UNIVERSITY OF CALIFORNIA,

IRVINE

Cumulative racial inequality of drug defendants

Submitted in partial satisfaction of the requirements for the degree of

DOCTOR OF PHILOSOPHY

In Criminology, Law & Society

by

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Finally, thank you to my family, who have supported my dreams that involved (so so) many years of school with patience and humor. I know it's hard to believe, but I'll finally no longer be a student! Fortunately for me, I'll hopefully never leave school, however.

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RESEARCH INTERESTS

Race and inequality in the criminal justice process, drug policy and drug use, sentencing, research methods

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Omori, M. (2013). Moral panics and morality policy: The impact of media, political ideology, drug use and manufacturing on methamphetamine legislation in the United States. *Journal of Drug Issues*, *43*(4), 517-534. Online at: jod.sagepub.com/content/early/2013/06/24/0022042613491101

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Smith, S.M., **Omori, M.**, Turner, S. & Jannetta, J. (2012). Assessing the implementation of the Earned Discharge Pilot Project: The importance of context, capacity, and content. *Criminology*

and Public Policy, 11(2), 381-408. Online at: onlinelibrary.wiley.com/doi/10.1111/j.1745-9133.2012.00817.x/abstract

Omori, M. & Turner, S. (2012). Assessing the cost of electronically monitoring high risk sex offenders. *Crime & Delinquency.* Online first DOI: cad.sagepub.com/content/early/2012/12/20/0011128712466373

Papers in Progress

Omori, M. "Nickel and dimed" for dime bags: Cumulative racial inequality of drug defendants in state courts. Under review.

Roussell, A. & **Omori, M.** The slippery slope of addiction: Drug use trajectories over the life course. In progress. Under review.

Omori, M., Haerle, D., & Gascón, L. Racialized Gangs: Colorblindness, risk, and social control. In progress.

Reports and Encyclopedia Articles

Lynch, M. & **Omori, M.** (2012, August). *Legal change and sentencing norms in federal court: An examination of the impact of Booker and Kimbrough decisions.* Report submitted to the National Institute of Justice.

Maxson, C., Haerle, D., Reid, S., Grebenkemper, J., & **Omori, M.** (2012, July). *Patterns of youth assaults recorded by DJJ, 2006-2011: A supplemental research report from the study, "Gangs and violence in California's youth correctional facilities".* Report submitted to Supplemental the California Department of Corrections and Rehabilitation's Division of Juvenile Justice.

Maxson, C., Bradstreet, C., Gascón, D., Gerlinger, J., Grebenkemper, J., Haerle, D., Kang-Brown, J., Mesinas, A.M., **Omori, M.**, Reid, S., & Scott, D. (2011, December). *Gangs and violence in California's youth correctional facilities: A research foundation for developing effective gang policies.* Report submitted to the California Department of Corrections and Rehabilitation's Division of Juvenile Justice.

Maxson, C., Bradstreet, C., Gascón, D., Gerlinger, J., Grebenkemper, J., Haerle, D., Kang-Brown, J., **Omori, M.**, Reid, S., & Scott, D. (2011, August). *Developing effective gang policies for California's Division of Juvenile Justice: Preliminary findings draft report.* Report submitted to the California Department of Corrections and Rehabilitation's Division of Juvenile Justice.

Turner, S., Braithwaite, H., Tartar, J., **Omori, M.** & Kearney, L. (2011, June). *The impact of the California Parole Supervision and Rehabilitation Model (CPSRM) pilot implementation on parole agent attitudes.* Report submitted to the California Department of Corrections and Rehabilitation.

Omori, M., Reyes, W., Roussell, A., Valasik, M., Diggs, R. & Lynch, M. (2010, March). *Policing in the "progressive" city: Exploring racialized drug arrest practices in San Francisco*. Report submitted to the American Civil Liberties Union.

Omori, M. (2007). Gangs and the War on Terror. In Kontos, L & Brotherton, D.C. (Eds.) *Encyclopedia of Gangs.* Westport, CT: Greenwood Press.

Omori, M. & Thompkins, D. (2007). The Gangster Disciples. In Kontos, L & Brotherton, D.C. (Eds.) *Encyclopedia of Gangs.* Westport, CT: Greenwood Press.

FELLOWSHIPS, HONORS, AND AWARDS

Grants and Fellowships

2013	Haynes Lindley Doctoral Dissertation Fellowship ($20,000)
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2013	Michelle Smith Pontell Award for outstanding accomplishments in graduate study, UC Irvine ($2250)
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2006 – 2007 Alpha Phi Sigma, National Honor Society in Criminal Justice, John Jay College of Criminal Justice, The City University of New York

2005 – 2007 Dean's List, John Jay College of Criminal Justice, The City University of New York

2002 – 2003 Omicron Tau Epsilon, International Honor Society in Economics, Occidental College

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PRESENTATIONS

Omori, M. *"Nickel and dimed" for drug crime: Cumulative racial inequality in state courts.* Presentation at the American Society of Criminology, Atlanta, GA, November 2013.

Gascón, L., **Omori, M.,** & Haerle, D. *Deconstructing violence: Racialized gangs in California's Division of Juvenile Justice*. Presentation at the American Society of Criminology, Atlanta, GA, November 2013.

Omori, M & Roussell, A. *The slippery slope of addiction: Drug use trajectories over the life course.* Presentation at the Contemporary Drug Problems Conference, Aarhus, Denmark, August 2013.

Omori, M. *Amplifying racial inequality in court: Using selection models to examine race in court processes and outcomes.* Presentation at the Law and Society Association annual meeting, Boston, MA, May 2013.

Omori, M., Gascón, L., & Haerle, D. *Racialized Gangs: Colorblindness, risk, and social control.* Presentation at the American Society of Criminology, Chicago, IL, November 2012.

Lynch, M. & **Omori, M.** *Legal change and sentencing norms in federal court: An examination of the impact of Booker and Kimbrough decisions*. Presentation at the Conference on Empirical Legal Studies, Palo Alto, CA, November 2012.

Tartar II, J.R., Turner, S., Braithwaite, H., & **Omori, M**. *The California Parole Supervision and Rehabilitation Model: Translating Risk-Needs-Responsivity to Real-World Settings*. Presentation at the American Psychology-Law Society conference, San Juan, PR, March 2012.

Omori, M., Gascón, L., Haerle, D., & Kang-Brown, J. *Crackin' ears and getting involved in "politics": Gangs and race in California youth correctional facilities*. Presentation at the Western Society of Criminology, Newport Beach, CA, February 2012.

Lynch, M., & **Omori, M.** *Legal change and sentencing norms in federal court: An examination of the impact of Booker and Kimbrough decisions*. Presentation at the American Society of Criminology Annual Meeting, Washington, D.C., November 2011.

Gascón, L. & **Omori, M.** *Get with the program: Language and culture within California's youth facilities*. Roundtable at the American Society of Criminology Annual Meeting, Washington, D.C., November 2011.

Scott, D.W., Bradstreet, C.E., Maxson, C., **Omori, M.**, & Reid, S. *It's complicated: Institutional and street gangs within DJJ*. Presentation at the American Society of Criminology Annual Meeting, Washington, D.C., November 2011.

Tartar II, J.R., Braithwaite, H., **Omori, M.** & Turner, S. *Evaluating parole reform: Parole agent attitudes toward rehabilitation.* Poster presentation at the American Society of Criminology Annual Meeting, Washington, D.C., November 2011.

Lynch, M. & **Omori, M.** *The changing "crack offender" in American federal law*. Presentation at the Contemporary Drug Problems Conference, Prato, Italy, October 2011.

Roussell, A.P. & **Omori, M.** *Situating drug use over the lifecourse: Using empirical findings to build theory.* Presentation at the Annual Meeting of the Western Society of Criminology, Vancouver, BC, February 2011.

Lynch, M., Verma, A., **Omori, M.**, Roussell, A. & Valasik, M. *Race, justice, and reforming drug policy*. Roundtable at the American Society of Criminology Annual Meeting, San Francisco, CA, November 2010.

Omori, M. & Turner, S. *Assessing the cost of GPS on high risk sex offender parolees.* Presentation at the Annual Meeting of the Western Society of Criminology, Honolulu, HI, February 2010.

Omori, M. *Exploring influences and dimensions of methamphetamine legislation*. Presentation at American Society of Criminology Annual Meeting, Philadelphia, PA, November 2009.

Omori, M. *Supply-side interventions versus demand-reduction policies: Assessing methamphetamine legislation in three states*. Poster presentation at American Society of Criminology Annual Meeting, Saint Louis, MO, November 2008.

RESEARCH EXPERIENCE

2012 — *Metropolitan Futures Initiative,* Graduate Student Researcher (PI: John Hipp)
Edited, created tables, and assisted in final report *Southern California Regional Progress Report: 2012*

2011 – 2012 — *Legal change and sentencing norms in federal court: An examination of the impact of Booker, Gall, and Kimbrough*, Graduate Student Researcher (PI: Mona Lynch)
Data management and analysis on National Institute of Justice-funded project examining how federal drug cases are adjudicated under changing sentencing

laws. Assisted organizing conference *Federal Criminal Cases in the Post-Booker Era*.

2010 – 2012 *Developing Effective Gang Policies for California's Division of Juvenile Justice,* Graduate Student Researcher (PI: Cheryl Maxson)
Requested and managed official data from the Division of Juvenile Justice, and conducted data analysis for reports. Taught graduate and undergraduate students in data cleaning, coding, and entry, and mentored undergraduates in summer research projects. Also conducted interviews with youth and staff, and helped construct staff interview instrument.

2008 – 2011 *Center for Evidence-Based Corrections, University of California, Irvine,* Graduate Student Researcher (Director: Susan Turner)
Data analysis for an evaluation of Non-Revocable Parole, which removes low risk parolees from direct supervision and places them on banked caseloads; conducted a cost analysis of GPS technology on high risk sex offenders, and assisted in interviewing parolees in focus groups. Other projects included analyzing interview and quantitative data for a simulation of early release of parolees, and assisting in interviews of parole agents and law enforcement.

2005 – 2007 *John Jay College of Criminal Justice – City University of New York*, Graduate Research Assistant (PI: David Brotherton, Zulema Blair, Barry Spunt)
Collected survey data, conducted archival research, and wrote literature reviews for various projects, including victimization in immigrant populations, terrorism and gangs, victimization and violence in the military, prisoner reentry and identification, and heroin and popular culture.

TEACHING EXPERIENCE AND PROFESSIONAL DEVELOPMENT

Courses Taught

Summer 2013 Drugs, Crime, and Social Control

Guest Lectures and Invited Presentations

Spring 2012 Guest lecture, Drugs, Crime, and Social Control undergraduate class, *From Cure-All to Redneck Cocaine: Meth in the United States*

Spring 2011 Presenter, *Intro to Stata* and *Common Commands in Stata for Data Cleaning* workshops

Summer 2010 Guest Lecture for undergraduate research methods class, *The Math of Meth: Secondary Data Analysis with Methamphetamine Policy*

Winter 2010 Presenter, Grants Logistics Workshop

Teaching Assistant
*Required lab instruction

Spring 2013 Graduate Applied Statistics (online course)

Spring 2009, Winter 2013	Graduate Data Analysis II (Econometrics)*
Fall 2009, Fall 2012	Graduate Data Analysis I (Introductory)*
Summer 2012	Undergraduate Research Design (online course)
Winter 2012	Graduate Structural Equation Modeling*
Winter 2009, Winter 2010	Graduate Research Methods
Summer 2009	Undergraduate Cybercrimes
Fall 2008	Undergraduate Victimless Crimes
Winter 2008	Undergraduate Prisons, Punishment and Corrections
Fall 2007	Undergraduate Crime and Public Policy

Course Development

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2011	Albert Novolozo, mentored in data cleaning and recoding in Stata
2009	Eddy Reyes, mentored in data entry and analysis in Stata

PROFESSIONAL EXPERIENCE

2006 Local Initiatives Support Corporation, New York, NY
Intern, Community Safety Initiative
Wrote articles on reentry, housing, and police-community partnerships, customized a reentry housing training tool for local stakeholders, assisted in organizing workshops.

2004 Maui Economic Opportunity, Wailuku, HI
Case Manager
Managed a caseload of 80-90 clients receiving assistance from Temporary Aid to Needy Families

2003 – 2004 DSA International Consulting, Los Angeles, CA
Marketing Information Support Coordinator
Maintained database, and interviewed applicants for jobs with client companies

SERVICE AND PROFESSIONAL MEMBERSHIPS

Departmental and School Service

2011 – Present Diverse Educational Community and Doctoral Experience (DECADE) Committee

2010 – Present Co-founder of the Criminology, Law & Society Graduate Peer Mentoring Award

2009 – 2012 Workshops, IRB, and Grants Committee

2010 – 2011 Criminology, Law & Society department graduate student representative

2010 – 2011 Comprehensive Exam Committee

2008 – 2010 Graduate Recruitment Coordinator

2008 – 2010 Graduate Peer Mentor Coordinator

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Journal of Quantitative Criminology (Reviewer), *SAGE Open* (Article Editor)

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2009 – Present American Sociological Association

- Crime, Law and Deviance section

2009 – Present Western Society of Criminology

2005 – Present American Society of Criminology

- Division on People of Color and Crime

2005 – 2007 Association for Criminal Justice Research (California)

ABSTRACT OF THE DISSERTATION

Cumulative Racial Inequality of Drug Defendants

By

Marisa Omori

Doctor of Philosophy in Criminology, Law & Society

University of California, Irvine, 2014

Professor Mona Lynch, Chair

Past research has demonstrated that those arrested for drug crimes is not representative of drug use, suggesting that drug policy and enforcement is highly racialized and unequal. We know much less about where and how racial inequality is reproduced within the criminal justice system, however. Focusing on racial inequality as both a total effect and as a process, I examine where and how racial inequality is cumulatively produced in the criminal justice system for drug defendants. Using data from state and federal courts, I examine this question through three primary analyses. First, I develop a measure of cumulative racial inequality for the court process and for sentencing outcomes to better understand the total effects of inequality. I also analyze the mechanisms of cumulative racial inequality in the state and federal court systems by examining disparities in court processing and outcome decisions while accounting for the effects of previous stages in later stages of the court process. Finally, I focus on a single city to examine how cumulative racial inequality operates in drug arrest patterns, court processes, and alternative to incarceration programs.

I find that racial inequality may be difficult to detect by only examining outcomes at single stages of the process because disparities are often small at any individual stage, and

because they occur mostly at early, less visible stages of the criminal justice process. Proactive policing drives much of the initial racial inequality through the use of geographically targeted arrests that focuses on nonwhite neighborhoods. Even before sentencing outcomes, the court process acts as a stratification mechanism in itself, where many mechanisms of inequality, including bail and pretrial detention decisions, occur in pre-sentencing stages. They also occur indirectly through factors such as criminal history which in itself is partially a function of previous criminal justice system contact.

Chapter 1: Introduction

Incarceration rates in the United States have risen dramatically over the past several decades, driven significantly by the War on Drugs. About one-fifth of prisoners, and over one-quarter of probationers, are under correctional supervision for drug crime (Glaze & Bonczar, 2009; West & Sabol, 2009). This elevated incarceration has also brought increases in racial disparities of those arrested and incarcerated for drug crime. While approximately 11% of self-reported drug users are Black, and an additional 11% are Latino, they respectively comprise 50% and 17% of drug-related prisoners in the United States (Guerino, Harrison & Sabol, 2011; SAMHSA, 2010). The War on Drugs has increased racial inequality in the criminal justice system, not only through the passage and application of severe mandatory minimum sentences, but also through the adoption of aggressive policing tactics in communities of color, and the expansion the system's reach through diversionary programs (Lynch, 2012; Provine, 2007). The high rates of drug arrests and incarceration have disproportionately impacted Black and Latino communities, along with producing harmful consequences for housing, employment, and families (Clear, 2002; Pager, 2007).

While federal, state, and local drug laws have had a dramatic racial impact, the commonsense understanding of race and racism in the United States is that we are living in a post-racial, "colorblind" era, and that racism largely exists as an individual, prejudicial thought or biased action (Bonilla-Silva, 2006). While drug laws and drug enforcement are arguably the most single significant driver of the current incarceration binge, and are particularly responsible for increasing racial inequality in the criminal justice system, criminalization of drug offenders is still largely perceived as a criminal justice, rather than racial justice issue (Alexander, 2010; Fagan & Meares, 2008; Reinarman & Levine, 2008).

This narrow understanding of racism allows for disparate racial outcomes in aggregate jail, probation, and prison populations and in the treatment of those populations, while the system is "racially innocent" in the absence of obvious personal bigotry (Seron, 2010). The criminal justice system itself is often coded with language that not only disguises racial impact, but also provides discretionary opportunities for biased organizational decisions to occur by police, prosecutors, probation officers, and other criminal justice institutions (Murakawa & Beckett, 2010). For example, police agencies have targeted certain geographic "hotspots" for drug crimes in primarily nonwhite neighborhoods as part of public order maintenance policing policies (Geller & Fagan, 2010). Thus, racial disparity in the criminal justice system is largely unchecked, both because racism is conceptualized as an overt, concrete action, and because it is hidden behind formally race-neutral laws and practices.

Unlike crimes that are victim-reported, drug crimes are much more likely to be proactively policed (Lynch, 2012). The number of drug offenders in the criminal justice system thus better reflect formal drug policy, institutional decisions, and discretion by criminal justice actors rather than changing levels of criminality (Provine, 2011; Musto, 1987). While previous work has documented the racially disparate outcomes of drug enforcement in arrest and incarceration statistics, we still lack understanding as to how this process occurs in the courts. To better understand this process, I focus on racial inequality in drug offender punishment through the post-arrest court processes to examine the disproportionate impact on Black and Latino defendants. I link two major literatures in this project, including research on court organizations and decision-making by criminal justice actors, and theories of "cumulative disadvantage" and other research on racial inequality in the criminal justice context. While much research focuses on racial disparities in arrest or incarceration, the middle ground of criminal justice processing is often overlooked as an object of inquiry. Feeley (1979) makes the case that the pretrial process,

including pretrial detention, securing an attorney, and court delays, often serves as the primary punishment for offenders processed in lower criminal courts, rather than the official legal sanction. Accordingly, I conceptualize punishment for drug offenses to include both formal legal outcomes (e.g. sentence) and informal legal practices.

I also draw from theories of cumulative disadvantage or cumulative inequality. Originally coined by Merton (1973) as "cumulative advantage" or the "Matthew effect" to explain the relative advantages that recognized scientists have in gaining additional recognition and funding over unknown ones, the general concept has been used to explain a number of social processes where one group's relative favorable (or unfavorable) initial position is a resource to produce later advantages (DiPrete & Eirich, 2006; Sutton, 2013). Cumulative racial inequality in this context is a process endogenous to the criminal justice system where small racial differences at any one stage may have compounding effects at later stages or when examined as a whole (DiPrete & Eirich, 2006; Schlesinger, 2007; Sutton, 2013). In sentencing research, cumulative inequality focuses on the role of race on multiple stages of court processing, including indirect and compounding racial effects on sentence outcomes (Dannefer & Schutt, 1982; Farrell & Swigert, 1978; Liska & Tausig 1979; Rodriguez, 2010; Zatz, 1984). While I am interested in understanding how group differences accumulate over a system, I also take a broader approach to cumulative racial inequality. My approach also focuses on the mechanisms of inequality by considering how previous stages influence later ones, as well as the influence of potential policy factors and practices.

This project also takes a comparative look at the state and federal criminal justice systems, as well as a more specific look at case processing in a single city to understand how the process of racial inequality in punishment of drug offenders may operate differently as a function

of the different systems' norms and structures. Specifically, I focus on felony drug crimes filed in state trial courts (in selected urban counties) and federal district courts. Federal courts are generally considered to have greater resources compared to the state courts, and a "comparative advantage" to state courts may allow federal courts to process select "airtight" cases (Miller & Eisenstein, 2005). Although federal courts have increased their caseloads over time, state courts still process the vast majority of criminal cases (Galanter, 2004; Miller & Eisenstein, 2005; O'Connor, 1980), and therefore may have a greater pressure to process and dispose of cases quickly (Miller & Eisenstein, 2005). While conducting analyses of state and federal courts broadly can help identify generalized mechanisms of inequality, focusing on one place allows an understanding of local practices while also considering some of these more generalized factors (Lynch, Omori, Roussell, & Valasik, 2013). I therefore also investigate drug arrest patterns and case processing in a single city to better understand how mechanisms of inequality may work in one context.

Murakawa and Beckett (2010) argue that greater scholarly attention needs to be given to the many ways in which racial power operates in groups and institutions throughout the criminal justice system, particularly those who have discretion and decision-making power. Most criminological literature on racial inequality focuses on a particular stage of the criminal justice system, such as policing, sentencing, or incarceration, but fails to examine the process in between, or how these institutions may work together to produce cumulative inequalities. For example, there is research on racial inequality in policing (Beckett, Nyrop, Pfingst & Bowen, 2005; Buckman & Lamberth, 2001), sentencing (Kautt & Spohn, 2002; Ulmer & Johnson, 2004), and incarceration (Clear, 2007; Mauer, 1999; Western, 2006), but less research on how these institutions work together in their daily practices to handle defendants. In this way, I examine

the court process to consider potential court and state-level effects, as well as ways in which racialized outcomes may be systemic and cumulative. Specifically, I am concentrating on the following research question: Where and how is racial inequality cumulatively produced in the court process?

To better understand the process by which racial inequality occurs in state and federal courts, this project centers on three goals: 1) develop a total measure of cumulative racial inequality in the state court process and determine whether it is conceptually separate from sentencing outcomes; 2) identify mechanisms of racial inequality in the state and federal court processes generally by identifying stages at which inequality occurs and understanding how inequality at one stage impacts later stages; and 3) identify local mechanisms of cumulative racial inequality in one city context, including an understanding how other criminal justice institutions work with the courts to produce cumulative racial inequality.

Review of Literature

This project draws from on organizational literature on the courts, including the court process as punishment, courtroom decision-making and norms, and the political economy of the courts, as well as literature on race and the criminal justice system, including institutional racism and cumulative disadvantage. To contextualize the current picture of racial inequality, I briefly review the expansion of the drug war and current research on drug offenders in state and federal courts in the following section. The way in which the drug war has impacted criminal justice processing practices has implications for both the race and organizational literatures. I then

examine the literature in justice system process and organizational decisionmaking, and finally review theories of institutional racism and cumulative disadvantage.

The war on drugs in the federal and state systems

There is a large literature on the war on drugs and its uneven consequences for Blacks and Latinos that resulted in radically widening racial inequality in the criminal justice system (Alexander, 2010; Mauer, 1999; Provine, 2007; Reinarman & Levine, 2008; Tonry, 2006). This included the proactive policing of "hotspot" outdoor drug markets and "buy and busts," as well as sentencing policy changes to mandatory minimums and other "tough on drugs" legislation starting in the 1980s and 1990s. The growth in incarceration rates (and racial inequality in incarceration) has largely been due to policies passed during the war on drugs: between 1979 and 1994, nonviolent drug offenses grew from 6% to 30% of the inmate population, and federally grew from 21% to 60% (Beckett, 1997). According to a study using estimates from the National Corrections Reporting Program, between 1983 and 1990, new state drug sentences for Black defendants went from about 25 per 100,000 nationally to over 250, Hispanic defendants went from about 25 to over 100, while White defendants remained well below 20 for the entire time period (Oliver, 2008).

Not only did the war on drugs result in the large increase in the sentencing and incarceration of Blacks and Latinos, but it also expanded the reach of the criminal justice system. This is particularly the case for the federal system, which had a historically much smaller role in crime and drug control (Beckett, 1994; 1997). In addition to dramatic changes to federal sentencing through mandatory minimums and increased sentencing guidelines, the war on drugs increased invasive policing tactics, particularly in poor, non-White communities. Policies during

the war on drugs also implemented diversion programs that have served as a "sorting mechanism" for White and affluent defendants, and increasingly excluded offenders from public services and benefits (Lynch, 2012). The federal expansion of civil and criminal asset forfeiture laws incentivized the federal government's jurisdictional expansion over drug crime (Brickley, 1995; Beckett, 1997). By increasing funding to states to encourage mandatory minimums, the federal government also influenced states to adopt harsh drug enforcement and prosecution practices. Hagan (1989) argues that drugs and other victimless crime cases are particularly vulnerable to outside political pressures, where political pressure would likely increase both the volume of cases and increasing cooperation between the various agencies. For example, the war on drugs has led to the increase of multi-jurisdictional policing and prosecution task-forces in many areas (Thompson, 2001-2002).

Moreover, legal changes and practices in state and federal jurisdictions due to the war on drugs were not monolithic (Lynch, 2012). While the local and federal systems are not mutually exclusive in operation, they are still jurisdictionally separate, and the states operate under a diversity of penal codes. Miller and Eisenstein (2005) argue that the federal system generally has the "comparative advantage" compared to the state courts, including greater resources, higher rates of pretrial detention, looser evidentiary rules, longer criminal sentences, and more favorable asset-forfeiture laws (Brickley, 1995; Miller & Eisenstein, 2005). On the other hand, state or local systems are more often short on resources, and are characterized as handing out "assembly-line" justice. Feeley (1979) characterizes these lower criminal courts as rapidly processing high numbers of routine crime and order problems, including drug cases. Due to the war on drugs, local courts in particular have been under increased pressure to deal with large caseloads by establishing "going rates" for crimes with plea bargaining (Lynch 2012).

Federal prosecutors also have less accountability to the local electorate because they are appointed rather than elected like local prosecutors, and given their increased resources, can prosecute more harshly than local prosecutors (Worrall, 2008). They can also be more subject to local politics than states, particularly when these crimes are largely driven by federal legislation that largely duplicates already-existing state laws (Brickley, 1995). They are thus better able to obtain convictions and impose long sentences relative to state courts (Levine, 2008). For example, Cares (2002) found that federal court cocaine defendants received a sentence that was two and a half times longer than those in state court in Pennsylvania.

Federal prosecutors therefore have an additional layer of discretion to "cherry pick" cases, or to select certain types of cases, to be prosecuted (Levine, 2008). This results in defendants being put in the relatively most disadvantageous position (Brickley, 1995). Places with close local-federal prosecutorial relationships allow for increased discretion for local prosecutors (Miller & Eisenstein, 2005). One jurisdiction studied by Miller and Eisenstein (2005) has a program with the local district attorney's office to federally prosecute selected firearm crimes. They note that some cases are more likely to be waived to federal court if they are more "airtight" cases and likely to be convicted, or cases with larger quantities of drugs because of longer mandatory minimum sentences. Local prosecutors use the threat of prosecution by the US attorney's office as a way to ensure a plea bargain by defendants, and the threat of prosecution at the federal level was a way for local prosecutors to increase the "going rate" for sentences.

Notwithstanding formal legal differences between the two systems, there is a diversity of different legal practices within the two systems (Kautt, 2002; Lynch, 2011; Lynch, 2012; Lynch & Omori, 2014; Wu & Spohn, 2008). Much of this is driven by prosecutorial practices, which vary widely across districts (Brickley, 1995). For example, at the peak of the war on drugs in the

early 1990s, the Southern District of California, simple possession cases were 14% of the total caseload, but was only 2% in the neighboring Central District of California. Recent research has found that even within states, incarceration rates by county differ substantively (Lynch, 2011; Ulmer & Johnson, 2004). Even though the federal system operates under uniform laws, there are large differences between federal judicial districts (Kautt, 2002; Lynch & Omori, 2011; Wu & Spohn, 2008). For example, one recent study has found that sentence lengths and mandatory minimums applied in drug trafficking cases vary more between federal judicial districts than within districts over time (Lynch & Omori, 2014). Differences between federal jurisdictions may be due to a number of factors, including racial and ethnic makeup of the court actors, differing crime rates, caseload sizes, racial makeup of the caseloads, and idiosyncratic practices around substantial assistance and other departures from the Sentencing Guidelines (Kautt, 2002; Ward, Farrell & Rousseau, 2009).

Although these studies inform the context of the current criminal justice system in the wake of the war on drugs, they generally lack explanations of how racial inequality operates within the justice system. It is unclear how the contrast between (and within) and criminal justice systems may suggest different processes of discretion and decision-making, and in turn how these points might differentiate in how racial inequality is evidenced in various systems.

While large-scale models can identify generalizable factors that may predict racial inequality, understanding the specific mechanisms necessitates an in-depth examination of the process in a local setting (Beckett, et al., 2005; Daly, 1994; Lynch et al., 2013). Even within a single jurisdiction, understanding how places are racialized, policed, and controlled by the criminal justice system is key to understanding the dynamics of racial inequality in that setting. Lynch et al. (2013) examine San Francisco as a case study for understanding the racial historical

trajectories and political and economic interests of different neighborhoods as a way to explain differential drug enforcement by the police. Using news sources, reports, and arrest statistics, they argue that two heavily-policed neighborhoods are constructed as the "ghetto" and "skid row," which in turn leads to different modes of racialized drug enforcement.

These studies suggest that understanding the local political and decisionmaking environment in which drug cases are processed requires a deeper case study approach. Although large dataset methods illustrate a generalized understanding of how racial inequality accumulates in general within courts, the many ways in which race and inequality are reproduced may also require a more contextualized understanding of how the process functions in a single jurisdiction.

