparity in sentencing exists based on race/ethnicity, gender, age, and citizenship status (Champion, 1987; Bickle & Peterson, 1991; Kramer & Steffensmeier, 1993; Steffensmeier, Kramer, & Streifel, 1993; Daly & Bordt, 1995; Steffensmeier, Kramer, & Ulmer, 1995; Albonetti, 1997, 2002; Ulmer, 1997; Steffensmeier, Ulmer, & Kramer, 1998; Spohn, 1999; Williams, 1999; Steffensmeier & Demuth, 2000, 2001, 2006; Spohn & Beichner, 2000; Spohn & Holleran, 2000; Steffensmeier & Motivans, 2000; Bushway & Piehl, 2001; Mustard, 2001; Demuth, 2002; Everett & Wojtkiewicz, 2002; Kautt & Spohn, 2002; Kautt, 2002; Demuth & Steffensmeier, 2004; Rodriguez, Curry, & Lee, 2006; Stacey & Spohn, 2006; Blackwell, Holleran, & Finn, 2008; Brennan & Spohn, 2008, 2009; Crow, 2008; Curry & Corral-Camacho, 2008; Iles, 2009; Doerner & Demuth, 2010). Of the drug offenders sentenced to incarceration, White drug offenders were sentenced to an average of 72.5 months of incarceration, compared to an average of 119 months of incarceration for Black drug offenders (Federal Justice Statistics, 2007). In terms of ethnic differences in federal drug

sentences, Hispanic drug offenders were sentenced to an average of 69.6 months of incarceration, compared to an average of 102 months for non-Hispanic drug offenders (Federal Justice Statistics, 2007). If racial and ethnic disparity exists in sentencing, this is a problem because it would indicate that the *Guidelines* are not achieving their intended purpose.

Overcriminalization, increased prosecutorial discretion, and harsh sentencing have resulted in consequences for individuals, families, communities, the criminal justice system, and society as a whole. The implications of this research are valuable to both policy analysts and society. The focus of this research is on fairness in federal drug sentencing, with consideration given to consistency and proportionality in sentencing outcomes. This research addresses the issue of whether the criminal justice system discriminates on the basis of race and ethnicity. By exploring the impact of defendants' race and ethnicity on sentence lengths, this research evaluates whether the *Guidelines* are being applied in a racially and ethnically neutral manner and therefore achieving the *Guidelines'* primary goal of fairness. Fairness is achieved when race/ethnicity and other extralegal variables are insignificant in the process of assigning sentences.

The current study uses the USSC's Monitoring of Federal Criminal Sentences (MFCS) data set, which consists of 76,478 cases and 406 variables, to examine the sentence lengths of federal drug defendants sentenced in 2008. Multivariate analyses are conducted for the purposes of this research. The data files include all cases that have sentencing dates between October 1, 2007 and September 30, 2008 and were assessed as constitutional. The federal sentencing data are ideally suited for this research because they contain a large number of cases in combination with detailed legal, extralegal, and

contextual information offers insight into the possible influence of multiple offender characteristics on federal sentencing outcomes under the *Guidelines*.

The dependent variable for this research is sentence length in months, if incarcerated. The independent variable is the defendant's race/ethnicity. Univariate and bivariate analyses are performed for all study variables. Linear ordinary least squares (OLS) regression is used to model the relationship between race/ethnicity and sentence lengths to assess the fairness within federal drug cases. After evaluating prior research and current analyses, policy recommendations are proposed.

## **Literature Review**

### **Overview of Federal Anti-Drug Legislation**

The current criminal justice system is based on a determinate sentencing philosophy. Evolving legislation and policy have led to the current U.S. federal anti-drug enforcement. The U.S. first acknowledged the existence of a drug problem in beginning of the twenty-first century (Gahlinger, 2003). While marijuana, opium, the coca leaf, and other substances with psychoactive properties have been known for thousands of years, their use for the purpose of pleasure, recreation, or performance spans just over 200 years (Inciardi & McElrath, 2011, p. 4).

#### **Comprehensive Drug Abuse Prevention & Control Act (1970)**

Until 1970, narcotics were controlled by a variety of laws regulating individual drugs, or broad categories of drugs. Legislation specific to each type of drug was unable to be maintained as a result of new drugs that became accessible each year (Gahlinger, 2003). Widespread usage of narcotics, both old and new, encouraged the government to

enact legislation (Gahlinger, 2003, p. 63). The Comprehensive Drug Abuse Prevention and Control Act of 1970 became the legislative foundation for drug regulation in the U.S. (Gahlinger, 2003, p. 63). All narcotics, stimulants, depressants, hallucinogens, anabolic steroids, and any other chemicals that were considered to have the potential for abuse became regulated through the Comprehensive Drug Abuse Prevention and Control Act (Gahlinger, 2003, p. 63).

Under the Controlled Substances Act (CSA), or Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, controlled substances are divided into five levels of control, according to their potential for abuse (Gahlinger, 2003, p. 72). Schedule I consists of drugs that are considered to have a very high abuse potential and no accepted medical use (Gahlinger, 2003). Examples of Schedule I drugs are heroin, marijuana, and LSD. Schedule II is made up of drugs that are considered to have a very high abuse potential but also an accepted medical use (Gahlinger, 2003). Examples of Schedule II drugs are morphine, cocaine, amphetamines, and barbiturates (Gahlinger, 2003). Schedule III consists of drugs that are considered to have a high abuse potential, but are accepted for medical use (Gahlinger, 2003). Physicians routinely prescribe Schedule III drugs, such as lesser concentrations of the opiates and barbiturates. Schedule IV drugs are considered to have a moderate abuse potential, but are accepted in medical use. Physicians routinely prescribe Schedule IV drugs (Gahlinger, 2003). Examples include benzodiazepines and antidepressant medications. Schedule V drugs are considered to have a low potential for abuse and are accepted for medical use. Schedule V drugs are available to be purchased without a prescription (Gahlinger, 2003).

### **Comprehensive Crime Control Act (1984)**

The Comprehensive Crime Control Act was an amendment to the Controlled Substances Act (CSA), which made it easier to prosecute suspected drug offenders and created harsher penalties for those convicted (Benoit, 2003, p. 284; Gahlinger, 2003, p. 67). Federal powers were expanded to seize assets involved in drug trafficking, deny pretrial release to drug defendants, create *Guidelines*, and increase maximum fines and prison terms for drug offenders (Benoit, 2003, p. 285). As a result of new recreational drugs appearing faster than laws could regulate them, the Comprehensive Crime Control Act of 1984 allowed the DEA to directly place a substance into Schedule I, on a temporary basis, therefore bypassing the normal legislative process (Gahlinger, 2003, p. 67).

### ***Federal Sentencing Reform Act (1984)***

In 1984, Congress enacted reforms to sentencing through the Federal Sentencing Reform Act, which was part of the Comprehensive Crime Control Act. The goals were to reduce unwarranted disparity, increase certainty and uniformity, correct past patterns of undue leniency for certain categories of serious offenses, and ultimately produce fair sentences (Wilkins et al., 1991, p. ii; Kautt, 2000, p. 8). In order to effectively achieve these goals, Congress created the USSC to establish and implement *Guidelines* for federal sentencing (Schanzenbach & Tiller, 2008, p. 715; Kautt, 2000, p. 8). Under the Sentencing Reform Act of 1984, *Mandatory Minimums* were reintroduced and applied more strictly than earlier mandatory minimum sentencing legislation (Gahlinger, 2003, p. 67). It was the USSC's job to establish uniform sentencing and eliminate the use of legally irrelevant factors in sentencing – such as race, ethnicity, gender, age, or economic

status, for defendants sentenced across the federal court system (Freeborn & Hartmann, 2010, p. 357; Kautt, 2000, p. 8). The Federal Sentencing Reform Act also initiated appellate review of sentences and abolished parole for federal defendants (Freeborn & Hartmann, 2010, p. 357).

The USSC's initial *Guidelines* were submitted to Congress on April 13, 1987 and after the prescribed period of Congressional review, the *Guidelines* took effect on November 1, 1987 and therefore applied to all offenses committed on or after that date (FSGM, 2010, p. 2). The USSC emphasizes that it views the *Guidelines*-writing process as evolutionary and expects that continuing research, experience, and analysis will result in modifications and revisions to the *Guidelines*. The USSC has the authority to submit guideline amendments each year to Congress between the beginning of a regular Congressional session and May 1. Amendments automatically take effect 180 days after submission unless a law is enacted to the contrary (FSGM, 2010, p. 2).

### **Anti-Drug Abuse Act (1986)**

The Anti-Drug Abuse Act made most existing drug-related penalties harsher through the imposition of *Mandatory Minimums* for a number of offenses (Benoit, 2003, p. 285). *Mandatory Minimums* specifically for the possession of cocaine were created and established drastically different sentencing structures for crack-cocaine and powder-cocaine. This legislation imposed a prison sentence of 5 to 40 years for cocaine possession (Gahlinger, 2003, p. 67). The *Mandatory Minimums* applied to 500 grams of powder-cocaine but only 5 grams of crack-cocaine, which is problematic because the two substances have nearly identical chemical compositions (Gahlinger, 2003). The law's

mandatory penalties were the harshest ever adopted for low-level drug offenses (Mauer, 2010).

### **Controlled Substances Analogue Enforcement Act (1986)**

Under the Controlled Substances Analogue Enforcement Act of 1986, an amendment to the CSA, any drug that is chemically similar or has a similar stimulant, depressant, or hallucinogenic effect as a Schedule I or Schedule II controlled substance is automatically deemed to be illegal (Gahlinger, 2003, p. 68). This change allowed newly created drugs to be declared illegal without demonstrating any abuse issues (Gahlinger, 2003, p. 68).

### **The PROTECT Act / Feeney Amendment (2003)**

The PROTECT (Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today) Act of 2003 and its Feeney Amendment, became effective on April 30, 2003 and was the first major alteration to the *Guidelines*. The Feeney Amendment restricted federal judges' ability to impose sentences outside of the *Guidelines* and required appellate courts to review all downward departures (Freeborn & Hartmann, 2010, p. 355). The passage of the PROTECT Act stemmed from a growing concern that judges and prosecutors had increasingly been using departures from the guideline ranges to avoid the *Guidelines*' mandates (Tiede, 2009, p. 36). Additionally, the Feeney Amendment required a reporting system, where the district's chief judge must write and submit an explanation for any departure to the USSC, which is then given to the Justice Department or Congress upon request (Freeborn & Hartmann, 2010, p. 355). Results of Freeborn and Hartmann's (2010) study suggest that the amendment reduces downward

departures by five percent and increases the average prison sentence by approximately two months (p. 355).

### **Federal Sentencing Guidelines and Mandatory Minimum Statutes**

The concept of guideline sentencing systems originated on the state level, expanded to the federal level, and continued to evolve throughout the past three decades. The underlying purpose of the *Guidelines* and the theory behind *Mandatory Minimums* is to create a system of sentencing that achieves fairness, uniformity, and consistency on a case-by-case basis. The *Guidelines* were developed as a way to guide judicial discretion while accomplishing sentencing objectives. The *Guidelines* were used to bring more uniformity and consistency into the federal sentencing process while adding a degree of predictability to sentencing outcomes and correctional costs (Lubitz & Ross, 2001). The seriousness of the crime and criminal history are used to prescribe punishment, with the goal that comparable offenders with similar legal characteristics will receive similar sentences (Lubitz & Ross, 2001; Doerner & Demuth, 2010). As a means of satisfying political constituencies with fears of street crime, nearly all 50 states and the federal system implemented *Mandatory Minimums* aimed at achieving greater deterrence, retribution, and incapacitation of criminal offenders (Ulmer, 1997, p. 1; Mauer, 2006, p. 167; Blackwell et al., 2008, p. 412; FSGM, 2010, p. 1). In employing a sentencing system with the goals of achieving fairness, uniformity, and consistency, the aspiration was to eradicate preexisting racial or ethnic disparity within the system.

#### **Federal Sentencing Guidelines**

As previously mentioned, the Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) provides for the development of *Guidelines*.

The Act delegates broad authority to the USSC to review and rationalize the federal sentencing process. *Guidelines* inform judges of the specific legal factors that should be used and how they should be used in sentencing (Bushway & Piehl, 2001, p. 739). Detailed instructions as to how federal sentencing determinations should be made are contained in the Act. Based on the determination of the USSC, categories of offense behaviors and offender characteristics are used to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons determined by coordinating the offense behavior categories with the offender characteristic categories (FSGM, 2010, p. 2). In instances where the *Guidelines* call for imprisonment, the maximum of the range cannot exceed the minimum by more than the greater of 25 percent or six months (FSGM, 2010, p. 2). Generally, the sentencing authority must select a sentence from within the guideline range. However, if a particular case presents “atypical features”, the Act allows the court to depart from the *Guidelines* and sentence outside the prescribed range. In cases where departures occur, the court must specify reasons for departure (FSGM, 2010, p. 2). If the court sentences within the guideline range, an appellate court may review the sentence to determine whether the *Guidelines* were correctly applied. Similarly, if the court departs from the guideline range, an appellate court may review the reasonableness for the sentencing departure (FSGM, 2010, p. 2).

Congress sought to achieve three objectives in enacting the Sentencing Reform Act of 1984. The Act’s primary objective was to “enhance the ability of the criminal justice system to combat crime through an effective, fair sentencing system” (FSGM, 2010, p. 2). In order to achieve this goal, Congress first sought honesty in sentencing by avoiding the confusion and implicit deception that arose out of the pre-*Guidelines*

sentencing system, which required the court to impose an indeterminate sentence of imprisonment and empowered the parole commission to determine how much of the sentence an offender actually would serve in prison (FSGM, 2010, p. 2). Prior to the *Guidelines*, defendants often served about one-third of the sentence imposed by the court (FSGM, 2010, p. 2). Congress abolished parole for the sake of achieving honesty in sentencing, thereby making the sentence imposed by the court the actual sentence the offender will serve, with a fifteen percent allowance for good behavior (FSGM, 2010, p. 3).

The second objective of the Act was to seek “reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders” (FSGM, 2010, p. 2; Albonetti, 2002). Through the third objective, Congress sought “proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity” (FSGM, 2010, p. 2).

The *Guidelines* account for both the seriousness of the crime and the defendant’s criminal record when determining sentence length (Freeborn & Hartmann, 2010, p. 357). Based on the *Guidelines* section 2B3.1(a) and section 2B2.3, respectively:

To establish the seriousness of the crime, the Sentencing Guidelines assign each type of crime (murder, robbery, antitrust violations, etc.) a base offense level (BOL). The more serious the crime, the higher the base offense level assigned (e.g., robbery has a base offense level of 20, while for trespassing the BOL is 4). The Guidelines also prescribe a complex set of rules on how the final offense level is calculated. For example, specific offense characteristics listed in Chapter 2 of the Guidelines either add or subtract from the base offense level; these characteristics vary across offenses. Chapter 3 adjustments are taken into account. These are based on victim characteristics, the offender’s role in the offense, and whether obstruction of justice took place. Finally, after adjustments for multiple counts and acceptance of responsibility are made, one derives the final offense level (FOL) used to determine sentence length (p. 357).

The *Guidelines* take an offender's criminal record into consideration by assigning criminal history points, thereby placing the offender into one of six possible criminal history categories (Freeborn & Hartmann, 2010, p. 357). The total number of points assigned by the judge depends on the number of prior adult convictions and the length of imprisonment for each prior adult offense (Freeborn & Hartmann, 2010, p. 357).

### ***Departures***

The sentencing statute permits a court to depart from a guideline-specified sentence only when it finds "an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the USSC in formulating the *Guidelines* that should result in a sentence different from that described" (FSGM, 2010, p. 6; 18 U.S.C. § 3553(b)). When a court finds an atypical case, where a particular guideline linguistically applies yet conduct significantly differs from the norm, the court is granted leeway in determining whether a departure is warranted (FSGM, 2010, p. 6). In cases where courts or judges depart from the *Guidelines*, whether upward or downward from the specified range, a written reasoning for the departure must be provided. Furthermore, departures are subject to appeal (Freeborn & Hartmann, 2010, p. 358).

The USSC adopted this departure policy because it recognizes that it is "difficult to prescribe a single set of guidelines that encompass the vast range of human conduct potentially relevant to a sentencing decision" (FSGM, 2010, p. 7). By monitoring when courts depart from the *Guidelines* and by analyzing their stated reasons for doing so, the USSC is able to refine the *Guidelines* over time by specifying more precisely when departures should and should not be permitted (FSGM, 2010, p. 7).

The *Guidelines* refer to two different types of departure. The first type of departure is intended to address “instances where the *Guidelines* provide specific guidance for departure by analogy or by other numerical or non-numerical suggestions” (FSGM, 2010, p. 7). The second type of departure remains unguided and it may “rest upon grounds referred to in Chapter Five, Part K (Departures) or on grounds not mentioned in the *Guidelines*” (FSGM, 2010, p. 7). While factors are listed that may constitute grounds for departure, the list is not exhaustive. The USSC recognizes that there may be other grounds for departure that are not mentioned but are warranted. Even so, the USSC expects that such cases will be infrequent (FSGM, 2010, p. 7). A court or judge may depart from the *Guidelines*’ range in instances where it can be shown that the case or offender are atypical and unlike ordinary crimes addressed in the *Guidelines* (Freeborn & Hartmann, 2010, p. 358).

#### *The Substantial Assistance Provision*

One circumstance under which departures are granted is “upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense” (FSGM, 2010, p. 456). This category of departure is referred to as ‘Substantial Assistance to Authorities’, and is the most common reason for assigning a sentence outside of the range provided by the *Guidelines* (FSGM, 2010, p. 456; Freeborn & Hartmann, 2010).

