DISSERTATION

CRACK/POWDER COCAINE: ANALYZING VARIOUS ELEMENTS OF EVERLASTING INEQUALITY

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ABSTRACT

CRACK/POWDER COCAINE: ANALYZING VARIOUS ELEMENTS OF EVERLASTING INEQUALITY

In 1986, the Anti-Drug Abuse Act was enacted in the US criminal justice system. This legislation set in place a ratio of 100:1 for powder and crack-cocaine offenses. This meant that under federal law, 100 grams of powder cocaine were equivalent to just 1 gram of crack-cocaine, despite the substances being pharmacologically identical. This difference resulted in stark sentencing inequalities among Black and White defendants. In 2010, changes were made to the ratio to “equalize” the substances. At that time, the ratio was lessened to 18:1, under the Fair Sentencing Act (FSA). Despite this change, a large body of research shows that distinct disparities persisted. In 2018, the First Step Act was enacted to address shortcomings of the FSA but left the 18:1 ratio intact. As such, a ratio of 18:1 remains today. To uncover the nuances that exist within these sentencing outcomes, I used various years of data from the United States Sentencing Commission to create four separate data blocks. With these blocks, I first explored how various amendments made to the crack/powder cocaine sentencing disparity impacted sentencing outcomes among these two substances. Then, I employed an intersectional framework to examine the relationship between race, sex, and education level and crack/powder-cocaine sentencing outcomes. Last, to explore other important aspects that have historically influenced crack/powder cocaine sentencing outcomes, I explored the use of the 851 enhancement among these two substances, focusing specifically on how race and cocaine type impact the presence of this enhancement at the time of sentencing. The 851 enhancement allows prosecutors to "enhance" mandatory minimum sentences for those who have prior drug convictions. Importantly, this enhancement is not automatic; prosecutors must choose to file this information using their own discretion. As such, inequalities in its use exist, particularly in relation to drug type and racial identity (USSC, 2016).

Findings show that in *post-Booker* (2005) and *post-Gall/Kimbrough* (2007) sentencing schemes, offenses involving crack-cocaine received harsher sentencing outcomes than offenses involving powder cocaine. Interestingly, results of this study show that in a *post-Fair Sentencing Act* (2010) sentencing scheme, individuals convicted of crack-cocaine related offenses received more lenient sentences than those convicted of powder cocaine related offenses. When examining the intersections of race and sex, Black men charged with crack-cocaine offenses were more likely to receive longer criminal sentences than all other individuals charged with crack-cocaine offenses, with the exception of Hispanic men and those who identified in the "other" racial category. When examining the intersection between race, sex, education level, and sentencing outcomes, analyses found that White, Black, and Hispanic women with less than a high school diploma received shorter sentencing outcomes for crack-cocaine related offenses in comparison to Black men with less than a high school diploma.

Additionally, White women with a college level education received significantly shorter sentences than Black men with a less than a high school diploma. Importantly, Hispanic men with less than a high school diploma received significantly longer sentences compared to Black men with less than a high school diploma. Last, when examining the factors that may influence an 851-enhancement being present at the time of sentencing, none of the main independent variables included in the analysis were significant. Overall, this dissertation serves as an up-to-

date exploration of the various ways in which crack/powder cocaine sentencing outcomes remain imbalanced, and bolsters the argument that in order to wholly remedy these stark, persistent inequalities, the 18:1 ratio attached to crack and powder cocaine must finally be abolished once and for all.

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CHAPTER 1

INTRODUCTION

In the United States, illicit drugs, defined as "substances that are illegal to possess", have continuously been at the forefront of criminal law (Edith Cowan University, 2023). Throughout time, certain substances have come into the spotlight at different points, all igniting their own unique crusade, often referred to as a "drug war". These politically defined "wars" have sought to combat the manufacturing, distribution, and usage of various substances. While each crusade has slightly differed in its legal outcomes, many of these substances are accompanied by harsh legal sanctions at the federal level, such as mandatory minimum sentencing guidelines (Cornerstone of Recovery, 2021; Congressional Research Service, 2023). Mandatory minimum sentencing guidelines develop a set of "irreducible sanctions" related to various offenses, many of which are drug-related (Wacquant, 2009:66). With these sentencing structures, judges have been given little leeway to go outside of the guidelines, thus reducing the amount of discretion they hold in sentencing.

As a result of the various "wars" that have taken place throughout modern history, drug-related offenses are the most influential factor in the tripling of the U.S. prison population since 1980 (Tonry, 1995). Indeed, in the federal prison system, 25 percent of this population had been charged with a drug-related offense at this time. By 1991, 56 percent of the population was comprised of individuals convicted of drug offenses, and by 1992, 58 percent (Tonry, 1995). More recently, data from 2020 show that law enforcement made over 1 million drug possession related arrests every year, many of which ultimately led to sentences of incarceration (Uniform Crime Report, 2020). Altogether, sentencing guidelines, such as mandatory minimums, and subsequent increases in the number of drug-related charges being prosecuted, have led to persistent racial inequalities in the US federal criminal justice system (Tonry, 1995).

While each drug “war” and the laws resulting from them have influenced racial inequalities in the federal prison population in some way, drug legislation set in place after 1980 was particularly damaging (Tonry, 1995; Tonry, 2016). More specifically, the crack/powder cocaine disparity law (also known as the Anti-Drug Abuse Act of 1986), has had especially detrimental outcomes for Black individuals (Blumstein, 2003; Center for American Progress, 2018; Garland, 2008; The Sentencing Project, 2015; Tonry, 1995). The crack/powder cocaine disparity law, also known as the Anti-Drug Abuse Act of 1986, developed a ratio of 100:1, meaning that under federal law, 100 grams of powder cocaine were equivalent to just 1 gram of crack-cocaine, despite the two substances being pharmacologically identical (Provine, 2011; Tonry, 1995; Tonry, 2016; Vagins & McCurdy, 2006). With this ratio, and the implementation of mandatory minimum sentencing structures, the possession of just 5 grams of crack-cocaine triggered the same federal mandatory minimum sentence as 500 grams of powder cocaine (Ahmad, 2021; Wacquant, 2009).

The disparities resulting from this legislation are stark, especially when noting that White individuals are more likely than Black individuals to use crack-cocaine in their lifetimes, yet continuously make up a minor percentage of those convicted of crack-cocaine related offenses (ACLU, 2023; The Leadership Conference on Civil and Human Rights, 2021; Palamar et al., 2015). Moreover, despite the fact that, amongst all racial categories, crack-cocaine use and distribution is prevalent, the majority of those prosecuted for crack-cocaine related offenses are Black. As such, major racial disparities have resulted from this legislation (Tonry, 1995). Further illustrating this, the average sentence length for crack-cocaine offenses is historically longer than that of powder-cocaine offenses. As a result, Black individuals incarcerated for crack-cocaine charges have served nearly just as much time in prison for non-violent drug offenses as White individuals have for violent offenses (ACLU, 2023). Overall, various statistics show that no substance is as racially skewed as crack (ACLU, 2023; US Sentencing Commission, 2015; 2023).

In addition to this legislation, the development of the United States Sentencing Commission (USSC), the Sentencing Reform Act (SRA), and the Sentencing Guidelines brought about an entirely new sentencing system in the United States. While the former structure allowed for a vast amount of judicial discretion, the outlines set in place by the SRA aimed to significantly lessen, if not totally do away with, differences in sentencing decisions. The Sentencing Commission was charged with developing the new structure, which brought forth a set of guidelines that outlined appropriate sentencing ranges for various crimes, with much emphasis on drug offenses. Judges were not authorized to stray from these ranges, unless especially unique factors were present. Additionally, the Commission was required to oversee sentencing decisions, and advocate for any necessary changes to be made to the guidelines (United States Sentencing Commission, 2020). In this legislation, the Commission implemented the mandatory minimum sentencing structure outlined by the Anti-Drug Abuse Act, setting in stone the scientifically unfounded, severely disparate crack/powder cocaine ratio and mandatory sentencing triggers attached to it. All in all, the racial inequality that has been perpetuated virtually every year since the implementation of these structures is deeply concerning.

Various Supreme Court cases have influenced the way in which the Guidelines are approached, ultimately working to lessen the disparities inherent in the crack/powder cocaine ratio and subsequent mandatory sentences. Of specific importance are *Blakely v. Washington*[1], *United States v. Booker and Fanfan, Kimbrough v. United States,* and *Gall v. United States*. These cases challenged the constitutionality of the Guidelines and allowed for the reconsideration of the "mandatory" aspect of their implementation (Frase, 2007; Hofer, 2007). In addition to these cases, two pieces of legislation have been implemented to further address the issues present in this ratio. First, in 2010, changes were made to the crack/powder cocaine ratio in an effort to "equalize" the substances. To do so, the ratio for powder versus crack-cocaine lessened from 100:1 to 18:1, under the Fair Sentencing Act of 2010 (FSA 2010) (Ghaly, 2013; The Leadership Conference of Civil and Human Rights, 2021). Despite this change, much research shows that distinct racial disparities have remained (The Leadership Conference on Human and Civil Rights, 2021; Kleiman & Hawdon, 2011). In 2018, the First Step Act was enacted to address the shortcomings of the FSA (2010); and more namely, the lack of retroactivity present in the Act (Library of Congress, 2021). Though these changes have begun to undo the damage done by the implementation of this ratio, a disparity of 18:1 still remains today, which only works to further perpetuate the longstanding inequalities resulting from this law.

Importantly, in the United States, federal drug offenses are the most common type of offense to carry a mandatory minimum penalty. These offenses are outlined in title 21 of the United States Code (USSC, 2018). Statutes ban the distribution, manufacture, or importation of controlled substances, and possession with intent to distribute controlled substances (USSC:10, 2018). Additionally, acts such as distributing drugs to persons who are under the age of 21 or who are pregnant, using persons under the age of 18 in drug operations, and distributing drugs in or near schools and colleges are also prohibited (USSC:10, 2018). Within this category, the most

[1] *Blakely v. Washington* is a state-level amendment, while all others are federal-level amendments.

prosecuted drug crimes carrying mandatory minimums stem from the quantity and type of illicit substance involved. For example, when certain quantities are present, a five-year mandatory minimum sentence applies. Additionally, when larger amounts are present, the mandatory minimum penalty increase to ten years, with a maximum of life imprisonment applicable (USSC, 2018). Moreover, if death or serious bodily injury results from the use of the controlled substance involved in an offense, even higher penalties apply.

These mandatory minimum penalties can be enhanced even further if the defendant has any prior felony drug offense convictions. These enhancements are commonly known as the recidivist drug enhancement; formally referred to as the 851-enhancement. The 851-enhancement produces its own unique sentencing disparities, which only furthers the imbalances that result from current US drug laws. To illustrate, a defendant who will normally qualify for a five-year mandatory minimum sentence may be subject to an increased sentence of ten years to life if they have one prior felony drug offense conviction. Additionally, a prior conviction increases a ten-year mandatory minimum sentence to a 20-year mandatory minimum sentence. Moreover, those who have been previously convicted of two or more felony drug offenses are subjected to a mandatory sentence of life imprisonment. For sentences that are already enhanced due to death or serious bodily injury, a previous felony drug conviction further enhances the mandatory minimum sentence imposed. Notably, these enhanced penalties are not automatically triggered after conviction. Instead, prosecutors must take steps to file an 851-enhancement prior to a conviction in order for these penalties to be applied.

Once this information is filed, the court must complete various procedural requirements. First, the court must determine whether any relative prior convictions are accurate and inform the defendant that any challenges to these prior convictions that are not raised before sentencing will be waived (USSC: 11, 2018). Following this, the defendant is entitled to a hearing before a judge, during which the government must prove the facts stated in the information beyond a reasonable doubt. In the case that the defendant does not raise a challenge, or the court concludes that the prior conviction qualifies as a means for implementing the 851- enhancement, the court must then impose an enhanced sentence (USSC, 2018).

This enhancement may be withdrawn at any point throughout the judicial process prior to sentencing for various reasons, such as the introduction of a plea deal or by providing substantial assistance to prosecutors throughout the case. Additionally, if a defendant meets five specific criteria that imposes the “safety valve” as outlined in 18 U.S.C. 3553(f), they may be subject to 851-enhancement relief. To be eligible for this, the defendant must have a limited criminal history, limited involvement in the offense, the offense must be nonviolent in nature and must not have resulted in serious injury. Last, prior to sentencing, the defendant must tell the government all they know about the offense and any related misconduct (USSC, 2018). This process overlaps with the substantial assistance departure outlined in U.S.S.G. 5k1.1. Indeed, USSC data shows that nearly one-third (32.6%) of those who were eligible for the 851-enhancement received a reduction through the use of the substantial assistance departure. Conversely, 23.5 percent of individuals who were eligible for an 851 filing but did receive one ultimately received the substantial assistance reduction (USSC, 2018). Overall, whether an enhancement- eligible defendant actually receives an increased sentence is very dependent on the district in which they are prosecuted. For example, in 2011, prosecutors in some districts filed 851-enhancements in over 75 percent of cases in which a defendant was eligible for this type of increase. Conversely, that same year, other districts filed no 851-enhancements in any case in which the defendant was eligible (US Courts, 2025, p. 3). This practice often results in extreme disparity (US Courts, 2025).

To illustrate the impacts of the disparate application of 851-enhancements, in 2016, for cases in which the 851 information was filed, sentences were over five years longer (61 months) on average when compared to the sentences imposed for those who were eligible for the 851-enhancement but did not have this information filed in their case (USSC, 2018). Racial inequities in the use of the 851-enhancement are also present. These data show that Black defendants were most likely to receive 851-enhancement filings. Notably, Black drug defendants made up a bigger portion of those eligible for an 851-enhancement (42.2%) than they did for overall drug defendants that year (23.6%) (USSC, 2018). The opposite is true for Hispanic defendants, who accounted for 51 percent of all drug defendants, but just 29.4 percent of those eligible for the enhancement that year. Additionally, the impact of the 851-enhancement on Black defendants becomes clearer when comparing racial groups at each of the significant stages in the 851 process: whether the defendant is eligible for the enhancement; if so, whether the 851 information was filed; and, whether the 851-enhancement remained in place at the time of sentencing. Results show that Black defendants comprised an increasingly larger percentage of those who received an 851-enhancement as they progressed through each of these steps.

These inequalities continue when comparing drug type as well. For instance, in 2016, crack-cocaine related offenses produced the largest portion of defendants eligible for this type of enhancement (60.3%). Comparatively, just 27.5 percent of defendants being tried for powder cocaine related offenses were eligible. When examining whether those who were eligible for this type of enhancement had the 851-information filed in their cases, inequalities remain. Indeed, despite just 15.4 percent of crack-cocaine traffickers being eligible for this enhancement, 851 information was filed in 18.1 percent of all eligible cases, meaning the government sought the enhancement slightly more often for crack-cocaine defendants when compared to other types of defendants. In sum, the 851-enhancement produces unique outcomes that are specific to drug defendants. For crack and powder cocaine defendants specifically, this statute essentially creates further inequalities within an already unequal playing field. As such, it is important to further illuminate the outcomes of this statute in its most current form. Uncovering the inequalities that still exist within its application is an important component to addressing the unique shortcomings found in U.S. drug laws.

While there have been various amendments and pieces of legislation enacted to combat the damage done by the implementation of the Anti-Drug Abuse Act of 1986 and the Sentencing Guidelines, it is simply not enough. Since its application, various entities throughout the legal and political systems, along with academics, have worked tirelessly to call attention to the imbalance that perpetually lives within the crack/powder cocaine disparity (ACLU, 2023; Chanenson, 2006; Tonry, 1995; 2016). Many of these individuals have contended that by not fully eradicating the disparity, inequalities have and will continue to remain. Altogether, the efforts made to lower the disparity fall short, and may even introduce their own unique inequalities both within the crack/powder cocaine mandatory minimum guidelines and on an inter-district level (Chanenson, 2006). As such, this study centers around the necessity for an exploration into crack/powder cocaine sentencing outcomes that result from various important amendments that have been made to the sentencing scheme, such as those that resulted from two important Supreme Court cases: *United States v. Booker* and *United States v. Gall/Kimbrough.* Further, the impacts of the changes implemented after the Fair Sentencing Act of 2010 and the First-Step Act of 2018 will be examined. Altogether, these four landmark pieces of legislation serve as important milestones within the crack/powder cocaine sentencing system, and showcase lasting disparities in these outcomes, even after the implementation of the most current amendments. This study also illuminates the need for more exploration into the impacts of the 851-enhancement, which only works to perpetuate disparate sentencing outcomes specifically among federal drug offenses.

Last, to further investigate the disproportionate outcomes that result from this imbalanced sentencing system, an intersectional lens will be implemented. Intersectionality theory was first coined by Kimberlé Crenshaw in 1989. This framework places an important emphasis on the intersection of one's various social positions. For example, by considering the ways in which identities like sex, race/ethnicity, and social class intersect with one another to create unique avenues of privilege and disadvantage as one navigates and interacts with our social systems (Crenshaw, 1991). Overall, Crenshaw argues that employing an intersectional framework in social research is crucial to uncovering important intricacies and differences that exist within one's social positions. As such, this study also illuminates racial/ethnic disparities, sex differences, and the impacts of education level on sentencing outcomes. This lens will be employed in the context of crack-cocaine related offenses specifically, given that the laws attached to this substance are particularly damaging. Altogether, because crack has continuously been punished more harshly than powder cocaine, even after various amendments have been implemented to lessen these disparities, those who are most disproportionately impacted by these harsh and imbalanced sentencing structures will serve as the focus of the intersectional investigation. Given this backdrop, the three main research questions that guide the focus of this study are:

R1: How have various amendments made to the crack/powder cocaine disparity impacted sentencing outcomes among federal crack/powder cocaine offenses?

R2: How do race, sex, and education level play a role in crack-cocaine sentencing outcomes?

R3: How do race and type of cocaine impact the use of 851-enhancements in crack and powder cocaine-related offenses?

Overview of Dissertation

In Chapter Two, a historical timeline of crack/powder cocaine sentencing laws is detailed, beginning with the Controlled Substances Act, and concluding with the First Step Act of 2018, to uncover how crack/powder cocaine sentencing structures have progressed into their most current form. In addition, the notable Supreme Court cases that influenced amendments to the Sentencing Guidelines will be presented. Then, in Chapter Three, previous literature is explored, to further illuminate the lasting inequalities and unique intricacies that have resulted from this legislation, throughout its various forms. In this section, the need for a more current and expanded exploration of these outcomes is explained. Next, Chapter Four includes an exploration of intersectionality theory, and its relation to the connection between racial identity, sex, educational attainment, and criminal sentencing outcomes. Then, Chapter Five explains the method used to approach the research questions, including a discussion about the data source, the sample population, and the measurements of all variables included in the analysis. Chapter Six presents the results of the analyses. Finally, Chapter Seven includes a discussion of the findings, implications, and limitations of the study, as well as suggestions for future research.

CHAPTER II

THE EVOLUTION OF CRACK/POWDER COCAINE SENTENCING LAWS IN THE UNITED STATES

Crack/powder cocaine criminal sentencing has taken various forms throughout U.S. history. Numerous pieces of federal legislation like the Controlled Substances Act and the Sentencing Reform Act of 1984, and Supreme Court cases, such as *Blakely v. Washington*, *United States v. Booker and Fanfan, Kimbrough v. United States,* and *Gall v. United States,* have influenced these changes. To adequately understand crack/powder cocaine sentencing in its most current form, a historical overview of its development, and the federal legislation and legal cases that influenced its amendments, is necessary. The following section begins with an exploration of the key pieces of legislation and legal decisions that have influenced the development and modification of the crack/powder cocaine ratio, and concludes with the most recent legislative changes related to this disparity that are currently in place.

To begin, one of the first major pieces of U.S. legislation related to drug use and control is the Controlled Substances Act (CSA), developed in 1971, during Richard Nixon's presidency[2]. At that time, Nixon and his team felt their declaration of a "War on Drugs" was hindered by a complex, unorganized system of laws, and drug enforcement/regulatory agencies. With this concern, the CSA worked to combine all previous drug laws into one federal mandate. This Act centered around the regulation, manufacturing, distribution, and use of illicit substances, and emphasized the role of federal law enforcement in relation to controlled substances (Kleiman & Hawdon, 2011; Ortiz & Preuss, 2024). The CSA also outlined guidelines for categorizing illicit

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[2] The Harrison Narcotics Act of 1914 is the first comprehensive federal law related to the regulation of various illicit substances to be implemented in the United States.

substances and developed the legal foundation to regulate them (Ortiz & Preuss, 2024). Altogether, the various components of this Act serve as a major baseline for drug enforcement attempts throughout U.S. history (Kleiman & Hawdon, 2011). As a result of these developments, the CSA significantly altered the way in which U.S. federal drug policies operate.

Mandatory minimum sentencing laws for drug offenses were largely repealed on a federal level during this time due to a shift in ideology surrounding the importance of rehabilitation (Mann, 2013). However, shortly after this, in 1973, the Rockefeller drug laws were implemented. These laws reintroduced mandatory minimum sentences in New York State. During this time, a heroin epidemic was unfolding in the city, and crime rates, particularly homicide rates, were on the rise (Mann, 2013). Then-governor Nelson Rockefeller, who was once an avid supporter of social programs such as drug rehabilitation, job training, and affordable housing, began shifting his response to drug use. What was once understood as a social problem was now seen as a criminal problem.

With the general social climate surrounding heroin use and, drug use more broadly, growing more hostile and panicked, Rockefeller determined that rehabilitative approaches to drug addiction had failed, and as such, a harsher, “zero-tolerance” approach to drug use would surely be more impactful (Drug Policy Alliance, 2009; Mann, 2013). With this, Rockefeller developed what would become known as the Rockefeller Drug Laws—the most severe narcotics laws in the U.S. (Kohler-Hausmann, 2010). These laws implemented exceptionally harsh punishments related to minor drug offenses. For example, mandatory prison sentences of fifteen years to life for those convicted of distributing or possessing drugs, even for very small amounts of marijuana, cocaine, or heroin. This legislation also forbade plea bargaining for drug-related offenses (Tonry, 1996). Overall, Rockefeller believed that harsh penalties for drug-related offenses would work as a strong deterrent to continued involvement with drugs (Mann, 2013; Tonry, 1995).

While Rockefeller was met with much harsh criticism from addiction experts and political peers alike, the laws eventually passed through New York legislature with ease. Though the original intent of these laws was to target drug “kingpins”, those most likely to be incarcerated under these laws were low-level, nonviolent, first-time offenses (The Drug Policy Alliance, 2023). Additionally, a detailed evaluation of their effectiveness showed that the enactment of these laws had no effect on drug distribution, use, or drug-related health struggles (Tonry, 1995, Tonry, 1996; Tonry 2016).

Overall, this legislation ignited the start of an unparalleled shift in the political and cultural climate surrounding drug use and abuse in the U.S. Indeed, the 1970s began with a focus on rehabilitation methods for drug abuse. However, after the implementation of the Rockefeller laws, support for addressing drug abuse through the criminal justice system rose exponentially (The Drug Policy Alliance, 2023; Garland, 2001). As a result, various states joined the “tough on drug crime” crusade and implemented their own versions of mandatory minimum sentencing laws and three-strikes laws related to drug offenses, as did the federal government (The Drug Policy Alliance, 2023; Mann, 2013). Altogether, the Rockefeller laws initiated widespread support for mandatory minimums across the U.S., at both the state and federal level, the latter of which imposed some of the harshest federal penalties related to illicit substances less than a decade later. Overall, this era serves as one of the most key shifts in how the U.S. criminal justice system operates. The departure from rehabilitation efforts at this time ultimately unraveled the principles and practices that were once the foundations of the modern penal system (Garland, 2001).

Though drug legislation was of high importance during President Nixon's run, the presidency of Ronald Reagan, beginning in 1981, brought about an even stronger crusade against drug abuse and an emphasis on its criminal sentencing (Wacquant, 2009). During this time, Reagan reinforced and expanded the reach and efforts of this "war", with a laser focus on harsh criminal punishments as the most effective way to deter drug use and abuse. With this outlook, the Sentencing Reform Act of 1984 (SRA) was implemented. Importantly, during this time, the reemergence of "just deserts" punishment, i.e., "the punishment that one deserves" became widespread, in response to the ever-growing idea that individualized sentencing was unfair (Garland, 2001; Wacquant, 2009). Indeed, prior to the changes in federal sentencing guidelines under the SRA, federal judges used indeterminate sentencing practices to sentence those convicted of crimes (US Sentencing Commission, 2024). Indeterminate sentencing structures allowed for unlimited discretion by judges, who used this setup to mete out sentences within a broad range of punishment options as laid out by statutory guidelines. After this, the U.S. Parole Commission would determine when someone would be released from prison and placed on parole. The overall goal of the indeterminate structure was to provide individualized sentencing with an emphasis on rehabilitation, to account for the unique circumstances and needs of each person (Tonry, 2016). With this broad discretion, judges also had the power to aggravate sentences when warranted (Garland, 2001; Tonry, 1995; Tonry, 2016). Additionally, no standards or guidelines existed that could be referenced in sentencing appeals, though, for the most part, the opportunity to file an appeal at this time was extremely rare (Tonry, 2016).

Given this structure, concern related to widespread sentencing disparities across the U.S. during the 1970s began to increase. Many critics argued that the broad discretion judges held could and did perpetuate unjustified racial and class disparities in sentencing (Garland, 2001;

Tonry, 1995). Opponents of indeterminate sentencing argued that racial discrimination throughout the criminal justice system was widespread; judges, parole boards, and corrections officers could not be trusted. As such, for those in opposition, the only way to truly limit racial disparities in the system was to reduce the amount of discretion officials had (Tonry, 1995; Tonry, 1996). By doing so, sanctions could then be focused solely on the offense at hand and not individual characteristics of the defendant. Furthermore, many legal scholars and practitioners condemned the lack of procedural consistency, transparency, and predictability present within the system (Tonry, 2016:43). Various supporters of these changes advocated for the development of strict guidelines that would also lessen the impact politics played on criminal justice policy (Tonry, 1996). On the other end of the spectrum, some supporters of this change contended that indeterminate sentencing resulted in "soft on crime" policies, thus weakening criminal justice system responses to crime (Garland, 2001). In major part, the implementation of the SRA and the development of the Commission was the result of a strengthening tough on crime outlook unfolding in the United States (Saxena, 2005). With this, a push for the implementation of determinate sentencing, in which sentencing lengths are set within a small range for all who encounter the criminal justice system, began (Wacquant, 2009). Additionally, various actors across the political spectrum advocated for the development of an appointed commission; one that was tasked with developing and overseeing sentencing rules and guidelines, to create more accountability and regulation within the legal system (Tonry, 1996).

