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# Race & Non-Racial Characteristics in Sentencing Length and Sentencing Type Disparity

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Race and Non-Racial Characteristics in Sentencing Length & Sentencing Type Disparity

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A thesis submitted in partial fulfillment of the requirements for the degree of Master of Science  
in Sociology at Virginia Commonwealth University.

by

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### **Abstract**

Utilizing data from the United States Department of Justice Bureau of Justice Statistics Survey of Inmates in State and Federal Correctional Facilities (SISCF) 2004, this research investigates the possibility that African American drug offenders receive lengthier prison sentences and are imposed more range of time or indeterminate sentences as opposed to flat sentences based on race and/or non-racial characteristics; specifically parole status prior to sentencing, plea agreement status, prior criminal history, education status prior to arrest, employment status prior to arrest, and parental incarceration. While regression analysis revealed racial sentencing disparity for length of sentence and type of sentence ( $p < .05$  and  $p < .001$  respectively), among non-racial characteristics, only education status prior to arrest proved a significant predictor for length of sentence ( $p \leq .001$ ). African American drug offenders were more likely sentenced to indeterminate sentences as opposed to flat sentences and were less likely to receive short sentences of 0 to 4 years or medium sentences of 4 to 10 years as compared to long sentences of 10 or more years. Potential research implications include the necessity for additional research regarding racial sentencing disparity as length or type of sentences as opposed to disparity as a numerical or a percentage difference between racial groups as well as the utilizing of inmate data that encompasses recent changes in drug sentencing laws, e.g. crack cocaine versus powder cocaine. Future research might also consider the evolution of marijuana laws in the United States and the potential impact on racial sentencing disparity.

## **Introduction**

Brown et al. (2005) asserts that racial animus towards African Americans is a thing of the past and promotes the thesis that the civil rights movement forced an end to racial hostility in the United States. Racial realists argue that racism has ended and insist that only residual effects of racism exist, but those are mostly as a result of personal deficiencies (Brown et al., 2005).

D'Souza (1996) proclaims an end to race and racism and acknowledges a new post-racial era in the United States. For many Americans, the election of Barack Obama as the country's first African American president should mean the end of any discussion concerning race or racism as the potential basis for problems throughout American society. However, contemporary events such as the death of Trayvon Martin by a white neighborhood watch captain, as well as the deaths of Michael Brown in Ferguson, Missouri, Eric Garner in New York City, and Walter Scott in North Charleston, South Carolina at the hands of white police officers have provided eerie reminders to the African American community of the continued existence of racial disparities within the criminal justice system.

Perhaps the greatest level of racial disparity within the criminal justice system is embodied by the disproportionate representation of African Americans residing in this country's prisons and jails. For every 100,000 African Americans, 4,347 are under correctional control as compared to 678 per 100,000 whites (Glaze, 2011). One out of every fifteen African American males above the age of eighteen is currently incarcerated compared to only one out of every one hundred six white males (American Civil Liberties Union, 2011). There are more African Americans currently under correctional control than were enslaved in 1850 (Alexander, 2010).

Discriminatory practices throughout the criminal justice system, including racial sentencing disparity, are often identified as aberrational occurrences. These assumed



abnormalities within the criminal justice system accentuate the warranted disparity thesis which identifies adjudication primarily on the basis of legal factors such as criminal history, crime type, and the severity of the crime while ignoring race or extra-legal factors (Bushway & Piehl, 2001; Everett & Wojtkowicz, 2002; Michell, 2005; Stolzenberg & D'Alessio, 1994). Consistent with the warranted disparity thesis, Bernstein et al. (1977), Engen and Gainey (2000), Myers and Talarico (1986), Sampson and Lauristen (1997) identify either leniency in sentencing towards African Americans or find no sentencing disparity based on race. Conversely, unwarranted disparity acknowledges differences in sentencing outcomes that can be reasonably identified as a result of race, gender, or other extra-legal factors after accounting for all legally mandated factors (Stolzenberg & D'Alessio, 1994).

Unwarranted sentencing practices throughout the criminal justice system while mostly unrecognizable, join with other legal and non-legal factors; producing racially discriminatory outcomes in certain situations (Kansal, 2005). Kramer and Steffensmeier (1993) conclude the mitigating effects of race, sentencing offense, and prior criminal record ultimately dictates sentence length. In a synopsis of previous research from the proceeding twenty years, Kansal (2005) reports racial discrimination towards minority defendants in sentencing outcomes including sentencing disparity towards African Americans at the federal level based on race as well as other characteristics. However, these studies reject the assumption that racial bias is systemic throughout the sentencing process or that African Americans are necessarily disadvantaged as compared to white defendants; rather race plays a critical role in determining sentencing length when examined interactively with other independent variables (Kansal, 2005).

Contemporary analysis concerning racial disparity in sentencing outcomes has progressed to examine race as an independent variable while examining the interaction between race and

additional variables as opposed to investigating racial disparity as a group outcome (Kansal, 2005). Such research does not assume that racial bias universally impacts minority defendants, but concerns itself with the circumstances in which racial bias is most prevalent (Kansal, 2005). The nature of my research reflects on sentencing disparity at the hands of African Americans based on race and non-racial characteristics. To this end, I will examine the relationship between race, sentence length, and type of sentence among African American and white drug offenders, controlling for parole status prior to sentencing, plea agreement, criminal history, education, employment status prior to arrest, and parental incarceration.

## **Literature Review**

### **Theoretical Perspective - Critical Race Theory**

My research employed Critical Race Theory (CRT), which examines racial discriminatory practices throughout society by acknowledging race as a primary observational tool. Alternatively, Black's Theory of Law establishes law as social control and considers the social factors of stratification, morphology, culture, organization, and alternative forms of social control. However, Black's Theory of Law does not establish race as the primary means of observation (Black, 1976). Consequently, Critical Race Theory (CRT) is the more robust theoretical perspective in the analysis of racial sentencing disparity.

Critical Race Theory (CRT) examines the intersection of race, racism and power while considering the minority group's history, economics, and self interest (Delgado & Stefancic, 2012). CRT questions the fundamental liberal order including equality theory and legal reasoning. From legal theory, CRT borrows the idea that case law may be interpreted differently by emphasizing one authority over another. From a feminist theoretical perspective, CRT builds on the relationship between power and social order along with the invisible set of rules that govern society. CRT is also an activist theory and serves not only to understand, but also to foster effective social change.

CRT is grounded in four central themes. The first theme recognizes that racism is an ordinary daily occurrence for most people of color (Delgado & Stefancic, 2012). Since it is normal, it is difficult to acknowledge or address. CRT faces a colorblind ideology that suggests racism's defeat and downgrades its existence to isolated events rather than a socially constructed system that favors white Americans. Proponents of a colorblind ideology reduce racism to personal prejudice and refute racism as systemic or prevalent throughout society (Bonilla-Silva,

2006). Many whites deny the structural existence of racism, but still maintain negative stereotypes of African Americans (Parker, 2010). Behind the auspice of egalitarianism, a colorblind ideology conceals a criminal justice system that offers incarceration and disparity in sentencing to African Americans as a measure of social control.

Color-blind ideology annotates the non-existence of racism or that race is no longer relevant, the existence of racial inequalities is relegated to other forms of oppression such as social class or personal deficiencies rather than as a result of racism, and white people no longer view race or color and are colorblind in their behavior and ideas (Ostertag & Armaline, 2011). A colorblind or race neutral approach to the problems associated with racism within the criminal justice system serves as an accomplice to sentencing disparity rather than an acknowledgement of race as the central focus, thus placing the burden of responsibility in the hands of those personally impacted and the African American community in general (Bonilla-Silva, 2006).

As many good people supported slavery and Jim Crow, those who defend a colorblind ideology feel that African Americans are their own worst enemies while viewing nothing abnormal about themselves or their beliefs (Bonilla-Silva, 2006). CRT views improprieties in the criminal justice system, including sentencing disparity, as largely due to contemporary systematic racism, attempts to deflect the subtleness of race neutral policies, contends that race remains a recognizable social category in the United States, and holds that racism is no longer dependent on bigotry, but is structurally enforced to ensure that power is maintained in the hands of white America (Delgado & Stefancic, 2012; Ostertag & Armaline, 2011).

