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Defining Sentence Type

Further Evidence against Use of the Total Incarceration Variable

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The effect of legal and extralegal factors on felony sentence outcomes has been widely studied, typically using a total incarceration variable that defines sentence outcomes as incarceration or probation. Research conducted by Holleran and Spohn has called this into question, revealing that factors that affected jail sentences were different than those that affected prison sentences and demonstrating that the conclusions one would draw regarding the influence of extralegal offender characteristics such as race and ethnicity differ depending on the way in which sentence was defined. The authors replicate and extend the research conducted by Holleran and Spohn, using several operational definitions of the decision to incarcerate or not, focusing on sentence outcomes for offenders convicted of felonies in a jurisdiction with an indeterminate sentencing system. Results provide compelling evidence in support of Holleran and Spohn.

Keywords: *sentencing; prison; jail*

In 2002, just more than 1 million offenders were sentenced subsequent to felony convictions in state courts throughout the United States. Of those convicted, 41 percent were sentenced to prison, 28 percent were sentenced to a local jail, and 31 percent were sentenced to probation without incarceration (Bureau of Justice Statistics 2004a). These figures suggest that judges consider three sentencing options for felony offenders; in determining the appropriate sentence, judges differentiate not only between incarceration and probation, but also between incarceration in jail and incarceration in prison. These figures also suggest that researchers who analyze sentencing

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outcomes should use a three-category variable, rather than the traditional total incarceration variable, to measure the type of sentence.

Merging jail and prison into a single sentence outcome ignores the quantitative and qualitative differences between these two forms of incarceration. For example, many jails, including those in the jurisdiction studied here, can only legally hold inmates for less than 1 year. In 2002, for example, the average maximum sentence for offenders sentenced to jail was 7 months, compared to 53 months for offenders sentenced to prison (Bureau of Justice Statistics 2004a). In addition, although jails house pretrial detainees, misdemeanants, and offenders convicted of less serious felonies, prisons primarily house offenders convicted of serious felonies and/or offenders with more substantial prior records (Bureau of Justice Statistics 2004b). This combination of shorter sentence length and less time spent with serious offenders results in a much different "quality of life" for those who are sentenced to jail rather than prison.

There are additional qualitative differences between jail and prison sentences. Jails are generally local facilities, operated by city or county correctional systems and funded by local tax dollars; prisons are state-operated systems that often are located in rural areas far from the urban centers where most offenders and their families live (Huling 2002). Jails, by their proximity to the jurisdiction in which the case was adjudicated, facilitate the maintenance of family ties, the continuation of employment, and the continuation of mental health treatment, substance abuse treatment, and educational services. The jailed inmate's ability to maintain ties to his or her social network may enhance his or her reintegration into the community following incarceration. According to Petersilia (2003), this is not the case for prison inmates. She contends that offenders released from prison are "largely uneducated, unskilled and usually without solid family supports"; moreover, they have "the stigma of a prison record and the distrust and fear that it inevitably elicits" (p. 3). Sampson and Laub (1993:142) take a similar position, arguing that imprisonment weakens offenders' social bonds and reduces their social capital by "knifing off" opportunities to participate in conventional social life.

These quantitative and qualitative differences between jail and prison suggest that it is inappropriate to combine jail and prison sentences into a total incarceration variable, as sentencing researchers typically do. The validity of this has been demonstrated using data from the state of Pennsylvania. Steffensmeier, Kramer, and Streifel (1993:424), for example, found that females received more lenient sentences than males when the type of disposition was defined as jail or prison versus probation but not when it was defined as prison versus jail or probation or as prison versus

jail. Similarly, Kramer and Steffensmeier (1993:368) found that although race had a significant effect on the in-out decision regardless of the way in which it was defined, its effect was stronger when they used the total incarceration variable rather than either prison versus jail or probation or prison versus jail. More recently, Holleran and Spohn's (2004) research revealed that the factors that affected jail sentences were different than the factors that affected prison sentences. More importantly, their study showed that the conclusions one would reach regarding the effects of legally irrelevant offender characteristics such as race and ethnicity varied depending on the way in which the dependent variable was defined. These results led them to conclude that "separating jail sentences from prison sentences enhances our understanding of the sentencing process and the factors that affect the sentences that judges impose" (p. 236).

In this study, we replicate and extend the research conducted by Holleran and Spohn (2004). Our objective is to determine if the results of their study can be generalized to other jurisdictions with other types of sentencing practices. Their study was conducted in Pennsylvania, a jurisdiction with sentencing guidelines. In addition, their analysis included offenders convicted of misdemeanors and those convicted of felonies. Our study, which uses several operational definitions of the decision to incarcerate or not, focuses on sentence outcomes for offenders convicted of felonies in a jurisdiction, Midwestern County, with an indeterminate sentencing system.¹

Prior Research

There is a large volume of research on the relationship between extralegal factors and sentence outcomes. Because our study examines the incarceration decision and does not address sentence length, and because prior research has demonstrated that different factors predict these two sentencing decisions (Spohn 2000), our review of prior research focuses primarily on the effects of extralegal factors (i.e., sex and race/ethnicity) on the in-out decision. In addition, we limit our review to studies of sentencing outcomes in state courts. Although there is a substantial amount of federal sentencing research, there are no local federal jails, and federal judges therefore do not decide between prison and jail. Our review of past research thus focuses on state-level studies of the decision to incarcerate or not. We begin by reviewing research that investigates the effect of sex on sentence severity. We then review research focusing on the effects of race and ethnicity, followed by research that examines the interactive effects of sex, age, and race/ethnicity.

We conclude with a discussion of Holleran and Spohn's (2004) research on the use of the total incarceration dependent variable.

The Effect of Sex on Sentencing

One of the more consistent findings of sentencing research is that females are treated more leniently than similarly situated male offenders; more to the point, this research reveals that females face substantially lower odds of incarceration than males and that women who are sentenced to prison receive shorter sentences than men (for reviews of this research, see Daly and Bordt 1995; Spohn and Beichner 2000). Some researchers concluded that gender affected both the likelihood of incarceration and the length of the prison sentence (Spohn 1998; Spohn and Spears 1997; Steen, Engen, and Gainey 2005); others found that the effect of gender was confined to the in-out decision (Spohn and Holleran 2000; Steffensmeier et al. 1993). Steffensmeier and colleagues (1993), for example, examined sentences imposed under the Pennsylvania sentencing guidelines. They found that female offenders faced lower odds of incarceration than did male offenders but that gender did not affect the length of the sentence.