Courts as organizations

Organizational models of criminal justice settings, particularly the courts, often focus on the functional systems model, which focuses more on the practices of smaller social units within the system, including controls, incentives, and sanctions, and emphasizes the informal "rules of the game" as primarily important (Feeley, 1973). Most criminal justice systems in general are "loosely coupled forms of organization," where individual organizations--courts, police agencies, and incarceration systems--generally have a fairly autonomous existence (Hagan, 1989). Heydebrand & Seron (1990) characterize them as "similar to the teamwork approach of multiservice organizations since there is little formal or external coordination but much reliance on self-direction, functional interdependence, discretion, and self-coordination" (p. 27). Even in the federal system, which shares uniform substantive rules, its structure is still largely decentralized, and courts are relatively independent (Heydebrand & Seron, 1990: 25-26). Traditionally, these relatively "closed" systems tend to be focused on initial operations and functioning, attempting to reduce uncertainty (Worrall, 2008). Because drug cases require more

proactive policing and prosecution compared to many other types of crime, however, they require closer, more cooperative relationships between criminal justice agencies (Hagan, 1989). For example, narcotics officers must secure otherwise-unwilling informants in order for district attorneys to prosecute cases.

This court research suggests that decisions are made in the context of a "courtroom workgroup" model, which includes judges, prosecutors, defense attorneys, clerks, bailiffs, and, to a limited extent, defendants (Eisenstein & Jacob, 1977; Nardulli, 1978). This does not suggest that all actors have equal access to the decision-making process, however. Although prosecutors function in relation to other court actors with the courtroom workgroup (Levine, 2008), the increase of sentencing guidelines and mandatory minimums at the federal and state levels has shifted the relative power from the judge to the prosecutor (Engen, 2008; Miller & Eisenstein, 2005; Tonry, 1996). Since prosecutors are present for many stages of the criminal justice process, this enables them to dictate much of the criminal justice process—from negotiating sentences to influencing law enforcement activity by screening cases and deciding whether to press charges (Worrall, 2008).

This is particularly applicable in lower criminal cases, justice is often mostly exercised during the pretrial process, where cases are resolved by a market-like negotiation between different parties, with different "going rates" for crimes (Feeley, 1979). These are developed from the “recurrent types of decision-making” that courts do, and thus are relatively stable (Heydebrand & Seron, 1990). Having “going rates,” of course, enables the court to process large volumes of routine cases relatively quickly. Thus, courts that have high volumes of drug caseloads, for example, would likely have more well-developed norms around prosecution and sentencing. Large caseloads would likely incentivize quick case processing by all court actors,

which results in many cases being resolved in the early pretrial stages. Expediting the criminal justice process is not only necessary and beneficial for the court actors who deal with large caseloads, but there is also considerable interest for offenders in low-level cases to minimize associated costs in the pretrial process, including money to a bail bondsman and attorneys, as well as time spent in the process, and avoiding the public embarrassment of a trial (Feeley, 1979).

Additionally, the drug war has increased caseload size, especially in state courts that prosecute routine drug cases, without a match in increased resources to courts. Thus, courts are under even more pressure to process cases quickly and efficiently. This pressure may be reflected in the decreasing trial rate over time in favor of plea bargaining, where the decision-making process of adjudication to be "swallowed up by the surrounding bargaining process" (Galanter, 2004: 526). This is particularly the case for state courts; the increased caseload size has also likely had a differential impact between the federal and state systems. Federal courts have also felt changes in sentencing and volume of cases, but they still deal with fewer and more serious cases, and therefore could still present alternative models of criminal justice processing.

Organizational scholars highlight the importance about focusing on the process itself. The entire criminal justice and court decisionmaking in itself as a process that serves as the punishment, and the final sentence often represents the end stage of this process (Feeley, 1979; Sampson, 1986). Based on his case study of lower criminal courts, Feeley (1979) argues that for many defendants, the court process itself is more burdensome than a relatively-short jail term or stigma of a criminal record. As reflected in the organizational literature, I conceptualize punishment to include both legal outcomes (formal punishment) and the court process itself. For low-level offenders, the pretrial process, including detention, securing an attorney, and court

delays, is often the primary punishment rather than the formal legal sanction (Feeley, 1979). Thus, the process by which drug defendants are produced and processed is also punitive in itself, so examining whether there are racial disparities in the pre-sentencing stages of case processing is important to consider analytically.

Moreover, courts are also influenced by the political and economic environment in which they reside (Heydebrand & Seron, 1986; 1990; Kautt, 2002). In a study of federal district courts, Heydebrand & Seron (1986) find that political economy pressures in a federal distinct (including government activity, economic activity, and demography) influence the court's civil caseload activities, and suggest that these factors are becoming increasingly influential over time. In addition to local law enforcement or district attorney initiatives, drug case processing could thus be influenced by the local demographic, political, and economic context of the external environment. In a study of federal courts, Kautt (2002) finds that district-level characteristics, including drug crime caseload, size of the population served, appeal rate, substantial assistance rate, guidelines compliance rate, percent Black and Hispanic of caseload, and unemployment rate, all influence case outcomes. Hagan (1989) notes that victimless crime such as drug crime is more resistant to control by political forces, so political pressure will most often increase their prosecution. Thus, political pressure to be elected, or a lack of an oversight body such as a sentencing commission, would likely increase proactive prosecutorial techniques, such as plea bargains, charge bargaining and sentence reductions.

Moreover, while the organizational literature emphasizes multiple actor decisionmaking, it generally lacks explanations for how racial bias may work in the decisionmaking process. Most of the literature on decision-making has focused on social-psychologically based arguments. In environments with limited time and information constraints, decision-makers will

rely on stereotypes and "blameworthiness" of the offender, resulting in harsh punishments (Albonetti, 1991; Steffensmeier, Ulmer & Kramer, 1998). Examining drug offenders in the federal system, Kautt and Spohn (2002) reason that the context of sentencing factors differ according to race, and find that race actually conditions the effects of sentencing predictors on outcomes, above and beyond drug type alone. This does not necessarily suggest, however, that these decisions are made in a systematic way, or how these decisions may work in the context of a "market" for punishments. In fact, if defendants are largely processed in a uniform way according to normative sanctions, this would suggest that racial biases would likely not be evident in sentencing, after controlling for legally-relevant factors. It is possible that racial biases could be built in to the "market" of punishment negotiation rather than explicitly or implicitly evaluated, but organizational theories do little to account for these biases.

Racial inequality and sentencing

Studies of racial disparity in the court process have found significant differences in many points of the court system, including charging (Bjerk, 2005), pretrial stages (Albonetti, Hauser, Hagan, & Nagel, 1989; Demuth 2003, Demuth & Steffensmeier 2004, Schlesinger 2005), and diversion (Albonetti & Hepburn, 1996, Schlesinger, 2013). Additionally, both federal and state level sentencing studies have found that defendant race is a significant predictor of both probability of incarceration and sentence lengths for drug offenders (Albonetti, 1997; Britt, 2000; Lynch & Omori, 2014; Steffensmeier & Demuth, 2000; Ulmer & Johnson, 2004; Zatz, 1984).

While the organizational literature is useful in understanding how punishment occurs as a process, and the roles that decision-makers may have, it generally lacks explanations for how racism operates in the decision-making process in a systemic way. Conflict theorists argue that

the increasing presence of racial minorities in a given community pose a threat to the majority group, who at a broader level, support and increase criminalization of minorities as a way to maintain control (Blalock, 1967; Bridges, Crutchfield & Simpson 1987; Dannefer & Schutt, 1982; Hagan; 1975). This perspective emphasizes the criminal justice system works as a "process of differential criminalization, guided by group interests, and prejudicially based on personal, extra-legal attributes" (Hagan, 1975: 620). Thus, the rise in criminal justice control through drug enforcement and the system's disproportionate impact on minority communities can be seen as an artifact of the racial majority group protecting its political or economic interests (Bridges, Crutchfield & Simpson, 1987).

Although conflict theorists emphasized the importance of racial power in punishment, they cannot account for how majority groups might respond across different locations, or across different time periods. It also implies that all non-White groups may be similarly disadvantaged, which is not supported empirically (Johnson & Bestinger, 2009). Moreover, they assume a level of rationality and coordination at the group level (Lynch, 2013). Although conflict theories emphasize maintaining material and resource advantages for the majority group, later structural theorists suggest that racism is also symbolic and less visible (Quillian, 2006).

Other recent theories of racial inequality is predicated on an understanding that racism and racial inequality is not just the work of overtly prejudiced individuals or even coordinated group interests, but rather is a "natural," group level process that operates when organizational practices are presumed to be race-neutral through policies and informal practices (Alexander, 2010; Bonilla-Silva, 2006; Brown et al., 2003; Haney Lopez, 1999-2000). These views focus on revealing how, at the institutional level, White racial power is maintained. In the current era of colorblindness, prejudicial beliefs are simply less overt, and discrimination is based on "laissez-

faire" racism, in which people use anti-Black stereotypes to justify and blame racial minorities for their own inequality (Bobo & Smith, 1997; Bonilla-Silva, 2006; Kinder & Sanders, 1996; Quillian, 2006). Because these views are structural, those that benefit the racial status quo are also most likely to support it (Bonilla-Silva, 2006).

The current system of mass incarceration thus serves as a new formation of a long-standing racial caste system, which has always been in place in order to maintain the status quo (Alexander, 2010). Moreover, this system of incarceration and race are mutually reinforcing, where incarceration and other markers of social status influence the way that race is perceived (Saperstein & Penner, 2010). The criminal justice system process thus functions as both a method of racial stratification, but also a producer of racial categories. Race is more than just a passive status, but plays into the way that policy interests, court organizations, levels of influence, and decisions operate (Ward, 2006). For example, previous work by Ward, Farrell, and Rousseau (2009) suggests that racial diversity of the criminal justice actors impact these courtroom processes and outcomes, particularly with prosecutors. Examining the federal system, they find that Black prosecutor representation results in decreased prison sentences.

While these theorists help explain the sources of racial inequality in the justice system, they do not explain *how* these discriminatory processes occur. As Bonilla-Silva (2006) suggests, the goal should be "to uncover the particular social, economic, political, social control, and ideological mechanisms responsible for the reproduction of racial privilege in a society" (p. 9). In the context of the courts and processing of drug defendants, the routine ways in which individual criminal justice actors have a role in the decisionmaking process need to be examined to develop a more robust understanding of how racial inequality occurs (Reinarman & Levine, 2008). Solely structural-level theories may not be able to specify the mechanisms by which

individually situated actors produce racially stratified outcomes (Haney Lopez, 1999-2000). Instead, Haney Lopez argues for a more multilevel theory of institutional racism in the legal system, situating individual actors in the context of the legal organization. Behavior is driven by "cognitively familiar routines," and frequently repeated patterns of activity take on natural rule-like status. In this model, racial inequality occurs as a process of largely unexamined cognitive stereotypes about race, as well as patterned, routine decisions about individual defendants.

Haney Lopez's view on institutional racism is similar to the "focal concerns" perspective, which situates court actors in an organizational context, suggesting that court actors' decisions center around three major "focal concerns" in sentencing: blameworthiness, protection of the community, and practical constraints (Steffensmeier, Ulmer & Kramer, 1998). In an organizational environment of limited time and information, both legal and extralegal (such as perceived race) factors affect the interpretation of these concerns through substantive rationality (Ulmer, 2011). Focal concerns assumes a greater level of rational decision-making compared to Haney Lopez's view of institutional racism, but for both of these perspectives, criminal justice actors' decisionmaking can have a cumulative effect on non-White group punishment outcomes through actors' patterned practices and cognitive shortcuts, even while they do not expressly intend to discriminate.

On the other hand, it is unclear as to how these perspectives' decisionmaking are tied to formal policies and informal practices that can also function as mechanisms for racially unequal outcomes. Scholars who emphasize structural-processual theories of race in the criminal justice system consider the ways in which structural inequalities are built into the legal process itself, and racial disparity is a result of bias operating at many stages of the decision-making process (Engen, Steen & Bridges, 2002; Liska & Tausig, 1979; Rodriguez, 2010; Sampson, 1986). This

occurs through policies such as mandatory minimums for certain types of drugs, such as crack cocaine, or through sentencing enhancements, which is often triggered by high drug volumes. The literature suggests that both of these policies disproportionately affect Black and Latino defendants (Caravelis, Chiricos, & Bales, 2011; Crawford, Chiricos, & Kleck, 1998; Crow & Johnson, 2008; Farrell, 2003; Ulmer, Kurlychek, & Kramer, 2007). In studies of federal court, practices such as charge bargaining occur more frequently with White defendants (Bjerk, 2005; Bushway & Piehl, 2007; Shermer & Johnson, 2010), producing more favorable sentencing outcomes for White defendants (Bushway & Piehl, 2007).

While some studies have not found direct racial disparities in sentencing (e.g. Zatz, 1984), the lack of direct racial differences in sentencing or other punishment outcomes after controlling for "legally-relevant" factors does not mean that there is a racially unbiased process (Spohn, 2000; Zatz, 2000). Many of these legally-relevant factors are also racially stratified, and thus race matters in indirect rather than direct ways. Several studies have noted that nonwhite defendants are more likely to have lower socioeconomic status and cultural differences that impact evaluation of community ties. For example, one study by Bridges (1997) finds that racial differences in the probability of having bail set, being released on recognizance, and in the probability of pretrial detention were likely due to a relative lack of resources by nonwhite defendants to hire a private attorney, as well as cultural differences or language barriers, leading judges to rely more often on prosecutors' recommendations. Because both public defenders and judges and pretrial investigators operated under limited resources, they had little time to dedicate to checking references or verify information provided by defendants, which led judges to more often follow recommendations of prosecutors. Another study of female defendants in New York City criminal court, Brennan (2006) found that Black and Latina defendants were more likely to

receive jail sentences indirectly through differences in socioeconomic status, community ties, prior record, and initial charging.

Given the disproportionate policing of poor communities of color, relative to self-reported crime (Sampson, 1986), criminal history in and of itself is partially a result of differential justice based on race and class, and so including criminal history in punishment decisions creates a "cyclic reconfirmation of criminality" (Farrell & Swigert, 1978: 451). Examining race and ethnicity effects for White, Black, and Chicano adult felony offenders in California, Zatz (1984) did not find any direct effects for race/ethnicity on determinate sentences, but instead finds racial group differences in offense type, mode of disposition, and prior record. For example, she finds that prior record results in harsher sentencing, particularly for Chicano offenders. Similarly, Farrell and Swigert (1978) compare the processing of Black and White homicide cases, and find that Black offenders are punished more severely because of the judicial discretion to penalize repeat offenders. Because prior adjudications are partially discretionary themselves, the use of a record in the disposition of a final case compounds this discretion.

In addition to legally-relevant factors that are racially stratified, early police and court processing outcomes may act as stratification mechanisms for later decisions in the criminal justice process. Hagan (1975) for example, finds that probation officers disproportionately weigh pre-sentence recommendations against nonwhite defendants, which are used in final sentencing decisions. For example, many studies specify the effects of pretrial detention or a type of defense attorney on sentencing outcomes (Johnson, Ulmer & Kramer, 2008; Rodriguez, 2010; Spohn, 2009). Spohn (2009) found that pretrial detention was more likely for Black offenders, and that race had an indirect effect on sentence severity through pretrial status but not direct effect on sentence severity. In drug sentencing at the federal level, Lynch (2013) argues that many of these

early decisions, such as the selection of cases to prosecute, the decision to apply mandatory minimums, career offender enhancements, and the uneven application of the "safety valve" relief from a drug mandatory minimum act as mechanisms, where sentencing decision represents the end product of these discretionary decisions made in preceding stages.

While sentencing studies generally acknowledge that early police and court processing outcomes influence later decisions, fewer have tested indirect and compounding racial effects explicitly. Research has provided conflicting evidence as to where in the criminal justice process greater bias and inequality may occur (Dannefer & Schutt, 1982; Engen, Steen & Bridges, 2002; McCarthy & Smith, 1986). Some scholars have suggested that later court processing outcomes may "correct" earlier biases in the criminal justice system by treating nonwhite youth more leniently than white youth (Dannefur & Schutt, 1982; Rodriguez, 2007). According to this logic, cases referred by the police are relatively weaker for nonwhite defendants compared to white defendants, and so are "corrected" at the back end.

One reason that cumulative racial inequality has been largely unexplored in the court setting is due to the relative lack of pre-conviction data, and because scholars tend to focus more narrowly on sentencing decisions (Baumer, 2013; Ulmer, 2011). Some scholars have estimated cumulative disadvantage over multiple stages of the court process. In one such study of several California counties, Chen (2008) finds accelerating aggregate racial disparities between Black and White defendants, but more continuous disparities between Latino and White defendants as they move through stages of the court system. Using the State Court Processing Statistics, Schlesinger (2007) finds that Black and Latino men receive racially disparate processing directly through sentencing decisions and indirectly through pretrial detention and adjudication. A recent analysis by Sutton (2013) finds support for cumulative disadvantage occurring in pretrial

detention, guilty pleas, and sentence severity (including prison, jail, or probation or a fine). After accounting for previous stages, Sutton estimates that the probability of a Black or Latino felony defendant sentenced to prison is 26% higher than White defendants. Finally, Stolzenberg, D'Alessio and Eitle (2013) focus on decisions surrounding bail, pretrial detention, adjudication as a felony, and carceral sentences. Using a meta-analysis technique to examine outcomes overall, they find that Black defendants receive over a 40% higher odds of a severe sanction.

While cumulative disadvantage studies emphasize both the direct and indirect role of race in their analysis, they do not emphasize how everyday legal decisions may be made based on underlying understandings of race itself. Instead, racial bias is mostly the result of legally-relevant factors that are amplified due to structural racial inequalities, or the influence of early decisions on later ones. Given the amount of discretion that criminal justice actors have in drug cases, it is likely that the effects of cumulative disadvantage would be particularly sizeable. Finally, the idea of cumulative disadvantage is limited in current studies by observing the "cumulative" processes through singular previous stages. For example, many studies specify the effects of pretrial detention or a type of defense attorney on sentencing outcomes (Johnson, Ulmer & Kramer, 2008; Rodriguez, 2010). This project expands on the current literature by explicitly examining multiple stages in the court process.

In sum, the literature on racial inequality and decisionmaking suggest that racism is likely indirect, subtle, and hidden through the use of race-neutral and “legally-relevant” decisions. Methods for examining inequality therefore must account for the compounding and indirect role of race in criminal justice processing for drug offenders. This implies a more complete investigation of the criminal justice process as a mode of punishment, as well as its impact on sentence outcomes. Moreover, models should account for the decisionmaking processes by

criminal justice actors, including the organizational environment of distinct court systems, and the political and economic interests in which they operate, particularly in the wake of the "war on drugs." These environmental effects may vary between state and federal jurisdictions as well. Finally, a local, contextual exploration of criminal justice processing may highlight the idiosyncratic practices of a single jurisdiction to understand how local legal norms and decisions are translated into racial inequality.

Conclusion

While most scholars focus on estimating the total cumulative effects of racial inequality, I also examine cumulative racial inequality as a system, or how decisions at each stage in the criminal justice process might have compounding effects. Thus, I conceptualize cumulative racial inequality is both a *total effect*, and a *process* that is internal to the criminal justice system. To estimate cumulative racial inequality as a total effect, chapter 2 develops a measure of court punishment using a confirmatory factor analysis approach and then estimates the total effects of cumulative racial inequality in the state court process by comparing this measure across Black, White, and Latino/Hispanic groups. This chapter takes seriously Feeley's (1979) idea that the "process is the punishment" by considering whether measures of court process are separate from sentencing outcomes.

Chapter 3 concentrates on the process of racial inequality. Specifically, I focus on mechanisms of cumulative racial inequality by modeling sequential stages of the state and federal court process to examine how stratification occurs in these two different systems. This includes discretionary decisions and practices made at multiple stages of the court process, which

may reflect racially-salient policies. Finally, I consider variation between systems by comparing the processing of drug defendants in the state and federal systems generally.

Chapter 4 focuses on the context of a single city to look at the localized nature of racial inequality in its arrest and court processing of drug defendants. I expand beyond the internal court process to examine geographic patterns of arrest and prosecutions, as well as review common punitive community correctional practices. I thus consider how multiple criminal justice institutions in one place produce cumulative racial inequalities.

I reflect on broad conclusions about my findings and directions for future research in Chapter 5. I argue that racial inequality in the criminal justice system (and perhaps in other domains) should be both theorized and studied as a process rather than as single stage outcomes. Doing so will shed a more expansive picture of drug enforcement and its racial impact in the United States.

Chapter 2: Total effects of cumulative racial inequality

The racial disproportionality in drug offenses likely reflect a combination of "race-salient" criminal laws, arrest decisions, and differences in criminal processing (Baumer, 2013; Schlesinger, 2007). Less is known about the relative weight or even how much racial inequality exists in each of these factors, however. This chapter focuses on the total disparities in differential criminal processing in a sample of state court defendants. Although sentences are the most visible outcomes of criminal processing, unpacking racial inequality in other stages that happen before sentencing may be key to better understanding the large-scale racial inequality observed in prisons, jails, and on probation. Moreover, as Feeley (1979) argues, the court process is deserving of attention in itself as a punitive process, and is one way to understand the cumulative inequality between racial groups. This analysis therefore has two goals: to develop a measure of court punishment for drug defendants and determine its total cumulative difference between racial groups, and secondly, to determine racial threat and stereotype, organizational, and other possible mechanisms of racial inequality in the cumulative court process.

Feeley (1979) makes the case that the pretrial process, including pretrial detention, securing an attorney, and court delays, often serves as the primary punishment for defendants processed in lower criminal courts, rather than the official legal sanction. Accordingly, I conceptualize punishment for drug offenses to include both formal legal outcomes (e.g. sentence) and informal legal practices. It is unclear, however, whether punishment experienced during the court process itself is conceptually distinct from the sentence outcome. There may be reasons that pretrial measures may be conceptually separate from sentence outcomes; for example, drug defendants who are diverted, or have their charges dismissed, or are acquitted, could have a high court punishment experience, but no formal sentence. This is likely stratified by race; if Black

and Latino defendants are disproportionately arrested and charged with weaker evidence, they could have a significantly harsher court experiences, only to have their charges dismissed or be given a light sentence.

Moreover, past literature on racial inequality and organizational decision-making suggest several individual, organizational, and structural influences on racial disparities in court punishment and sentencing. Literature on racial stereotyping and focal concerns suggests that in a context of limited information and time, court actors fall back on stereotypes when assessing blameworthiness and threats to safety (Steffensmeier, Ulmer & Kramer, 1998). Thus, young Black males in particular are seen as dangerous and would be expected to receive harsher punishments compared to other groups (Bontrager, Bales, & Chiricos, 2005; Bridges & Steen, 1998; Spohn & Beichner, 2000). As part of an organizational environmental shift from adjudication to administration in the courts, increasing caseload size and complexity of cases could influence dispositions (Heydebrand & Seron, 1990). If a court has more cases, and especially more routinized drug cases, then it may influence its actors to rely more often on shorthand stereotypes to make these decisions. Court actors are also likely sensitive to external resources, including drug courts or other alternatives to incarceration. This might allow for more diversion and less punitive sentencing outcomes, particularly for White defendants.

Similarly, Hagan (1989) argues that drugs and other "victimless crime" cases are particularly vulnerable to outside political pressures. Thus, factors such as whether there is an active state sentencing commission, whether judges are elected or appointed, or the presence of drug courts could also influence the way that cases are adjudicated. I would expect that states with an active sentencing commission, as an oversight body, may be more inclined to have fewer racial disparities in sentencing. These commissions are often concerned with racial, gender, or

geographic disparity in sentencing (National Association of Sentencing Commissions, 2011). Similarly, states with appointed judges would likely have less punitive outcomes overall compared to judges who were elected and might run on "tough on crime" platforms.

Finally, many "legally-relevant" factors and policies that are functions of differential racial enforcement may influence court and sentencing outcomes. For example, the use of mandatory minimums, and the initial charging decision of drug sales compared to possession are largely a function of early police and prosecution work in determining drug amount (Barnes & Kingsworth, 1996). I would expect that those with higher criminal history, use of mandatory minimums, and a harsher initial charging decision can function as harsher "bargaining chips" to ensure more severe sentences. Similarly, Farrell and Swigert (1978) argue that the inclusion of criminal history is also partially stratified according to race and class.

Methods

Data and sample

The State Court Processing Statistics (SCPS) is drawn from a stratified random sample of the 75 most populous counties in the United States biannually from 1990-2006 (9 years total). [1] Data collection by the Bureau of Justice Statistics used a two-stage stratified random sample, where the initial 75 counties were divided into four strata based on population, arrests, and the volume of felony filing information, and then counties from each strata provided data for every felony case filed on a set number of days during the month of May.[2] The Bureau of Justice Statistics estimate that the 75 most populous counties cover more than one-third of the

[1] The initial SCPS dataset ran from 1990-2006, and the Bureau of Justice Statistics recently released one additional year of data collection for 2009. It is unclear as to whether future data collection will continue, though future analyses will include 2009 data. Given changes in sampling, most counties do not have available data for all years. However, I use the full sample for all years rather than limiting the timeframe, as I am interested in general mechanisms of court processing, rather than observing individual counties over time.

[2] Counties in the first stratum (most populous and most filings) provided 5 business days of filings, second and third stratum counties provided 10 days, and the fourth stratum provided 20 days of filings.

population, and approximately half of all reported crimes in which charges were filed by the prosecution. These data track a representative sample of felony defendants' movements through the local criminal courts, from initial filing until adjudication and sentencing, for up to a year. Additionally, demographic, prior record and incarceration, pretrial release, court appearance and pretrial rearrest, and adjudication information is include in the dataset.

I limit the sample to defendants with felony charges of drug trafficking or other drug crimes (N=35,214) filed against them. The "other" drug charges primarily include possession of controlled substances or paraphernalia, and prescription violations. The defendant sample is also limited to cases that had been resolved within the year follow-up period, since cases that were still pending did not have an adjudication or sentencing outcome. About 11% of the sample had cases that were pending, with slightly higher proportions of Black and Latino defendants compared to White defendants. Due to a small sample size, I also exclude those of "other" race, which is approximately 1.4% of the sample.

Court punishment indicators

I use indicators of court processing that could be punishing for defendants to develop an aggregate court punishment measure(s). These include both traditional measures used in sentencing scholarship, such as receiving a carceral sentence and sentence length, but also measures that are traditionally conceptualized as the court process, such as pretrial detention, bail amount, having a public defender or court-appointed attorney, and pleading guilty. Table 2.1 below shows the indicators of interest for the measurement model.

<table 2.1 about here>

Sentencing scholarship has generally focused on outcomes of the court process, such as the type and length of sentence. I use two related measures for indicators: whether a defendant received a carceral sentence of prison and/or jail, and the sentence length. Carceral sentence is measured as a dichotomous variable, with a 1 if the defendant was sentenced to prison or jail, and 0 otherwise (including if the defendant had his or her charges dropped, was sent to a diversionary program, or found not guilty by trial). Prison and jail sentence length is measured in months, truncated at a maximum of 470 months and logged, which is consistent with federal sentencing studies by the US Sentencing Commission and other researchers (Ulmer, Light, & Kramer, 2011). Defendants who did not receive a prison or jail sentence are coded as receiving 0 months. Before logging, the mean sentence length for a state defendant sentenced to prison and jail is 10.33 months.[3]

Pretrial detention is coded as a 1 if a defendant was detained in custody until the disposition of his or her case by the court and 0 otherwise. This excludes defendants who were initially detained but released before the disposition of their case, or defendants who were returned to custody after release because of a violation of their pretrial release conditions. About 40% of the sample was detained pretrial. Bail amount is in millions, which is truncated at a million dollars.[4] For those that were denied bail, I recoded bail amount as one million dollars, and those that were on a nonfinancial release (release on recognizance) were recoded as having a zero bail amount. After recoding the variable, the mean bail amount was over 90,000.[5]

[3] The mean prison sentence length is over 46 months when those that did not get a prison sentence are coded as missing instead of 0, as is done in the next chapter

[4] Less than 0.1% of the sample had an actual bail amount that was over a million dollars. I chose to scale the variable to millions because most of the other indicators were scaled between 0 and 1.

[5] This is highly skewed; excluding those that were denied bail (bail amount=1 million) and those that had a nonfinancial release/released on their own recognizance (bail amount=0) , the mean bail amount was 24,067. Future analyses might lower the maximum bail amount to see if it changes the factor loadings. I would not expect substantive results to change, however.

Guilty pleas reflect the increasingly administrative nature of courts, as well as the relative power of the prosecutor, who can bargain over both the seriousness of the charges or over the facts that affect sentences (Engen, 2008). While it generally shortens the court process and can result in a lower sentence than the defendant might otherwise receive (Ulmer, Eisenstein, & Johnson, 2010), it also undermines the adjudicatory function and presumption of innocence. Of those defendants who did not have their charges dismissed, over 80% plead guilty. Finally, public defenders or court-appointed attorneys could be relatively punitive for defendants compared to private attorneys insofar as they are likely to be under tremendous pressure to dispose of cases quickly and have limited time to spend on an individual defendant's case. Public defenders and court-appointed assigned attorneys are combined into a single category, because often the choice in attorney reflects county (or even state) practices rather than individual defendant choice.[6]

Independent variables

I also include a number of independent variables to predict the court processing and sentence outcome measures in a full (structural) model. Because I am primarily interested in observing differences between racial groups in court processing and sentencing outcomes, I include non-Hispanic Black, non-Hispanic White, and Latino/Hispanic groups. When estimating racial groups in the model as independent variables, I exclude the Black non-Hispanic group to serve as a reference category. In the state data, just under half of the sample was Black, about one-quarter was White, and one-quarter Latino/Hispanic. Age is measured in years as a continuous variable, and female is a dichotomous variable with 0 as male and 1 as female. The

[6] I attempted to include court time, measured in the number of months from arrest to adjudication of a case, but including this variable caused the models to not converge.

mean age in the sample was about 30 years old, and just under one-fifth of the sample was female.