Racism further advances the physical and material well being of the white working class and white elites (Delgado & Stefancic, 2012). Bell (1980) asserts that an interest convergence led to the claimant's victory in *Brown v. Board of Education* rather than an enlightened American

society ready to distance itself from its Jim Crow past. He posits that racism materially benefits whites, and racial equality will be accommodated only when it converges with the interest of whites (Bell, 1980). Identification of the primary interest of whites may be a suitable approach for investigating many problems throughout the criminal justice system (Delgado & Stefancic, 2007). Sellin (1976) suggests the United States' criminal justice system can be linked to labor markets resulting from the demise of slavery.

CRT also emphasizes the social construction of manmade labels of race, such as intelligence and diligence, over biological characteristics shared among all people and stresses the social construction thesis, which advances the virtue and normalness of whiteness (Delgado and Stefancic, 2012). Nakayama and Krizek (1995) contend that in the 20<sup>th</sup> century, white has assumed the role of normal and yields an invisible web of power while other groups are discursively labeled. A positive white frame is shared by most whites and even by some non-whites (Feagin, 2013). Omni and Winant (1994) argue that race is socially constructed by whites for the group's benefit. Lastly, CRT argues that the unique perspective in which minorities engage the world offers the best way to talk about race and racism (Delgado & Stefancic, 2012). The authors suggest that shared stories and storytelling by African Americans offers the best way to end the circumstances and conditions of racism throughout society (Delgado & Stefancic, 2012).

## **Race**

The criminal justice system in the United States polices, prosecutes, convicts, imprisons, and disenfranchises African Americans at disproportionate levels while maintaining former legalized color barriers (Brewer & Heitzeg, 2008). The NAACP (2009-2014) admonishes that while African Americans make up only one tenth of total drug users, they comprise more than

one third of those arrested for drugs and nearly sixty percent of those serving time in state prison for a drug offense. Marable (1983) insists that the criminal justice system is organized to maintain white dominance. Yet behind a colorblind ideology, an open dialogue about race rarely occurs; rather terms such as the war on drugs, gangs, and criminals are substituted to personify the criminalization of the African American community (Brewer & Heitzeg, 2008). At present, the black male has become the identity of crime and fear in both social and political American culture (Anderson, 1995; Reiman, 1995; Szykowny, 1994).

The United States ranks as the highest per capita incarcerator in the world with 743 individuals per 100,000 behind bars (Walmsley, 2011). While African Americans make up less than fourteen percent of the population, they comprise nearly thirty-nine percent of the prison population (Ostertag & Armaline, 2011). Many have come to assert that the United States penal system is a cleverly devised system of social control deeply rooted in the country's racial past (Herzig, 2005; Myers & Sabol, 1987; Wacquant, 2000). African Americans are incarcerated and continually labeled as felons while many white Americans deny the existence of racism and the historical legacy that gives rise to the disproportionate rate of incarceration among this group. At the federal and state levels, the direct effect of race resulting in harsher sentences for African Americans is 68.2% and 43.2% respectively (Kansal, 2005).

Several studies conclude that African American defendants routinely receive harsher sentences than white defendants (Albonetti, 1997; Demuth & Steffensmeier, 2004; Lizotte, 1978; Mitchell, 2005; Petersilia, 1983; Spohn, 1990; Spohn et al., 1981-82; Steffensmeier & Demuth, 2000, 2001; Steffensmeier et al., 1998). Steffensmeier and Demuth (2000) find that in federal courts white defendants receive more lenient sentences as compared to African Americans defendants. Utilizing data from the Monitoring Database created by the U.S. Sentencing

Commission, Everett and Wojtkiewicz (2002) uncover that African Americans are fifty percent more likely to receive lengthier sentences than whites when offense characteristics are not considered.

## **Drugs**

Racial sentencing disparity fueled in part by mandatory minimum sentencing drug laws has contributed to the judicial inadequacies imposed upon African Americans. In an investigation of Pennsylvania Commission on Sentencing (PCS) files from 1998 to 2000, Ulmer et al. (2007) uncover that mandatory minimum charges are presented against African Americans primarily in counties where the group's population assume greater numbers. Between 1975 and 2002, mandatory minimum sentencing laws were adopted by all fifty states (Kearny et al., 2014). Many states also employed mandatory minimum sentencing laws for drug possession and trafficking along with three strike laws which provided harsher sentences for repeat offenders (Kearny et al., 2014).

In an analysis of data from the United States Sentencing Commission on offenders sentenced under the mandatory minimum laws in 1992, Vincent and Hoffer (1994) confirm that seventy percent of the growth in federal prisons since 1985 is due to lengthier drug sentences. The Sentencing Reform Act, part of the Comprehensive Crime Control Act of 1984 was enacted to provide consistency in federal sentencing. However, between 1984 and 1990 more than 90% of those sentenced under federal mandatory minimum provisions were African American (Vincent & Hoffer, 1994).

Mandatory minimum drug sentencing laws are largely associated with eradicating society from the ills of crack cocaine. The media sensationalism and the racialization of crack cocaine are well established, as is the drug's close association to the African American urban community

(Beckett, 1995; Beckett & Sasson 1998; Reeves & Campbell 1994; Reinerman & Levine 1997). In 1986, the U.S. Senate and U.S. House of Representatives asserted that the addictive nature of crack cocaine over powder cocaine, create a physiological effect that was greater than powder cocaine, was cheaper than powder cocaine – an effect which attracts young users, and led to greater levels of crime than powder cocaine (Graham, 2011). Subsequently, the Anti Drug Abuse Act of 1986 differentiated between crack and powder cocaine and established a mandatory minimum sentence disparity of a 100 to 1 ratio (Grassley, 1998; Reinerman & Levine, 1997; Sacher, 1997; U.S. Sentencing Commission, 1991). In effect, 1 gram of crack cocaine was equal to 100 grams of powder cocaine. Moreover, the Omnibus Anti-Substance Abuse Act of 1988 established a five year minimum sentence for the possession of 5 or more grams of crack cocaine (Omnibus Anti-Substance Abuse Act, 1988).

In an effort to address racial disparity in drug sentencing, President Obama signed The Fair Sentencing Act in 2010. The act reduces the sentencing disparity between crack cocaine and powder cocaine from 100:1 to 18:1, in addition to changing the mandatory minimum sentence of five years in prison for a first time possession of five grams to twenty eight grams of crack cocaine (Fair Sentencing Act, 2010). Ironically, the prevalence of crack cocaine usage over a lifetime is almost two times greater among whites than African Americans (The Substance Abuse and Mental Health Services Administration, 2013).

Data collected on African American and white drug offenders sentenced in three U.S. district courts reveal that African American crack cocaine drug offenders are most frequently viewed in a stereotypical manner and depicted as having prior drug and weapons convictions, which lengthens sentences (Spohn & Sample, 2013). Such stereotypical views suggest that judicial decisions are often dependent on the offender's race (Spohn & Sample, 2013). Given



that African Americans are more likely to be charged with crack cocaine related offenses, this group generally faces a larger number of convictions associated with this drug and are less likely to have their charges dismissed or receive probation (Free, 1997).

Utilizing the Monitoring of Federal Criminal Sentences 1991-1992 data for defendants convicted of crack cocaine, powdered cocaine, heroin, or methamphetamine offenses, Albonetti (1997) reveals that federal defendants face sentencing disparity based not only on offense related variables as prescribed by the guidelines, but also based on personal characteristics such as race and gender. She concludes that federal sentencing guidelines have failed to eliminate racial disparity for drug offenders (Albonetti, 1997). Spohn & DeLone (2000) observe that sentencing disparity may result from guidelines that give judges greater latitude in low level offenses. Consequently, some judges may rely on superfluous irrelevant legal factors to influence their sentencing decision (Spohn & DeLone, 2000). Moreover, African American defendants are sentenced more severely than white defendants in federal drug crimes and tend to benefit less from sentencing guideline departures by judges (Albonetti, 1997).

Everett and Wojtkiewicz (2002) find harsher sentences for African Americans arrested for drug offenses. Even when controlled for offense related variables, African Americans are twenty-two percent more likely to receive greater sentences than whites (Everett & Wojtkiewicz, 2002). In an analysis of 9,690 habitual Florida offenders in fiscal year 1992-1993, Crawford et al. (1998) find sentencing disadvantages for African Americans especially for drug offenses. Myers (1989) finds greater disparity in sentencing among African Americans for drug distribution and drug usage as compared to white drug offenders while Spohn (2000) reports that African Americans receive 14.09 months lengthier sentences than whites for drug offenses through studies conducted in Georgia and Kansas City respectively.