Although most studies find that women are less likely than similarly situated men to be incarcerated, there are some exceptions. There also is evidence that the strength of the association between sex and the decision to incarcerate varies. Two studies that used data on offenders sentenced in Pennsylvania from 1989 to 1992 found that females faced substantially lower odds of incarceration than did males (Steffensmeier, Ulmer, and Kramer 1998; Ulmer 2000). More modest effects benefiting female offenders were found by Ulmer and Johnson (2004) using 1997 to 1999 data from Pennsylvania. Research examining the effect of sex on sentences imposed in three jurisdictions (Kansas City, Chicago, and Miami) found that the offender's sex affected the likelihood of incarceration in Kansas City and Chicago but not in Miami (Nobling, Spohn, and DeLone 1998; Spohn and Beichner 2000; Spohn and Holleran 2000).

There is some disagreement among researchers on the reasons why female offenders are treated more leniently than are their male counterparts. A common theme is that the differential treatment of females is a product of judicial paternalism (Steffensmeier et al. 1993) or chivalry in sentencing (Spohn and Beichner 2000). According to this perspective, judges view females as weaker and more in need of protection than males and, as a result, are reluctant to sentence them to jail or prison. Other researchers emphasize the "social costs" of incarcerating female offenders (Daly 1989:138). Daly

(1987, 1989) suggests that judges' pretrial release and sentencing decisions are affected by defendants' family circumstances; familial defendants (i.e., those who are married and living with a spouse, living with parents or other relatives, or caring for young children) are treated more leniently than are nonfamilial defendants. According to Daly (1989), this more lenient treatment of familial defendants reflects judges' beliefs that these offenders have greater informal social control in their lives and judges' concerns about maintaining families and protecting innocent children.

Although there are some exceptions, then, most studies investigating the effect of sex on sentencing reveal that female offenders face lower odds of incarceration than do male offenders. Whether because of paternalism, chivalry, or concerns about the social costs of punishment, judges appear to be reluctant to send women to jail or prison.²

The Effect of Race/Ethnicity on Sentencing

Social scientists have conducted dozens of studies designed to untangle the complex relationship between race/ethnicity and sentence severity. In fact, as Zatz (1987:69) notes, this issue may well have been the major research inquiry for studies of sentencing in the 1970s and early 1980s. Like research on sex and sentencing, studies of the relationship between race/ethnicity and sentencing vary enormously in theoretical and methodological sophistication. They range from simple bivariate comparisons of incarceration rates for Whites and racial minorities to methodologically more rigorous multivariate analyses designed to identify direct racial effects to more sophisticated designs incorporating tests for indirect race effects and for interaction between race and other predictors of sentence severity. The findings generated by these studies and the conclusions drawn by their authors also vary.

A comprehensive review of this body of research is beyond the scope of this article. Instead, we summarize the results of two reviews of the research (Chiricos and Crawford 1995; Spohn 2000) and then discuss in more detail the findings of two recent and methodologically sophisticated studies. Chiricos and Crawford (1995) reviewed 38 studies published between 1979 and 1991 that included a test for the direct effect of race on sentencing decisions in noncapital cases. Unlike previous reviews, they distinguished results involving the decision to incarcerate or not from those involving the length of sentence decision. Chiricos and Crawford also considered whether the effect of race varied depending on structural or contextual conditions. They asked whether the impact of race would be stronger "in southern jurisdictions, in places where there is a higher percentage of

Blacks in the population or a higher concentration of Blacks in urban areas, and in places with a higher rate of unemployment” (p. 282).

The authors’ assessment of the findings of these 38 studies revealed “significant evidence of a *direct* impact of race on imprisonment” (Chiricos and Crawford 1995:300). This effect, which persisted even after the effects of crime seriousness and prior criminal record were controlled, was found only for the decision to incarcerate or not; it was not found for the decision on length of sentence. The authors also identified a number of structural contexts that conditioned the race-imprisonment relationship. Black offenders faced significantly greater odds of incarceration than did White offenders in the South, in places where Blacks composed a larger percentage of the population, and in places where the unemployment rate was high.

Spohn’s (2000) review of noncapital sentencing research that used data from the 1980s and 1990s also highlighted the importance of attempting to identify the context in which and the circumstances under which race/ethnicity affected sentence outcomes. Consistent with the conclusions of Chiricos and Crawford (1995), Spohn (2000) reported that many of these studies found a direct race effect. At both the state and federal levels, there was evidence that Blacks and Hispanics were more likely than Whites to be sentenced to prison; there also was some evidence that Blacks received longer sentences than did Whites.

Noting that “evidence concerning direct racial effects . . . provides few clues to the circumstances under which race matters,” Spohn (2000:458) also evaluated the 40 studies included in her review for evidence of indirect or contextual discrimination. She found that the combination of race/ethnicity and other legally irrelevant offender characteristics produced greater sentence disparity than did race/ethnicity alone and that the race of the victim interacted with the race of the offender to produce harsher sentences for Blacks convicted of crimes against Whites. She also found that some studies revealed that process-related factors conditioned the effect of race/ethnicity on sentence severity; pleading guilty, hiring a private attorney, or providing evidence or testimony in other cases, for example, resulted in greater sentence discounts for White offenders than for Black or Hispanic offenders.

Two recent studies illustrate the ways in which the effects of race and ethnicity on sentence outcomes are conditioned by other variables, including the type of offense and the offender’s prior criminal record. Steffensmeier and Demuth (2001) compared the sentences imposed on White, Hispanic, and Black offenders convicted of drug and nondrug offenses. They found that Blacks were 6 percent more likely and Hispanics were 18 percent more likely than Whites to be incarcerated in nondrug cases. In drug cases, there

was a 7 percentage point difference in the probabilities of incarceration for Blacks and Whites and a 26 percentage point difference in the probabilities for Hispanics and Whites. For both types of crimes, but particularly for drug offenses, Blacks faced higher odds of incarceration than did Whites, and Hispanics faced a higher likelihood of incarceration than did both Whites and Blacks.

Steffensmeier and Demuth (2001) stated that their findings were consistent with hypotheses “drawn from the writings on prejudice and intergroup hostility suggesting that the specific social and historical context facing Hispanic Americans will exacerbate perceptions of their cultural dissimilarity and the ‘threat’ they pose” (p. 170). They illustrated this with comments made by a judge in a county with a rapidly growing Hispanic population, who noted that “the whole area has changed with the influx of Hispanics and especially Puerto Ricans. . . . There’s more dope, more crime, more people on welfare, more problems in school” (p. 168). This judge’s comments suggest that concerns about changes in the racial/ethnic makeup of a community, coupled with stereotypes linking race and ethnicity to drug use and drug-related crime and violence, may interact to produce harsher treatment of racial minorities by criminal justice officials who have always “prided themselves for not being prejudiced” (Greenberg 2002: 330). According to Greenberg (2002), individuals who have ambivalent attitudes about race “may engage in automatic invidious stereotyping and may act on the basis of these stereotypes” (p. 170).