Through the *Guidelines*, the prosecutor has the discretion of whether or not to initiate the substantial assistance provision for a downward departure. To apply the substantial assistance provision, only prosecutors can initiate the motions for cases where the defendant is able to provide helpful information to the prosecution (Kautt, 2000, p.

15). Receiving a substantial assistance departure acts as a mechanism to avoid imposing *Mandatory Minimums*. Culpable defendants, such as drug kingpins and mid-level drug traffickers often have more knowledge of criminal activities, which allows them benefit from their knowledge in exchange for a substantial assistance departure (Albonetti, 2002, p. 408). However, low-level drug defendants often lack the knowledge necessary to qualify for a substantial assistance departure. This type of scenario produces inverted sentences between mid-level defendants and low-level defendants. As a consequence, the more culpable defendants avoid severe sentences under *Mandatory Minimums* and less culpable defendants receive longer terms of imprisonment resulting from their lack of knowledge and information (Albonetti, 2002, p. 408). Critics insist that prosecutorial abuse in the application of the safety valve occurs regularly (Kautt, 2000, p. 16).

#### *The “Safety Valve” Exception*

The safety valve provision is a Congressional response to criticism of the harsh sentences imposed under drug mandatory minimum penalties in federal drug cases (Albonetti, 2002, p. 402). The safety valve provision is meant to alleviate unfairness caused by *Mandatory Minimums* on low-level drug offenders (Levy-Pounds, 2006, p. 475). Some offenders may receive sentences outside of the *Guidelines* if the safety valve is applied. Drug offenders may receive the benefit of both the substantial assistance provision and safety valve provision (USSC, 2008, p. 8). In the application of the safety valve statutory provision, federal judges are required to calculate a sentencing range in accordance with the *Guidelines* as a starting point for determining an appropriate punishment for a person convicted of a federal drug crime (Hinojosa et al., 2009, p. 2). Then, the safety valve grants courts the authority to wave the application of the

mandatory minimum sentence and propose a sentence reduction in cases where the defendant meets specific criteria (Levy-Pounds, 2006, p. 475; USSC, 2008, p. 7). The safety valve can reduce the statutory minimum sentence for some drug offenses if the court finds that five criteria are met: 1) the defendant has no prior criminal history; 2) the defendant is nonviolent and did not use a firearm in the offense; 3) the offense did not result in death or serious bodily injury; 4) the defendant is not a leader, manager, or supervisor of the drug ring or others involved in the offense and is not engaged in continuing criminal enterprise; and 5) the defendant provides truthful information to prosecutors pertaining to the activities of the crime and other related offenses (Albonetti, 2002, p. 403; Levy-Pounds, 2006, p. 477; Freeborn & Hartmann, 2010, p. 358). Based on the requirement of having no prior criminal history, only offenders assigned to Criminal History Category I (offenders with a criminal history score of zero or one) are eligible to receive the benefit of the safety valve (USSC, 2008, p. 7).

### ***Plea Agreements***

Approximately 90 percent of all federal criminal cases involve guilty pleas, and many of these cases involve some form of plea agreement (FSGM, 2010, p. 7). The USSC expressed positive expectations regarding the *Guidelines*' anticipated influence on plea agreement practices for two reasons. First, the *Guidelines* "create a clear, definite expectation in respect to the sentence that a court will impose if a trial takes place" (FSGM, 2010, p. 8). By this reasoning, USSC hoped that the *Guidelines* would reduce irrationality in plea agreements. Second, the *Guidelines* "create a norm to which courts will likely refer when they decide whether, under Rule 11(e), to accept or to reject a plea agreement or recommendation" (FSGM, 2010, p. 8).

Plea agreements also affect sentencing severity under the *Guidelines*, as prosecutors have the ability to accept or deny plea bargains. Critics also suggest the occurrence of hidden plea-bargaining for the purpose of arriving at what is considered to be a reasonable sentence. The shift of discretion from judges to prosecuting attorneys may circumvent the goal of eliminating unwarranted disparity as a result of plea-bargaining. Sentencing disparity may result from differential plea-bargaining settlements or departure motions that are linked to offender characteristics (Albonetti, 1997, p. 792).

### ***Crack-Cocaine and Powder-Cocaine***

The *Guidelines* treat a given amount of crack-cocaine as equivalent to 100 times the amount of powder-cocaine. This 100-to-1 ratio results in sentences for crack-cocaine defendants that are considerably more severe than sentences for powder-cocaine defendants (Inciardi, Surratt, & Kurtz, 2007, p. 252). For example, the penalty for a federal drug trafficking first offense (for the amount of 500-4,999 grams of powder-cocaine and 5-49 grams of crack-cocaine) is not less than five years, and not more than 40 years (DEA, 2010).

The consequence of linking mandatory prison terms to specific quantities of drugs is what is referred to as the “cliff effect”. The “cliff effect” describes situations where small differences in drug quantities result in substantially different lengths of imprisonment (Albonetti, 2002, p. 409). In such instances, similar defendants are sentenced to dissimilar levels of punishment. In 2009, this mandatory sentencing structure resulted in sentences of more than two years longer for crack-cocaine offenses than for powder-cocaine offenses (Mauer, 2010, p. 2).

## **Mandatory Minimums**

Similar to the *Guidelines*, *Mandatory Minimums* require that judges impose a specific sentence for any violation of a specific offense (Kautt, 2000, p. 19). Varying versions of *Mandatory Minimums* exist across U.S. jurisdictions and examples of these statutes include “three strikes laws,” “truth in sentencing” provisions, mandatory sentence enhancements, and simple statutory-mandated sentences. There are more than one hundred separate *Mandatory Minimums* in approximately sixty different federal statutes (Kautt, 2000, p. 19). The criteria for imposing *Mandatory Minimums* vary, as some are offense-based and others are offender-based. Offense-based *Mandatory Minimums* specify a fixed mandatory sentence or sentence enhancement for particular crimes. On the other hand, offender-based *Mandatory Minimums* mandate particular sentences for offenders who have specified prior records (Kautt, 2000, p. 19). The most frequently applied *Mandatory Minimums* are in the areas of drug trafficking and firearm possession during a felony (Kautt, 2000, p. 20).

## **Continuing Role of the Federal Sentencing Guidelines**

The *Guidelines* continue to have an important role in determining federal sentences, despite being challenged in several court cases throughout the years. The constitutionality of the *Guidelines* has been challenged, beginning with the case of *Mistretta v. United States* (1989). *Mistretta v. United States* (1989) upheld the constitutionality of both the *Guidelines* and the USSC against nondelegation and separation of powers challenges (FSGM, 2010, p. 12). In *Apprendi v. New Jersey* (2000), the Court held that the Constitution requires any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction,

be submitted to a jury and proved beyond a reasonable doubt. Therefore, *Apprendi v. New Jersey* (2000) prohibited judges from enhancing criminal sentences beyond statutory minimums.

Next, *Blakely v. Washington* (2004) called the mandatory nature of the *Guidelines* into question. The Court ruled that the Sixth Amendment prohibited judges from enhancing criminal sentences based on facts other than those decided by a jury or admitted by the defendant. The *Blakely v. Washington* (2004) decision called into question whether the *Guidelines* could also be deemed violations of the Sixth Amendment to the U.S. Constitution (Levy-Pounds, 2007, p. 296).

Six months after *Blakely v. Washington* (2004), the case of *United States v. Booker* (2005) drastically altered the constraints of the *Guidelines* by making them advisory rather than mandatory for sentencing judges, therefore preserving their constitutionality (Schanzenbach & Tiller, 2008, p. 716). Because the provision of the federal sentencing statute that made the *Guidelines* mandatory was stricken, district courts are required to instead focus on a broader range of factors when imposing sentences. Furthermore, appellate courts are to review sentences for “reasonableness”. Prior to the Court’s decision in *United States v. Booker* (2005), judges had little *de jure* ability to control the sentences of individual defendants, as sentencing judges were generally not allowed to depart from the *Mandatory Minimums* even under mitigating circumstances (Levy-Pounds, 2007, p. 308). After the *United States v. Booker* (2005) ruling, judges regained *de jure* ability to make sentencing determinations for defendants (Levy-Pounds, 2007, p. 309).

After the *United States v. Booker* ruling, the Court held in *Rita v. United States* (2007) that a court of appeals may apply a presumption of reasonableness to a district court sentence within the *Guidelines*. Similarly, *Gall v. United States* (2007) held that while the extent of the difference between a particular sentence and the recommended *Guidelines* range is relevant, courts of appeal must review all sentences – whether inside, just outside, or significantly outside of the *Guidelines* range – under a deferential abuse-of-discretion standard. Because the *Guidelines* are now advisory, appellate review of sentencing decisions is limited to determining whether they are “reasonable”. *Kimbrough v. United States* (2007) held that the cocaine *Guidelines*, like all other *Guidelines*, are advisory only. A district judge must include the *Guidelines* range in the array of factors warranting consideration, and the Court confirmed that federal district judges have discretion to impose sentence outside of the range dictated by the *Guidelines*.

### **Theoretical Framework**

The analysis of this research is framed by the focal concerns theory of judicial decision making, first articulated by Steffensmeier (1980). The focal concerns theory suggests that judges and other court actors are guided by three focal concerns when determining fair and reasonable sentencing decisions. Because judges are typically limited on time and case information, these three focal concerns are of particular significance.

Steffensmeier and colleagues provide this theoretical framework of focal concerns for the purpose of understanding why extralegal factors such as race, ethnicity, gender, age, and citizenship might influence sentencing decisions despite the creation and implementation of *Guidelines* and *Mandatory Minimums*. The three focal concerns are

blameworthiness, protection of the community, and practical constraints and consequences (Steffensmeier, 1980; Steffensmeier et al., 1993, 1995, 1998; Steffensmeier & Motivans, 2000; Steffensmeier & Demuth, 2000, 2001, 2006; Demuth & Steffensmeier, 2004; Iles, 2009; Doerner & Demuth, 2010).

### **Blameworthiness**

In reference to the focal concern of blameworthiness, the defendant's potential punishment increases according to the offender's culpability and the degree of injury or injustice caused while committing a crime (Steffensmeier et al., 1998, p. 766). For example, being a leader increases blameworthiness, while having previously been victimized at the hands of others tends to mitigate perceived blameworthiness (Steffensmeier & Demuth, 2001, p. 151). Blameworthiness is typically associated with a retributive philosophy of sentencing, with the view that the punishment should fit the crime. Offense severity, criminal history, and the offender's role in offenses may influence judges' and other criminal justice officials' perception of the blameworthiness of the offender (Steffensmeier et al., 1998, p. 767). Thus, when these legally relevant factors are controlled, offender characteristics should not have strong effects on sentencing decisions.

### **Protection of the Community**

The focal concern of protection of the community draws on similar considerations as blameworthiness, but specifically emphasizes need to incarcerate offenders for the sake of deterrence (Steffensmeier et al., 1998). The hope is that incapacitation sets an example and deters would-be offenders and future crime. The focal concern of protection of the community suggests that judges and other court actors make assessments about

offenders' future behavior, dangerousness, and recidivism. Sensitivities exist regarding the impact of recidivism on the court's standing in the community because of local politics and conforming to community norms (Steffensmeier et al., 1998, p. 767). Predictions regarding the dangerousness of the offender and the risk of future violence are based on case information, such as the offender criminal history, facts of the crime such as the use of a weapon, and on characteristics of the offender such as drug dependency, education, employment, family history of offending, or ties to the community (Steffensmeier et al., 1998). Even though extralegal factors should not figure into community protection, race, citizenship status, and other extralegal variables are characteristics that may be associated with future criminal tendencies from the view of criminal justice actors with insufficient information or time (Iles, 2009).

### **Practical Constraints and Consequences**

The focal concern of practical constraints and consequences encompass concerns on both the organization and individual level. Hence, the functioning of the criminal organization as well as the circumstances of individual offenders, their families, and communities are considered. According to Steffensmeier et al. (1998), organizational constraints include "maintaining working relationships among courtroom actors, ensuring the stable flow of cases, and being sensitive to local and state correctional crowding and resources" (p. 767). Examples of organizational constraints that may be taken into account are prison overcrowding and the availability of correctional or alternative programs, such as drug programs or mental health facilities (Iles, 2009). Practical concerns that may weigh in judges' sentencing decision include "the offender's ability to do time, health condition, special needs, the costs to be borne by the correctional system,

and the disruption of ties to children and other family members” (Steffensmeier et al., 1998, p. 767).

The focal concerns and their influence are complex, as judges rarely have complete information on cases and defendants (Steffensmeier & Demuth, 2000, 2001). Based on these three focal concerns, it is possible to assume that judges and other court actors, as both citizens and elected officials, may project behavioral expectations that are reflective of the community in which they serve. Behavioral expectations about whether the offender is likely to be a good or bad risk for rehabilitation, is a potential danger to the community, or is more or less blameworthy and hence more or less deserving of punishment may be considered (Steffensmeier & Demuth, 2000, 2001). Thus, racial, ethnic, and gender-based attributes have the potential to intertwine with the focal concerns that already influence sentencing decisions, including whether to incarcerate, and if so, the length of incarceration (Steffensmeier et al., 1998).

### **Consequences of Federal Sentencing Guidelines and Mandatory Minimum Statutes**

Disparities that are present in the federal court system are often blamed on the *Guidelines* and *Mandatory Minimums*, often interchangeably. Incarceration remains as the dominant sentencing practice, which produces effects on families, civil liberties, minority communities, disenfranchisement, and general offender well being. The consequences of loss of judicial discretion, prison population growth, racial and ethnic disparity, and the associated effects on communities are of particular interest to this research.

### **Loss of Judicial Discretion**

One criticism of the *Guidelines* and *Mandatory Minimums* is due to the redistribution of power and discretion in the courtroom setting. Some critics assert that through the use of the *Guidelines* and *Mandatory Minimums*, power shifts from judges to prosecutors. Legal scholars and court officials suggest that the *Guidelines* allow prosecuting attorneys to gain more control over the sentencing process, while judges lose much of the discretion they once possessed (Albonetti, 1997, 2002; Kautt, 2000; Levy-Pounds, 2007). Prior to the *Guidelines*, prosecutorial power was restricted by judicial discretion in sentencing. However, within the *Guidelines*, prosecutors hold great bargaining power over the defendants and are able to determine whether to reduce charges, to accept plea bargains, to reward a defendant's substantial assistance, and to ultimately determine the final sentence (Standen, 1993; Albonetti, 1997; Arditti & McClintock, 2001). The change in power is specifically exemplified under the *Guidelines* substantial assistance departures, safety valve exceptions, and plea agreements (Albonetti, 1997; Kautt, 2000; Levy-Pounds, 2007).

### **Prison Population Growth**

Correctional supervision totals include adults supervised in the community on probation or parole as well as those incarcerated in state or federal prisons and local jails (BJS, 2011). The number of individuals under correctional supervision has grown from 1.8 million in 1980 to 7.2 million in both 2008 and 2009 (BJS, 2011). In 1980, 1.3 million individuals were on probation or parole and 501,886 individuals were incarcerated in prisons and jails (BJS, 2011). As of 2008, 5.1 million were on probation or parole and 2.3 million were incarcerated in prisons or jails (BJS, 2011). The total

number of offenders under correctional supervision in 2009 represented approximately 3.1 percent of adults in the U.S. population, or one in every 32 adults (Glaze, 2010).

The U.S. maintains the highest incarceration rate in the world at 502 per 100,000 in 2009 (BJS, 2011). The U.S. incarceration rate was 139 per 100,000 in 1980 and grew to 504 per 100,000 by 2008 (BJS, 2011; Sourcebook of Criminal Justice Statistics, 2009). Despite the incarceration rate increase over a 29-year time span, the incarceration rate has declined for two consecutive years, between 2007 and 2009 (West, Sabol, & Greenman, 2010).

The federal war on drugs is associated with contributing to the increase in the prison population. The war on drugs has overloaded the criminal justice system by requiring expansions to courts, jails, and prisons (Moore & Elkavich, 2008). Between the years of 1925 and 1975, the prison incarceration rate remained stable at approximately 100 incarcerated per 100,000 of the resident population (Pettit & Western, 2004, p. 152). Following this 50-year period of prison rate stability, U.S. incarceration rates increased dramatically throughout the 1970s, 1980s, and 1990s, and quadrupled by the end of the century (BJS, 2011; Blumstein & Wallman, 2006; Kautt, 2000). The growth in the rate of arrested and sentenced offenders in combination with the increase in time served contributed most heavily to the prison population expansion (Blumstein & Wallman, 2006).

A range of factors, such as crime rates, discretionary policing patterns, and an increase in targeting drug offenses, contribute to the increase in arrests in the U.S. By declaring a “war” against drugs, militaristic strategies of reducing the supply and the demand for drugs occur (Arditti & McClintock, 2001). Resulting from the politics of the

war on drugs, law enforcement is evaluated by and defines its success by enforcing public safety through the number of arrests, where high arrest rates indicate the most success (King, 2008; Moore & Elkavich, 2008). Similarly, increased incarceration is viewed as producing a safer society by removing offenders and their unlawful behavior from the public sphere (Moore & Elkavich, 2008). Using arrests as a means of measuring success is problematic because while arrests are the product of crimes being committed, they are also the result of discretionary policing decisions. Increases in arrests are caused by many factors, including an increase in criminal activity as well as an administrative decision to police in certain areas and neighborhoods (King, 2008).