In contrast, certain previous scholarship concludes that African Americans are treated more favorably than whites in the sentencing phase (Bernsteem et al., 1977; Miethe & Moore, 1986; Myers & Talarico, 1986; Peterson & Hagan, 1984). Bernstein et al. (1977) posits that a sub-cultural differences force leniency from prosecutors and judges towards African American defendants. In a stratified sample of more than 16,000 inmates from the Georgia Department of Corrections, Myers and Talarico (1986) found no racial sentencing differences based on “urbanization, economic inequality, or the seriousness of the crime problem” (p. 245). Petersilia (1983) offers the charges of discrimination in sentencing length are meaningless unless all other factors are the same. Still other research uncovers no difference between African Americans and whites in sentencing outcomes (e.g., Engen & Gainey, 2000).

### **Parole Status Prior to Adjudication**

While Demuth (2003) and Schlesinger (2008) find that African Americans are slightly more likely to be held prior to sentencing, Crew (1991) and Spohn (2013) conclude that African Americans are more than two times more likely to be held prior to sentencing. As race or gender are not explicit judicial factors; yet other factors such as family ties, employment, financial resources, community ties, and criminal history are indirectly linked to race and gender and influence judges’ decision to order pretrial detention (Spohn, 2013). In a study of ten federal courts, Albonetti et al. (1989) find that the lack of economic resources rather than the direct effect of race impact pre-trial release outcomes.

Evidence reveals that offenders who are detained prior to adjudication receive harsher sentences than those offenders who are released on bond or on personal recognizance (Chiros & Bales, 1991; Crew, 1991; LaFrenz & Spohn, 2006; Sutton, 2013). In a study of drug offenders from three U.S. District courts collected from fiscal years 1998, 1999, and 2000, LaFrenz and

Spohn (2006) reports that offenders held in custody prior to sentencing receive on average an eight month longer sentence with African Americans held in custody garnering a year and a half longer sentences. Spohn (2013) reveals that pre-trial detention indirectly leads to lengthier sentences for African American offenders.

Although it is well established that offenders who are detained prior to sentence plead guilty at a greater rate and consequently receive discounted sentences, sentencing discounts afforded to African American offenders who choose to plead guilty are less than the discounts given to white offenders who plead guilty (Sutton, 2013). Consequently, African Americans are offered and accept guilty pleas less often than their white counterparts thus leading to longer sentences (Sutton, 2013). In a random sample of ten percent of the males committed to Kentucky state prisons during 1980, Crew (1991) establishes that pleading guilty appears to benefit white offenders, but not African American offenders. Detained individuals are far less capable of defending themselves, thus potentially exposing a racial component in the ability to bargain effectively for reduced or dismissed charges (Crew, 1991).

### **Plea Agreement**

In the United States nearly ninety five percent of felony convictions are settled by a guilty plea (Fazal-Gazal & Tor, 2012). Most states follow sentencing guidelines and determinant sentences laws that restrict sentencing discretion and sentence bargaining (Sutton, 2013). Standen (1993) and Stuntz (2001) argue that such conditions allow prosecutors to overcharge in order to encourage guilty pleas. Previous research finds that pleading guilty significantly reduces the length of sentence (Albonetti, 1991; Hagan et al., 1980; Miethe, 1987; Rhodes, 1991; Ulmer & Kramer, 1996). Controlling for guideline variables, Albonetti (1997) finds that sentencing

length is impacted by offender ethnicity as African American drug offenders receive the harshest sentences.

Utilizing a sample of felony defendants from America's 75 most populated urban counties in 2000, Sutton (2013) reveals that sentencing disparities favor whites who plead guilty by a cumulative amount of twenty-seven percent. He further reports that sentencing disparity is incurred by African American felons who are detained prior to sentencing (Sutton, 2013). LaFrenz and Spohn (2006) find that white defendants who plead guilty receive a thirty-month discount in sentence while African Americans receive a seventeen-month discount. Ultimately the practice of accepting guilty pleas discourages trials where it is generally understood that harsher penalties are imposed on defendants who are found guilty with African Americans receiving the harshest trial penalty (Kansal, 2005; Ulmer & Kramer, 1996).

### **Prior Arrest History**

An estimated 64.6 million or 27.8% of the adult population in the United States has a criminal record (Rodriguez & Emsellem, 2011). In a study of a large Pennsylvania metropolitan county, researchers found that racial differences impacting incarceration were centered on the seriousness of the defendant's previous record (Ulmer & Kramer, 1996). In the same study, judges from another county reluctantly sentence even the most egregious white defendants with prior records to prison out of concern that prison is reserved for "really bad people" (Ulmer & Kramer, 1996). Previous research also provides that African Americans are sentenced more harshly than whites even when controlling for prior criminal record and seriousness of offense (Albonetti, 1997; Crawford et al., 1998; Kramer & Steffensmeier, 1993; Mitchell, 2005).

In a multivariate analysis of the independent variable effects on sentencing to probation or prison for drug crimes, property crimes, and violent crimes, Olson (2001) reveals that

individuals previously convicted of drug offenses are six times more likely to be sentenced to prison than those without previous imprisonment. Moreover, as African Americans are more than three times more likely than whites to be sentenced for a drug law violation, race appears as an independent effect on sentencing in drug offense violations (Olson, 2001). Spohn and Spears (2000) find greater incarceration among African American felony drug violators with prior felony convictions as compared to similar white defendants, but find race as non-impactful for those without a felony conviction. In an analysis of aggregate sentencing data for 1985-1991 from two Pennsylvania counties, Ulmer and Kramer (1996) conclude that intended racial irregularities assumed eliminate by sentencing guidelines are ultimately perpetuated at other levels of the trial process most notably at the discretion of prosecutors in charge of recommending sentencing reduction.

### **Age**

Age is also an important consideration in potential sentencing disparity. Previous research finds that young African American defendants receive harsher sentences than young whites (Chiricos & Bales, 1991; Nobling et al., 1998; Spohn & Holleran, 2000). In a Pennsylvania statewide study of sentencing outcomes for 1989-1992, Steffensmeir et al. (1998) find that young African American male defendants receive harsher sentences than any other defendant group. The greatest sentencing disparity appears between young African American defendants and young white defendants (Steffensmeir et al., 1998). Among Texas drug offenders, the greatest likelihood of receiving a prison sentence appears among African American males between the ages of 22 and 30, as this group receives twenty seven percent lengthier sentences than their white counterparts (Curry & Corral-Camacho, 2008). Using data compiled by the United States Sentencing Commission and controlled for legal and contextual

factors, Doerner & Demuth (2010) reveal that young African American defendants receive harsher sentences than older defendants, black females, and whites. Racial differences in sentencing are greatest among young offenders, as the youngest African American offenders receive a five percent greater length in sentence than young white offenders for similar crimes (Doerner & Demuth, 2010).

Stereotypes leading to lengthier sentences for African Americans may not be based on race alone and may include biases against younger defendants (Spohn & Holleran, 2000; Steffensmeier et al., 1998). Young African American defendants with prior criminal records help reinforce racial stereotypes (Kluegel, 1990). Daly (1994) has studied attitudes towards sentencing lengths by judges that suggest a predisposition towards crime by young African American defendants. Judges routinely view young offenders as less culpable for their offense(s), along with a greater likelihood of committing future crime (Steffensmeier et al., 1995). As a consequence, young African American defendants, especially those under the age of twenty-five, have a forty-four percent greater chance of going to prison than other defendants (Wooldredge, 2010).

### **Education**

Deficient academic performance among African Americans has been well documented including elevated dropout rates (Ogbu, 1974). The status ‘dropout rate’ refers to individuals 16 to 24 years of age who are not currently enrolled in high school and have not earned a high school equivalency such as a GED (National Center for Education Statistics, 2014). Potential causes for dropout may include poor academics, truancy, disciplinary problems, ineffective family education, devaluation of education, family poverty, and outside responsibilities (Bonikowske, 1987; Ekstom et al., 1987; Nariello et al., 1990; Ogbu, 1990; Roderick 1993).

Jordan et al. (1996) reveal push pull effects for student dropout and confer schoolwork failure, safety fears, and expulsion/suspension as general reasons for student dropout. Stephens and Repa (1992) confirm expulsion/suspension as one of the highest reasons given by African American inmates for dropping out of high school. White inmates reported wanting to work full time as the primary reason for dropping out with expulsion/suspension ranking near the bottom as a reason for their dropping out of school (Stephens & Repa, 1992).