Research conducted in Washington State also examined the interactive effects of race and stereotypes about drug dealing on sentencing decisions in drug cases. Steen et al. (2005) interviewed criminal justice officials about their perceptions of typical drug cases and drug offenders and the factors they used to differentiate among drug cases. They found that decision makers used three offender characteristics—gender, prior record, and whether the offender was using or dealing drugs—to construct a stereotype of a dangerous drug offender. Males with prior felony convictions who were convicted of drug delivery offenses involving cocaine, heroin, or methamphetamine were perceived as more dangerous and threatening than other types of drug offenders. Steen and her colleagues also found that African Americans were more likely than Whites to have all of the characteristics of a dangerous drug offender; 16 percent of the African Americans, but only 6 percent of the Whites, were male offenders with prior felony convictions who were convicted of drug dealing. According to the authors, “This disproportionality, along with cultural stereotypes, makes decision makers more inclined to expect this ‘worst case’ behavior from black offenders (especially black males) than from white

offenders” (p. 444). As a result, Whites who match the stereotype of a dangerous drug offender will be seen as atypical, and their behavior will be subjected to more judicial scrutiny; African Americans who match the stereotype, on the other hand, will be perceived as typical, and their cases will be handled in a routine fashion.

The results of the authors’ analysis of the decision to incarcerate or not revealed that African Americans were substantially more likely than Whites to be incarcerated and that offenders whose characteristics matched those of the dangerous drug offenders had higher odds of incarceration than offenders whose characteristics were at odds with the stereotype. Males were 56 percent more likely than females to be incarcerated, and the odds of incarceration were 23 times greater for dealers than for nondealers and 8 times greater for offenders with prior felony convictions than for those without prior felonies. When the authors partitioned the data by the race of the offender, they found that although being a drug dealer had a significant effect on the likelihood of incarceration for both White offenders and African American offenders, it had a significantly larger effect for Whites than for Blacks. Being a dealer increased the odds of incarceration 27 times for White offenders, compared to 9 times for African American offenders (Steen et al. 2005:451). Further analysis revealed that fitting the stereotype of a dangerous drug offender (i.e., a male dealer with prior felony convictions) also affected the likelihood of incarceration for White offenders more than for African American offenders (Steen et al. 2005:454).

The authors interpreted their finding that matching the stereotype of a dangerous drug offender had a more pronounced effect on the severity of the sentence for Whites than for African Americans as reflecting “greater leniency in the sentencing of less-threatening white offenders, compared to Blacks, as opposed to greater punitiveness in the sentencing of the most threatening white offenders” (Steen et al. 2005:460). In other words, all offenders—Whites and African Americans—who matched the stereotype of a dangerous offender were sentenced to jail or prison; probation was not an option for these dangerous offenders. Among less serious offenders, on the other hand, judges sent Whites to jail or prison less often than African Americans. The authors concluded that their results suggested that “decision makers are more likely to define low-level black offenders as a threat to public safety, and therefore deserving of incarceration, than similarly situated white offenders” (p. 461).

The results of these studies, then, demonstrate that the criteria used by judges to determine the appropriate sentence will vary depending on the nature of the crime and the defendant’s prior criminal record. More to the

point, they demonstrate that the effect of race on sentence severity will vary. Judges impose harsher sentences on African Americans than on Whites under some circumstances and for some types of crime; they impose similar sentences under other circumstances and for other types of crime.

Interactions among Legally Irrelevant Offender Characteristics

In a recent article exploring the convergence of race, ethnicity, gender, and class on court decision-making, Zatz (2000) urged researchers to consider the ways in which offender (and victim) characteristics jointly affect case outcomes. As she noted, "Race, gender, and class are the central axes undergirding our social structure. They intersect in dynamic, fluid, and multifaceted ways" (p. 540).

The findings of a series of studies conducted by Darrell Steffensmeier and his colleagues at Penn State University illustrate these intersections. Research published by this team of researchers during the early 1990s concluded that race (Kramer and Steffensmeier 1993), sex (Steffensmeier et al. 1993), and age (Steffensmeier, Kramer, and Ulmer 1995) each played a role in the sentencing process in Pennsylvania. However, it is interesting to note, especially in light of their later research findings (Steffensmeier et al. 1998) that the team's initial study of the effect of race on sentencing concluded that race contributed very little to our understanding of judges' sentencing decisions (Kramer and Steffensmeier 1993:370). Although the incarceration (jail or prison) rate for Blacks was 8 percentage points higher than the rate for Whites, there was only a 2 percentage point difference in the rates at which Blacks and Whites were sentenced to prison. These findings led Kramer and Steffensmeier (1993) to conclude that "if defendants' race affects judges' decisions in sentencing . . . it does so very weakly or intermittently, if at all" (p. 373).

This conclusion was called into question by Steffensmeier et al.'s (1998) more recent research, which explored the ways in which race, sex, and age interact to influence sentence severity. They found that each of the three legally irrelevant offender characteristics had a significant direct effect on the likelihood of incarceration: Blacks were sentenced more harshly than Whites, younger offenders were sentenced more harshly than older offenders, and males were sentenced more harshly than females. More importantly, they found that the three factors interacted to produce substantially harsher sentences for one particular category of offenders, young Black males, than for any other age-race-sex combination. According to the authors, their results "illustrate the high cost of being black, young, and male" (p. 789).

The validity of this assertion is confirmed by the results of a replication and extension of the Pennsylvania study. Spohn and Holleran (2000) examined the sentences imposed on offenders convicted of felonies in Chicago, Miami, and Kansas City. Their study included Hispanics and Blacks and tested for interactions among race, ethnicity, sex, age, and employment status. They found that each of the four offender characteristics had a significant direct effect on the decision to incarcerate or not in at least one of the jurisdictions. In Chicago, both Black offenders and Hispanic offenders were more likely than White offenders to be sentenced to prison; in Miami, Hispanics (but not Blacks) faced higher odds of incarceration than did Whites. Male offenders were substantially more likely than female offenders to be sentenced to prison in Chicago and Kansas City, and unemployed offenders faced significantly higher odds of incarceration than employed offenders in Kansas City. In all three jurisdictions, offenders aged 21 to 29 were about 10 percent more likely than offenders aged 17 to 20 to be sentenced to prison (Spohn and Holleran 2000:291-92). Race, ethnicity, sex, age, and employment status, then, each had a direct effect on the decision to incarcerate or not.