<insert table 2.2 about here>

For the offense characteristics, I also include a dichotomous variable to indicate whether the initial filing charge is drug sales or trafficking, where cases that were filed as drug trafficking or sales are coded as 1, and other drug incidents as 0. Criminal history in the SCPS data include the number of prior arrests and number of prior felony convictions. Both the number of prior arrests and prior felony convictions are counts, and are truncated at a maximum of 10 prior incidents. The mean number of prior arrests was just under 5, and defendants in the sample had 1.2 prior felony convictions on average. Criminal justice control meant that the defendant was already under criminal justice system control at the time of the case, including on probation or parole, in a diversionary program, or already in custody. Just over one-third of defendants in the sample fell into this category, reflecting the high number of people who get cycled back through the system while under high surveillance.

Sentencing research also suggests the relevance of local context and the diversity of legal practices in different jurisdictions that differ substantially by area (Kautt, 2002; Lynch & Omori, 2014; Ulmer & Johnson, 2004; Wu & Spohn, 2008). I include percent nonwhite defendants in the caseload, and the percent drug cases as county-level characteristics. Nonwhite defendants on average were about 70% of the caseload, and drug cases were just under 40% of caseloads. I also include some demographic characteristics of the counties from the Census, including poverty, population density (population per 1000 square miles), percent white population, and a measure

of racial/ethnic heterogeneity based on the Herfindahl index[7]. Even given the urban counties in the sample, density varied from about 90 people to over 45,000 people per square mile. On average, counties in the sample had 50% white population, and had about 15% of its population below poverty.

I also include sentencing and court characteristics for state courts, coded from the Census of State Court Organizations, 2004. Because mandatory minimums can significantly drive sentences, I include whether there were mandatory minimums at the state level for felony drug offenses. Due to data limitations, this does not indicate whether mandatory minimums were used in any individual case, but states that have drug mandatory minimums could be used as leverage by prosecutors to secure lengthier sentences in general. According to the Census of State Court Organizations (2004), around 40% of states represented in the sample had mandatory minimums.[8] In addition to mandatory minimums, I also include whether the state that had an active sentencing commission, number of drug courts per million population, and whether or not judges are appointed rather than elected. Just under 20% of states whose counties represented in the sample have active sentencing commissions, over 70% appointed (rather than elected) judges, and on average there are 4 drug courts per 1 million people in the state. Finally, I include measures for percent female judges and percent nonwhite judges in appellate and general jurisdiction trial courts from the 2004 State Court Caseload Statistics survey in the models. On average, states in the sample have 30% female judges, and 12% nonwhite judges. Based on Ward et. al.'s (2009) research, observed racial disparities would more likely be attenuated through the

[7] This measure is calculated as: $1 - \sum_{1}^{j=J} G_j^2$, where G is the proportion of each racial/ethnic group j out of J groups, subtracted from 1. In this case, I use four racial/ethnic groups: non-Hispanic Black, non-Hispanic White, non-Hispanic other, and Latino/Hispanic.

[8] One of the weaknesses of this measure is that it does not account for repeals to drug mandatory minimums or changes in legislation. Since the SCPS dataset itself covers a lengthy time period from 1990-2006, it is highly likely that state mandatory minimums have changed over time.

representation of nonwhite prosecutors rather than judges, but this study focuses on judges due to data limitations.

Confirmatory factor analysis and multiple groups analysis

I use these court punishment indicators to test two different measurement models using confirmatory factor analysis (CFA). I first test a single-factor model where I load all the individual factors onto one latent court punishment variable. I then compare the single factor model against a two-factor model, where I separate the court process indicators (pretrial detention, bail amount, having a public defender or court appointed attorney, and plea bargaining) from the sentence outcome indicators (which are carceral sentence and sentence length). The two CFA models are below in figures 2.1 and 2.2.

<insert figure 2.1 and 2.2 about here>

The general measurement model is expressed as: $x=\Lambda_x\xi+\delta$ where the x is the vector of observed variables, Λ_x is the vector of all factor loadings for x, ξ represents the latent exogenous variables, and δ is the disturbance term (the error of measurement for x) (Bollen, 1989, p. 20). δ is assumed to have a mean of zero, uncorrelated with ξ, homoscedastic and nonautocorrelated across observations (Bollen, 1989 p. 18). I scaled each of the factors to a binary indicator, so the latent variables are on a scale of 0 to 1.[9]

Because I am primarily interested in racial differences in court processing and outcomes, I also estimate the CFA model with multiple groups for non-Hispanic Black, non-Hispanic

[9] As Kline (2005, p. 105) mentions, there are two basic requirements for a structural equation model for identification: there must be at least as many observations as free model parameters, and all latent variables must be assigned a scale. Moreover, it is possible for my two-factor model to be empirically underidentified if the correlation between the two latent constructs is close to zero. Fortunately, after running the model, the correlation was large enough to be identified. Bollen (1989) notes that a two-factor model is sufficiently identified if the factor complexity of each x_i is 1(so each indicator loads on 1 factor only) and that there are no nonzero elements in Φ. Additionally, the errors are not correlated, and there are at least 2 indicators per factor.

White, and Latino/Hispanic groups. To examine whether group differences are due to individual indicators (such as large differences in bail amount or in rates of plea bargaining), I fit an unconstrained model allowing factor loadings, means, factor variances and covariances to be estimated separately for each racial group.[10] To model the cumulative racial inequality of the court punishment and sentence outcome latent variables, I estimate the latent variables' means and variances for each racial group by setting their intercepts to 0, as well as constraining the factor loadings and variances to be equal across groups.

After estimating the CFA models, I then specify a full structural model, testing the predictors of sentencing outcomes using the court process measure and other independent variables. For this model, the general equations are: $y = B\eta + \Lambda x + \delta$, where $\eta = \Lambda x + \zeta$. The model is below in figure 2.3 with selected independent variables depicted.

<insert figure 2.3 about here>

The full model is recursive, since it has no feedback loops and no correlated errors, and is therefore identified (Paxton, Hipp, & Marquart-Pyatt, 2011). I estimate the effects of the independent variables on both the court process and the sentence outcome measure. In other words, I test to see whether court processing is a mediator for the other independent variables, since it is reasonable to expect for the court process to predict sentence outcomes. Finally, I include a multiple groups analysis between Black, Latino, and White groups to determine how other factors might influence court processing and sentence outcomes differently. For both the CFA and full models, I cluster by county to adjust the standard errors for the non-independent nature of observations in the sample.

[10] For these models, I still constrain the factor intercepts at 0 and the variances to be equal because completely unconstrained models would not converge.

Results

CFA Models

I first conceptualize a single "court punishment" construct that includes both the final sentence as well as factors that occur during the court process. While many scholars examine individual stages of criminal justice system processing, this model represents a common measure of punishment under which cumulative between racial group differences might be observed. Specifically, I capture potential punishment incurred through the court process with six indicators, as illustrated in figure 2.1: pretrial detention, bail amount, pleading guilty, having a public defender or assigned attorney, receiving a prison or jail sentence, and the length of the sentence. The fit statistics for the CFA models are listed below:

<insert table 2.3 about here>

The fit indices indicate a relatively poor model fit in general for the single-factor court punishment CFA, suggesting that combining court processing and sentencing indicators together is not the best way to characterize defendants' punitive experiences in general. The fit statistics indicate a relatively poor fit; the chi-square value is significant ($p<0.001$),[11] the CFI and TLI are 0.89 and 0.81, respectively, and the RMSEA is 0.166.[12] Even given the poor fit, the individual factor loadings are all statistically significant and in the expected positive direction; higher values indicate greater punishment in the court process. Table 2.4 below illustrates the CFA model results, including the single-factor model, the two-factor model, and then a multiple groups analysis for the two-factor model.

[11] Because the sample size is large, the chi-square value is likely to be significant even if the observed and expected values in the covariance matrices are relatively close. Thus, I rely more on the approximate fit indices to assess model fit.

[12] The CFI and TLI range from 0 to 1, with higher values indicate a better fit, and lower values for the RMSEA indicate a better fit. Hu and Bentler (1999), recommend cutoff values for an ML method of 0.9 for the CFI and TLI as a "good" fit, and values of less than 0.05 for the RMSEA as a very good fit, and values above 0.10 as a poor fit. These values are intended to be guidelines rather than strict rules, however, and are more useful for comparison between models.

<insert table 2.4 about here>

The two factor model suggests that there is a distinct punitive court process from the sentence outcome. Dividing the court process from sentence outcome measures results in a significant improvement compared to the single factor model in model fit, reflected by the chi-squared fit statistics (change in chi-square=2283.96, d.f.=1, $p<0.001$). Other approximate fit statistics indicate model improvement as well, with a smaller RMSEA, AIC, and BIC, and slightly higher TLI (0.92) and CFI (0.84). While all the indicators are still positive, guilty pleads become a weaker indicator after dividing the court process from sentence outcome. Because guilty pleas are the normative disposition for a case, this category perhaps better reflects defendants who are not sent to a diversionary program or have their charges dropped, rather than a punitive court experience. As reflected in the positive correlation between court process and sentence outcome, more severe experiences in the court process are related to more severe sentence outcomes.

I then examined how these court punishment and sentence outcome measures were generally different in general for Black, Latino, and White defendants by conducting a multiple groups analysis on the two-factor CFA model by racial/ethnic group. These results are reflected in the final three models of Table 2.4 and in Figure 2.4 below. I first estimate an unconstrained model, allowing factor loadings and means to be estimated separately for each group,[13] and then increased constraints between groups, including factor loadings, and finally estimating a completely constrained model. The final constrained model allows me to compare the mean court process and sentence outcome measures across groups. In general, the fit indices indicate little difference in fit between the unconstrained and constrained model when estimating the multiple racial groups, suggesting the factor loadings are relatively similar between racial

[13] I attempted to estimate a fully unconstrained model, but it did not converge.

groups. Specifically, the chi-square, AIC and BIC are better fitting for the unconstrained model, but the RMSEA and TLI are better for the constrained model.

<insert figure 2.4 about here>

These results suggest that punishment in the court process and sentence outcome is different for all three groups, but Black and Latino defendants are relatively disadvantaged in different ways. Both the court punishment and sentence outcome scores are on a 0 to 1 scale, and Latino defendants have the highest mean court punishment score (about 0.48), which is over 30% is larger than White defendants (0.32), and 15% higher than Black defendants (0.40). Black defendants, on the other hand, have the highest sentence outcome punishment, which is over 35% higher than for White defendants, and is over 20% larger than Latino defendants.

Full models

Given the results from the CFA models that support a two-factor model, I estimate a full structural model with individual, county, and state independent variables predicting court process and sentence outcome. Because I expect that a punitive court punishment experience would lead to a more punitive sentence outcome, I include a path of court punishment predicting sentence outcome. By including this path, I am also testing whether court punishment is a mediating variable for sentence outcome by introducing independent variables to predict both the court punishment and sentence outcome. I first estimated a baseline model without any racial groupings, as well as a second model with racial groups as independent variables. These two models are included in Appendix A. I then conducted a series of multiple group models with increasingly restrictive constraints between racial group models: an unconstrained model, allowing factor loadings, variances, and residuals to be estimated for each group, then a second

constraining the variance to be equal across racial groups, a third one constraining factor loadings and variances to be equal across groups, and finally a fully constrained model. Table 2.5 below reflects the fit statistics for the full multiple group models.

<insert table 2.5 about here>

Much like the CFA multiple group results, the relative fit indices indicate little difference between the unconstrained and constrained models. The AIC, BIC, and CFI are indicate that the unconstrained model is a slightly better fit, and the TLI and RSEA suggest that the constrained model is a better-fitting result. According to the chi-square test, the constrained model is a better fit than the unconstrained model (change in chi-square=3206.52, d.f.=102, $p<0.001$), although it is likely to be significant given the large sample size. Table 2.6 below includes full model results from the baseline model, a model with racial groups as independent variables, and the unconstrained and constrained multiple group models.

<insert table 2.6 about here>

While the CFA models indicate that court processes are most severe for Latino defendants overall, a punitive court process had the strongest impact on sentencing outcomes for Black defendants. Black defendants, and to a lesser degree Latino defendants, are particularly impacted by the cumulative and indirect nature of early criminal justice and court experiences in later sentencing decisions. This is likely due to the use of criminal history in early charging, bail, and adjudication decisions. As reflected in the full models, these factors significantly increase court punishment, but have less of an impact on sentence outcomes. Specifically, prior arrests only impact sentence outcome indirectly through court processing experiences, and for Black defendants, the charging decision of drug sales and the number of prior felony convictions had no or minimal direct impact on sentences. Criminal history is one of the largest drivers in

sentencing, and one of the reasons that Black defendants receive the most punitive sentence outcomes. This also illustrates one way that examining mechanisms of racial disparities are less visible when estimating sentencing outcomes alone. On the other hand, with the exception of prior record, court process largely does not appear to be a mediator on sentence outcome for the other independent variables.

The results also support racial stereotyping and focal concerns perspectives of sentencing Black men, and young Black men in particular, to the most severe sentences. Younger Black men receive a more severe sentence outcome compared to older Black men. Black and white women tend to experience less severe sentence outcomes compared to men, although this is likely for opposite reasons. Black men experience the most severe sentence outcomes, whereas white women experience the least severe outcomes. For example, white women are the most likely group to be diverted (16% are diverted, compared to 9% of Black women and 12% of Latina women), and Black men are the most likely group to receive a prison sentence (37% of those convicted receive a prison sentence, compared to 32% of Latino men and 25% of White men). While sentencing outcomes are stratified by gender within racial groups, the court process seems to be more uniform. Women do not experience less severe court punishment when the models are estimated separately by racial group (although when constrained to be equal, they do experience less severe court punishment overall compared to men). On the other hand, racial threat is not supported; under racial threat theory, places with a lower percent White population would be expected to have higher punishment outcomes for nonwhite defendants. Instead, counties with a higher percent White population generally predicted a higher court punishment process for Black and White racial groups, and had no impact on sentencing. Additionally, more diverse counties actually have less punitive sentence outcomes for Black defendants.

Mandatory minimums are likely a significant driver of racial inequality, disproportionately increasing punitive sentence outcomes for Black and Latino defendants. Although mandatory minimums are not estimated at a case-level due to data limitations, these findings fall in line with past research suggesting that mandatory minimums are applied more often to Black and Latino defendants (Caravelis, Chiricos, & Bales, 2011; Crow & Johnson, 2008; Farrell, 2003; Ulmer, Kurlychek, & Kramer, 2007). On the other hand, they do not generally have much of an effect (or potentially even a small downward effect) on court process.

The results also suggest that the organizational and political context of the courts also impacts how punitive they are. First, courts that process higher percentages of drug cases result in a lower punitive court process for Black defendants, and a lower sentence outcome for Latino and White defendants. It is possible that higher volumes of drug cases may lower the "going rate" for drug offenses, and certainly may put pressure on the courts to dispose of the cases quickly. Similarly, drug courts may be incentivizing defendants to plead guilty, especially if they are post-plea where more drug courts per population predict a less severe sentence outcome for Black and White defendants, but predicted a more punitive court process. Thus, courts are sensitive to both internal and external pressures on case processing.

Outside political influences also impact the punitiveness of the court process and sentence outcome in some unexpected ways. Sentencing commissions predict a lower court process punishment, but predict a more severe sentence outcome for Black and Latino defendants. It is possible that sentencing commissions could be in states with larger racial disparities in the first place. Similarly, states with appointed judges predict a less severe sentence outcome for all racial groups, but a harsher court process for Black and Latino defendants.

Discussion and conclusion

While scholars have studied racial disparities at many individual stages of the criminal justice process, including pretrial detention, charging, and certainly sentencing, few have assessed the cumulative racial differences in criminal justice processing. This chapter operationalizes the punitive nature of the court process separately from sentencing outcomes and estimates the cumulative disparity between racial groups. These results suggest that the court process is best captured as a distinct experience from the sentencing outcome and is differentially punishing between racial groups. The sentence outcome is the most severe for Black defendants; in the CFA models, Black defendants had a total score of 0.36 compared to 0.28 for Latinos, and 0.23 for White defendants.

In line with previous research on pretrial processes (Demuth, 2003; Schlesinger, 2005), the court process itself is the most punishing for Latino defendants compared to White or Black defendants on average. Latino defendants have the highest median bail amount ($5,000) compared to $3,000 for Black and White defendants, the highest rates of pretrial detention, and are the most likely to plea guilty. Black defendants are the most likely to have a public defender or assigned attorney, however. These suggest a series of decision points at which Latino and Black defendants receive disadvantaged experiences, which add to a cumulatively more punitive experience compared to White defendants. While this analysis finds that Black defendants receive the harshest sentencing outcomes, Latinos may receive harsher sentencing outcomes than they otherwise might indirectly due to their highly relatively punitive treatment in the presentencing stages.

Black defendants are particularly impacted by the cumulative and indirect impact of charging decisions and prior criminal history in sentencing through severe early court

experiences. If discretion is relatively wide at early stages, such as bail and pretrial detention, or how cases are charged, it makes sense that these influence later sentencing decisions, where decisionmaking is relatively more structured (Schlesinger, 2007). The indirect role of charging and criminal history could make it more difficult to detect in sentencing, and because these factors are often seen as racially neutral, they may not be considered a mechanism for cumulative racial inequality, even though it has a large impact in court processing, sentencing indirectly for Black (and to a lesser degree Latino) defendants.

Racial differences may be due, in part, to racial stereotyping and focal concerns perspectives of seeing young Black and Latino men as a greater threats to community safety, particularly in the face of massive case processing of routine drug cases. Bridges (1997) suggests that racial disparities could result from a combination of a lack of resources and cultural or language barriers, where defenders and pretrial investigators have little resources to check references or verify information, which lead judges to more often follow recommendations of prosecutors. In fact, these two theories could work in complementary manners; as Steffensmeier, Ulmer, and Kramer (1998) note, if young, Black, male defendants are presumed to be dangerous, court actors who are processing large volumes of routine drug cases and are short on resources would be likely to rely on a prosecutor's recommendation for a severe sentence. Similarly, if Latino men are stereotyped as being "illegal aliens" and are assumed as having a greater flight risk, and there are disproportionate barriers to verifying community ties, then prosecutors and judges would rely on these stereotypes by presuming them to be a higher flight risk.

This is not to say that given infinitely more resources or even less discretion, courts would be more likely to be much fairer. Other structural barriers, including ones that are built into "legally-relevant" considerations of court processing and sentencing such as prior record, or

uneven application of mandatory minimums for certain types of drugs, would still result in racial disparities. For example, these analyses suggest that formal policies such as mandatory minimums likely influence Black and Latino sentencing to a greater degree than White defendant sentencing.

Studies that aim to examine the cumulative nature of inequality in sentencing should continue to theorize about and develop measures of the relatively invisible nature of the court process and how it disproportionately punishes Latino and Black defendants. Because many key decisions occur the pretrial and presentencing stages, capturing the expansive nature of punishment in court processing is helpful in considering where early racial disparities occur and how they might influence later stages. Perhaps even more important than understanding how much Black-White or Latino-White differences at multiple stages is to think about how these processes occur. The next chapter moves beyond total measures of court processing and sentence outcomes to examine the mechanisms of cumulative racial inequality.

Table 2.1: Descriptive statistics for measurement model indicators

	Mean	SD	Min	Max
Pretrial detention	0.38	0.49	0	1
Bail amount in millions	0.09	0.27	0	1
Guilty plea	0.66	0.48	0	1
Public defender or assigned attorney	0.57	0.50	0	1
Carceral sentence	0.31	0.46	0	1
Carceral sentence length (ln)	0.89	1.50	0	6.15

Table 2.2: Descriptive statistics structural model independent variables

	Mean	SD	Min	Max
Individual level variables				
Year	1998.52	5.04	1990	2006
Race/ethnicity				
White, non-Hispanic	0.28	0.45	0	1
Black, non-Hispanic	0.48	0.5	0	1
Latino/Hispanic	0.24	0.43	0	1
Age	30.83	9.91	10	90
Female	0.18	0.38	0	1
Drug sales	0.47	0.5	0	1
Number of prior arrests	4.79	4.05	0	10
Number of prior felony convictions	1.22	2.01	0	10
Criminal justice control	0.34	0.47	0	1
County level variables (n=71)				
Percent nonwhite defendants	69.57	14.91	18.72	97.09
Percent of drug cases	38.68	11.17	8.66	65.63
Population density	4.51	8.87	0.09	45.52
Percent below poverty	14.47	5.18	3.62	30.68
Percent white population	48.7	16.44	14.58	91.41
Racial/ethnic heterogeneity	0.59	0.1	0.16	0.74
State level variables (n=27)				
Sentencing commission in state	0.18	0.38	0	1
Drug courts per 1 million	4.05	2.2	0.86	15.64
Judges appointed (not elected)	0.71	0.45	0	1
Mandatory minimum for felony drug sentence	0.41	0.23	0	1
Percent female judges	29.09	6.24	14.29	47.37
Percent nonwhite judges	12.02	5.04	0	63.64

Table 2.3: fit statistics for CFA models

	Chi square (d.f.)	p-value	RMSEA	AIC	BIC	CFI	TLI
CFA measurement models							
1 factor CFA	9036.58 (9)	<0.001	0.166	270224.88	270377.83	0.89	0.81
2 factor CFA	6752.62 (8)	<0.001	0.153	267942.93	268104.38	0.92	0.84
2 factor CFA M-groups: variances/covariances equal	8238.46 (39)	<0.001	0.134	260125.76	260481.57	0.89	0.88
2 factor CFA M-groups: factor loadings, variances/covariances equal	8515.09 (47)	<0.001	0.124	260386.39	260674.43	0.89	0.90
2 factor CFA M-groups: factor constrained	8775.08 (53)	<0.001	0.118	260634.38	260871.59	0.89	0.90

Table 2.4: CFA models

	1 factor CFA	2 factor CFA	2 factor M-groups: variances constrained			2 factor M-groups: factor loadings, variances constrained			2 factor M-groups: constrained		
			Black	Latino	White	Black	Latino	White	Black	Latino	White
Measurement model indicator	**Court punishment**	**Court process**									
Pretrial detention	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Bail amount	0.206***	0.333***	0.312***	0.424***	0.360***	0.346***	0.346***	0.346***	0.333***	0.333***	0.333***
Guilty plea	1.377***	0.397*	0.497	0.442+	0.510	0.452***	0.452***	0.452***	0.401***	0.401***	0.401***
Public def./assign. atty.	0.357***	0.277***	0.292	0.243*	0.410+	0.293***	0.293***	0.293***	0.273***	0.273***	0.273***
		Sentence outcome									
Carceral sentence	3.161***	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Sentence length	9.685***	3.278***	2.997***	3.132***	2.892***	3.013***	3.013***	3.013***	3.013***	3.013***	3.013***
Means and variances											
mean(court process)			0.401***	0.483***	0.316***	0.401***	0.483***	0.316***	0.398***	0.478***	0.326***
mean (sentence outcome)			0.364***	0.281***	0.231***	0.363***	0.282***	0.230***	0.363***	0.282***	0.230***
var(pretrial detention)	0.219***	0.096*	0.114	0.114	0.114	0.106***	0.106***	0.106***	0.096***	0.096***	0.096***
var(bail amount)	0.073***	0.058***	0.058***	0.058***	0.058***	0.058***	0.058***	0.058***	0.058***	0.058***	0.058***
var(guilty plea)	0.191***	0.207***	0.200***	0.200***	0.200***	0.203***	0.203***	0.203***	0.206***	0.206***	0.206***
var(public def.)	0.244***	0.236***	0.233***	0.233***	0.233***	0.234***	0.234***	0.234***	0.236***	0.236***	0.236***
var(carceral sentence)	0.008***	0.021***	0.006*	0.006*	0.006*	0.007***	0.007***	0.007***	0.007***	0.007***	0.007***
var(sentence length)	0.368***	0.233**	0.386***	0.386***	0.386***	0.381***	0.381***	0.381***	0.381***	0.381***	0.381***
var(court punishment)											
var(court process)	0.020***	0.143***	0.122	0.138+	0.109	0.125***	0.150***	0.120***	0.137***	0.160***	0.129***
var(sentence outcome)		0.191***	0.226***	0.197***	0.172***	0.225***	0.198***	0.170***	0.225***	0.198***	0.170***
cov(court process, sentence outcome)		0.069***	0.081***	0.057***	0.061***	0.078***	0.060***	0.062***	0.078***	0.060***	0.062***

***p<0.001; **p<0.01; *p<0.05; +p<0.10

Table 2.5: fit statistics for full models

	Chi square (d.f.)	p-value	RMSEA	AIC	BIC	CFI	TLI
Full models							
M-groups: unconstrained	17636.55 (270)	<0.001	0.077	2610612.10	2611895.3	0.80	0.72
M-groups: constrained variances/covariances	18932.96 (286)	<0.001	0.078	2611876.50	2613025.5	0.79	0.72
M-groups: constrained variances and loadings	19588.23 (294)	<0.001	0.078	2612515.80	2613597.7	0.78	0.71
M-groups: constrained model	20843.07 (372)	<0.001	0.071	2613614.60	2614042.3	0.77	0.76

Table 2.6: Full models

	M-groups: unconstrained			M-groups: variances equal		
	Black	Latino	White	Black	Latino	White
Court process measurement model indicators						
Pretrial detention	1.000	1.000	1.000	1.000	1.000	1.000
Bail amount	0.219***	0.261***	0.273***	0.218***	0.270***	0.263***
Guilty plea	1.510***	1.341***	1.809***	1.507***	1.366***	1.769***
Public def./assign atty.	1.378***	1.068***	1.439***	1.374***	1.099***	1.401***
Court process structural model predictors						
Year	0.007***	0.004***	0.002*	0.006***	0.005***	0.002*
Age	0.001**	0.000	0.000	0.001*	0.000	0.000
Female	-0.001	-0.023+	-0.003	-0.001	-0.023+	-0.003
Drug sales	0.044***	0.129***	0.041***	0.045***	0.124***	0.043***
Prior arrests	0.005***	0.008***	0.010***	0.006***	0.007***	0.010***
Prior felony convictions	0.013***	0.016***	0.011***	0.013***	0.017***	0.011***
Criminal justice control	0.058***	0.070***	0.078***	0.058***	0.072***	0.076***
% nonwhite defendants	0.000	-0.001	0.000	0.000	-0.001	0.000
% drug cases	-0.001***	0.001	0.001+	-0.001***	0.001+	0.001+
Population density	-0.002***	-0.001***	-0.003***	-0.002***	-0.001***	-0.003***
% below poverty	-0.001	-0.003**	0.001	-0.001	-0.003**	0.001
% White population	0.002***	0.000+	0.001*	0.002***	0.000	0.001**
Racial/ethnic heterogeneity	0.322***	0.088*	0.198***	0.318***	0.078+	0.203***
Sentencing commission in state	-0.080***	-0.098**	-0.050***	-0.081***	-0.097**	-0.049***
Drug courts per population	0.007***	0.011*	0.006***	0.007***	0.011**	0.007***
Judges appointed	0.014*	0.065**	0.022	0.014*	0.064**	0.022
Mandatory minimum drug	-0.022	0.035	-0.049+	-0.021	0.031	-0.051+
% female judges	0.005***	0.011***	0.003***	0.005***	0.011***	0.003***
% nonwhite judges	0.000	-0.003*	0.000	0.000	-0.003*	0.000
Sentence outcome factor loadings						
Carceral sentence	1.000	1.000	1.000	1.000	1.000	1.000
Sentence length (ln)	2.956***	3.083***	2.927***	2.973***	3.109***	2.859***