Inadequate education is listed among the central causes of incarceration (Loury, 2010). Utilizing 1985 data for 200 U.S. counties, Sampson and Laub (1993) reveal that high school can be a critical turning point for individuals. In an assessment of future incarceration risk based on the life events of young men aged 19-36, Beatie and Arum (1999) find that an individual's experiences in high school impacts the chance of incarceration. Poor school performance and low grades also contribute to lower life chances and criminal behavior (Hagen et al., 1996). The National Center for Education Statistics (2014) reports that the 1990 and 2012 high school dropout rate among African Americans was thirteen and eight percent respectively; while the dropout rate for whites was nine and four percent for the same years.

Low educational outcomes and incarceration are associated as a modal life event for many African Americans (Pettit & Western, 2004). By 2008, 37% of African American dropouts were incarcerated (Western & Pettit, 2010). Along with a more punitive criminal justice system, researchers agree that insufficient schooling among the urban population has led to the rise in imprisonment since the 1970s (Wilderman & Western, 2010). Conversely, utilizing data from the National Longitudinal Survey of Youth 1997 Cohort, Sweeten et al. (2009) report high school dropout as a negligible effect on subsequent delinquency once all variables are taken into consideration.

### **Employment Status upon Arrest**

While not fully supported by research, more orthodox ideology accepts that crime increases during periods of heightened unemployment, consequently causing a greater judicial response during such periods (Box & Hall, 1985). Box and Hall (1985) and Greenberg (1977) posit that despite the consequences of other conditions, unemployed defendants face confinement to prison at greater levels than their employed counterparts. Young unemployed African American males are stereotyped by some judges as criminally predisposed and consequently treated more harshly at sentencing (Kennedy, 1997). As unemployment rates are consistently higher among African Americans than among whites, judges may view unemployment as a temporary condition for white offenders, but as a perpetual condition for African American offenders (Nobling et al., 1998). Harsher sentences imposed upon young African American males may also result from a perceived group threat coupled with views that African American offenders are more likely to continue nefarious activities (Lafrenz & Spohn, 2006).

Previous research concludes that unemployed African American offenders are sentenced more harshly than white offenders (Chiricos & Bales, 1991; Nobling et al., 1998; Spohn & Holleran, 2000). In an analysis of 1,970 criminal defendants arrested in two Florida counties in 1982, Chiricos and Bales (1991) find that African Americans face an odds ratio of 3.9 for pretrial detention and a 2.5 odds ratio for incarceration upon sentence. In a two-city study, Nobling et al., (1998) find that unemployment is associated with lengthier sentences for African Americans in Kansas City. The scholars only uncover an association between unemployment and more frequent incarceration in Chicago, but not between unemployment and lengthier prison sentences (Nobling et al., 1998). Spohn and Holleran (2000) analyze data of 6,638 offenders convicted felons in three large U.S. metropolitan cities and find that unemployed African American drug



offenders face a greater chance of incarceration than whites, but fail to exhibit an association between race and lengthier prison sentences.

### **Parental Incarceration**

Previous research recognizes the consequences on adolescents of incarcerated parents (Hagen & Dinovitzer, 1999). Murray and Farrington (2008) associate parental incarceration with antisocial behavior and negative socioeconomic outcomes in a working class inner-city area of South London (Murray & Farrington, 2008). The scholars use data from the Cambridge Study in Delinquent Development (CSDD) comprised of 411 males who were first contacted in 1961-1962 (Murray & Farrington, 2008). In an analysis of 132 randomly selected U.S. schools comprised of grades 7 to 12, Foster and Hagen (2007) identify parental incarceration as a root cause of social exclusions for maturing adolescents. In an analysis of 15,117 children born in 1953, Murray et al. (2007) find an association between parental incarceration and criminal involvement. New generations of children are in danger of following their parents' path to imprisonment since parental incarceration potentially increases the risk of future crime and incarceration among the children of confined parents (Glueck & Glueck 1950; Hagan & Palloni 1990; McQuaide & Ehrenreich, 1998; Murray & Farrington 2005).

As children of incarcerated parents tend to live in communities wrought with high levels of incarceration, including familial incarceration, some children/communities are socialized to accept prison as a normal life course (Reed & Reed, 1997). For African American children born in 1990, Wakefield and Wildeman (2011) estimate that there is more than a twenty five percent risk of parental imprisonment by the age of fourteen as compared to less than a four percent chance among whites born in the same year. Children of incarcerated parents are five to six times more likely to encounter the criminal justice system (Springer et al., 2000). There is a strong

association between maternal incarceration and the risk of their children's future incarceration (Huebner & Gustafson, 2007).

Research concerning racial discrimination theories suggests that the effects of parental incarceration may be greatest among African Americans and other minority families (Roettger & Swisher, 2011). In a longitudinal study of 20,700 children enrolled in grades 7 to 12 interviewed in waves from 1996, 2001-2002, and 2007-2008, the pair finds similar high level of delinquency and arrest among African Americans and whites whose fathers were incarcerated (Roettger & Swisher, 2011). Yet, incarceration may not impact children of both races equally as African Americans are disproportionately more likely to have a father incarcerated (Roettger & Swisher, 2011). As a result, young African American males who have experienced a father in prison are at greater risk of delinquency, arrest, and incarceration (Glaze & Maruschak, 2008; Wildeman, 2009).

### **Statement of the Problem**

While this research primarily concerns itself with sentencing disparity towards African Americans, the extent of the problem resonates with this country's quiet view of this group as racially distinct, innately deficient, and criminally predisposed. Consequently, racial improprieties throughout the criminal justice system appear as the norm rather than as repeated aberrations and support society's soft spoken negative view of African Americans as a whole. Therein, a continued analysis and discussion of racial problems utilizing an effective theoretical prospective such as 'Critical Race Theory' serves as a potential means of relief to the thousands of impacted African Americans and their families through the continued articulation, elevation, acknowledgement followed by the development of sound strategies to eradicate racial disparities throughout the criminal justice system.

### **Purpose of the Paper**

This paper has two primary purposes and one ancillary goal. The first purpose is to examine the possibility that African American inmates who have been convicted of a drug offense are given lengthier prison sentences and sentenced more frequently to a range of time or indeterminate sentence versus a single or flat sentence than white inmates who have been convicted on similar charges. The second purpose is to investigate the relationship between race, non-racial characteristics, sentence length, and sentence type between African American and white inmates. Therein, I hope to extend the research regarding the American criminal justice system as situationally flawed versus one that serves all groups of Americans equally.

### **Research Question & Hypothesis**

This research examines the role of race in conjunction with length and type of sentence among convicted African American and white drug offenders. This research asks if African

American inmates whose controlling offense is a drug related offense receive lengthier prison sentences and a greater number of range of time or indeterminate sentences versus single or flat sentences as compared to white inmates who have also been convicted on similar charges. Based on existing literature, I hypothesize that African Americans who are convicted for a drug related offense are punished more harshly thus receiving lengthier prison sentences and are imposed more indeterminate sentences rather than flat sentences as compared to comparable white offenders when controlling for other variables that may affect sentence length and type of sentence, specifically parole status prior to sentencing, plea agreement status, prior criminal history, education status prior to arrest, employment status prior to arrest, and parental incarceration.

## **Methods**

In order to examine sentencing disparity towards African Americans based on race and non-racial characteristics, I have conducted secondary data analysis utilizing the United States Department of Justice Bureau of Justice Statistics Survey of Inmates in State and Federal Correctional Facilities (SISCF), 2004 (United States Department of Justice, 2007). Inmate surveys were conducted from October 2003 through May 2004 and provide information ranging from current offense and sentencing data to personal characteristics, family background, and criminal history. In an effort to obtain a broad cross section of inmate responses, this research utilizes the state survey of inmates as opposed to the federal survey. While this research utilizes 2004 survey data, state prison inmate surveys were also conducted in 1974, 1979, 1986, 1991, and 1997.

## **Sample**

State inmate populations were separated into male and female frames. Facilities incarcerating both males and females were included in both sampling frames. State facilities were selected with 100% confidence if the facility population divided by the national inmate sampling interval exceeded seventy-five. Facilities were designated as self-representing (SR) if they reported medical, mental health, and geriatric care functions and held more than 1,500 males or 750 females. The remaining facilities were placed in strata based on their population after excluding the SR prisons. The 14 largest male prisons and 7 largest female prisons were selected with 100% confidence and designated as SR. The remaining 1,387 male prisons and 350 female prisons were each grouped into eight strata defined by census region; Northeast, Midwest, South, West along with New York, Florida, Texas, and California. Facilities were ordered by size of population within each stratum.