Like Steffensmeier and colleagues (1998), Spohn and Holleran (2000) found that various combinations of race/ethnicity, sex, age, and employment status were better predictors of incarceration than any variable alone. They found, for example, that young Black and Hispanic males were consistently more likely than middle-aged White males to be sentenced to prison. These offenders, however, were not the only ones singled out for harsher treatment. In Chicago, young Black and Hispanic males and middle-aged Black males faced higher odds of incarceration than middle-aged White males. In Miami, young Black and Hispanic males and older Hispanic males were incarcerated more often than middle-aged White males. And in Kansas City, both young Black males and young White males faced higher odds of incarceration than did middle-aged Whites. These results led Spohn and Holleran to conclude that "in Chicago and Miami the combination of race/ethnicity and age is a more powerful predictor of sentence severity than either variable individually, while in Kansas City age matters more than race" (p. 301).

The results of these recent studies (for interactions between race/ethnicity and sex, see also Spohn and Beichner 2000; Steffensmeier et al. 1993) highlight the importance of testing for intersections among sex, race/ethnicity, age, and other legal and extralegal variables. Although each variable may have a direct effect on the decision to incarcerate or not, combinations of these characteristics may be more powerful predictors than any single characteristic alone.

Use of the Total Incarceration Variable

We turn now to the research conducted by Holleran and Spohn (2004) examining the use of the total incarceration variable. Their study included misdemeanor and felony convictions for Philadelphia County, Pennsylvania, in 1998. The authors first examined the predictors of sentence outcomes using the total incarceration variable typically used in the studies reviewed above. Their results mirrored the results of the prior research; that is, the legally relevant variables of offense seriousness and prior record were the primary predictors of the decision to incarcerate (in jail or prison) or not. They also found that males were more likely than females to be incarcerated and that Hispanic offenders faced higher odds of incarceration than White offenders did. Age, on the other hand, was not a significant predictor of the decision to incarcerate or not.

When they examined the decision to sentence the offender to prison rather than jail (with probation cases excluded), Holleran and Spohn (2004) found that the offender and case characteristics included in the model did predict whether the offender would be sentenced to prison rather than jail. Both the offense gravity score and the prior record score affected the odds of a prison sentence; the likelihood of prison sentence rather than a jail sentence also was affected by the type of disposition in the case, with defendants who pled guilty having a lower likelihood of prison than defendants who went to trial. Regarding the extralegal variables, sex and age were not significant factors in the jail or prison decision, either in the overall model or in the models partitioned by race/ethnicity. However, Hispanic offenders faced higher odds of imprisonment than either White or Black offenders. Based on these results, Holleran and Spohn (2004) concluded that prison and jail sentences are not indistinguishable; rather, "offender and case characteristics . . . predict whether an offender will be sentenced to prison rather than jail" (p. 230).

Further confirmation of this was provided by the results of their multinomial logistic regression analysis. For example, the authors found that the offense gravity score had a significantly greater effect on the decision to sentence the offender to prison (rather than probation) than on the decision to sentence the offender to jail (rather than probation; Holleran and Spohn 2004:226). Similarly, the type of disposition in the case had no effect on the odds of a jail sentence, but offenders who pled guilty were less likely than those who went to trial to be sentenced to prison rather than probation. The effects of some of the offender characteristics were similarly variable.

Prior research using the total incarceration dependent variable has made important contributions to our understanding of the factors that affect sentence outcomes. However, the results of the study conducted by Holleran and Spohn

(2004) raise serious questions about the validity of this approach. As they noted,

The multinomial logistic regression specification, in which the odds of receiving prison and the odds of receiving jail are each compared to the odds of receiving probation, provides a more meaningful picture of the disposition decision than the binomial logistic regression with the total incarceration response variable. (p. 235)

Their study demonstrated not only that the effects of offender and case characteristics vary depending on the way in which the in-out decision is defined, but also that combining jail and prison sentences into a single category masks differences in the types of sentences imposed on male and female offenders and on White, Black, and Hispanic offenders.

In this study, we replicate and extend the research conducted by Holleran and Spohn (2004). Using data on offenders bound over for trial in a Midwestern jurisdiction (hereafter, Midwestern County) with an indeterminate sentencing scheme, we examine the predictors of sentence outcomes using a set of dependent variables measuring the type of sentence imposed by the judge. Like Holleran and Spohn, our primary objective is to determine if the factors that influence the type of sentence vary depending on the way in which the type of sentence is defined. Our second objective is to extend the research conducted by Holleran and Spohn by determining if our conclusions regarding the effects of race, sex, and age vary depending on the operational definition of the type of sentence.

Method

This study examines the sentencing decisions of judges in an urban county in the Midwestern United States; we refer to this county as Midwestern County. We apply the methods used by Holleran and Spohn (2004) in their examination of sentencing decisions in a jurisdiction with mandatory sentencing guidelines to a jurisdiction without sentencing guidelines. Midwestern County is an urban district court that utilizes indeterminate sentencing.

The data for the present study were collected by Spohn and Piper (2004) for a study of felony case processing in Midwestern County. The data file includes information on all felony offenders bound over for trial in Midwestern County District Court in 2001. The original data file contained 2,663 cases. For the purposes of this research, we eliminated cases that

were assigned to the adult drug court ($n = 255$) or transferred to juvenile court ($n = 31$). Because very few offenders were Hispanic ($n = 61$), Native American ($n = 24$), Asian ($n = 2$), or another race ($n = 8$), these cases were eliminated. To ensure that the cases being examined were those in which the judge had discretion to determine the type of sentence, we also eliminated cases where neither probation nor jail was a realistic option. This included cases in which the most serious conviction charge was murder or manslaughter ($n = 10$), forcible rape ($n = 29$), and armed robbery ($n = 26$); for these three types of offenses, all but 3 of the offenders were sentenced to prison. Finally, because we are only interested in offenders who were convicted and sentenced to prison, jail, or probation, cases that were dismissed ($n = 641$) or that were still pending at the time of data collection ($n = 78$), and cases involving offenders who were given an alternative disposition ($n = 11$), were excluded from the analysis. The cases included in the analysis ($N = 1,487$) involve offenders who were bound over for trial on felonies and who were convicted and sentenced to probation, jail, or prison. The dependent and independent variables used in the study are presented in Table 1. For each independent variable, we present the number and percentage of offenders who received each sentence type.

Dependent and Independent Variables

The dependent variables used in this study are dichotomous and trichotomous indicators of the type of sentence imposed on the offender. The first variable is the traditional total incarceration variable; for this variable, offenders who were sentenced to either jail or prison ($n = 981$) are compared to those who were sentenced to probation ($n = 506$). The second dependent variable compares offenders who were sentenced to prison ($n = 553$) to those who were given either a jail or a probation sentence ($n = 934$). Our final dependent variable is a trichotomous variable that differentiates among offenders who were sentenced to probation, jail, and prison.

In all of the analyses, we control for the characteristics of the offender and legally relevant case characteristics. Variables measuring offender characteristics include age, race (White = 0, Black = 1), and sex (male = 1, female = 0). Age is a continuous variable. Measures of the offender's prior record include whether the offender was previously convicted of a prior violent felony (no = 0, yes = 1) and the offender's number of prior felony convictions.