Sentence outcome predictors						
Court process	2.581***	1.409***	1.856***	2.404***	1.853***	1.679***
Year	-0.020***	-0.009***	-0.008***	-0.019***	-0.013***	-0.008***
Age	-0.002**	0.000	-0.001	-0.002**	0.000	0.000
Female	-0.029*	-0.030+	-0.016*	-0.030*	-0.020	-0.015*
Drug sales	0.012	-0.043*	0.042**	0.020	-0.086***	0.040***
Prior arrests	0.000	0.001	-0.007***	0.001	-0.002	-0.005*
Prior felony convictions	0.006	0.033***	0.026***	0.008*	0.026***	0.027***
Criminal justice control	-0.081***	-0.029	-0.067***	-0.068***	-0.061**	-0.056***
% nonwhite defendants	0.002**	-0.002	0.002+	0.002**	-0.002	0.002*
% drug cases	-0.002	-0.003***	-0.007***	-0.002+	-0.003***	-0.007***
Population density	0.008***	0.005***	0.005***	0.007***	0.006***	0.005***
% below poverty	0.007	0.009***	0.002	0.007	0.011***	0.002
% White population	-0.001	0.001+	0.000	-0.001	0.001+	0.000
Racial/ethnic heterogeneity	-0.993***	0.219	-0.242+	-0.926***	0.201	-0.217+
Sentencing commission in state	0.102*	0.252***	-0.002	0.090*	0.286***	-0.009
Drug courts per population	-0.027***	0.010	-0.011**	-0.025***	0.004	-0.011***
Judges appointed	-0.153***	-0.370***	-0.175***	-0.153***	-0.396***	-0.170**
Mandatory minimum drug	0.186**	0.143**	0.097***	0.180**	0.130*	0.092***
% female judges	-0.012***	-0.019***	-0.003	-0.012***	-0.024***	-0.003
% nonwhite judges	0.009***	0.015***	0.003+	0.009***	0.016***	0.003
Variances						
var(pretrial detention)	0.203***	0.194***	0.172***	0.193***	0.193***	0.193***
var(bail amount)	0.066***	0.092***	0.065***	0.072***	0.072***	0.072***
var(guilty plea)	0.171***	0.148***	0.170***	0.165***	0.165***	0.165***
var(public defender/assigned atty)	0.219***	0.227***	0.218***	0.220***	0.220***	0.220***
var(carceral sentence)	0.003*	0.001	0.009***	0.004*	0.004*	0.004*
var(sentence length)	0.514***	0.359***	0.269***	0.405***	0.405***	0.405***
var(court process)	0.016***	0.027***	0.014***	0.018***	0.018***	0.018***
var(sentence outcome)	0.093***	0.112***	0.094***	0.099***	0.099***	0.099***

*** p<0.001; ** p<0.01; *p<0.05; +p<0.10

Table 2.6: Full modes (continued)

	M-groups: variances, loadings constrained			M-groups: constrained		
	Black	Latino	White	Black	Latino	White
Court process measurement model indicators						
Pretrial detention	1.000	1.000	1.000	1.000	1.000	1.000
Bail amount	0.244***	0.244***	0.244***	0.244***	0.244***	0.244***
Guilty plea	1.527***	1.527***	1.527***	1.531***	1.531***	1.531***
Public def./assign atty.	1.300***	1.300***	1.300***	1.302***	1.302***	1.302***
Court process structural model predictors						
Year	0.006***	0.005***	0.003**	0.005***	0.005***	0.005***
Age	0.001*	0.000	0.001	0.000+	0.000+	0.000+
Female	-0.001	-0.018	-0.003	-0.011*	-0.011*	-0.011*
Drug sales	0.047***	0.110***	0.046***	0.065***	0.065***	0.065***
Prior arrests	0.006***	0.007***	0.012***	0.008***	0.008***	0.008***
Prior felony convictions	0.014***	0.014***	0.012***	0.014***	0.014***	0.014***
Criminal justice control	0.060***	0.062***	0.087***	0.068***	0.068***	0.068***
% nonwhite defendants	0.000	-0.001	0.000	0.000	0.000	0.000
% drug cases	-0.001***	0.001+	0.001+	0.000	0.000	0.000
Population density	-0.002***	-0.001***	-0.003***	-0.002***	-0.002***	-0.002***
% below poverty	-0.001	-0.003**	0.001	-0.001	-0.001	-0.001
% White population	0.002***	0.000	0.001*	0.001***	0.001***	0.001***
Racial/ethnic heterogeneity	0.315***	0.080*	0.224***	0.239***	0.239***	0.239***
Sentencing commission in state	-0.082***	-0.082**	-0.057***	-0.086***	-0.086***	-0.086***
Drug courts per population	0.007***	0.011**	0.007***	0.009***	0.009***	0.009***
Judges appointed	0.015*	0.056**	0.024+	0.023*	0.023*	0.023*
Mandatory minimum drug	-0.022	0.025	-0.055+	-0.033*	-0.033*	-0.033*
% female judges	0.005***	0.010***	0.003***	0.005***	0.005***	0.005***
% nonwhite judges	0.000	-0.003*	0.000	-0.001	-0.001	-0.001
Sentence outcome factor loadings						
Carceral sentence	1.000	1.000	1.000	1.000	1.000	1.000
Sentence length (ln)	2.982***	2.982***	2.982***	2.980***	2.980***	2.980***

Sentence outcome predictors						
Court process	2.389***	1.869***	1.653***	1.985***	1.985***	1.985***
Year	-0.018***	-0.012***	-0.008***	-0.014***	-0.014***	-0.014***
Age	-0.002**	0.000	0.000	-0.001+	-0.001+	-0.001+
Female	-0.029*	-0.029	-0.015*	-0.014+	-0.014+	-0.014+
Drug sales	0.018	-0.062***	0.036**	0.005	0.005	0.005
Prior arrests	0.001	-0.001	-0.007***	-0.001	-0.001	-0.001
Prior felony convictions	0.008*	0.030***	0.025***	0.018***	0.018***	0.018***
Criminal justice control	-0.072***	-0.045+	-0.072***	-0.066***	-0.066***	-0.066***
% nonwhite defendants	0.002**	-0.002	0.002*	0.002*	0.002*	0.002*
% drug cases	-0.002+	-0.003***	-0.007***	-0.004***	-0.004***	-0.004***
Population density	0.007***	0.006***	0.006***	0.007***	0.007***	0.007***
% below poverty	0.007	0.010***	0.002	0.005**	0.005**	0.005**
% White population	-0.001	0.001	0.000	0.000	0.000	0.000
Racial/ethnic heterogeneity	-0.914***	0.196	-0.248+	-0.467**	-0.467**	-0.467**
Sentencing commission in state	0.091*	0.260***	0.002	0.097***	0.097***	0.097***
Drug courts per population	-0.026***	0.005	-0.011***	-0.019***	-0.019***	-0.019***
Judges appointed	-0.154***	-0.383***	-0.173**	-0.191***	-0.191***	-0.191***
Mandatory minimum drug	0.181**	0.141**	0.097***	0.156***	0.156***	0.156***
% female judges	-0.012***	-0.021***	-0.003+	-0.011***	-0.011***	-0.011***
% nonwhite judges	0.009***	0.016***	0.003	0.008***	0.008***	0.008***
Variances						
var(pretrial detention)	0.194***	0.194***	0.194***	0.195***	0.195***	0.195***
var(bail amount)	0.072***	0.072***	0.072***	0.072***	0.072***	0.072***
var(guilty plea)	0.166***	0.166***	0.166***	0.165***	0.165***	0.165***
var(public defender/assigned atty)	0.222***	0.222***	0.222***	0.222***	0.222***	0.222***
var(carceral sentence)	0.005**	0.005**	0.005**	0.005***	0.005***	0.005***
var(sentence length)	0.404***	0.404***	0.404***	0.405***	0.405***	0.405***
var(court process)	0.018***	0.018***	0.018***	0.019***	0.019***	0.019***
var(sentence outcome)	0.098***	0.098***	0.098***	0.104***	0.104***	0.104***

*** p<0.001; ** p<0.01; *p<0.05; +p<0.10

Figure 2.1: 1 factor CFA model

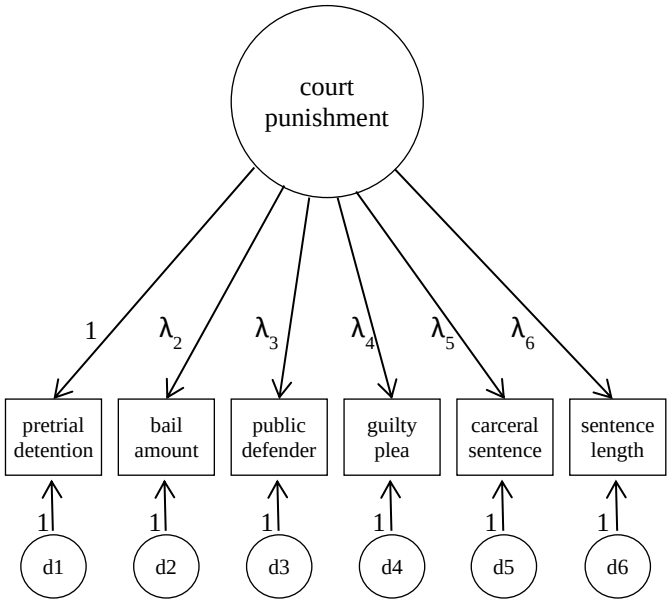


Figure 2.2: 2 factor CFA model

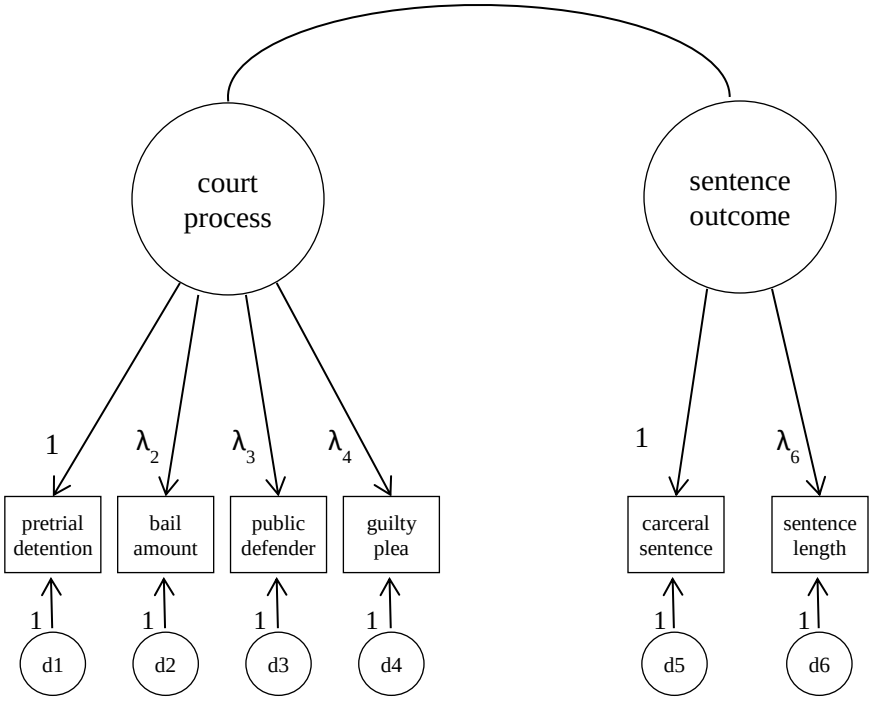


Figure 2.3: Full model with selected exogenous variables

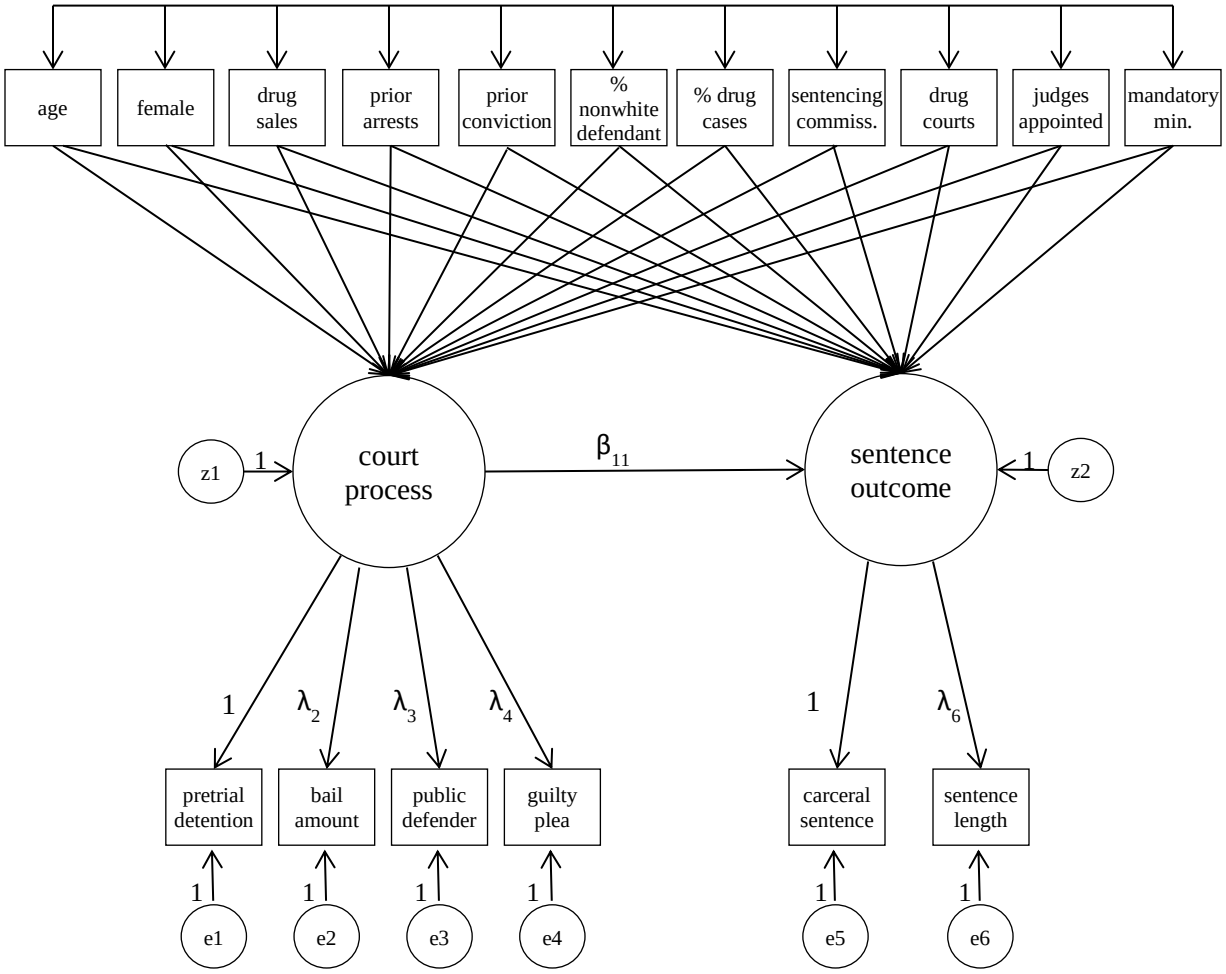
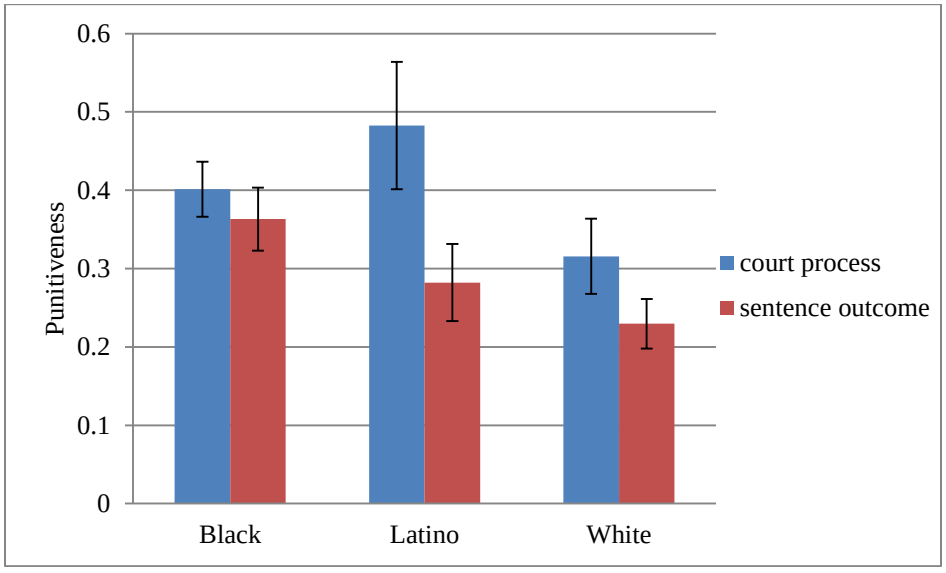


Figure 2.4: Court process and sentence outcome scores by racial group



Chapter 3: Mechanisms of cumulative racial inequality in federal and state systems

While drugs and crime were traditionally left to the states to regulate, the federalization of drug crime control has been part of the changing landscape as part of the war on drugs. For scholars, it has raised interesting questions about the increased discretion available to court actors in the enforcement and punishment of drug crimes, and the organizational context of the courts and courtroom work groups (Miller & Eisenstein, 2005). The federal system generally has the "comparative advantage" compared to the state courts, including greater resources, higher rates of pretrial detention, looser evidentiary rules, and more favorable asset-forfeiture laws (Brickley, 1995; Miller & Eisenstein, 2005). On the other hand, state or local systems are more often short on resources, and are characterized as handing out "assembly-line" justice. Although federal caseloads have been increasing, state courts still handle the vast majority of cases (Galanter, 2004; Miller & Eisenstein, 2005; O'Connor, 1980).

Federal prosecutors have an additional layer of discretion to select certain types of cases to be prosecuted (Levine, 2008). In the case of drugs, because federal legislation largely duplicates already-existing state laws, federal courts are even more of a reflection of policy and informal mandates made by prosecutors relative to state courts (Brickley, 1995). This is compounded by the fact that they also have less accountability to the local electorate because they are appointed rather than elected like local prosecutors (Worrall, 2008). Given the relatively greater resources of federal compared to state prosecutors, as well as harsh federal sentencing legislation passed during the war on drugs, federal prosecutors can prosecute more harshly than local prosecutors (Worrall, 2008).

Sentencing at the federal level is based on the Federal Sentencing Guidelines, which includes a calculation of a sentence range given the offense seriousness and criminal history.

There is a possibility for many adjustments (generally enhancements) that can be made based on a number of offense criteria. Although the Guidelines are only advisory post-2005, past research indicates that districts tend to sentence in similar patterns both before and after the changes to policy (Lynch & Omori, 2014). Moreover, federal sentencing still adheres to mandatory minimum sentences, which were not formally affected by the advisory status of the Guidelines and are still the primary driver of high federal drug sentences. Prosecutors are thus better able to obtain convictions and impose long sentences relative to state courts (Levine, 2008). These practices result in defendants being put in the relatively most disadvantageous position (Brickley, 1995). For example, Cares (2002) found that federal court cocaine defendants received a sentence that was 2 ½ times as long as those in state court in Pennsylvania.

Moreover, places with close local-federal prosecutorial relationships may also allow increased discretion for local prosecutors (Miller & Eisenstein, 2005). One jurisdiction studied by Miller and Eisenstein (2005) has a cooperative program with the local district attorney's office to federally prosecute selected firearm crimes. They note that some cases are more likely to be waived to federal court if they have stronger evidence and are more likely to result in conviction, or if they are cases with larger quantities of drugs because the U.S. attorney's office can seek longer mandatory minimum sentences. Local prosecutors use the threat of prosecution by the U.S. attorney's office as a way to ensure a plea bargain by defendants, and the threat of prosecution at the federal level is a way for local prosecutors to increase the "going rate" for sentences.

In short, federal systems have greater autonomy from the local context relative to state courts, and with increased discretion to select cases, have little "fallout" of cases in court processing stages (Kautt, 2002). Because the federal system processes fewer cases and has

greater resources, prosecutors likely have relatively greater power at the federal level relative to state courts. In contrast, state courts must deal with massive routine case processing, which likely creates more of a courtroom workgroup with more established "going rates" for cases in order to resolve them quickly. In addition to having longer sentences and higher conviction rates overall, federal courts are likely to have different mechanisms of racial inequality compared to state courts. Past research supports that disparities in state-level courts are likely to occur through pretrial detention decisions (Albonetti, Hauser, Hagan, & Nagel, 1989; Demuth 2003, Demuth & Steffensmeier 2004; Rodriguez, 2010; Schlesinger 2005) or diversion decisions (Albonetti & Hepburn, 1996, Schlesinger, 2013). In the federal system, factors such as the use of mandatory minimums, charge bargaining, or the use of substantial assistance reductions may likely drive disparities in sentencing (Kautt, 2002). Thus, racial disparities are more likely to appear in sentencing compared to other stages at the federal level.[14]

This chapter builds from previous studies on cumulative disadvantage in the courts to consider how racial stratification occurs across stages using multiple adjudication and sentencing measures, and to consider how these mechanisms differ between state and federal courts. Many sentencing studies are largely limited to observing the "cumulative' process through singular measures, and methods for examining inequality should account for the compounding and indirect role of race in criminal justice processing for drug offenders. As Spohn (2000) and Wonders (1996) argue, the more interesting research endeavor is identifying the circumstances under which race and ethnicity (and other factors, such as gender and socioeconomic status) matter, rather than debating whether or not they matter. This chapter similarly seeks to focus on the mechanisms of cumulative racial inequality in the state and federal court systems rather than

[14] Future analyses will test for indirect effects at the federal level for mandatory minimums, safety valves, substantial assistance, career offender enhancements, and charge bargaining on sentencing outcomes.

focusing on estimating total effects. If racism and racial inequality is not the work of overtly prejudiced individuals, but rather is a "natural," group level process that operates even when organizational practices are presumed to be race-neutral, then it is mostly the result of legally-relevant factors that are amplified due to structural racial inequalities. Identifying these potential points in the state and federal court systems is of central interest in this chapter.

Methods

Data and Sample

These analyses use two primary data sources: The State Court Processing Statistics (SCPS), and the Federal Justice Statistics Program (FJSP), both collected by the Bureau of Justice Statistics. The SCPS dataset and sample is the same as that used in the last chapter; these data are drawn from a sample of filed felony defendants in the most populous counties' court systems. I limited my sample to drug trafficking or other drug crimes, as well as to non-pending cases that had been resolved within a year. This yielded a sample of N=35,214.

The FJSP is a combination of several different federal agencies that process criminal defendants including the U.S. Marshals Service, the Executive Office for U.S. Attorneys, the Administrative Office of the U.S. Courts, and the U.S. Sentencing Commission. These datasets cover all persons arrested by federal law enforcement agencies, or those transferred to federal custody between 1994-2009. The participating agencies' administrative datafiles can be merged through a dyadic linking process to enable the tracking of a defendant from arrest until

disposition of their case.[15] The algorithm developed to link individuals across multiple datasets and agencies means that the linking process is not complete for all cases.[16]

The FJSP allows an examination of an additional step of arrest to initial charge filing that is excluded in the SCPS data. Rather than drawing the sample at the filing stage, the federal sample includes defendants whose primary arrest crime was for drugs, which can be linked to the U.S. Attorneys dataset. This yields a sample size of (N=302,542). While this makes federal and state samples slightly less comparable, examining the additional step of arrest to charging is of interest for this analysis. Similar to the SCPS dataset, I exclude those who still had pending cases, and those of "other" race. I also exclude cases that were transferred out of district (to avoid double-counting, as they would be filed in a different district), and cases that could not be linked from the U.S. Marshals service to the Executive Office for U.S. Attorneys, as they were missing adjudication and sentencing variables.

Dependent Variables

The research question centers around amplification of racial inequality in the court process, and so I examined decision-making points at multiple stages, including pretrial, adjudication, and sentencing. Specifically, the state-level analysis used four primary outcomes: pretrial detention,[17] adjudication type, sentence type, and sentence length. The federal analysis used whether or not charges were filed, adjudication type, sentence type, and sentence length.

[15] The dyadic linking process means that datasets are linked one at a time; where the US Marshals Service is linked to the Executive Office of U.S. Attorneys files through a common link file, and then the U.S. Attorneys files are linked to the Administrative Office of the U.S. Courts through another common link file, and so on.

[16] Using the imputed data, as well as multiple datasets for variables (which increased the ability to keep observations even if they were not linked across all datasets) 98% of drug cases in the USMS dataset were used. Actual linking rates are significantly lower; 87% (269,134 of 308,171) of drug cases in USMS were linked either to EO Cases OUT or EO Matters Out, but only 50% of those cases (133,869 of 269,134) were linked to AO Cases OUT. 82% of those cases (110,937 of 133,869) were linked through to the USSC dataset.

[17] Unfortunately, pretrial detention was largely missing in the federal data (93% missing), so I excluded this variable from consideration in the federal analysis.

Table 3.1 below outlines the descriptive statistics for the dependent variables for the state (SCPS) and federal (FJSP) samples.

<insert table 3.1 about here>

In the federal system, over 90% of those arrested have charges filed against them. Although state systems vary significantly based on local norms and policies on case screening, the proportion of cases filed in federal court is likely much higher than state courts in general due to the more selective nature of cases that are processed by the federal system.[18] While the federal dataset excludes reliable information about pretrial detention, a federal report by Cohen (2013) estimates that 83% of felony and misdemeanor federal drug cases between 1995-2010 were detained pretrial. In contrast, about 40% of the sample is detained pretrial at the state level in the SCPS dataset. Defendants are detained either on bail or because they were denied bail, and those released are generally able to meet bail or released on their own recognizance.

Adjudication type includes whether the defendant's charges are dismissed, or if the defendant is sent to a diversion program, pleads guilty, is found guilty by trial, or acquitted by trial. While this "stage" is a combination of several decision points in reality (since dismissal can happen at the probable cause stage, and the decision to plead guilty or go to trial would be a separate stage from the trial outcome itself), they are compressed for the sake of parsimony in this analysis. In the state systems, just over 20% of the defendants in the sample have their charges dismissed, and another 10% of defendants are diverted pre-trial. In contrast, only about 10% of defendants in the federal system have their charges dismissed or are diverted.[19] While

[18]To my knowledge, there is not systematic data about arrest and filing at the state court level. As one example, in Sacramento County between 2005-2010, around 40% of drug arrests are filed.

[19] The diversion outcome was so infrequent—only about 0.04% of the time—that it was excluded from analysis because it caused models in the federal dataset to not converge.

two-thirds of defendants in the state sample plead guilty, over 80% in the federal sample do. Few defendants in either system go to trial, and have similar acquittal and conviction rates.

Nearly 90% of federal defendants and 70% of state defendants in the samples either plead guilty or are found guilty by trial, and are sentenced. Defendants in state systems receive one of four sentence types: prison, jail, probation and community service, or fines and "other" sentences, and federal defendants receive prison, probation, or fines. Because defendants are often sentenced to a combination of probation and community service in the state system, those sentences were combined into a single category. Those who receive both a jail and probation sentence were recoded as receiving whichever sentence is longer.[20] The federal system had a significantly harsher sentencing outcomes compared to the state system. A significantly higher proportion of defendants were sentenced to federal prison (over 90%) compared to state system, where just over 30% received a prison sentence, and an additional 15% are sentenced to jail. In contrast, over half of convicted state defendants received some combination of probation or community service, while only 7% did so in the federal system.

Finally, for those who received prison, or probation and community service sentences (and for state defendants, jail sentence), I estimated separate models for sentence length in months. Sentence length is truncated at a maximum of 470 months and logged.[21] Before logging, the mean sentence length for a state defendant sentenced to prison is 46.04 months (or just under four years), and six and a half months in jail. Federal defendants were sentenced to prison over a year and a half longer on average, although probation sentence lengths were nearly identical.

[20] While some defendants received a combination of prison and probation time, this overlap was extremely small (about 2% of the sample). These defendants were recoded as receiving prison only. There was a greater overlap for defendants that received jail and probation (about 25% of the convicted sample), but because jail is a substantively different experience than probation, I decided to model these as separate categories. For those that received both a jail and probation sentence that were the same length, I recoded these people as receiving a jail sentence.

[21] Unlike the last chapter, those that did not receive a prison, probation, or community service sentence had missing values for sentence length rather than "0" values because I used selection models to estimate sentence length adjusting for sample selection.

Independent Variables

The analysis primarily examined the impact of race and the role of selection on court processing and outcomes. In addition to race/ethnicity and other demographics, I included criminal history, offense characteristics, and pretrial processes as individual-level variables in the models. Race and ethnicity were coded as Black non-Hispanic, White non-Hispanic, and Hispanic or Latino dummy variables. In the FJSP dataset, whether a defendant was Latino was missing for defendants that were not sentenced, so I imputed Latino/Hispanic for the missing values using a multiple imputation chained equation method in Stata.[22] I exclude other racial groups from both the state and federal samples due to their extremely small number.[23] I exclude the Black non-Hispanic group to serve as a reference category for the other racial/ethnic groups. Unlike the state data, which is nearly half Black, the federal data is just under half Latino/Hispanic and just over one-quarter White and one-quarter Black. Because prior contact with the criminal justice system disproportionately impacts nonwhites, I also tested an interaction with racial group and number of prior arrests (in SCPS) or criminal history score (in FJSP).[24]

Age is a continuous variable in years, and female is coded as a dichotomous variable. The mean age for defendants in both samples is approximately 30 years old. About 18% of the SCPS sample and 15% of the FJSP sample is female. Table 3.2 and 3.3 below illustrates the descriptive statistics for the independent variables of interest.

[22] I used imputation by chained equations ("ICE") with the mi impute command, available for Stata 12 or later. I imputed values for all missing data on variables used in the analyses with M=20 imputations, which is recommended by the Stata multiple imputation reference manual (2013). Multiple imputation adjusts the standard errors to account for the sampling variability for the missing data. In addition to Latino/Hispanic ethnicity, criminal history score was also missing for those that were arrested and booked, but not sentenced. Future analyses will also include imputation of the SCPS data.

[23] Initially, models included "other" race as well, but many of these models did not converge due to small sample size.

[24] The criminal history score used in the federal system is not equivalent to the state system, since it represents convictions rather than arrests. Unfortunately, the FJSP does not include number of prior arrests.