The Sentencing Reform Act of 1984 and the Development of the Commission

As a result of the multifaceted push for a determinate sentencing structure and increased accountability, under the Sentencing Reform Act of 1984, the United States Sentencing Commission (USSC) was developed. The Commission has up to seven voting members, along with a chair, who are appointed by the President, and confirmed by the Senate (US Sentencing Commission, 2020). Up to four Commissioners can be from the same political party, and at least three must be federal judges. The Sentencing Reform Act requires the Commission to develop sentencing polices and implement judiciary practices in two overarching ways: by implementing and regularly reassessing federal sentencing guidelines and by issuing reports to Congress that detail recommended changes in federal sentencing legislation (United States Sentencing Commission, 2020). The SRA also requires the Commission to conduct data collection and research centered around sentencing-related issues. Additionally, a special branch was created to educate various legal actors, such as federal judges, prosecutors, defense council, and probation officers, about federal sentencing practices.

The implementation of the SRA brought about a new sentencing structure that greatly differed from the previous setup. At the federal level, parole release was abolished, rehabilitation was removed as a core goal of punishment, and emphasis on the development and implementation of various guidelines and mandatory sentences began (Garland, 2001; Seghetti, 2009; Tonry, 1995; Tonry, 1996; Tonry 2016). More specifically, Congress pushed for the Commission to develop guidelines that increased penalties for various types of crimes, such as White-collar and violent offenses. In addition, Congress implemented mandatory minimum penalties for various drug-trafficking and firearms offenses and prohibited probation for certain types of offenses (US Sentencing Commission, 2020).

The enactment of the SRA introduced a new setup that notably reduced the amount of discretion judges once held. First, the Commission was required to develop a “detailed set of sentencing guidelines” that addressed “all important variations that commonly may be expected in criminal cases, and that reliably breaks cases into their relevant components and assures consistent and fair results" (US Sentencing Commission, 2024:5). Secondly, the SRA instructed the Commission to bar or restrict the consideration of individual defendant characteristics related to sentencing. Last, the new framework required limiting the span of individual sentences within the guidelines' parameters such that "the maximum of the range shall not exceed the minimum of the range by more than the greater of 25 percent or six months" (otherwise known as the "25 percent rule") (US Sentencing Commission, 2024, pp. 5). Overall, the SRA required courts to sentence individuals within the guidelines unless the Commission had found basis for a "departure" from the range, or an aggravating or mitigating factor of some kind that had not been taken into consideration by the Commission when developing the guidelines. The sentencing judge was required to make an argument as to why these factors should ultimately result in a sentence that falls outside of the specified sentencing range (US Sentencing Commission, 2024). These restrictions were put in place to lessen inequalities in sentencing amongst similarly situated defendants by removing factors deemed "irrelevant" in sentencing, such as socioeconomic status. The guidelines and subsequent limitations brought forth by the SRA were also said to increase overall certainty and fairness throughout the sentencing process.

In 1987, the Commission published the first *Guidelines Manual*, which outlined the new set of guidelines and provided a sentencing table with much more restricted sentencing ranges than the broader statutory sentencing ranges outlined for various federal crimes. For example, in a bank robbery case in which the defendant did not use a dangerous weapon, the statutory range of punishment is zero to twenty years. However, under the new structure, the average range implemented in this type of case is much slimmer, ranging between 78-97 months (US Sentencing Commission, 2024). A new wave of mandatory minimum sentencing laws pointed at drug-related offenses were implemented as well. Proponents of mandatory minimum sentencing laws claimed these laws would work as strong deterrents against drug crime, due to the certainty and harshness of the laws (ACLU, 2023). Coupled with this, federal commissioners appointed to the Commission in 1985 were strong proponents of toughness rather than fairness. Rather than emphasizing a separation between politics and social policy, Commissioners decided to lean into this relationship, to "prove" they were also tough on crime and had no time for "lenient" judges (Tonry, 1996; Tonry, 2016). The Commission overwhelmingly rejected the notion that sentencing should be just and separate from politics (Tonry, 1996; Tonry, 2016). As such, the guidelines brought forth by the SRA were particularly harsh, and as a result, placed more people in incarceration for longer periods of time for years to come.

With these pieces in place, the SRA outlined seven factors that a sentencing court must consider throughout the sentencing process. First, the nature and circumstances of the offense, along with the history and characteristics of the defendant must be considered. Next, the sentence imposed must reflect the four primary purposes of sentencing: retribution, deterrence, incapacitation, and rehabilitation. Third, the kinds of sentences available must be contemplated. For example, whether probation is an option, or a mandatory minimum sentence is required by statute. Next, the sentencing range "established through application of the sentencing guidelines and the types of sentences available under the guidelines" must be the framework in which sentencing decisions are made (18 USC § 3553(a)). Additionally, any relevant "policy statements" developed by the Commission must be considered. Next, the "need to avoid unwanted sentencing disparities among defendants with similar records who have been found guilty of similar conduct" must be taken into consideration when determining the appropriate sentence (18 USC § 3553(a)). Last, judges must consider any necessary restitution that must be made to any victims of the offense. Importantly, the Commission has sought to consider many of these factors when developing their own guidelines and policy statements (USSC, 2020). Just one year after these major changes were implemented, Congress developed one of the most negatively impactful pieces of legislation related to the drug war, known as the Anti-Drug Abuse Act of 1986. This Act is the most significant mandatory minimum law enacted by Congress after the development of the SRA (ACLU, 2023; Palamar et al., 2015).

Within this piece of legislation, increases in federal power and budgets to stop the trafficking of drugs into the US were implemented, as were mandatory minimums for various other illicit substances, such as heroin, marijuana, and methamphetamine. Additionally, the Anti-Drug Abuse Act of 1986 enacted one of the most notorious pieces of legislation related to US drug policy, centered around crack and powder cocaine. This Act categorized crack and powder cocaine as two different substances, despite the fact that these substances are identical in their chemical makeup (ACLU, 2023; Reinarman & Levine, 1997; Tonry, 1995; 1996). As a result of this differing classification, albeit unfounded, a legal disparity of 100:1 was created, meaning 100 grams of powder cocaine held the same legal equivalence to just 1 gram of crack-cocaine. Accompanying this disparity were mandatory minimum sentencing laws. For example, for first-time offenses that involved just five grams of crack-cocaine, i.e., the weight of just two pennies, a mandatory minimum sentence of five years, without any consideration of mitigating factors, was imposed. Conversely, for powder cocaine, to receive the same five-year sentence, 500 grams were needed (Kleiman & Hawdon, 2011; Sopko, 2017, Vagins & McCurdy, 2006; Wacquant, 2009). Additionally, those convicted of crimes involving 5,000 grams of powder cocaine, or just 50 grams of crack-cocaine, were met with a mandatory minimum sentence of 10 years in prison (Sopko, 2017; Wacquant, 2009; Vagins & McCurdy, 2006).

According to proponents of this disparity, harsher penalties for crack-cocaine were set in place as a means of targeting "key" drug players (Kleiman & Hawdon, 2011; Vagins & McCurdy, 2006). However, the amounts of cocaine attached to the mandatory minimums are typically much lower than those a high-level drug trafficker would possess (Public Broadcasting Service, 2014). As such, most drug-related offenses impacted by these sentences involve low-level defendants. At this time, the Commission had not yet published any of its own guidelines. As such, with the entire development of the federal sentencing guidelines still in the works, the Commission had to consider these new mandatory punishments outlined in the Act. Though the Commission argued that "further refinement of drug amounts is essential to provide a logical sentencing structure for drug offenses", they ultimately decided to adopt the 100-to-1 ratio into its Guidelines (Chanenson, 2006, pp. 559). Altogether, the implementation of this Act led to an increase in the average amount of time spent incarcerated for drug crimes; from 22 months to 33 months on average post-enactment (Shewan & Davies, 2013).

Two years later, in 1988, The Anti-Drug Abuse Amendment Act of 1988 was implemented. This Act expanded on the 1986 legislation. This bill authorized even more funding to be allocated to the drug war and created the Office of National Drug Control Policy further streamline efforts made to control substance use (Intlekofer, 2018). Further, this Act expanded the mandatory minimum sentencing structure to include drug trafficking conspiracies and attempts, whereas before this amendment, mandatory minimums were only applicable to completed drug trafficking violations (USSC, 1995). This expansion strengthens the connection between the application of mandatory minimums and the use of the sentencing ranges outlined in the Guidelines. Indeed, the overall Guidelines determine a sentencing range for each type of crime. This range is generally determined using an individual's criminal record, and the overall seriousness of the offense (FAMM, 2012). In the case of drug trafficking offenses, drug type and quantity are also used to determine this range. With the introduction of mandatory minimums, the sentence outlined in this scheme now supersedes any sentencing ranges outlined by the Guidelines, regardless of any mitigating factors. Put differently, if the sentencing range outlined by the Guidelines is lower than the sentence outlined in the mandatory minimum that is attached to a specific quantity/type of substance, the sentence outlined by the mandatory minimum now becomes the range in which a judge must impose a sentence (USSC, 2011). As such, mandatory minimum sentences hold much power in determining the "statutory floor" a judge must abide by (USSC, 2011). Thus, offenses that have mandatory minimum sentencing schemes attached to them often fuel disparate sentencing outcomes seen in drug sentencing (FAMM, 2012).

The 1988 amendment also widened the span of who could be prosecuted in drug-related offenses. Indeed, this act developed "conspiracy" laws, meaning those who had indirect involvement in a drug transaction could now be prosecuted on drug-related charges. For example, if an individual was simply a doorman at a house that drugs were sold out of, that individual, under this amendment, was now legally liable for all the drugs ever sold by the organization or individual who operated within that house (Public Broadcasting Service, 2014). This Act also implemented numerous civil penalties for "personal use" amounts of illicit substances (Kleiman & Hawdon, 2011). With the focus of drug control remaining strong amongst both Republican and Democratic legislators during this time, the amendment passed with major support.

This Act also brought about amendments to crack/powder cocaine legislation. First, in this bill, crack-cocaine became the only illicit drug with a mandatory minimum sentence for a first offense of simple possession (United States Sentencing Commission, 1995). Next, this Act made the possession of more than five grams of any mixture or substance with a cocaine base (i.e., crack) a punishable offense with a prison sentence of at least five years attached to it. Furthermore, the five-year mandatory minimum sentence now applied to the possession of more than three grams of cocaine base if the individual had a prior crack-cocaine conviction. Additionally, just more than one gram of crack triggered a five-year mandatory minimum sentence if the defendant had two or more prior crack convictions (USSC, 1995). The amendments brought forth by this Act singled out crack-cocaine in a way that was far more severe than the penalties implemented for any other controlled substances, including powder cocaine. Notably, the Department of Justice, one of the crack/powder cocaine disparity's biggest supporters, opposed these amendments (USSC, 1995). Despite this opposition, the amendments to crack/powder cocaine sentencing structures were enacted.

Pivotal Supreme Court Cases and their Impacts on the Sentencing Structure

The mandatory minimum sentencing structures and Guidelines set forth by the SRA remained in place until the mid 2000s, despite the fact that inequalities were resulting from them since the moment of their implementation. Various Supreme Court Cases throughout the early 2000s, namely, *Blakely v. Washington* (2004), *United States v. Booker and Fanfan* (2005), *Kimbrough v. United States* (2007), and *Gall v. United States* (2007), played significant roles in the amendments made to the Federal Sentencing Guidelines during this time.

To begin, the constitutionality of all US guidelines systems was brought into question in the case of *United States v. Blakely* in 2005. In the original case, known as *Blakely v. Washington*, the defendant in this case was convicted of a kidnapping in Washington state. As such, state law allowed for a maximum 10-year sentence (*Blakely v. Washington*, 542 U.S. 296; 2004). Washington state sentencing guidelines also allowed for a sentence in the range of 49 to

53 months, (equivalent to just a little over four years), for a "typical offender committing the same crime and having the same criminal history" (Mitchell, 2015). Additionally, the Guidelines set forth a "general departure standard", meaning the court could impose a sentence that more severely deviated from this range, provided the court found "substantial and compelling reasons to justify an exceptional sentence" (Mitchell, 2015).

With this discretion, the judge concluded on a sentence of 90 months (seven and a half years), arguing that the defendant had committed the act with "deliberate cruelty" (Mitchell, 2015). The Supreme Court later ruled that the process used by the court to impose a sentence beyond those outlined in the Guidelines violated the defendant's Sixth Amendment right to a jury trial, because the *judge* rather than the jury made the conclusions that justified a higher sentence. Importantly, under the state-level Supreme Court case *Apprendi v. New Jersey* (2000), any fact, other than a prior conviction, that increases the punishment for a crime beyond the statutory maximum as outlined by the sentencing guidelines, must be submitted to a jury and proven beyond reasonable doubt (Mitchell, 2015).

While the case of *Blakely* was specific to Washington state legislation, the outcomes of this case were widespread across various other states and the federal system. Indeed, because the Supreme Court defined the statutory maximum as that outlined by the Sentencing Guidelines, rather than the maximum sentence outlined in the statute by Washington State, the judge did not have the authority to decide on this increase without the jury's input. As a result, a defendant's Sixth Amendment rights risk being violated any time the court decided on a sentence that was higher than that put forth by the Guidelines, even when that sentence is below the maximum sentence outlined by legislation (Mitchell, 2015). Overall, the outcome of *Blakely* ultimately called into question the constitutionality of all Guidelines systems in place. At this time, it was quite common for state systems to allow judges the discretion to depart from the Guidelines and impose a harsher sentence if so warranted, as long as the sentence was still below the legislatively outlined statutory minimum. After *Blakely,* it was unknown as to whether these decisions could continue.

In the years following, under *United States v. Booker* (2005) and *United States v. Fanfan*, (2005), the Supreme Court considered its ruling in *Blakely* to further call into question the constitutionality of the Federal Sentencing Guidelines. In pre-*Booker* times, the Guidelines required federal judges to increase a criminal sentence above the maximum sentence outlined by statute on the basis of any aggravating factors or the defendant's criminal history (Saxena, 2005). Further, the judge alone determined which factors outlined in the Guidelines pertained to a specific case. In this setup, a judge's discretion was still quite limited, given that the Guidelines thoroughly outlined most possible factors a judge might consider when deciding the type of sentence to impose. Moreover, the process by which a judge could argue to depart from the guidelines was used seldomly. Indeed, sentencing departures were only allowed if a mitigating to aggravating factor was not outlined by the Guidelines. If judges chose to submit an argument for their departure, a judge's ruling could still be overturned on an appeal, if the argument "did not advance the objectives set forth" in the Guidelines (Saxena, 2005).

In *United States v. Booker* (2005), the defendant was arrested for possession of 92.5 grams of crack-cocaine. At trial, a jury found Booker guilty on two counts of possessing at least 50 grams of cocaine base with intent to distribute it. During sentencing, the judge found that, based on a preponderance of evidence, Booker had distributed 566 grams of crack-cocaine on top of the 92.5 grams the jury found (*United States v. Booker*, 543 U.S. 220; 2005). The judge also determined that Booker had obstructed justice. When considering just the original 92.5

grams of crack-cocaine, under the United States Sentencing Guidelines, the maximum sentence Booker could have received was 262 months. However, based on the additional findings the judge made, Booker was sentenced to 360 months. The United States Court of Appeals for the Seventh Circuit accepted the conviction but overturned the sentence on the basis of *United States v. Blakely*—the mandatory Federal Sentencing Guidelines violated the Sixth Amendment right to a trial by jury (Legal Information Institute, 2024).

In *United Stated v. Fanfan* (2005), defendant Fanfan was found with 2.5 kilograms of cocaine and 281.6 grams of crack-cocaine. At trial, a jury found Fanfan had conspired to distribute and possessed with the intent to distribute at least 500 grams of cocaine. The maximum sentence for this case as outlined by the Federal Guidelines was 78 months in prison (Legal Information Institute, 2024). At sentencing, the judge determined that Fanfan was also the "organizer, leader, or supervisor" of the criminal operation (Legal Information Institute, 2024). These charges, along with his criminal history, resulted in a sentence of 188 to 235 months as determined under the Guidelines; a ten-year increase from that which the jury had determined. However, given the recent decision in *Blakely*, the judge worried about what effect this ruling had on federal judges imposing sentences higher than that found by a jury. As such, he based his decisions solely off the possession of 500 grams, and sentenced Fanfan to 78 months.

The Supreme Court reviewed the court's decision and remanded the case for resentencing. In May 2005, the district judge resentenced Fanfan to 210 months in prison (Justia, 2024). Eventually, given the seriousness of questions raised in both cases, *Booker* and *Fanfan* were consolidated, with the US government asking the Supreme Court to determine whether rulings like those outlined in *Apprendi* (2000) and *Blakely* (2005) applied to the Federal Sentencing Guidelines. With this, the two central questions brought forth by these cases were: 1) were sentencing enhancements under the Guidelines unconstitutional? 2) What should be done if a constitutional violation is found?

Five Supreme Court Justices from both ends of the ideological spectrum confirmed the first question. In the opinion by Justice Stevens, the Court heavily cited *Apprendi* (2000) and *Blakely* (2005) to reconfirm its decision that the Guidelines, as they had been applied, stripped convicted defendants of their Sixth Amendment right to have all facts which may increase their sentence beyond the statutory minimum proven by a jury (Saxena, 2005). The remaining four Justices dissented from this decision, arguing that trial judges have always held the discretion to determine the type of sentence imposed in a case. Further, Justice Breyer stated that the Guidelines were only there to give trial judges a framework to work within, and outlined objective criteria that must be met in order to stray from the guidelines (Saxena, 2005). However, given the fact that the Guidelines had been continuously described and implemented as mandatory, this argument has been met with various criticisms.

With the second question, "what should be done if a constitutional violation is found", in mind, the Supreme Court ruled that the mandatory aspect of the Guidelines must be dissolved. Additionally, the Court dissolved 18 U.S.C. § 3742(e), the section of the Guidelines that instructed courts of appeal to review sentences made under them to ensure they were accurate. With this, the Guidelines became advisory, meaning judges were required to consider them, but could also depart from them whenever they felt necessary (Saxena, 2005). This served as a major landmark decision in how the Guidelines operated.

In a post-*Booker* world, judges use a three-step process when making sentencing decisions. First, the court identifies the applicable sentencing range as outlined by the *Guidelines Manual*. Next, the court considers any policy recommendations related to sentencing departures.

Last, after considering all factors outlined in 18 USC § 3553(a), such as the nature and circumstances of the offense and the need to avoid unwarranted sentencing disparities among defendants in similar situations, the court may decide to impose a sentence outside of the guidelines range, in a downward or upward manner (United States Sentencing Commission, 2020).

The shift from the Guidelines being mandatory to now being advisory also had significant impacts on the ways in which cocaine sentencing was conducted in the US system. In 2007, *Kimbrough v. United States* highlighted these shifts. In this case, defendant Kimbrough was indicted in federal court on four drug-related charges: conspiracy to distribute crack and powder; possession with intent to distribute more than 50 grams of crack; possession with intent to distribute powder; and possession of a firearm in furtherance of a drug-trafficking offense (*Kimbrough v. United States*, 552 U.S. 85; 2007). Kimbrough pleaded guilty on all counts. Under the statutes in place, Kimbrough's sentence could range from a minimum of 15 years to a maximum of life imprisonment. The corresponding Guidelines range, now advisory at this time, was 228 to 270 months, or, put differently, 19 to 22.5 years. The Court found that a sentence in this range would be greater than the punishment necessary to meet the purposes of sentencing as outlined in 18 USC § 3553(a), i.e., retribution, deterrence, incapacitation, and rehabilitation (United States Sentencing Commission, 2024).

To support its argument, the court contended that Kimbrough's case showed the "disproportionate and unjust effect that crack-cocaine guidelines have in sentencing" (Legal Information Institute, 2024). The court further argued that if Kimbrough had only possessed powder cocaine, his Guidelines range would have been much lower: between 97 to 106 months. In conclusion, the court believed that the statutory minimum was long enough to meet the objectives of sentencing set forth by the SRA. As such, the court sentenced him to 180 months, i.e., 15 years, in prison. Shortly after this, the Fourth Circuit Court of Appeals vacated the sentence, arguing that a sentence that goes outside of the Guidelines is unreasonable when it is based on a disagreement with the crack/powder cocaine disparity set in place, which makes crack-cocaine offenses much more harshly punished than powder cocaine offenses. Taking this case into consideration, the Supreme Court ultimately ruled in favor of the 180-month sentenced imposed on Kimbrough. In its majority opinion, the Court argued that as stated in *Booker,* cocaine sentencing Guidelines, like all other Guidelines, were now advisory. As such, judges hold the discretion to impose a sentence that differs from the Guidelines, particularly when considering possible sentencing disparities that may be "unwarranted" (Legal Information Institute, 2024).

In the 2007 case of *Gall v. United States*, the issue of departing from the Guidelines was considered further. In this case, the defendant plead guilty to participating in a drug enterprise three and a half years prior. In the presentence report, a sentence of 30 to 37 months in prison was recommended. However, the District Court sentenced Gall to 36 months' probation, given the personal circumstances of his offense, such as his decision to leave the conspiracy voluntarily and his post-offense conduct (*Gall v. United States*, 552 U.S. 38; 2007). The Eighth Circuit remanded the sentence, arguing that the court had not justified its decision to depart from the guidelines in such a stark manner. The court further argued that in order to depart from the guidelines in such a way, extraordinary circumstances must be present, and they believed that in this case, they were not. The Supreme Court ultimately ruled in favor of the District Court, arguing that because the guidelines were now advisory under *Booker*, the appellate court's duty was limited to determining whether sentencing decisions are "reasonable" or not. An appellate court may consider the degree of deviation from the Guidelines, but it cannot require "extraordinary" circumstances to measure the justification of a departure (Justia, 2024). By doing so, the Court argued, a stricter standard of review for sentences imposed outside of the Guidelines range would develop, thereby lessening the advisory nature of the Guidelines (Justia, 2024). Ultimately, under both *Kimbrough* and *Gall*, the advisory nature of the Guidelines in sentencing decisions was reiterated and strengthened.

In 2009, the decision to render the Guidelines advisory was further solidified. In *Spears v. United States*, the defendant was found guilty of "conspiracy to distribute at least 50 grams of cocaine base and at least 500 grams of powder cocaine" (*Spears v. United States*, 555 U.S. 261 (2009)). With these quantities, along with his criminal history, the Guidelines outlined a range of imprisonment between 324 to 405 months incarceration. The District Court ultimately determined that the Guidelines' 100:1 ratio resulted in an excessive sentence when taking into consideration the sentencing factors outlined in 18 U. S. C. §3553(a) (Justia, 2024). As such, the District Court recalculated Spears' sentence based on a 20:1 crack powder cocaine ratio, resulting in a sentencing range of 210 to 262 months of incarceration. Ultimately, the District Court sentenced Spears to 240 months in prison.

The Government argued that the District Court had wrongfully rejected the 100:1 ratio, and erred in basing his sentence off of their own ratio. The Eighth Circuit ultimately reversed Spears' sentence and asked for a resentencing under the 100:1 ratio. The Supreme Court eventually granted certiorari and reviewed the case considering the *Kimbrough v. United States* decision. In the majority opinion, the Supreme Court held that the crack/powder cocaine ratio outlined in the Guidelines is not binding. As such, district courts may vary from the Guidelines on a case-by-case basis. Moreover, they may also do so based on a policy disagreement with the

Guidelines, and the sentencing disparities within crack and powder cocaine offenses that result from the ratio. With this, the Court held that the district court did not err in using a 20:1 ratio in this case (Justia, 2024). Altogether, *Spears v. United States* further confirmed that the crack/powder cocaine ratio outlined in the Guidelines was advisory. As a result, judges held the discretion to implement their own ratio when they felt it necessary.

The shift from mandatory to advisory Guidelines under these various Supreme Court decisions influenced Crack/powder cocaine sentencing in unique ways. To begin, the impact of *Booker* in relation to crack/powder cocaine sentencing was dampened due to the prevalence of mandatory minimum sentences. Indeed, the outcome of *Booker* did not grant a judge permission to sentence below a statutory mandatory minimum set forth by Congress (Chanenson, 2006). To illustrate the impacts of mandatory minimums of crack/powder cocaine sentencing, in 2003, federal courts sentenced nearly 5,500 defendants for crack-cocaine related crimes. Seventy-five percent of these cases received mandatory prison terms of either five years (28.9%) or ten years (47.5%) (King & Mauer, 2006). In a post-*Booker* era, judges were allowed to exercise more discretion in two specific types of crack/powder cocaine cases: 1) cases where a mandatory sentence do not apply or 2) cases considering enhancements beyond the base sentence where a mandatory minimum sentence applies.

Importantly, at this time, various district courts used their new authority to argue that the 100-to-1 ratio was unnecessary in all cases, and as such, worked to impose sentences that were less severe than what was outlined in the Guidelines. For example, some judges adopted a 10-to-1 ratio, while others implemented a 20-to-1 ratio (Chanenson, 2006). Judges who imposed these ratios argued that the Guidelines' recommendation "lacks persuasive evidence of rationality and thus overstates the seriousness of crack offenses" (Chanenson, 2006, pp. 572). Judges also contended that the stark ratio outlined in the guidelines resulted in unwarranted disparities that most often correlated with racial identity.