Additionally, focusing on a specific crime, such as drug offenses, can spike arrests rates (King, 2008). The estimated number of arrests for drug abuse violations was 471,200 in 1980 and rose to 1.6 million by 2007 (BJS, 2011). Targeting drug offenses greatly contributed to the increase in arrest rates, and from that, the soaring incarceration population. In 1980, there were 7,119 federal drug defendants in cases concluded in U.S. district courts. This number rose to 31,704 federal drug defendants by 2006 (BJS, 2011). On the state level, there were 19,000 drug offenders under the jurisdiction of state correctional authorities in 1980. The number of drug offenders under the jurisdiction of state correctional authorities rose to 265,880 by 2006 (BJS, 2011). *Mandatory Minimums* specifically directed toward drug offenses and other crimes increase the proportion of arrested drug offenders who are sentenced to prison and also increase the length of time that offenders serve in prison (Mauer, 2006, p. 167). For example, drug offenders released from prison in 1990 and not sentenced under the *Guidelines* served an average of 30 months in prison (Mauer, 2006, p. 167). Comparably, offenders sentenced to prison in

1990 under the *Guidelines* were expected to serve an average of 66 months (Mauer, 2006, p. 167). The proportion of federal prisoners convicted of drug offenses increased from 25 percent in 1980 to 55 percent in 2004 (Mauer, 2006, p. 167). Moreover, Blacks convicted of drug offenses are overrepresented in prison by nearly 50 percent (Blumstein, 1993, p. 751; Spohn, 2009, p. 181).

### **Racial and Ethnic Disparity**

Many studies exist on the topic of racial discrimination and begin with the disproportionate representation of Blacks and other minorities in the criminal justice system, both in arrest and incarceration statistics as compared to their representation in the total population. Dating back to the 1991 Special Report to the Congress, racial discrimination is reported (Wilkins et al., 1991, p. iii):

The disparate application of mandatory minimum sentences in cases in which available data strongly suggest that a mandatory minimum is applicable appears to be related to the race of the defendant, where whites are more likely than non-whites to be sentenced below the applicable mandatory minimum; and to the circuit in which the defendant happens to be sentenced, where defendants sentenced in some circuits are more likely to be sentenced below the applicable mandatory minimums than defendants sentenced in other circuits. This differential application on the basis of race and circuit reflects the very kind of disparity and discrimination the Sentencing Reform Act, through a system of guidelines, was designed to reduce.

The USSC's 1991 review found that 54 percent of White defendants are sentenced at the mandatory minimum, compared to 67.7 percent of Black defendants, and 57.1 percent of Hispanic defendants (Wilkins et al., 1991, p. 51).

Blacks and Hispanics are minorities in the United States population, but are overrepresented as defendants in criminal courts and as inmates in prison (McBride et al., 2009, p. 74; Doerner & Demuth, 2010). Blacks make up 13 percent of the U.S. population, but are incarcerated at a rate approximately seven times higher than their

White counterparts and account for roughly 60 percent of the incarcerated population (Moore & Elkavich, 2008, p. 783; Kautt, 2000, p. 25; Spohn, 2009, p. 176). Black males are particularly over represented as the data reveal that 1 in every 33 Black men are incarcerated in a state or federal prison, compared with 1 in every 79 Hispanic men, and 1 in every 205 White men (Spohn, 2009, p. 132). Stated another way, 3,109 Black men are incarcerated for every 100,000 Black men in the population of the U.S. (Freidman, 1998, p. 78; Huggins, 2005, p. 78). The disparities are particularly prominent for young Black males, whose incarceration rate is approximately 25 times higher than the rest of the population (Mauer, 2006, p. 158; Kautt, 2000, p. 25; Moore & Elkavich, 2008, p. 784; Steffensmeier et al., 1998, p. 763). While the figures are much smaller for Black females, the pattern is similar (Spohn, 2009, p. 132).

Racial differences vary by crime type, where the disparity is most pronounced for street crimes and drug crimes and least evident for property crimes (Kautt, 2000, p. 25). The discretionary enforcement of drug laws in specific areas or neighborhoods amplifies incarceration rates and contributes to the cycle of removing men, women, and children from communities (Moore & Elkavich, 2008, p. 784). Blacks make up 62.6 percent of drug offenders in state prisons. Nationwide, the rate of incarceration for drug charges is 13 times higher for Black men than for White men (Moore & Elkavich, 2008, p. 784). Furthermore, the rates for Black men are 26 to 57 times higher than those for White men in 10 states, as of 1996 (Moore & Elkavich, 2008, p. 784). The chances of receiving a prison sentence after being arrested for a drug offense increased by 447 percent between 1980 and 1992 (BJS; Mauer, 2006, p. 167). From 1985 to 1995, drug offenders made up 42 percent of the rise in the Black state prison population (Mauer, 2006, p. 169). This

disproportionate representation of racial and ethnic minorities in the Criminal Justice system continues to be a source of concern because it suggests the possibility of discrimination within the criminal justice system (Doerner & Demuth, 2010).

A number of factors contribute to why the war on drugs specifically exacerbates racial inequality. Scholars trace high incarceration rates among Black men to several sources, including slim economic opportunities and turbulent living conditions that lead to criminal activity (Pettit & Western, 2004, p. 152). Racially unequal patterns of arrest and incarceration indicate a diversion from the principle of fairness and create a culture of distrust between entire communities and law enforcement because the credibility of the law is tainted (Pettit & Western, 2004, p. 152; King, 2008, p. 28). From the perspective of the people living in low-income urban communities, the policing strategies of the war on drugs undermine the fundamental fairness of the criminal justice system (King, 2008, p. 27). With high crime rates in many low-income Black communities, there is a higher police presence in these neighborhoods results. The National Crime Victimization Survey (NCVS) and the FBI Uniform Crime Report (UCR), the two leading indicators of crime, indicate heightened rates of crime and victimization in Black neighborhoods. As a result of policing practices being centered in these communities, the likelihood of police contact and arrest also increase (King, 2008, p. 21).

Additionally, drug sales in many low-income Black communities occur in public spaces, thereby making detection by the police an easier and more common task (King, 2008, p. 21). Drug markets often function through gang sales, where distribution occurs on various street corners via face-to-face contact. Furthermore, Black drug markets are often characterized by stranger-to-stranger sales. In this type of selling scheme,

individuals selling drugs are more at risk for the “buy and bust” undercover police tactic (King, 2008, p. 22). The more visible style of drug sales in Black communities is also likely to cause public complaints, thus attracting the scrutiny of law enforcement as well as adding pressure to respond accordingly (King, 2008, p. 24). By comparison, police forces are much less likely to infiltrate and make arrests in White suburban drug markets, as there are no consistent drug-selling neighborhoods or specific locations. Drug transactions by Whites are more likely to be sold by word-of-mouth means and occur at taverns, places of employment, or during after work leisure activities, all of which requires insider knowledge on the part of law enforcement (King, 2008, p. 22). While drug sales and drug use occur in any neighborhood, despite race or social class, the methods of drug distribution in Black communities allow for the elevated risk of arrest by law enforcement (King, 2008, p. 23).

### ***Crack-Cocaine and Powder-Cocaine***

A source of criticism of the *Guidelines* is the differential sentence lengths for crack-cocaine, powder-cocaine, and other drugs. As previously mentioned, current federal sentencing law allows for more severe penalties for possession of crack-cocaine than for powder-cocaine (Kautt, 2000, Spohn & Spears, 2001). The *Guidelines* treat a given amount of crack-cocaine as equivalent to 100 times the amount of powder-cocaine. This 100-to-1 ratio results in sentences for crack-cocaine defendants that are considerably more severe than sentences for powder-cocaine defendants (Inciardi, Surratt, & Kurtz, 2007, p. 252). Small differences in drug quantities result in considerably different lengths of imprisonment, thus causing similar defendants to be sentenced to dissimilar levels of punishment. Despite the sentencing differences between powder-cocaine and crack-

cocaine, no evidence indicates a pharmacological difference in the two forms of cocaine significant enough to account for the large disparity in sentencing, as the two drugs have nearly identical chemical compositions (Levy-Pounds, 2007, p. 303; Kautt, 2000, p. 13). This sentencing policy has been criticized on the basis that it discriminates against Blacks (Inciardi, Surratt, & Kurtz, 2007, p. 252). Because Blacks and individuals of lower social class are much more likely to use crack-cocaine than powder-cocaine, they are more likely to receive *Mandatory Minimums*. In 2006, Blacks comprised 81.5 percent of federal crack-cocaine and 27.0 percent of federal powder-cocaine defendants. Comparatively, Whites represented 8.8 percent of federal crack-cocaine defendants and 14.3 percent of federal powder-cocaine defendants. Hispanics represented 8.4 percent of federal crack-cocaine defendants and 57.5 percent of federal powder-cocaine defendants. Defendants who identified their race as other represented 1.0 percent of federal crack-cocaine defendants and 1.2 percent of federal powder-cocaine defendants (The Sentencing Project, 2010, p. 5; USSC, 2006). The USSC attempted to remedy this inconsistently by recommending that Congress make the sentencing terms for crack-cocaine and powder-cocaine offenses more consistent. Up through 2009, Congress did not respond to the USSC's recommendation and failed to close the sentencing gap between crack-cocaine and powder-cocaine (Levy-Pounds, 2007, p. 304).<sup>1</sup>

Neither the National Survey on Drug Use and Health (NSDUH) nor the Monitoring the Future (MTF) study show significant differences in rates of illicit drug use among youth based on race or ethnic group (McBride et al., 2009, p. 74). The rates of illicit drug use are roughly the same for Blacks, at 7.4 percent, and Whites, at 7.2 percent,

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<sup>1</sup> The sentencing gap between crack-cocaine and powder-cocaine has since been narrowed. See 'Discussion' for clarification of the updated legislation, specifically the Fair Sentencing Act of 2010.

and are slightly lower for Latinos, at 6.4 percent (Moore & Elkavich, 2008, p. 783). In 1998, Whites were nearly five times more likely than Blacks to use marijuana and were three times more likely than Blacks to have ever used crack-cocaine (Moore & Elkavich, 2008, p. 783). To summarize, Blacks are not more likely to use drugs, yet, they are more likely to be arrested and prosecuted for their use according to drug use statistics as compared to arrest and sentencing statistics (Moore & Elkavich, 2008, p. 784).

### **Effects on Communities**

The economic and social costs of the war on drugs are especially devastating in many Black communities (King, 2008). In addition to the community costs of drug abuse, the war on drugs takes a toll on urban communities. The measurable effects of the war on drugs include the financial costs being channeled into law enforcement and away from drug treatment and prevention programs, the individuals removed from communities because of incarceration, and lives that are lost to violence (King, 2008, pp. 26-27). The war on drugs disproportionately impacts Black communities, both through sentencing policy and law enforcement priorities (Mauer, 2010).

Within the Black community, the proportion of adult males who are incarcerated varies from community to community. In 2003, nearly eight percent of adult Black males or one in 13 were incarcerated (Mauer, 2006, p. 202). The ratio increases for black males in their late twenties, where the figure is one in eight adult black males (Mauer, 2006, p. 202).

By employing discretionary policing strategies, harsh penalties are applied to a sample of the population that is not necessarily representative of all the persons who violate the drug laws (Mauer, 2010). The removal of a violent offender from a

community typically brings some level of public safety, which is desirable, even in instances where the offender's family suffers from this loss. In the case of nonviolent property and drug offenders, many residents are being removed from communities, which is specifically decreasing the population in poor and minority neighborhoods (Mauer, 2006). In most communities, the number of offenders sentenced to prison is relatively small and therefore has a minimal effect on the community (Mauer, 2006). By contrast, the effects felt by communities substantially increase when large numbers of individuals are incarcerated, which often occurs in low-income and predominantly Black neighborhoods (Mauer, 2006, p. 202). Communities are weakened by fragmented families, the incarceration of a large amount of the population, and the stigmatization stemming from incarceration. Many of these communities are already economically stressed, and the added stress of the loss of adults to prison further weakens the community structure.

Furthermore, nonviolent property and drug offenders are more likely than violent offenders to be socially integrated to their communities and have social and professional ties to legitimate institutions, such as families, education, and labor markets (Arditti & McClintock, 2001, p. 21). Therefore, removing integrated and involved members of the community disrupts the communities as a whole. Prolonged separation of offenders from their families and communities is likely to worsen the challenge of social integration upon release (Arditti & McClintock, 2001, p. 21).

### **Previous Research Studies**

Previous research finds that Black offenders tend to have legal characteristics, such as longer criminal histories, that often contribute to harsher sentences.

Consequently, researchers have dealt with the correlation between race and legally relevant factors by dividing racial disparity into two categories: warranted and unwarranted disparity (Bushway & Piehl, 2001, p. 734; Spohn, 2009, p. 140). Any variation in sentencing outcomes due to legally relevant factors, including criminal history, crime type, and crime severity are identified as warranted disparity. As long as sentencing differences resulted from the application of legitimate criteria, the disparity is classified as warranted (Spohn, 2009, p. 141). On the other hand, the variation in sentencing outcomes that can be reasonably identified as being the result of race/ethnicity or other extra-legal factors after all legally relevant sentence factors are taken into account are identified as unwarranted disparity (Bushway & Piehl, 2001, p. 734). In other words, unwarranted sentencing disparity occurs when legally similar or comparable defendants receive dissimilar sentences (Ulmer, 1997, p. 7). Discussions of unwarranted disparity typically focus on the influence of extralegal factors on sentencing and investigate how much influence extralegal factors exert in sentencing (Ulmer, 1997, p. 7). Filtering out warranted and unwarranted disparity is usually done using standard regression techniques (Ulmer, 1997; Rodriguez, Curry, & Lee, 2006).

Previous research consistently indicates that differences in legally relevant case characteristics, including offense severity, criminal history, multiple charges, and mode of conviction, account for a majority of the variation in sentences (Kramer & Steffensmeier, 1993; Steffensmeier, Kramer, & Streifel, 1993; Dixon, 1995; Ulmer, 1997; Engen & Gainey, 2000; Kautt & Spohn, 2002; Stacey & Spohn, 2006; Iles, 2009; Doerner & Demuth, 2010). In addition to the legally relevant case characteristics, jurisdictional differences in the law and differences in the structural organization and

cultural norms of courtrooms have been suggested to contribute to some of the variation in sentencing outcomes (Dixon, 1995; Ulmer, 1997). After all of aforementioned legally relevant factors are considered, there is evidence that sentencing decisions are influenced by extralegal factors, such as the defendant's race/ethnicity, gender, and age (Champion, 1987; Bickle & Peterson, 1991; Kramer & Steffensmeier, 1993; Steffensmeier, Kramer, & Streifel, 1993; Daly & Bordt, 1995; Steffensmeier, Kramer, & Ulmer, 1995; Albonetti, 1997, 2002; Ulmer, 1997; Steffensmeier, Ulmer, & Kramer, 1998; Spohn, 1999; Williams, 1999; Steffensmeier & Demuth, 2000, 2001, 2006; Spohn & Beichner, 2000; Spohn & Holleran, 2000; Steffensmeier & Motivans, 2000; Bushway & Piehl, 2001; Mustard, 2001; Demuth, 2002; Everett & Wojtkiewicz, 2002; Kautt & Spohn, 2002; Kautt, 2002; Demuth & Steffensmeier, 2004; Rodriguez, Curry, & Lee, 2006; Stacey & Spohn, 2006; Blackwell, Holleran, & Finn, 2008; Brennan & Spohn, 2008, 2009; Crow, 2008; Curry & Corral-Camacho, 2008; Iles, 2009; Doerner & Demuth, 2010). Recently, research focuses on contextual factors, including racial or ethnic composition, unemployment, crime rates, and political party identification (Wang & Mears, 2010, p. 3).

### **The Effects of Race/Ethnicity**

Research focusing on racial disparity arises from the question of whether racial and ethnic minorities are discriminated against in the processes of administering criminal sanctions (Ulmer, 1997, p. 8). Extensive literature exists on racial discrimination in sentencing outcomes. As a result of the history of slavery and Jim Crow laws in the U.S., much of the research on sentencing disparity focuses primarily on the effects of race in legal decisions, sentencing decisions, and sentencing lengths, specifically for Black and

White defendants (Iles, 2009, p. 64). Findings from previous research on this topic vary, where some studies find that Black defendants are incarcerated more often and receive longer sentences than White defendants, other studies find few substantial differences in the sentencing of Black and White defendants, and some studies produce mixed results (Steffensmeier & Demuth, 2000, 2001, 2006; Spohn & Beichner, 2000; Spohn & Holleran, 2000; Steffensmeier & Motivans, 2000; Bushway & Piehl, 2001; Mustard, 2001; Albonetti, 2002; Demuth, 2002; Everett & Wojtkiewicz, 2002; Kautt & Spohn, 2002; Kautt, 2002; Demuth & Steffensmeier, 2004; Rodriguez, Curry, & Lee, 2006; Stacey & Spohn, 2006; Blackwell, Holleran, & Finn, 2008; Brennan & Spohn, 2008, 2009; Crow, 2008; Curry & Corral-Camacho, 2008; Iles, 2009; Doerner & Demuth, 2010). The findings of more than 40 years of research on the effect of race/ethnicity on sentencing outcomes and sentencing length have not resolved the debate (Kautt & Spohn, 2002, p. 2). Recent studies of sentencing differences between Black defendants and White defendants in state and federal courts generally find that Black defendants receive harsher sentences than comparable White defendants (Kramer & Steffensmeier, 1993; Albonetti, 1997; Ulmer, 1997; Steffensmeier, Ulmer, & Kramer, 1998; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2000, 2001, 2006; Bushway & Piehl, 2001; Mustard, 2001; Demuth, 2002; Everett & Wojtkiewicz, 2002; Kautt, 2002; Demuth & Steffensmeier, 2004; Mitchell, 2005; Brennan & Spohn, 2008; Curry & Corral-Camacho, 2008; Doerner & Demuth, 2010).