The case characteristics included in the analysis are the number of charges filed, the number of conviction charges, the type of conviction charge, the mode of conviction (guilty plea = 1, trial = 0), and whether the offender was detained in jail prior to trial (released = 0, held in jail = 1). The

Table 1
Offender and Case Characteristics by Type of Sentence

Offender Characteristics	Probation ^a		Jail ^b		Prison ^c	
	<i>n</i>	Percentage	<i>n</i>	Percentage	<i>n</i>	Percentage
Age (mean)	33.37		35.27		34.58	
Race						
White	322	38.8	198	23.9	308	37.3
Black	184	27.9	230	34.9	245	37.2
Sex						
Male	375	30.7	364	29.8	483	39.6
Female	131	49.4	64	24.2	70	26.4
Case characteristics						
No. of prior felony convictions						
0	348	47.5	191	26.1	192	26.4
1	107	32.3	104	31.4	120	36.3
2	28	16.4	54	31.6	89	52.0
3 or more	23	9.1	79	31.1	152	59.8
Prior violent felony conviction						
Yes	25	14.7	49	28.8	96	56.5
No	481	36.5	379	28.8	458	34.7
Number of charges filed						
1	182	40.8	145	32.5	118	26.7
2	137	37.0	105	28.4	128	34.6
3	83	33.2	72	28.8	95	38.0
4	40	25.5	48	30.6	69	43.9
5	29	32.6	23	25.8	37	41.6
6 or more	35	19.9	35	19.9	106	60.2
Number of conviction charges						
1	424	38.8	341	31.2	328	30.1
2	57	20.8	71	25.9	146	53.3
3 or more	25	21.0	15	12.6	79	66.4
Type of conviction charge						
Violent offense	46	26.0	22	12.4	109	61.6
Drug offense	156	39.2	123	30.9	119	29.9
Property offense	304	33.3	283	31.0	326	35.7
Defendant plead guilty						
Yes	458	33.9	380	28.1	513	38.0
No	48	35.0	48	35.0	41	29.9

(continued)

Table 1
(continued)

Offender Characteristics	Probation ^a		Jail ^b		Prison ^c	
	<i>n</i>	Percentage	<i>n</i>	Percentage	<i>n</i>	Percentage
Defendant in custody before trial						
Yes	137	20.0	224	32.7	324	47.3
No	366	45.9	204	25.6	228	28.6

a. *n* = 506.

b. *n* = 428.

c. *n* = 553.

type of conviction charge was measured using three dummy variables: violent crime, drug offense, and property crime; in all of the analyses, violent crime is the reference category.³

Method of Analysis

We begin the analysis by examining the total incarceration variable. That is, we examine the effect of offender and case characteristics on the decision to sentence the offender to jail or prison rather than probation. We also investigate the effects of offender and case characteristics on the decision to sentence the offender to prison rather than jail or probation. For these dichotomous variables, the use of ordinary least squares (OLS) regression is inappropriate, as this technique does not produce accurate estimates of the coefficients of the independent variables. The more appropriate technique for regression analysis with dichotomous dependent variables is binary logistic regression (Studenmund 1997). Although the results of OLS regression are interpreted as the change in the dependent variable that is produced by a one-unit change in each of the independent variables, interpretation of the results of the binary logistic regression analysis is not as straightforward. The logistic regression coefficients are interpreted as the expected change in the log of the probability (likelihood) of the event occurring (Studenmund 1997).

Our third dependent variable is a trichotomous variable that differentiates among three different sentence outcomes: probation, jail, and prison. We use multinomial logistic regression analysis, which takes all three decision categories into account, to analyze this variable (Studenmund 1997:517). Our models of this three-category variable reflect our assumption that the sentencing judge follows a series of decision rules in determining the appropriate

sentence; our use of multinomial logit also assumes that these decisions are made more or less simultaneously.⁴ The judge first decides whether probation is an appropriate sentence. If probation is deemed inappropriate (i.e., if the judge believes that the offender deserves to be incarcerated), the judge then decides whether the offender should be incarcerated in jail or prison. Consistent with this, jail sentences are the reference category in the analysis. We compare both the likelihood that the offender would be sentenced to probation and the likelihood that the offender would be sentenced to prison to the likelihood that the offender would be sentenced to jail.

We recognize that the likelihood that an offender will be sentenced to jail rather than prison is affected by the length of the statutory maximum sentence for the crime for which the offender has been convicted.⁵ That is, an offender who is convicted of a crime for which the sentencing range is 2 to 7 years cannot, in the state in which the study was conducted, be sentenced to serve his or her sentence in a county jail. If the judge imposes an incarceration sentence, the sentence must be served in a state correctional institution. We have tried to control for this by eliminating from the analysis the crimes for which nearly all convicted offenders were sentenced to prison (i.e., murder, manslaughter, forcible rape, and armed robbery). To further ensure that our results were not biased by this, we ran all of the analyses with only those cases where the maximum sentence was 36 months or less ($n = 1,291$). The results for the variables of interest were identical to the results using all of the cases ($N = 1,487$). Therefore, we present the results using the larger sample of cases.⁶

Findings

The sentences imposed on offenders with different background and case characteristics are presented in Table 1. These data indicate that sentences vary by the offender's race and gender. Although the proportions of Black offenders and White offenders sentenced to prison are nearly identical, Whites were substantially more likely than Blacks to be placed on probation and Blacks were more likely than Whites to be sentenced to jail. Female offenders were more likely than male offenders to receive probation sentences and less likely than males to receive jail or, especially, prison sentences. The type of sentence imposed was also affected by the offender's prior criminal record and pretrial status; offenders with more serious records were more likely to be sentenced to prison, and offenders who were released pending trial were more likely to receive probation rather than either jail or prison. Not surprisingly, the odds of a prison sentence were

affected by the number of charges and by the type of conviction charge. Offenders convicted of multiple charges and those convicted of violent crimes faced higher odds of prison than did offenders convicted of a single charge or those convicted of drug offenses or property crimes.

These bivariate results suggest that the type of sentence imposed by the judge reflect both legally relevant case characteristics and legally irrelevant offender characteristics. The results of the binary logistic regression analyses, which are displayed in Table 2, confirm this. The first model is the logistic regression model for the traditional total incarceration variable. The offender's race and sex, but not the offender's age, had significant effects on the decision to incarcerate. Male offenders were more than twice as likely to be sentenced to jail or prison as were similarly situated female offenders, and Black offenders faced substantially higher odds of incarceration than did White offenders. The offender's criminal history also was a significant predictor of the incarceration decision. Each prior felony conviction increased the likelihood that the offender would be sentenced to jail or prison for the current offense. The other predictors of the decision to incarcerate or not were case characteristics: the number of conviction charges and the offender's pretrial status. The number of conviction charges had a positive effect on the likelihood of incarceration, and offenders who were detained in jail prior to trial were 3 times more likely to be incarcerated than those who were released prior to disposition.