Though these departures are rooted in good intentions, the outcomes of this practice fell short. Indeed, by solely lowering the ratio between crack and powder cocaine, one of the major root causes of sentencing disparities in crack/powder cocaine sentencing—mandatory minimums—is still left intact. To illustrate this, prominent law scholar Chanenson (2006) provides a useful example. In the case of two defendants with identical backgrounds, defendant 1 was charged with trafficking 50 grams of crack, and defendant 2 was charged with trafficking 49.9 grams. Even this miniscule difference in amount will result in different sentencing outcomes under the 20-to-1 ratio. Indeed, at this ratio, both would be met with advisory guidelines of 70-87 months. However, the statutory mandatory minimum for crack offenses interferes with this uniformity. For defendant 1, the mandatory minimum of 10 years is imposed, given the 50-gram trigger. However, for defendant 2, this mandatory minimum does not apply. This means defendant 2 will likely receive a sentence that is at least four years less than defendant 1. As such, the 20-to-1 ratio creates unique, unwanted disparities among crack defendants specifically (Chanenson, 2006). Additionally, for districts that did not lessen the ratio at all, but instead continued with the 100-to-1 determination, inter-district disparities in crack-cocaine sentencing also persisted in the post-*Booker* era.

The Sentencing Commission Sets Out to Remedy the Disparities

Despite these unique and lasting inequalities, the crack/powder cocaine ratio remained largely intact until 2010. Throughout the years that followed in a post-*Booker* world, numerous actors related to the "drug war", along with various entities throughout the legal system, began to call out the extreme inequalities that resulted from it. After *Booker* (2005), federal judges continuously expressed major concern about the mandatory sentencing laws attached to crack-cocaine offenses, and the disparate outcomes that resulted (Lynch & Omori, 2018). Additionally, the passage of the Violent Crime Control Enforcement Act of 1994 (VCCEA) brought about policy requirements for the monitoring of crack and powder cocaine sentencing outcomes. In the Act, the Sentencing Commission was required to study and present information regarding federal cocaine sentencing policies. In addition to this, the Commission was required to provide recommendations related to improving the equality in these sentencing outcomes (Wells, 2022). The findings of this report led to a collaboration among Congress and the Commission to develop a "safety valve" related to drug sentencing. This allowed courts to sentence specific types of low-level, non-violent drug offenses below the outlined mandatory minimums (Wells, 2022). Additionally, individuals who assisted the state in prosecuting others of drug related offenses also qualified for lower sentences, under the 5k1.1 Substantial Assistance Departure. This "valve" was made available for crack-cocaine specific offenses too. While the requirements outlined in the VCCEA did not require ongoing monitoring of crack and powder cocaine sentencing outcomes, the Commission has continuously developed reports related to these substances (USSC, 1999; USSC, 2015; USSC 2020).

In its findings, the USSC repeatedly illuminated the clear-cut racial inequities that resulted from the crack-cocaine sentencing laws in various reports to Congress, from 1995-2002. The recommendations set forth by this report continuously suggested lessening the crack/powder disparity to a 1-to-1 ratio, after determining that much evidence, both scientific and otherwise, did not justify such harsh differences in sentencing. The Commission also recommended that Congress reevaluate the sentences attached to simple possession of crack-cocaine. The Commission asserted that the 100-to-1 ratio was disproportionate to the harms posed by the two substances. Further, the Commission argued that some of the harms linked to crack-cocaine could be addressed elsewhere through various enhancements that are not drug specific. Importantly, the Commission also maintained that the severe crack-cocaine penalties outlined in this legislation were directed disproportionately at low-level offenses, and most significantly among Black individuals (Chanenson, 2006). Alarmingly, the Commission also found that the 100-to-1 ratio is the primary cause of widening sentencing disparities between Black and White federal defendants (Chanenson, 2006). Despite their efforts, this proposal was rejected by Congress. Not only did Congress refuse to reconsider the statutory mandatory sentences attached to crack, but they also argued that any future revisions brought forth by the Commission should reflect a greater punishment for the trafficking of crack-cocaine compared to trafficking the same quantity of powder cocaine. This marked the first time in the Guidelines' history that Congress and the President rejected the changes approved by the Commission (ACLU, 2010).

In 1997, the U.S. Sentencing Commission worked again to suggest a revision of the disparity from 100:1 to 5:1 and brought this proposal to Congress once more. At this time, the suggestions brought forth by the report were ignored altogether, and instead, Congress directed the Commission to further study federal cocaine sentencing practices and its outcomes (United States Sentencing Commission, 2015). In 2002, the Commission issued its third report, in which it reiterated the same findings—the current 100-to-1 ratio overestimated the harm of crack, and disproportionately impacted low-level, minoritized defendants. A vast range of experts were consulted during this investigation, who overwhelmingly reported that there is no scientific or medical difference between crack and powder cocaine (Vagins & McCurdy, 2006). In this report, the Commission suggested a 20-to-1 ratio be set in place, which would ultimately raise the thresholds for crack-cocaine and maintain the threshold for powder cocaine. Further, the

Commission suggested that Congress repeal the mandatory minimum sentence scheme attached to simple possession of crack-cocaine (USSC, 2015). In its recommendations, the Commission unanimously agreed that the ratio was unjustified. Despite some interest in amending the ratio based on these findings, Congress ultimately did not respond to the Commission's recommendations once again.

In response to this continued inaction, the Commission finally took it upon themselves to enact change. In 2007, the Commission amended the drug quantity table in the Guidelines. This change lowered the sentencing ranges for most crack-cocaine offenses. For first-time offenses involving 5 grams or more of crack-cocaine, the original range of incarceration was 62-78 months. Following the amendment, the range was now 51-63 months. Additionally, for first-time offenses of 50 grams or more, the sentencing range was lowered from 121-151 months to a range of 97-121 months (Beaver, 2010). Importantly, this reduction was implemented retroactively, giving courts the authority to reduce sentences of incarcerated individuals whose sentences had been determined based on the former, harsher guidelines (USSC, 2015). Although these ranges became advisory in 2005, judges still tend to refer to the Guidelines, specifically when deciding sentences. Indeed, according to 2020 sentencing data from the USSC, the Guidelines have proven to be the benchmark of sentencing in the federal court. Statistics from this report show that 75 percent of cases are sentenced within those outlined by the Guidelines, including more than 50 percent that are sentenced "within-range". Additionally, 25 percent are sentenced outside the Guidelines range, but still within departures recognized by the *Guidelines Manual* (USSC, 2020). As such, this tangible change to the Guidelines themselves was overall a major step in addressing the ongoing disparities inherent within the original ratio.

The Fair Sentencing Act of 2010

Then, in 2010, The Fair Sentencing Act (FSA 2010), a legislative compromise that was the result of a longstanding fight to address the negative outcomes of the 100-to-1 ratio, was signed into law, and took effect the following year (Lynch & Omori, 2018). Those who supported the Act outlined four main goals they hoped the Act would achieve: 1) reduce the racial disparities shown in drug sentencing; 2) enhance public trust in the criminal justice system, which had been weakened since the implementation of flawed drug policy in the 1980s, especially amongst minoritized groups; 3) reduce the overincarceration of non-violent drug offenders that also resulted from the 1986 Act; and 4) shift the focus away from low-level offenders to high-level drug kingpins (Wallace, 2014, pp. 150). The Act lessened the crack/powder disparity from 100:1 to 18:1, meaning that it now took 28 grams of crack and 500 grams of powder cocaine to trigger a five-year minimum sentence.

Additionally, 208 grams of crack and 5 kilograms of powder cocaine were now needed to trigger a ten-year mandatory minimum sentence (Cabral, 2019; Families Against Mandatory Minimums, 2023). The FSA 2010 also repealed the five-year mandatory minimum sentence applied to first-time simple possession of crack-cocaine. This meant that any first-time offense involving simple possession for any amount of crack-cocaine is subject to a sentencing range of zero to 1 year imprisonment, regardless of the quantity (USSC, 2015, pp. 7-8). This penalty now matched the guidelines historically set in place for simple possession of powder cocaine (Wallace, 2014). This Act marked the first time since Richard Nixon's presidency that a mandatory minimum statute had been repealed.

Outcomes of the implementation of the FSA (2010) were mixed. While this Act applied retroactively to cases in which sentencing occurred on or after August 3rd, 2010 (the date of its signing into law), regardless of the date of offense, it did not apply retroactively to all crack-cocaine related cases (USSC, 2015). As Hubbard (2010) contended, "the 100-to-1 ratio is perhaps the single worst symbol of unfairness in our criminal justice system" (pp. 76). Therefore, by not allowing for retroactivity in all crack-cocaine offenses, this Act is only a "half-victory" (Wallace, 2014). Judges also showed their dismay for its lack of retroactivity, stating that the logic of the Act was unacceptable, given that judges had to continue following unjust sentencing guidelines for those who committed their offenses before the law became effective (Wallace, 2014).

Despite these valid criticisms, the outcomes of this Act did show some improvements related to the racially disparate outcomes inherent within crack/powder cocaine sentencing. Indeed, a report developed by the Commission found that after the implementation of the FSA, the sentencing gap related to the sentencing disparities lessened on average. For example, in a post-FSA (2010) system, those being sentenced for crack-related offenses were given sentences of 71 months on average. When compared to sentencing outcomes pre-FSA (2010), the average sentence for these individuals would have been around 106 months (USSC, 2015). In addition, in 2014, over 6,000 crack-cocaine first-time offenses received sentence reductions as a result of widening the type of cases that qualified for retroactive application under newly outlined drug guidelines implemented by the Commission (USSC, 2015). Though these outcomes are positive, various academic researchers argue that the changes seen post-FSA (2010) implementation are largely due to changes that took place in the justice system years prior. More particularly, the changes *Booker* brought to the discretionary power judges held when sentencing crack and powder cocaine offenses (Bjerk, 2017; Wells, 2022).

Crack/Powder Cocaine Sentencing in its Most Current Form: The First Step Act of 2018

While the Fair Sentencing Act was the first major step in addressing racial disparities related to the crack/powder cocaine disparity, inequalities remained. Indeed, as some members of Congress argued after its implementation, the disparity between crack and powder cocaine was only lessened, and as such, falls short of implementing truly meaningful change (Wallace, 2014). In 2018, the First Step Act (FSA 2018) was developed to further address the unfair outcomes of the cocaine disparity, though the ratio of 18-to-1 remained intact. The enactment of the First Step Act serves as the most recent legislative change centered around crack/powder cocaine sentencing. This legislation also aimed to address various shortcomings of the Fair Sentencing Act. To do so, this law expanded the retroactive nature of the FSA to *all* federal cases involving powder or crack-cocaine (Library of Congress, 2019).

In 2019, The Sentencing Project noted that 2,000 people had benefitted from the expanded retroactive component, with sentencing reductions of almost 6 years on average (Gotsch, 2019). Black individuals constitute 91 percent of those who received such reductions. By 2021, the number of federal inmates impacted by retroactive measures had reached nearly 6,000, with more than 3,700 federal inmates receiving reduced sentences, and more than 2,000 being released (LCCHR, 2021). Overarchingly, research estimates that each year, 2,000 people will receive prison sentences that are 20 percent shorter than they were pre-First Step Act (Grawert, 2020). In 2021, the Supreme Court case of *Terry v. United States* brought about questions related to the types of sentences the First Step Act applied to. In this case, the defendant plead guilty to "possession with intent to distribute a small amount of crack-cocaine" (Library of Congress, 2021:3). The offense was categorized within the lowest statutory penalty outlined in the Controlled Substances Act. As such, the offense was not subject to either the 5- or

10- year mandatory minimum sentence triggers. The sentencing court determined that the defendant was a career offender and sentenced him to 188 months of incarceration (Library of Congress, 2021). The defendant sought a resentencing after the First Step Act was enacted, stating that his sentence qualified under the Act. Both the district court and the US Court of Appeals for the Eleventh Circuit disagreed, stating that "offenders are eligible for a sentence reduction only if they were convicted of a crack-cocaine offense that triggered a mandatory minimum sentence" (Library of Congress, 2021:4).

On June 14th, 2021, the Supreme Court concurred with the district court and US Court of Appeals. In a unanimous decision, the Court affirmed that the retroactivity of the First Step Act did not extend to cases in which the lowest penalty tier was implemented, and further, did not extend to cases in which a mandatory minimum sentence was not triggered (Library of Congress, 2021). Though Justice Sotomayer agreed, she wrote a separate opinion outlining the shortcomings of the First Step Act, as seen in this case. In her statement, she argued that a significant portion of those sentenced under the lowest tier before 2010 "have been left behind", despite an overall reduction in the crack/powder cocaine disparity (Library of Congress, 2021). Further, she noted that if Terry had been convicted of possession with the intent to distribute a larger amount of crack-cocaine, he would have then been eligible to receive resentencing under the First Step Act as a result of the Fair Sentencing Act's amendment of the middle and highest penalty levels. Justice Sotomayer's opinion highlights the flaws inherent with the most current legislation, in which an individual whose amount of crack-cocaine is high enough to trigger a mandatory minimum sentence is eligible for a lesser sentence, while those who possess even lower levels of crack-cocaine are not. This shortcoming further fuels imbalances amongst crack-cocaine defendants specifically. This opinion also offers support for the argument that simply raising the amount of crack-cocaine needed to trigger mandatory minimum sentences does not necessarily alleviate inequalities within cocaine sentencing, but instead further perpetuates and even creates new imbalances. By failing to fully "even the legal playing field" between crack and powder cocaine, people will continue to experience differential treatment in cocaine sentencing.

While the outcomes of this Act have proven positive in some ways, critics warn to proceed with caution. Only time can truly tell how successful this law is at addressing the shortcomings of the FSA (2018), and, more broadly, the stark failings of the crack/powder cocaine sentencing disparities (Grawert, 2020). Those skeptical of these changes argue that to truly remedy the inequalities that result from this disparity, the ratio must be done away with altogether. Indeed, many researchers, practitioners, politicians, and criminal justice reform groups note that to undo the decades of harm caused by this disparity, a full overhaul is necessary (Chanenson, 2006; Gotsch, 2019; Grawert, 2020). Further, the US Sentencing Commission has continuously argued that revising the crack/powder cocaine disparity would have a stronger impact than "any other single policy change in the US system" and would dramatically improve the equity of the federal sentencing system (Vagins & McCurdy, 2006:7).

Beginning in the 1970s, with the Rockefeller laws, a major shift in how society viewed drug use began. What was once seen as a social problem, in which those who struggled with drug abuse needed support and rehabilitation, was now deemed a personal problem, best addressed through harsh legal punishments. As a result of this cultural shift, legal policies began to center around "tough on crime" ideals, in order to "prove" the U.S. had no tolerance for drug use or distribution. As a result, various drug laws, including the crack/powder cocaine disparity, were implemented, along with harsh sentencing guidelines and an array of mandatory minimum sentencing structures. After the implementation of the Guidelines, and both versions of the Anti-

Drug Abuse Act, criminal sentencing became a point of contention among various actors throughout the legal system. Many judges argued that the Guidelines stripped them of their discretion and ability to consider cases on a more detailed, individual level.

Moreover, sentencing inequalities resulting from the crack/powder cocaine disparity were rising. With this, various Supreme Court cases uncovered various flaws within these legal components, and ultimately led the push for important amendments to be made. These amendments also illuminated the lasting shortcomings of crack/powder cocaine sentencing specifically, which ultimately led to two major pieces of legislation being implemented in the later 2000s. While these changes are undoubtedly important steps to begin remedying the disparities brought forth by the crack/powder cocaine ratio, the amendments made fall short of true progress. In order to understand the longstanding impacts of the crack/powder cocaine disparity, previous research must be explored.

Summary and Overview

In Chapter Two, the evolution of crack/powder cocaine sentencing was discussed in depth, beginning with its initial development and ending with a discussion of its most current form. In this discussion, pivotal Supreme Court cases that influenced the way in which crack/powder cocaine sentencing has operated throughout history were explored. Chapter Three discusses previous literature on the topic of crack/powder cocaine sentencing and its relation to long lasting, stark racial inequalities. Additionally, previous research on the topic of the 851-enhancement is explored, in order to illuminate a unique component in drug sentencing that further perpetuates sentencing and racial inequalities in the criminal justice system.

CHAPTER III

LITERATURE REVIEW:

EXPLORING PERPETUAL INEQUALTIES IN CRACK/POWDER COCAINE SENTENCING OUTCOMES

Racial Inequalities in Crack/Powder Cocaine Sentencing: Apparent from the Start

Since its inception in the 1980s, the crack/powder cocaine disparity and its mandatory minimum sentence structure have been highly controversial. Proponents of this disparity from all facets of the political and legal world have historically argued that crack-cocaine poses a higher threat to public welfare than powder cocaine, thus justifying the ratio as "rational" (ACLU, 2024; Chanenson, 2006; Tonry, 1996). With this environment, many judges followed the 100-to-1 ratio in their sentencing decisions, albeit begrudgingly. Indeed, much of the criticism surrounding the Guidelines stemmed from the rigidity of them, with many judges maintaining that the use of mandatory minimums "tied their hands", by preventing them from considering an individual's unique circumstances when imposing a sentence (Saxena, 2005). By focusing solely on the weight amount of drugs involved in a case, a judge's personal perspective was of little importance. Similarly, defense attorneys argued that the Guidelines did not hold space for the consideration of mitigating factors applicable to certain cases (Saxena, 2005). Further, they argued that the use of the Guidelines had resulted in an unwarranted level of harsh punishments and the overuse of incarceration as a punishment. Data from the USSC supports many of the concerns made. In the first year after the Guidelines were implemented, the total amount of prison time given out by federal judges almost doubled (Saxena, 2005). Additionally, those convicted of drug offenses, including first-time offenses and simple possession cases, became the most likely group to be incarcerated. In the mid-2000s, this group became the largest proportion of those held in federal incarceration (Saxena, 2005).

Various academics and legal practitioners also widely criticized the crack/powder disparity, further arguing that it would increase inequalities within the incarceration system, particularly racial inequalities (Chanenson, 2006; Tonry, 1996). Numerous entities also pointed to the fact that crack and powder cocaine are identical in pharmacological makeup and physical effects, thus arguing that the ratio requires one to prosecute the exact same substance in vastly different ways (Provine, 2011; Tonry, 1995; Vagins & McCurdy, 2006). Legislative bills aimed at lessening the ratio, done to address these disparate outcomes, were introduced nearly every year beginning in 1993 through 2009. All these measures failed at some point along the legislative process (Graham, 2011). Altogether, the Department of Justice has been one of the few entities in total support of this ratio in subsequent years, and the mandatory sentencing schemes attached to it.

In opposition of this disparity and its mandatory minimums, one federal judge illuminated the early inequalities resulting from this law, stating that there was "nearly overwhelming statistical evidence that Black individuals are prosecuted much more frequently and disproportionately for crack violations than White individuals" (Lowney, 1994). As a result, Black Americans were also more likely than White Americans to experience harsher sentences under the federal crack guidelines. In 1991, over 90 percent of those prosecuted under federal crack statutes were Black. In contrast, those convicted of powder cocaine offenses were much more likely to be White or Latino (Mauer, 2011). Many researchers have characterized this legislation in negative ways since its implementation, describing it as "a travesty of justice", "a period of punishing race", and "a long period of injustice with racial disparities in incarceration"

(ACLU, 2023; Tonry, 1994; Wallace, 2014). Michael Tonry (1994) further criticized this legislation, arguing that the disadvantages Black individuals experience as a result of the mandatory minimum sentencing guidelines cannot be justified. Other prominent judges, such as U.S. District Judge Robert Sweet, argued that the use of mandatory minimums in crack-cocaine cases "has resulted in Jim Crow justice" (Ahmad, 2021:4). Former prosecutor Judge Cassell has argued this point further, stating that the "apparent inequality in the sentencing guidelines procedures produces actual injustice to the crack-cocaine defendant" (Ahmad, 2021:4). In 1997, a group of 27 federal judges sent a letter to Congress arguing that the current crack powder cocaine disparity could not be justified, and results in unjust sentences that do not "serve society's interest" (Ahmad, 2021:4).

Previous research continuously supports the concerns brought forth by those opposed to the ratio. The disparity resulting from this ratio is glaring, especially when noting the fact that White Americans are more likely than Black Americans to use crack-cocaine in their lifetimes, yet make up a very small portion of those incarcerated for crack-cocaine related offenses (ACLU, 2023; The Leadership Conference on Civil and Human Rights, 2021; Palamar et al., 2015). Additionally, despite crack-cocaine usage and distribution being a widespread phenomenon among all racial categories, Black individuals make up the majority of those arrested for crack-cocaine related offenses. As such, major racial disparities have resulted from this law, beginning almost immediately after its implementation (Tonry, 1995; Wallace, 2014).

According to the ACLU, in 1986, prior to the introduction of mandatory minimum sentences and the implementation of the crack/powder cocaine ratio, Black individuals received federal drug sentences that were, on average, 11 percent higher than White individuals. However, just four years after the Anti-Drug Abuse Act was implemented, Black individuals were sentenced to lengths that were 49 percent higher than White individuals (Vagins & McCurdy, 2006). By 1991, the Sentencing Project brought forth important data that illuminated the broad impacts of the War on Drugs. In their report, Black males were found to be incarcerated at a rate that was four times higher than rates among Black males in South Africa during Apartheid (3,109 per 100,000 in the US versus 729 per 100,000 in South Africa) (Wallace, 2014). Further, by 1991, 25 percent of young Black men were under the control of the US criminal justice system. To illustrate this alarming increase, in California's 1991 prison population, there were more Black people incarcerated for drug offenses than there were total offenders in 1979 for all crimes. This is a direct outcome of an increase in drug policy enforcement (Taylor, 1992).

The same year, outcomes were showing that those who sold even just a small amount of crack-cocaine were given lengthy prison sentences, with the majority being Black individuals (Wallace, 2014). As Tonry contended, these findings were characteristic of the fact that the War on Drugs was, essentially, a war on the Black American man (Tonry, 1995). Moreover, 2003 brought about a major increase in incarceration rates for those convicted of drug offenses in both jail and prison populations. Indeed, in 2003, the total number rose to 500,000. Comparatively, in 1980, before the introduction of the crack/powder cocaine ratio, just 41,000 individuals were incarcerated for drug related charges. Within this population growth, data show racial disparities in rates of incarceration persisted at this time (Mauer, 2011). While the mandatory minimum sentencing laws related to the crack/powder cocaine disparity were originally created to address inequalities in the system, this was not the reality. Instead, these disparities were further perpetuated at a rate that has never been seen with any other illicit substance in the U.S. (ACLU, 2023; Kurtzlebenin, 2010; US Sentencing Commission, 2023). Indeed, the Sentencing Commission has continuously contended that the most impactful factor related to the disparate sentences between Black and White male defendants is the crack/powder cocaine ratio and its mandatory minimums (Schwartz, 2007).

Further supporting the argument that the ratio results in racial inequity, US Sentencing Commission statistics show that no sentencing outcomes related to an illicit substance are as racially skewed as crack-cocaine (US Sentencing Commission, 2010). Indeed, in a report published in 1988, the USSC examined the sixty federal mandatory sentencing laws established since 1984. In their findings, the Commission found that four specific statutes were responsible for 94 percent of imposed mandatory sentences (Lowney, 1994). Over 91 percent of these cases were related to drug offenses. Within them, 63 percent of those convicted of crimes in which a mandatory sentence was imposed were Black or Latino, and 33 percent of these individuals had no prior criminal record (Lowney, 1994). In 1991, a study conducted on the disparate outcomes of crack versus powder cocaine sentencing found that first-time minority drug defendants received sentences that were twice as long as their White counterparts, despite possessing less than half as much cocaine, on average (Glasser & Siegel, 1997).

By 1993, calls for change had already begun to spread through various sectors of the political and legal world. However, most courts refused to strike down these laws. It became clear at this time that any changes made to the 100-to-1 ratio would have to come directly from Congress, which ultimately did not happen (Wallace, 2014; US Sentencing Commission, 2024). In 1994, federal drug sentencing data further illuminated racial inequalities. Indeed, while Black Americans represented just 12 percent of the US population, they accounted for almost 90 percent of those sentenced for crack-cocaine related offenses (Binnicker, 2012). In the Commission’s report from 1995, findings recognized the disproportionate impact this sentencing scheme had on Black Americans. For example, the possession of 25 grams of powder cocaine led to a 14-month sentence on average. Conversely, less than 25 grams of crack resulted in a sentence of 65 months on average (Beaver, 2010). Overall, the data gathered by the Commission that year showed that racial disparities were strongly evident amongst federal inmates convicted for drug offenses, with the crack/powder cocaine disparity already having devastating impacts for Black individuals specifically (Reske, 1995).

Within the first five years of the passage of these laws, the number of Black Americans convicted of crack-cocaine related offenses more than doubled (Lynch & Omori, 2018). Further, the number of Black people placed in federal prison increased from approximately 50 per 100,000 adults to almost 250 per 100,000 adults. Alarmingly, when comparing these rates, there was virtually no change in the amount of White people placed in federal prison at this time (Equal Justice Initiative, 2023). In 1995, *The Los Angeles Times* found that no White person had been charged with crack-cocaine related offenses "in federal courts in Los Angeles, Boston, Denver, Chicago, Miami, Dallas, or in seventeen state courts" (Beaver, 2010:2549). In 1996, data show that White crack defendants accounted for just 4.8 percent of all crack-cocaine defendants sentenced that year, while Black individuals accounted for 85.8 percent of all crack-cocaine sentences (Binnicker, 2012, p. 62). In 1997, Vice Chairman of the Commission, Michael Gelacak, argued that it was irresponsible for Congress to ignore the disparate impact the mandatory minimum sentences tied to the ratio had on Black Americans. He also argued that younger Black Americans made up a disproportionate number of those receiving hefty federal sentences for crack-cocaine offenses (United States Sentencing Commission, 1997).

Racial Inequalities in Crack/Powder Cocaine Sentencing: Year 2000 and Beyond

Research from 2000 further illuminates the imbalances between sentencing White and Black cocaine defendants. Data provided by the Commission showed that while there were more

White cocaine defendants in the US, Black defendants comprised more than 84 percent of all federal crack cases that year (Chodroff, 2008). Commission data from this same year also showed that the average sentence for low-level crack-cocaine offenses was 103.5 months, i.e., nearly 9 years. In comparison, the mean maximum prison sentence for all violent offenses that year was 100 months, i.e., 8.3 years (Coyle, 2002). These findings further highlight the imbalance that exists within the way crack-cocaine offenses have been sentenced in the US system. Overall, by the year 2000, over 80 percent of those prosecuted for crack related offenses were Black, while less than 6 percent were White (Beaver, 2010; Bjerk, 2017). Findings from research conducted in 2001 continued to illuminate the long-lasting outcomes of this disparity, showing that between 1991 and 2001, nine times as many Black people were placed in federal prison on crack-cocaine related offenses when compared to White people (Equal Justice Initiative, 2019). Then, in 2002, 81 percent of those sentenced for crack-cocaine related offenses were Black. The average length of sentence was 119 months, while for powder cocaine, it was 78 months (United States Sentencing Commission, 2002).