The research literature specifically addressing how Hispanic ethnicity influences criminal sentencing decision making in comparison to Black-White outcomes is growing. Prior research tends to show that Hispanic and Black defendants both receive harsher

sentences than similarly situated White defendants (Albonetti, 1997; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2000, 2001, 2006; Demuth, 2002; Everett & Wojtkiewicz, 2002; Demuth & Steffensmeier, 2004; Mitchell, 2005; Steffensmeier & Demuth, 2006; Brennan & Spohn, 2008; Curry & Corral-Camacho, 2008; Brennan & Spohn, 2009; Doerner & Demuth, 2010; Spohn & Brennan, 2011). In some cases, the disadvantage is greater for Hispanics than Blacks (Steffensmeier & Demuth, 2000, 2001; Demuth, 2002; Brennan & Spohn, 2008; Iles, 2009); in other cases the disadvantage is greater for Blacks than Hispanics (Curry & Corral-Camacho, 2008).

Kramer and Steffensmeier (1993) use the Pennsylvania guidelines sentencing data to test the effects of race on sentencing decisions (p. 357). Their findings reveal that net of other factors, race has a small effect on the judicial decision of whether or not to incarcerate, but has a negligible effect on the judicial determination of sentencing length (Kramer & Steffensmeier, 1993, p. 357). Despite the fact that Black defendants are slightly more likely to be sentenced to prison than White defendants, they find that offense severity is overwhelmingly the most significant factor influencing judicial sentencing (Kramer & Steffensmeier, 1993, p. 370).

Steffensmeier and Demuth (2000) use federal court data collected by the USSC for the years 1993-1996 and examines racial and ethnic differences – White versus Black versus White-Hispanic versus Black-Hispanic – in sentencing outcomes under the *Guidelines* (p. 705). The results find that ethnicity has a small to moderate effect on sentencing outcomes that favors White defendants and penalizes Hispanic defendants. The main finding is that Hispanic drug offenders receive the harshest penalties, which is most pronounced in prosecutor-controlled *Guidelines* departure cases (Steffensmeier &

Demuth, 2000, p. 705). Hispanic defendants receive harsher sentences than White or Black defendants (Steffensmeier & Demuth, 2000, p. 726).

Bushway and Piehl (2001) isolate the part of the variation in sentencing that is due to the discretion of the judge and model the *Guidelines* themselves (p. 733). Using sentencing data from Maryland, Bushway and Piehl (2001) find more judicial discretion and greater racial disparity than is generally found in the literature on the subject. Their results suggest that Blacks average 20 percent longer sentences than Whites. In attempting to explain the discretion, they conclude that judges tend to give longer sentences relative to the recommended *Guidelines* to Black defendants (Bushway & Piehl, 2001, p. 733).

Steffensmeier and Demuth (2001) use data on Pennsylvania sentencing practices and compare the sentencing outcomes of White, Black, and Hispanic defendants (p. 145). Generally, they find considerable consistency in the sentencing of Pennsylvania criminal defendants, as similar sentences are prescribed for similar defendants convicted of the same offense across ethnic groups (Steffensmeier & Demuth, 2001, p. 166). Nevertheless, they find that ethnicity has a small to moderate effect on both the decision to incarcerate and the sentence length decision, both favoring White defendants and penalizing Hispanic defendants, with Black defendants falling in the middle (Steffensmeier & Demuth, 2001, p. 166). The research finds more lenient treatment of White defendants and suggests that Hispanic defendants are at greater risk to receive the harshest penalty for both drug and non-drug cases (Steffensmeier & Demuth, 2001, p. 145).

Everett and Wojtkiewicz (2002) examine the degree to which disparity in sentencing on the basis of race and ethnicity occurs in federal sentencing after the *Guidelines* were implemented (p. 189). They use data from the USSC Monitoring Database from October 1, 1991 to September 30, 1993 (Everett & Wojtkiewicz, 2002, p. 195). The findings of this study suggest that Blacks, Hispanics, and Native Americans receive relatively harsher sentences than Whites. Additionally, these differences are only partially explained by offense-related characteristics (Everett & Wojtkiewicz, 2002, p. 189). According to Everett and Wojtkiewicz (2002), “offenders are sanctioned partially for what they have done (offense characteristics, criminal history), for who they are (race/ethnicity, age, gender) and for what they may fail to do during the punishment process (plead guilty or express remorse)” (p. 208). From this point, they suggest that Blacks and Hispanics are less likely to plead guilty or accept responsibility and this contributes to their longer sentences (Everett & Wojtkiewicz, 2002, p. 208). Everett and Wojtkiewicz (2002) find that Hispanic and Black defendants receive more severe sentences than White defendants in the federal courts after controlling for legally relevant variables.

Demuth and Steffensmeier (2004) examine the racial differences in sentencing in state felony courts using the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics for the years 1990, 1992, 1994, and 1996 (p. 994). Their findings suggest that Hispanic defendants are sentenced more similarly to Black defendants than comparable White defendants. Further, both Black and Hispanic defendants receive harsher sentences than White defendants (Demuth & Steffensmeier, 2004, p. 1008).

Brennan and Spohn (2008) examine sentencing outcomes for a random sample of Black/White, Hispanic/White, and Hispanic/Black felony drug offenders convicted in 2000 in a large urban jurisdiction in North Carolina. They report that White offenders received less severe punishments than either Blacks or Hispanics. Furthermore, they conclude that Hispanic offenders are particularly disadvantaged because they receive harsher punishments relative to both Blacks and Whites (Brennan & Spohn, 2008, p. 371).

Crow (2008) investigates the complexities of prior record, race, ethnicity, and sentencing policies on the sentencing of felony offenders using data compiled by the Florida Department of Corrections (p. 502). This study incorporates multiple dimensions of prior record to analyze the differential impact of those dimensions across race/ethnicity and offense type and examines the effects across different sentencing policies (Crow, 2008, p. 502). Crow (2008) finds that calculations of risks and dangerousness are based on a combination of legal variables and extralegal variables. The findings suggest that race conditions prior record, but the effect is not entirely straightforward because different dimensions of prior record interact with the race and ethnicity of the defendant (Crow, 2008, p. 519).

Iles (2009) analyzes the sentences of 583 federal defendants sentenced in the District Court of the U.S. Virgin Islands between 1997 and 2004 (p. 64). In this study, the strongest predictors of federal sentencing are legally relevant factors, indicating that judges' decisions are based on factors that the USSC determine to be relevant (Iles, 2009, p. 73). The results of this study reveal that after legally relevant factors are considered, Hispanics receive harsher sentences than Blacks (Iles, 2009, p. 64). Citizenship status is

an important contributor to the sentence length and legal aliens receive significantly longer prison sentences than the sentences received by U.S. citizens (Iles, 2009, p. 64). According to Iles (2009), the harsher sentences imposed on legal aliens are directed towards defendants who are citizens of the Dominican Republic (p. 64).

Despite the aforementioned findings, it is important to note that some studies find little or no effects of race (Dixon, 1995; Engen & Gainey, 2000; Spohn & Spears, 2001; Kautt & Spohn, 2002). Dixon (1995) examines sentencing outcomes in 73 counties in Minnesota to evaluate various theoretical approaches to sentencing. Specifically, Dixon (1995) appraises “the formal legal theory of sentencing, which predicts that legal variables are the primary determinants of sentencing, the substantive political theory, which predicts that legal and social status variables determine sentencing, and the organizational maintenance theory, which predicts that legal and processing variables determine sentencing” (p. 1157). The findings suggest that the effects of legal variables are important determinants of sentencing regardless of the organizational context. However, the level of bureaucratization in courts conditions the effects of pleas. Finally, Dixon (1995) finds no significant relationship between race and sentencing and asserts that racial effects on sentencing are curtailed by the use of the *Guidelines* (p. 1191).

Engen and Gainey (2000) present an alternative approach to specify more precisely the effects of legally relevant factors on sentencing outcomes (p. 1207). The felony sentencing data for this study are from the Washington State Sentencing Guidelines Commission (Engen & Gainey, 2000, p. 1241). This research controls for the presumptive sentence, which the authors claim substantially improves the fit and explanatory power of models predicting sentencing decisions (Engen & Gainey, 2000, p.

1207). Consequently, the estimated effects of extralegal factors, especially race and sex, are reduced considerably. It should be noted that Ulmer (2000) offers a comment on Engen and Gainey's method for modeling sentencing outcomes under guidelines, where he stresses his reluctance to recommend the omission of the offense seriousness and offender history variables (p. 1240).

Spohn and Spears (2001) examine sentences imposed on drug offenders with the purpose of investigating racial discrimination in sentencing. The authors use three jurisdictions in their study, which are Cook County, Illinois; Dade County, Florida; and Jackson County, Missouri. Spohn and Spears (2001) find very limited support for assertions that Black and Hispanic drug offenders are sentenced more harshly than White drug offenders. The results suggest that Hispanics face greater odds of incarceration than comparable Whites in Miami, but that racial minorities and Whites are sentenced to prison at the same rate in Chicago and Kansas City (p. 223). This study finds that race/ethnicity effect sentencing for drug offenders in an unexpected manner, in that the sentences imposed on Hispanic drug offenders are significantly longer than the sentences imposed on Black drug offenders in both Chicago and Miami. However, further analysis shows that only Hispanic offenders convicted of the most serious drug offenses, those with a prior felony conviction, and those who are unemployed receive longer sentences than Black offenders, indicating a notable interplay between legal and extralegal variables.

### *The Effects of Citizenship Status*

One shortcoming of studies investigating racial and ethnic disparities in sentencing outcomes is the failure to address the role of citizenship status on sentencing

outcomes. Of the research studies investigating the effects of citizenship status that do exist, findings generally suggest that citizens are sentenced more leniently than non-citizens (Albonetti, 1997; Demuth, 2002; Iles, 2009).

Demuth (2002) examines sentencing outcomes in guideline drug cases to determine whether a defendant's citizenship status has an effect on sentencing outcomes after controlling for other legal and extralegal factors (p. 271). Demuth (2002) finds that noncitizen defendants are more likely to receive incarceration sentences than citizen defendants (p. 274). Additionally, Black and Hispanic defendants are more likely to receive incarceration sentences than comparable White defendants (Demuth, 2002, p. 274). Even though Black defendants tend to receive slightly longer sentences than White and Hispanic defendants, Demuth (2002) finds no sentence length difference between illegal aliens, legal aliens, and citizen defendants (p. 274).

### **The Effects of Gender**

While not nearly as extensively studied as race and ethnicity, researchers are paying increasing attention to gender and its potential interaction with race and ethnicity (Curry & Corral-Camacho, 2008, p. 256). The most common finding in sentencing literature is that adult female defendants are treated more leniently than comparable adult male defendants and with the exception of violent crimes, women are less likely to be incarcerated and tend to receive shorter sentences (Bickle & Peterson, 1991; Steffensmeier, Kramer, & Streifel, 1993; Daly & Bordt, 1995; Albonetti, 1997, 2002; Ulmer, 1997; Steffensmeier, Ulmer, & Kramer, 1998; Spohn, 1999; Spohn & Beichner, 2000; Spohn & Holleran, 2000; Mustard, 2001; Kautt, 2002; Rodriguez, Curry, & Lee, 2006; Stacey & Spohn, 2006; Steffensmeier & Demuth, 2006; Blackwell, Holleran, &

Finn, 2008; Curry & Corral-Camacho, 2008; Brennan & Spohn, 2009; BJS, 2010; Doerner & Demuth, 2010). Studies investigating Black/White gender comparisons show that Black males have the greatest odds of being incarcerated (Spohn et al., 1985; Spohn & Spears, 1996; Ulmer, 1997; Steffensmeier, Ulmer, & Kramer, 1998; Spohn & Beichner, 2000; Spohn & Holleran, 2000; Mustard, 2001; Kautt, 2002; Curry & Corral-Camacho, 2008; Brennan & Spohn, 2009).

Steffensmeier, Kramer, and Streifel (1993) study Pennsylvania offenders for the years 1985-1987 to analyze and assess the influence of gender on judges' imprisonment decisions (p. 411). Their results indicate that gender "has a small effect on the likelihood of imprisonment toward lesser jailing of female defendants" but has an insignificant effect on the sentence length decision (Steffensmeier et al., 1993, p. 411). According to their findings, males are more likely to be incarcerated and to receive lengthier sentences. However, male offenders in this study had higher offense severity scores than females, as well as lengthier prior records of offending. Moreover, the two legal variables are correlated strongly with sentence outcomes, and gender and the other variables in their models are correlated weakly with sentence outcomes (Steffensmeier et al., 1993, p. 411).

Spohn (1999) tests the validity of the assertions that female drug offenders are treated the same as, or more harshly than, their male counterparts since the onset of the war on drugs (p. 365). Spohn (1999) compares the likelihood of incarceration for males and females convicted of drug offenses in 1993 and 1994 in Chicago (p. 376). The results suggest that females are significantly less likely than males to be sentenced to prison (Spohn, 1999, p. 365). Additionally, tests for interaction reveal that preferential treatment

is restricted to offenders without dependent children and to offenders without a prior conviction for a drug offense (Spohn, 1999, p. 365).

Williams (1999) uses data from adult felony cases between 1994 and 1996 in Leon County, Florida to address the influence of gender in sentencing (p. 475). This research addresses the issue of gender in sentencing by examining the factors that influence a judge's decision to sentence males and females to particular punishments (Williams, 1999, p. 471). The results of this study indicate that judges consider both legally relevant and extralegal factors when sentencing females. However, judges only consider legally relevant factors when sentencing males (Williams, 1999, p. 471).

Spohn and Beichner (2000) use data on offenders convicted of felonies in Chicago, Miami, and Kansas City to address the topic of differential sentencing of female offenders (p. 149). Their study finds that women face significantly lower odds of incarceration than similarly situated men in all three jurisdictions (Spohn & Beichner, 2000, p. 149). Additionally, "the effect of race is conditioned by gender but the effect of gender, with only one exception, is not conditioned by race; harsher treatment of racial minorities is confined to men but more lenient treatment of women is found for both racial minorities and Whites" (Spohn & Beichner, 2000, p. 149). White and Black women are less likely than their male counterparts to be sentenced to prison in both Chicago and Kansas City and in Miami, Black women face lower odds of incarceration than Black men (Spohn & Beichner, 2000, p. 173). The study indicates that the effects of other legal and extralegal variables are conditioned by gender in all three jurisdictions (Spohn & Beichner, 2000, p. 173).

Rodriguez, Curry, and Lee (2006) use a large random sample of convicted offenders in Texas drawn from a statewide project on sentencing practices. This research uses logistic regression and ordinary least squares (OLS) regression analyses of likelihood of imprisonment and prison length to illustrate sentencing outcomes in terms of gender and crime type (Rodriguez et al., 2006, p. 318). Their findings suggest that the effect of gender on sentencing varies by crime type, where females are less likely to be sentenced to prison and also receive shorter sentences if they are sentenced to prison for both property and drug offending (Rodriguez et al., 2006, p. 318). However, these findings do not hold true for violent offending.

Stacey and Spohn (2006) set out to determine if the *Guidelines* have accomplished their goal of eliminating unwarranted disparities in sentencing by studying gender disparities, where they question whether sentencing outcomes for male and female offenders are affected by whether defendants are attached to a family unit through marriage or children (p. 73). Similar to previous research, this study reports that female offenders are treated more leniently than male offenders and that female offenders receive sentences that are approximately ten months shorter than the sentences imposed on comparable male offenders (Stacey & Spohn, 2006, p. 73). Additionally, Stacey and Spohn (2006) find that females are significantly more likely than males to receive a downward departure for providing substantial assistance and in instances where substantial assistance is provided, females receive greater sentencing discounts than their male counterparts (p. 73). While Stacey and Spohn (2006) find that an offender's gender is a significant predictor of the length of the sentence imposed by the judge, the effects of

case characteristics explain more variation in sentencing differences than the effect of gender (p. 67).

Blackwell, Holleran, and Finn (2008) examine the influence of sentencing guidelines on the outcomes of male and female defendants sentenced in Pennsylvania during three periods, one of which did not apply sentencing guidelines (p. 399). This study finds that sentencing guidelines do not reduce the gender disparity in sentencing (p. 409). Their results support the previously found disparity based on gender, where women are less likely than men to be incarcerated, with or without sentencing guidelines. Their results find that because Pennsylvania's guideline system confers greater discretion to judges than do other state guidelines, the presence or absence of guidelines does not alter the impact of gender on sentencing decisions. They recommend cautious interpretation of the negative impact of guidelines on female offenders (Blackwell, Holleran, & Finn, 2008, p. 411).

Despite the aforementioned findings, some researchers have reported little difference in sentencing outcomes between males and females (Kruttschnitt & Green, 1984). Kruttschnitt and Green (1984) investigate Minnesota defendants convicted of theft, forgery, and drug offenses over a 16-year time span between the years of 1965 and 1980 (p. 541). This research finds that the effect of gender in the decision to incarcerate can partly be accounted for by the pretrial release decision (Kruttschnitt & Green, 1984, p. 541). The pretrial release decision significantly reduces evidence of leniency based on gender over the 16-year period (Kruttschnitt & Green, 1984, p. 541).

## **The Effects of Age**

Previous studies frequently control for the effect of the age of the defendant, yet few make age effects the focus of their analyses. Generally, the findings suggest that older offenders are sentenced more leniently than younger offenders (Champion, 1987; Steffensmeier, Kramer, & Ulmer, 1995; Steffensmeier, Ulmer, & Kramer, 1998; Spohn & Holleran, 2000; Steffensmeier & Motivans, 2000; Curry & Corral-Camacho, 2008; Doerner & Demuth, 2010). On the other hand, a few studies indicate no age effects (Wu & Spohn, 2009).

Champion (1987) compares the sentencing outcomes of 4,848 elderly felons in selected counties in Florida, Georgia, and Tennessee, Pennsylvania, Michigan, and Wisconsin between the years of 1970 to 1984 (p. 7). Champion (1987) reports increasing leniency for elderly offenders and significant differences in sentencing severity between younger and older offenders during the period of the investigation in all jurisdictions (p. 12).