<insert table 3.2 about here>

<insert table 3.3 about here>

For the offense characteristics, I also include a dichotomous variable to indicate whether the initial arrest (or filing, in the state data) charge was drug sales or trafficking. Current criminal justice status is also coded as a dichotomous variable for state defendants, with 1 as being under "active" involvement with the adult criminal justice system, such as probation, parole, in custody, in a diversion program, or released on an open case, and 0 otherwise. One-third of the sample has an "active" criminal justice status at the time of re-arrest. Federal data also included information on the primary drug type, recoded into major categories of powder cocaine, crack cocaine, heroin, marijuana, and methamphetamine.[25] Approximately 20% of defendants had powder, 12% had crack cocaine, 14% were methamphetamine, and over 35% were marijuana cases.

While the state data contained number of prior arrests and prior felony convictions, federal defendants are assigned a criminal history score, which is used for sentencing purposes. Similar to Rehavi and Starr (2013), I chose to impute criminal history score for defendants missing criminal history scores. The defendant's attorney is broken down into two substantive categories with dummy variables: a private attorney, and a public defender or assigned attorney. Public defenders and assigned attorneys were combined into a single category, because often the choice in attorney reflects county (or even state) practices rather than individual defendant choice. I also included an additional dummy variable for missing attorney in the state sample because nearly one-third of the sample had missing values. Because statutory mandatory minimums for drug crimes can significantly drive sentences, I included mandatory minimum

[25] Missing values for drug type were imputed. The majority of these recodes were determining whether drugs were powder or crack, because the U.S. Marshals Service data do not differentiate between the two.

eligibility at the individual case level for federal defendants who were sentenced, as well as whether or not a substantial assistance reduction was granted. While this information is not available in the SCPS dataset, I included whether there are mandatory minimums at the state level for felony drug offenses.

Similar to the previous analysis, I included percent nonwhite defendants and percent of drug cases in the total criminal caseload, and a measure of mean court processing time as county-level (for state defendants) or district-level (for federal defendants) characteristics. Both the percent nonwhite defendants and drug cases as a percent of the caseload varies considerably; nonwhite defendants in counties range from under 20% to 97% in the counties, and the percent of drug cases out of total caseload range from under 10% to nearly two-thirds of the total caseload in both the state and federal datasets. While the court processing time measure excludes cases that have not been resolved in the year timeframe, the mean number of days to resolve a case from arrest to adjudication across all counties is just over 3 months, and over 6 months for federal districts. I also included some demographic characteristics of the counties or states from the Census, including poverty, population density (population per 1000 square miles), percent white population, and a measure of racial/ethnic heterogeneity based on the Herfindahl index[26]. Similar to the previous chapter, I also included whether or not the state had an active sentencing commission, number of drug courts per million population, whether judges were appointed (rather than elected), and percent female and percent nonwhite appellate judges in the state data. While federal districts are much larger than counties, and are often the same as states, it is impossible to identify sub-district units. Thus, structural characteristics are not necessarily analogous between the state and federal samples.

[26] This measure is calculated as: $1 - \sum_{1}^{j=J} G_j^2$, where G is the proportion of each racial/ethnic group j out of J groups, subtracted from 1. In this case, I used four racial/ethnic groups: non-Hispanic Black, non-Hispanic White, non-Hispanic other, and Latino/Hispanic.

Mediation and selection models

To better understand where and how race matters in processing drug defendants, I estimated a series of models for four stages of the court process. For the state models, this included pretrial detention, adjudication, sentence type, and sentence length, and for the federal models, this included filing, adjudication, sentence type, and sentence length. Pretrial detention in the state model is estimated as a probit model, with 1 for those who are detained pretrial, and 0 for those who are released. Filing in the federal models is similarly estimated as a probit model, with 1 as having charges filed, and 0 for cases when filing was declined by the U.S. Attorney's office. For the adjudication and sentence type outcomes, I estimated probit models for the FJSP data and multinomial probit models for the SCPS data.[27] In the adjudication models, there are five potential outcomes--dismissal, pretrial diversion, acquittal, guilty plea, or guilty by trial.

For those who were convicted, there were four main sentencing categories for state defendants: prison, jail, a combined probation or community service sentence, or a fine. Jail sentence is used as a reference category. Federal defendants received prison, probation, or a fine. I used OLS to estimate lengths of prison, probation, and jail for state defendants. To correct for the dependence of observations in courts within the same county or district, I clustered by county for all SCPS models, and district for all FJSP models. As an example of the models for case processing, figure 3.1 below illustrates the four models and their outcomes for state defendants. The dotted lines indicate mediation for pretrial detention, and then the selection at the adjudication and sentence category stages, which is discussed below.

<insert figure 3.1 about here>

[27] I also estimated individual probit models for the FJSP data because the multinomial probit models appeared to not converge with multiple imputation. Individual probit model results without the imputed data were nearly identical to the multinomial probit results, however.

I estimate mediation and selection models to control for racial stratification in previous stages to better understand how a current stage exhibits racial disparities. After estimating pretrial detention alone in the SCPS models, pretrial detention is tested as a mediating variable in the adjudication model to see whether racial group disparities in pretrial detention mediated disparities in adjudication, or whether there were additional effects above and beyond this. If pretrial detention acts as a mediator for adjudication, then direct effects of racial groups on adjudication would decrease or disappear completely after predicting pretrial detention. Using a structural equation modeling framework, I estimated two models. I first estimated a regular probit model predicting adjudication outcomes, constraining the indirect path from the independent variables to pretrial detention. I then estimated a probit mediation model, including race/ethnicity and other independent variables as direct and indirect effects through pretrial detention on the adjudication outcomes.[28]

For the sentence type and sentence length models, and for the adjudication models in the FJSP data, I estimated a selection model similar to a Heckman model, accounting for selection into the previous stage. As Zatz and Hagan (1985) note, models that only examine sentence length as an outcome only account for those who were sentenced, but exclude those who could have been subject to incarceration, but were not convicted, did not have charges filed against them, or were not arrested. Moreover, decisions at earlier stages of the process may affect later outcomes. Heckman models have been commonly used in sentencing work to overcome these issues (for examples in sentencing, see Hagan and Palloni, 1986; Ulmer and Johnson, 2004; Zatz and Hagan, 1985). Traditional Heckman models are a two-stage estimation process where the

[28] The mediation models were modeled as separate individual adjudication outcome simultaneously with probit models, rather than multinomial probit models because neither Stata or Mplus currently supports mediation in SEM with multinomial probit models. They were thus compared to probit models without mediation to examine the effects of pretrial detention on adjudication.

first equation models the "selection" process (e.g. those who were sentenced to prison) using a probit model, and then the second stage models the effects of both the selection and additional exogenous variables on the outcome y (e.g. sentence length) using ordinary least squares (Greene, 2000). Thus, the second outcome is the substantive outcome of interest conditional on being selected into the incarcerated population (Bushway, Johnson, and Slocum, 2007).

Adapting the Heckman selection model, I created a multiple-stage selection model by first estimating a selection model for filing, calculating the inverse Mills ratio from the model results, and including the inverse Mills ratio to estimate the adjudication models. I then treated the adjudication model as another selection stage, and again calculated the inverse Mills ratio to include in the sentence type model. This is repeated again for the sentence length models. Because the state data started at the filing decision, I estimated selection models for the sentence type and sentence length only. Thus, the sentence length models accounted for previous stages (filing, adjudication, and sentence type) of selection. The models were estimated both with and without the inverse Mills ratio as an explicit examination of how the previous stage of adjudication may influence sentence type, and how filing, adjudication, and sentence type influence sentence length.

Finally, I exclude the number of drug courts per population from the sentence type models, and then drug courts and mean time from arrest to adjudication in the sentence length models in order to resolve issues of multicollinearity and model identification with the inclusion of the inverse Mills ratio.[29]

[29]One problem with using the Heckman correction with the inverse Mills ratio is that it often results in multicollinearity with X. Bushway, Johnson, & Slocum (2007) suggest that the best solution is to include exclusion restrictions (using an instrumental variable), which also helps with model identification. In other words, I would find an instrumental that would predict selection, but not sentence length. Most sentencing scholars neglect to do this, however, and instead compare results with and without the Heckman correction.

State court processing

Pretrial detention

Table 3.4 reflects results from the pretrial detention model, which represents the first point of decision in state analysis. The first model presents results without prior arrest and racial group interactions, and the second model includes these predictors. Women are less likely than men to receive pretrial detention, and compared to drug possession, those with sales charges are more likely to be detained pretrial. Unsurprisingly, those with an active criminal justice status or a more serious criminal history are more likely to be detained as well.

<insert table 3.4 about here>

<insert figure 3.2 about here>

White defendants have a significantly lower probability of receiving pretrial detention compared to Black defendants, and after adjusting for prior arrest interactions, Latino defendants have a significantly higher probability of being detained pretrial compared to Black defendants. Even after controlling for drug sales and criminal justice status, White defendants have about a 30% chance of pretrial detention, compared to about 38% for Blacks, and 41% for Latinos. White defendants with a mean number of arrests still have a lower probability of pretrial detention than Black or Latino defendants with a below-mean number of arrests.

As reflected in the *pretrial 2* model and in figure 2, Latinos appear to be significantly more likely to be detained pretrial regardless of prior arrests compared to Black and White defendants. Because the decision to release or detain a defendant pretrial is formally based on the risk of absconding and to community safety (American Bar Association, n.d.), factors that are used to determine detention such as employment or ties to the community are "less neutral than

they might seem" (Hagan and Palloni, 1999: 619). Past research (Hagan and Palloni, 1999) has found that Hispanic immigrants are far more vulnerable to pretrial detention due to formal and informal policies on immigration and criminal justice. This could also be an artifact of increasingly restrictive immigration policies that specify presumptive detention in some places.[30]

Defendants who have public defenders or assigned council are also more likely to be detained pretrial; this makes sense given that the vast majority of those detained occur because the defendants cannot afford bail. Of those detained pretrial in this sample, over 80% were unable to pay bail, whereas only 14% were denied bail outright. For those who were given bail as an option, over half (53.6%) could not pay it and were thus detained pretrial. A higher proportion of Black and Latino defendants were disproportionately unable to make bail. Whites comprise just over 20% of those who are detained because they cannot afford bail in a sample that is about 28% White. Bail therefore represents an enormous stratification mechanism in which Black and Latino drug defendants are disproportionately subject to pretrial detention largely because they cannot afford to meet it.

Adjudication

In addition to being a form of punishment and an early stratification mechanism in itself, pretrial detention has significant consequences for later state court processes. Table 3.5a reflects adjudication outcomes using multinomial probit models with pretrial detention as an independent variable. Defendants who were adjudicated could have potential outcomes of acquittal, diversion, guilty plea, and guilty trial, against an excluded outcome of charges dismissed. Table 5b tests adjudication in the SCPS data with mediating effects for pretrial detention using probit models.

[30] Unfortunately, the SCPS dataset does not include immigration status. Future research might examine cases in which bail was denied altogether as evidence of presumptive detention, however.

<insert table 3.5a here>

In general, dismissal of charges did not vary much by racial group in the state data, with a predicted probability of 0.20 for Latino and White defendants, and about 0.22 for Black defendants. Compared to Black defendants, White defendants are less likely to go to trial. Both White and especially Latino defendants are more likely to plead guilty compared to Black defendants. As reflected in figure 3.3, While Latino and White defendants with greater prior contact with the criminal justice system through arrest have a relatively increased chance of pleading guilty, Black defendants plead guilty at similar rates, regardless of their prior arrests. Specifically, while Black defendants have about a 70% probability of pleading guilty regardless of the number of prior arrests, Latino and White defendants have about a 70% probability if they have low arrests, but a 76-78% if they have high arrests. The large exception is in diversionary outcomes--Black and Latino defendants are far less likely to be diverted compared to White defendants, as illustrated in the figure 3.4. Black defendants have a 16% lower probability of being diverted compared to White defendants, and Latinos have a 22% lower probability of being diverted. Finally, women are less likely to go to trial compared to men, regardless of whether they are acquitted or found guilty.

<insert figure 3.3 and 3.4 here>

Other case and court characteristics also impacted predicted adjudication type in the state system. Those charged with drug sales are more likely to plead guilty or be found guilty by trial and less likely to be diverted compared to those charged with drug possession, and those with a more serious criminal history are more likely to plead guilty or be found guilty by trial, and less likely to be diverted. Those under parole, probation, or other criminal justice system control were also significantly higher to plead guilty and number of prior arrests indicated a lower likelihood

to divert. This could be a reflection of defendants being arrested with drugs while under correctional supervision, and illustrates one way in which defendants already under surveillance are likely to remain under criminal justice system control. As reflected in figure 4, diversion in particular differed most significantly for those with low levels of arrests, where those with low levels of arrests were far more likely to be diverted compared to those with medium and high arrests.

Decisions around the type of adjudication defendants received were also sensitive to external environmental factors in the state data. For example, states with higher levels of drug court population are more likely to divert defendants and have them plead guilty. It seems likely that higher drug court participation may incentivize both diversion and guilty pleas since court actors have relatively greater alternatives compared to states with fewer drug courts. Characteristics of the judges, including the gender and racial composition, affected adjudication type as well. For example, states with larger proportions of female judges were also more likely to divert defendants. Although not measured at the court level, the models support the idea that gender and race composition of the courtroom workgroup may matter for case processing decisions.

Pretrial detention in the state court data significantly predicts a lower likelihood of being diverted, and a much higher likelihood of pleading guilty or being found guilty in a trial. Given these strong effects, I also modeled adjudication type with pretrial detention as a mediating variable to test for how racial inequality might increase over multiple stages. These pretrial detention mediation results are in Table 3.5b.[31]

<insert table 3.5b here>

[31]The coefficients differ from the multinomial probit models because each adjudication outcome is being estimated as a separate model simultaneously, and so the reference category is no longer dismissed charges. For this reason, I focus on testing pretrial detention as a mediator rather than interpreting the predicted probabilities.

Racial inequality is evident both directly in adjudication outcomes, as well as indirectly through pretrial detention. In other words, pretrial detention is one stage where racial inequality appears, and it also functions as a mechanism for further inequality in adjudication. Defendants that are detained have a significantly lower chance of having a favorable adjudication decision, including dismissal of charges, diversion, or acquittal, and a higher probability of pleading guilty or having a guilty trial. Pretrial detention amplifies racial disparities in adjudication, where White defendants are significantly less likely to be detained, and partially through this decision, are more likely to be diverted (although similarly less likely to go to trial). Differences between Black and Latino defendants' adjudication remain similar after including pretrial detention as a mediator, even though Latinos have the highest probability of being detained. Moreover, pretrial detention likely serves as a method of incentivizing guilty pleas and potentially disincentivizing diversion. Because Latino defendants are more likely to be pretrial detained, this could help explain their disproportionately highest rates of guilty pleas. Conversely, because White defendants are far less likely to be pretrial detained, this could also partially explain their higher rates of diversion.

Sentence type

Defendants who have pled guilty or who have been found guilty at trial were then sentenced to prison, jail, some combination of probation and community service, or fined. Table 3.6 presents results from the sentence type model for the SCPS data, with jail as the base outcome. The *sentence type 2* and *sentence type 4* models also incorporate the inverse Mills ratio, representing the selection effects from the previous adjudication stage.

<insert table 3.6 about here>

While there are racial disparities at the point of sentencing at the state level, they are relatively small compared to previous stages. Black defendants are slightly more likely to receive a carceral sentence (both jail and prison) compared to White and Latino defendants. Racial stratification in sentence type was also partially due to how defendants were adjudicated in the case of fines. Before accounting for stratification in previous arrests, White and Latino defendants are more likely to pay a fine compared to Black defendants partially because they are more likely to plead guilty. These racial differences disappear after controlling for prior arrests by race, however, likely because few defendants receive it as a sole sanction. Observed racial disparities in receiving a fine is actually due to how defendants are adjudicated.

Similar to the adjudication stage, defendants who receive pretrial detention in the state system have a far greater chance of receiving a prison sentence compared to jail, probation, or community service. This is above and beyond factors such as prior record and filing crime, suggesting that pretrial detention also has lasting effects in both culpability and in sentencing.

<insert figure 3.5 about here>

As illustrated in figure 3.5, the largest differences between Black and White defendants at the state level are for those with low arrests. For those with low prior arrests, convicted White defendants have approximately a 21% probability of receiving prison, compared to 29% for Black defendants, and 25% for Latinos. Moreover, the probability of receiving prison is significantly more consistent for Black defendants regardless of their prior arrests compared to other racial groups. Thus, it appears that previous justice system contact mattered less for sentencing for Black defendants compared to Latino or White defendants.

Interestingly, those with a public defender or assigned attorney are less likely to get a prison sentence compared to those who have a private attorney. It is possible that public

defenders or assigned attorneys are more familiar with the courtroom workgroup, and are therefore able to better negotiate less serious punishments compared to private attorneys. Alternatively, defendants with more serious cases and/or greater income may also be more likely to hire private representation. Descriptive statistics suggest that those charged with drug sales can likely afford private representation compared to defendants charged with drug possession or other drug crimes.

Prison, jail, and probation or community service sentence length

For those who are sentenced to prison, table 3.7 presents results on prison sentence length from the SCPS data. The first two models exclude racial group and prior arrest interactions, and the final two models include them. *Prison 2* and *Prison 4* models include cumulative selection from both the sentence type and adjudication stages. In other words, they adjust for both the probability of pleading guilty, and the probability of being sentenced to prison.

<insert table 3.7 about here>

Substantive differences in prison sentence lengths between racial groups have largely disappeared, and are largely not statistically significant. After adjusting for interactions and selection from previous stages, White defendants received a predicted 29.4 month prison sentence, compared to 31.6 month sentence for Black defendants and 32.5 month sentence for Latinos. At this point, the effect of prior arrests on prison sentence length is also substantively not significant.

The cumulative selection for pleading guilty and being sentenced to prison does influence the role of criminal history and other factors on prison length to some degree. Without considering the cumulative selection, criminal justice status, prior felony convictions, and

pretrial detention all influence prison sentence length, but when the selection is included, they are no longer significant. In other words, many of the prior criminal history factors matter for earlier court decisions for defendants, and even on the type of sentence a defendant receives, but they actually have little direct effect on sentence length. In contrast, including the cumulative selection process also reveals a few county- and state- demographic influences on prison sentence length that are not apparent without the selection. Defendants receive slightly shorter prison sentences if they are processed in caseloads with a higher percentage of racial minorites, or in counties with greater racial diversity, or in states with a higher proportion of female judges.

<insert table 3.8 about here>

Although prison sentence lengths did not differ substantially by racial group, jail sentences did vary. Table 3.8 includes results from the jail sentence length for the SCPS dataset. Compared to White defendants, Black defendants received significantly longer jail sentences, and were also much more likely to receive a similar sentence regardless of the number of previous arrests. Black and Latino defendants received similar jail sentence lengths, however.

While criminal history factors impacted the type of sentence, they largely did not impact jail sentence length. Unlike prison sentence length, pretrial detention is consistently significant for jail sentence length, where those who are detained predict a longer jail sentence. This may be an artifact of credit for time served, if cases that took longer settled at the "going rate" of credit for time served, or there is additional time added to time served, increasing the total sentence length.

<insert table 3.9 about here>

<insert figure 3.6 about here>

Table 3.9 and figure 3.6 reflect results from the combined probation and community service sentence length for state defendants. Black defendants have significantly longer probation sentences compared to White defendants. Black defendants are also sentenced more consistently to these longer sentences regardless of their prior arrest record, although his effect is not significant after adjusting for the probability of pleading guilty to a probation sentence. Having longer probation and community service sentences may serves as a stratification mechanism for re-arrest as well, as those on probation or parole can be stopped and searched without a warrant (Hemmens & Del Carmen, 1997). Similar to other stages, the greatest difference in probation sentence lengths is for Black and White defendants with low levels of prior arrests; Black defendants with low prior arrests receive a probation sentence of 31.2 months, compared to 28.2 months for White defendants with low prior arrests.

The results suggest the cumulative "selection" of how defendants are adjudicated and sentenced impacts sentence lengths for probation even more than for prison or jail. Probation length would be over-estimated without adjusting for previous steps. More importantly, failing to account for selection underestimates the difference in sentence lengths between Black and White defendants, and between males and females. In other words, White defendants receive a shorter probation sentence after accounting for the fact that they are cumulatively more likely to plead guilty to a probation sentence compared to Black defendants. Without accounting for previous stages, it would appear that there Black and White (and male and female) defendants receive similar sentence lengths, but this is likely because all else equal, White defendants (and female defendants) sentenced to probation are likely convicted of more serious crimes.

Accounting for how defendants are adjudicated and sentenced in previous stages also highlights the importance of prior record on probation length. After controlling for the

probability of defendants pleading guilty to a probation sentence, having prior felony convictions predicts a longer probation and community service sentence by over one month. Defendants who are detained pretrial receive a longer probation sentence, but the effect of detention becomes even stronger (by over one month) after accounting for previous stages.

Similar to prison sentence length, defendants with a public defender or assigned attorney received a shorter probation sentence length. In other words, they were more likely to plead guilty, but they also tended to receive less severe sentences overall, both in terms of sentence type and in terms of sentence length.

Federal court processing

Filing

Table 3.10 contains estimates from filing decisions in the federal data, where arrested defendants are referred to the U.S. Attorneys offices to make a decision to file a case in a district court. In the federal system, prosecutors overwhelmingly filed charges in most cases; the predicted probability is over 95% in general for defendants.

<insert table 3.10 here>

Even given these high filing rates, White defendants had a significantly higher probability of having their case filed compared to Black or Latino defendants. This could suggest that Black and Latino defendants are brought in on weaker initial charges or evidence, so prosecutors decline to file an initial case. Moreover, higher filing rates for White defendants occurred regardless of a defendant's criminal history. All else equal, women were more likely to have charges filed, and U.S. citizens were significantly less likely to have charges filed. Given current restrictive immigration policies and practices (and the rise of immigration cases in the federal system), this could similarly reflect immigration cases being brought into federal courts

with weaker evidence. Compared to powder cocaine, crack cocaine cases were significantly more likely be filed, and methamphetamine cases were significantly less likely to be filed.

Adjudication

Figures 3.7 and 3.8 below contrast the state and federal systems' adjudication outcomes. Specifically, they depict the predicted probability of each adjudication outcome by racial group.

<insert figure 3.7 and 3.8 here>

As reflected in the figures, state and federal systems operate differently in terms of adjudication. While the probability of a trial is low for federal and state defendants alike, trials were far less likely to occur in the state system compared to the federal system. This may reflect the relative resource constraints and pressure to dispose of cases quickly in the state system. Similarly, diversion is such an uncommon adjudication outcome in the federal system that models did not converge, whereas they represented a real option for defendants in the state system. While this is likely a reflection of the more serious nature of cases selected for prosecution in the federal system, it could also reflect the relative resource strain in the state system so that they are motivated to divert relatively more defendants to correctional alternatives.

Probabilities of dismissal are more than twice as high in the state system (about 20%) compared to the federal system (10% or less). The lower probability of dismissals in the federal system likely represents the selective nature of cases that are generally brought in to the federal system compared to the state system, which processes the bulk of routine drug cases. The probability of dismissal is highest for Black defendants in the state system, but for Latino defendants in the federal system. While guilty pleas are the most common outcome for

defendants in both state and federal systems, federal drug defendants have an even higher probability of pleading (85%) compared to state defendants (73%).

<insert table 3.11 here>

Unlike the state models, the probabilities of adjudication outcomes in the federal system tended not to depend on previous criminal history score, directly or indirectly by racial group. Since prosecutors nearly always filed charges against defendants in the federal system, the selection of cases filed did not impact the type of adjudication for a defendant. Latino defendants had the highest probability of having their charges dismissed, and White defendants had the lowest probability compared to other groups. Black defendants also had the highest probability of having a trial, regardless of the outcome, while Latino defendants had the lowest probability. White defendants had a significantly higher probability of pleading guilty compared to Black or Latino defendants.

Other than racial differences, women are significantly more likely than men to have their charges dismissed, and less likely to plead guilty or be found guilty in a trial. Compared to powder cocaine, defendants with crack cocaine charges were less likely to have their charges dismissed by prosecutors or acquitted in a trial, and significantly more likely to plead guilty. Given the significantly lower weight trigger for federal mandatory minimum sentences for crack compared to powder cocaine during the study timeframe, this may have incentivized prosecutors to have defendants to plead guilty for these cases. Even though drug-specific legislation such as crack mandatory minimums was aimed at sentencing, it also appears to influence how cases are adjudicated.

Sentence type

Figures 3.9 and 3.10 below illustrate the predicted probabilities of each sentence type by racial group in the state and federal systems.

<insert figure 3.9 and 3.10 about here>

Defendants are three times as likely to be sentenced to prison in the federal system compared to state defendants in the SCPS sample. Convicted federal defendants have about a 95% chance of receiving a prison sentence. The most probable outcome for state defendants in the sample is to receive probation (between 50-60%), whereas this probability is about 3-5% in the federal sample. Fines for drug convictions are rare in both systems.

Table 3.12 below contains results for sentence type model for the federal data. As with the state models, the *sentence type 2* and *sentence type 4* models also incorporate the inverse Mills ratio, representing the selection effects from the previous adjudication stage. As in the adjudication models, the sample has gone through relatively little selection at the federal level; from the initial arrest, the probability of being guilty after filing and adjudication is still over 85-90%.

<insert table 3.12 about here>

Even though convicted federal defendants are all highly likely to receive a prison sentence in general, similar to the state models, White defendants are more likely to receive a less severe sanction. Compared to Black defendants, White defendants are significantly less likely to be sentenced to prison, and are more likely to receive probation. Moreover, Black defendants are consistently more likely to receive a prison sentence than White defendants regardless of criminal history score. This effect is much less exaggerated in the federal models

compared to the state models, however, since all defendants have such a high probability of being sentenced to prison. This is illustrated in figure 3.11 below.

<insert figure 3.11 about here>

Conversely, both White and Latino defendants are less likely than Black defendants to receive a fine, although the probability is extremely low for any federal defendant. Similar to adjudication, the impact of severe crack cocaine penalties at the federal level is reflected in sentencing; compared to powder cocaine, defendants charged with crack cocaine crimes are significantly more likely to be sentenced to prison and less likely to receive probation.

Prison and probation sentence length

Table 3.13 and figure 3.12 below present results for predicted prison sentence length for convicted federal defendants in the FJSP data. Unlike the state data, federal defendants are not sentenced to jail. Similar to the state models, *prison 2* and *prison 4* includes the cumulative selection effects from previous stages.

<insert table 3.13 about here>

Compared to the state data, federal defendants are sentenced to significantly longer prison terms. While state defendants receive anywhere between 30-40 months in prison, federal defendants receive from 40 (for those with low criminal history scores) to upwards of 80 to 100 months (for high criminal history scores). Unlike defendants in the state data, prison sentence lengths in the federal data are significantly shorter for White defendants compared to Black defendants.

<insert figure 3.12 about here>

The difference is greatest for those with high criminal history scores, where the predicted prison sentence for a Black defendant with a high score is 93.9 months, but is 83.9 months for a White defendant. Latinos with high criminal history scores have the highest predicted sentence length of 103.0 months. Even with low criminal history scores, Black and Latino defendants receive, on average, a 3-4 month longer sentence compared to White defendants with low criminal history scores. Thus, while the state data indicates larger racial disparities in earlier pre-sentencing stages, the federal system reflects relatively larger disparities at sentencing.[32] Unlike the state models, there is little selection of federal defendants. The vast majority of federal defendants have charges filed against them, plead guilty, and are sentenced to prison, whereas state defendants are relatively more likely to have their charges dismissed, be diverted, or get other non-prison sentences.

The large racial differences in prison sentence length are above and beyond the effect for mandatory minimum, which indicate substantial increases in sentence length. In cases where a drug mandatory minimum is applied, predicted sentence length increased by ninety percent. While mandatory minimums are also racially stratifying, the results suggest that there are racial disparities even after they are applied. Racial differences are also net of drug type, which also likely are racially stratifying. Compared to powder cocaine, heroin and marijuana predicts shorter sentence lengths, and crack cocaine and methamphetamine indicated longer sentence lengths.[33]

[32] Sentence length excludes presumptive sentence, which is often included in federal sentencing analyses. I excluded it here because I wanted to be consistent with models of the state system, and because many of the factors captured in a presumptive guideline are included in the models, including criminal history score, and whether the crime was drug sales/trafficking, drug type, and mandatory minimum.

[33] Future analyses will test directly for mediating effects of mandatory minimums and drug type on racial inequality in sentencing.

Table 3.14 and figure 3.13 below include probation sentence length for federal defendants. As illustrated in the adjudication models, probation for federal defendants is rare, occurring only 3-5% of the time. As in the models above, *probation length 2* and *probation length 4* include the cumulative selection effects from previous stages.

<insert figure 3.13 here>

<insert table 3.14 here>

Predicted probation lengths are relatively similar between the federal and state systems. For Black and Latino defendants, federal probation terms are about 30 months, regardless of criminal history score. White defendants with medium and high criminal history scores receive slightly longer predicted probation terms of 33 and 35 months, respectively, although these are not statistically significantly different from Black and Latino defendants. In fact, the most significant predictors of probation sentence length are mandatory minimum eligibility, and substantial assistance.