In 2003, Black Americans constituted over 80 percent of those sentenced for crack related offenses, despite the fact that White and Hispanic/Latinx populations accounted for over 66 percent of crack users at this time (Palamar et al., 2015). In 2006, Black Americans comprised 82 percent of those sentenced for crack-cocaine related offenses, even though just 25 percent of crack users at this time were Black (Provine, 2011). Comparatively, White Americans made up just 9 percent this population. Indeed, research shows that for every ten Black Americans prosecuted for crack-cocaine possession, “only one White person was so charged” (Beaver, 2010:2549). Further illustrating the imbalance inherent within the ratio, the “median amount of crack-cocaine” for which an individual was charged was 52 grams. This amount triggered the mandatory 10-year sentence. Conversely, the "median amount of powder cocaine" for which an individual was charged was 340 grams. As one practitioner states, this amount was "insufficient to warrant a long prison sentence" (Beaver, 2010).

In 2007, after the implementation of the Crack-Cocaine Amendment made by the Commission, 87 percent of those who benefitted from the amendment were Black (USSC, 2024). After this implementation, optimism centered around finally remedying the inequalities that resulted from the ratio and mandatory minimums increased. Unfortunately, data from later that year quickly halted hope. Brennan and Spohn (2008) explored various state and federal sentencing amendments made that year, and found that despite these improvements, differential sentences for those convicted of crack/powder cocaine offenses still resulted in racial inequality, on both the state and federal levels. The same year, Carol Chodroff, the US Advocacy Director to the House Judiciary Committee at the time, pushed for the elimination of the racially discriminatory sentencing practices tied to crack/powder cocaine offenses. In her arguments, she reiterated the outcomes that have continuously resulted from these policies: crack-cocaine defendants were more likely to receive harsher punishments than those charged with powder cocaine offenses. Moreover, she highlighted, as many others had before, Black individuals were disproportionately on the receiving end of these severe sentences (Chodroff, 2008). Additionally, Shein (2007) wrote that since 1987, and the implementation of the federal Sentencing Guidelines, there has been an enormous sentencing differentiation between crack and powder cocaine offenses. In this differentiation, Black Americans have been disproportionately impacted.

In 2009, 79 percent of those arrested for crack-cocaine offenses were Black, while the number of White individuals arrested for crack-cocaine offenses during this time was just 10 percent (Kurtzleben, 2010; USSC, 2010:10). The average length of imprisonment for crack-cocaine related offenses was also higher, 115 months on average, while for powder-cocaine related offenses, the average sentence was 87 months (Kurtzleben, 2010; USSC, 2010:10). Even those in possession of small amounts of crack-cocaine faced severe punishments. For example, the average sentence for defendants in possession of 25 grams of powder cocaine was 14 months, while defendants in possession of less than 25 grams of crack were subjected to sentences of 65 months on average (Beaver, 2010:2549).

Despite the few positive outcomes of the Fair Sentencing Act of 2010, research conducted after its implementation found that racial disparities within crack-cocaine sentencing remained. To begin, approximately just 33 percent of crack-cocaine users were Black in 2011, yet more than 80 percent of those sentenced for crack-cocaine related offenses were Black (Kleiman & Hawdon, 2011). Other research shows that in 2011, the rate at which White individuals were being sentenced for crack-cocaine related offenses lessened compared to the previous year, while for Black individuals convicted of crack-cocaine offenses, the amount rose by 5 percent (Binnicker, 2012). This data also showcases the lasting inequities present within crack-cocaine sentencing: from 1996-2011, the number of Black individuals sentenced per year was disproportionately higher than that of White individuals. The year 2008 was the *only* year in which White people accounted for more than 10 percent of all crack-cocaine sentences (Binnicker, 2012). Conversely, Black individuals made up the majority of the remaining percentage of these sentences each year. Differences in the sentencing averages for each type of substance began to lessen, though disparities remained. In 2012, the average sentence length for a powder cocaine offense was 80 months. For crack-cocaine, the average was 95 months (USSC, 2015).

In 2013, White Americans comprised over 50 percent of crack users, yet less than 10 percent of those federally convicted of crack-cocaine offenses were White. Conversely, Black Americans made up 32 percent of crack users, yet comprised an alarming 82 percent of those federally convicted for crack-cocaine offenses (Legal Defense Fund, 2019). Findings also showed that Black individuals received sentences that were 8 percent longer on average compared to sentences received by White individuals (Wells, 2022). Overall differences in the sentencing averages for crack and powder cocaine also slightly increased that year. For powder cocaine, the average sentence was 79 months, while for crack-cocaine, the average sentence length was 96 months (USSC, 2015).

This same year, then-Attorney General, Eric Holder, elucidated the lasting inequalities that remained even after the implementation of the FSA (2010). In his speech, Holder advised federal prosecutors to stop charging low-level, nonviolent drug defendants with offenses that would trigger mandatory minimum sentences, pointing to the racialized outcomes of these practices (Exum, 2014). Moreover, he argued that the sentencing laws in place at that time sent "too many Americans to too many prisons for far too long, and for no truly good law enforcement reason" (Exum, 2014:113). Holder's statement further supports the notion that there are no scientifically significant differences between crack and powder cocaine, and thus, no significant reasons for their punishments to differ so greatly. In the years after the Fair Sentencing Act was implemented, the amount of crack-cocaine defendants declined at a steady pace. In 2010, 4,730 crack-cocaine offenses were sentenced. In 2014, this number had lessened to 2,366 sentenced offenses (USSC, 2015). However, despite these improvements, crack-cocaine was still the fourth-most prosecuted type of drug that year.

In 2016, Black Americans were still being arrested for cocaine-related offenses at a rate that was more than twice that for White Americans (Equal Justice Initiative, 2019). Research from the Leadership Conference on Civil and Human Rights shows that these inequities continue, even in recent years. Right before the FSA (2010) was enacted, just 7.3 percent of those sentenced under federal crack-cocaine laws were White. Conversely, 78.5 percent of those sentenced at the federal level for crack-cocaine offenses were Black. In a post-FSA (2010) world, 6.3 percent of those sentenced under these federal laws are White, while 77.1 percent are Black (LCCHR, 2021).

In a post-First Step Act world, the inequalities seen in crack powder cocaine sentencing persist. After its implementation, over 3,000 individuals had their sentences reduced. Ninety-one percent of those who received this reduction were Black, again proving the stark inequalities inherent within this sentencing scheme. Additionally, in 2022, a Commission report noted that of those released under the First Step Act, 92 percent were Black, and 98 percent were men (Gotsch, 2019). Amongst those who received a reduced sentence, a reduction of 24 percent was implemented, amounting to being released 72 months sooner, on average. Though this is of course a positive step, it is important to note that the racial inequities resulting from the ratio still exist. Indeed, Sentencing Commission data from 2019 show that amongst crack-cocaine defendants, 81 percent were Black, while just 5 percent were White. In 2020, 77 percent of those convicted of crack-cocaine offenses were Black, despite the fact that 66 percent of crack-cocaine users are White or Hispanic (Ahmad, 2021). Overall, data gathered by the Sentencing Commission spanning from 1996 through 2020 showcase the perpetual inequalities present in crack/powder cocaine sentencing. Apart from 2008, White Americans have *never* accounted for more than 10 percent of all crack-cocaine related offenses (United States Sentencing

Commission, 2024). These statistics become even more alarming when noting the fact that data from 2003 to 2018 centered around lifetime crack-cocaine use shows White Americans accounted for at least 65 percent of this population each year.

Altogether, since the adoption of the crack/powder cocaine ratio, racial inequities in federal crack-cocaine related offenses have continuously existed. The Sentencing Guidelines and mandatory minimum laws related to the ratio did not improve federal sentencing disparities as initially intended. Instead, it further perpetuated these disparities at a rate that has never been seen with any other illicit substance in US history (ACLU, 2023; Kurtzleben, 2010; US Sentencing Commission, 2024). Even in the rare occurrence in which amendments have been implemented, the racial disparities that are inherent in this ratio have remained nearly untouched. As a result, Black individuals have suffered in various ways as a result of this harsh and imbalanced legislation. For example, in 2000, there were more Black men in jails and prisons than in higher education (Vagins & McCurdy, 2006). In more recent years, Black Americans are incarcerated at a rate that is nearly 5 times that of White Americans; a large portion of this results from drug-related offenses (The Sentencing Project, 2021).

Many scholars, practitioners, and various other players throughout the legal system have continued to argue that in order to do away with the misconception that crack-cocaine is more dangerous, lethal, and addicting than powder cocaine, any disparity remaining between the two wrongfully separated substances must be eliminated altogether. Failing to do so only further perpetuates the misinformation and stereotypes surrounding crack-cocaine, which work to reinforce racial inequalities within the US federal criminal justice system. Additionally, the continuous focus on raising the amount of crack-cocaine needed to trigger the mandatory minimums falls short of real progress. Indeed, by simply increasing the weight of crack-cocaine needed for a mandatory minimum to kick in, the disparity in sentencing amongst this substance and powder cocaine will continue to exist on some level. As a result of the continued push for full abolition, in the fall of 2021, the Eliminating a Quantifiably Unjust Application of the Law Act, (EQUAL Act), a bill developed to do away with the disparity and apply it retroactively, was passed in the House. After this, the bill lost momentum within the legislative process, due in major part to an overall lack of support in the Senate (H.R. 1693- EQUAL Act of 2021). In February 2023, various legislators announced plans for reintroducing the bill, though no steps have been taken in this process to date. To first explore general crack/powder cocaine sentencing differences throughout time, given the exhaustive research that continuously shows disparate outcomes related to crack and powder cocaine sentencing, Hypothesis 1 is:

> H1: crack-cocaine sentencing outcomes will be harsher than powder-cocaine sentencing outcomes after each major amendment was enacted.

851-Enhancements and Drug Offenses

The Anti-Drug Abuse Act of 1986, and in particular, the mandatory minimums set forth by this legislation, laid the groundwork for decades of highly imbalanced sentencing outcomes in relation to crack/powder cocaine sentencing to occur. Indeed, drug offenses are continuously the most common act that mandatory minimum penalties are attached to in the federal system. The mandatory minimum and statutory maximum penalties outlined in this act are based primarily off the type of drug in possession, the quantity of the substance, and any prior drug trafficking offenses (USSC, 2018:2). With this, a defendant may be subject to a mandatory minimum sentence if the offense involves a drug quantity that is large enough to trigger a mandatory sentence. While the disparate results of the Anti-Drug Abuse Act are strongly evidenced in sentencing literature and official statistics, an important component of these imbalanced outcomes is typically left out of analyses.

While the guidelines of this act serve as a baseline for sentencing, these penalties may be enhanced further. Importantly, the 1986 Anti-Drug Abuse Act included a stipulation that allowed prosecutors to potentially double both a 5- and 10-year mandatory minimum sentence, if a defendant had a single prior drug felony conviction (Lynch, 2016). Importantly, a prior offense may be for mere possession of a substance, so long as the offense was punishable by more than one year in prison (21 U.S.C. § 841(b)(1)(B). Two years later, an even more intense enhancement was signed into law. Indeed, in cases typically subjected to a 10-year mandatory minimum, prosecutors could pursue a mandatory minimum of life without parole if a defendant had two or more prior drug charge convictions (Lynch, 2016). These provisions are widely known as recidivist enhancements (Russell, 2010).

Interestingly, the process by which a prosecutor attempts to obtain an enhanced drug sentence was already outlined in the criminal code under 21 U.S.C. § 851. This code had been implemented in 1970 to give prosecutors the choice to *not* seek mandatorily enhanced punishments against repeat drug offenses (Lynch, 2016). Indeed, in the Comprehensive Drug Abuse Prevention and Control Act of 1970, U.S.C. § 851 was implemented to lessen mandatory criminal history-related enhancements that were previously set in place during the Anslinger era. Anslinger, who was the Commissioner of the Federal Bureau of Narcotics at this time, is historically known for his widespread condemnation of various substances and groups of people unfoundedly attached to them, and the implementation of harsh drug laws that were in major part due to the social uproar that resulted from his racist fear tactics (Lynch, 2016; Tarricone, 2020). Thus, by outlining the provision this way, prosecutors could use their own discretion to determine whether a motion for an enhanced sentence was appropriate on a case-by-case basis. It ultimately required prosecutors to file an information, stating that they were seeking this enhancement, and to provide evidence of the prior conviction(s) that were relevant to the implementation of the enhancement. Importantly, this provision gave prosecutors the discretion to *not* file this information as well. These enhancements have become widely referred to as "851s" or "851-enhancements".

Importantly, these enhancements apply only to drug defendants in federal courts (Lynch, 2016: 26). These enhancements are unique in the fact that unlike convictions that count against defendants under other provisions, such as criminal history points or the career offender guideline, both of which are used to determine sentencing outcomes, prior drug convictions have no expiration date for the 851-enhancement. As such, decades-old prior offenses could be used against drug defendants when considering whether to file an 851-enhancement or not (Lynch, 2016; USSC, 2024). Importantly, these sentences are only at risk of doubling when the defendant has prior drug convictions. Other crimes, such as a robbery or murder conviction, would not trigger this enhancement (Russell, 2010). To ensure a "fair and uniform" sentencing system, the USSC implemented these new mandatory minimums into the Sentencing Guidelines. With the implementation of these minimums and the 851-enhancement, the goals set out by the USSC and the subsequent Sentencing Guidelines, became clear. Drug offenses should be sentenced in a way that is highly punitive rather than rehabilitative. Moreover, individual responsibility became less valued in this process, as sentences were now strongly centered around the drug in question and the quantity one possessed.

During the Bush administration, the use of 851-enhancements became commonplace (Russell, 2010). In 2003, a memorandum published by John Ashcroft, who served as the

Attorney General, outlined use guidance for this enhancement. In this information, it is suggested that prosecutors must file enhancements unless there is proof of "narrow exceptions" (Russell, 2010: 1164). With the introduction of a new Administration after Bush, the memorandum was not revised until 2010, when Eric Holder took over the role of Attorney General. Holder issued new guidance, stating that while a prosecutor should "ordinarily charge" the most serious offense, each case requires individual assessment based on the facts of the case (USSC, 2018: 12). This guidance, which became known as the "Holder Memorandum" pushed for the same individual assessment in plea bargaining and sentencing processes.

In 2011, the Commission released a report on the mandatory minimum penalties in place in the federal system. In its findings, the Commission recommended that Congress reconsider the severity and scope of recidivist enhancements, citing that these were more severe than the "graduated increases" provided for in the guidelines (USSC, 2011:37). The Commission also concluded that the use of 851-enhancements was shown to be inconsistently implemented throughout judicial districts. Further, prosecutors reported that there was wide variation in the practices related to the filing of an 851 information across districts as well. This report also urged Congress to consider changing the definition of a "felony drug offense" in order to reduce the inconsistent usage of this enhancement across districts (USSC, 2011).

Then, in 2013, the Supreme Court filed a decision in *Alleyne v. United States* that impacted the use of 851-enhancements. In this decision, the Court held that "facts that trigger a mandatory minimum penalty are elements that must be submitted to the jury and proven beyond a reasonable doubt" (USSC, 2018:12). Then, in the Smart on Crime Initiative, charging policies were further modified by the Department of Justice (DOJ). Arguing that the outcome of *Alleyne* places higher discretion in the hands of prosecutors to determine whether an individual is subject to a mandatory minimum sentence, the DOJ developed a new policy related to mandatory minimum statutes for specific nonviolent, low-level drug defendants. This legislation directed prosecutors to decline charging the "quantity necessary to trigger the mandatory minimum sentence if the defendant meets certain criteria" (USSC, 2018:13). Further, the initiative argued that prosecutors should "decline to file an 851 information unless the defendant is involved in conduct that makes the case appropriate for severe sanctions" (USSC, 2018:13). Factors that should be taken into consideration included: whether the person was a leader, organizer, or supervisor of others in a criminal organization; if the defendant was involved in the use or threat of violence in the offense; the nature of the defendant's criminal history; whether the defendant had significant connections to large-scale drug trafficking operations; whether the filing would create a gross sentencing disparity with equally or more culpable co-defendants; and other case-specific aggravating or mitigating factors (USSC, 2018:13). Importantly, this legislation also cautioned against the use of this enhancement in plea negotiations, stating that this information should not be used in plea deals for the sole purpose of getting a defendant to plead guilty. This memorandum outlined that an 851 filing should not be used as a leverage tactic in inducing a guilty plea. More simply put, the DOJ argued that the decision to file an 851 should not be based on whether a defendant is entering a guilty plea, as this is "inappropriate and inconsistent with the spirit of the policy" (USSC, 2018: 13). Importantly, as Attorney General Jefferson Sessions took office, these policies regarding the 851-enhancement were rescinded. As such, Sessions provided guidance to revert back to previous policies centered around prosecutors seeking and charging the most serious, "readily provable" offenses involved in a situation. He also stated that "the most serious offenses are those that carry the most substantial guidelines sentence, including mandatory minimum sentences" (USSC, 2018:13).

Despite the changing attitudes related to the use of 851-enhancements, the threat of filing an 851-enhancement is historically a practice commonly used by prosecutors as a tactic to get drug defendants to cooperate with law enforcement and provide information about others involved in drug offenses. In her important work, criminologist Mona Lynch details this occurrence. To begin, Lynch argues that in some districts, the biggest threat used to force plea deals or induce cooperation from a defendant is the 851-enhancement. In some instances, the prosecutor will file an 851 even after a plea agreement has been reached, and will then tell the defense that the only way out from the "now-doubled mandatory minimum" is through cooperation (Lynch, 2016: 75). This practice places defendants in a major dilemma, in that providing assistance, otherwise known as informing on someone, can in many cases result in the death of those which inform on others (Lynch, 2016). Thus, many are placed in a difficult scenario—they can choose to cooperate with governmental entities, inform on their peers, and face the risk of serious consequences from their peers after, or, they can refuse to cooperate, and risk at least doubling their incarceration time (Lynch, 2016).

While there is a large gap in academic work related to the implementation and outcomes of the 851-enhancements in drug sentencing, various reports from the USSC provide useful insight into the application and impact of this provision. Using data from 2016, the findings of the 2018 report illuminate the outcomes of this enhancement. Findings show that the use of 851-enhancements was overall quite rare in 2016, though the USSC argues that this may be due to the change in DOJ guidance surrounding 851-enhancements that was in effect at the time of publication. Nonetheless, the government filed 851-enhancement information against 757 drug trafficking offenses, which equates to just 12.3 percent of the total number of individuals (6,153) eligible for this type of enhancement that year (USSC, 2018). Additionally, various cases were withdrawn or were reconsidered as a result of providing substantial assistance to the case.

After accounting for these instances, 243 people ultimately remained eligible for the enhanced penalties under this provision. Despite the small pool of eligible individuals for this enhancement, the application of them was applied inconsistently throughout districts. Results from this report show that there were widespread geographic variations in the way in which these enhancements were filed, withdrawn, and applied. For example, in five districts, an 851-enhancement was filed against more than 50 percent of eligible individuals. Conversely, there were nineteen specific districts that did not file enhancements against any defendants who were eligible (USSC, 2018). In one district, prosecutors noted that they rarely filed 851 information, stating that these enhanced penalties were a "hammer for the works offenders" but otherwise much too harsh for low-level drug offenses (USSC, 2017: 21). Importantly, prosecutors did advise that an 851-enhancement would be filed in any case in which the defendant insisted on taking the case to trial. The rate at which 851s were withdrawn also varied. For instance, many of the districts with the highest rate of 851 filings also had some of the lowest rates of withdrawal, while districts that appeared to be more selective in their filings also had some of the highest rate of withdrawal. When considering eligibility rates among drug type, results showed that crack-cocaine offenses made up the majority of those who were eligible for the enhanced penalties (60.3 percent). This group was also slightly more likely to receive an 851-enhancement than others who were eligible but possessed other substances (USSC, 2018).

Results of this report also elucidate just how impactful these filings are on sentencing length. Overall, results showed that when the 851-enhancement was implemented, longer sentences resulted. To begin, in 2016, for those who received an 851-enhancement, the average sentence length was 61 months longer than eligible individuals who did not have the information filed against them. Put differently, those with an 851-enhancement were sentenced to 147 months on average, while those who did not receive an 851 received a sentence of 86 months on average. Those whose enhancement remained in place during the sentencing stage received average sentences of 19 years. This is roughly 10 years longer than the average sentence for those who received relief from an enhanced sentence, through things like substantial assistance, or the safety valve component outlined in 18 U.S.C.§ 3553(f). This sentence was almost 12 years longer than the sentence received by those who were eligible but did not have 851 information filed against them (USSC, 2018).

Racial inequalities in the use of 851s also exist. Some argue that these enhancements further overall racial disparities seen in the criminal justice system (Russell, 2010). Findings from the 2018 USSC report support this argument. Indeed, while 851-enhancements significantly impact all racial groups, Black individuals were the group most significantly impacted by the use of these enhancements. In 2016, Black defendants represented the largest portion of drug trafficking offenses (42.2%) who were eligible for an 851 filing. Additionally, Black defendants comprised the majority (51.2%) of those who had an 851-information filed against them. White defendants made up 24.3 percent of this population, followed by Hispanic defendants comprising 22.5 percent of this group, and Other Race defendants making up 2 percent of this population (USSC, 2016). When considering the percentage of those eligible for 851s who actually received a filing of this information, racial inequalities persist. 851 information was filed against 14.9 percent of eligible Black defendants, while for other racial categories, these percentages were lower. For example, 11.4 percent of eligible White defendants received this filing, Other Race defendants comprised 11.7 percent of this group, and Hispanic defendants constituted 9.4 percent of this population. Racial inequalities were even more striking for those who remained subject to this enhancement during the sentencing stage. Indeed, Black people comprised 57.9 percent of this group (USSC, 2017). This trend shows that Black defendants constituted a larger proportion of those who received an 851-enhancement as they progressed through each stage of the 851-enhancement process. As such, the report concludes that Black defendants receive an 851-enhancement more often than any other racial category.

In 2018, under the First Step Act (FSA 2018), important changes were made to the 851-enhancement requirements. To begin, this legislation changed the scope and severity of certain aspects of the enhancement. First, the Act changed the prior offenses that set off this recidivist enhancement. For example, before the implementation of the FSA (2018), an individual's sentence could be enhanced if they had been convicted of a prior "felony drug offense". However, after the implementation of the FSA (2018), in order to meet the criteria for the 851-enhancement, a defendant must now be convicted of a "serious drug felony" (USSC, 2019). As such, a prior drug offense qualifies as a prior offense only if it is an offense specifically defined in 12 U.S.C. § 924(e)(2)(A), the person served an incarceration term of more than 12 months for that offense, and was released within 15 years of the offense (USSC, 2018: 7). Before to this, any drug offense punishable by more than one year of incarceration qualified as a prior offense, regardless of the length of time imposed or served for the offense. The First Step Act also expanded the type of offenses that were classified as prior convictions, by adding "serious violent felony" to the list (USSC, 2020). Additionally, the FSA reduced the sentencing length of some enhanced penalties. For example, for those who were once facing a 20-year mandatory minimum if they had one qualifying prior conviction, the FSA (2018) reduced this to 15 years. Furthermore, for cases that qualified for an enhancement of life imprisonment for two qualifying prior convictions, the sentence was now 25 years (USSC, 2020). Importantly, for those who qualify for a five-year sentence to be enhanced to a ten-year sentence, this facet still remains under the FSA. As such, a qualifying predicate offense, i.e., a "serious drug offense" or "serious violent felony" still increases a five-year penalty to ten years (USSC, 2020: 8).

Outcomes of these changes are important to explore. To begin, as a result of the changes made to offenses that count toward the 851-enhancement under the FSA (2018), some who previously qualified for an enhancement due to a prior felony drug conviction no longer qualified. Conversely, others became newly eligible for this as a result of the addition of "serious violent felonies". Further, when compared to outcomes of 2018, the Commission found that prosecutors filed 851 information at a rate that was just slightly above that in 2019. In 2018, an 851 was filed in 1,274 cases, which equates to about 7 percent of all drug trafficking cases. In 2019, an 851 was filed in 1,607 cases, which equates to 8 percent of all drug trafficking cases (USSC, 2020). Moreover, while the FSA (2018) broadened the scope of the types of offenses that would qualifying as a prior offense under the 851-enhancement, for those whose 851 information was still intact during the sentencing phase, most were given an enhanced penalty based off of serious drug felonies. Conversely, very few were given an enhanced sentence based off of a qualifying serious violent felony.

When considering the length of enhanced penalties after the implementation of the FSA (2018), the average sentence length for individuals who received an 851-enhancement decreased overall. For example, for those whose 851-enhancement remained at sentencing, the overall sentence was eight months shorter in the year following the FSA (2018) when compared to 2018 (USSC, 2020). To illustrate, the average sentence after the FSA (2018) was 179, while in 2018, the average sentence was 187 months. When considering drug type, heroin and fentanyl were the two categories of substances that people were most likely to receive an enhancement during the sentencing phase. This finding is consistent with the increased focus on opioids from the criminal justice system in more recent years (USSC, 2023). Interestingly, when comparing rates at which information was filed for crack versus powder cocaine, powder cocaine remained at nearly identical rates when comparing data from 2018 and 2019, resulting in 16.3 percent of 851 information filed in 2018, and 16.2 percent of 851 information filed in 2019. Crack-cocaine offenses made up less of the total number of 851-enhancements filed in 2019. In 2018, crack-cocaine represented 16.3 percent of cases in which this enhancement was filed, while in 2019, just 15.5 percent of cases (USSC, 2020). However, in cases where 851-enhancements were filed and not withdrawn, the number of crack-cocaine related offenses in this population increased after the FSA, from 15.2 percent in 2018, to 16.3 percent in 2019.