From a pool of 1,758 state prison facilities from the Bureau of Justice Statistics 2000 Census of State and Federal Correctional facilities, along with a secondary set of prison facilities which opened after the conclusion of the 2000 census, a total of 290 prisons were selected utilizing selection based on probability proportional to size, including 225 male facilities and 65 female facilities. Seven supplemental facilities were also added to the sample size for a total of 297 facilities. A total of 14 facilities failed to participate in the interview process, resulting in the addition of four reserve state facilities to the list of state correctional facilities allotted for inmate interviews.

Facility sample sizes were appropriately adjusted to ensure consistency to the 2000 census. Inmates residing in each selected facility were assigned numbers on a list. Utilizing a computerized randomly generated starting point coupled with a skip interval, individual inmates were selected to be interviewed. Non-responses resulted from an inmate's unwillingness to participate in the interview process or incomplete interviews. Interviews lasted about an hour in length and were conducted by computer-assisted personal interviewing (CAPI). The CAPI technique displayed both interview questions and follow-up questions based on the participant's response to previous questions. Inmates were provided information in writing and in person stating that participation was completely voluntary. Inmates were also informed that all responses would be held in confidence and used only for statistical purposes. In total, 14,499 completed state interviews were conducted.

### **Dependent Variables**

To analyze racial sentencing disparity, this paper utilized two dependent variables representing length of sentence and type of sentence. The sentence variable representing type of sentence asks: "For your controlling offense, is your sentence fixed or range of time

indeterminate?" Responses of single or flat responses were coded as (0) while responses of range of time or indeterminate were coded as (1). The sentence variable representing length of flat sentence ask inmate respondents: "How long is the sentence to prison for controlling offense - include any suspended time?" Since the length of sentence variable in scale form was highly skewed and not normally distributed, responses were re-coded to an ordinal format. To establish analytical consistency, all inmate length of sentencing responses were standardized to months and re-coded to represent one of three categories; short, medium, or long. The short sentence category represents inmate sentences from .03 to 48 months (0 to 4 years). The medium sentence category represents inmate sentences from 48.03 to 120 months (4 to 10 years). The long sentence category represents inmate sentences from 120.01 months or longer (10 years or more).

### **Independent Variable**

Race serves as the sole independent variable for my study. Inmate respondents were asked: "Which of these categories describes your race?" Inmate respondents who self identified as non-Hispanic white were coded as (0) and represent 36.7% of the total sample. Inmate respondents who self identified as non-Hispanic Black were coded as (1) and represent 41.2% of the total sample. As this research views race as a dichotomous relationship between non-Hispanic Blacks and non-Hispanic whites, all other racial categories and those inmate respondents who self identified as both non-Hispanic white and non-Hispanic Black were deleted from the analytical sample.

### **Additional Delimitation**

As some previous research including (Crawford et al., 1998; Everett and Wojtkiewicz, 2002; Myers, 1989; Spohn, 2000) finds harsher sentences for African Americans arrested for drug offenses, my analysis has been restricted to inmates whose controlling offense is a drug

offense. An inmate's controlling offense is understood as the primary offense charge. The delimitation of drug offense considers inmate respondents who have as their controlling conviction one of the following offenses: delivery, trafficking, sale, importation, manufacturing of cocaine or crack, possession of cocaine or crack with intent to distribute or sell, attempted distributing, trafficking of cocaine or crack, conspiracy to distribute, traffic cocaine or crack, possession/use of cocaine or crack, attempt to possess/use cocaine or crack, conspiracy to possess/use cocaine or crack, non-specified cocaine/crack, offenses, and cocaine/crack offenses other than sales-traffic, use, or possession. The variable also measures inmate respondents who have as their controlling conviction the possession, use, or trafficking of other controlled substances to include marijuana, heroin, and other unspecified drugs. Drug responses were re-coded into one variable to comprise the drug offense variable. Responses of "no" were coded as (0) while "yes" responses were coded as (1).

### **Control Variables**

Consistent with some previous research, this project views race and non-racial characteristics as major factors adversely impacting sentencing disparity against African American (e.g. Stolzenberg & D'Alessio, 1994). Coupled with racial preconceptions, unwarranted factors help reinforce societal norms held against African American defendants and the African American community in general. Most prevalent throughout the above previous research are the stereotypically views of African Americans wielded by a social institution which was ironically created to serve all Americans with unequivocal impartiality. Previous research also reveals the continued marginalization and the subsequent punishment of African Americans for failing to live up to supposed American values and standards that in actuality remain consistently beyond the group's grasp.



I have selected seven control variables in order to reflect possible explanations other than race for sentencing outcomes, as outlined in the above literature review. The control variable representing an inmate's release prior to trial asks: "Were you released between the time of your arrest (notification of charges) and the start of your trial?" Responses of "no" were coded as (0) while "yes" responses were coded as (1). The control variable representing an inmate's plea arrangement status asks: "Before your trial for your controlling offense did you reach an agreement with a prosecutor to plead guilty to a lesser charge, fewer counts, or less time?" Responses of "no" were coded as (0) while "yes" responses were coded as (1).

In an effort to evaluate an inmate's prior criminal history, two variables were developed. The control variable representing whether an inmate had ever been arrested was derived from the inmate question of: "How many times have you ever been arrested, as an adult or a juvenile, before your arrest - (controlling arrest date)?" The question elicited numeric responses. Inmate responses of zero were re-coded as "none" while all other responses were re-coded as "one or more." Responses indicating "none" were coded as (0) while responses of "one or more" were coded as (1). The control variable representing the number of previous arrests was also derived from the inmate question of: "How many times have you ever been arrested, as an adult or a juvenile, before your arrest - (controlling arrest date)?" Inmate responses were re-coded to represent two categories; "zero to two arrests" or "3 or more arrests". "Zero to two arrests" was coded as (0) while "3 or more arrests" were coded as (1).

The control variable representing an inmate's education level asks: "Did you earn a high school diploma or a GED prior to incarceration for your controlling offense?" This variable is derived from several education variables. If inmate respondents attended 0-11 years of schooling, I checked to see if they earned a GED. These respondents were combined with the respondents

who confirmed their completion of 12 years of education to create the 'high school diploma or GED' variable. Responses of "no" were coded as (0) while "yes" responses were coded as (1).

The control variable representing an inmate's recent employment status asks: "During the month before your arrest did you have a job or a business?" Responses of "no" were coded as (0) while "yes" responses were coded as (1). Lastly, the control variable representing an inmate's parental incarceration status asks: "Have any of your parents or stepparents ever been sentenced and served time in jail or prison?" Responses of "no" were coded as (0) while "yes" responses were coded as (1).

## Results

### Descriptive Analysis

The conventional idea that drug offenders are a unique subset of criminals who deserve harsher punitive responses than non-drug offenders is a belief embraced by many Americans. To assess this contention, I have selected a range of socio-demographic characteristics chosen to provide a broad perspective into the previous conditions and experiences realized by inmates prior to their incarceration and as a comparative measure between non-drug offenders and drug offenders.

Table 1 summarizes the socio-economic differences for drug offenders and non-drug offenders. The table demonstrates that African Americans are more prevalent among drug offenders as opposed to non-drug offenders; 64.5% to 51.8%. This disparity lends to the suspicion that African Americans are punished more frequently for drug offenses. For ten of the eleven variables shown in Table 1, there is a statistically significant difference between drug offenders and non-drug offenders ( $p < .05$ ). Specifically, there is a greater occurrence of African American, males among drug offenders as compared to non-drug offenders. Drug offenders are less likely to have a high school diploma or GED, to have been employed prior to arrest, to have a parent or step-parent who has been incarcerated, to have lived in a family unit prior to incarceration, to have grown up in a foster home, to have received public assistance, to have ever been homeless, and to have ever been abused. For the most part, these differences were modest in magnitude. The largest differences were in race, sex, and ever been abused. There was no relationship between type of offense and whether an inmate grew up in public housing.