Discussion and Conclusion

Given that the war on drugs has led to the increasing federalization of drug crimes, contrasting how the federal and state systems process drug defendants can better illustrate where racial inequality occurs in the two systems. The contrast between the two systems' case processing has implications for how racial disparities in sentencing are studied. Although the federal system remains the exceptional case for prosecuting drug defendants, once cases are brought up for prosecution by the U.S. Attorneys Office, the modal experience for federal drug defendants is to receive a significant prison term. Very few cases are not filed, and few are

dismissed. In contrast, often drug crimes at the state level are managed in non-prison ways--through diversion, probation, and other alternatives to incarceration.

Cumulative racial inequality is a useful perspective with which to view criminal justice processing, as they can illustrate the multiple stages in which racial inequality occurs in different systems. Like other researchers (Chen, 2008; Stolzenberg, D'Alessio, & Eitle, 2013; Sutton, 2013), I find that racial disparities at many stages in the state system were not necessarily excessively large. However, when multiple stages of the justice system are taken into account, a picture of a justice system that systematically discriminates against Black and Latino drug defendants emerges.

In the state system, the largest racial inequalities between defendants also occur earlier rather than later in the court process in general. For example, racial disparities in sentencing are relatively small or negligible. Moreover, early court processing outcomes influence later stages. For example, pretrial detention has an impact on both adjudication and sentencing, and the cumulative probability of pleading guilty and being sentenced to probation influences the length of that sentence. While factors such as criminal history influence early decisions, they do not matter at the stage of determining sentence length. Points of the system that appear to have greater discretion, such as pretrial detention, diversion, or in jail sentence lengths, often reflect the greatest differences between racial groups. Moreover, after accounting for previous stages, there was actually greater racial disparity in probation sentence lengths for Black and White defendants.

In contrast, the early federal system stages in the models (such as filing or dismissal) show relatively insignificant racial inequality. This is not to say that the federal system does not have mechanisms of racial inequality before sentencing, however. Because the vast majority of

federal defendants plead guilty to lengthy prison sentences, racial inequality likely occurs through other prosecutorial mechanisms rather than "falling out" of the system in the state models. Federal cases are selected up front to be prosecuted, and once prosecuted, it is likely that plea bargains, and in particular, charge bargaining, substantial assistance, and the use of mandatory minimums would likely uncover more mechanisms in the federal system.[34] These are areas with considerable discretion for federal prosecutors that occur in (or before) the plea bargaining stage, but in these models, they are reflected in sentencing disparities. Thus, differences in sentence length are much greater in the federal compared to the state system; racial differences for state defendants prison length are 2-3 months, but differences in federal sentences are about 8 months. Future analyses should directly test for these mechanisms and their role in the racial disparities observed in sentencing.

I also focus on mechanisms of racial inequality, which are most evident in the state system in this analysis. In the state system, pretrial detention and diversionary programs in particular act as what Lynch (2012) calls a "sorting mechanism" for White drug offenders and a mechanism for cumulative racial inequality. Pretrial detention is disproportionately used on Black and Latino drug offenders who are unable to make bail, and is an important first decision point where formally "race neutral" informal (or formal) policies of setting bail or releasing drug offenders result in significant disparity.

Pretrial detention also acts as a stratification mechanism for adjudication. Defendants that were detained pretrial also had a higher chance of pleading guilty and having a guilty verdict rendered in a trial, and lower chances of diversion. Although mediation models were not tested

[34] I ran some initial models on substantial assistance to see if this was the case. White defendants are significantly more likely to give substantial assistance compared to Black and Latino defendants; all else equal, White defendants had a 25% probability of giving substantial assistance, compared to 16% probability for Black defendants, and 14% for Latino defendants.

with sentencing outcomes, defendants that were detained pretrial had a greater chance of prison and lower chance of receiving probation or a fine, as well as receiving a longer probation and jail sentence. This comports with past sentencing research (e.g. Spohn, 2009; Williams, 2003), suggesting that there are lasting effects of pretrial detention on later stages.

Diversion in the state system also is significantly more likely for White defendants compared to Black and Latino defendants, particularly for those with low levels of prior arrests. Defendants who are diverted are generally eligible to either not enter a guilty plea or not have one formally entered into their records, thus avoiding an initial conviction (and potential carceral sentence). This may represent a positive mechanism for avoiding future criminal justice system contact because of the significant barriers to employment, housing, and other factors that come with prior felony convictions (Clear, 2002; Pager, 2007). Moreover, early diversion of White defendants with low criminal histories also has the consequence of retaining a more serious group of White defendants in the sentencing stage. This underestimates racial differences in sentencing between White and nonwhite defendants, particularly for the less serious sanctions of probation and jail.

The mechanisms of racial inequality are different for Black and Latino defendants in both the state and federal systems. For example, Black and Latino defendants are both kept under criminal justice system control for longer periods of time compared to White defendants, but through different methods. In the state system, compared to Black defendants, Latino defendants are even more likely to be detained pretrial, but Black defendants are more likely to be on probation for longer, increasing vulnerability for surveillance and arrest compared to those not under supervision. Black defendants in both the state and federal systems are more likely to go to prison compared to White and Latino defendants, and are more consistently sentenced to prison

regardless of previous number of arrests. Latino defendants receive, on average, the longest prison sentence.

Although more research is needed in this area, one possible explanation for Black and Latino overrepresentation in the court system could be due to a combination of racial stereotypes and racialized policies that reinforce these stereotypes. I find that Black and Latino defendants are treated more homogeneously in various stages of the process based on prior arrest record or criminal history in comparison to White defendants. This homogenization could suggest the use of stereotypes in decisionmaking a climate of massive case processing, as Steffensmeier, Ulmer and Kramer (1998) suggest. For example, the finding that Black defendants were more consistently sentenced to prison could be a result of a combination of stereotyping and drug mandatory minimums. Much of the severe crack cocaine legislation passed was based on the stereotype of the "dangerous Black man" that was the face of the war on drugs. Latino defendants in the state system experience more homogeneous jail detention outcomes, as they are more consistently detained pretrial, and receive a more consistent jail sentence length. This could reflect the perceived stereotype of the "illegal immigrant," where detention is a way to prevent absconding. This is reflected in the roles of immigration policies in criminal justice, where some places have presumptive detention for undocumented citizens. Future research might explore how stereotypes and policies impact discretionary decisions.

The criminal justice system is far from being "racially innocent," and the findings presented in this chapter demonstrate where and how some discretionary opportunities for formally race-neutral practices can have disparate racial impact. Because the federal and state system indicate very different methods of case processing, they also reflect different mechanisms of inequality. In both cases, however, moving towards a process-oriented approach of

investigating cumulative racial inequality is important for revealing how racial disparity occurs in the criminal justice system.

Tables

Table 3.1: Descriptive statistics for SCPS and FJSP dependent variables

	SCPS (N=35,214) %	FJSP (N=302,542) %
Pretrial detained	38.72	--
Declined to file	--	9.88
Adjudication outcome	N=35,214	N=272,657
Dismissal	20.24	10.90
Acquittal	0.64	0.78
Diversion or other	9.77	0.05
Guilty-Plea	66.00	82.91
Guilty-Trial	3.36	5.35
Sentence type if convicted	N=23,044	N=240,680
Prison	31.77	92.35
Jail	14.59	--
Probation or community service	51.76	6.61
Fine or other	1.88	1.04
Sentence length if convicted	N=22,611	N=238,515
Prison mean (SD)	46.04 (53.52)	66.88 (68.45)
Jail mean (SD)	6.50 (7.95)	--
Probation or community service mean (SD)	35.33 (26.63)	33.70 (20.07)

Table 3.2: Descriptive statistics for SCPS independent variables

	Mean	SD	Min	Max
Individual level variables				
Year (centered)	0.59	5.06	-8	8
Race/ethnicity				
White, non-Hispanic	0.28	0.45	0	1
Black, non-Hispanic	0.48	0.50	0	1
Latino/Hispanic	0.24	0.43	0	1
Age	30.83	9.91	10	90
Female	0.18	0.38	0	1
Drug sales	0.47	0.50	0	1
Criminal justice status				
Active	0.34	0.47	0	1
Missing	0.07	0.26	0	1
Number of prior arrests	4.79	4.05	0	10
Number of prior felony convictions	1.22	2.01	0	10
Pretrial detention	0.39	0.49	0	1
Type of attorney				
Private attorney	0.13	0.34	0	1
Public defender or assigned attorney	0.57	0.50	0	1
Other attorney or missing	0.30	0.46	0	1
County level variables (n=71)				
Percent nonwhite defendants	69.57	14.91	18.72	97.09
Percent of drug cases	38.68	11.17	8.66	65.63
Mean court time	98.17	29.79	48.80	229.29
Population density	4.51	8.87	0.09	45.52
Percent below poverty	14.47	5.18	3.62	30.68
Percent white population	48.70	16.44	14.58	91.41
Racial/ethnic heterogeneity	0.59	0.10	0.16	0.74
State level variables (n=27)				
Sentencing commission in state	0.18	0.38	0	1
Drug courts per 1 million	4.05	2.20	0.86	15.64
Judges appointed (not elected)	0.71	0.45	0	1
Mandatory minimum for felony drug sentence	0.41	0.23	0	1
Percent female judges	29.09	6.24	14.29	47.37
Percent nonwhite judges	12.02	5.04	0	63.64

Other race was less than 1% of the sample

Table 3.3: Descriptive statistics for FJSP independent variables

	Mean	SD	Min	Max
Individual level variables				
Year	2001.33	4.43	1994	2009
Race				
White	0.28	0.45	0	1
Black	0.26	0.44	0	1
Latino	0.47	0.14	0	1
Age	31.95	9.98	13	90
Female	0.15	0.36	0	1
U.S. Citizen	0.69	0.46	0	1
Drug crime				
Trafficking	0.84	0.37	0	1
Possession	0.07	0.26	0	1
Other drug crime	0.09	0.28	0	1
Primary drug type				
Powder cocaine	0.21	0.40	0	1
Crack cocaine	0.12	0.33	0	1
Heroin	0.07	0.25	0	1
Marijuana	0.37	0.48	0	1
Methamphetamine	0.14	0.35	0	1
Other drug	0.10	0.30	0	1
Criminal history score	2.05	1.53	1	6
Drug mandatory minimum	0.48	0.50	0	1
Substantial assistance	0.21	0.41	0	1
Type of attorney				
Private attorney	0.08	0.28	0	1
Public defender or assigned attorney	0.27	0.45	0	1
Other attorney or missing	0.64	0.48	0	1
District level variables (n=89)				
Percent nonwhite defendants	41.52	13.89	6.75	78.65
Percent of drug cases	33.33	10.69	7.25	64.41
Mean court time	6.26	2.03	0.96	17.26
State level variables (n=50)				
Population density	1.61	1.59	0.01	11.74
Percent below poverty	13.90	2.99	4.5	25.7
Percent white population	82.01	7.42	29.97	98.48
Racial/ethnic heterogeneity	0.30	0.09	0.03	0.66
Treatment admissions rate	4.96	3.38	0.48	20.04

Table 3.4: SCPS Pretrial detention probit model results

	Pretrial 1	*Pretrial 2*
Individual level		
Year (centered)	0.001	0.001
Latino	0.078	0.224***
White	-0.237***	-0.289***
Drug sales	0.335***	0.333***
Age	0.002	0.002
Female	-0.103***	-0.099***
Active CJ status	0.440***	0.445***
Missing CJ status	0.235**	0.231**
Prior arrests	0.040***	0.045***
Prior arrests x Latino		-0.031**
Prior arrests x White		0.012
Prior felony convictions	0.072***	0.071***
Public defender or assigned attorney	0.587***	0.585***
Other attorney	0.371***	0.370***
County level		
% nonwhite defendants	0.002	0.001
% drug cases	0.000	0.000
Court time	-0.005***	-0.005***
Population density	-0.009	-0.009
% below poverty	-0.015	-0.016
% white population	-0.003	-0.003
Racial/ethnic heterogeneity	-0.441	-0.409
State level		
Sentencing commission	-0.548***	-0.538***
Drug courts per 1 million	-0.015	-0.015
Judges appointed	0.020	0.005
Mandatory minimum drug	0.032	0.041
% female judges	0.034***	0.033***
% nonwhite judges	0.011	0.011
Intercept	-1.340	-1.317

***p<0.001; **p<0.01; *p<0.05

Table 3.5a: SCPS Adjudication multinomial probit model (charges dismissed as base outcome)

	Adjudication 1				Adjudication 2			
	Acquittal	*Diversion*	*Guilty plea*	*Guilty trial*	*Acquittal*	*Diversion*	*Guilty plea*	*Guilty trial*
Individual level								
Year (centered)	-0.059***	0.052***	-0.024	-0.065***	-0.059***	0.052***	-0.024	-0.065***
Latino	-0.136	0.078	0.127*	-0.177*	-0.004	0.121	0.014	-0.227*
White	-0.421***	0.198***	0.103*	-0.123*	-0.362*	0.230**	0.004	-0.176*
Drug sales	0.204	-0.439*	0.353**	0.410**	0.205	-0.440*	0.355**	0.411**
Age	0.012***	-0.000	0.002	0.005	0.012***	-0.000	0.002	0.005
Female	-0.205*	0.029	-0.016	-0.167**	-0.200*	0.029	-0.017	-0.168**
Active CJ status	0.081	-0.028	0.220***	0.048	0.086	-0.024	0.213***	0.046
Missing CJ status	-0.115	-0.581*	0.340*	-0.269	-0.123	-0.574*	0.335*	-0.271
Prior arrests	-0.009	-0.058***	0.013	0.014	-0.004	-0.047**	0.001	0.009
Prior arrests x Latino					-0.032	-0.018	0.024*	0.011
Prior arrests x White					-0.014	-0.013	0.021*	0.011
Prior felony convictions	0.054*	-0.171***	0.011	0.025	0.054*	-0.173***	0.013	0.025
Pretrial detention	-0.010	-0.485***	0.386***	0.390***	-0.013	-0.484***	0.389***	0.391***
Public defender or assigned attorney	-0.157	0.053	0.075	-0.100	-0.152	0.054	0.071	-0.103
Other attorney	-0.719***	0.565**	-0.729***	-0.368	-0.715***	0.567**	-0.733***	-0.370
County level								
% nonwhite defendants	-0.002	-0.018	-0.006	-0.014*	-0.002	-0.018	-0.006	-0.015*
% drug cases	-0.001	-0.016	-0.006	-0.006	-0.001	-0.016	-0.006	-0.006
Court time	0.002	0.005	0.002	-0.001	0.002	0.005	0.002	-0.001
Population density	-0.003	-0.049*	-0.008	-0.004	-0.003	-0.050*	-0.008	-0.004
% below poverty	-0.024	-0.024	-0.016	-0.038	-0.025	-0.025	-0.016	-0.038
% White population	-0.008	-0.030*	-0.000	-0.024**	-0.009	-0.030*	-0.000	-0.024**
Racial/ethnic heterogeneity	1.686	2.049	1.135	0.556	1.676	2.057	1.113	0.545
State level								

Sentencing commission	0.405*	-0.035	-0.120	0.680***	0.411*	-0.035	-0.123	0.679***
Drug courts per 1 million	0.038	0.120*	0.114**	-0.070	0.039	0.120*	0.113**	-0.070
Judges appointed	-0.271	0.551	0.238	-0.651***	-0.283	0.543	0.242	-0.649***
Mandatory minimum drug	-0.354	0.032	-0.134	0.154	-0.355	0.026	-0.127	0.158
% female judges	-0.001	0.068***	0.034	-0.015	-0.002	0.067***	0.034	-0.015
% nonwhite judges	0.021*	0.025	0.007	0.047***	0.021*	0.025	0.006	0.047***
Intercept	-2.250	-1.335	-0.851	1.443	-2.198	-1.317	-0.793	1.478

***p<0.001; **p<0.01; *p<0.05

Table 3.5b: SCPS Adjudication probit model with mediation for pretrial detention

	Adjudication 3					
	pretrial detention	*dismissal*	*acquittal*	*diversion*	*guilty plea*	*guilty trial*
Individual level						
Year (centered)	0.001	0.009	-0.038***	0.056***	-0.023**	-0.046**
Latino	0.224***	-0.039	-0.025	0.104	-0.036	-0.225**
White	-0.289***	-0.059	-0.331**	0.192***	-0.078	-0.184**
Drug sales	0.333***	-0.167	0.032	-0.545**	0.331***	0.211*
Age	0.002	-0.001	0.009**	-0.001	0.001	0.003
Female	-0.099***	0.012	-0.147*	0.037	-0.007	-0.126**
Active CJ status	0.445***	-0.124**	-0.024	-0.131**	0.16***	-0.064
Missing CJ status	0.231**	-0.107	-0.174	-0.594***	0.396***	-0.321*
Prior arrests	0.045***	0.004	0.000	-0.038**	0.007	0.011
Prior arrests x Latino	-0.031**	-0.008	-0.033	-0.026*	0.029***	0.002
Prior arrests x White	0.012	-0.003	-0.015	-0.021	0.029**	0.005
Prior felony convictions	0.071***	0.001	0.044*	-0.147***	0.025**	0.021
Pretrial detention	----	-0.199***	-0.187**	-0.601***	0.346***	0.163*
Public defender or assigned attorney	0.585***	-0.048	-0.153	0.014	0.050	-0.134
Other attorney	0.370***	0.319*	-0.322**	0.813***	-0.674***	-0.03
County level						
% nonwhite defendants	0.001	0.005	0.003	-0.011	-0.002	-0.007
% drug cases	0.000	0.005	0.002	-0.011	-0.002	-0.001
Court time	-0.005***	-0.001	0.001	0.003	0.001	-0.002
Population density	-0.009	0.008	0.004	-0.035*	-0.002	0.003
% below poverty	-0.016	0.017	-0.005	-0.011	0.002	-0.016
% White population	-0.003	0.005	-0.003	-0.023**	0.007	-0.016
Racial/ethnic heterogeneity	-0.409	-0.894	0.716	1.061	0.439	-0.277
State level						
Sentencing commission	-0.538***	0.050	0.342*	0.006	-0.122	0.602***
Drug courts per 1 million	-0.015	-0.08**	-0.026	0.037	0.064**	-0.121**

Judges appointed	0.005	-0.159	-0.322*	0.342	0.18	-0.662***
Mandatory minimum drug	0.041	0.117	-0.213	0.144	0.029	0.249
% female judges	0.033***	-0.028*	-0.02	0.036**	0.014	-0.033*
% nonwhite judges	0.011	-0.012	0.005	0.012	-0.008	0.031**
Intercept	-1.317	0.136	-2.152	-1.088	-1.076	0.934

***p<0.001; **p<0.01; *p<0.05

Table 3.6: SCPS Sentence type multinomial probit model

	Sentence type 1			Sentence type 2			Sentence type 3			Sentence type 4		
	Prison	*Probation*	*Fine*	*Prison*	*Probation*	*Fine*	*Prison*	*Probation*	*Fine*	*Prison*	*Probation*	*Fine*
Individual level												
Year	-0.047***	-0.022	0.043*	-0.048***	-0.015	0.029	-0.047***	-0.022	0.043**	-0.048***	-0.015	0.031
Latino	0.159*	0.275**	0.211	0.166*	0.246*	0.263*	0.108	0.362***	0.187	0.111	0.369***	0.179
White	-0.015	0.206***	0.161	-0.011	0.193**	0.185*	-0.240*	0.071	0.178	-0.241*	0.094	0.154
Drug sales	0.747***	0.175*	-0.066	0.760***	0.094	0.084	0.752***	0.174*	-0.069	0.760***	0.083	0.061
Age	-0.003	0.000	-0.000	-0.003	0.000	0.000	-0.002	0.001	-0.000	-0.002	0.000	0.000
Female	-0.109	0.074	-0.151*	-0.109	0.075	-0.156*	-0.108	0.075	-0.152*	-0.108	0.077	-0.154*
Active CJ status	0.394***	0.138	0.017	0.403***	0.090	0.108	0.387***	0.138	0.020	0.393***	0.087	0.094
Missing CJ status	0.212	0.029	0.178	0.230	-0.084	0.390	0.200	0.018	0.184	0.210	-0.105	0.365
Prior arrests	0.009	-0.045***	-0.050***	0.010	-0.051***	-0.040*	-0.003	-0.047***	-0.048***	-0.003	-0.049***	-0.046**
Prior arrests x Latino							0.008	-0.018	0.007	0.008	-0.026	0.019
Prior arrests x White							0.041*	0.026*	-0.013	0.041*	0.019	-0.002
Prior felony convictions	0.069**	-0.128***	-0.051	0.070**	-0.135***	-0.036	0.070**	-0.127***	-0.050	0.071**	-0.136***	-0.035
Pretrial detention	0.319***	-0.528***	-0.632***	0.335*	-0.625***	-0.464**	0.318***	-0.533***	-0.635***	0.328*	-0.642***	-0.483**
Public def./assigned atty	-0.383**	-0.152	-0.350**	-0.380**	-0.160	-0.336**	-0.394**	-0.159	-0.348**	-0.390**	-0.167	-0.350**
Other attorney or missing	-0.537**	-0.229	0.242	-0.569*	-0.026	-0.130	-0.545***	-0.233	0.244	-0.562*	-0.004	-0.100
County level												
% nonwhite defendants	0.011	0.004	0.004	0.011	0.005	0.003	0.011	0.004	0.005	0.011	0.004	0.003
% drug cases	0.024**	0.038***	0.029**	0.024**	0.039***	0.027**	0.024**	0.038***	0.029**	0.024**	0.039***	0.027**
Court time	-0.000	-0.005	0.001	-0.000	-0.005	0.001	-0.000	-0.005	0.001	-0.000	-0.005	0.001
Population density	-0.025**	-0.042***	-0.019*	-0.025**	-0.043***	-0.017*	-0.025**	-0.042***	-0.019*	-0.025**	-0.043***	-0.017*
% below poverty	0.049	-0.010	0.026	0.048	-0.010	0.027	0.048	-0.011	0.026	0.048	-0.011	0.027
% White population	0.036	0.019	0.018	0.037	0.017	0.021*	0.036	0.018	0.018	0.036	0.016	0.020*
Racial/ethnic heterogeneity	1.525	1.525	0.842	1.540	1.470	0.874	1.512	1.533	0.838	1.523	1.480	0.854
State level												
Sentencing commission	-0.176	0.088	0.396	-0.189	0.131	0.343	-0.174	0.096	0.391	-0.184	0.148	0.351
Judges appointed	0.144	0.971*	0.657*	0.168	0.892	0.739*	0.138	0.960*	0.656*	0.158	0.870	0.727*
Mandatory minimum drug	0.538	-0.148	0.200	0.542	-0.177	0.269	0.554	-0.140	0.196	0.557	-0.172	0.259

% female judges	0.074**	0.065*	0.016	0.075**	0.061*	0.019	0.073**	0.064*	0.016	0.074**	0.060*	0.018
% nonwhite judges	0.001	-0.026	-0.034	-0.000	-0.023	-0.041	-0.000	-0.026	-0.033	-0.001	-0.023	-0.040
Inverse Mills ratio				0.420	-1.911	2.975				0.293	-2.150	2.620
Intercept	-7.455*	-3.261	-4.567*	-7.707*	-2.170	-6.157**	-7.333*	-3.158	-4.594*	-7.517*	-1.959	-5.927*

Table 3.7: SCPS Prison sentence length (ln)

	Prison 1	Prison 2	Prison 3	Prison 4
Individual level				
Year (centered)	-0.033*	-0.022	-0.033*	-0.023
Latino	0.027	0.051	0.112	0.187**
White	-0.080*	-0.024	-0.054	0.046
Drug sales	0.413***	0.203*	0.411***	0.199
Age	0.003*	0.004**	0.003*	0.004**
Female	-0.124***	-0.074*	-0.122***	-0.073*
Active CJ status	0.154*	0.048	0.156*	0.053
Missing CJ status	0.101	0.020	0.100	0.021
Prior arrests	-0.008*	-0.023*	-0.004	-0.014
Prior arrests x Latino			-0.014	-0.023*
Prior arrests x White			-0.004	-0.012
Prior felony convictions	0.032***	-0.014	0.032***	-0.015
Pretrial detention	0.094*	-0.132	0.092*	-0.135
Public defender or assigned attorney	-0.256***	-0.169**	-0.253***	-0.163**
Other attorney or missing	-0.311**	-0.184	-0.307**	-0.178
Inverse Mills ratio		-2.412*		-2.407
County level				
% nonwhite defendants	-0.011	-0.014*	-0.011	-0.014*
% drug cases	-0.008	-0.007	-0.008	-0.007
Population density	0.014***	0.013***	0.014***	0.013***
% below poverty	-0.028*	-0.046**	-0.029*	-0.046**
% White population	-0.017*	-0.025**	-0.017*	-0.025**
Racial/ethnic heterogeneity	-0.845	-0.961*	-0.845	-0.951*
State level				
Sentencing commission	0.143	0.215	0.145	0.217
Judges appointed	-0.220	-0.024	-0.221	-0.026
Mandatory minimum drug	-0.046	-0.260	-0.050	-0.267
% female judges	-0.018	-0.026*	-0.018	-0.026*
% nonwhite judges	0.003	-0.003	0.003	-0.003
Intercept	6.590***	9.573***	6.579***	9.530***

***p<0.001; **p<0.01; *p<0.05

Table 3.8: SCPS Jail sentence length (ln)

	Jail 1	Jail 2	Jail 3	Jail 4
Individual level				
Year (centered)	-0.018	-0.026	-0.018	-0.027
Latino	-0.112	-0.044	-0.088	-0.025
White	-0.177*	-0.137	-0.402**	-0.403**
Drug sales	0.435***	0.562**	0.436***	0.562**
Age	-0.015***	-0.015***	-0.015***	-0.015***
Female	-0.078	-0.080	-0.086	-0.087
Active CJ status	0.088	0.167	0.080	0.156
Missing CJ status	0.133	0.172	0.115	0.151
Prior arrests	0.025*	0.015	0.015	0.003
Prior arrests x Latino			-0.005	-0.005
Prior arrests x White			0.042*	0.050**
Prior felony convictions	0.000	-0.007	0.002	-0.005
Pretrial detention	0.647**	0.607**	0.640**	0.600**
Public defender or assigned attorney	-0.299	-0.362	-0.310	-0.373
Other attorney	-0.355*	-0.437*	-0.358*	-0.439*
Inverse Mills ratio		-2.432		-2.411
County level				
% nonwhite defendants	-0.006	-0.003	-0.006	-0.003
% drug cases	-0.015	-0.007	-0.015	-0.007
Population density	-0.008	-0.019	-0.008	-0.018
% below poverty	0.018	0.027	0.016	0.026
% White population	0.022	0.031	0.021	0.031
Racial/ethnic heterogeneity	1.398	2.017	1.362	1.971
State level				
Sentencing commission	0.027	0.037	0.037	0.047
Judges appointed	-0.042	0.124	-0.053	0.110
Mandatory minimum drug	-0.331	-0.256	-0.332	-0.255
% female judges	0.015	0.033	0.014	0.032
% nonwhite judges	0.015	0.015	0.015	0.014
Intercept	-0.180	-0.576	0.031	-0.331

***p<0.001; **p<0.01; *p<0.05

Table 3.9: SCPS Probation and community service sentence length (ln)

	Probation 1	Probation 2	Probation 3	Probation 4
Individual level				
Year (centered)	0.003	0.003	0.003	0.003
Latino	0.010	-0.028	0.013	-0.033
White	-0.035	-0.076*	-0.079*	-0.102**
Drug sales	0.103***	0.155***	0.103***	0.153***
Age	-0.000	-0.001	-0.000	-0.001
Female	-0.019	-0.045**	-0.018	-0.043**
Active CJ status	0.073**	0.092***	0.073**	0.091***
Missing CJ status	0.122*	0.147*	0.121*	0.145*
Prior arrests	-0.001	0.008	-0.004	0.005
Prior arrests x Latino			-0.001	0.001
Prior arrests x White			0.010*	0.006
Prior felony convictions	-0.002	0.034*	-0.001	0.033*
Pretrial detention	0.073***	0.200**	0.072***	0.194**
Public defender or assigned attorney	-0.072*	-0.096**	-0.075*	-0.096**
Other attorney or missing	-0.103*	-0.120**	-0.105**	-0.120**
Inverse Mills ratio		-1.569*		-1.502*
County level				
% nonwhite defendants	-0.000	-0.000	-0.001	-0.000
% drug cases	-0.007*	-0.011**	-0.007*	-0.011**
Population density	0.015***	0.023***	0.015***	0.022***
% below poverty	0.017	0.020*	0.017	0.020*
% White population	0.004	0.003	0.004	0.003
Racial/ethnic heterogeneity	0.226	-0.115	0.227	-0.097
State level				
Sentencing commission	-0.532***	-0.569***	-0.530***	-0.567***
Judges appointed	0.029	-0.167	0.027	-0.160
Mandatory minimum drug	-0.007	0.039	-0.003	0.040
% female judges	0.028**	0.023*	0.028**	0.023*
% nonwhite judges	0.014*	0.019**	0.014*	0.019**
Intercept	2.184*	3.336**	2.212*	3.297**