Focusing on demographics, in both years, men were most likely to be to be the ones to receive 851-enhancements. In terms of racial category, in 2018, Black defendants accounted for 49.8 percent of those who had an 851-information filed against them, and 51.3 percent of those whose enhancements applied at sentencing. In 2019, these numbers increased. Indeed, Black defendants accounted for 53.8 percent of the enhancement filed, and 59.7 percent of those applied at sentencing. Conversely, the portion of White defendants impacted by these enhancements lessened in 2019. In 2018, White individuals comprised 30.6 percent of filed 851s, and 30.3 percent of those applied at sentencing. In contrast, in 2019, 24.6 percent of enhancements filed involved a White defendant, and just 19.9 percent of those applied at sentencing involved a White defendant (USSC, 2020). Hispanic defendants made up the third largest category, with this group making up 19.8 percent of the 851 filings in 2019, and 18.9 percent of those applied at sentencing. These percentages increased from the year before the FSA

(2018) was implemented. Overall, while the FSA (2018) is a positive step in combatting the inequalities that result from the 851-enhancement, recent findings show that the imbalances that were present in this setup remain. Particularly so in relation to the application of them, as well as the social groups who are most impacted by them. Given this, the following hypotheses were created:

> H4: Black individuals are more likely to receive 851-enhancement filings than their White and Hispanic counterparts.
>
> H5: Eligible crack-cocaine offenses receive a disproportionate amount of 851 filings when compared to eligible powder cocaine offenses.

Summary and Overview

In Chapter Three, previous literature related to sentencing and racial inequalities was discussed. Additionally, previous literature on the ways in which the 851-enhancement further impacts sentencing and racial inequalities seen in crack/powder cocaine related offenses was included. Chapter Four describes intersectionality theory, and explore previous literature surrounding the relationship between racial identity, sex, educational attainment, and criminal sentencing outcomes.

CHAPTER IV

INTERSECTIONALITY THEORY

While most literature on crack/powder cocaine sentencing has centered around racially disparate outcomes, it is of great importance to explore other facets of inequality that result from these policies too. More specifically, employing an intersectional lens when assessing sentencing outcomes is crucial. In using this theory, the intricacies of the imbalanced outcomes that result from crack/powder cocaine sentencing practices are better illuminated. As such, intersectionality theory serves as the methodological framework of this study, and guides the development and exploration of the research questions. In the sections that follow, the development of this framework is discussed. Then, previous literature centered around race and drug sentencing outcomes, sex and drug sentencing outcomes, and socioeconomic status and drug sentencing outcomes is examined.

Various groups, including social movement activists and critical feminism and race scholars have emphasized the importance of an intersectional framework (Cole, 2009; Combahee River Collective, 1977/1995; Giddings, 1985; Hancock 2005; Hill-Collins, 2016). Following this, the 1980s ignited a widespread movement centered around the understanding of the nuances of race, gender, and socioeconomic status, with many women of color at the forefront of this emphasis (Anzaldua, 1987; Davis, 1983; hooks, 1984). While many actors were engaging in intersectional work at this time, the term was first coined in 1989 by prominent Black feminist and Critical Race Theory scholar Kimberlé Crenshaw. She first defined this lens in her prominent essay "Demarginalizing the Intersection of Race and Sex", in which Crenshaw used this framework to uncover the disparate consideration of Black women in various facets of society, such as antidiscrimination laws, as well as feminist and antiracist theory and practices (Carbado, Crenshaw, Mays, & Tomlinson, 2013; Crenshaw, 1989). In 1991, Crenshaw furthered this framework, using an intersectional view to illuminate the widespread shortcomings of social movements and advocacy centered around violence against women, i.e., the omission of the experiences of women of color, especially those from immigrant and marginalized communities (Carbado, Crenshaw, Mays, & Tomlinson, 2013; Crenshaw, 1991).

Throughout her work, Crenshaw noted that much of the social world and explorations of it are centered around a "single-axis" way of thinking. For example, by placing major emphasis on the differential treatment seen amongst various racial categories or gender identities within numerous social systems and facets. While these differences are undoubtedly important to explore, Crenshaw argued that in the realms of knowledge production, feminist theory, the legal system, and antiracist politics, this "single-axis" framework lessens the effectiveness of these systems (Cho, Krenshaw, & McCall, 2013). Crenshaw also argued that by employing this type of framework, the experiences of "the most privileged members of subordinate groups" are the foci of investigation (Cole, 2009). In doing so, the experiences of those who often face "double discrimination" (often referred to as 'double jeopardy'), i.e., the combined effects of discrimination that result from an individual's race, sex, and socioeconomic class, among other identities, are left out of the discussion (Cole, 2009; Crenshaw, 1998/1993).

As such, an intersectional framework brings important attention to the ways in which various social identities work in a compounding manner, emphasizing important "dynamics of difference and sameness" (Cho, Krenshaw, & McCall, 2013: 727). With this, using an intersectional lens allows for the examination of various influencing factors at once. For example, when exploring how various social identities such as race, sex, and socioeconomic status work together to impact an individual's experiences with the criminal justice system. Put more explicitly, this framework is particularly important when considering questions such as "how does a Black, low-income woman's experience within the criminal justice system differ from a White, upper-class man's?". Additionally, this framework aids in uncovering the intricacies present within the same social identity as well, such as the differences in the experiences of Black women when compared to White or Hispanic/Latinx women.

While intersectionality is a framework that has been implemented throughout many topics of social research and hypothesizing, this lens has rarely been used to explore crack/powder cocaine sentencing outcomes. As such, this research project employs this framework to better illuminate the intricate and nuanced disparities that result from crack/powder cocaine sentencing structures. In the following sections, previous literature surrounding various social positions, particularly race, sex/gender, and socioeconomic status, and their implications in the context of criminal sentencing outcomes, are explored.

Previous Literature

Race and Criminal Sentencing

Racial inequality in incarceration is an everlasting component of the US criminal justice system, with a major increase in these imbalances occurring during the 1990s. Various scholars point to the importance of race in understanding the inequalities that exist in this system, arguing that race must be central in any investigation into the increased rates of incarceration that occurred during this time (Chapelle, 2010; Frase, 2009; Sharp, Braley, & Marcus-Mendoza, 2000). Indeed, from 1990-2000, the total percentage of state and federal inmates who were White decreased from over half of the population to 47.9 percent. Conversely, by 1997, the percentage of incarcerated individuals who were Black increased to 49.4 percent (Sharp, Braley, & Marcus-

Mendoza, 2000). Many other studies have concluded that Black individuals and members of other racially minoritized groups are disproportionately represented in the use of both jail and prison sentences (Crutchfield et al., 1995; Spohn, 2000; Harrington & Spohn, 2007). These inequalities are also present when considering the differential treatment received by defendants of different gender and racial categories. For example, in 1997, almost half of the women in state prisons were Black, while White women made up most of the probation population that year (Greenfield & Snell, 1999: 7). These findings suggest the existence of differential treatment in the way punishments are meted out (Sharp, Braley, & Marcus-Mendoza, 2000). In 2000, Sharp, Braley, & Marcus-Mendoza found similar results in their own study. Findings showed that within the incarceration population in two state facilities in Oklahoma, White women were more likely to be serving time in lower sentence categories when compared to Black women. For example, in the 5-to-9-year range, Black women accounted for 38 percent of this group, while White women comprised just 28 percent.

These trends are especially prevalent among drug offenses. For example, by the 1990s, crack-cocaine offenses made up the largest portion of those convicted of drug offenses to be sentenced to prison by state courts (Sevigny & Caulkins, 2004). Importantly, the federal system also played a significant role in the changing population demographics. For example, federal adoption of state crack-cocaine cases became a routine phenomenon at this time (Guerra, 1995). In various jurisdictions, low-level dealers became common targets of these “federal-state law enforcement partnerships” (Lynch & Omori, 2018). As heavily described in previous sections, Black individuals have continuously been the group disproportionately impacted by federal crack policies.

More recent estimates provide support for the notion that drug offenses play a significant role in the increase in US incarceration, showing that approximately one-fifth of incarcerated individuals and over 25 percent of those on probation are part of the correctional system as a result of drug offenses (Omori, 2017). Within this population, stark racial disparities have existed throughout time, as a major portion of the increase in incarceration amongst Black individuals is attributed to drug offenses, especially when compared to White individuals (Sharp, Braley, & Marcus-Mendoza, 2000). Further illustrating this, in 2006, nearly half of those incarcerated for drug offenses were Black (Mauer, 2006). Importantly, various researchers have contended that crimes committed by racially minoritized individuals are sentenced more harshly than crimes committed by similarly situated White defendants (Chiricos & Crawford, 1995; Kautt, 2000; Kautt & Spohn, 2002).

Others have combatted these claims, arguing that harsher sentencing outcomes are simply due to the seriousness of their offenses and prior criminal records. Those in opposition to this argument also contend that other “legally relevant” factors play a role in this imbalance too (Kautt & Spohn, 2002: 2). Despite these differing viewpoints, there is a large body of evidence spanning across decades that points to one solid consensus: drug laws and the enforcement of them have had the most significant impact on the alarming increases in the US prison population over time (Alexander, 2010; Fagan & Mears, 2008; Omori, 2017; Reinarman & Levine 2008). The federal war on crack has been especially impactful in bolstering these inequalities. Indeed, many scholars have contended that crack-cocaine laws play a particularly important role in the subjugation of certain racial groups (Alexander, 2010; Dvorak, 2000; Lynch et al., 2013; Provine, 2007).

As discussed in previous sections, this decades-long war has influenced various revisions of sentencing policies and practices to address many of these concerns, especially the reduction of extralegal disparities seen in sentencing. Two of the main structures implemented throughout this debate—the federal sentencing guidelines and federal mandatory minimum sentencing statutes—were put in place with the intention of reducing racial sentencing disparities, by lessening the amount of judicial discretion judges held under the previous indeterminate sentencing setup. Progressive advocates argued that the implementation of these changes would increase fairness and hold judges more accountable for their decision-making processes, while conservative support centered around the argument that these reforms would result in harsher penalties that would ultimately deter crime (Tonry, 1995; Spohn & Sample, 2013). While these revisions have been relatively successful in some facets of the legal system, racial disparities in drug sentencing have continuously increased since their implementation (Beck & Mumola, 1999; Kautt & Spohn, 2002/2008; Tonry, 1995; Tonry & Hatlestad, 1997; USSC, 2005/2007). For example, the portion of those convicted of drug offenses who were Black more than doubled just 5 years after these laws were enacted. By 1992, Black individuals made up 36.4 percent of those convicted of a drug offense, and 91 percent of those convicted of crack-cocaine offenses (Lynch & Omori, 2018). For the first time, in 1996, crack-cocaine related offenses surpassed powder cocaine offenses as the largest sum of the overall federal drug caseload.

Research from Albonetti (1997) further showcases the lasting impacts of the sentencing guideline restructuring. In this research, which focused on data from over 14,000 individuals convicted of drug offenses, result showed that judges imposed sentences that were significantly more severe for Black and Hispanic individuals when compared to White people. What's more, various research has shown that racial differences in federal drug sentencing outcomes cannot be explained by other “legally relevant factors” (Albonetti, 1997; Meierhoefer, 1992; Steffensmeier & Demuth, 2006). Indeed, much evidence shows that Black individuals are more likely to receive longer sentences than White individuals (Spohn, 2000; Steffensmeier, Ulmer, & Kramer, 1998; Zatz, 1987). Additionally, there is a growing pool of research that shows that Hispanic individuals are sentenced more harshly than White individuals, and sometimes even more harshly than Black individuals (Brennan & Spohn, 2008; Hartley & Miller, 2010; Hartley, Miller, & Spohn, 2010; Ulmer & Johnson, 2004).

Further, many studies have shown that even after accounting for criminal history and severity of offense, Black and Hispanic individuals are more likely to receive longer sentences than their White peers (Albonetti, 1997; Chappell & Maggard, 2007; Kramer & Steffensmeier, 1993; Spohn, 2000; Ulmer & Bradely, 2006). In 2000, Steffensmeier & Demuth found that the likelihood of imprisonment was significantly less for White individuals when compared to racially minoritized groups. Likewise, the mean prison sentence was shorter for White defendants than for racially minoritized defendants, and especially so when compared to Hispanic populations specifically. Researchers also concluded that Hispanic individuals convicted of drug offenses typically received lower sentencing discounts for providing “substantial assistance” when compared to Black or White drug defendants (Spohn & Sample, 2013:7). Further, in studies that focus on the impact of plea bargaining in federal sentencing, White defendants are more likely to receive these offers, thus providing more opportunities for lesser sentencing for this group of individuals (Bushway & Piehl, 2007). As such, despite efforts to implement “neutral”, balanced sentencing guidelines and structures, racial inequality in federal sentencing remains.

In addition to harsher sentencing outcomes, defendants who hold a racially minoritized identity make up a disproportionate percentage of the US prison population, with a consistent increase year after year (Brennan & Spohn, 2008). With these statistics, many continue to argue that the steady increase in incarceration rates amongst these groups results from the War on Drugs, and the implementation of harsher drug sentencing laws that resulted from this crusade (Mauer & King, 2007; Wells, 2017). This argument is backed up by various data throughout time. For example, in 2004, 20 percent of the prison population were incarcerated for drug offenses. Within that population, 45 percent were Black, 21 percent were Hispanic, and 26 percent were White (Brennan & Spohn, 2008). Further, in 2012, Black individuals made up 39 precent of all individuals federally incarcerated for drug offenses, while White people represented 22 percent of this population (Taxy, Samuels, & Adams, 2015). For Hispanic individuals, the trends are similar, representing 37 percent of those federally incarcerated for drug offenses (Carson & Anderson, 2016).

This imbalanced trend has continued throughout subsequent years. For example, in 2015, nearly half of all federally incarcerated individuals were serving time for drug-related offenses (Carson & Anderson, 2016). When examining the racial makeup of this population, more than half were Black or Hispanic (Wells, 2017). Most recently, USSC data from 2024 showcase this lasting trend. Indeed, as of January 2024, 34.8 percent of the Federal Bureau of Prisons population are Black, while 31.1 percent are Hispanic, and 29.9 percent are White. Among this group of incarcerated individuals, the most common type of offense is drug trafficking (USSC, 2024). Importantly, these statistics are disproportionate when noting the fact that Black Americans make up just 14 percent of the overall US population, while Hispanic individuals make up 19.5 percent (Pew Research Center, 2024).

Sex and Criminal Sentencing

While racial disparities in federal sentencing have been richly explored across decades, examining gender outcomes has been less of a focus throughout time (Griggs, 2021). The awareness of gender biases in sentencing practices began to increase in the late 20th century, offering new insight into the nuanced ways in which disparities in sentencing arise (Sarnikar et al., 2007). While men were historically incarcerated at much higher rates than women, this trend began to change in the 1990s. During this time, the number of women incarcerated in both state and federal prisons began to increase at a fast rate. Indeed, in 1985, women accounted for just a bit over 23,000 individuals of this population. In 1990, 44,065 women were incarcerated in prisons. By 1995, nearly 75,000 were under incarceration (Spohn, 1999). In 1998, this number continued to grow, with 85,000 women being incarcerated in state or federal facilities at this time (Sharp, Braley, & Marcus-Mendoza, 2000). Put differently, women's incarceration increased by 6.5 percent, while the men's incarceration increased by 4.7 percent (Sharp, Braley, & Marcus-Mendoza, 2000). Outcomes of studies centered around gender disparities in sentencing offer mixed findings, with many studies showing these disparities tend to impact males more when compared to women (Bickle & Peterson, 1991; Doerner, 2009; Spohn, 2000/2002).

Much research shows that when men and women are convicted of the same crimes, they tend to receive different sentences, with women typically receiving lesser punishments than men (Albonetti, 1997; Blowers & Doerner, 2015; Etienne, 2010). Additionally, various studies show that women are also less likely to be incarcerated, and more likely to receive other forms of punishment, like probation (Albonetti, 1997; Blowers & Doerner, 2015; Bradley-Engen et al., 2012; Kautt, 2002; Messing & Heeren, 2009). These findings hold even after accounting for offense severity and criminal history. Further, many scholars contend that women tend to be met with “lenient judicial processing” when compared to men (Messing & Heeren, 2009:1, Shapiro, 2000; Streib, 1990, 2002). Highlighting this trend, in 2006, Steffenmeier and Demuth found that men were 71 percent more likely to be incarcerated than women. They also found that men typically received sentences that were 20 percent longer than sentences imposed on women (Steffensmeier & Demuth, 2006). Various researchers argue that overarching gender norms and expectations play an important role in these imbalanced outcomes. Furthermore, numerous scholars contend that concepts like paternalism, the idea that women are “less responsible for their actions and therefore need to be protected”, or chivalry, the notion that men are “less willing to inflict additional harm on women by incarcerating them for their actions” play a role in these differences as well (Adler, 1975; Daly, 1987; Stryker, Nagel, & Hagan, 1983; Steffensmeier et al., 1993, Wells, 2017:40).

Tied to this, it is argued that sentencing decisions made by the legal system are impacted by society’s perceptions as to how women “should” behave (Gilbert, 2001). For example, lenient sentences tend to be awarded to women who hold traditional gender roles, like being married or having children or other dependents (Daly, 1989). Moreover, when women committed crimes that were viewed as “masculine” or “unfeminine” in the way they were carried out, and thus differed from typical gender expectations, they were seen as “nonconforming”. As such, these individuals tended to receive the harshest penalties (Nagel, 1981, Nagel et al., 1982). Further, women who are perceived as “respectable” i.e., married, nonviolent, and sexually “decent”, are more likely to be met with sentences that are less severe than those perceived as “nontraditional” (Chesney-Lind, 1987; Messing & Heeren, 2009:172).

While these arguments may offer important aspects to consider, they are also heavily criticized. Daly and Tonry (1997) point to the fact that concepts like paternalism, chivalry, or the “masculinity” of women’s crime are difficult to explore empirically and lack avenues of analysis. Joining Steffensmeier and his team’s argument, Daly and Tonry instead posit that judges who impose lesser sentences for women may be more motivated by beliefs surrounding blameworthiness, or the social costs that may come with a woman’s incarceration. They also note the importance of considering “gender-linked criteria”, such as responsibility for children, possibility of reform, or pregnancy may also impact sentencing decisions (Daly & Tonry, 1997:232).

Overall, though much research shows that women often receive preferential sentencing outcomes when compared to men (Albonetti, 1997; Blowers & Doerner, 2015; Etienne, 2010), others contend that judges tend to treat women more harshly than men because it is a “masculine” trait to engage in criminal activity; a man’s nature simply makes them more likely to engage in crime (Simon & Landis, 1991). Thus, judges may overreact to a woman’s criminality, and ultimately impose a harsher punishment, because it is “unfeminine” to engage in crime or “violates ideas of appropriate womanhood” (Gomez 1997; Sharp, Bradley, Marcus-Mendoza, 2000: 6; Simon & Landis, 1991). Research from the 1990s back this claim, showing that at this time, more people were being sentenced to prison, and for longer periods of time. This trend was especially true for women, who became incarcerated more often and for longer periods (Sharp, Braley, & Marcus-Mendoza, 2000). With this, the argument that in the criminal justice system, women are treated more harshly than men, is especially common when examining drug offenses specifically (Chesney-Lind, 1995; Spohn, 1999).

Given these mixed arguments and findings, it is important to further explore gender disparities, and especially so in the context of drug sentencing. While much of the literature surrounding gender inequality in sentencing shows more favorable outcomes for women when compared to men, many early scholars contend that this trend reverses when examining drug offenses. Indeed, the increase in women's incarceration seen during the 1990s is majorly attributed to the War on Drugs and the increased penalties for to the possession and sale of drugs that accompany this war (Chesney-Lind, 1995; Spohn, 1999). These policies increased both the probability and length of incarceration for women involved in even low-level drug offenses (Bush-Baskette & Smith, 2012). Research from this time shows that women incarcerated in state prisons were more likely to be serving time for drug offenses than men (Spohn, 1999). For example, 38 percent of the increase in women's incarceration was attributed to drug offenses, while for men, these offenses accounted for just 17 percent of the population increase (Sharp, Braley, & Marcus-Mendoza, 2000). Additionally, these studies show that the number of women incarcerated for drug-related offenses increased dramatically during this time; from 2,400 in 1986 to 12,600 in 1991, equating to a 432 percent increase (Spohn, 1999: 366). Further, research from 1999 showed that rates of incarceration rose more quickly for women (364 percent) than for men (195 percent) (Bush-Baskette & Smith, 2012).

As Spohn (1999) argues, given that there is a large body of research that shows women are treated more leniently than their male counterparts, one would expect these trends to hold for drug offenses specifically. However, this expectation may be called into question by the argument that widespread fear historically tied to drug use resulted in the criminal justice system taking a tough stance on these offenses. As such, drug offenses are viewed by the justice system as serious crimes that "generally deserve harsh punishment", regardless of individual characteristics (Tonry, 1995).

With dramatic increases in women's incarceration occurring at this time, prominent feminist criminologist scholar Chesney-Lind, contended that the War on Drugs had become a “war on women” and more specifically, a war on women of color (Bush-Baskette & Smith, 2012; Chesney-Lind, 1997: 112). Prior evidence supports this argument, with drug use typically impacting sentencing length for Black women more often when compared to White women (Chappelle, 2010; Sharp, Braley, Marcus-Mendoza, 2000). In 1997, Chesney-Lind furthered this argument, asserting that long-lasting calls to “get tough on crime”, coupled with a criminal justice system that now supports “equality for women, with a vengeance when it comes to the punishment of crime” has resulted in heightened use of incarceration as a response to women’s criminal behavior (Chesney-Lind, 1997: 15). Additionally, Jordan-Zachary asserts that the War on Drugs has been framed in ways that places emphasis on certain groups over others, particularly Black women. In doing so, Black women have become “hyper-visible and invisible” simultaneously. Meaning, hyper-visible in the images and narratives used to shape the “war”, yet invisible in the consideration and understanding of their experiences with and consequences that result from crack use (Chapelle, 2010; Jordan-Zachary, 2003).

Other scholars have continued to further highlight the gendered nature of this “war”. Durham (1994: 111) noted that the increase in women’s incarceration has resulted from the War on Drugs, stating that women who had once been the recipients of more lenient sentencing were now being treated the same as men, and in many cases, even more harshly. Furthering this argument in 1997, prominent sentencing scholars Daly and Tonry contended that the push for gender equality in sentencing, along with the War on Drugs and the “tough on crime” movements seen in the 1980s, resulted in dramatic increases in incarceration rates (Daly & Tonry, 1997: 24). Echoing this, Boyd (2003) contends that drug prohibition works to ensure that women who use illicit substances are treated as “deviants” by those in medical, social service, and legal fields (Boyd, 2003). As such, since the implementation of harsher laws related to the War on Drugs, women became the new target of this crusade (Boyd, 2003).

Governmental reports from this era also show that much of the increase in women's incarceration at this time resulted from changes made to sentencing practices. This is particularly the case for those convicted of drug offenses, i.e., the introduction of the Guidelines and the mandatory minimums attached to these Guidelines (Sharp, Braley, & Marcus-Mendoza, 2000). Indeed, the number of women imprisoned for drug-related offenses nearly doubled in 1997 when compared to 1990.

Conversely, more recent literature surrounding this topic furthers the argument that women tend to receive lesser punishments than men. To begin, Mustard (2001), focused on a sample of over 77,000 individuals in the federal correctional system, and found that women were more likely to receive downward departures from sentencing guidelines than men. Importantly, men were more likely to receive upward sentencing adjustments. Additionally, when men did receive a downward departure, the reductions were smaller than those received by women. Further, when the implementation of no prison term was available, men were less likely to receive this option (Mustard, 2001). Research from 2007 focused specifically on federal crack/powder cocaine offenses also found that women were more likely to receive substantial assistance sentencing departures, i.e., departures implemented based on an individual's cooperation in providing "substantial assistance" in the "investigation or prosecution of another person" (Hartley, Maddan, & Spohn, 2007; Ward et al., 2016). Other research showed that women were 1.64 times more likely to receive a substantial assistance departure than men (Stacey & Spohn, 2006). Further, research centered around those convicted of federal drug offenses in three US districts also found that women were more likely to receive substantial assistance departure than men. When these sentencing discounts were applied, women were more likely to receive larger reductions than men (Spohn & Brennan, 2011).

Furthering the argument that women typically receive lesser sentences than men, Kautt (2002) found that women convicted of drug offenses received a sentence that was 4 months less than sentences meted out to men convicted of drug offenses, on average. Another study found that gender played a significant role in determining sentencing length. For example, women received sentences that were 11 months shorter than sentences imposed on men, on average (LaFrentz & Spohn, 2006). Farrell (2004), focused on federal drug trafficking defendants, and found that women were more likely to receive sentencing departures brought forth by both prosecutors and judges. In his research, Johnson (2003), found that gender played a strong role in determining the odds of receiving a downward sentencing departure, with women being more likely to receive sentences below sentencing guidelines when compared to men. Indeed, a woman defendant had 63 percent greater odds of a downward sentencing departure than a male defendant (Doerner, 2012). Similarly, the odds of a male defendant receiving an upward departure, i.e., a sentence that is above the outlined guidelines, was 31 percent higher than for women defendants.

Education Level and Criminal Sentencing: A Proxy for Socioeconomic Status

Socioeconomic status is another important variable to consider when exploring the disparate outcomes of sentencing practices. While data related to the income levels of incarcerated individuals are not available in sentencing records, some past research shows that poor Americans become criminal defendants at a rate that is much higher than non-poor Americans (Hashimoto, 2011). Data from 2004 shows that roughly 33 percent of individuals surveyed in state prisons earned less than $800 in the month before their arrest. Importantly, this income level indicates these individuals would be at or below the outlined poverty threshold for a single person that year (Hashimoto, 2011). With these numbers, this research concluded that those living below the poverty threshold were three times more likely to be serving time in a state prison than the average American, and four times more likely than those living above the poverty threshold that year (Hashimoto, 2011). Data from the Bureau of Justice Statistics furthers this connection. In a 2002 survey centered around jail inmates, results showed that 47 percent of inmates reported an income of less than $800 in the month prior to their arrest. As such, those falling below the poverty threshold were more than four times more likely to be in jail than the average American, and seven times more likely than individuals falling above the poverty threshold (Hashimoto, 2011: 57).