Table 2 summarizes the dependent and control variables for non-drug offenders and drug offenders. This table is highlighted by several occurrences. First, the non-drug offenders received

a greater number of sentences in the range of ten or more years as compared to drug offenders. Drug offenders were sentenced more frequently to short or medium sentences as opposed to long sentences. Drug offenders were also released prior to trial more frequently than non-drug offenders. For eight of the nine variables shown in Table 2, there is a statistically significant difference between drug offenders and non-drug offenders ( $p < .05$ ). Specifically, drug offenders are more likely than non-drug offenders to have a shorter sentence, be released prior to trial, plead guilty prior to trial, have been arrested prior to controlling offense, and have three or more arrests. Drug offenders are less likely than non-drug offenders to have a high school diploma or GED, to have been employed prior to arrest and to have a parent or step-parent who has been incarcerated. The largest differences were in length of sentence and release prior to trial. There was no relationship between type of offense and type of sentence.

Table 1: Socio-demographic Characteristics of Non-Drug Offenders and Drug Offenders

		Non-Drug Offenders <sup>a</sup>		Drug Offenders <sup>b</sup>	
		Percent	Number	Percent	Number
Race (3 groups) **	Black	41.4	4733	50.3	1533
	White	38.5	4412	27.6	842
	Other	20.1	2304	22.1	675
Race (2 groups) **	Black	51.8	4733	64.5	1533
	White	48.2	4412	35.5	842
Sex**	Male	94.0	10577	90.2	2750
	Female	6.0	673	9.8	300
High school diploma or GED**	Yes	64.5	7206	58.5	1758
	No	35.5	3962	41.5	1245
Employed prior to arrest**	Yes	73.8	8039	67.1	1995
	No	26.2	2854	32.9	977
Parent or stepparent ever incarcerated*	Yes	21.1	2321	18.9	566
	No	78.9	8689	81.1	2427
Lived in family unit prior to arrest*	Yes	81.8	8880	80.0	2369
	No	18.2	1980	20.0	591
Grew up in foster home**	Yes	13.8	1503	8.9	267
	No	86.2	9397	91.1	2721
Grew up in public housing	Yes	18.1	1994	19.5	581
	No	81.9	9020	80.5	2399
Family received public assistance**	Yes	23.6	2057	19.8	462
	No	76.4	6663	80.2	1868
Ever homeless*	Yes	8.9	953	7.6	220
	No	91.1	9719	92.4	2685
Ever Abused**	Yes	17.4	1934	12.0	361
	No	82.6	9200	88.0	2655

<sup>a</sup> Non-Drug Offenders, Number of cases = 11449

<sup>b</sup> Drug offenders, Number of cases = 3050

\*p<.05, \*\*p<.001

Table 2: Dependent and Control Variables – Non-Drug Offenders and Drug Offenders

		Non-Drug Offenders <sup>a</sup>		Drug Offenders <sup>b</sup>	
		Percent	Number	Percent	Number
Length of Sentence***	0 to 4 years	30.4	2388	43.0	994
	>4 to ten years	34.8	2728	39.0	900
	>10 years	34.8	2733	18.0	417
Type of Sentence	Single or flat sentence	78.7	8689	77.6	2341
	Range of time or indeterminate sentence	21.3	2347	22.4	677
Released prior to trial***	Yes	23.5	2612	41.0	1244
	No	76.5	8512	59.0	1791
Pled guilty prior to trial*	Yes	69.9	5822	72.5	1913
	No	30.1	2510	27.5	727
Ever arrested prior to controlling offense***	1 or more	83.7	8926	87.4	2537
	None	16.3	1740	12.6	365
Number of times arrested as an adult or juvenile***	0–2	47.0	5018	42.3	1228
	3 or more	53.0	5649	57.7	1674
High school diploma or GED***	Yes	64.5	7206	58.5	1758
	No	35.5	3962	41.5	1245
Employed prior to arrest***	Yes	73.8	8039	67.1	1995
	No	26.2	2854	32.9	977
Parent or stepparent ever incarcerated**	Yes	21.1	2321	18.9	566
	No	79.9	8689	81.1	2427

<sup>a</sup> Non-Drug Offenders, Number of cases = 11449

<sup>b</sup> Drug offenders, Number of cases = 3050

\*p<.05, \*\*p<.01, \*\*\*p<.001

### **Bivariate Analysis**

To determine statistical analysis between my independent variable, control variable, and my dependent variables, it was first important to determine whether my independent variable and my dependent variables are statistically related for drug offenders. Table 3 exhibits my study's dependent variables, length of sentence and type of sentence, by my study's independent variable, race for drug offenders. The table reveals that short and medium length sentences, 0-4 years and 4-10 years, are most prevalent among drug offenders for both races. Table 3 also reflects that African American drug offenders are sentenced more frequently to long sentences of ten or more years more often than white drug offenders; 20.7% to 15.7%. Also, African American drug offenders were sentenced to range of time or indeterminate sentences more often than white drug offenders; 24.5 to 14.8%. For drug offenders, both dependent variables, length of flat sentence and type of sentence, demonstrated a significant relationship to the independent variable race; ( $p < .05$ ). Consequently, race was a significant predictor for length of sentence and type of sentence among drug offenders. Although both relationships are statistically significant, the relationship between race and type is stronger than between race and length.

Table 3: Length of Sentence and Type of Sentence by Race for Drug Offenders

		Race			
		Black		White	
		Percent	Number	Percent	Number
Length of Sentence	0 to 4 years	41.7	471	42.2	296
	>4 to ten years	37.6	425	42.2	296
	>10 years	20.7	234	15.7	110
$\chi^2=8.61, df=2, p=.017; \gamma=.052$					
Type of Sentence	Single or flat sentence	75.5	1147	85.2	710
	Range of time or indeterminate sentence	24.5	372	14.8	123
$\chi^2=30.613, df=1, p<.001; \gamma=.304$					



In Table 4, I viewed the relationship between my research's independent variable, race and each control variable. Notably, the table reveals a higher percentage of whites than African Americans were released prior to trial, and a higher percentage of whites had earned a high school diploma or GED prior to incarceration. With the exception of the control variable representing pled guilty prior to trial; all other control variables demonstrated a significant relationship to the independent variable race; ( $p < .05$ ). Consequently, an inmate's release status prior to trial, previous arrest status, number of previous arrests, education level, employment status prior to arrest, and previous or current parental incarceration status were significant predictors of the independent variable race. Moreover, an inmate's previous arrest status, the number of previous arrests, and educational level demonstrated the strongest relationship to the independent variable race; ( $\gamma = .223$ ,  $\gamma = .223$ ,  $\gamma = -.426$  respectively).

Table 4: Control Variables by Race for Drug Offenders

		Race			
		Black		White	
		Percent	Number	Percent	Number
Released prior to arrest	Yes	40.5	617	49.3	413
	No	59.5	907	50.7	425
$\chi^2=17.021, df=1, p<.001; \gamma =-.176$					
Pled guilty prior to trial	Yes	72.3	934	72.4	555
	No	27.7	357	27.6	212
$\chi^2=.000, df=1, p=.995; \gamma=.000$					
Ever arrested prior to controlling offense	1 or more	13.2	106	8.8	128
	None	86.8	699	91.2	1328
$\chi^2=10.71, df=1, p=.001; \gamma =.223$					
Number or times arrested as adult or juvenile	0 – 2	41.9	338	37.4	544
	3 or more	58.1	468	62.6	912
$\chi^2=10.71, df=1, p=.001; \gamma =.223$					
High school diploma or GED	Yes	54.8	835	75.1	626
	No	45.2	689	24.9	208
$\chi^2=93.963, df=1, p<.001; \gamma =-.426$					
Employed prior to arrest	Yes	63.6	945	69.9	573
	No	36.4	542	30.1	247
$\chi^2=9.403, df=1, p=.002; \gamma =-.142$					
Parent or stepparent ever incarcerated	Yes	21.6	325	17.8	147
	No	78.4	1183	82.2	677
$\chi^2=4.548, df=1, p=.033; \gamma =.117$					

Subsequently, I evaluated the relationship between each control variable and my dependent variables in Tables 5 and 6. Table 5 exhibits each control variable by the dependent variable representing length of sentence for drug offenders. The table reveals that affirmative responses for 0-4 years sentencing range were numerically prevalent over the other sentencing ranges for all the control variables. Only the control variable representing educational level demonstrated a significant relationship to length of sentence for drug offenders ( $p < .05$ ). Consequently, having a high school diploma or earning a GED prior to incarceration was a significant predictor of length of sentence for drug offenders. Moreover, an inmate's level of education demonstrated the strongest relationship to length of sentence ( $\gamma = .125$ ).