***p<0.001; **p<0.01; *p<0.05

Table 3.10: FJSP Case filed probit model results

Independent variables	*case filed 1*		*case filed 2*	
Year	0.020	***	0.020	***
Latino	-0.008		0.017	
White	0.324	**	0.342	**
Age	-0.006	***	-0.006	***
Female	0.326	***	0.325	***
U.S. Citizen	-0.547	***	-0.544	***
Drug crime: trafficking/sales	0.362	***	0.362	***
Drug crime: other	-0.012		-0.012	
Drug type: crack cocaine	0.235	***	0.233	***
Drug type: heroin	-0.077		-0.077	
Drug type: marijuana	-0.035		-0.035	
Drug type: methamphetamine	-0.248	***	-0.247	***
Drug type: other drug	-0.247	***	-0.247	***
Criminal history score	-0.025		-0.020	
Criminal history x Latino			-0.010	
Criminal history x White			-0.007	
Public defender or assigned attorney	0.175	*	0.175	*
Other attorney	-2.106	***	-2.105	***
District-level variables (n=89)				
Percent nonwhite defendants	-0.001		-0.001	
Percent of drug cases	-0.003		-0.003	
Mean court time	-0.052	***	-0.052	***
State-level variables (n=50)				
Population density	-0.021		-0.021	
Percent below poverty	-0.007		-0.007	
Percent white population	-0.003		-0.003	
Racial/ethnic heterogeneity	-0.001		-0.003	
Treatment admissions rate	-0.003		-0.003	
Intercept	-35.595	***	-35.577	***

Table 3.11: FJSP Adjudication probit model

	Adjudication type 1				Adjudication type 2			
	dismissal	*acquittal*	*guilty plea*	*guilty trial*	*dismissal*	*acquittal*	*guilty plea*	*guilty trial*
Independent variables								
Year	-0.025***	-0.032***	0.050	-0.069***	-0.023***	-0.032***	0.049***	-0.070***
Latino	0.139**	-0.302	0.020	-0.230***	0.149**	-0.301	0.013	-0.232***
White	-0.144***	-0.198	0.234***	-0.235***	-0.128**	-0.196	0.221***	-0.238***
Age	0.002**	0.005**	-0.005***	0.008***	0.002	0.005**	-0.005***	0.008***
Female	0.245***	-0.018	-0.135***	-0.176***	0.274***	-0.014	-0.158***	-0.182***
U.S. Citizen	0.108*	-0.134	-0.079	-0.003	0.073	-0.139	-0.051	0.004
Drug sales/trafficking	-0.148	0.127*	0.312*	-0.465**	-0.107	0.134	0.279*	-0.474**
Other drug crime	0.059	0.134*	0.053	-0.230	0.033	0.130*	0.074	-0.225
Crack cocaine	-0.155***	-0.179**	0.118***	-0.006	-0.152***	-0.179**	0.116***	-0.007
Heroin	-0.004	-0.193*	0.131***	-0.272***	-0.006	-0.193**	0.133***	-0.272***
Marijuana	0.081	-0.015	-0.011	-0.113**	0.076	-0.016	-0.007	-0.111**
Methamphetamine	0.060	-0.073	-0.042	0.016	0.061	-0.073	-0.043	0.015
Other drug	0.186***	-0.122*	-0.089**	-0.112**	0.185***	-0.123*	-0.088**	-0.111**
Criminal history score	-0.002	-0.024	0.000	0.009	-0.002	-0.024	0.000	0.009
Criminal history x Latino								
Criminal history x White								
Public defender or assigned attorney	-0.062	-0.088	0.109**	-0.124***	-0.073	-0.089*	0.116**	-0.123***
Other attorney	0.529***	-0.047	-0.450***	0.194***	0.453***	-0.060	-0.386***	0.212**
Inverse Mills ratio					1.479	0.249	-1.215	-0.305
District-level variables								
% nonwhite defendants	-0.002	0.001	-0.002	0.008**	-0.002	0.002	-0.002	0.008**
% of drug cases	-0.003	0.005	0.003	-0.002	-0.003	0.005	0.003	-0.002
Court time	0.008	-0.006	0.010	-0.033	0.003	-0.007	0.015	-0.031
State-level variables								
Population density	-0.042**	0.004	0.026*	0.010	-0.044**	0.004	0.027*	0.010
% below poverty	-0.009	-0.002	0.013	-0.014	-0.009	-0.002	0.013	-0.014

% white population	0.003	0.003	-0.009	0.014	0.002	0.003	-0.008	0.014
Racial/ethnic heterogeneity	0.998	0.028	-1.108	0.661	0.974	0.022	-1.086	0.668
Treatment admissions rate	0.014	-0.010	-0.001	-0.026 **	0.014	-0.010	-0.001	-0.026 **
Intercept	47.714 ***	62.247 ***	-98.752 ***	135.968 ***	43.996 ***	61.716 ***	-95.750 ***	136.813 ***

Table 3.11 (continued): FJSP Adjudication probit model

	Adjudication type 3				Adjudication type 4			
	dismissal	*acquittal*	*guilty plea*	*guilty trial*	*dismissal*	*acquittal*	*guilty plea*	*guilty trial*
Independent variables								
Year	-0.025 ***	-0.032 ***	0.050 ***	-0.069 ***	-0.023 ***	-0.032 ***	0.049 ***	-0.070 ***
Latino	0.141 **	-0.287	0.013	-0.228 ***	0.150 **	-0.286	0.007	-0.230 ***
White	-0.142 **	-0.197	0.230 ***	-0.244 ***	-0.125 **	-0.195	0.217 ***	-0.248 ***
Age	0.002 **	0.005 **	-0.005 ***	0.008 ***	0.002	0.005 **	-0.005 ***	0.008 ***
Female	0.245 ***	-0.018	-0.135 ***	-0.176 ***	0.274 ***	-0.013	-0.159 ***	-0.183 ***
U.S. Citizen	0.108 *	-0.133	-0.080	-0.002	0.073	-0.139	-0.051	0.006
Drug sales/trafficking	-0.148	0.127 *	0.312 *	-0.465 **	-0.106	0.135 *	0.279 *	-0.475 **
Other drug crime	0.059	0.134 *	0.053	-0.230	0.033	0.130 *	0.074	-0.225
Crack cocaine	-0.155 ***	-0.180 **	0.118 ***	-0.006	-0.152 ***	-0.180 **	0.116 ***	-0.007
Heroin	-0.004	-0.193 *	0.131 ***	-0.273 ***	-0.006	-0.194 **	0.133 ***	-0.272 ***
Marijuana	0.081	-0.015	-0.011	-0.113 **	0.076	-0.016	-0.007	-0.111 **
Methamphetamine	0.060	-0.073	-0.042	0.015	0.061	-0.073	-0.043	0.015
Other drug	0.186 ***	-0.122 *	-0.089 **	-0.112 **	0.185 ***	-0.123 *	-0.088 **	-0.111 **
Criminal history score	-0.001	-0.022	-0.001	0.008	-0.002	-0.022	-0.001	0.008
Criminal history x Latino	-0.001	-0.009	0.003	-0.001	0.000	-0.009	0.003	-0.001
Criminal history x White	-0.001	0.000	0.001	0.004	-0.001	0.000	0.002	0.004
Public defender or assigned attorney	-0.062	-0.088	0.109 **	-0.124 ***	-0.073	-0.090 *	0.116 **	-0.123 ***
Other attorney	0.529 ***	-0.047	-0.450 ***	0.194 ***	0.452 ***	-0.062	-0.385 ***	0.213 **
Inverse Mills ratio					1.506	0.274	-1.225	-0.327
District-level variables								
% nonwhite defendants	-0.002	0.001	-0.002	0.008 **	-0.002	0.002	-0.002	0.008 **

% of drug cases	-0.003	0.005	0.003	-0.002	-0.003	0.005	0.003	-0.002
Court time	0.008	-0.006	0.010	-0.033	0.003	-0.007	0.015	-0.031
State-level variables								
Population density	-0.042**	0.004	0.026*	0.010	-0.044**	0.004	0.027*	0.010
% below poverty	-0.009	-0.002	0.013	-0.014	-0.009	-0.002	0.013	-0.014
% white population	0.003	0.003	-0.009	0.014	0.002	0.003	-0.008	0.014
Racial/ethnic heterogeneity	0.998	0.026	-1.107	0.661	0.973	0.020	-1.086	0.668
Treatment admissions rate	0.014	-0.009	-0.001	-0.026**	0.014	-0.010	-0.001	-0.026**
Intercept	47.717***	62.291***	-98.762***	135.966***	43.929***	61.703***	-95.733***	136.873***

***p<0.001; **p<0.01; *p<0.05

Table 3.12: FJSP Sentence type probit model

	Sentence type 1			Sentence type 2			Sentence type 3			Sentence type 4		
	Prison	*Probation*	*Fine*	*Prison*	*Probation*	*Fine*	*Prison*	*Probation*	*Fine*	*Prison*	*Probation*	*Fine*
Individual level												
Year	0.022***	-0.021**	-0.016*	0.019**	-0.022**	-0.013*	0.022***	-0.020**	-0.016**	0.019**	-0.022**	-0.013*
Latino	-0.041	0.096**	-0.174**	-0.027	0.087*	-0.177**	-0.006	0.031	-0.197*	-0.002	0.034	-0.198*
White	-0.175***	0.242***	-0.171**	-0.197***	0.247***	-0.157**	-0.230***	0.277***	-0.187*	-0.240***	0.269***	-0.172*
Age	0.000	0.000	0.002*	0.000	0.001	0.002	0.000	0.000	0.002*	0.000	0.001	0.002
Female	-0.473***	0.515***	-0.147***	-0.468***	0.520***	-0.145***	-0.473***	0.515***	-0.146***	-0.468***	0.520***	-0.145***
U.S. Citizen	-0.469***	0.435***	0.453***	-0.437***	0.434***	0.426***	-0.446***	0.409***	0.449***	-0.429***	0.424***	0.422***
Drug sales/trafficking	1.396***	-1.285***	-1.045***	1.376***	-1.306***	-1.014***	1.398***	-1.287***	-1.044***	1.377***	-1.306***	-1.012***
Other drug crime	0.682***	-0.811***	0.037	0.705***	-0.801***	0.022	0.687***	-0.816***	0.037	0.705***	-0.801***	0.021
Crack cocaine	0.172***	-0.180***	-0.051	0.174***	-0.186***	-0.050	0.177***	-0.183***	-0.049	0.175***	-0.185***	-0.048
Heroin	-0.102*	0.055	0.256***	-0.128**	0.090*	0.254***	-0.132**	0.087*	0.258***	-0.128**	0.090*	0.254***
Marijuana	-0.392***	0.351***	0.306***	-0.374***	0.338***	0.301***	-0.377***	0.335***	0.305***	-0.374***	0.338***	0.301***
Methamphetamine	0.033	-0.098	0.297***	0.022	-0.092	0.299***	0.023	-0.087	0.297***	0.020	-0.090	0.298***
Other drug	-0.600***	0.575***	0.350***	-0.605***	0.577***	0.352***	-0.603***	0.578***	0.351***	-0.604***	0.576***	0.352***
Criminal history score	0.073***	-0.080***	-0.014	0.074***	-0.080***	-0.015	0.070***	-0.085***	-0.018	0.071***	-0.084***	-0.019
Criminal history x Latino							-0.016	0.031*	0.010	-0.017	0.030*	0.009
Criminal history x White							0.022*	-0.013	0.007	0.022*	-0.013	0.007
Public def./assign atty.	0.074	-0.075*	-0.035	0.066	-0.067	-0.036	0.064	-0.066	-0.034	0.064	-0.066	-0.037
Other attorney	-0.162***	0.074*	0.663***	-0.085	0.139	0.580***	-0.162***	0.074	0.662***	-0.088	0.140	0.573***
Inverse Mills ratio				-0.863	-0.773	0.699				-0.849	-0.771	0.757
District level												
% nonwhite defendants	0.000	0.000	0.000	-0.001	0.001	0.000	-0.001	0.001	0.000	-0.001	0.001	0.000
% drug cases	0.005*	-0.004	-0.007	0.005	-0.004	-0.007	0.005*	-0.004	-0.008	0.005*	-0.004	-0.007
Court time	-0.030*	0.031**	0.011	-0.038**	0.044**	0.008	-0.040**	0.042**	0.012	-0.038**	0.044**	0.008
State level												

Population density	0.021*	-0.015	-0.035	0.003	0.003	-0.033	0.004	0.004	-0.033	0.003	0.003	-0.033
% below poverty	0.008	0.005	-0.061***	0.010	0.002	-0.061***	0.010	0.002	-0.061***	0.010	0.002	-0.061***
% white population	0.003	0.007	-0.014	0.004	0.006	-0.015	0.004	0.006	-0.014	0.004	0.006	-0.015
Racial/ethnic heterogeneity	-0.408	0.878	0.175	-0.161	0.747	0.080	-0.244	0.695	0.142	-0.171	0.760	0.076
Intercept	-44.173***	39.91 3**	32.50 7*	-38.132**	43.10 4**	26.31 8*	-43.044***	38.72 8**	32.19 4*	-38.175**	42.99 7**	25.78 4*

***p<0.001; **p<0.01; *p<0.05

Table 3.13: FJSP Prison sentence length (ln)

	Prison 1	Prison 2	Prison 3	Prison 4
Individual level				
Year	-0.007	-0.008	-0.006	-0.008
Latino	-0.041	-0.040	-0.115 *	-0.112 *
White	-0.125 ***	-0.113 ***	-0.143 **	-0.122 *
Age	0.004 ***	0.004 ***	0.004 ***	0.004 ***
Female	-0.257 ***	-0.225 ***	-0.258 ***	-0.225 ***
U.S. Citizen	0.061 *	0.083 **	0.052 *	0.073 **
Drug sales/trafficking	0.983 ***	0.795 ***	0.985 ***	0.793 ***
Other drug crime	0.903 ***	0.771 ***	0.904 ***	0.768 ***
Crack cocaine	0.057 *	0.049	0.062 *	0.054 *
Heroin	-0.110 *	-0.104 *	-0.109 *	-0.103 *
Marijuana	-0.633 ***	-0.614 ***	-0.632 ***	-0.613 ***
Methamphetamine	0.187 ***	0.185 ***	0.186 ***	0.184 ***
Other drug	-0.081	-0.028	-0.083	-0.028
Criminal history score	0.219 ***	0.215 ***	0.207 ***	0.204 ***
Criminal history x Latino			0.034 **	0.034 **
Criminal history x White			0.005	0.001
Public defender or assigned attorney	-0.183 ***	-0.187 ***	-0.184 ***	-0.187 ***
Other attorney	-0.089 ***	-0.079 ***	-0.089 ***	-0.078 **
Drug mandatory minimum	0.909 ***	0.910 ***	0.910 ***	0.911 ***
Substantial assistance	-0.367 ***	-0.367 ***	-0.367 ***	-0.367 ***
Inverse Mills Ratio		-1.394		-1.423
District level				
% nonwhite defendants	0.004	0.004	0.004	0.004
% of drug cases	-0.001	-0.002	-0.001	-0.002
State level				
Population density	-0.015	-0.015	-0.016	-0.015
% below poverty	0.017	0.017	0.017	0.017
% white population	-0.011	-0.011	-0.010	-0.011
Racial/ethnic heterogeneity	-1.158	-1.198	-1.135	-1.177
Intercept	16.102	19.418 *	15.622	19.028

***p<0.001; **p<0.01; *p<0.05

Table 3.14: FJSP Probation sentence length (ln)

	Probation length 1	Probation length 2	Probation length 3	Probation length 4
Individual level				
Year	-0.014*	-0.014	-0.014*	-0.013
Latino	0.001	-0.001	-0.012	-0.013
White	-0.015	-0.024	-0.088	-0.100
Age	-0.003**	-0.003**	-0.003**	-0.003**
Female	0.007	-0.009	0.006	-0.013
U.S. Citizen	-0.027	-0.037	-0.027	-0.038
Drug sales/trafficking	0.483***	0.535**	0.483***	0.544**
Other drug crime	0.285***	0.320**	0.284***	0.325**
Crack cocaine	0.053	0.058	0.052	0.057
Heroin	0.011	0.009	0.010	0.008
Marijuana	-0.086*	-0.095*	-0.086*	-0.096*
Methamphetamine	-0.034	-0.031	-0.034	-0.031
Other drug	-0.026	-0.044	-0.023	-0.045
Criminal history score	0.009	0.011	-0.020	-0.018
Criminal history x Latino			0.006	0.005
Criminal history x White			0.054	0.055
Public defender or assigned attorney	0.018	0.021	0.017	0.020
Other attorney	-0.143**	-0.145***	-0.144***	-0.146***
Drug mandatory minimum	0.195***	0.194***	0.196***	0.195***
Substantial assistance	0.167***	0.167***	0.166***	0.166***
Inverse Mills Ratio		-0.254		-0.300
District level				
% nonwhite defendants	-0.007**	-0.007**	-0.007**	-0.007**
% of drug cases	-0.001	0.000	-0.001	0.000
State level				
Population density	-0.013	-0.014	-0.013	-0.014
% below poverty	0.003	0.003	0.003	0.003
% white population	0.011	0.011	0.011	0.011
Racial/ethnic heterogeneity	1.178	1.181	1.166	1.170
Intercept	30.989**	29.407*	30.734**	28.856*

***p<0.001; **p<0.01; *p<0.05

Figures

Figure 3.1: SCPS mediation and selection models

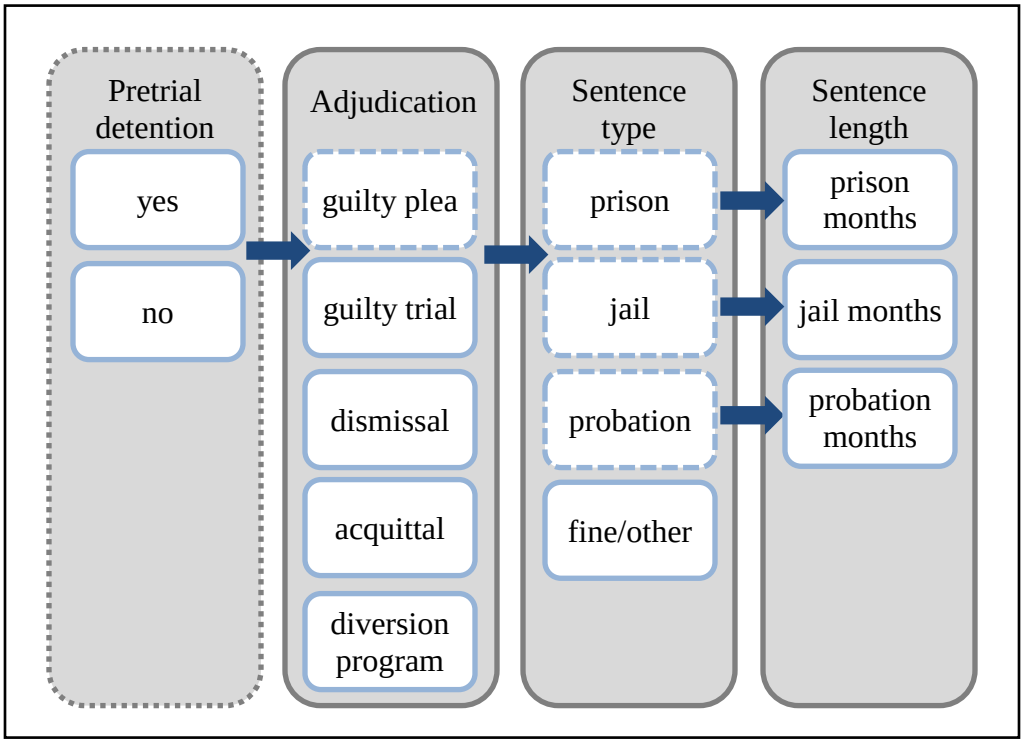


Figure 3.2: SCPS predicted probabilities for pretrial detention by racial group and prior arrests

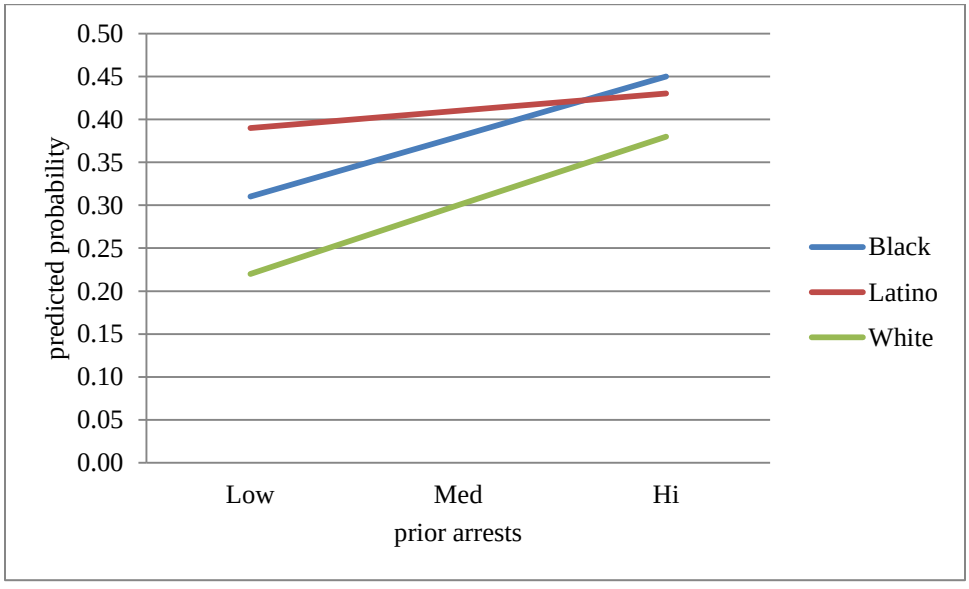


Figure 3.3: SCPS predicted probabilities for guilty plea by racial group and prior arrests

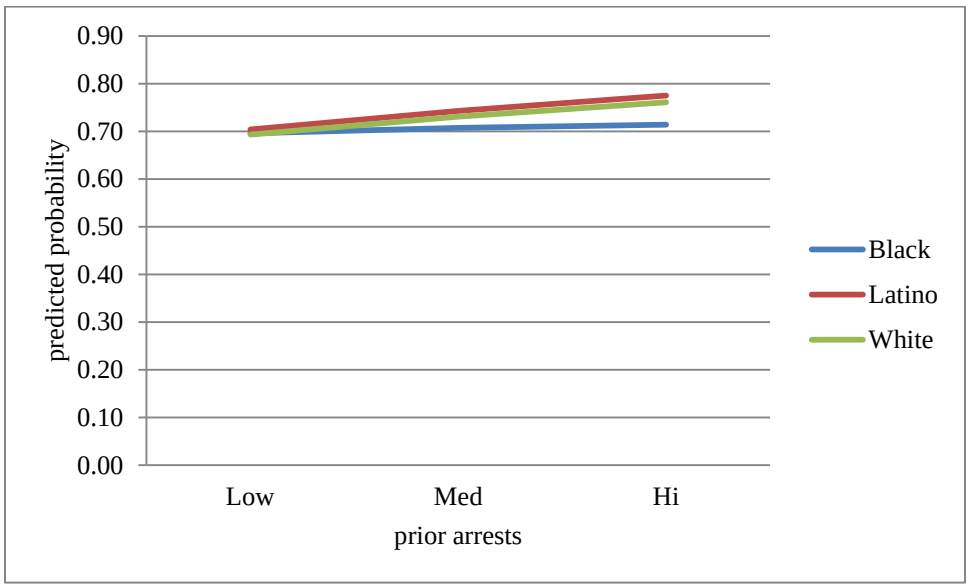


Figure 3.4: SCPS predicted probabilities for diversion by racial group and prior arrests

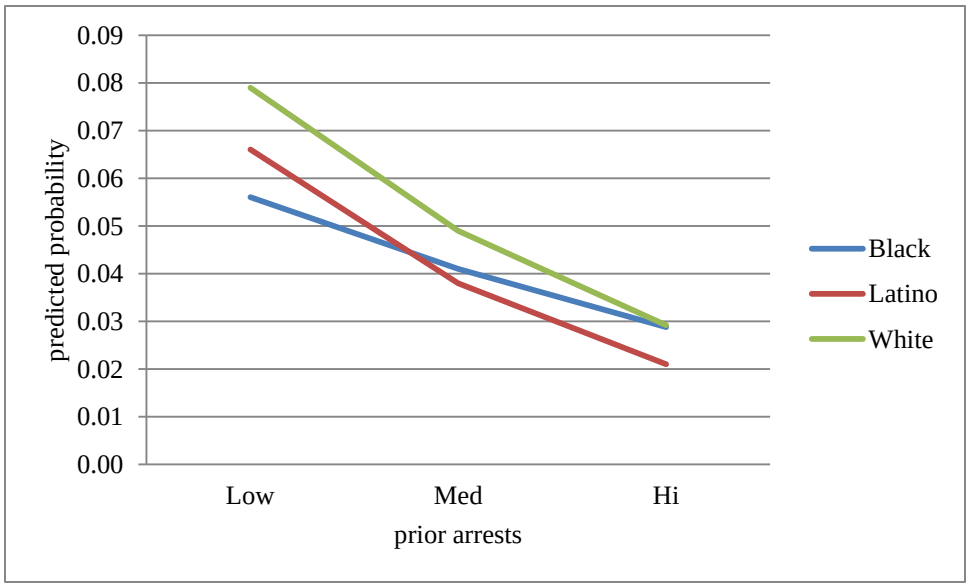


Figure 3.5: SCPS predicted probabilities for prison by racial group and prior arrests

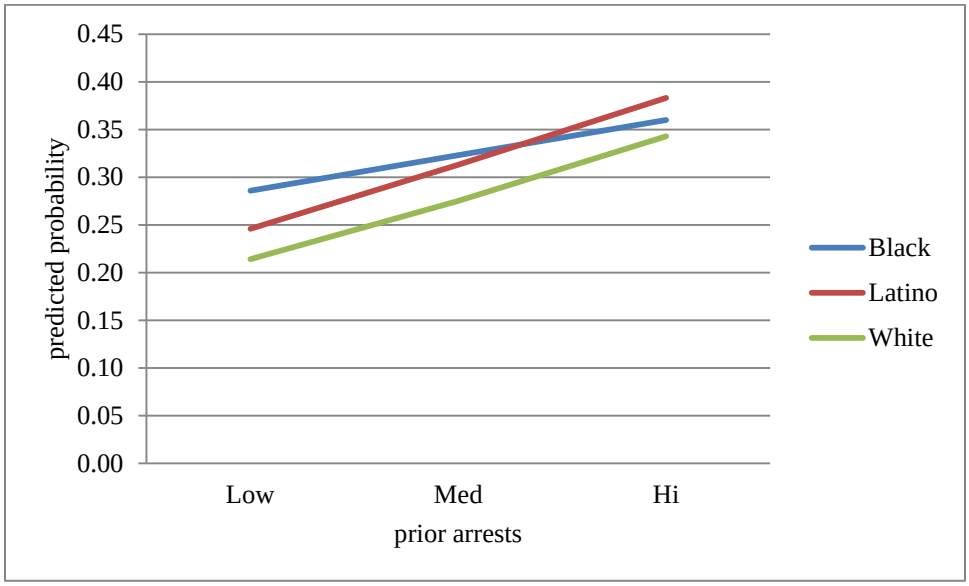


Figure 3.6: SCPS predicted probation sentence length by racial group and prior arrests