Moreover, research has shown that those with a lower socioeconomic background are more likely to receive harsh sentences, while those who come from a higher socioeconomic background are more likely to receive some type of leniency in their sentencing outcomes (Albonetti, 1997; Miethe & Moore, 1985; Sharp et al., 2000). Various aspects often used to measure an individuals' socioeconomic status may contribute to these inequalities, such as educational attainment. As Franklin (2017) argues, educational attainment serves as a strong indicator of one's socioeconomic status. Indeed, it is through educational attainment that an individual gains various skills and behaviors necessary to increase one's socioeconomic status. This connection is further supported by statistics that show the unemployment rate is lower among populations with higher educational attainment (Franklin, 2017). For example, data from 2009 shows that for those who graduated with a college degree, the unemployment rate was one-third that of individuals who did not complete high school. Furthermore, that same year, women and men who had a bachelor's degree earned about two-thirds more than those with a high school diploma (Snyder & Dillow, 2011). Additionally, educational attainment has been linked to issues related to criminality. For example, in Lochner and Moretti's research (2004), those with a high school diploma were significantly less likely to report involvement in violent, property, and drug crimes. Previous research backs this finding, noting that educational attainment is negatively correlated with self-reports of crime, as well as official crime statistics (Henry, Caspi, Moffitt, Harrington, & Silvia, 1999; Thornberry, Moore & Christenson, 1985). Further, educational attainment is related to recidivism rates. Various studies have shown that people who have completed higher levels of education are less likely to commit further crimes once they have returned to the community (Bellair & Kowalski, 2011; Harer, 1995; Makarios, Steiner, & Travis, 2010).

Education level has also been shown to directly influence a judge's perception related to the dangerousness of a defendant or the threat of future offending one poses. As such, those who have higher education may be seen as more "worthy" of a chance at reformation, and thus will receive preferential sentencing outcomes (Wells, 2017). Further, when considering extralegal factors in sentencing decisions, educational attainment may be one factor that is more acceptable to consider than aspects such as race/ethnicity, gender, or age, thus, judges may be more likely to take educational attainment into account when making these decisions (Franklin, 2017). Supporting this argument, Albonetti's (1997) research concluded that those who had at least a high school level education received shorter sentences than those who had less than a high school education. In research from 2017, the effects of educational attainment on decisions related to incarceration and sentencing length were examined. Results showed that defendants who did not have a high school diploma were more likely to be incarcerated and received longer sentences than those with a high school diploma (Franklin, 2017). Conversely, other research has shown that education level has no effect on the severity of one's sentence (Bradley-Engen, et al., 2012; Brennan & Spohn, 2008;2009; Bush-Baskette & Smith, 2012; Hartley & Miller, 2010; Kautt & Spohn, 2002). For example, in their research, Brennan & Spohn (2008, 2009) found that education level did not influence the length of sentencing among those convicted of drug offenses specifically.

Socioeconomic status is particularly important to consider when discussing drug sentencing outcomes, and especially so in the context of crack/powder cocaine related offenses. Indeed, in the 1980s, crack-cocaine usage became widespread, particularly among those who held a lower socioeconomic status. Indeed, research shows that the widespread introduction of crack-cocaine in the 1980s worked to exacerbate drug use particularly in inner-city areas. By the late 1980s, these areas became commonplace for crack sales and consumption, eventually overtaking the use and sales of all other hard drugs at that time (Cross et al., 2001). The affordability of this substance is one of the main drivers in usage amongst this group (Palamar & Ompad, 2014). To illustrate, at this time, crack was typically sold at cheaper prices when compared to powder cocaine, costing anywhere from $5-10 for crack, while powder cocaine was typically sold for prices ranging anywhere from $50-100. Additionally, powder cocaine tends to be more expensive than crack, because powder is typically sold by the gram, while crack-cocaine is sold in much smaller units. As such, the appeal of crack from an affordability standpoint becomes much more impactful for those in lesser socioeconomic positions (Caulkin, 1997). Conversely, for those in higher socioeconomic positions, it is logical that these individuals would be better financially suited to purchase powder cocaine at these higher prices. Previous research supports this hypothesis, detailing that powder cocaine has often been viewed as an "elite" drug, one that is associated with luxury and "glamour" (Ditton et al., 1991; Kleiman et al., 2011;

Palamar et al., 2015). Miech, Chilcoat, & Harder (2005) help support the relationship between socioeconomic status and crack/powder cocaine usage, by discussing an increase in the relationship between low education levels and cocaine usage that began in the 1990s. They attribute this strengthening connection to the introduction of a cheaper cocaine product at that time, i.e., crack-cocaine. Research conducted in 2001 furthers this relationship, concluding that frequent crack users were less likely to participate in full-time employment (Cross et al., 2001). Furthermore, previous research shows that low-income women are particularly impacted by drug laws implemented since the late 1980s, elucidating the intertwined relationship between various social identities, such as socioeconomic status and gender (Chapelle, 2010).

Though research examining the relationship between socioeconomic status, crack/powder cocaine use, and sentencing outcomes is sparse, some studies suggest socioeconomic status influences whether one engages in crack or powder cocaine usage. In their research, Palamar et al., (2015), found that higher educational attainment was associated with increased likelihood of powder cocaine usage, and less likelihood of crack-cocaine usage. Additionally, higher income was correlated with decreased likelihood of crack-cocaine usage (Palamar et al., 2015). These findings further earlier arguments that those who use crack frequently are more likely to be unemployed, and tend to be more marginalized from employment altogether (Cross et al., 2001; Palamar & Ompad, 2014).

These studies also found that higher income was negatively correlated to crack-cocaine use. With these findings, Palamar et al., (2015) concludes that those in lower socioeconomic positions may be more likely to be incarcerated for drug offenses, because they are more likely to engage in crack-cocaine usage (Palamar et al., 2015). Given the exceptionally harsh punishments that have been placed upon the possession of crack-cocaine, those who engage in crack use more frequently, i.e., those in lower socioeconomic positions, are more likely to receive harsher sentencing outcomes than those in possession of powder cocaine. Thus, one would expect that those in lower socioeconomic positions are more likely to be incarcerated for cocaine-related offenses than those in higher socioeconomic positions, and are more likely to receive harsher punishments.

The Intersection of Racial Identity, Sex, Education Level, and Criminal Sentencing

While much research has focused on the independent effects race, sex, and education level have on criminal sentencing outcomes, less has been conducted on the joint effects these social positions have on sentencing differences. Importantly, these joint effects often produce larger inequities than individual main effects (Doerner & Demuth, 2010). When examining the research that has been done on these relationships, findings consistently show inequitable sentencing outcomes. For example, results overwhelmingly indicate that when comparing Black and White men and women, Black men tend to have the highest odds of incarceration (Farnworth & Teske, 1995; Spohn et al., 1985; Spohn & Spears, 1996).

In their seminal work, Steffensmeier, Ulmer, and Kramer (1998), explore the ways in which differences in sentencing outcomes are tied to race and gender. In their research, which focused on sentencing outcomes in Pennsylvania, young Black males were most likely to receive harsher sentences when compared to other racial categories. The odds of incarceration for young White males were .38 less than for young Black males. Additionally, within this sample, White males received incarceration sentences that were 2.74 months shorter on average when compared to Black males. The authors concluded that the results of their study demonstrate the “high cost of being Black, young, and male” (LaFrentz & Spohn, 2006; Steffensmeier et al., 1998: 789).

Other research shows that when Hispanic defendants are included in the research sample, both Hispanic and Black men are more likely to be incarcerated than those at other intersections of race/ethnicity and gender (Spohn & Beichner, 2000; Spohn & Holleran, 2000). Likewise, Steffensmeier and Demuth (2006) found that Hispanic and Black men were more likely to receive an incarceration sentence, and when comparing sentencing lengths, were more likely to receive longer sentences. Spohn (2013) and Holmes and D'Amato (2020) echo these findings, concluding that Black and Hispanic men receive significantly longer sentences than similarly situated White men do. In their work, Spohn and Holleran (2000, p.282) argued that those with characteristics other than "young, Black, and male" may also be "singled out for harsher treatment". Conversely, some studies find that sentencing disadvantages are more prominent for Black men than Hispanic men (Mitchell & MacKenzie, 2004). Other studies conclude that sentencing outcomes for both groups are quite similar (Brennan & Spohn, 2009; Doerner & Demuth, 2010). Further, some studies find that sentencing differences are exclusive to Black men specifically, "bypassing" Hispanic men altogether (Feldmeyer & Ulmer, 2011; Holmes, Feldmeyer, & Kulig, 2020).

For women across various racial categories, inequitable sentencing outcomes exist as well, with various studies coming to differing conclusions. For example, in Steffensmeier et al. (1998), the odds of incarceration for White women were significantly less when compared to Black women. Additionally, Black women received longer sentences (approximately two months) than White women. Importantly, this research compared the most dissimilar identity combinations as well. For instance, White women aged 50 and older had a 35.4% lesser probability of incarceration than Black men aged 18-29. In situations where older White women were incarcerated, their mean sentence length was over 18 months shorter than that for Black men aged 18-29 (Steffensmeier, Ulmer, & Kramer p. 785, 1998). When comparing sentencing decisions that came out of Chicago, Illinois, Miami, Florida, and Kansas City, Missouri, Spohn and Beichner (2000) found that in Chicago and Kansas City, both Black and White women were significantly less likely to be sentenced to prison when compared to men. Diving further into these intricacies, this study concluded that Black men were sentenced to prison more often than Black and White women, but not White men. In Miami, however, Black men were sentenced to prison more often than Black women and White men, but not White women (Spohn & Beichner, 2000).

Other research shows that like Black men, Black women tend to have harsher sentencing outcomes than their White peers (Brennan 2006; Crawford, 2000; Moulds, 1980). In their work, Brennan (2006) found that Black and Hispanic women were more likely than White women to receive jail sentences. Conversely, some studies have found that women of various racial/ethnic identities *all* receive sentencing advantages when compared to men of various racial/ethnic identities (Holmes et al., 2020; Spohn & Brennan, 2011). Interestingly, Spohn and Beichner (2000), found that women of racially minoritized identities received the most beneficial treatment when compared to other groups (Spohn & Beichner, 2000). For example, in Miami, preferential treatment in sentencing was found for Black women, but not for White women (Spohn & Beichner, 2000:167).

Other studies that focus on within-sex comparisons conducted in research highlight additional findings. For example, in Doerner & Demuth's (2010) work, which examined USSC data from 2000-2001, the effect of race was stronger for male defendants when compared to women defendants. Put differently, Black men were sentenced more harshly than White men, but Black women were sentenced only slightly harsher than White women (Doerner & Demuth, 2010). Other research shows that when compared to Black men, Black women, as well as both White men and women, were all more likely to be sentenced to probation (Freiburger & Hilinski, 2013). Moreover, when examining jail terms, White women, Black women, and White men received jail sentences that were significantly shorter than those assigned to Black men (Freiburger & Hilinski, 2013). Spohn (2013), found similar results, concluding that White men and women received shorter sentences when compared to Black men.

In their research, Doerner and Demuth (2010), further expand on the relationship between race, gender, and sentencing outcomes. Their findings show that among men, Hispanic and Black defendants were more likely to be placed in incarceration than White defendants. When examining differences in sentencing length, Black and Hispanic men also received longer sentences than their White male peers (approximately 7.5% and 5% longer, respectively) (Doerner & Demuth, 2010: 14). Furthermore, when examining odds ratios among these groups, this research found that for Black and Hispanic defendants, the odds of receiving a sentence of incarceration were about 50 percent lower for women than men. For White defendants, the odds are approximately 32 percent lower for women than men.

When considering differences in sentence length, this study found that Black women's sentences were 36 percent shorter than Black men's. In comparison, Hispanic women's sentences were 17 percent shorter than Hispanic men's, and White women's sentences were 20 percent shorter than White men's (Doerner & Demuth, 2010). When examining who was most likely to receive prison sentences, racial inequalities remained. For example, in the sample, young Hispanic defendants were most likely to receive prison sentences. The odds of incarceration for young Hispanic men were almost double the odds for young White men (Doerner & Demuth, 2010). Additionally, young Hispanic and Black men received the harshest sentencing outcomes among all subgroups. For example, the odds that a young Hispanic man would receive a prison sentence were approximately 6 times greater than the odds of an older White woman receiving a prison sentence. What's more, young Black men received prison sentences that were about 80 percent longer than Black women defendants in their 50s (Doerner & Demuth, 2010).

The influence of various social identities on sentencing outcomes is evident in drug sentencing too. For example, Albonetti (1997) found that sentencing advantages women received were smaller for Hispanic women in comparison to White and Black women. Additionally, Albonetti found that an individual's gender impacted sentencing decisions for White and Black defendants, but not for Hispanic defendants (Albonetti, 1997). In a later study, Albonetti (2002) found that Black and Hispanic men were less likely to receive sentences below outlined guidelines. Results also showed that White women received the greatest benefit from providing substantial assistance to prosecutors in return for a sentence below the guidelines. Further, the guideline offense level had a stronger effect on sentencing length for White women than for Black women (Albonetti, 2002). In their research, Curry and Corral-Camacho (2008) focused on felony drug convictions across the seven largest counties in Texas. Their findings show that when compared to racially minoritized men, the probability of receiving an incarceration sentence was lower for White men and for women of all three racial/ethnic groups (White, Hispanic, and Black). When assessing differences in sentence length, sentences for White men were 23 percent shorter than for Black men. Additionally, sentences Hispanic men received were 21 percent shorter.

When examining differences between men and women, inequities persist. For example, Black women received sentences that were 29 percent shorter than those meted out to Black men. For White women, sentences were 32 percent shorter than those Black men received.

Furthermore, Holmes (2022), found that sentencing data from 1998-2016 shows that Black and Hispanic men were disadvantaged in comparison to White men when considering incarceration decisions and sentence length. For women in this sample, incarceration was less likely and when incarceration did occur, their sentence length was shorter when compared to White men, on average. Holmes also found an interesting split amongst Black individuals depending on their sex: for Black men, sentences were particularly harsh, while for Black women, sentences were more lenient (Holmes, 2022).

Given that the pool of research focusing on the intersectional effects of race and sex in sentencing outcomes is small, and even less explored in drug sentencing literature, an updated inquiry into these connections is necessary. Previous research also shows that various outcomes result from these studies, with some showing that certain intersectional inequities exist, while others conclude the opposite. Additionally, the role that educational attainment may play in crack/powder cocaine sentencing outcomes is something that has not been explored on a broad scale. What's more, previous intersectionality-based sentencing research that includes the use of educational attainment is highly scarce. As such, this study aims to further uncover these intersectional inequities in the context of crack/powder cocaine sentencing outcomes. Taking into consideration the previous evidence that elucidates the intersectional inequalities that exist among racial identities, sexes, and level of educational attainment in relation to crack/powder cocaine sentencing outcomes, the following hypotheses were developed:

> H2: Black men charged with crack-cocaine offenses are more likely to receive longer criminal sentences than all other individuals charged with crack-cocaine offenses.

H3: Black men with less than a high school diploma charged with crack-cocaine offenses are more likely to receive harsher sentences than all other individuals charged with crack-cocaine offenses.

Summary and Overview

In Chapter Four, the methodological framework used in this work, intersectionality theory, was described and applied to the topic of crack/powder cocaine sentencing, and the roles in which race, sex, and educational attainment play in criminal sentencing. Additionally, previous literature on the intersection of these various social identities in relation to sentencing was detailed. Chapter Five describes the method used to explore the research questions and test the hypotheses, including the dataset and sample, measurement of variables, and the analytic strategy used to conduct this research.

CHAPTER V

METHOD

This project provides an exploration of crack/powder cocaine sentencing outcomes in various contexts. This study first focuses on sentencing outcomes that have resulted from the implementation of various amendments made to the crack/powder cocaine disparity throughout time (R1). Next, this study employs an intersectional lens to dive further into the disparities that result from crack-cocaine offenses and the sentencing scheme that accompanies this substance, focusing on racial, sex, and education level differences (R2). Last, this study aims to uncover the roles of racial identity and substance type in the use of the 851-enhancement among crack and powder cocaine offenses. To examine these foci, data from the United States Sentencing Commission (USSC) are used. This chapter describes the data and the measurements of all dependent, independent, and control variables included in the study, and the analytical strategy that is used to explore the research questions.

Data and Sample

To address the research questions, information from various years of data collected by the United States Sentencing Commission is used. The USSC was created under the Sentencing Reform Act and exists within the judicial branch of the US government as an independent agency. In addition to its focus on developing and implementing sentencing guidelines and practices for federal courts, the Commission collects yearly data on all felony and Class A misdemeanor cases that are processed through the federal system. This data includes a broad array of components, such as demographics, guideline applications, and sentencing outcomes, at both the organizational and individual level. Organizational data provided by the Commission center around sentences meted out in cases involving entities like corporations or partnerships, while individual level data focus on sentences applied in cases involving individual defendants (USSC, 2024). Overall, this data is used to identify criminal trends and examine federal sentencing guidelines. The USSC acts as a clearinghouse for federal sentencing outcomes, receiving tens of thousands of reports related to organizational and individual offenses each year (USSC, 2018: 3).

As outlined by federal statutes, sentencing courts are required to submit five specific sentencing documents to the Commission within 30 days of the date at which a judgment is made in a criminal case. These five documents include: 1) the charging document, 2) when applicable, the plea agreement, 3) the Presentence Report, 4) the Judgment and Commitment Order, and 5) the State of Reasons form (USSC, 2018: 8). Using these documents, the Commission collects data on a wide range of case information that is particularly important to policymakers and the federal criminal justice system more broadly. This sentencing data is then made public by the Commission in various ways, in part by providing a public-access dataset of these records. Importantly, the data do not include information about defendants who were ultimately found not guilty of all charges, those who had their charges dropped, or information related to appeals or resentencing.

Measures

Dependent Variables

The main dependent variable used in this study is *sentencing length*. This variable measures the total prison length in months for each reported case, with a range of 0.01 through a maximum of 470 months. This variable is capped at 470 to account for any outliers that may skew the data. As a result, any incarceration length that is longer than 470 months is coded as a life sentence. Given that the distribution of values in the original sentence length variable is positively skewed, the sentence length variable is also logged. To explore R3, which focuses on the roles racial identity and cocaine type play in the use of 851-enhancements in federal crack and powder cocaine related offenses, the variable *851-enhancement* is used. This variable is used to determine whether an 851-sentencing enhancement was still present at the time of sentencing. If this enhancement was still present at the time of an individual's sentencing, that means their sentencing outcome was impacted by this enhancement. This variable is recoded such that 0 = no and 1 = yes.

Independent Variables

The primary independent variables used in this study are *race*, *sex,* and *educational attainment*. First, racial identity is measured using the self-reported racial/ethnic identity at the time of sentencing. Response categories ranged from 1- 6, with (1) = White, (2) = Black, (3) = Hispanic, (6) = Other. For R1 and R3, Race is recoded into three dummy variables. First, I created the variable *Black*, such that (1) = Black and (0) = all other racial categories. Next, I created the variable *Hispanic*, such that (1) = Hispanic, and (0) = all other racial categories. Last, I created the variable *Other*, such that (1) = Other, and (0) = all other racial categories. The response category "White" serves as the reference category for all three race dummy variables. Next, *sex* was measured using the self-reported sex identity given at the time of sentencing. *Sex* is recoded into a dummy variable, such that (0) = women and (1) = men. Last, education level is determined using the highest reported level of education completed by each defendant. Response categories ranged from 1-6, with (1) = Less than a high school degree, (3) = High school graduate, (5) = Some college, and (6) = College graduate. This variable is recoded into two separate dummy variables. First, I created the variable *high school*, such that (1) = high school graduate and (0) = all other education categories. Next, I created the variable *college level* *education*, such that (1) = some college or a college degree and (0) = all other education categories. The response category “less than a high school degree” serves as the reference category for all three education dummy variables.

Control Variables

The control variables used in this study include judicial district, age, citizenship status, whether a defendant was convicted through a plea deal or after a trial, and whether a defendant was held in pretrial detention or not. First, *age* is measured using the incarcerated person’s age in years at the time of sentencing. The variable *citizenship status* is determined by asking the question “what is your citizenship status?”. This variable is recoded such that (0) = non-US citizen, and (1) = US citizen. Next, *trial* is determined by indicating whether a sentenced individual was convicted through a plea deal or after a trial occurred. This variable is coded such that (0) = a plea deal, and (1) = a trial. *Pretrial detention* is recorded using a sentenced individual’s pre-sentence detention status. *Pretrial detention* is then recoded into a dummy variable such that (1) = in custody and (0) = all other situations. This study also controls for the presumptive sentence of each case, which is labeled as offense severity in this study. This variable represents the minimum sentence a judge could impose without departing from sentencing guidelines (Brennan & Spohn, 2009). This variable, like the sentence length variable, is positively skewed, and is therefore logged in this analysis. Additionally, the criminal history score for each individual is controlled for. This variable ranges from 1-6, and is determined by various factors such as the number of prior convictions an individual has, and the length of the sentence(s) imposed for any prior convictions. Overall, higher criminal history scores indicate more extensive criminal histories, meaning that an individual who has been convicted of numerous prior offenses will have a higher sentencing guideline range than an individual who committed the same crime, but has no criminal history (USSC, 2025). To test Hypotheses 1, 3, and 4, *education* is included in the analysis as a control variable. Last, the judicial district each case was tried in, along with the year in which sentencing occurred for each case, are entered as fixed effects.

Analytic Strategy

For the purposes of this study, Commission datafiles from various years are merged. Altogether, I created four separate "data blocks". First, to understand crack/powder cocaine sentencing outcomes that resulted from a post-*Booker* criminal sentencing system, I merged USSC data from 2005 through 2007, to create *Block 1: post-Booker*. This period was used to examine the immediate outcomes of the *Booker* decision, by isolating sentencing outcomes that occurred after this amendment, but prior to other landmark legislative adjustments. Next, I created *Block 2: post-Gall/Kimbrough*, using USSC data from 2007 through 2009. This block examines the direct impact of the Gall/Kimbrough amendments immediately after their implementation, but prior to the enactment of the Fair Sentencing Act in 2010.

Block 3: Fair Sentencing Act (2010), which explores the impacts the Fair Sentencing Act of 2010 had on crack/powder cocaine sentencing outcomes, was create using USSC data from 2011 through 2013. Given that the implementation of this Act occurred in August 2010, this data block begins with the first full fiscal year following its implementation. Additionally, for the sake of analytical uniformity, I included a three-year time period in this block. Last, *Block 4: First Step Act (2018)*, which focuses on the impacts of the First Step Act of 2018 on crack/powder cocaine sentencing outcomes, was developed. To do so, I merged USSC data from 2019 through 2021. Data from 2019 is the first year used in this block, given that the First Step Act was implemented in December of 2018. Thus, to understand its impacts more deeply, the first full fiscal year after its implementation marks the starting point of analysis in this block. To further ensure analytical uniformity, a three-year time period is included in this block as well. To explore the research questions, crack and powder cocaine related offenses are isolated in the data using the variable *drug type*. After isolating all cases coded as either (1) = cocaine or (2) = crack, I created the variable *crack-cocaine*, recoded it such that (0) = powder cocaine, and (1) = crack-cocaine. Using these four blocks, I explore (R1), "How have various amendments made to the crack/powder cocaine disparity impacted sentencing outcomes among federal crack/powder cocaine offenses?".

To examine (R2), "How do race, sex, and education level play a role in crack-cocaine sentencing outcomes?", the intersectional effects of these social positions are explored using data from *Block 4- First Step Act (2018),* in order to explore the most contemporary relationship between these social identities and the current crack/powder cocaine sentencing schemes in place. Only cases involving crack-cocaine are used to explore this question, in order to understand the intricacies that exist among a group that is historically already more disadvantaged when comparing crack and powder cocaine sentencing outcomes. Additionally, I used this data block to explore the most up-to-date data related to these outcomes.

To test (H2) "Black men charged with crack-cocaine offenses are more likely to receive longer criminal sentences than all other individuals charged with crack-cocaine offenses", I created seven dummy variables to capture intersectional variations between racial identity and sex. For this analysis, Black men served as the reference category. To test (H3) "Black men with less than a high school diploma charged with crack-cocaine offenses are more likely to receive harsher sentences than all other individuals charged with crack-cocaine offenses", I created twenty-one dummy variables o capture intersectional variations between racial identity, sex, and education level. For this analysis, Black men with less than a high school diploma served as the reference category.

Last, (R3) “How do race and type of cocaine impact the use of 851-enhancements in crack and powder cocaine-related offenses?” is explored in the context of a post First-Step Act (2018) criminal sentencing system using data from *Block 4- First Step Act (2018)*. The use of this block allows for an exploration of the sentencing outcomes that resulted from the most up-to-date crack/powder cocaine sentencing system. To explore this question, Logistic regression is be used. In the analyses, descriptive statistics of all the variables included in the study are provided first. Then, a series of Ordinary Least Squares (OLS) regression and Logistic regression analyses are performed to explore each separate research question and their respective hypotheses.

Summary and Overview

Chapter Five described the samples and data used in this study, including a description of the variables used to answer the research questions, how the variables were measured, and the analytical strategy employed in this study. Chapter Six presents the results of the analyses, including descriptive statistics and OLS/Logistic regression results.

CHAPTER VI

RESULTS

This project provides an exploration of crack/powder cocaine sentencing outcomes in various contexts**.** To do so, several years of USSC data are used. This chapter first provides descriptive statistics for all data blocks, including means and standard deviations. Then, results from various OLS and Logistic regression analyses are described.