The second model examines the decision to sentence an offender to jail or probation rather than impose a prison sentence. Although some of the results are consistent with those found for the total incarceration model, others are not. The most notable difference is the effect of the offender's race, which had a positive effect on incarceration but a negative effect on imprisonment. Black offenders, in other words, were more likely than White offenders to be sentenced to jail or prison rather than probation but were less likely than Whites to be sentenced to prison rather than jail or probation. The number of filed charges and the type of conviction offense, which did not affect the likelihood of incarceration, did predict whether the offender would be sentenced to prison or not. Offenders who were convicted of drug offenses or property crimes were substantially less likely than those convicted of violent crimes to be sentenced to prison rather than jail or probation. The variables that had similar effects on both decisions were the offender's sex, the number of prior felony convictions, the number of conviction charges, and the offender's pretrial status. Regardless of whether sentence severity was conceptualized as probation versus jail/prison or as probation/jail versus prison, males received harsher sentences than females, those with more prior felony convictions or current convictions

Table 2
Results of the Binomial Logistic Regression Analyses

	Offender Sentenced to Jail or Prison Rather than Probation			Offender Sentenced to Prison Rather than Jail or Probation		
	<i>b</i>	<i>SE</i>	Odds Ratio	<i>b</i>	<i>SE</i>	Odds Ratio
Offender characteristics						
Age	.001	.006		-.003	.006	
Race (Black = 1)	.274*	.127	1.32	-.297*	.125	.74
Sex (male = 1)	.825*	.156	2.28	.613*	.169	1.85
Case characteristics						
Number of prior felony convictions	.543*	.066	1.72	.284*	.040	1.33
Prior violent felony	.085	.260		.320	.195	
Number of charges filed	.077	.035		.105*	.030	1.11
Number of conviction charges	.231*	.099	1.26	.400*	.090	1.49
Type of conviction charge						
Drug offense	-.224	.224		-1.16*	.208	.31
Property crime	-.154	.209		-1.08*	.189	.34
Defendant pled guilty	-.012	.211		.375	.212	
Pretrial custody	1.093*	.128	2.98	.545*	.119	1.72
Constant	-1.463*	.387		-1.696*	.381	
Nagelkerke R^2		.26			.23	
Number of cases		1,482			1,482	

Note: The odds ratio is reported only for those variables that were statistically significant ($p \leq .05$).
 * $p \leq .05$.

received harsher sentences than did those with fewer prior or current convictions, and offenders who were in custody prior to trial were sentenced more harshly than those who were released pending trial.

The results of the logistic regression analysis, then, reveal that the conclusions one would reach regarding the effects of offender and case characteristics on sentence severity vary depending on the way in which the decision to incarcerate is measured. This is confirmed by the results of the multinomial logistic regression analysis, which compares the likelihood of being sentenced to jail to both the likelihood of being sentenced to probation and the likelihood of being sentenced to prison (see Table 3). The results of the analysis comparing probation to jail reveal that Black offenders were less likely than White offenders and that male offenders were less likely than female offenders to be placed on probation rather than sentenced to jail. The odds of getting probation rather than jail were also affected by the offender's prior criminal history and pretrial status. Each prior felony

Table 3
Results of the Multinomial Logistic Regression Analysis

	Offender Sentenced to Probation Rather than Jail			Offender Sentenced to Prison Rather than Jail		
	<i>b</i>	<i>SE</i>	Odds Ratio	<i>b</i>	<i>SE</i>	Odds Ratio
Offender Characteristics						
Age	-.005	.007		-.006	.007	
Race (Black = 1)	-.560*	.146	.57	-.564*	.143	.57
Sex (male = 1)	-.703*	.181	.50	.240	.199	
Case characteristics						
Number of prior felony convictions	-.464*	.069	.63	.151*	.042	1.16
Prior violent felony	.068	.289		.270	.214	
Number of charges filed	-.026	.041		.090*	.036	1.10
Number of conviction charges	.058	.131		.433*	.115	1.54
Type of conviction charge						
Drug offense	-.795*	.302	.45	-1.599*	.279	.20
Property crime	-.824*	.288	.44	-1.520*	.260	.22
Defendant pled guilty	.248	.234		.458	.236	
Pretrial custody	-1.076*	.146	.34	.026	.138	
Constant	2.465*	.475		.324	.469	
Nagelkerke <i>R</i> ²				.30		

Note: The odds ratio is reported only for those variables that were statistically significant ($p \leq .05$).
 * $p \leq .05$.

conviction decreased the likelihood of a probation sentence (and thus increased the odds of a jail sentence), and offenders who were incarcerated during the pretrial process were substantially less likely than those who were released to be placed on probation. Offenders convicted of drug offenses or property crimes were significantly less likely than those convicted of violent crimes to be sentenced to probation rather than jail.

The results of the analysis comparing jail to prison, which also are shown in Table 3, are somewhat different. The offender's sex, which did predict whether the judge would impose a probation sentence or a jail sentence, did not affect the decision to sentence the offender to prison rather than jail. Similarly, pretrial status had a significant effect on the decision regarding probation or jail but did not affect the decision regarding prison or jail. The number of filed charges and the number of conviction charges, neither of which affected the likelihood of probation, had significant effects on the likelihood of a prison sentence.

The most interesting difference revealed by the multinomial logistic regression analysis, however, concerns the effect of the offender's race. As discussed above, Black offenders were less likely than White offenders to be sentenced to probation rather than jail; Black offenders, however, were also less likely than White offenders to be sentenced to prison rather than jail. Stated another way, Black offenders were treated more harshly than White offenders when the choice was between probation and jail, but White offenders were treated more harshly than Black offenders when the choice was between jail and prison.

As we pointed out earlier, previous research has highlighted the importance of testing for interrelationships among the offender's race, gender, age, and sentence severity (Spohn and Holleran 2000; Steffensmeier et al. 1998). This research shows that these offender characteristics interact to produce harsher sentences for young Black (and Hispanic) males than for other categories of offenders. To explore this issue, we created four dummy variables measuring combinations of the race and sex of the offender: Black male ($n = 541$), White male ($n = 682$), Black female ($n = 118$), and White female ($n = 147$). We also created 6 dummy variables measuring the race and age of the male offenders: Black male 17 to 29 ($n = 230$), Black male 30 to 39 ($n = 121$), Black male 40 or older ($n = 190$), White male 17 to 29 ($n = 247$), White male 30 to 39 ($n = 226$), and White male 40 or older ($n = 209$).⁷ (Because there were too few female offenders in some of the categories, we were not able to examine the combination of race and age for female offenders.) We then reran the multinomial logistic regression analysis, substituting these variables for the variables measuring race, sex, and age in the original model.