Steffensmeier, Kramer, and Ulmer (1995) examines age differences in sentencing using statewide data from Pennsylvania between the years of 1989 and 1992. They distinguish sentencing outcomes in relation to two stages of sentencing – whether to imprison and length of term. Steffensmeier et al. (1995) reports that older offenders are somewhat less likely to be imprisoned than younger offenders, and if imprisoned, older offenders receive shorter sentences (p. 596). Steffensmeier et al. (1995) clarify that because offenders under the age of 21 also receive leniency in sentencing outcomes in relation to offenders in their mid-twenties, the age-sentencing relationship is curvilinear (p. 596). According to Steffensmeier et al. (1995), “The peak ages for sentencing severity

are 21 to 27; after this period, severity declines gradually until the advanced ages, when the decline accelerates” (p. 596).

Steffensmeier and Motivans (2000) use the Pennsylvania Commission on Sentencing (PSC) database for the years 1990-1994 and examine whether older defendants receive more lenient sentences compared with similarly situated younger defendants and whether the effects of aging on sentencing outcomes manifest itself similarly across male and female offenders (p. 141). The study concludes that “older offenders of both genders were sentenced less harshly – they are less likely to be imprisoned than their younger counterparts and, if imprisoned, elderly defendants receive shorter prison terms” (Steffensmeier & Motivans, 2000, p. 141). The elderly advantage in sentencing is found to be greater for males than for females. Finally, Steffensmeier and Motivans (2000) find that the elderly advantage is diminished in the case of drug offending (p. 141).

Wu and Spohn (2009) use meta-analytic methodology to assess empirical findings from previous sentencing studies. This research focuses on the imposition of sentence length and the findings reveal that the age of the offender has no effect on the length of the prison term (Wu & Spohn, 2009, p. 379). The authors find that the relationship between an offender’s age and the length of sentence is neither linear nor curvilinear (Wu & Spohn, 2009, p. 394). Additionally, the strength of the association between the two variables is extremely weak (Wu & Spohn, 2009, p. 379).

### **Multiple Effects of Extralegal Variables**

Albonetti (1997) investigates “the direct effects of defendant characteristics (ethnicity, gender, education, and citizenship status), guideline-stipulated legally relevant

variables (guideline offense level, type of drug offense, criminal history points, number of counts), and processing variables (guilty pleas and guideline departures) on length of imprisonment and the probability of incarceration” (pp. 816-817). By doing so, this research explores whether a defendant’s ethnicity/race moderates the effect of other defendant characteristics, legally relevant variables, guilty pleas, and departures on sentence severity (p. 789). This research finds that disparity in federal sentencing of drug offenders “is linked not only to offense-related variables, as structured by the guidelines, but also to defendant characteristics such as ethnicity, gender, educational level, and noncitizenship, which under the guidelines are specified as legally irrelevant” (Albonetti, 1997, p. 789). According to the study, a defendant’s gender, ethnicity, education, and citizenship status exert significant direct effects on sentence outcomes even after controlling for guideline-defined legally relevant variables and processing variables (Albonetti, 1997, p. 817). Female defendants receive less severe sentences than comparable male defendants. Defendants who are not U.S. citizens receive more severe sentences than similarly situated defendants who are U.S. citizens. Black and Hispanic defendants receive more severe sentences than comparable White defendants (Albonetti, 1997, p. 817). Albonetti (1997) finds that defendants with at least a high school education received less severe sentences than defendants who did not complete high school (p. 817). Finally, this research reports “defendant’s ethnicity conditions the effect of defendant’s gender and education on sentencing outcomes” (Albonetti, 1997, p. 818). White defendants are more likely to benefit from their educational achievements than Black or Hispanic defendants and the effect of defendant’s citizenship status significantly

influences sentencing outcomes for Black and Hispanic defendants, but not for White defendants (Albonetti, 1997, p. 818).

Ulmer (1997) finds the legally prescribed factors of offense type, specifically offense severity and prior record, to be the most influential predictors of sentencing outcomes (p. 163). This research finds that extralegal factors such as jury trial, gender, race, and age exert consistent influences on incarceration decisions (Ulmer, 1997, p. 71). To elaborate, defendants convicted by jury trials, males, and Blacks are consistently more likely to be incarcerated, even after controlling for the other factors in the models (Ulmer, 1997, p. 71). The research finds that the odds of incarceration vary according to community size, as large courts are consistently less likely to incarcerate defendants than small or medium courts (Ulmer, 1997, p. 72). Similar results are produced for the length of incarceration, where the primary predictors are legally prescribed factors. Legal factors, especially prior record, are the best predictors of the size of durational departures (Ulmer, 1997, p. 72). Ulmer (1997) finds that jury trial, gender, race, and large court size are associated with important differences in sentence length (p. 72). Defendants convicted by jury trial and Blacks are sentenced to longer incarceration terms. Women and defendants in large courts are sentenced to shorter terms (Ulmer, 1997, p. 72). Ulmer (1997) notes several interaction effects in addition to the main effects. He finds that Blacks convicted by bench and jury trials are moderately more likely to be incarcerated and less likely to receive dispositional departures. Additionally, increases in offense severity have slightly less impact on women's chances of incarceration and dispositional departure (Ulmer, 1997, p. 72). In summary, this study finds that the mode of conviction,

gender, race, and court size are associated with important sentencing differences (Ulmer, 1997, p. 164).

Albonetti (1998) tests a general model of length of imprisonment for defendants. Albonetti (1998) finds the effect of offender's educational attainment on sentence severity to be indirect via case complexity and guilty pleas (p. 353). However, this research reports "offender's race and gender effect the length of imprisonment both directly and indirectly through the intervening effect of case complexity and guilty pleas" (Albonetti, 1998, p. 353).

Steffensmeier, Ulmer, and Kramer (1998) study the effects on sentencing outcomes in Pennsylvania for 1989-1992. The findings of their study suggest (Steffensmeier et al., 1998, p. 763):

(1) Young Black males are sentenced more harshly than any other group, (2) race is most influential in the sentencing of younger rather than older males, (3) the influence of offender's age on sentencing is greater among males than females, and (4) the main effects of race, gender, and age are more modest compared to the very large differences in sentencing outcomes across certain age-race-gender combinations.

Steffensmeier et al. (1998) find that each variable – race, gender, and age – has direct effects on sentencing outcomes, with gender effects being the most prominent, followed by age, and then race (p. 788). Furthermore, the influence of age depends on gender and age is more influential in the sentencing of male defendants than female offenders.

Young Black males receive the most severe sentences of any race-age-gender category (Steffensmeier et al., 1998, p. 788).

Spohn and Holleran (2000) replicate the research approach of Steffensmeier et al. (1998) to examine the intersections of the effects of race, gender, and age on sentencing outcomes. Additionally, Spohn and Holleran (2000) extend their analysis by examining

sentencing outcomes in three large urban jurisdictions, including Hispanics as well as Blacks in the test for interactions, and test for interactions between race/ethnicity, gender, and employment status (p. 281). Their results are generally consistent with the results of Pennsylvania study conducted by Steffensmeier et al. None of the offender characteristics influences the length of the prison sentence, but “each has a significant direct effect on the likelihood of incarceration in at least one of the jurisdictions” (Spohn & Holleran, 2000, p. 281). The results of the study conclude that young, Black, and Hispanic males face greater odds of incarceration (Spohn & Holleran, 2000, p. 281).

Mustard (2001) examines federal offenders sentenced under the *Guidelines* (p. 285). After controlling for legal, demographic, and socioeconomic variables, this research produces several findings. First, “Blacks, males, and offenders with low levels of education and income receive substantially longer sentences” (Mustard, 2001, p. 285). Second, “disparities are primarily generated by departures from the guidelines, rather than differential sentencing within the guidelines” (Mustard, 2001, p. 285). Mustard (2001) finds that 55 percent of the Black-White difference and 70 percent of the male-female difference are produced by departures (p. 285). Third, “the largest differences are for drug trafficking”. Finally, “Blacks and males are also less likely to get no prison term when that option is available; less likely to receive downward departures; and more likely to receive upward adjustments and, conditioned on having a downward departure, receive smaller reductions than Whites and females” (Mustard, 2001, p. 285).

Albonetti (2002) uses the 1996-1997 Monitoring of Federal Criminal Sentences data set to analyze defendants convicted of a federal drug trafficking or manufacturing guideline offense (p. 47). This research concludes that regardless of ethnicity, females

compared to males, experienced greater sentence reductions from substantial assistance departures (Albonetti, 2002, p. 55). White females, as compared to Black and Hispanic females, receive the greatest sentencing advantage from substantial assistance departures. White males receive the strongest sentence reduction from substantial assistance departures (Albonetti, 2002, p. 55). Females do not receive consistently greater sentence advantage from non-substantial departures. According to Albonetti (2002), White females continue to receive the greatest sentence reduction, but Hispanic females receive statistically similar sentence reductions (p. 55). Black females receive the lowest sentence reduction from non-substantial assistance departures among females and Albonetti (2002) notes that Black females are treated more similar to Black and Hispanic males than to White and Hispanic females in reference to the effect of non-substantial assistance departures on length of imprisonment (p. 55).

Kautt (2002) investigates the findings of previous research claiming that the *Guidelines* are used differently from one demographic group to another, resulting in unwarranted disparity in the sentencing of federal drug offenders (p. 161). This research examines 99 drug trafficking sentences from 1998 while simultaneously correcting design flaws of previous research. The findings suggest that the Guidelines are used differently for male defendants than for female defendants and for Black defendants as compared to White defendants (Kautt, 2002, p. 161). These differences typically benefit White and female defendants, and operate to the detriment of Black and male defendants.

Kautt and Spohn (2002) analyze the relationship between a defendant's race, sentencing strategy, and drug type while holding constant other theoretically relevant factors (p. 1). They find that a defendant's race "conditions" the effects of the drug and

other factors differentially from one sentencing strategy to the next (Kautt & Spohn, 2002, p. 1). They categorize federal drug-offense sentences into three groups: offenses that carry *Mandatory Minimums* and receive a minimum sentence, offenses that fall under *Mandatory Minimums* but do not receive a minimum sentence (hybrid offenses), and offenses that are simple *Guidelines* drug cases (Kautt & Spohn, 2002, p. 10). This research uses USSC data for defendants who were sentenced in 1997-1998 (Kautt & Spohn, 2002, p. 11). Kautt and Spohn (2002) determine that the predictors of the length of sentences operate differently for White and Black defendants and for *Guidelines*, *Mandatory Minimums*, and hybrid drug cases (p. 32). Furthermore, there are more racial differences in the effects of the predictors for cases sentenced under *Mandatory Minimums* than for hybrid cases or cases following *Guidelines* (Kautt & Spohn, 2002, p. 32). The findings suggest that there are several factors that are more beneficial to Black defendants than to White defendants (Kautt & Spohn, 2002, p. 33).

Steffensmeier and Demuth (2006) utilize data from large urban courts for the years 1990-1996 to examine the main and interaction effects of gender and race/ethnicity on sentencing outcomes (p. 241). The main focus of this research is whether the effects of race/ethnicity and gender on sentence outcomes are similar or different across gender and racial/ethnic groups (Steffensmeier & Demuth, 2006, p. 241). Their findings suggest that female defendants receive more lenient sentences than male defendants and that Black and Hispanic defendants receive less favorable treatment than White defendants, which is consistent with prior research (Steffensmeier & Demuth, 2006, p. 241). With these findings, the authors caution that the main effects are strongly dependent on whether the sample is partitioned by gender or race/ethnicity. Race/ethnicity influences male

sentences, but not female sentences. Gender strongly influences sentencing across all racial/ethnic groups (Steffensmeier & Demuth, 2006, p. 241).

Curry and Corral-Camacho (2008) use a random sample of felony drug offenders in the seven largest metropolitan counties of Texas in 1991 (p. 260). Their results suggest that race/ethnicity, gender, and age influence sentencing severity. According to Curry and Corral-Camacho (2008), the probability of receiving prison time is greater and sentences are longer for Blacks, Black males, and Black males aged 22-30 (p. 253). The research suggests that Blacks are nine percent more likely to receive a prison sentence and receive sentences that are 19 percent longer than Whites (Curry & Corral-Camacho, 2008, p. 270). Additionally, their findings suggest that the likelihood of going to prison is higher for Hispanic males and Hispanic males aged 31-40, however no differences were observed for sentence length (Curry & Corral-Camacho, 2008, p. 270). The research concludes that Hispanic males aged 31-40 are 31 percent more likely to be sentenced to prison, and Black males aged 22-30 are 30 percent more likely to receive prison sentences. Additionally, Black males aged 22-30 receive prison sentences that are 27 percent longer, displaying effects that are larger than those in prior studies (Curry & Corral-Camacho, 2008, p. 270).

Brennan & Spohn (2009) examine the main and interactive effects of race/ethnicity and sex on sentence length decisions for drug offenders in three federal courts located in Iowa, Minnesota, and Nebraska (p. 200). The additive model shows that females receive shorter prison sentences than similarly situated male offenders, but there are not racial differences in offenders' prison sentences (Brennan & Spohn, 2009, p. 200). The authors go on to recognize that when the data is partitioned by sex, Black

males receive lengthier prison sentences than White males. However, there are no differences between White males and Hispanic males. White females, Black females, and Hispanic females are treated similarly (Brennan & Spohn, 2009, p. 200). Furthermore, when the data are portioned by race/ethnicity, White females are treated no differently than White males. Yet, Black females receive shorter sentences than Black males and Hispanic females receive shorter sentences than Hispanic males. Their findings conclude that after further analyses, Black and Hispanic males receive longer sentences than White females and Black males receive longer sentences than all other offenders, with the exception of Hispanic male offenders (Brennan & Spohn, 2009, p. 200).

Doerner and Demuth (2010) examine the independent and joint effects of race/ethnicity, gender, and age on incarceration and sentence length decisions in the U.S. federal courts (p. 2). They focus on the treatment of Hispanic defendants relative to Black and White defendants. They find that “Hispanics and Blacks, males, and younger defendants receive harsher sentences than Whites, females, and older defendants after controlling for important legal and contextual factors” (Doerner & Demuth, 2010, p. 1). Furthermore, young Hispanic male defendants have the highest odds of incarceration and young Black male defendants receive the longest sentences when these effects are examined in combination with one another (Doerner & Demuth, 2010, p. 1).

Spohn and Brennan (2011) use data from the District of Minnesota, the District of Nebraska, and the Southern District of Iowa to examine the main and interactive effects of drug offenders’ race/ethnicity and gender on the likelihood of receiving a downward departure for providing substantial assistance (p. 49). The results of this study indicate that female offenders are more likely than male offenders to receive substantial assistance

departures and that race does not affect the likelihood of departure. However, Black and Hispanic male offenders are treated more harshly than all other offenders. Furthermore, Spohn & Brennan (2011) find no difference between female offenders of any race/ethnicity.

### **The Current Study**

The purpose of this research is to evaluate fairness in federal drug sentencing. The current study uses data compiled by the United States Sentencing Commission (USSC) to examine the sentence lengths of federal drug defendants sentenced in 2008. By exploring the impact of defendants' race and/or ethnicity on sentence length, this research evaluates whether the *Guidelines* are being applied in a racially and ethnically neutral manner and therefore achieving the *Guidelines*' goal of fairness.

### **Research Hypotheses**

This research aims to evaluate fairness – *race/ethnicity, gender, age, and citizenship* are insignificant in the process of assigning *sentence lengths*. With consideration given to the findings of previous research as well as the focal concerns perspective on sentencing decisions and practices of court officials, this research expects that *Black* and *Hispanic* defendants, as compared to *White* defendants, will receive longer sentences. This research expects longer sentences for *Black* and *Hispanic* defendants because of the overrepresentation of *Black* and *Hispanic* individuals in the criminal justice system, and also due to the overwhelming number of similar research studies that have produced this result. Additionally, this research expects that *female* defendants will be treated more leniently than comparable *male* defendants, and therefore will receive shorter prison

sentences. This expectation is based on the findings of previous research studies. Next, this research expects that older defendants will receive shorter *sentence lengths* than younger defendants. This expectation is also based on the findings of previous research studies. Finally, this research expects that *illegal aliens* and *resident/legal aliens* will receive longer prison sentences, as compared to *U.S. citizens*. This expectation is based on the current debate regarding immigration in American and the political controversy surrounding the issue. The research and null hypotheses of this study are as follows:

H<sub>1</sub> – *Black* and *Hispanic* defendants will receive longer sentences than comparable *White* defendants.

H<sub>0</sub> – *Race/ethnicity* of the defendant has no effect on *sentence length*.

H<sub>2</sub> – *Female* defendants will receive shorter sentences than similarly situated *male* defendants.

H<sub>0</sub> – *Gender* is not related to *sentence length*.

H<sub>3</sub> – Older defendants will receive shorter sentences than younger defendants.

H<sub>0</sub> – *Age* does not influence *sentence length*.

H<sub>4</sub> – *Resident/legal aliens* and *illegal aliens* will receive longer sentences than comparable *U.S. citizens*.

H<sub>0</sub> – *Citizenship* is not related to *sentence length*.

## Methodology

### Data

The data for this study are from the 2008 Monitoring of Federal Criminal Sentences (MFCS) data set, which originally consists of 76,478 cases and 406 variables. These data are compiled by the United States Sentencing Commission (USSC). These data include demographic, sentencing, and guideline application information on criminal cases, which are sentenced in the federal court system under the *Guidelines* and Policy Statements of the Sentencing Reform Act of 1984 (USSC, 2008, p. 339). The data files include all cases that have sentencing dates between October 1, 2007 and September 30, 2008 and are assessed as constitutional. Each case's sentencing date, circuit, district, and judge are compared to provide uniformity in reporting the cases. The federal sentencing data are ideally suited for this research because they contain detailed legal, extralegal, and contextual information, which allow for a more meaningful examination of the existence of extralegal disparities in sentencing. Additionally, the federal sentencing data set consists of a large number of cases to perform a thorough analysis of all offender subgroups. A large number of cases in combination with detailed legal, extralegal, and contextual information offer insight into the possible influence of multiple offender characteristics on federal sentencing outcomes under a sentencing guideline system.