Table 1. Summary Table of Descriptives Statistics for Blocks 1-4

	Block 1: Post-Booker (N = 35,582)		*Block 2: Post-Gall/Kimbrough (N = 37,190)*		*Block 3: Post-FSA (2010) (N = 30,158)*		*Block 4: Post- FSA (2018) (N = 14, 441)*	
Variables	M	SD	M	SD	M	SD	M	SD
Men	.90	--	.87	--	.90	--	.90	--
Black	.54	--	.23	--	.49	--	.44	--
Hispanic	.33	--	.44	--	.39	--	.49	--
Other	.01	--	.04	--	.01	--	.01	--
HS Diploma	.35	--	.36	--	.38	--	.31	--
College Level Educ	.16	--	.165	--	.17	--	.22	--
Sentence Length	115.59	103.34	116.67	105.37	108.48	107.95	75.38	66.71
Crack-cocaine	.48	--	.48	--	.38	--	.30	--
Age	32.74	9.12	33.15	9.23	34.38	9.31	37	10.05
US Citizen	.79	--	.80	--	.80	--	.76	--
Pretrial Detention	.80	--	.81	--	.80	--	.78	--
Trial	.066	--	.056	--	.046	--	.033	--
Offense Severity	179.06	814.93	174.8	800.5	167	812.97	193.99	1031.6
Criminal History	2.70	1.86	2.77	1.89	2.65	1.86	2.49	1.79
AY2004	.07	--						
AY2005	.33	--						
AY2006	.34	--	.08	--				
AY2007	.26	--	.33	--				
AY2008			.34	--				
AY2009			.25	--				
AY2010					.08	--		
AY2011					.36	--		
AY2012					.33	--		
AY2013					.22	--		
AY2018							.10	--
AY2019							.40	--
AY2020							.27	--
AY2021							.23	--

Descriptive Statistics

Block 1: Post-Booker (2005)

Descriptive statistics for *Block 1* (*N* = 35,582) are provided in Table 1. Most respondents included in this block are men (90%), while just 10 percent are women. When examining racial identity, most respondents in this block identified as Black (54%), while 33% identified as Hispanic, about 12% identified as White, and 1% identified as a race other than Black, White, or Hispanic. When considering the makeup of drug cases in this block, 48 percent of the cases involve crack-cocaine, while 52 percent involve powder cocaine. Looking to the education variables, 35 percent of the sample have a high school diploma, while 16 percent have some college level education. Last, 49 percent of the sample have less than a high school diploma. The average sentence length for people in this block is 115.59 months (*M* = 115.59, *SD* = 103.34).

This study controls for age, citizenship status, whether a person was held for pretrial detention, whether the case went to trial, and the offense severity and criminal history scores of each individual. The average age of people in this block is approximately 33 years of age (*M* = 32.74, *SD* = 9.12). In terms of citizenship status, 79 percent of the sample in this block are US citizens. When examining how many cases went to trial versus how many ended in a plea deal, just 6.6 percent of all cases in this sample went to trial. Looking at pre-trial detention status, most of those in this sample were held in custody while they awaited trial (80%). When examining offense severity, which is the minimum sentence a judge could impose without dropping below mandatory minimum guidelines, the mean sentence length was 179.06 months. This is 63.5 months longer than the mean sentence (115.59) imposed on this group of individuals. When looking at criminal history, the mean response was 2.70 (*M* = 2.70, *SD* = 1.86). This means that on average, individuals in this block fall within category II of the criminal history categories. This study also includes fixed effects for the year in which each case was processed. Descriptive statistics below show that 7 percent of the cases in the block were processed in 2004, 33 percent of the cases were processed in 2005, 34 percent of the cases were processed in 2006, and 26 percent of the cases were processed in 2007.

Block 2: Post- Gall/Kimbrough (2007)

Descriptive statistics for *Block 2* (N = 37,190) are also provided in Table 1. Most respondents included in this block are men (87%), while just 13 percent are women. When examining racial identity, most respondents in this block identified as Hispanic (44%), while approximately 29% identified as White, 23% identified as Black, and 4% identified as a race other than Black, White, or Hispanic. When considering the makeup of drug cases in this block, 48 percent of the cases involve crack-cocaine, while 52 percent involve powder cocaine. Looking to the education variables, 36 percent of the sample have a high school diploma, while 16.5 percent have some college level education. Last, 47.5 percent of the sample have less than a high school diploma. The average sentence length for people in this block is 116.67 months (M = 116.67, SD = 105.37).

Focusing on control variables, the average age of people in this block is approximately 33 years of age (M = 33.15, SD = 9.23). In terms of citizenship status, 80 percent of the sample in this block are US citizens. Looking at pre-trial detention status, most of those in this sample were held in custody while they awaited trial (81%). When examining how many cases went to trial versus how many ended in a plea deal, just 5.6 percent of all cases in this sample went to trial. When examining offense severity, the mean sentence length was 174.8 months. This is 58.13 months longer than the mean sentence (116.67) imposed on this group of individuals. When looking at criminal history, the mean response was 2.77 (M = 2.77, SD = 1.89). This means that on average, individuals in this block fall within category II of the criminal history categories.

This block also includes fixed effects for the year in which each case was processed. Descriptives below show that 7 percent of the cases occurred in 2004, 33 percent of the cases occurred in 2005, 34 percent of the cases occurred in 2006, and 26 percent of the cases occurred in 2007.

Block 3: Post-Fair Sentencing Act (2010)

Next, descriptive statistics for *Block 3* (*N* = 30,158) are provided above. Most respondents included in this block are men (90%), while just 10 percent are women. When examining racial identity, most respondents in this block identified as Black (49%), while 39% identified as Hispanic, about 11% identified as White, and 1% identified as a race other than Black, White, or Hispanic. When considering the makeup of drug cases in this block, 38 percent of the cases involve crack-cocaine, while 62 percent involve powder cocaine. Looking to the education variables, 38 percent of the sample have a high school diploma, while 17 percent have some college level education. Forty-five percent of the sample have less than a high school diploma. The average sentence length for people in this block is 108.48 months (*M* = 108.48 *SD* = 107.95).

Turning to control variables, the average age of people in this block is approximately 34 years of age (*M* = 34.38, *SD* = 9.31). In terms of citizenship status, 80 percent of the sample in this block are US citizens. In terms of pre-trial detention status, most of those in this sample were held in custody while they awaited trial (80%). When examining how many cases went to trial versus how many ended in a plea deal, just 4.6 percent of all cases in this sample went to trial. When examining offense severity, the mean sentence length was 167 months. This is 58.52 months longer than the mean sentence (108.48) imposed on this group of individuals. When looking at criminal history, the mean response was 2.65 (*M* = 2.65, *SD* = 1.86). This means that on average, individuals in this block fall within category II of the criminal history categories. This block also includes fixed effects for the year in which each case was processed in this block. Descriptives below show that 8 percent of the cases occurred in 2010, 36 percent of the cases occurred in 2011, 33 percent of the cases occurred in 2012, and 22 percent of the cases occurred in 2013.

Block 4: Post-First Step Act (2018)

Last, descriptive statistics for *Block 4* (*N* = 14, 411) are provided in Table 1. Most respondents included in this block are men (90%), while just 10 percent are women. When examining racial identity, most respondents in this block identified as Hispanic (49%), while 44% identified as Black, about 6% identified as White, and 1% identified as a race other than Black, White, or Hispanic. When considering the makeup of drug cases in this block, 30 percent of the cases involve crack-cocaine, while 70 percent involve powder cocaine. Looking to the education variables, 31 percent of the sample have a high school diploma, while 22 percent have some college level education. Forty-six percent of the sample have less than a high school diploma. The average sentence length for people in this block was 75.3 months (*M* = 75.3, *SD* = 66.71).

Focusing on control variables, the average age of people in this block is approximately 37 years of age (*M* = 37, *SD* = 10.05). In terms of citizenship status, 76 percent of the sample in this block are US citizens. In terms of pre-trial detention status, most of those in this sample were held in custody while they awaited trial (78%). When examining how many cases went to trial versus how many ended in a plea deal, just 3.3 percent of all cases in this sample went to trial. When examining offense severity, the mean sentence length was 193.99 months. This is 118.69 months longer than the mean sentence (75.3) imposed on this group of individuals. When looking at criminal history, the mean response was 2.49 (*M* = 2.49, *SD* = 1.79). This means that on average, individuals in this block fall within category II of the criminal history categories. This block includes fixed effects for the year in which each case was processed in this block. Descriptives show that 10 percent of the cases occurred in 2018, 40 percent of the cases occurred in 2019, 27 percent of the cases occurred in 2020, and 23 percent of the cases occurred in 2021.

Regression Results

Main Effects

OLS and Logistic regression analyses are conducted to explore crack/powder sentencing outcomes in various contexts. First, to explore R1, "How have various amendments made to the crack/powder cocaine disparity impacted sentencing outcomes among federal crack/powder cocaine offenses?", and H1: "crack-cocaine sentencing outcomes will be harsher than powder-cocaine sentencing outcomes after each major amendment was enacted", a separate regression is run on each data block.

Table 2 first explores sentencing outcomes that resulted from a post-*Booker* sentencing scheme. The regression results illuminate important findings. To begin, even after expanded sentencing discretion was given to judges through this amendment, men received significantly longer sentences when compared to women (B =.195, $p < .001$). Further, Black and Hispanic individuals received longer sentences than their White peers (B =.071, $p < .001$; B =.096, $p < .001$). Individuals convicted of crack-cocaine related offenses received longer sentences than those convicted of powder cocaine offenses (B =.128, $p < .001$).

Turning to control variables, those held in pretrial detention received longer sentences than those who were released before their trial (B =.228, $p < .001$). Defendants whose cases went to trial received longer sentences than those who settled through a plea deal (B =.635, $p < .001$).

Additionally, increases in offense severity and criminal history scores resulted in longer sentences (B =.213, p < .001; B =.101, p < .001). Finally, defendants who were older received significantly longer sentences than younger defendants (B = .002, p < .001). Results for the regression analysis shown in Table 5 indicate that approximately 27% of the variance in sentencing outcomes was explained by the independent and control variables.

Table 2. Summary of Regression Results for Main Effects

Independent Variables	*Post-Booker (N = 35,582)*		*Post-Gall/Kimbrough (N = 37,190)*		*Post-FSA (2010) (N = 30,158)*		*Post-FSA (2018) (N = 14,441)*	
	B	*SE*	*B*	*SE*	*B*	*SE*	*B*	*SE*
Men	.195***	.017	.219***	.018	.140***	.021	.870***	.045
Black	.071***	.017	.034*	.017	-.042	.024	.299***	.057
Hispanic	.096***	.019	.028	.019	.001	.025	.350***	.059
Other	.009	.049	-.036	.051	-.097	.063	.243	.134
Crack-cocaine	.128***	.013	.036**	.013	-.038*	.016	-.007	.034
HS Diploma	.005	.011	.019	.011	-.010	.014	.012	.029
College Level Educ	-.004	.014	.027	.015	-.019	.018	-.095**	.035
Pretrial Detention	.228***	.014	.244***	.014	.169***	.017	1.30***	.035
US Citizen	.004	.016	-.011	.017	.058**	.020	.146***	.039
Trial	.635***	.020	.648***	.022	.668***	.030	.401***	.072
Offense Severity	.213***	.005	.211***	.005	.230***	.006	.575***	.013
Criminal History	.101***	.003	.108***	.003	.101***	.004	.070***	.009
Age	.002***	.001	.002***	.001	.003***	.001	-.001	.001
AY 2005	-.017	.021						
AY 2006	-.004	.021						
AY 2007	-.010	.021	-.035	.019				
AY 2008			-.025	.019				
AY 2009			-.071***	.020				
AY 2011					-.035	.023		
AY 2012					-.057*	.023		
AY 2013					-.064**	.025		
AY 2019							-.036	.045
AY 2020							-.123**	.047
AY 2021							-.068	.048
Constant	2.751***	.105	2.789***	.100	2.648***	.115	-.914***	.048
Adjusted R^2	.268		.246		.20		.395	.277
F	120.8***		113.2***		68.4***		84.4****	

*$p \leq .05$, **$p \leq .01$, ***$p \leq .001$

Next, Table 2 explores sentencing outcomes that resulted from a post-*Gall/Kimbrough* sentencing scheme. These regression results further illuminate important differences. To begin, even after Supreme Court cases *Gall v. US* (2005) and *Kimbrough v. US* (2005) reaffirmed that judges hold the power to use wide discretion in sentencing decisions, men received longer sentences when compared to women (*B* = .219, $p < .001$). Additionally, Black individuals received longer sentences than their White peers (*B* = .034, $p < .05$). Individuals convicted of crack-cocaine related offenses received longer sentences than those convicted of powder cocaine offenses (*B* = .036, $p < .01$).

Focusing on control variables, those held in pretrial detention received longer sentences than those who were released before their trial (*B* = .244, $p < .001$). Additionally, defendants whose cases went to trial received longer sentences than those who settled through a plea deal (*B* = .648, $p < .001$). Increases in offense severity and criminal history scores also resulted in longer sentences (*B* =.211, $p < .001$; *B* =.108, $p < .001$). Finally, defendants who were older received significantly longer sentences than younger defendants (*B* = .002, $p < .001$). Results for the regression analysis shown in Table 6 indicate that 25% of the variance in sentencing outcomes was explained by the independent and control variables included in the analysis.

Table 2 also highlights important outcomes of a post-*Fair Sentencing Act (2010)* sentencing scheme. To begin, men received longer sentences when compared to women (*B* = .140, $p < .001$). Importantly, individuals convicted of crack-cocaine related offenses received shorter sentences than those convicted of powder cocaine offenses during this period (*B* = -.038, $p < .05$). When focusing on the control variables, those held in pretrial detention received longer sentences than those who were released before their trial (*B* = .169, $p < .001$). Individuals who were US citizens received longer sentences than those who were non-citizens (*B* = .058, $p < .01$).

Additionally, defendants whose cases went to trial received longer sentences than those who settled through a plea deal (*B* = .668, $p < .001$). Additionally, increases in offense severity and criminal history scores resulted in longer sentences (*B* =.230, $p < .001$; *B* =.101, $p < .001$). Finally, defendants who were older received significantly longer sentences than younger defendants (*B* = .003, $p < .001$). Results for the regression analysis shown in Table 7 indicate that 20% of the variance in sentencing outcomes was explained by the independent and control variables included in the analysis.

Finally, Table 2 explores sentencing outcomes that result from a post-First Step Act sentencing scheme. To begin, men received significantly longer sentences when compared to women (*B* = .870, $p < .001$). Black and Hispanic individuals received longer sentences than their White peers (*B* = .299, $p < .001$; *B* = .350, $p < .001$). Other findings show that education level played a role in sentencing outcomes too; those with college-level education received shorter sentences in comparison to those who had less than a high school degree (*B* = -.095, $p < .01$). Turning to the control variables, those held in pretrial detention received longer sentences than those who were released before their trial (*B* = 1.30, $p < .001$). Individuals who were US citizens received longer sentences than those who were non-citizens (*B* = .146, $p < .001$). Additionally, defendants whose cases went to trial received longer sentences than those who settled through a plea deal (*B* = .401, $p < .001$). Last, increases in offense severity and criminal history scores resulted in longer sentences (*B* =.575, $p < .001$; *B* =.070, $p < .001$). Results for the regression analysis shown in Table 8 indicate that approximately 40% of the variance in sentencing outcomes was explained by the independent and control variables included in the analysis.

Intersectional/Joint Effect Regression Results

In the next section, which explores RQ2 "How do race, , and education play a role in crack-cocaine sentencing outcomes?", an intersectional lens was used to dive deeper into the nuances of crack-cocaine sentencing outcomes in their most current form, focusing on racial/ethnic, sex category, and education level differences using data from Block 4.

Table 3. Block 4 Regression Results of Logged Sentence Length for Crack Defendants: Using Race/Ethnicity x Sex Dummy Variables (N = 4,368).

Independent Variables	*B*	*SE*
White Men	$-.478^{***}$	.140
White Women	-1.22^{***}	.166
Black Women	$-.788^{***}$	.118
Hispanic Men	.086	.088
Hispanic Women	-1.99^{***}	.247
Other Men	-.036	.313
Other Women	-1.34^{**}	.463
High School Diploma	-.004	.051
College Level Education	-.096	.071
Pretrial Detention	1.60^{***}	.068
US Citizenship	-.087	.174
Trial	.218	.144
Offense Severity	$.605^{***}$	.024
Criminal History	$.057^{***}$	.015
Age	-.003	.002
AY 2019	-.031	.081
AY 2020	-.074	.085
AY 2021	$-.193^{*}$	.088
Constant	.130	.566
Adjusted R^2	.43	
F	30.688^{***}	

$^{*}p \leq .05$, $^{**}p \leq .01$, $^{***}p \leq .001$

Results in Table 3 relate to Hypothesis 2, which states that Black men charged with crack-cocaine offenses are more likely to receive longer criminal sentences than all other individuals charged with crack-cocaine offenses. Findings show that Black men received significantly longer sentences than White men and women (B = -.478, p < .001; B = -1.22, p < .001), Black women (B = -.788, p < .001), Hispanic women (B = -1.99, p < .001), and women who self-identified within the "other" racial category (*B* = -1.34, $p < .01$). Conversely, there was no significant difference in sentence length outcomes among Hispanic men, men who self-identified within the "other" racial category, and Black men.

Focusing on control variables, among those convicted of crack-cocaine related offenses, individuals who were held in pretrial detention received longer sentences than those who were released before their trial (*B* = 1.60, $p < .001$). Additionally, increases in offense severity and criminal history scores resulted in longer sentences (*B* =.065, $p < .001$; *B* =.057, $p < .001$). Results for the regression analysis shown in Table 3 indicate that approximately 43% of the variance in sentencing length outcomes is explained by the independent and control variables included in the analysis.

Table 4 provides results relating to Hypothesis 3, which states that Black men with less than a high school diploma who are charged with crack-cocaine offenses are more likely to receive harsher sentences than all other individuals with various education levels who are charged with crack-cocaine offenses. As shown in the table, Black men with less than a high school diploma received significantly longer sentences than many of the other racial, sex category, and education-level variations, but not all. Among White defendants, White women with less than a high school diploma (*B* = -1.29, $p < .001$) and White women with at least some college-level education (*B* = -.575, $p < .05$) received sentences that were significantly shorter than Black men without less than a high school degree. Among Black defendants, Black women with less than a high school diploma (*B* = -.795, $p < .001$) received significantly shorter sentences than Black men with less than a high school degree. Additionally, Hispanic women with less than a high school diploma received sentences that were significantly shorter than those meted out to Black men with less than a high school degree (*B* = -.739, $p < .05$).

Table 4. Block 4 Regression Results of Logged Sentence Length for Crack Defendants: Using Race/Ethnicity x Sex x Education Level Dummy Variables (N = 4,368).

Independent Variables	*B*	*SE*
White men w/ less than HS diploma	-.341	.265
White men w/ college level education	-.347	.331
White women w/ less than HS diploma	-1.29***	.283
White women w/ college-level education	-.575*	.290
Black men w/ college-level education	.087	.078
Black women w/ less than HS diploma	-.795***	.191
Black women w/ college-level education	-.296	.235
Hispanic men w/ less than HS diploma	.381***	.105
Hispanic men w/ college-level education	.107	.208
Hispanic women w/ less than HS diploma	-.739*	.353
Hispanic women w/ college-level education	-.240	.067
Other men w/ less than HS diploma	.641	.606
Other men w/ college-level education	.722	.151
Other women w/ college-level education	-.005	.520
Pretrial Detention	1.68***	.069
US Citizenship	.007	.176
Trial	.225*	.115
Offense Severity	.067***	.025
Criminal History	.073***	.015
Age	-.004	.002
AY 2019	-.009	.082
AY 2020	-.056	.086
AY 2021	-.177*	.089
Constant	-.149	.572
Adjusted R^2	.41	
F	27.685***	

*$p \leq .05$, **$p \leq .01$, ***$p \leq .001$

Contrary to Hypothesis 3, results show that sentencing outcomes among certain other groups, in comparison to Black men with less than a high school diploma, show no significant differences. For example, White men with less than a high school diploma, White men with at least some college-level education, Black men and women with at least some college-level education, Hispanic men and women with at least some college-level education, men who self-identified within the "other" racial category with less than a high school diploma, and both men and women who self-identified within the "other" racial category with at least some college-level education did not have sentences imposed upon them that were significantly different from the sentences imposed upon Black men with less than a high school diploma. What's more, results show that Hispanic men with less than a high school diploma received sentencing outcomes that are harsher than Black men with less than a high school diploma (*B* = .381, $p < .001$).

Turning to control variables, among those convicted of crack-cocaine related offenses, defendants who were held in pretrial detention received longer sentences than those who were released before their trial (*B* = 1.68, $p < .001$). Additionally, defendants whose cases went to trial received longer sentences than those who settled through a plea deal (*B* = .225, $p < .05$). When examining offense severity and criminal history scores, those with high offense severity and criminal history scores received significantly longer sentences than those with lower scores (*B* = .607, $p < .001$; *B* = .073, $p < .001$). Results for the regression analysis shown in Table 10 indicate that approximately 41% of the variance in sentencing outcomes was explained by the independent and control variables included in the analysis.

Given the relatively small sample included in the analysis for R2 *(N = 4,368),* certain group variations of the interactions between racial identity, sex, and education level are unable to be included in the analysis, due to lack of data. As such, White, Black, and Hispanic men and women, and men who self-identified within the "other" racial category with high school diplomas, along with women who self-identified within the "other" racial category who had less than a high school degree, a high school degree, or a college degree are removed from the regression analysis.

851-Enhancement Regression Results

Table 5 shows results relating to Hypotheses 4 and 5, which state: (H4) Black individuals will be more likely to receive 851-enhancement filings than their White and Hispanic counterparts, and (H5): Eligible crack-cocaine cases receive a disproportionate number of 851-enhancemcent filings when compared to eligible powder cocaine cases. Using binary logistic regression analyses, neither of these hypotheses are supported, being that there is no significant difference in the odds of an 851-enhancement being present at the time of sentencing when comparing White individuals to Black or Hispanic individuals, or those who self-identified within the "other" racial category. Additionally, there are no significant differences in the odds of an 851-enhancement being present at the time of sentencing when comparing powder cocaine offenses to crack-cocaine offenses. Overall, just two variables in this model are significant. First, increases in criminal history scores increased the odds of an 851-enhancement being present at the time of sentencing (1.34, p < .001). Secondly, cases that went to trial increased the odds of an 851-enhancement being present at the time of sentencing (2.81, p < .001).

Table 5. Block 4 Logistic Regression Results of Presence of 851-Enhancement at Sentencing using Block 4 Data (N = 1,032).

Independent Variables	*B*	*SE*	*Odds Ratio*
Men	-.004	.601	.996
Black	-.054	.463	.947
Hispanic	.358	.499	1.43
Other	-1.41	1.054	.243
Crack-cocaine	-.129	.204	.879
High School Degree	.368	.206	1.44
College Level Education	.105	.266	1.11
Pretrial Detention	-.373	.320	.689
US Citizenship	-.529	.502	.589
Offense Severity	-.170	.099	.843
Criminal History	.294	.069	1.34^{***}
Trial	1.03	.320	2.81^{***}
Age	.001	.011	1.00
AY 2019	-1.27	.313	$.282^{***}$
AY2020	-.983	.348	$.374^{**}$
AY 2021	-.612	.378	.542
Constant	.841	.068	2.318^{***}
-2 Log Likelihood	887.627		
Pseudo R^2	.43		

$^{*}p \leq .05$, $^{**}p \leq .01$, $^{***}p \leq .001$

Table 6. Rank-Order of Intersectional Coefficients: Who is Receiving the Most Lenient Sentencing Outcomes? (N = 4,368)

Independent Variables	*B*	*SE*
Race/Ethnicity x Sex Variables		
Hispanic women (*N* = 43)	-1.99^{***}	.247
White women (*N* = 100)	-1.22^{***}	.166
Black women (*N* = 199)	$-.788^{***}$	.118
White men (*N* = 141)	$-.478^{***}$	.140
Other women (*N* = 12)	-1.34^{**}	.463
Race/Ethnicity x Sex x Education Level Variables		
White women w/ less than HS diploma (*N* = 29)	-1.29^{***}	.283
Black women w/ less than HS diploma (*N* = 70)	$-.795^{***}$	.191
Hispanic women w/ less than HS diploma (*N* = 20)	$-.739^{*}$	.353
White women w/ college level education (*N* = 77)	$-.575^{*}$	.290
Hispanic men w/ less than HS diploma (*N* = 277)	$.381^{***}$	.105

$^{*}p \leq .05$, $^{**}p \leq .01$, $^{***}p \leq .001$

Table 6 provides a rank ordering of the groups of individuals who received significantly different sentence length outcomes in a post-*First Step Act (2018)* sentencing scheme. When focusing on the intersectional variables that involve race/ethnicity and sex, Hispanic women received sentences that were the least harsh in comparison to Black men. This is followed next by White women, then Black women, and finally, White men. Women who identified within the "other" racial/ethnicity category received the smallest statistically significant difference in sentencing length outcomes. All other categories were nonsignificant. Next, when examining the intersections of race/ethnicity, sex, and education level, White women with less than a high school diploma received sentences that were the least harsh in comparison to Black men with less than a high school diploma. This is followed by Black women with less than a high school diploma, then Hispanic women with less than a high school diploma, and finally, White women with a college education. Importantly, Hispanic men with less than a high school diploma received sentencing outcomes that were significantly longer in comparison to Black men with less than a high school diploma ($B = .381$, $p < .001$).

Table 7. Summary of Hypothesis Tests

Hypothesis	Hypothesis supported?
H1: crack-cocaine sentencing outcomes will be harsher than powder-cocaine sentencing outcomes after each major amendment was enacted.	Partially supported
Post-Booker	Yes
Post-Gall/Kimbrough	Yes
Post-Fair Sentencing Act	No
Post-First Step Act	No
H2: Black men charged with crack-cocaine offenses are more likely to receive longer criminal sentences than all other individuals charged with crack-cocaine offenses.	Yes (except for Hispanic men and men who identified in the "other" racial category)
H3: Black men with less than a high school diploma charged with crack-cocaine offenses are more likely to receive harsher sentences than all other individuals charged with crack-cocaine offenses.	Partially supported
H4: Black individuals are more likely to receive 851-enhancement filings than their White and Hispanic counterparts.	No
H5: Eligible crack-cocaine offenses receive a disproportionate amount of 851 filings when compared to eligible powder cocaine offenses.	No

Summary and Overview

In this chapter, results of the analyses exploring various facets of crack and powder cocaine sentencing outcomes were presented. These findings are discussed in greater depth in Chapter Seven and considered in the context of previous literature and intersectionality theory. Finally, Chapter Seven discusses limitations of this project and provides suggestions for future research.