The results of the analysis are summarized in Table 4 (full results are available from the authors). When we ran the analysis using the race/sex dummy variables, we found that White males, Black females, and White females were all more likely than Black males (the reference category) to be sentenced to probation rather than jail. The results for the analysis of the decision to sentence the offender to prison rather than jail showed that White males were substantially more likely than Black males to be sentenced to prison; there were no differences in the likelihood of imprisonment between Black males and either Black females or White females.

These results suggest that the harsher treatment of Black offenders found in the original analysis (see Table 3) with respect to the decision to sentence the offender to probation rather than jail is confined to males. Similarly, the results suggest that the harsher treatment of Whites revealed by the original analysis with respect to the decision to sentence the offender to prison rather than jail is confined to males. To test this, we ran the analysis again, with

Table 4
Results of the Multinomial Regression Analysis Using
Race × Sex and Race × Sex × Age Interaction Terms

	Offender Sentenced to Probation Rather than Jail			Offender Sentenced to Prison Rather than Jail		
	<i>b</i>	<i>SE</i>	Odds Ratio	<i>b</i>	<i>SE</i>	Odds Ratio
Race × sex						
Black male (reference category)						
White male	.581*	.161	1.79	.593*	.153	1.81
Black female	.763*	.262	2.14	-.141	.276	
White female	1.216*	.259	3.37	.243	.291	
Race × age (males only)						
Black male, 17-29	.518	.315		.382	.276	
Black male, 30-39 (reference category)						
Black male, 40 or older	.443	.337		.202	.282	
White male, 17-29	1.156*	.318	3.18	.968*	.439	2.63
White male, 30-39	.895*	.318	2.45	.797*	.286	2.22
White male, 40 or older	.762*	.317	2.14	.569*	.279	1.77

* $p \leq .05$.

White females as the reference category. We found that White females were not more likely than Black females ($B = -.495$, $SE = .331$) or White males ($B = -.644$, $SE = .255$) to receive a probation sentence rather than a jail sentence. We also found that White females were not more likely than Black females to be sentenced to prison rather than jail ($B = -.400$, $SE = .378$). In deciding between a probation sentence and a jail sentence, in other words, judges were more likely to give the jail option to Black males than to White males; they did not, on the other hand, give jail more often to Black females than to White females or to White males more often than to White females. In deciding between a prison sentence and a jail sentence, judges were more likely to give the prison option to White males than to Black males, but they did not sentence White females to prison more often than Black females.

Table 4 also presents the results of our analysis using the race/age dummy variables. Although prior research has shown that young Black males are singled out for harsher treatment, in Midwestern County middle-aged Black males were the offenders least likely to be sentenced to probation and most likely to be sentenced to jail. Thus, we ran the analysis with middle-aged

(30-39) Black males as the reference category. With respect to the decision to sentence the offender to probation rather than jail, we found that there were no differences between middle-aged Black males and either younger or older Black males. There were, on the other hand, significant differences between middle-aged Black males and White males, regardless of age. White males, regardless of age, had higher odds of going to prison rather than jail than did middle-aged Black males. The age of the offender, then, did not affect either of these sentencing decisions; there were no direct age effects, and age did not interact with race and sex to influence sentence severity.

Discussion

The purpose of this study was to assess the validity of using the total incarceration variable in sentencing research. More to the point, our purpose was to determine if the factors that predict the type of sentence the judge will impose, and thus our conclusions about the determinants of sentencing decisions, vary depending on the way in which the type of sentence is defined.

Our results provide compelling evidence in support of Holleran and Spohn's (2004) contention that "separating jail sentences from prison sentences enhances our understanding of the sentencing process and the factors that affect the sentences that judges impose" (p. 236). When we modeled the sentencing decision using the total incarceration variable that combined jail and prison sentences into a single category, we found that Blacks were more likely than Whites to be incarcerated and that females faced significantly lower odds of incarceration than males. Although these findings are consistent with prior research, the results of our multinomial logistic regression analysis revealed that they are misleading. The offender's sex, for example, had a significant effect on the decision to sentence the offender to probation rather than jail but did not affect the decision to sentence the offender to prison rather than jail. Moreover, the race of the offender affected decisions regarding probation and prison in different ways. Consistent with the results of the analysis using the total incarceration variable, Black offenders were more likely than White offenders to be sentenced to jail rather than probation. However, Black offenders were less likely than White offenders to be sentenced to prison rather than jail. Based on these results, it would have been inaccurate to conclude, as we would have based the results of the binary logistic regression analysis only, that Blacks were treated more harshly than Whites; similarly, it would have been misleading to conclude that males were treated more harshly than females.

Our study provided additional evidence that jail and prison are not indistinguishable punishments and thus should not be combined into a total incarceration variable. Although the number of prior felony convictions on the offender's record affected the type of sentence regardless of the way it was defined, the effects of a number of the other case characteristics did vary. The results of the multinomial logistic regression analysis revealed that the influence of the offender's pretrial status was confined to decisions regarding probation rather than jail; this variable did not affect whether the offender would go to prison rather than jail. Conversely, the number of filed charges and the number of conviction charges affected whether the judge would sentence the offender to prison rather than jail but not whether the judge would sentence the offender to probation rather than jail.

Our findings also highlight the importance of testing for interrelationships among legally irrelevant offender characteristics. Our initial multinomial logistic regression analysis revealed that both race and sex affected the likelihood of probation rather than jail. When we ran the analysis using the race/sex dummy variables, we found that Black males were significantly less likely than White males, White females, and Black females to be placed on probation rather than sentenced to jail. Moreover, there were no differences in the odds of a probation sentence between White females and Black females or between White females and White males. The effect of race, in other words, was confined to males, and the effect of sex was confined to Blacks. There was a similar pattern of results for the decision to sentence the offender to prison rather than jail. The original analysis revealed that race, but not sex, affected the likelihood of prison rather than jail. Further analysis revealed that this effect was confined to males—White males faced higher odds of a prison sentence than did Black males, but there were no differences in the likelihood of prison between White females and Black females.

Further clarification of these findings emerged when we ran the analysis with the race/age dummy variables for male offenders. Regarding the decision to sentence the offender to probation rather than jail, we found that middle-aged Black males faced lower odds of probation than did White males, regardless of age, and that there were no differences between middle-aged Black males and either younger Black males or older Black males. Age was also irrelevant to the prison versus jail decision—middle-aged Black males were sentenced to prison less often than were younger, middle-aged, or older White males but did not face lower odds of prison than did younger or older Black males.