Table 6 exhibits each control variable by the dependent variable representing type of sentence for drug offenders. The table reveals affirmative responses for single or flat sentences were numerically prevalent versus range of time or indeterminate sentences for all control variables. The control variables representing plea status and educational level demonstrated a significant relationship to the dependent variable for drug offenders ( $p < .05$ ). Consequently, pleading guilty prior to trial and education level were significant predictors of type of sentence. While pleading guilty prior to trial demonstrated a positive relationship to type of sentence ( $\gamma = .123$ ), an inmate's level of education demonstrated a negative or reverse relationship to type of sentence;  $\gamma = -.103$ ). In conclusion, my statistical analysis determined that only the control variable representing education was significantly related to both the independent variable representing race and the dependent variables representing length of sentence and type of sentence.

Table 5: Control Variables by Length of Sentence for Drug Offenders (Row Percentages)

		Length of Sentence			Total N
		0–4 years	>4–10 years	>10 years	
Released prior to trial	Yes	43.7	39.2	17.1	941
	No	42.4	38.9	18.7	1366
$\chi^2=0.959$ , $df=2$ , $p=.619$ ; $\gamma=-.030$					
Pled guilty prior to trial	Yes	45.7	39.3	15.0	1458
	No	43.4	40.2	16.4	579
$\chi^2=1.193$ , $df=2$ , $p=.551$ ; $\gamma=-.046$					
Ever arrested prior to controlling offense	1 or more	43.5	38.9	17.6	1944
	None	42.0	39.4	18.6	264
$\chi^2=.234$ , $df=2$ , $p=.890$ ; $\gamma=-.027$					
Number of times arrested as an adult or juvenile	0 – 2	41.2	40.7	18.1	917
	3 or more	44.8	37.8	17.4	1290
$\chi^2=2.898$ , $df=2$ , $p=.235$ ; $\gamma=-.053$					
High school diploma or GED	Yes	40.8	38.9	20.3	1353
	No	46.4	39.0	14.6	924
$\chi^2=13.999$ , $df=2$ , $p=.001$ ; $\gamma=.125$					
Employed prior to arrest	Yes	43.1	39.3	17.6	1505
	No	43.3	38.0	18.7	742
$\chi^2=.581$ , $df=2$ , $p=.748$ ; $\gamma=-.007$					
Parent or stepparent ever incarcerated	Yes	45.6	39.0	15.4	428
	No	42.5	39.0	18.5	1844
$\chi^2=2.577$ , $df=2$ , $p=.276$ ; $\gamma=-.068$					

Table 6: Control Variables by Type of Sentence for Drug Offenders (Row Percentages)

		Type of Sentence		
		Single/flat sentence	Range of time/ indeterminate sentence	Total N
Released prior to trial	Yes	76.9	23.1	1234
	No	78.0	22.0	1778
$\chi^2=.511$ , $df=1$ , $p=.475$ ; $\gamma=.032$				
Pled guilty prior to trial	Yes	77.0	23.0	1903
	No	81.1	18.9	720
$\chi^2=5.080$ , $df=1$ , $p=.024$ ; $\gamma=.123$				
Ever arrested prior to controlling offense	1 or more	78.3	21.7	2511
	None	74.3	25.7	362
$\chi^2=2.972$ , $df=1$ , $p=.085$ ; $\gamma=-.111$				
Number of times arrested as an adult or juvenile	0 – 2	76.5	23.5	1217
	3 or more	78.8	21.2	1657
$\chi^2=2.070$ , $df=1$ , $p=.150$ ; $\gamma=-.065$				
High school diploma or GED	Yes	79.1	20.9	1739
	No	75.5	24.5	1233
$\chi^2=5.440$ , $df=1$ , $p=.020$ ; $\gamma=-.103$				
Employed prior to arrest	Yes	77.6	22.4	1972
	No	77.2	22.8	968
$\chi^2=.065$ , $df=1$ , $p=.799$ ; $\gamma=-.012$				
Parent or stepparent ever incarcerated	Yes	77.5	22.5	569
	No	77.8	22.2	2403
$\chi^2=.026$ , $df=1$ , $p=.871$ ; $\gamma=.009$				

## **Multivariate Analysis**

Based on bivariate analysis reported above, only the covariates representing race and level of education are suitable for regression analysis for either dependent variable. To analyze the effect(s) of covariate variables on this study's dependent variables, two distinct methods of regression analysis were conducted. For the dependent variable representing length of sentence, multinomial logistic regression analysis was performed. This method of regression analysis is appropriate for dependent variables consisting of three or more mutually exclusive outcome categories. Multinomial regression analysis produces covariate coefficients which serve as likelihood predictors of occurrence relative to some other occurrence. For the dependent variable representing type of sentence, binary logistic regression analysis was performed. This method of regression analysis is appropriate for dependent variables consisting of dichotomous outcome responses and covariate responses of any type. Binary regression analysis produces covariate coefficients which serve as likelihood predictors of occurrence versus non-occurrence.

Table 7 displays the results of the multinomial logistic regression analysis for the dependent variable representing length of sentence. The table exhibits the following results. The covariates representing race and level of education each exhibit a negative autonomous effect on the log odds of African American inmates and inmates who failed to earn a high school diploma or a GED receiving a short or medium sentence as compared to the reference category of sentences of ten or more years. African American inmates are 32% less likely to receive a short sentence and 38% less likely to receive a medium sentence as compared to a long sentence. Inmates who graduate from high school or obtain a GED are 40% less likely to receive a short sentence and 38% less likely to receive a medium sentence as compared to receiving a long sentence. Both covariates exhibit a significant relationship to the dependent variable representing

length of sentence for short and medium sentence ranges as compared to receiving a long sentence; ( $p < .05$ ). While the overall model fit is significant ( $p < .05$ ),  $< 1.5\%$  of variance in the dependent variable length of sentence is explained.

Table 8 displays the results of the binary logistic regression analysis for the dependent variable representing type of sentence. The table exhibits the following results. Race exhibits a positive autonomous effect on the log odds of receiving a single or flat sentence as opposed to a range of time or indeterminate sentence. African American prisoners are 1.851 times more likely to receive a range of time or indeterminate sentence as opposed to a flat sentence. Controlling for race, educational level is not a statistically significant predictor of type of sentence. While the overall model and race were significant predictors of type of sentence ( $p < .001$  respectively), only 2% of the variance in the dependent variable type of sentence is explained.

Table 7: Odds Ratio from Multinomial Logistic Regression Models Predicting Short &amp; Medium Length of Sentence as Compared to Long Sentence

	Length of Sentence			
	Short Sentence		Medium Sentence	
	Exp( $\beta$ ) (95% C.I.)	P-value	Exp( $\beta$ ) (95% C.I.)	P-value
African American <sup>1</sup>	.681 (.517-.898)	.007	.620 (.469-.818)	.001
High school diploma or GED <sup>2</sup>	.599 (.454-.791)	<.001	.620 (.468-.822)	.001

N=3049.65;  $\chi^2=22.602$ ; df= 4; p<.001; Pseudo R<sup>2</sup> (Nagelkerke) =.014

<sup>1</sup> White is the omitted category

<sup>2</sup> No high school diploma or GED is the omitted category

Table 8: Odds Ratio from Binomial Regression Models Predicting Range of time or Indeterminate Sentencing as Compared to Flat Sentencing

	Exp( $\beta$ ) (95% C.I.)	P-value
African American <sup>1</sup>	1.851 (1.472-2.327)	<.001
High school diploma or GED <sup>2</sup>	1.003 (.815-1.235)	.976

N=3238;  $\chi^2=30.559$ ; df= 2; p<.001; Pseudo R<sup>2</sup> (Nagelkerke) =.020

<sup>1</sup> White is the omitted category

<sup>2</sup> No high school diploma or GED is the omitted category



## **Conclusion**

This research was conceived out of concern for the disproportionate number of African Americans currently incarcerated for drug offenses and the associated growing prison population in the United States. The disproportionate rate of incarceration among the African American population, primarily for drug offenses, has been aptly coined mass incarceration. Mass incarceration refers to confinement that surpasses the historical norms of a society and the “systematic imprisonment of whole groups of the population” (Garland, 2001, p. 2). These individuals have been ostracized from society for years with sentences that seemingly outweigh their crimes. Moreover, racial stereotypes, media images, political rhetoric, and poor judgment by some African Americans contribute to America’s view of this group as criminally predisposed (Barkan & Cohn, 2005; Devine & Baker, 1991; Edsall & Edsall, 1992; Hurwitz & Peffley, 1997).