For this analysis, several defendant groups are excluded from the sample. First, only defendants convicted of a drug-related crime as their primary offense are focused on in this research. Following Stacey and Spohn (2006), this research limits the analysis to drug offenses because previous research contends, "increasingly punitive treatment for drug offenders is the main cause of the explosion in state and federal prison populations

over the past two decades” (p. 58). Additionally, focusing on drug defendants ensures that the defendants and their cases are more similar than they would be if all federal defendants were included in the analysis. Therefore, all defendants who are convicted of other criminal offenses as their primary offense are excluded from the data set. There are 51,296 non-drug cases that are excluded. Second, all defendants whose citizenship status is unknown are excluded from the sample because the status of a defendant’s citizenship is used as a control variable in this research. U.S. citizens, resident/legal aliens, and illegal aliens are included in the sample. There are 537 cases with unknown citizenship status that are excluded in this research. Finally, all defendant cases with missing data within the study variables are excluded from the sample. There are 1,971 cases containing missing data within the study variables that are excluded from this research. After the aforementioned defendant groups are removed from the sample, the final sample size is 22,851.

### **Research Design**

The first stage of analysis consists of univariate and bivariate statistics for each of the variables included in the study. The mean and the standard deviation are presented for all variables. Correlation analysis is used to describe the strength and direction of the linear relationship between the study variables. Correlation analysis also identifies multicollinearity between study variables. If there is a strong relationship between variables, they are reviewed in order to avoid compromising the regression analysis. For this research, the multicollinearity threshold for removing variables is 0.70. Should correlations between study variables reach the designated threshold for removal, they are removed. The remaining variables are used in the second stage of analysis.

In the second stage of analysis, the relationship between *sentence length* and the study variables is examined using ordinary least squares (OLS) linear regression and includes only those defendants who received a prison sentence. Four models estimate the effect of legal and extralegal variables on the total prison sentence. The first model regresses race on the total sentence length. The second model regresses the legally relevant variables on the total sentence length. The third model regresses the legally relevant variables and the extralegal control variables on the total sentence length. Finally, the fourth model regresses race on the total sentence length while controlling for the legally relevant variables and the other extralegal variables. This research uses R-square scores as a measure of the overall model fit. The R-square value reports how much of the variance in the total sentence length is explained by each model. The statistical significance of each model is indicated by the F score. The *t*-test scores are used when evaluating which of the legally relevant variables and the extralegal control variables contribute to the prediction of the total sentence length. The *t*-test scores illustrate which of the predictors have a statistically significant *t*-test effect on *sentence length*.

### **Dependent Variable**

Federal sentencing outcomes are the result of a two-stage decision-making process: the decision to incarcerate, and if incarcerated, the sentence length decision (Kramer & Steffensmeier, 1993; Steffensmeier et al., 1998; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2000, 2001, 2006; Bushway & Piehl, 2001; Kautt & Spohn, 2002; Demuth & Steffensmeier, 2004; Iles, 2009; Doerner & Demuth, 2010). The dependent variable for this research is the *sentence length*, if incarcerated. Due to the highly skewed nature of the *type of sentence* variable, it is not included in the multivariate

analyses. The *sentence length* variable represents the length of the total prison sentence (excluding months of alternative confinement), in months, without zeros (probation).

### **Extralegal Variables**

The extralegal variables utilized in this study are *race/ethnicity*, *gender*, *age*, and *citizenship*. The independent variable is *race/ethnicity*. The variable providing the offender's *race/ethnicity* is self-reported to the probation officer assigned to the case. The variables indicating *race/ethnicity* are recoded into dummy variables. *White* is the reference category for *race/ethnicity*. *Black* is coded 0 for not black and 1 for black. *Hispanic* is coded 0 for not Hispanic and 1 for Hispanic. *Other race* is coded 0 for not another race and 1 for other race.

This research controls for extralegal variables that have been found, or proposed, in prior research to affect sentences, which includes: *gender*, *age*, and *citizenship*. The *gender* variable indicates the offender's gender and is coded 0 for male and 1 for female. *Male* is the reference category for *gender*. The *age* variable identifies the age of the defendant at the time of sentencing. The defendant's *age* is a continuous variable and is determined using the defendant's date of birth and sentence date. The variable indicating the nature of the defendant's citizenship status with respect to the United States is recoded into a set of dummy variables. *U.S. Citizen* is the reference category; *Legal Alien* is coded 0 for No and 1 for Yes; and *Illegal Alien* is coded 0 for No and 1 for Yes.

### **Legal Variables**

There is an ongoing debate regarding the use of certain legal variables in the *sentence length* ordinary least squares (OLS) regression model. As indicated by previous literature (Albonetti, 1997; Steffensmeier & Demuth, 2000; Doerner & Demuth, 2010),

sentencing ranges are determined using a grid that accounts for the severity of the offense on one axis and the defendant's criminal history on the other axis. Thus, prior research separates the criminal history (*criminal history points*) and the offense severity (*final offense level*) variables in their ordinary least squares (OLS) regression analysis. Based on prior research, Engen and Gainey (2000) allege that most studies do not control fully for the effects of offense seriousness and criminal history on sentencing outcomes (p. 1209). They claim that because there is an interaction between offense seriousness and criminal history built into most sentencing guideline systems, the model is misspecified. For that reason, Engen and Gainey (2000) present an alternative approach to specify the effects of legally relevant variables, which controls for the presumptive sentence (p. 1207). By doing so, they argue this method improves the fit and explanatory power of the model. Ulmer (2000) responds to Engen and Gainey by pointing out that sentencing guidelines do more than quantify offense seriousness and criminal history, in that they prescribe sentences (p. 1240). Ulmer (2000) emphasizes the statistical importance of including offense severity and prior record even if the presumptive sentence is included as well. According to Ulmer (2000), there are no circumstances that would require these variables to be omitted (p. 1240).

This study determines which legally relevant variables to include in the ordinary least squares (OLS) regression model based on the joint consideration of what is done in prior research and the evaluation of the correlation matrix to assess multicollinearity. This study follows the examples put forth by both Engen and Gainey (2000) and Ulmer (2000) by including offense severity, prior record, and presumptive sentence (*mandatory drug minimum sentence*) in the regression models. The presumptive sentence is included

for the purpose of improving the explanatory power of the models. Accordingly, this research includes the legally relevant predictors of *mandatory drug minimum sentence*, *number of conviction counts*, *final offense level*, number of *criminal history points*, whether *the safety valve provision* is applied, whether a *government sponsored departure* occurs, whether the case is settled by *plea* or *trial*, use of a *weapon* during the offense, and whether *career offender status* is applied.

The *mandatory drug minimum sentence* variable is used to represent the mandatory minimum sentence (in months) assigned to drug statutes. The *mandatory drug minimum sentence* is a continuous variable, where 470 represents a life sentence. The *number of conviction counts* variable, indicating the counts of conviction applied to a case, is continuous. The *final offense level* variable, which is a continuous variable, indicates the final offense level as determined by the court. The *final offense level* is determined by taking the base offense level and adding and subtracting any specific offense characteristics and adjustments that apply. As previously mentioned, the final offense level and criminal history points are used to determine the defendant's sentencing guideline range. The *weapon* variable indicates if there are any Specific Offense Characteristic (SOC) enhancements for a weapon present. *Weapon* is coded 0 for no SOC weapon enhancement present and 1 for the presence of a SOC weapon enhancement. The *criminal history points* variable provides a subtotal of criminal history points applied to the defendant's case based on the contributions of one, two, and three point offenses, which are then totaled. The *criminal history points* variable is continuous, where 0 indicates that no history points are applied. The *career offender status* variable is an indicator to whether Career Offender status is applied under §4B1.1. *Career offender*

*status* is coded 0 for not applied and 1 for applied.

The safety valve is intended to give low level, first time offenders relief from being sentenced to drug mandatory minimum sentences. Since its creation by Congress, the safety valve has been expanded by the USSC to provide an additional 2 level decrease while still being sentenced below the mandatory minimum (USSC, 2008). The *safety valve* variable indicates whether the safety valve provision, which is only applicable to drug cases, is applied. *Safety valve* is coded 0 for cases where the safety valve is not applied and 1 for cases where the safety valve is applied. *Government sponsored departure* indicates if a case is sentenced outside of the guideline range based on a government sponsored departure. *Government sponsored departure* is coded 0 for No and 1 for Yes. *Trial*, a dummy variable, indicates whether the defendant's case is settled by trial, as opposed to a plea agreement. *Trial* is coded 0 for cases settled by plea agreements and 1 for cases settled by a trial. *Plea* is the reference category.

## **Results**

### **Univariate**

First, this study examines descriptive statistics at the sentencing stage. The descriptive statistics for study variables are displayed in Table 1.

#### **Dependent Variables**

The descriptive statistics reveal that the *type of sentence* with the greatest frequency is a prison sentence, indicating a highly skewed distribution. Defendants not assigned a prison sentence represent 4.2 percent of offenders. On the other hand, 95.8 percent of defendants are assigned a prison sentence. The *sentence length* variable provides the total prison sentence (excluding months of alternative confinement), in

months, without zeros (probation). The average number of sentenced months of incarceration is 83.1896.

### **Extralegal Variables**

The racial and ethnic breakdown of federal drug defendants indicates that *Hispanics* represent 40.0 percent of sentenced offenders, *Blacks* represent 31.9 percent of sentenced offenders, *Whites* represent 24.9 percent of sentenced offenders, and *Other* represents 3.1 percent of sentenced offenders. Based on *gender*, *males* make up a majority of federal drug defendants at 87.5 percent and *females* account for 12.5 percent of federal drug defendants. The average *age* of federal defendants at the time of the drug offense is 33.45 years. In reference to *citizenship* status, a majority of federal drug defendants are *U.S. citizens*, at 73.4 percent. *Illegal aliens* make up 18.8 percent of federal drug defendants, and *resident/legal aliens* comprise 7.8 percent of federal drug defendants.

### **Legal Variables**

The majority of federal drug cases are classified as a trafficking offense type. 97.7 percent of defendants are sentenced with drug trafficking being the conviction with the highest statutory maximum penalty. Communication facilities convictions comprise 1.3 percent of federal drug cases. An additional 1.0 percent of federal drug cases are classified as simple possession cases.

The *mandatory drug minimum sentence* variable, which is used to represent the mandatory minimum sentence (in months) assigned to drug statutes, indicates that the average mandatory minimum sentence is 71.6194 months. The variable indicating the *number of conviction counts* indicates an average of 1.35. The mean of the *final offense*

*level* variable is 24.67. According to the *weapon* variable, 87.4 percent of federal drug defendants do not have a SOC weapon enhancement charge applied to the case. On the other hand, 12.6 percent of federal drug defendants do have a SOC weapon enhancement applied to the case. The mean *criminal history points* added to a federal drug defendant's case is 3.13. The majority of cases, at 92.3 percent, do not have *career offender status* applied. Defendants with *career offender status* applied comprise 7.7 percent of defendants.

According to the *safety valve* variable, the safety valve is not applied in 62.2 percent of cases. The safety valve is applied 37.1 percent of cases. *Government sponsored departures* comprise 33.2 percent of sentences. Cases without departures make up 66.8 percent of cases. As a point of reference, 52.8 percent of cases are sentenced *within guideline range*, 0.7 percent of cases are sentenced *above guideline range*, and 13.3 percent of cases are sentenced *below guideline range*. *Plea agreements* are the most common mode of conviction and account for 96.2 percent of federal drug cases. Comparatively, only 3.8 percent of cases are settled by *trials*.

## **Bivariate**

Before running the ordinary least squares (OLS) regression models, a correlation analysis is completed. The Pearson correlation matrix for study variables are displayed in Table 2. As stated in this study's research design, the multicollinearity threshold for removing variables is 0.70. The consequence of including two highly correlated variables in the ordinary least squares (OLS) regression model is greater standard error. The higher the correlation is between variables in the model, the bigger the standard error. Multicollinearity is problematic because as the variables become more highly correlated,

it becomes more difficult to determine which variable is producing the effect on the dependent variable. No variables are dropped due to multicollinearity in this study; instead, variables are excluded based on previous literature.

### **Extralegal Variables**

There is a statistically significant correlation between the *sentence length* and identifying one's race as *Black*. There is a weak, positive correlation between the two variables,  $r = .259$ ,  $p < .01$ , implying that 6.7 percent of the variance in the *sentence length* is associated with the *Black* dummy variable. There is a statistically significant correlation between the *sentence length* and identifying one's race as *Hispanic*. There is a weak, negative correlation between the two variables,  $r = -.157$ ,  $p < .01$ , implying that 2.5 percent of the variance in the *sentence length* is associated with the *Hispanic* dummy variable. There is a statistically significant correlation between the *sentence length* and identifying one's race as *Other*. There is a very weak, negative correlation between the two variables,  $r = -.044$ ,  $p < .01$ , implying that 0.2 percent of the variance in the *sentence length* is associated with the *Other Race* dummy variable.

There is a statistically significant correlation between the *sentence length* and identifying one's gender as *female*. There is a weak, negative correlation between the two variables,  $r = -.155$ ,  $p < .01$ , implying that 2.4 percent of the variance in the *sentence length* is associated with the *female* dummy variable. There is a statistically significant correlation between the *sentence length* and *age*. There is a very weak, positive correlation between the two variables,  $r = .072$ ,  $p < .01$ , implying that 0.5 percent of the variance in the *sentence length* is associated with the variance in *age*.

There is a statistically significant correlation between the *sentence length* and being a *resident/legal alien*. There is a very weak, negative correlation between the two variables,  $r = -.097$ ,  $p < .01$ , implying that 0.9 percent of the variance in the *sentence length* is associated with the *resident/legal alien* dummy variable. There is a statistically significant correlation between the *sentence length* and being identified as an *illegal alien*. There is a weak, negative correlation between the two variables,  $r = -.120$ ,  $p < .01$ , implying that 1.4 percent of the variance in the *sentence length* is associated with the *illegal alien* dummy variable.

### **Legal Variables**

There is a statistically significant correlation between the *sentence length* and the *drug minimum sentence*. There is a strong, positive correlation between the two variables,  $r = .578$ ,  $p < .01$ , implying that 33.4 percent of the variance in the *sentence length* is associated with the variance in the *drug minimum sentence*. There is a statistically significant correlation between the *sentence length* and the *number of conviction counts*. There is a weak, positive correlation between the two variables,  $r = .238$ ,  $p < .01$ , implying that 5.7 percent of the variance in the *sentence length* is associated with the variance in the *number of conviction counts*. There is a statistically significant correlation between the *sentence length* and the *final offense level*. There is a very strong, positive correlation between the two variables,  $r = .732$ ,  $p < .01$ , implying that 53.6 percent of the variance in the *sentence length* is associated with the variance in the *final offense level*. There is a statistically significant correlation between the *sentence length* and cases that applied a *weapon* enhancement. There is a weak, positive correlation between the two variables,  $r = .204$ ,  $p < .01$ , implying that 4.2 percent of the variance in the *sentence*

*length* is associated with the application of a *weapon* enhancement. There is a statistically significant correlation between the *sentence length* and the number of *criminal history points*. There is a moderate, positive correlation between the two variables,  $r = .404$ ,  $p < .01$ , implying that 16.3 percent of the variance in the *sentence length* is associated with the variance in the number of *criminal history points*. There is a statistically significant correlation between the *sentence length* and having a *career offender status*. There is a moderate, positive correlation between the two variables,  $r = .383$ ,  $p < .01$ , implying that 14.7 percent of the variance in the *sentence length* is associated with having a *career offender status*.

There is a statistically significant correlation between the *sentence length* and a *safety valve* reduction. There is a moderate, negative correlation between the two variables,  $r = -.434$ ,  $p < .01$ , implying that 18.8 percent of the variance in the *sentence length* is associated with *safety valve* reductions. There is a statistically significant correlation between the *sentence length* and *government sponsored departures*. There is a weak, negative correlation between the two variables,  $r = -.165$ ,  $p < .01$ , implying that 2.7 percent of the variance in the *sentence length* is associated with *government sponsored departures*. There is a statistically significant correlation between the *sentence length* and settling a case by *trial*. There is a moderate, positive correlation between the two variables,  $r = .324$ ,  $p < .01$ , implying that 10.5 percent of the variance in the *sentence length* is associated with settling a case by *trial*.

### **Multivariate**

This study employs OLS regression to determine if the addition of extralegal control variables and *race/ethnicity* improves prediction of *sentence length* beyond that

afforded by differences in legally relevant variables. The OLS regression models for *sentence length* decisions are displayed in Table 3.

### **Linear OLS Regression**

Model 1 explores the role of *race/ethnicity* on *sentence length*. Model 1 refers to the first stage in the hierarchy, when only *race/ethnicity* is used as a predictor. This combination of variables produces an R-square value of .067, meaning that 6.7 percent of the variance in *sentence length* is explained by *race/ethnicity*, the independent variable. The F score significance value of Model 1 is .000, indicating that the model reaches statistical significance. *Race/ethnicity* is a significant set of predictors of *sentence length*. The *t*-test scores indicate which of the racial/ethnic dummy variables contribute to the prediction of *sentence length*. In Model 1, the categories of *Black*, *Hispanic*, and *Other* are all statistically significant predictors of sentence length. The *sentence lengths* of *Black* defendants ( $b = 39.835, p \leq .001$ ) are 39.84 months longer than the *sentence lengths* of *White* defendants. *Hispanic* defendants ( $b = -2.678, p \leq .05$ ) are sentenced to prison terms of 2.68 months shorter than *White* defendants. Defendants who identify their race as *Other* ( $b = -7.158, p \leq .05$ ) receive *sentence lengths* of 7.16 months less than *White* defendants.