CHAPTER VII

DISCUSSION AND CONCLUSION

The purpose of this study is to examine crack and powder cocaine sentencing outcomes in various contexts. Using numerous years of data from the United States Sentencing Commission, I tested 1 hypothesis regarding the connection between various amendments made to the original legislation and sentencing outcomes that resulted after each. Additionally, I tested two hypotheses centered around the connection between race/ethnicity, sex, education level, and crack/powder cocaine sentencing outcomes. Last, I tested two hypotheses related to race/ethnicity, drug type, and crack/powder cocaine sentencing outcomes. In this chapter, a summary of the results is presented. The results are then related back to intersectionality theory and other relevant literature. Next, implications of the findings are discussed, as well as limitations of this study. Finally, suggestions for future research are presented, followed by the conclusion.

Discussion of Results

Amendments Made to the Crack/Powder Cocaine Legislation and Sentencing Outcomes

The goal of this project is to further examine the impact various amendments made to the crack/powder cocaine ratio had on sentencing outcomes among this offense type. Results show that in *post-Booker* (2005) and *post-Gall/Kimbrough* (2007) sentencing schemes, offenses involving crack-cocaine received harsher sentencing outcomes than offenses involving powder cocaine. This is consistent with previous research, which shows that despite efforts to increase the amount of discretion judges held to impose sentences that departed from the Guidelines, crack-cocaine related offenses still received harsher outcomes than powder cocaine related offenses (Hartley, Maddan, Spohn, 2007; Hartley & Miller, 2009; Spohn & Sample, 2013; Ward et al., 2016).

This may be because at the time, the 100:1 ratio was still intact, and mandatory minimum sentences accompanied these two substances in significantly different ways. While judges held the power to depart from these guidelines, there may be many instances in which they ultimately decided not to impose sentences that were lower than the guidelines. For example, judges often consider aspects such as criminal history or public safety concerns when considering sentencing outcomes. In these instances, if the judge concluded that a defendant was not "worthy" of a sentencing reduction based off these two components, they could ultimately choose to stay within the guideline range (Federal Defenders of New York, 2026). Altogether, judges hold much discretion to impose sentences as they see fit. These decisions can be based off a multitude of factors, both legal and extralegal (Albonetti, 1997; Spohn, 2013). Overall, the guidelines were made advisory at that time, meaning judges could depart from them if they felt a reduction was warranted, however, they were not required to depart from them. As such, the sentencing outcomes that resulted in these eras were still accompanied by various disparities, including harsher sentencing outcomes for crack-cocaine related offenses in comparison to powder cocaine offenses (Beaver, 2010; Kurtzleben, 2010; Spohn, 2013).

Interestingly, results of this study show that in a *post-Fair Sentencing Act* (2010) sentencing scheme, individuals convicted of crack-cocaine related offenses received more lenient sentences than those convicted of powder cocaine related offenses. Some research conducted after the implementation of this Act shows similar results. First, in 2011, approximately one year after the implementation of the FSA, the USSC estimated that nearly 12,000 people would benefit from sentencing reductions of 37 months on average (Gotsch, 2011). Further, in 2015, the

USSC found that the Fair Sentencing Act "reduced the disparity among crack and power cocaine sentences, reduced the federal prison population, and resulted in fewer federal prosecutions for crack-cocaine" overall (USSC, 2015). Additionally, research shows that after the passage of this Act, the average crack-cocaine sentence was lower, and more aligned with the average powder cocaine sentence (USSC, 2015). Some research suggests that the outcomes of *Kimbrough* (2007) and *Spears* (2009), which held that sentencing judges had more freedom to depart from the guideline recommendations, even for their disagreement with the crack and powder cocaine disparity, may have played a role in lesser sentences being meted out for crack-cocaine related offenses in subsequent years, given that judges were free to use their discretion in relation to these offenses as they saw fit (USSC, 2015). The overall lessening of the disparity under the FSA (2010) may play a role as well. Under the FSA (2010), it now took more grams of crack-cocaine to trigger mandatory minimums than before (USSC, 2015). Additionally, the Act repealed the five-year mandatory minimum sentence applied to first-time simple possession of crack-cocaine, instead imposing a range of zero to 1 year imprisonment, regardless of the amount of crack-cocaine involved (USSC, 2015, pp. 7-8). Both changes may have ultimately played a role in overall sentence length outcomes for crack-cocaine in comparison to powder cocaine, the latter of which was left unchanged in this legislation (USSC, 2015).

These factors may also explain the non-significance between crack and powder cocaine sentence length outcomes in the post-*First Step Act (2018)* block as well. Indeed, scholars argue that since the implementation of the Fair Sentencing Act, judges have continuously used their discretion to impose sentences far below the guidelines, in an attempt to remedy the stark disparities seen between crack and powder cocaine related sentencing outcomes (Komar, 2023; Riley, 2022). The retroactive nature of the FSA (2018) may also play a role. After the enactment of the FSA (2018), individuals convicted of various crack-cocaine related offenses were now able to seek resentencing, to ultimately have their sentences reduced. In a 2022 report, the USSC noted that 4,000 people had received a reduced sentence as a result of this change (USSC, 2020). On average, those who benefitted from the retroactivity received a 24 percent reduction in their sentence, meaning that their release date was now 72 months sooner on average (USSC, 2020). Additionally, the FSA (2018) reduced various mandatory minimum sentences related to drug trafficking, such as reducing the 20-year mandatory minimum for drug trafficking with one prior conviction to 15 years (USSC, 2020). Further, this Act eliminated the mandatory life-without-parole sentence for drug trafficking offenses amongst those with two or more prior convictions, instead implementing a 25-year mandatory minimum (USSC, 2020). This act also expanded the safety valve provision, which affords courts the right to sentence those convicted of low-level, nonviolent drug crimes who have minor criminal histories to less than mandatory minimum sentencing requirements. All in all, these changes may have affected the sentences being meted out amongst crack and powder cocaine offenses during this time period, thus resulting in nonsignificant differences among these two substances.

Race, Sex, Education Level, and Sentencing Length

Next, this study explores the relationship between various social positions (race, sex, and education level) and sentencing length outcomes, specifically among crack-cocaine related offenses. Findings show that when examining the intersections of race and sex, Black men charged with crack-cocaine offenses were more likely to receive longer criminal sentences than all other individuals charged with crack-cocaine offenses, with the exception of Hispanic men and those who identified in the “other” racial category, given that the outcomes for these two categories were nonsignificant. These findings align with previous research, which shows that

Black men tend to be punished more harshly than men and women of other racial identities (Feldmeyer & Ulmer, 2011; Holmes, Feldmeyer, & Kulig, 2020; LaFrentz & Spohn, 2006; Mitchell & MacKenzie, 2004; Steffensmeier, Ulmer, and Kramer, 1998). Furthermore, some previous research shows that Hispanic and Black men both receive harsher sentences than other intersections of race and sex, while other research shows similar sentencing outcomes among these two groups (Brennan & Spohn, 2009; Doerner & Demuth, 2010; Holmes and D'Amato 2020; Spohn, 2013; Steffensmeier and Demuth, 2006). These outcomes may be the result of judges' perceptions of certain groups of defendants, particularly those with minoritized identities. For example, much research argues that judges make sentencing decisions based off their perceptions related to the level of blameworthiness of a defendant or concerns about the "dangerousness" of a defendant, among other considerations. Often, these perceptions are tied to stereotypes, such as racial or gender-based stigmas (Albonetti, 1997; Spohn, 2013; Steffensmeier et al., 1998).

When examining the intersection between race, sex, education level, and sentencing outcomes, this study found that White, Black, and Hispanic women with less than a high school diploma received shorter sentencing outcomes for crack-cocaine related offenses in comparison to Black men with less than a high school diploma. Additionally, White women with a college level education received significantly shorter sentences than Black men with a less than a high school diploma. These findings are supported by previous research, which shows that men are more likely to receive harsher sentencing outcomes in comparison to women (Albonetti, 1997; Blowers & Doerner, 2015; Etienne, 2010; Kautt, 2002). Many previous studies also find that women who identify within a racially minoritized category tend to receive harsher sentencing outcomes than their White counterparts (Chapelle, 2010; Jordan-Zachary, 2003; Sharp, Braley, Marcus-Mendoza, 2000). Findings from this study echo this, showing that White women with less than a high school diploma received the largest sentencing discount in comparison to Black women and Hispanic women with less than a high school diploma. Findings also show that White women with college level education received shorter sentences than Black men with less than a college degree. This finding aligns with previous research as well, which concludes that those with higher levels of education may be seen as more “worthy” of a lesser sentence and more likely to be rehabilitated because of it (Albonetti, 1997; Wells, 2017).

Importantly, Hispanic men with less than a high school diploma received significantly longer sentences compared to Black men with less than a high school diploma. This finding departs from most previous research, which tends to show that Black men with less education historically receive the most punitive sentences in comparison to other racial, gender, and education level intersections (Assari, 2024; Pettit, Sykes, and Western, 2022). One factor that may be tied to this unique finding is a person’s citizenship status. For example, in one study, it was found that non-citizen, Hispanic defendants were more likely to receive incarceration sentences than citizen defendants (Demuth, 2002). One thing that may factor into this is the lack of probation options that are available to this group because of their lack of legal residence in the U.S. (Demuth, 2002).

851-enhancement and Sentencing Length Outcomes

When examining the factors that may influence an 851-enhancement being present at the time of sentencing, none of the main independent variables included in the analysis were significant. This may be because the use of the 851-enhancement is relatively rare (USSS, 2018). For example, in all eligible cases from 2016, an 851-enhancement was filed in just 12.3 percent of all cases. This number becomes even smaller after eliminating cases in which the 851-

enhancement was withdrawn before sentencing. Ultimately, there were 583 cases in which an 851-enhancement was not withdrawn by the time of sentencing, and just 243 defendants who remained eligible for an enhanced mandatory minimum penalty (USSS, 2018:6). Another component that may tie to this is the expansion of certain protections under the FSA (2018). Research shows that in 2019, the number of defendants who received enhanced penalties decreased by 15.2 percent from the previous year (USSC, 2020). This Act also narrowed the type of prior offenses that could ultimately trigger an 851-enhancement filing. Under this law, only "serious drug felonies" apply. As such, fewer defendants are eligible for this filing in a post-*First Step Act* sentencing scheme (USSC, 2020). Additionally, the type of drug most impacted by 851-enhancement filings has shifted in recent years. While in previous years, crack-cocaine has made up a significant portion of cases in which an 851-enhancement was filed, this has now changed. Indeed, in USSC data from 2019, results show that methamphetamine (30.3%) and heroin (18.1%) were the two main substances that were most often accompanied by the filing of an 851 (USSC, 2020). The amount of powder cocaine related offenses in which an 851 filing was not withdrawn before sentencing was also higher (17.2%) in comparison to crack-cocaine related offenses (16.3%). Overall, this may be due to shifting trends in overall illicit drug use during this time period. Previous research shows that substances like methamphetamine, heroin, and powder cocaine have become more commonly used and trafficked in comparison to crack-cocaine (Finklea and Sacco, 2021).

Demographic and Control Variables

Turning to demographic variables, the findings of this study illuminate various relationships. When focusing on the findings for R1, differences among sex and racial identity are found to be statistically significant in every data block. For example, in all blocks, men were shown to receive significantly longer sentences in comparison to women among crack and powder cocaine offenses. This is supported by much previous research, which shows that men are more likely to receive longer sentencing outcomes than women, even in instances in which the offense involved in a case are the exact same (Albonetti, 1997; Blowers & Doerner, 2015; Etienne, 2010). This may be partially due to gender norms and expectations that are broadly held in U.S. society, such as the idea that women are more sensitive and obedient, and therefore not as responsible for their actions, and thus, need to be protected (Adler, 1975; Daly, 1987; Stryker, Nagel, & Hagan, 1983; Steffensmeier et al., 1993, Wells, 2017:40). Next, Black individuals were found to receive significantly longer sentences in comparison to White individuals in 3 out of 4 blocks. Overall, these findings align with a large breadth of previous research that shows Black individuals tend to receive harsher sentencing outcomes in comparison to White individuals, even when they are similarly situated (Chiricos & Crawford, 1995; Kautt, 2000; Kautt & Spohn, 2002). Additionally, results show that Hispanic individuals received significantly harsher sentences in comparison to White individuals in 2 out of 4 blocks. This is also supported by a growing body of research that shows Hispanic individuals are sentenced more harshly in comparison to White individuals (Brennan & Spohn, 2008; Hartley & Miller, 2010; Hartley, Miller, & Spohn, 2010; Ulmer & Johnson, 2004). As discussed in the discussions above, this finding may be due in part to social stigmas and stereotypes that exist in relation to these groups, such as the belief that racially minoritized individuals are more blameworthy and pose a greater risk to public safety (Doerner & Demuth, 2010; Ghandnoosh, 2023; Spohn, 2000).

Focusing on control variables, this study controls for the impact of pretrial detention, citizenship status, whether a case went to trial or not, the offense severity and criminal history scores of each defendant, and a person’s age on sentence length outcomes. In all models, aside from the 851-enhancement model, those that were held in pretrial detention were shown to receive harsher sentencing outcomes than those who were released pretrial. These findings are consistent with previous research, which shows that pretrial detention increases one's likelihood of receiving a longer incarceration sentence (Lowenkamp, VanNostrand, & Holsinger, 2013; Oleson et al., 2017; Sacks & Ackerman, 2012). This may be due to aspects such as the inability to "prove" that they are a good candidate for a probation sentence, by showing that they can contribute to one's community, maintain employment, abstain from criminal activity while they're released, and be responsible by showing up to court when necessary (St. Louis, 2022; Williams, 2003).

In addition, those held pretrial may not be able to prepare for their trial as easily as someone who has been released pretrial, which ultimately influences the outcomes of their case (St. Louis, 2022). Next, a defendant's citizenship status was found to be statistically significant in just two models: the post-*FSA (2010)* model, and the post-*FSA (2018)* model. In both models, those who were U.S. citizens received longer sentences than non-citizens. This may be due to the use of downward departures in non-citizen cases. Downward departures allow judges to impose a sentencing that is lower than the range outlined in the Guidelines. Historically, downward departures have been implemented in cases involving non-citizens more often than cases involving U.S. citizens (USSC, 1998, 2019; Wu & Spohn, 2010; Wolfe, Pyrooz, & Spohn, 2011). Additionally, some research argues that U.S. citizens may have longer criminal histories than noncitizens. As their criminal histories expand, the sentencing lengths imposed upon them also expand, due to this history (Boyke & Avalos Iniguez, 2024).

In all models, apart from the model examining the intersections between racial identity, sex, and sentence length outcomes, cases that went to trial resulted in longer sentence lengths than cases that ended in a plea deal. This is supported by previous research, which shows that those convicted by trial tend to receive harsher sentencing outcomes than those who accept a plea deal (Dixon, 1995; Johnson, 2003; Ulmer, Eisenstein, & Johnson, 2010). There are various possible explanations for this, including: sentencing discounts that come with cooperating with law enforcement or rewards attached to accepting responsibility through a guilty plea (Ulmer, Eisenstein, & Johnson, 2010). Offense severity was also found to be statistically significant in all models, except for the 851-enhancement model, showing that those with higher offense severity scores received longer sentences. This finding aligns with previous research, and is often an outcome of the Sentencing Guidelines. For example, the Guidelines are organized in a way that ensures punishments are proportional to the seriousness of a crime. Thus, a higher offense severity score typically means a greater violation of the law occurred, there was more harm done to victims involved in the offense, or the defendant played a greater role in the offense, among other aspects (USSC, 2004, 2015). In these situations, judges may believe that offenses that are higher up on the severity scoring deserve longer sentences, and thus impose such sentences (USSC, 2004, 2015).

Relatedly, findings for all models show that those with higher criminal history scores received longer sentences. This is also consistent with previous research, and is due in part to the Sentencing Guidelines, which state that those with higher criminal history scores should receive harsher sentences, due to higher rates of recidivism (Doerner & Demuth, 2014; Holmes & Feldmeyer, 2019; USSC, 2004, 2015). This may also be due to a judge's heightened perceptions of blameworthiness and the level of risk one may pose to the community among those with higher criminal history scores (Doerner & Demuth 2010; Ulmer, 2000). Next, a defendant's age was also found to be statistically significant in three models (post-*Booker*, post-*Gall/Kimbrough*, and post-*FSA 2010* models). These findings showed that as age increases, so does one's sentence length. This finding is counter to much research that shows that as one's age increases, their criminal sentences typically decrease (Freiburger, Jordan, & Hilinski-Rosick, 2019; Steffensmeier et al., 1995, Wu & Spohn, 2009). Conversely, other research shows similar results, with older defendants receiving longer sentences than their younger peers (Freiburger & Sheeran, 2020; Steffensmeier et al., 2017). This finding may suggest that judges consider younger defendants to be more impressionable, more receptive to non-incarceration sentences, and more at risk of experiencing harm than their older peers, and thus are more likely to impose lighter sentences onto younger individuals (Ryon et al., 2017; Steffensmeier et al., 2017). This may also be due to one's criminal history or the use of career offender enhancements; research shows that older defendants tend to have higher criminal history scores than younger defendants, which opens them up to various sentencing enhancements, such as the career offender enhancement (Frase, 2016; 2017). Finally, education level was significant as a control variable in just one model (post- *FSA 2018*). In a post-*FSA (2018)* sentencing scheme, college level education was found to be statically significant, showing that those with college-level education received shorter sentences than those with less than a high school diploma. This is consistent with previous research, which shows that those with higher levels of education tend to receive less punitive sentences than those with less education (Albonetti, 1997; Franklin, 2017; Wells, 2017). This may be due in part to the greater "acceptability" of using education level as an extralegal factor that can be taken into consideration when making sentencing decisions, meaning judges may consider this aspect when making decisions related to risk assessments or whether a person would benefit from probation rather than an incarceration sentence (Franklin, 2017).

Implications

The main goal of this project is to examine various factors that influence sentencing length outcomes among crack and powder cocaine defendants. Findings show partial support for the hypothesis that despite various forms of legislative change that have been applied to the crack and powder cocaine ratio, stark disparities in sentencing outcomes among these two substances remain. Additionally, this study shows partial support for the hypothesis that racial identity, sex, and education level play a role in sentencing outcomes among crack-cocaine related offenses, with men, those who hold racially minoritized identities, and those with less education typically receiving harsher sentences than those in other social positions. Thus, to lessen or altogether eliminate the stark differences in sentencing outcomes among these two substances, the crack and powder cocaine ratio must be abolished altogether. Indeed, the findings of this study add to a large body of previous research that shows crack-cocaine sentencing outcomes continue to be harsher even after various amendments have been made (USSC, 2015; Spohn, 2013). Furthermore, after the most recent amendments were made through the FSA (2018), findings show that powder cocaine related offenses received harsher sentencing outcomes than crack-cocaine, thus reversing previously long held trends among these two substances. As such, in order to finally create a sentencing scheme that is equitable among these two substances, the ratio must be lessened from 18:1 to 1:1. This is especially crucial given the fact that these two substances are pharmacologically identical, meaning there is no concrete scientific reasoning for the differentiation between the two substances (ACLU, 2023).

Ensuring the retroactive nature of the First Step Act reaches all currently incarcerated individuals who had been sentenced prior to its enactment is also paramount to undo the perpetual inequalities the crack and powder cocaine disparity has created over the last 40 years.

While judges have approved sentence reductions, in many cases, the DOJ has attempted to block hundreds of eligible individuals (Gotsch, 2019). Furthermore, this bill failed to extend retroactivity for enhanced mandatory minimum sentences for prior drug offenses. This aspect is uniquely tied to crack and powder cocaine related offenses, given that those sentenced for crack-cocaine offenses under the previous disparity were met with distinctly different outcomes based on the 100:1 ratio intact at the time of their sentencing. For example, under the 100:1 ratio, the five-year mandatory minimum sentence applied to those in possession of more than three grams of cocaine base if they had a prior crack-cocaine conviction. Additionally, possession of more than one gram of crack-cocaine triggered a five-year mandatory minimum sentence if the defendant had two or more prior crack convictions (USSC, 1995). As such, to continue addressing the disparate sentencing outcomes that exist among crack and powder cocaine offenses, those who received enhanced sentences due to prior crack-cocaine convictions must be included in the resentencing that is afforded under the First Step Act. In doing so, the legal system can begin to implement full legal justice for victims of this historically unjust legislation. Failure to do so will only continue to perpetuate racial and sex-based disparities in the U.S. federal system, and continue to fuel harmful, baseless stereotypes surrounding drug use in the United States.

Limitations

Limitations of this study are worth discussing. Importantly, this study uses a dummy variable methodological approach to explore intersectional outcomes in crack/powder cocaine sentencing. It is critical to highlight that this method has inherent limitations, as it may be a weaker approach to accounting for the compounded effects of each variable included in the intersectional analysis. As such, it may be more beneficial to use an alternative method, such as the Multilevel Analysis of Individual Heterogeneity and Discriminatory Accuracy (MAIHDA) approach, to explore the intersectional components of this study (Evans et al., 2018). Next, this study focuses on just three social positions that may play a role in sentencing length outcomes—racial identity, sex, and education level—which overall limits the conclusions that can be drawn. Other social positions may be important to consider, such as one's geographic location, or legal system elements such as the role prosecutorial discretion plays in determining sentence length outcomes, in order to gain a more in-depth understanding of the factors that influence these decisions. A third limitation of this study centers around the use of education level as a proxy for social class. While income level data is not available in USSC sentencing data, education level may not be the strongest indicator of one's social class status. As such, perhaps the development of a composite variable that encompasses various elements related to social class may be useful. Next, the measurement of racial identity is limited to just four racial categories. This undoubtedly limits the representations of the intricacies that are inherent within racial identity, particularly among individuals who identify beyond these four categories. Additionally, this study addresses the variable *judicial district* by controlling for it using fixed effects. Using other analytical approaches to address this variable may be more robust, such as cluster or multi-level modeling methods. Last, this dissertation is quantitative. It may be beneficial to employ qualitative methods to this topic, in order to gain a richer understanding of the factors that play a role in determining sentencing length outcomes and to better understand the impacts various amendments may have had on overall sentencing length outcomes.

Suggestions for Future Research

To gain a deeper understanding of which social positions influence sentence length outcomes, future research should further consider the role racial identity plays in sentence length outcomes among crack and powder cocaine defendants, particularly in a post-*First Step Act* judicial system. For example, the findings of this study show that in a post-*First Step Act* system, Hispanic men without a high school diploma received sentences that were harsher than the sentences meted out to Black men without a high school diploma. This is a relatively unique finding given that most research shows that Black men receive the harshest sentencing outcomes in comparison to other racial and sex category intersections (Assari, 2004; Pettit, Sykes, and Western, 2022). Previous research also shows that when Hispanic populations are added to an analysis, the sentencing outcomes among Hispanic individuals are very similar to those Black individuals receive (Holmes & D'Amato, 2020; Spohn, 2013; Steffensmeier and Demuth, 2006). As such, it is beneficial for future research studies to examine this intricate relationship further, in order to better understand the connections between racial identity, sex, and sentence length outcomes. Future research should also continue exploring the connection between racial identity, sex, and education level. While much research focuses on the intersections between racial identity, sex, and sentencing outcomes, there is virtually no previous research that examines the intersections of racial identity, sex, and education level. Future research may also benefit from expanding the number of variables used to measure one's social class, by examining aspects like employment status or occupational prestige (Albonetti, 1994; Nobiling, Spohn, Delone, 1998; Spohn & Holleran, 2000). In doing so, the strength of the class status indicators may increase, thus providing a clearer picture of how socioeconomic status influences sentencing outcomes among crack and powder cocaine defendants. Finally, future research should consider the role 851 enhancements play at the district level. As previous research shows, the use of 851 enhancements in drug sentencing varies widely depending on the district in which each case is tried (USSC, 2018). As such, future research should explore this connection further, in order to emphasize interdistrict variation, and to better understand what other factors or variables may influence the disparities seen in the use of the 851 enhancement in drug sentencing.

Conclusion

While proponents of the current 18:1 disparity note that "something is better than nothing", critics of these small improvements have pushed for the elimination of the disparity altogether. Indeed, many advocates for the abolition of the disparity note that the elimination of this ratio is the only step toward "applying equal justice under the law" (Armstrong, 2023). Failing to do so will only further perpetuate the damage that has been done since this disparity was created. Given that crack and powder cocaine are comprised of identical pharmacological components, this disparity, which has perpetuated numerous elements of inequality in the federal U.S. prison system at an alarming level, is unfounded. Further, much research shows that despite misconceptions that crack-cocaine is more harmful and dangerous than powder in relation to its pharmacological effects, the effects of these drugs are the same, regardless of its form (Vagins & McCurdy, 2006). As such, the basis for this disparity is based on false information, and negates all scientific research conducted on this topic that continuously disproves these arguments.

This project works to provide support for this argument, by analyzing the role of legislative amendments, various social positions such as racial identity, sex, and education level, and the use of 851-enhancements in crack and powder cocaine sentencing length outcomes. Scholarship on this topic has mainly focused on outcomes that have resulted in the aftermath of the Anti-Drug Abuse Act of 1986 and after the enactment of the Fair Sentencing Act of 2010. Result of this study support the notion that this topic deserves a renewed focus that centers around outcomes of the most modern sentencing scheme, as important disparities remain among the sentencing outcomes attached to these two substances. Although support for the hypotheses was limited, the findings remain important, as they give a clearer understanding of what factors continue to play a significant role in crack and powder cocaine sentencing outcomes. Altogether, findings of this study provide useful contributions to existing literature on this topic. For example, racial, sex-based, and substance-based disparities still exist in relation to crack and powder cocaine. Moreover, when focusing solely on crack-cocaine offenses, racial identity, sex, and education level play a role in disparate sentencing outcomes. Moving forward, these findings are illuminating, as they paint a clearer picture of the social positions that still play a role in perpetuating sentencing inequalities, which groups of individuals may benefit most from further amendments to this ratio and overall policy reform efforts, and provide support for the argument that the crack/powder cocaine disparity must be abolished once and for all in order to finally remedy the inequalities it has continuously perpetuated for the last 40 years.

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