This study examined the relationship between race and non-racial characteristics in sentencing length and sentencing type disparity. Specifically, this study explored the potential that sentencing disparity between African American and white drug offenders could be explained by non-racial characteristics; e.g. parole status prior to sentencing, plea agreement status, prior criminal history, education status prior to arrest, employment status prior to arrest, and parental incarceration rather than as a direct consequence of race. I hypothesized that African Americans who are convicted for a drug related offense are punished more harshly thus receiving lengthier prison sentences and are imposed more indeterminate sentences rather than flat sentences as compared to white drug offenders when controlling for other variables that may affect sentencing.

Consistent with some previous research, this research recognized that African Americans receive harsher penalties at sentencing (e.g. Albonetti, 1997; Demuth & Steffensmeier, 2004; Lizotte, 1978; Mitchell, 2005; Petersilia, 1983; Spohn, 1990; Spohn et al., 1981-82; Steffensmeier & Demuth, 2000, 2001; Steffensmeier et al., 1998). This research revealed a relationship between race and lengthier sentences for African American drug offenders (Everett & Wojtkiewicz, 2002). This study revealed that African American drug offenders were less likely to receive short or medium sentences as opposed to long sentences of ten years or more. Also consistent with some previous research, this research recognized the relationship between race and type of sentence (Crawford et al., 1998; Everett & Wojtkiewicz, 2002; Myers 1989; Spohn 2000). This research observed that African American drug offenders were nearly twice as likely as white drug offenders to receive a range of time or indeterminate sentence as opposed to a flat sentence.

This study's results differ with some previous research that acknowledges the collective effects of non-racial characteristics as an explanation of sentencing disparity between African American and white offenders. This research revealed that only an inmate's level of education prior to incarceration demonstrated a bivariate relationship with the independent variable race and to the study's two dependent variables of length of sentence and type of sentence. Educational level prior to incarceration was a significant predictor of an inmate's length of sentence but not type of sentence, controlling for race. Inmates who received a high school degree or GED prior to incarceration were more likely to be sentenced to terms of 10 or more years. No other non-racial characteristics observed by this study demonstrated a relationship to the independent variable, race, or the dependent sentencing variables. Subsequently, these

findings do not support the portion of my hypothesis that suggests collective non-racial characteristics contribute to sentencing disparity for African American drug offenders.

It should be noted that the preponderance of such previous research views racial sentencing disparity as the number or percentage of African Americans incarcerated as opposed to whites. However, this research evaluated sentencing disparity by using length and type of sentence. This evaluative difference, coupled with the utilization of a more expansive set of controlling factors in previous research such as, but not limited to, inmate's age upon arrest, inmate's age upon first arrest, inmate's probation history, and inmate's type of legal representation, in part offers an explanation as to why non-racial characteristics were observed to be important in previous studies, but not in this research.

Highlighted results pertaining to non-racial characteristics uncovered in previous research that were not supported in this research include the following: (Albonetti, 1997; Chiricos & Bales, 1991; Crawford et al., 1998; Kramer & Steffensmeier, 1993; Mitchell, 2005; Nobling et al., 1998; Pettit & Western 2004; Spohn & Holleran, 2000; Sutton, 2013).

- African Americans are offered and accept guilty pleas less often than their white counterparts thus leading to longer sentences (Sutton, 2013).
- Sentencing disparity is incurred among African American felons who are detained prior to trial (Sutton, 2013).
- African Americans are sentenced more harshly when controlled for prior criminal record (Albonetti, 1997; Crawford et al., 1998; Kramer & Steffensmeier, 1993; Mitchell, 2005).
- Among African Americans, there is an association between low education and incarceration (Pettit & Western 2004).

- Unemployed African American offenders are sentenced more harshly than white offenders (Chiricos & Bales, 1991; Nobling et al., 1998; Spohn & Holleran, 2000).

In summary, this study demonstrated that African Americans were less likely to receive short or medium sentences as compared to long sentences and were imposed more indeterminate sentences versus flat sentences. However, this study failed to support the entirety of my hypothesis that race along with non-racial characteristics are directly related to lengthier sentences as well as more punitive time or range of sentences for African American drug offenders.

### **Limitations and Future Research**

It is important to recognize that this analysis is not without limitations. Foremost, this analysis focused only on African American and white inmates while excluding other minority groups. This research also considered male and females as one homogenous group. Future analysis regarding racial sentencing disparity should include the racial group consisting of Hispanic Americans as this group of Americans is the most rapidly growing minority group in the United States and represents the new face of racial resentment. Future research should also consider other ethnic minority groups for example Asian and Pacific Americans for a more thorough evaluation of racial sentencing disparity. Future research should also consider looking exclusively at gender specific outcomes.

This analysis was also hindered by the inability to utilize age as a control variable. The United States Department of Justice Bureau of Justice Statistics Survey of Inmates in State and Federal Correctional Facilities (SISCF) survey asked inmates for their current age rather than their age upon arrest or age at incarceration. The available data set did not allow for inference or

interpretation of age at incarceration although previous research including Chiricos and Bales (1991), Nobling et al. (1998), and Spohn and Holleran (2000) found that young African American defendants consistently receive harsher sentences than young white defendants. Future analysis concerning sentencing disparity should consider a data set which with an expansive range of covariates, including age upon arrest or age at incarceration for the controlling offense.

This research was limited by the inability to incorporate a more expansive set of control variables as mentioned above. This research also chose to view all drug offenders as a collective group to ensure an appropriate number of observations. Future research would be wise to look at individual drug offenses such as crack, methamphetamines, and heroin as opposed to drugs as merely one group. While this research was limited to drug offenders, future research concerning sentencing disparity should also consider a more extensive selection of offenders to include both violent and non-violent offenses, potentially leading to a more thorough interpretation of sentencing disparity.

### **Potential Implications**

Although my analysis did not fully concur with my hypothesis, the independent variable representing race proved a significant predictor of length and type of sentence for African American drug offenders. While these findings are not overly surprising, opportunities exist through future research to examine racial sentencing disparity defined as length or type of sentences, as opposed to incarceration disparity solely as a numerical or a percentage difference between racial groups. Also, more current inmate data that encompasses recent changes in drug sentencing laws should be examined. The recent changes involving crack cocaine versus powder cocaine could have major legal and research implications. Perhaps as interesting would be an

evaluation of racial sentencing disparity concerning cannabis offenders as marijuana drug laws begin to change throughout the country.

While this research failed to show a significant relationship between an inmate's level of education prior to incarceration and type of sentence, it demonstrated that inmates who earned a high school diploma or GED prior to incarceration were more likely to receive long sentences of ten or more years as opposed to short or medium sentences. As this result is counterintuitive, potential explanations may include problematic assumptions in the development of this research's level of education variable, a punitive relationship between societal expectations and greater educational levels among offenders, and limited inter-activity between this study's significant control variables; race and educational level prior to arrest. This statistical anomaly deserves further investigation by future researchers of racial sentencing disparity.

Although this research failed to support my full hypothesis of non-racial bias in sentencing length and sentencing type, this research did provide evidence of racial bias in sentencing length and sentencing type disparity against African American drug offenders. Moreover, this research is consistent with the principal components of Critical Race Theory. I suspect the African American community may view these findings with limited disagreement or surprise as the existence of race and racism is a normal, yet unfortunate daily occurrence in the lives of many minorities. Conversely, some other Americans may consider these findings a result of poor decision making, a lack of intelligence, and/or a poor work ethic by the offenders under question without contemplation of the criminal justice system as anything other than 'fair and just.' Perhaps those individuals who are the most enlightened on the problems associated with mass incarceration and racial improprieties in the United States may view these findings as

evidence of contemporary social control of African Americans while the material and monetary gains of white elites and the white working class are advanced.

Regardless of one's consideration of these findings, there remains a glaring association between race, racism, and the institutional power personified by the American criminal justice system. Consequently and consistent with the activist stance implied by Critical Race Theory, it is imperative that the voices of those enlightened and concerned individuals be raised in continued denunciation of racial hostility wielded by the criminal justice system in the United States. Therein, as the American consciousness becomes more sensitive to the problems of mass incarceration, racial sentencing disparity, the loss of Black lives on a near daily basis at the hands of the police, and racial inequalities fostered by the criminal justice system in general, it is my hope that appropriate legislation, such as the Fair Sentencing Act of 2010, coupled with American sensibility will grant a full range of relief to this crisis.

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