Model 2 explores the impact of the legally relevant variables on *sentence length*. This combination of legal variables produces an R-square value of .743, meaning that 74.3 percent of the variance in *sentence length* is explained by legally relevant variables. The F score significance value is .000, indicating that Model 2 reaches statistical significance. Legally relevant variables are an important set of predictors of *sentence length*. The *t*-test scores indicate which of the legally relevant variables contribute to the

prediction of *sentence length*. In Model 2, all legally relevant variables make statistically significant contributions to determining defendants' *sentence length*.

A one unit increase in the *drug minimum sentence* is associated with a 0.28 month increase in the *sentence length*. A one unit increase in the number of *counts of conviction* is associated with 4.21 month *sentence length* increase. A one point increase in the *final offense level* yields a 5.01 month increase in *sentence length*. The use of a *weapon* during the drug offense is associated with a 5.76 month increase in *sentence length*. A one point increase in *criminal history points* yields a 2.57 month addition to *sentence length*.

Defendants with *career offender status* applied to their case experience a 33.80 month increase in *sentence length*. In reference to mode of conviction, defendants with *trial* convictions, as compared to *plea* agreements, have *sentence length* increases of 47.29 months. The employment of *government sponsored departures* and the *safety valve* provision result in decreased *sentence lengths*. The employment of a *government sponsored departure* causes a 39.28 month decrease in *sentence length*. The *safety valve* provision is associated with a 16.84 month decrease in *sentence length*.

Model 3 regresses the legally relevant variables and the extralegal control variables on the total *sentence length*. This combination of variables produces an R-square value of .744, meaning that 74.4 percent of the variance in *sentence length* is explained by legally relevant variables and extralegal control variables. The F score significance value is .000, indicating that Model 3 reaches statistical significance. Therefore, legally relevant variables and extralegal control variables are important predictors of *sentence length*. The *t*-test scores indicate which of the legal and extralegal

variables contribute to the prediction of *sentence length*. In Model 3, 12 variables make statistically significant contributions to determining defendants' *sentence length*.

In reference to extralegal control variables, being *female* contributes to more lenient sentences in that *females* are sentenced to shorter prison terms than their *male* counterparts. *Females*, as compared to *males*, receive *sentence lengths* that are 3.75 months shorter. Similarly, a one year increase in *age* is associated with a 0.14 month decrease in *sentence length*. Being an *illegal alien* is associated with a 4.09 month increase in *sentence length*. According to the results of Model 3, being identified as a *legal alien* does not contribute to the determination of *sentence length*. The results of this study find that Model 3 best explains the variation in federal drug *sentence lengths*.

Finally, Model 4 regresses *race/ethnicity* on the total *sentence length* while controlling for legally relevant variables and other extralegal variables. This combination of variables produces an R-square value of .744. There is no change in R-square from Model 3 to Model 4, indicating that *race/ethnicity* does not contribute to the determination of sentence length. 74.4 percent of the variance in *sentence length* is explained by legally relevant variables, extralegal control variables, and *race/ethnicity* in Model 4. The F score significance value is .259, indicating that Model 4 does not reach statistical significance. Even though 12 variables in Model 4 make contributions to determining defendants' *sentence length* according to the *t*-test scores, the model itself is not statistically significant. After all legal variables, extralegal variables, and independent variables are included in the model, *Black*, *Hispanic*, *Other*, and *White* defendants have similar *sentence lengths*.

## Research Hypotheses

The first research hypothesis is not supported by the findings of this study. The findings do not support the prediction that *Black* and *Hispanic* defendants will receive longer sentences than comparable *White* defendants. For that reason, the null hypothesis is accepted.

The second research hypothesis is supported by the findings of this study. The findings support the prediction that *female* defendants will receive shorter sentences than their *male* counterparts. *Females*, as compared to *males*, receive *sentence lengths* that are almost four months shorter. Hence, the null hypothesis is rejected.

The third research hypothesis is supported by the findings of this study. The findings support the prediction that older defendants will receive shorter sentences than younger defendants. A one year increase in *age* is associated with a 0.14 month decrease in *sentence length*. Thus, the null hypothesis is rejected.

The findings of this study partially support the fourth research hypothesis. *Illegal aliens* face increases in *sentence lengths* of approximately four months. However, the findings do not support the prediction that *resident/legal aliens* will receive longer sentences than comparable *U.S. citizen* defendants; therefore the null hypothesis cannot be rejected.

Overall, the OLS regression models identify legally relevant variables as being significantly related to drug *sentence length*. There is considerable uniformity and neutrality in the sentencing of federal drug defendants, in that judges prescribe similar sentences for similar defendants convicted of the same offense. Regardless of *race/ethnicity*, defendants with more severe *final offense levels* and more extensive

*criminal histories* are much more likely to receive longer prison sentences. Based on the implications of this study, federal drug sentencing under the *Guidelines* is mostly successful in achieving fairness, consistency, and proportionality.

## Discussion

### Findings

The focus of this research is on fairness in federal drug sentencing. This research addresses the issue of whether the criminal justice system discriminates on the basis of race/ethnicity. By exploring the impact of defendants' race/ethnicity on sentence length outcomes, this research evaluates whether the *Guidelines* are being applied in a neutral manner and therefore achieving one of the *Guidelines'* primary goals of fairness.

This research contributes to a growing body of research that considers the effects of multiple defendant characteristics on sentencing outcomes. This research produces notable findings. There are five important findings from the current study that contribute to the field of sentencing research. Most importantly, the current study finds that defendants' race/ethnicity does not influence sentence lengths after legally relevant guideline variables are controlled. The effects produced by legally relevant variables within this study largely indicate that judges' sentence length decisions are based on factors that the USSC deem as relevant. Additionally, this research uses the focal concerns theoretical perspective to aid in interpreting the findings of this study and in explaining the implications. The three focal concerns intertwine and contribute to the explanation of sentencing patterns.

## **Legally Relevant Effects**

First, this study finds that legally relevant variables are the most important predictors of federal drug sentencing outcomes, which is consistent with the findings of previous sentencing research (Kramer & Steffensmeier, 1993; Steffensmeier, Kramer, & Streifel, 1993; Dixon, 1995; Ulmer, 1997; Engen & Gainey, 2000; Kautt & Spohn, 2002; Stacey & Spohn, 2006; Iles, 2009; Doerner & Demuth, 2010). Drug minimum sentence, number of conviction counts, final offense level, weapon enhancements, criminal history points, career offender status enhancements, application of the safety valve provision, government sponsored departures, and trial convictions account for a large majority of the variation in sentence length outcomes. Additionally, legal variables act as important statistical controls for estimating race/ethnicity, citizenship, gender, and age effects.

The effects produced by legally relevant variables within this study largely indicate that judges' sentence length decisions are based on factors that the USSC deem as relevant. In reference to the theoretical framework, legally relevant variables are linked to the focal concerns of offender blameworthiness and protection of the community in the determination of sentence lengths. The effects produced by legally relevant variables are consistent with the focal concern of blameworthiness in that judges prescribe lengthier sentences to more serious offenders, offenders with lengthier criminal histories, defendants classified as career offenders, and defendants who use a weapon during their offense. By considering offender blameworthiness, judges' sentence more punitively based on offender culpability and the injustice caused by the crimes. The consideration of protection of the community intertwines with offender blameworthiness. The most blameworthy offenders, or those identified as the most dangerous and with the most risk

of future violence are sentenced to lengthier prison terms, which sets an example for would-be offenders and possible future crime. Protection of the community occurs through the incarceration of the most blameworthy and most dangerous offenders.

While most legally relevant variables contribute to fair and consistent sentencing outcomes, three legally relevant variables produce results that may go against the USSC goals and expectations. The three legally relevant variables that may be producing disparity and therefore undermining the *Guidelines* are mode of conviction, government sponsored departures, and the safety valve exception. The legally relevant variable of mode of conviction produces an interesting finding. The approximate 48-month increase in sentence length yielded by trial convictions is noteworthy. By choosing to exercise one's right to a trial, defendants then face an increase in sentences by 48 months. This finding is significant because the prosecution determines plea agreements. The difference in sentence lengths between plea and trial convictions suggest that the prosecution may use the threat of applying a longer sentence as a bargaining tool to obtain guilty pleas. If so, it is possible that the recommended sentences are not being applied to cases settled by plea agreements. Therefore, a defendant may avoid serving the minimum sentence simply by accepting a plea agreement. Such drastic differences between defendants convicted by trial and defendants convicted by plea agreements suggest disparity in sentencing based on the mode of conviction. With the prosecution possessing such a great deal of bargaining power, exercising one's right to a trial results in a longer prison sentence. This trend likely challenges the expectations of the USSC.

The current study finds that government sponsored departures, largely occurring through the Substantial Assistance Provision, are associated with 39-month disparity in

federal drug sentencing. Through this disparity, the question of whether government sponsored departures are undermining the *Guidelines* arises. As discussed above, the prosecution has a large influence in sentencing. In reference to government sponsored departures from the *Guidelines*, prosecutors possess the power to determine whether to reward a defendant with substantial assistance. As found in the current study, deciding to reward a defendant with substantial assistance results in a 39-month reduction in sentence length. The problem with substantial assistance departures is that low-level drug defendants often lack the knowledge necessary to qualify for said departure, while more blameworthy defendants often have more knowledge of criminal activities and are able to benefit by exchanging their knowledge for a substantial assistance departure, therefore avoiding *Mandatory Minimums*. Situations such as this may be undermining the Guidelines and the goals of the USSC.

Similarly, the current study finds that the safety valve provision allows for a 16-month reduction in sentence length, thereby raising the question of whether it is meeting its goals. Unlike substantial assistance departures, the safety valve provision is more likely to be used to alleviate unfairness caused by *Mandatory Minimums* on low-level nonviolent first time offenders. Only defendants assigned to the Criminal History Category I are eligible to receive relief from the safety valve provision. As a result of the strict requirements associated with benefiting from the safety valve reduction, it is less likely to be misused or abused in sentencing practices.

### **Extralegal Effects**

Second, defendants' race/ethnicity does not influence federal drug sentence lengths after legally relevant guideline variables and other extralegal variables are

controlled. Thus, this study finds that comparable Black defendants, Hispanic defendants, Other race defendants, and White defendants are sentenced to similar prison terms. This finding reinforces the importance of legally relevant variables in the determination of sentence lengths. In reference to the theoretical framework, this finding suggests that judges rely heavily on the focal concern of offender blameworthiness when determining sentence lengths. It should be noted that this finding does not rule out racial disparity in earlier stages of criminal processing, nor does it explain the overrepresentation of racial and ethnic minorities in the criminal justice system. The findings of the current study only suggest that comparable defendants are sentenced similarly regardless of race or ethnicity.

Third, defendants' gender influences federal drug sentence lengths after legally relevant guideline variables and other extralegal control variables are controlled. This study finds that being female results in shorter sentence lengths and is therefore consistent with the findings of previous sentencing research (Bickle & Peterson, 1991; Steffensmeier, Kramer, & Streifel, 1993; Daly & Bordt, 1995; Albonetti, 1997, 2002; Ulmer, 1997; Steffensmeier, Ulmer, & Kramer, 1998; Spohn, 1999; Spohn & Beichner, 2000; Spohn & Holleran, 2000; Mustard, 2001; Kautt, 2002; Rodriguez, Curry, & Lee, 2006; Stacey & Spohn, 2006; Steffensmeier & Demuth, 2006; Blackwell, Holleran, & Finn, 2008; Curry & Corral-Camacho, 2008; Brennan & Spohn, 2009; BJS, 2010; Doerner & Demuth, 2010). In reference to the theoretical framework, this finding suggests that judges take the focal concern of practical constraints of the defendant into consideration when determining sentence lengths. Though, all three focal concerns intertwine in the evaluation of the sentence lengths of female defendants. Women may be

perceived as less dangerous and as less of a risk to community safety than male defendants. Women may be seen as presenting greater problems for the correctional system in terms of health care and child welfare costs (Steffensmeier et al., 1998). This is the case because women are often seen as being more likely to be supporting a family and thus, the practical concern of children is present. Further, organizational demands and correctional costs of incarcerating pregnant women or women with physical or mental problems are straining (Steffensmeier et al., 1993).

Fourth, defendants' age influences federal drug sentence lengths after legally relevant guideline variables are controlled. This study finds that as defendants' age increases, their sentence length is reduced slightly. This finding is consistent with the findings of previous sentencing studies (Champion, 1987; Steffensmeier, Kramer, & Ulmer, 1995; Steffensmeier, Ulmer, & Kramer, 1998; Spohn & Holleran, 2000; Steffensmeier & Motivans, 2000; Curry & Corral-Camacho, 2008; Doerner & Demuth, 2010). In reference to the theoretical framework, this finding indicates that judges take the focal concerns of blameworthiness, protection of the community, and practical considerations into consideration when determining sentence lengths. In determining offenders' blameworthiness, older offenders may be viewed as less dangerous and less risky than comparable younger offenders. Even with similarities in final offense levels and criminal histories, the criminality of older and younger offenders is regarded differently in terms of blameworthiness, even though this should not be the case.

Similarly, the level of danger and threat to the community may also be interpreted differently for older and younger offenders. The perceived risks to communities are significantly greater when younger offenders are released than when older offenders are

released back into communities (Steffensmeier, Kramer, & Ulmer, 1995, p. 598). Judges may view the risk of repeat offending as higher for younger offenders than comparable older offenders. In reference to practical considerations, incarcerating older offenders may be more costly and burdensome to the criminal justice system due to foreseeable health problems in the future (Steffensmeier, Kramer, & Ulmer, 1995). Much like how women are viewed in comparison to men, older offenders may be seen as presenting greater problems for the correctional system to bear in terms of health care (Steffensmeier et al., 1998). Therefore, practical considerations are present in the sentencing of older offenders.

Lastly, the findings suggest that citizenship status contributes to federal drug sentence lengths. It should be noted that not all citizenship categories influence sentence lengths. Being a resident/legal alien does not produce statistically significant results; however, illegal aliens receive prison sentences that are longer than those received by U.S. citizens. This finding is consistent with previous sentencing research, in that non-citizen defendants are sentenced to longer prison terms than citizen defendants (Albonetti, 1997; Demuth, 2002; Iles, 2009). From the focal concerns perspective, non-citizen offenders may be perceived as being more blameworthy and more dangerous than comparable citizen offenders simply on the grounds of their illegal status. In general, the presence of illegal aliens generates considerable controversy throughout the nation and the negative perception of illegal aliens is further exacerbated when federal drug crimes are introduced into the equation. When determining sentence lengths, judges may view illegal aliens as not only more blameworthy, but also as more likely to reoffend in the future.

## Limitations

There are limitations to the current study. This research originally intended to use logistic regression to model the *type of sentence*. The univariate results indicate that prison sentences make up 95.8 percent of drug cases, compared to the 4.2 percent of non-prison sentences. As there are too few non-prison sentences in the *type of sentence* variable, it is excluded from the analyses. Ideally, the *type of sentence* variable would need to have 10 percent variation for there to be sufficient variation to model. In this study, the variation falls below that threshold. Consequently, the greatest limitation to this research is caused by the minimal variation in the *type of sentence*.

This study's limitation of having too few non-prison sentences in the *type of sentence* variable draws attention to the trend of relying on incarceration over sentencing alternatives in the correctional system. When the non-prison sentences are further divided into types of alternative sentences, the lack of variation in types of sentences becomes more evident. Out of the 22,851 federal drug cases assessed in this study, only nine defendants receive a fine only sentence. An additional 549 defendants receive a probation only sentence and 392 defendants receive a sentence of probation with confinement conditions. With such reliance on incarceration sentences for drug offenses in 2008, it is clear that drug offenders largely contribute to the expanding prison population throughout the country.

Next, Ulmer (1997) suggests that most quantitative research studies of sentencing share a limitation of contextual focus, which holds true in this research. This research is unable to establish precise explanations for disparity in federal sentencing that may be caused by contextual factors. Contextual factors refer to court-level characteristics and

the cultural, political, economic, and social influences on court operations. Examples of contextual factors include: type of jurisdiction in which a court is located (rural, suburban, urban), region of jurisdiction (Northeast, Midwest, South, West), size of a jurisdiction, racial composition of the population, level of crime in the area, level of local unemployment, prevalence of economically disadvantaged populations, political conservatism/liberalism of the jurisdiction, urbanization, and level of bureaucratization (Weidner, Frase, & Pardoe, 2004, 2005). By focusing exclusively on modeling aggregate case outcomes, this research is unable to capture the interactional, organizational, and political processes that generate sentencing case outcomes. For instance, legally relevant variables, including final offense level and criminal history, may vary from jurisdiction to jurisdiction according to the aforementioned contextual factors. In terms of unwarranted sentencing disparity, this research is unable to empirically identify the processes that gave rise to the disparities and the case processing stages at which the disparities occur. It is possible that the findings of this research are masking race/ethnicity, gender, age, and citizenship biases at earlier stages in the criminal justice process.

A limitation to this research is that the study is cross-sectional. This research focuses on cases that are sentenced between October 1, 2007 and September 30, 2008 and are assessed as constitutional. Aside from reviewing previous research studies, this research cannot make assertions on sentencing trends over a range of years. It is likely that the implications of the *Guidelines* and *Mandatory Minimums* are best evaluated over a span of time, rather than within a single year. By examining the same federal sentencing practices over an extended number of years, trends based on similarities or differences in sentencing patterns may emerge that could be overlooked by a cross-

sectional study. Thus, the cross-sectional nature of this study is limited in its ability to evaluate long-term sentencing patterns.