Our results regarding the effects of race are somewhat puzzling. Our finding that Blacks—or, more specifically middle-aged Black males—were

treated more harshly than Whites when judges chose between probation and jail is consistent with other research suggesting that racial discrimination is more likely to occur in less serious cases, where judges have a considerable amount of discretion to sentence the offender to either probation or jail. In these less serious cases, Blacks tend to get jail, whereas Whites tend to receive probation (e.g., Spohn and Cederblom 1991). Our finding that Whites were treated more harshly than Blacks when the choice was between jail and prison, on the other hand, is not consistent with most prior research. Although we can only speculate, it may be that judges view Whites who commit serious imprisonable offenses as “atypical” and, thus, as deserving of harsher punishment than Blacks who commit these offenses. Farrell and Holmes (1991) make a similar argument, contending that “legal decisions [will be] influenced by the meaning court actors attribute to the offense within the context of the offender’s alternative social statuses” (p. 529). Consistent with this, Steen and colleagues (2005) suggest that socially advantaged offenders “will be perceived as more blameworthy (because they had more choices available to them)” (p. 440) and, as a result, will receive more punitive sentences than more disadvantaged offenders. Because the data file for this study does not contain an indicator of the offender’s social class, we cannot test this possibility. Nonetheless, the fact that we found harsher treatment of Whites than Blacks when the choice was between jail and prison is consistent with these suggestions.

Two other findings of this study merit comment. Contrary to prior research and traditional assumptions regarding the “trial penalty,” we found that the type of disposition in the case had no effect on the decision to incarcerate or not. Regardless of the way in which the in-out decision was defined, defendants who went to trial did not receive harsher sentences than those who pled guilty. To determine if the type of disposition affected the length of the prison sentence, we modeled sentence length using the same independent variables as were included in the multinomial logistic regression. We found that defendants who went to trial did not get longer sentences than those who pled guilty ($b = -3.124$, $SE = 2.854$, t values = -1.095). At least in this jurisdiction, judges do not penalize defendants who take their case to trial. Second, one of the indicators of the offender’s prior criminal record—whether the offender had a prior violent felony conviction—played no role in determining the type of sentence to be imposed, once the number of prior felony convictions on the offender’s record was taken into account. This suggests that judges in Midwestern County are concerned with incapacitating repeat offenders and do not give a great deal of weight to the type of crime for which the offender was previously convicted.

Conclusion

More than 20 years ago, the Panel on Sentencing Research, noting that the “sentences available to judges typically include choices among a number of qualitatively different options” (Blumstein et al. 1983:81), called on researchers to use measures of sentence severity that reflect the options available to judges. This admonition notwithstanding, many of the studies published during the past two decades have continued to use a total incarceration variable that combines the “qualitatively different options” of jail and prison. Our findings, coupled with the findings reported by Holleran and Spohn (2004), suggest that this approach increases the risk of measurement error and may lead to inaccurate or misleading conclusions regarding the determinants of sentencing decisions. It is overly simplistic to conceptualize the sentencing decision as “in” versus “out.” Judges view probation, jail, and prison as distinctly different sentencing options; they follow different decision rules and weigh some of the offender and case characteristics differently in deciding between probation and jail and between jail and prison. Separating jail sentences from prison sentences enhances our understanding of the sentencing process and allows us to more precisely identify the factors that affect the sentences that judges impose.

Disentangling jail and prison sentences also enhances our understanding of the collateral consequences of sentencing decisions. As we noted in the introduction to this article, jail and prison sentences are quantitatively and qualitatively different types of punishment. Offenders sentenced to prison rather than jail serve longer sentences in correctional facilities that house serious repeat offenders and that often are located far from the communities where their families live. As a result, they leave prison with weakened social bonds and diminished social capital. Our finding that judges sentenced Whites to prison (rather than jail) more often than Blacks suggests that, at least in Midwestern County, the collateral consequences of imprisonment will be visited more often on White offenders and their families than on Black offenders and their families. On the other hand, our finding that judges sentenced Blacks to jail (rather than probation) more often than Whites suggests that the benefits of a probation sentence (i.e., the ability to serve the sentence in the community, continuation of education and/or employment, access to substance abuse treatment and other services) will be enjoyed less often by Black offenders than by White offenders. Sentencing decisions, in other words, have race-linked collateral costs and benefits.

Notes

1. The Pennsylvania guidelines provide both a minimum and a maximum sentence for many of the cells in the sentencing grid; the judge is expected to set both a minimum and a maximum sentence within the range. Thus, Pennsylvania has a guidelines system that uses an indeterminate sentencing system. Unlike some other jurisdictions, which generally limit jail sentences to 2 years or less, Pennsylvania allows sentences between 2 years and 5 years to be served in either a county jail or a state prison. Sentences of less than 2 years must be served in county jail, whereas those of more than 5 years must be served in prison.

2. Dramatic increases in the number of women incarcerated in state and federal prisons have led some researchers to conclude that differential sentencing of female offenders is a thing of the past. Much of this growth in women's imprisonment is attributed, not to an increase in the seriousness of crimes women commit but to the crime control policies pursued during the past 20 years. A number of authors suggest that these policies, which produced an unprecedented imprisonment binge (Irwin and Austin 1997:1), had a particularly pronounced effect on women. Chesney-Lind (1997:151), for example, contends that public calls to get tough on crime, coupled with a legal system that now espouses equality for women with a vengeance when it comes to the punishment of crime, has resulted in a much greater use of imprisonment in response to women's crime. Durham (1994) similarly asserts that "women who had previously been the beneficiary of more lenient sentencing . . . are now being treated like their male counterparts, or even more harshly" (p. 111).

3. We use these broad categories, rather than the offense types, because of the small number of cases for some of the offense types. We also ran all of the analyses with the 10 individual offense types: unarmed robbery, assault, burglary, larceny/theft, weapons offenses, possess narcotics with intent, possess narcotics, possess marijuana with intent, fraud/forgery, and other offenses. The findings for the variables of interest were identical.

4. Another approach would be to model the in-out decision as a series of binary decisions—the judge first decides between probation and some type of incarceration and then between jail and prison. However, as Studenmund (1997) has pointed out, the sequential binary logit model is "cumbersome and at times unrealistic" (p. 527), making multinomial logit a better choice.

5. The decision also would depend on whether the offender was convicted of a crime where probation was not an option or of a crime with a mandatory minimum sentence that was longer than 1 year. We have eliminated the offenses that are nonprobationable in the jurisdiction where the study was conducted. This includes forcible rape, which is the only offense that carries a mandatory sentence of more than 1 year.

6. The results of the analysis using the restricted data file are available from the first author.

7. We use these categories because there were very few offenders who were younger than 20 ($n = 13$) or older than 50 ($n = 77$).

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