### **Future Research**

A need exists for more research on sentencing practices, which would be beneficial on both the state-level and the national-level, in order to address unresolved questions in sentencing. If this study were to be recreated, both the incarceration decision (in/out) and the sentence length would be assessed. Following Steffensmeier et al. (1995, 1998) and Doerner and Demuth (2010), additional dummy variable categories would be created for the purpose of examining joint effects of defendant characteristics. Such categories would include White male, White female, Black male, Black female, Hispanic male, and Hispanic female. Other examples of how the dummy variable categories could be created include combining the characteristics of race/ethnicity, gender, and age categories into each dummy variable. Through the creation of dummy variables for age ranges, the study would be better able to assess the curvilinearity of the age-sentencing relationship that is referred to by Steffensmeier and colleagues. Steffensmeier et al. (1995) suggest that youthful defendants (ages 18-20) are sentenced more leniently than young adult defendants (ages 21-29). They assert that the peak ages for sentencing severity are from 21 and 27 and after this period, severity declines gradually until the advanced ages, where the decline accelerates. Therefore, it would be useful to investigate whether a curvilinear age-sentencing relationship continues to exist and what type of contribution this makes while controlling for legally relevant and extralegal factors.

Based on the results of the current study, the primary suggestion for further research is on the topic of prosecutorial decision-making and discretion in federal

criminal cases. Because prosecutors hold great bargaining power over defendants and ultimately determine the final sentence, there is a need for research examining the ways in which this unchecked power is utilized. Research is needed that explores how prosecutors decide who receives a reduction in sentence due to a plea bargain or substantial assistance departure and how large the reduction should be, and whether this process introduces unwarranted and undesirable disparities into the federal criminal justice system.

### **Policy Recommendations**

As a result of the findings of this study, it seems that the focus of policy recommendations does not need to be on the issue of race/ethnicity in sentencing. Because there is considerable consistency in the sentencing of federal drug defendants and judges seem to prescribe sentence lengths based on legally relevant factors, resolving racial and ethnic disparity are not the goals of these policy recommendations. Instead, the policy recommendations of this study concentrate on measures to control prison growth caused by drug offenses and sentencing. As previously discussed, there is minimal variation in the types of sentences assigned to federal drug offenders. With such reliance on incapacitation, prison and jail populations are straining the correctional system.

Much of the prison population growth has been associated with the mandatory minimum sentence triggers built into the *Guidelines*' recommended sentences for drugs, particularly crack-cocaine and powder-cocaine. Many of the policy recommendations that would have been suggested as a result of this study have already been addressed through recent federal legislation. Such recommendations would have included the reduction or elimination of cocaine quantity disparity in sentencing, the reduction of mandatory

incarceration sentences for simple possession cases, and added leniency for first-time offenders.

In 2010, bipartisan sentencing reform occurred on the federal level through the passage of the Fair Sentencing Act (FSA), legislation that amends many sections of the Controlled Substances Act (CSA). First, the new legislation significantly reduces the cocaine sentencing quantity disparity from 100-to-1 to 18-to-1 by raising the quantity of crack-cocaine necessary to require the 5- and 10-year mandatory minimum sentences, thereby limiting the stiff mandatory minimum sentences for low-level crack cocaine offenses. The FSA strikes “50 grams” and inserts “280 grams” and strikes “5 grams” and inserts “28 grams” in Section 401(b)(1) of the CSA. In other words, defendants convicted of a crack-cocaine offense need to possess at least 28 grams, compared to the previous five grams, to receive a five-year mandatory penalty. In order to trigger the 10-year mandatory minimum, 280 grams of crack-cocaine must be possessed, instead of the previous 50 grams (S. 1789, p. 1). Next, the FSA amends Section 404(a) of the CSA by striking the mandatory minimum sentences associated with the simple possession of crack-cocaine (S. 1789, p. 1). First-time simple possession of any quantity of crack-cocaine or powder-cocaine results in a sentence of no longer than one year, compared to the previous mandatory five-year prison term for the simple possession of five grams of cocaine (S. 1789, p. 1). Additionally, the FSA increases penalties for major drug traffickers by increasing penalties for manufacture, distribution, dispensation, or possession with intent to manufacture, distribute, or dispense. The FSA also increases the penalties associated with the importation and exportation of drugs.

The Congressional Budget Office (CBO) estimates reductions of \$42 million in federal prison spending between the years of 2011 and 2015 as a result of the FSA (CBO, 2010). It is estimated that the prison population will decrease by 1,550 person-years, where a person-year measures the incarceration of one person for a full year (CBO, 2010). A decrease in the federal prison population of this magnitude is estimated to save approximately \$27,000 per person per year by avoiding incarceration time (CBO, 2010). Additionally, it is suggested approximately 3,000 defendants per year could receive some form of relief from the FSA (The Smart on Crime Coalition, 2010; The Sentencing Project, 2010).

After recognizing the policy implications associated with the implementation of the FSA, a few problematic policy areas remain. There are two policy recommendations of this study. The first recommendation is the retroactive application of FSA changes in sentencing structure and the second recommendation is the expansion of the federal safety valve provision.

### **Retroactive Application of the Fair Sentencing Act (FSA)**

Resulting from the changes in legislation that have already occurred through the passage and implementation of the Fair Sentencing Act, the primary recommendation of this study is the retroactive application of FSA sentencing structure to previously sentenced cocaine offenders. In other words, offenders sentenced and incarcerated under the old mandatory minimum sentences would receive a reduction of their sentences that is consistent with the lower mandatory penalties of the FSA. Offenders who committed a cocaine offense prior to the enactment of this legislation currently do not benefit from the reform, as Congress has not yet approved retroactive application of the law. The

collective agreement to reform cocaine sentencing through the FSA is a testament the unfairness of the previous legislation and should therefore be applicable to all federally sentenced cases.

### **Expansion of the Safety Valve**

Through the application of the safety valve provision, the court or judge may wave the application of a mandatory minimum sentence and propose a sentence reduction in cases where the defendant meets specific criteria. Of the federal drug defendants included in this study, only 14.5 percent of crack-cocaine cases qualified for the safety valve enhancement. By contrast, 41.4 percent of powder-cocaine cases qualified for the safety valve enhancement in 2008.

As mentioned, the safety valve can reduce the statutory minimum sentence for some drug offenses if the court finds that five criteria are met: 1) the defendant has no prior criminal history; 2) the defendant is nonviolent and did not use a firearm in the offense; 3) the offense did not result in death or serious bodily injury; 4) the defendant is not a leader, manager, or supervisor of the drug ring or others involved in the offense and is not engaged in continuing criminal enterprise; and 5) the defendant provides truthful information to prosecutors pertaining to the activities of the crime and other related offenses (Albonetti, 2002; Levy-Pounds, 2006; Freeborn & Hartmann, 2010). Based on the safety valve criteria, it seems that the criminal history qualification could be expanded slightly for the inclusion of low-level offenders, rather than only defendants with no prior criminal history. Slight tweaking of the safety valve provision could allow for the inclusion of all defendants with a Category 1 Criminal History, instead of the current requirement that defendants have only one criminal history point. Because the intention

of the safety valve provision is to allow some leniency and consideration for defendants with limited or no criminal history, the expansion of the safety valve provision to drug defendants with criminal history scores that classify as Category 1 would better account for which defendants are classified as low-level offenders. The expansion of the safety valve provision would benefit the criminal justice system financially and in terms of housing capacity and availability.

### **Conclusion**

There are five important findings from the current study that contribute to the field of sentencing research: 1) Defendants' race/ethnicity does not influence federal drug sentence lengths after legally relevant guideline factors are controlled; 2) legally prescribed factors are the most important predictors of federal drug sentencing outcomes; 3) defendants' gender influences federal drug sentence lengths after legally relevant guideline factors are controlled; 4) defendants' age influences federal drug sentence lengths after legally relevant guideline factors are controlled; and 5) citizenship status contributes to federal drug sentence lengths.

The results of this study do not support for assertions that Black and Hispanic drug offenders are sentenced to longer prison terms than White drug offenders. This study finds that legally relevant variables are the most important predictors of sentence length. There is considerable uniformity and neutrality in the sentencing of federal drug defendants, in that judges prescribe similar sentences for similar defendants convicted of the same offense. Regardless of race/ethnicity, defendants with more severe final offense levels and more extensive criminal histories are much more likely to receive longer

prison sentences. The findings of this study are consistent with the theoretical framework and associated focal concerns developed by Steffensmeier and colleagues, which argue that legal actors consider blameworthiness, protection of the community, and practical constraints when determining sentences. Based on the implications of this study, federal drug sentencing under the *Guidelines* is mostly successful in achieving fairness, consistency, and proportionality. Much of the sentencing disparity found in this study based on gender, age, and citizenship status has been reported in prior research. Thus, the topic of drug sentencing remains as an area requiring future research.

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## Appendix

Table 1. Descriptive Statistics for Study Variables (N = 22,851)					
	<u>Range</u>	<u>M</u>	<u>SD</u>	<u>N</u>	<u>%</u>
<b>Dependent Variables</b>					
Prison Sentence	0 - 1			21,901	95.8
Sentence Length	0 - 470	83.19	75.65	22,851	
<b>Extralegal Variables</b>					
White	0 - 1			5,701	24.9
Black	0 - 1			7,297	31.9
Hispanic	0 - 1			9,136	40.0
Other Race	0 - 1			717	3.1
Male	0 - 1			19,993	87.5
Female	0 - 1			2,858	12.5
Age	15 - 105	33.45	9.85	22,851	-
U.S. Citizen	0 - 1			16,763	73.4
Resident/Legal Alien	0 - 1			1,784	7.8
Illegal Alien	0 - 1			4304	18.8
<b>Legal Variables</b>					
Drug Minimum Sentence	0 - 470	71.62	67.74	22,851	
# of Conviction Counts	1 - 999	1.35	1.09	22,851	
Final Offense Level	1 - 99	24.67	7.50	22,851	
Weapon Enhancement	0 - 1			2,869	12.6
Criminal History Points	0 - 125	3.13	4.53	22,851	
Career Offender Status	0 - 1			1,751	7.7
Safety Valve	0 - 1			8,408	36.8
Gov't Sponsored Departure	0 - 1			7,583	33.2
Within Range	0 - 1			12,074	52.8
Above Range	0 - 1			150	0.7
Below Range	0 - 1			3,044	13.3
Plea	0 - 1			21,986	96.2
Trial	0 - 1			865	3.8

	Type of Sent.	Sent. Length	Black	Hisp.	Other	Female	Age	Legal Alien	Illegal Alien
Type of Sent.	1.00	–	–	–	–	–	–	–	–
Sent. Length	–	1.00	–	–	–	–	–	–	–
Black	.056 **	.259 **	1.00	–	–	–	–	–	–
Hispanic	.072 **	-.157 **	-.559 **	1.00	–	–	–	–	–
Other	-.017 *	-.044 **	-.123 **	-.147 **	1.00	–	–	–	–
Female	-.139 **	-.155 **	-.110 **	-.016 *	.037 **	1.00	–	–	–
Age	-.013 *	.072 **	-.062 **	-.056 **	.002	-.019 **	1.00	–	–
Legal Alien	.034 **	-.097 **	-.148 **	.193 **	.049 **	-.010	.071 **	1.00	–
Illegal Alien	.084 **	-.120 **	-.297 **	.481 **	-.050 **	-.087 **	-.036 **	-.140 **	1.00
Drug Min.	.187 **	.578 **	.144 **	-.055 **	-.046 **	-.093 **	.063 **	-.034* *	-.030 **
# of Conv.	.041 **	.238 **	.068 **	-.045 **	.017 *	-.048 **	.044 **	-.014 *	-.015 *
Final Offense	.334 **	.732 **	.188 **	-.081 **	-.027 **	-.139 **	.095 **	-.063 **	-.052 **
Weapon	.053 **	.204 **	.121 **	-.116 **	-.010	-.076 **	-.025 **	-.063 **	-.065 **
Crim. History	.104 **	.404 **	.330 **	-.273 **	-.052 **	-.140 **	.032 **	-.152 **	-.243 **
Car. Off.	.053 **	.383 **	.227 **	-.150 **	-.034 **	-.092 **	.054 **	-.070 **	-.121 **
Safety Valve	-.079 **	-.434 **	-.294 **	.268 **	.028 **	.156 **	-.037 **	.161 **	.265 **
Gov't Depart.	-.024 **	-.165 **	-.051 **	-.067 **	.032 **	.047 **	.020 **	-.020 **	-.013
Trial	.039 **	.324 **	.067 **	-.030 **	-.005	-.036 **	.062 **	.020 **	-.028 **

\*\* . Correlation is significant at the 0.01 level (2-tailed)  
\* . Correlation is significant at the 0.05 level (2-tailed)

	Drug Min.	# of Conv.	Final Offense	Weapon	Crim. Hist.	Car. Off.	Safety Valve	Gov't Dep.	Trial
Type of Sent.	–	–	–	–	–	–	–	–	–
Sent. Length	–	–	–	–	–	–	–	–	–
Black	–	–	–	–	–	–	–	–	–
Hisp.	–	–	–	–	–	–	–	–	–
Other	–	–	–	–	–	–	–	–	–
Female	–	–	–	–	–	–	–	–	–
Age	–	–	–	–	–	–	–	–	–
Legal Alien	–	–	–	–	–	–	–	–	–
Illegal Alien	–	–	–	–	–	–	–	–	–
Drug Min.	1.00	–	–	–	–	–	–	–	–
# of Conv.	.131 **	1.00	–	–	–	–	–	–	–
Final Offense	.627 **	.174 **	1.00	–	–	–	–	–	–
Weapon	.088 **	.073 **	.236 **	1.00	–	–	–	–	–
Crim. History	.139 **	.040 **	.229 **	.072 **	1.00	–	–	–	–
Career Offender	.112 **	.037 **	.284 **	.035 **	.483 **	1.00	–	–	–
Safety Valve	-.117 **	-.108 **	-.321 **	-.255 **	-.493 **	-.218 **	1.00	–	–
Gov't Depart.	.134 **	-.037 **	.140 **	.001	.002	.022 **	.051 **	1.00	–
Trial	.160 **	.247 **	.190 **	.018 **	.043 **	.048 **	-.127 **	-.130 **	1.00
** . Correlation is significant at the 0.01 level (2-tailed)									
* . Correlation is significant at the 0.05 level (2-tailed)									

	Model 1				Model 2			
	B	SE	t		B	SE	t	
<b>Race &amp; Ethnicity</b>								
Black	39.835	1.334	29.872	***	–	–	–	–
Hispanic	-2.678	1.275	-2.100	*	–	–	–	–
Other Race	-7.158	2.993	-2.391	*	–	–	–	–
<b>Legal Variables</b>								
Drug Min. Sentence	–	–	–	–	.281	.005	56.626	***
# of Conv. Counts	–	–	–	–	4.207	.248	16.943	***
Final Offense Level	–	–	–	–	5.012	.053	95.416	***
Weapon Enhancement	–	–	–	–	5.756	.816	7.050	***
Crim. History Points	–	–	–	–	2.571	.073	35.162	***
Career Off. Status	–	–	–	–	33.797	1.132	29.856	***
Safety Valve	–	–	–	–	-16.841	.673	-25.034	***
Gov't Sponsored Dep.	–	–	–	–	-39.277	.568	-69.137	***
Trial	–	–	–	–	47.291	1.416	33.386	***
<b>Extralegal Variables</b>								
Female	–	–	–	–	–	–	–	–
Age	–	–	–	–	–	–	–	–
Legal Alien	–	–	–	–	–	–	–	–
Illegal Alien	–	–	–	–	–	–	–	–
Constant	71.566	1.014	70.606	***	-64.270	1.279	-50.266	***
R <sup>2</sup>	.067				.743			
F	525.807***				7034.528***			
<p>*** p ≤ .001; ** p ≤ .01; * p ≤ .05  The omitted categories are <i>White, Male, U.S. Citizen, Weapon Enhancement Not Applied, Career Offender Status Not Applied, Safety Valve Not Applied, No Government Sponsored Departure, and Plea.</i></p>								

Table 3. Linear OLS Regression of Legal and Extralegal Variables on the Sentence Length Decision, (cont.)

	Model 3				Model 4			
	B	SE	t		B	SE	t	
<b>Race &amp; Ethnicity</b>								
Black	–	–	–	–	-.406	.736	-.552	–
Hispanic	–	–	–	–	-1.400	.760	-1.841	–
Other Race	–	–	–	–	.302	1.577	.192	–
<b>Legal Variables</b>								
Drug Min. Sentence	.281	.005	56.675	***	.281	.005	56.533	***
# of Conv. Counts	4.199	.248	16.942	***	4.187	.248	16.876	***
Final Offense Level	5.017	.053	95.362	***	5.020	.053	95.324	***
Weapon Enhancement	5.513	.817	6.715	***	5.421	.819	6.622	***
Crim. History Points	2.611	.074	35.237	***	2.604	.075	34.859	***
Career Off. Status	33.907	1.130	29.993	***	33.906	1.134	29.859	***
Safety Valve	-17.355	.691	-25.099	***	-17.317	.693	-24.987	***
Gov't Sponsored Dep.	-39.016	.568	-68.678	***	-39.141	.574	-68.220	***
Trial	47.652	1.416	33.657	***	47.619	1.416	33.630	***
<b>Extralegal Variables</b>								
Female	-3.754	.835	-4.498	***	-3.796	.839	-4.526	***
Age	-.137	.027	-5.104	***	-.142	.027	-5.221	***
Legal Alien	.570	1.002	.569		1.069	10.43	1.025	
Illegal Alien	4.089	.712	5.742	***	4.797	.808	5.939	***
Constant	-60.238	1.515	-39.771	***	-59.557	1.608	-37.048	***
R <sup>2</sup>	.744				.744			
F Change	22.532***				1.340			

\*\*\* p ≤ .001; \*\* p ≤ .01; \* p ≤ .05  
 The omitted categories are *White, Male, U.S. Citizen, Weapon Enhancement Not Applied, Career Offender Status Not Applied, Safety Valve Not Applied, No Government Sponsored Departure, and Plea.*