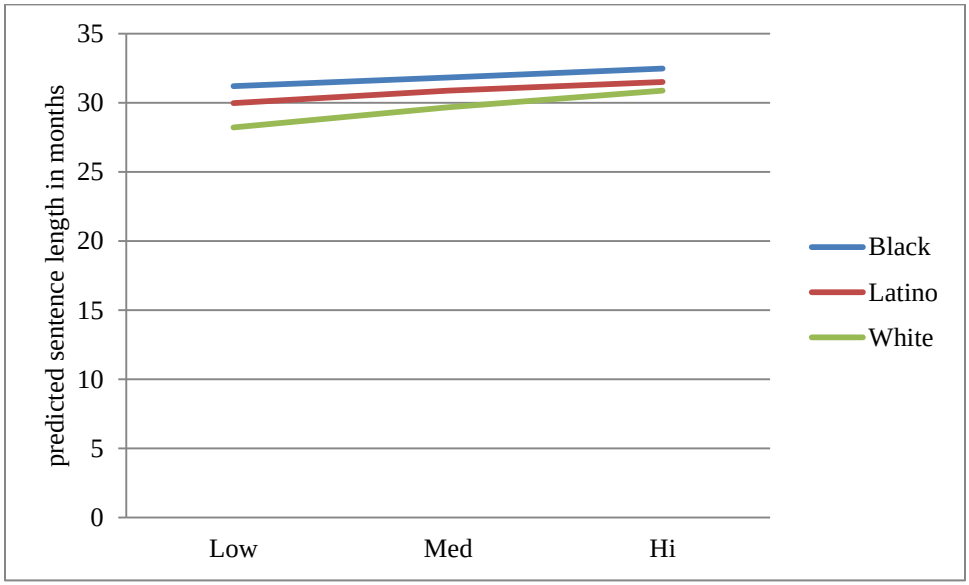


Figure 3.7: SCPS predicted probabilities for adjudication type

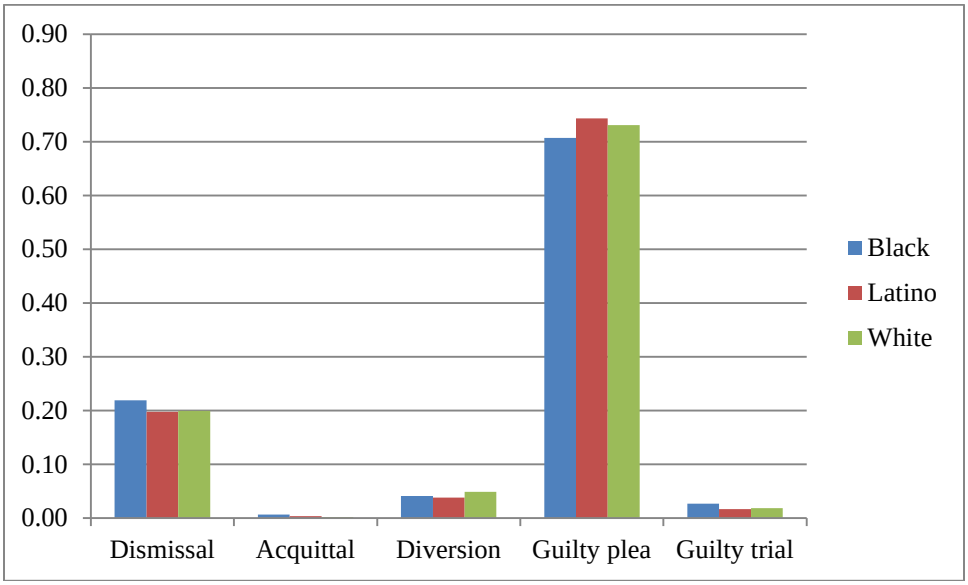


Figure 3.8: FJSP predicted probabilities for adjudication type

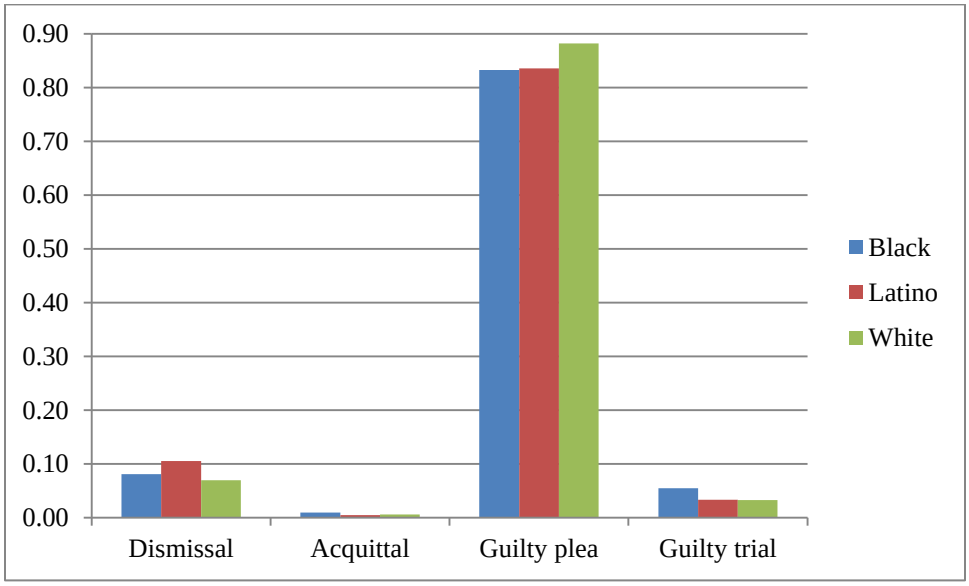


Figure 3.9: SCPS predicted probabilities for sentence type

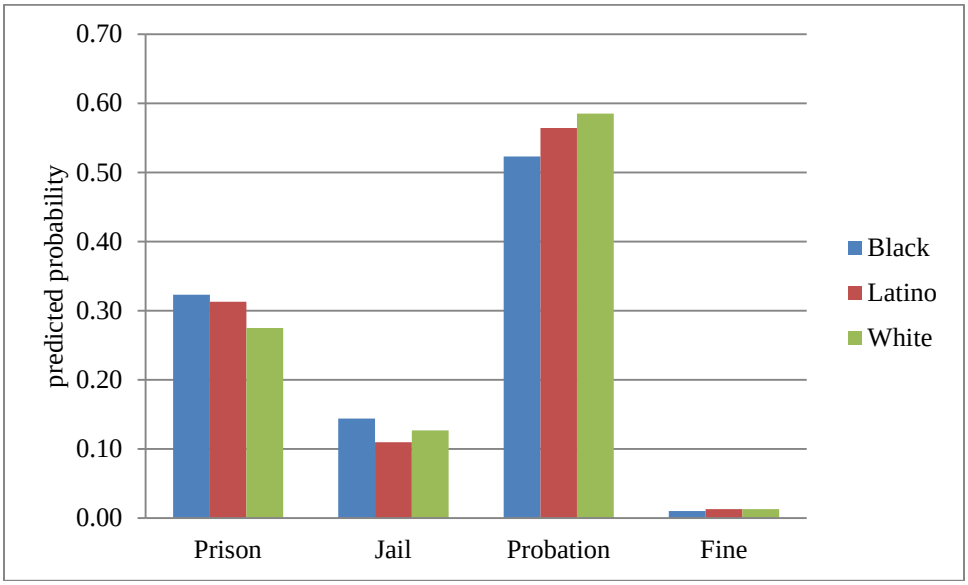


Figure 3.10: FJSP predicted probabilities for sentence type

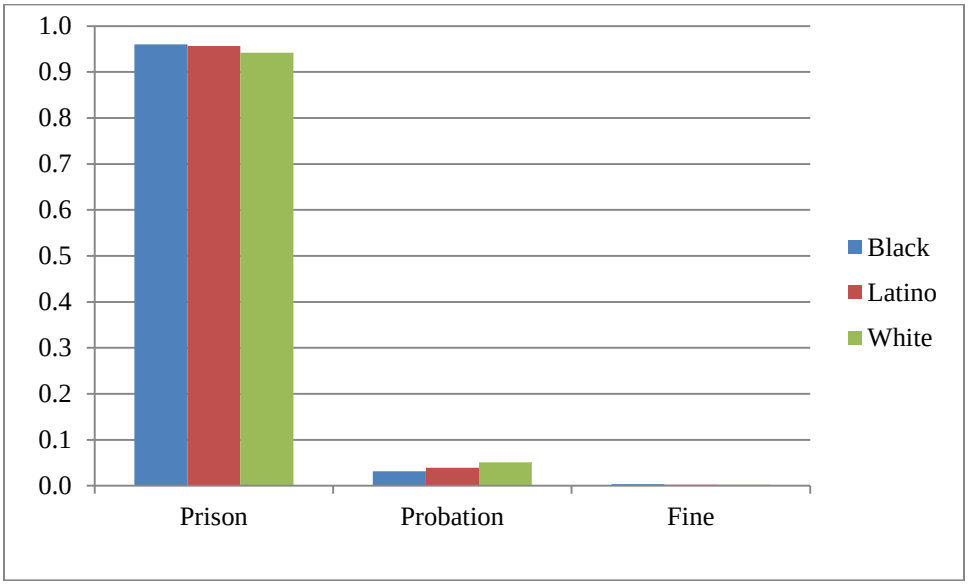


Figure 3.11: FJSP predicted probabilities for prison by racial group and criminal history score

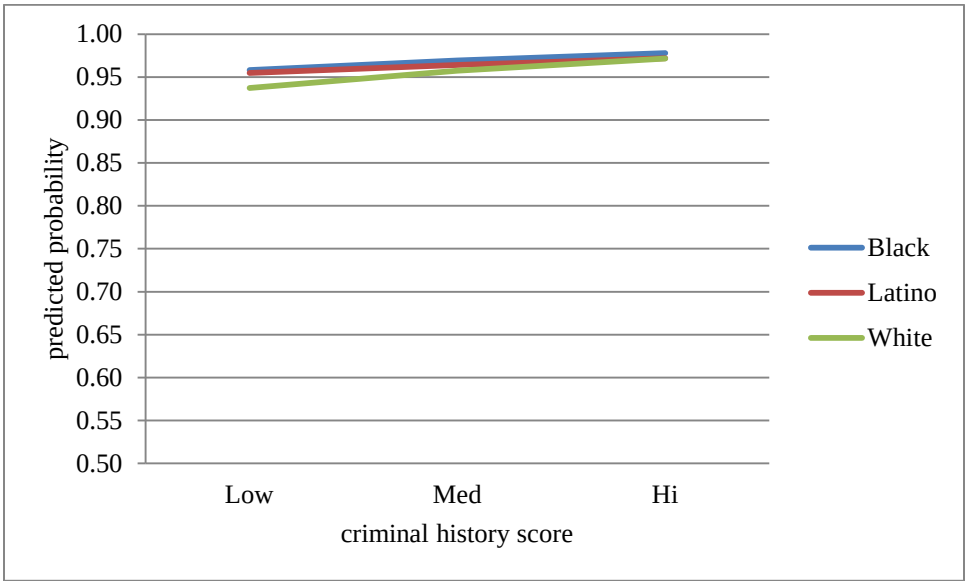


Figure 3.12: FJSP predicted prison sentence length by racial group and criminal history score

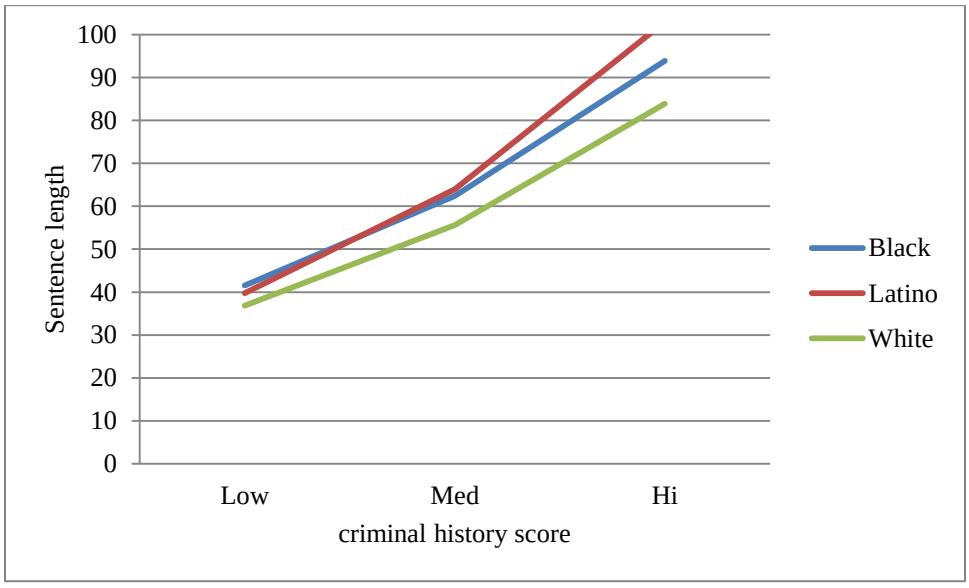
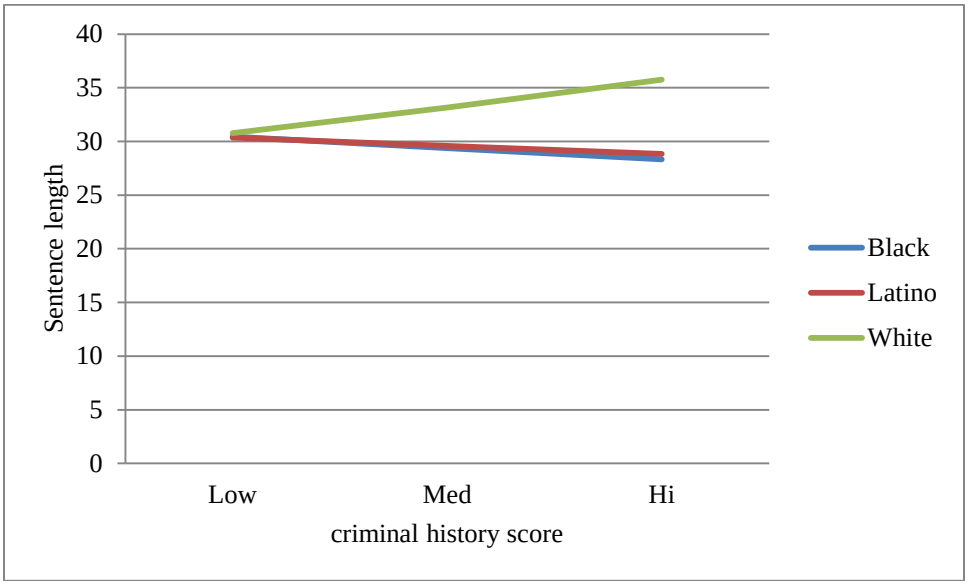


Figure 3.13: FJSP predicted probation sentence length by racial group and criminal history score



Chapter 4: Contextualizing racial inequality in Sacramento, California

Although analyses over multiple jurisdictions reveal general mechanisms of cumulative racial inequality, they also homogenize significant variation in prosecution practices between jurisdictions (Kautt, 2002; Lynch & Omori, 2014). This chapter identifies how drug enforcement practices internal to the criminal justice system, including arrest, charging, and sentencing, operate as mechanisms for cumulative racial inequality in the city of Sacramento, California.[35] Focusing on a single city allows for a more nuanced understanding of local criminal justice norms and practices, including an analysis of geographic variation in these practices, and as well as examination of how other criminal justice institutions can work with the court to create a system that facilitates racially unequal outcomes. Specifically, I investigate how patterns of prosecution may be biased within a single jurisdiction through geographically-driven policing, and how prosecution and correctional practices function to retain defendants under criminal justice system control, especially through the plea bargaining system and alternatives to incarceration.

I therefore draw from other single-city case studies on drug enforcement to contextualize this examination of how racial inequality is driven by the deployment of "race-salient" criminal laws and the over-policing of poor nonwhite communities (Schlesinger, 2007). Several recent studies have examined the role of racialized policing of drug crimes and other low-level crime in specific cities and that have considered how police practices result in the overrepresentation of Black and Latinos under criminal justice control. Katherine Beckett and colleagues (Beckett, Nyrop, Pfingst, & Bowen, 2005; Beckett, Nyrop & Pfingst, 2006) found that the focus on crack offender prosecution and the geographic targeting of outdoor drug markets explain racial

[35] While the district attorney's office and sheriff's department are run through the county, I limit my analysis to cases that occurred within Sacramento city limits because the Sacramento police department is run through the city.

disparity in drug delivery arrests in Seattle. Lynch (2011) found that police in Cleveland targeted poor Black communities for drug offenses and had a practice of charging the possession of drug paraphernalia—in nearly all cases, crack pipes—as a felony. In both cases, a combination of geographic targeting and local policy or practices regarding crack cocaine (either directly or indirectly) were ways in which Black defendants became overrepresented in the criminal justice system.

The over-policing of Black and Latino communities has largely occurred under the rationale of ostensibly race-neutral "disorder" policing and economic "revitalization" (Stuart, 2011). In a study of policing practices in New York, Fagan, Geller, and colleagues (Fagan, Geller, Davies & West, 2009; Geller & Fagan, 2010) found that law enforcement's "stop and frisk" policy focusing on drug and weapons possession has resulted in disproportionate stopping and searching of those residing in poor nonwhite neighborhoods. The researchers found that the geographic targeting of police stops was predicted more by demographic and socioeconomic characteristics of areas rather than disorder or crime rates, even though the policy was justified as order-maintenance policing. Moreover, spaces themselves are racialized. Lynch and colleagues (Lynch, Omori, Roussell, & Valasik, 2012) argue that the policing of different neighborhoods reflect racialized stereotypes of the "junkie" in "skid row," where criminal justice practices worked to contain residents, and the "gangster" in the "ghetto," where aggressive police enforcement helped gentrification efforts in another neighborhood. Similarly, in a study of Los Angeles, Forrest Stuart (2011) found that "disorder policing" practices, and the consequent alternative to incarceration work programs function to quarantine residents in the Skid Row area. Within the buffer zone and the rest of downtown, Skid Row inhabitants are "marked by the color of their skin as 'out of place' among the loft dwellers and wealthy new gentry of downtown" (p.

208-209). His analysis expands beyond arrests and prosecution to suggest that the alternatives to incarceration programs work in concert with law enforcement practices to maintain Skid Row residents in subpoverty jobs.

While there have been studies focusing on racial inequality and drug enforcement in cities that have considerable "consumer" appeal (Glaeser & Gottlieb, 2006), such as Seattle, San Francisco, New York, and Los Angeles, less work has been done in other types of cities. Sacramento is not as easily classified as a "consumer" city. It has a mix of ongoing revitalization and urban renewal efforts, as well as historic housing due to its gold rush history. Over time, the economy has shifted from industrial manufacturing, canning, and military, to government and high-tech (Avella, 2008; Clark & Herrin, 1997; Hernandez, 2009). Sacramento city has a growing population of just under 500,000, and is just under 35% non-Hispanic White, 15% Black, 18% Asian, and 27% Hispanic or Latino origin (U.S. Census Bureau, 2012).

Like many cities, Sacramento has had a long history of racial residential segregation. Hernandez (2009) traces current segregation to historic practices of racially restrictive covenants, central city renewal programs, and mortgage redlining. More recently, however, a combination of redevelopment of the historic housing market, as well as a housing market collapse has placed additional pressure on traditionally Black and Latino communities as a place to find affordable housing. Sacramento has designated several historic preservation districts since 1975, with the majority of them close to downtown (Clark & Herrin, 1997). Historic preservation districts increase the value of older homes, as well as impose strict regulations on homeowners to make improvements. The higher property tax resulting from increased home values, and higher cost of maintenance due to the strict regulations functions to gentrify poor areas with older housing, or to maintain racial and economic segregation in areas that are already affluent. Much like lower-

density “Sunbelt” cities such as Phoenix and Fresno (Lynch et al., 2012), Sacramento was also hit hard by the housing market crisis in the mid-2000s (Hernandez, 2009). Between 2005-2010, home values in the Sacramento area fell 43% (Reese, 2010).

The city has also has had a history of racial inequality in drug enforcement. Like many other cities in the 1980s, Sacramento was under political pressure to arrest and prosecute drug crimes, resulting in heavy policing of inner-city drug markets. Barnes and Kingsworth (1996) conducted a study in the late 1980s of drug defendants charged with a felony drug possession in Sacramento County, and found that the overrepresentation of Black and Latino defendants in prosecution had more severe arrest charges compared to White defendants, so that prosecution patterns reflected the racial disparities in proactive policing. They found significant racial disparities at many stages of the prosecution and sentencing process, including that Black defendants were significantly more likely to receive a prison sentence, and received a longer prison sentence compared to White defendants. In contrast, White defendants were more likely to receive diversion or have their charges reduced compared to Black and Latino defendants. They also suggest that racial disparities in sentencing are due to less severe penalties for methamphetamine compared to other drugs, particularly crack cocaine. In their sample, 78% of Black defendants were charged with crack cocaine, Latinos were primarily charged with heroin (35%) and methamphetamine (35%), and White defendants were primarily charged with methamphetamine (74%).

Some of these racially stratifying mechanisms may have shifted since the height of the drug war. Since the mid-1990s, legislation in California has specified additional sentencing enhancements for methamphetamine-related crimes. Like many other cities in California, Sacramento’s criminal justice has faced recent resource constraints, including increased

supervision of inmates due to statewide realignment, as well as budget cuts to law enforcement (Delgado & Mass, 2011; Justice Reform Coalition, 2008). These factors have pressured law enforcement to decrease policing of minor crimes (Delgado & Mass, 2011). According to an ACLU (2011) report, Sacramento dramatically decreased its arrest rates for individuals charged with citable infractions between 2008-2010 (Delgado & Mass, 2011). These factors could potentially affect the racial disparity in drug crimes.

This analysis of Sacramento's drug law enforcement builds on Barnes and Kingsworth's (1996) findings by focusing on the geographic patterns of arrests and prosecution to consider how these practices enforce uneven criminal justice system control. Additionally, I focus on sentencing practices, and in particular, non-carceral sentences. Sacramento County sends far fewer of its defendants to prison compared to the rest of the SCPS counties as a whole (about 18% compared to 32% in the overall data). It also has a large network of diversionary, alternatives to incarceration, and jail-based programs. I thus expand the focus from just court processing to include both arrest practices (on the front end), and diversionary programs and alternatives to incarceration (on the back end) to consider how many of these practices enable defendants to be cycled back into the criminal justice system as another method of cumulative racial inequality.

Methods

Because this chapter focuses on an in-depth analysis of one city's case processing, I use several complementary data sources. I obtained citywide arrest data for the years 2005-2010

from Sacramento's Sheriff Department and Sacramento Police Department.[36] These data include the date and address location of the arrest, as well as the criminal code for the arrest. The sheriff's data includes up to ten charges, which I recoded to include whether the most severe charge was a drug arrest, as well as whether the arrest occurred at an address location, or was an arrest of a defendant in court, in jail, or on an alternative to incarceration program. This yielded a total number of 36,273 arrests for the time period with complete address information, with 23,919 from the police department, and 12,354 from the sheriff's department. There were an additional 7,311 arrests made by the sheriff's department that occurred in court, jail, or an alternative to incarceration program and therefore had no address information.[37]

I also obtained prosecution data on felony drug prosecutions[38] for the years 2005-2010 from the Sacramento district attorney's office, including arrest location, and charging, adjudication and sentencing information. Although the district attorney's office processes cases for the entire county, I limit my analysis to cases that occurred within Sacramento city limits. This included 17,298 defendants with complete address information who had their charges filed by the district attorney's office.[39] The statistical data were geocoded to the tract level[40] for the city, and I obtained demographic characteristics for the tracts from the 2010 American Community Survey from the U.S. Census, which covered 5-year estimates (from 2007-2011).

[36] Originally, I had planned on focusing the analysis at the county level, but was unable to obtain data from the other city police departments in the county. Thus, I restrict my analysis here to Sacramento city.
[37] The police data came with coordinates of the arrest, but the sheriff data provided address information only. 68% of the arrests were able to be geocoded, with the rest having either missing or incomplete address information.
[38] One weakness in comparing the arrest to prosecution data is that the prosecution data covers drug crimes that were filed as felonies only, whereas the arrest data does not differentiate between misdemeanors and felonies. Thus, this analysis seriously underestimates the number of filings made by the District Attorney's office. This is primarily a problem to the degree that misdemeanors (and felonies) are geographically concentrated in certain areas.
[39] The district attorney data provided address information only, and 69% of the addresses were able to be geocoded.
[40] This chapter serves more as an exploratory analysis for future work, and future analyses will likely include smaller geographic units.

While I was not able to link the prosecution data directly to the arrest data, by geocoding them, I analyze how drug arrests and prosecution occurs by area within the city.

To better understand drug crime and law enforcement practices in the city, I also conducted several interviews with attorneys currently or formerly employed in the district attorney's office, examined district attorney, court, probation, law enforcement, treatment program, and community-oriented websites, and conducted a search about crime stories in the *Sacramento Bee* and other local newspapers. I focused the website and newspaper searches on the communities that received the highest drug enforcement. I also concentrated substantively on arrest practices, prosecution of defendants, and alternatives to incarceration. Because my statistical data cover the 2005-2010 time period, I attempted to restrict news stories to events happening during the time period. The interviews primarily provided me with a better understanding of case processing practices. I also researched these practices to the degree that it was possible through the criminal justice, newspaper, and community-related websites to triangulate the findings.

This chapter reports on a descriptive analysis of the drug enforcement practices in the city of Sacramento, California. In particular, I identify specific mechanisms of racial inequality by examining how drug crime is enforced and prosecuted across place, as well as by focusing on general prosecution and correctional practices that help maintain racial inequality.

Results

Sacramento's police department and District Attorney's office portrays itself as being community-oriented and diversity-friendly. In 2008, then-Sacramento Police Chief Rick Braziel was a vocal advocate for community policing, indicating he was "firm believer that we need to

get out of our [police] cars and talk to folks [and] focus on the unique problems in each of the neighborhoods" (Justice Reform Coalition Interview, 2008). In 2009, he publicly supported legalizing "law-abiding" undocumented immigrants (Magaganini & Ferris, 2009). District Attorney Jan Scully, who has been in office since the mid-1990s (Sacramento County District Attorney, 2010), has shown her support for both victims and community engagement by establishing a multicultural community council and a community prosecution program for "quality-of-life" issues (Center for Court Innovation, 2006). She notes that this is a departure from the "traditional culture of a prosecutor's office, where you're…as good as your last trial" (Center for Court Innovation, 2006).

Sacramento has had a middle ground approach to drug policy, neither striving for lengthy incarceration terms, nor endorsing harm reduction initiatives. While local needle exchange programs operate illegally, they are largely left alone by law enforcement (Anderson et al., 2003). The District Attorney's office has a practice of diverting or providing alternatives to incarceration for low-level drug defendants. There are a host of diversionary programs, including drug court (started in 1995) and Proposition 36 (passed in 2000), which is a statewide initiative mandating treatment options instead of incarceration for low-level drug defendants (Boles, Young, Moore, & DiPirro-Beard, 2007). There are also a significant number of alternatives to incarceration run through the Sacramento County Sheriff's Department and other local initiatives. These include the Alternative Sentence Project and the Sheriff's Work Project, which are supervised community work programs to gain sentencing credit, as well as electronic monitoring, work furlough, and probation.

While these practices have garnered some local media and political attention for being relatively progressive alternatives to incarceration, they are also a less visible manner in which

criminal justice control is concentrated in poor Black and Latino communities. The geographic concentration of arrest and prosecution is one of the ways that racial inequality is perpetuated by the criminal justice system. In particular, drug defendants are funneled into many of these alternatives to incarceration, and their punitive requirements often serve as reroutes back into the criminal justice system. In the following sections, I discuss the descriptive results of my analysis of drug crime policing and prosecution in Sacramento, and then identify three practices that serve as mechanisms of cumulative racial inequality.

Policing and prosecuting race through place

There are three main areas in Sacramento that have a high concentration of drug arrest rates: downtown, Oak Park in the southeastern side of the city, and sections of North Sacramento. Downtown represents the prototypical "skid row" with a concentration of homeless and transient occupants coupled with social and intervention services (Huey & Kemple, 2007). It is geographically bounded by a tourist district (and the Sacramento River) to the west, gentrification to the east in Midtown, and the American River to the north. While the downtown lagged behind Midtown in development, there continue to be significant pressures to "revitalize" the area, including turning an old railyard area to a new arena for the Sacramento Kings (which has been rejected since) and developing a promenade along the riverfront (Breton, 2012). While historically downtown held up to 70% of the city's nonwhite population, since the 1950s federal funding for "urban renewal" incentivized developers to develop commercial real estate. This resulted in the displacement of many nonwhite residents out of downtown to areas such as Oak Park. While many residents left, downtown still retained some low-income housing, and it still has a significant population of nonwhite residents.

Like many other downtown areas, Sacramento's downtown has had a "persistent homeless problem," including a tent city encampment along the American River (Safe Ground Sacramento, n.d.). Facing economic pressure of downtown development, in 2006 the city and county started a ten year plan to end chronic homelessness (Sacramento Housing Alliance, n.d.). The geographically-targeted policy built on past efforts to move the homeless out of Sacramento, including offering one-way bus tickets out of town, and passing ordinances that make it illegal to sit in public places with belongings more than three cubic feet (Kelly, 2001). Police allegedly started regularly sweeping homeless encampments and tossing their belongings in efforts to harass them to move, resulting in a class-action lawsuit that was later settled with the county (Hubert, 2011). This effort has also included a significant concentration of drug arrests. Downtown includes the highest rates of drug arrests in the city, with over 100 arrests per 1000 people occurring in some tracts. The map below illustrates drug arrests made during 2005-2010 and percent in poverty.

<insert figure 4.1 about here>

Both Oak Park and North Sacramento are primarily poorer Latino and Black neighborhoods. Oak Park is just south of downtown, and as a result of "racial steering" practices by the real estate industry between the 1950s and 1980s, is a traditionally working-class Black and Latino neighborhood with 30-40% poverty (Hernandez, 2009). For the time period studied, drug arrests averaged over 20 arrests per 1000 people, well over the city mean of 11.2. Oak Park is portrayed as a space that is "crime plagued" and "gritty" (Lillis, 2013) with occasional violent gang activity (Minugh, 2014). More recently, however, it has been gaining attraction as an affordable place to live for White, upper-middle class students and young families who are interested in accessing Midtown entertainment, and who are associated with the nearby

University of Davis Medical center (Van der Meer, 2013). In the wake of many foreclosures in the area in the early 2000s, real estate developers purchased low-priced homes in auction and resold them, and even more recently, new townhome and shopping construction have been developed in the area (Lillis, 2014).

North Sacramento was incorporated into the city in the 1960s, and is geographically divided from the rest of the city by the American River. Because of its late annexation, much of the city's funding was directed towards downtown and midtown development, with little investment in North Sacramento. Its population is largely Black and Latino, with some more recent Southeast Asian immigration, and it has some of the highest rates of poverty in the city. While it has not gentrified as much as downtown or Oak Park, it is undergoing the beginnings of an economic "revival" due to a growing arts community and its proximity to downtown (Sacramento Bee, 2007). Along with downtown and Oak Park, sections of North Sacramento also represent some of the highest concentrations of drug arrests in the city, with rates ranging from 17 to 62 arrests per 1000 residents among its tracts. The maps below illustrate drug arrests and percent Latino and percent Black by tract.

<insert figure 4.2 and 4.3 about here>

These initial drug arrests largely serve as a geographic funnel for later prosecution and sentencing decisions. The maps below illustrate the number of arrests and number of filings per population in thousands. Filings reflect similar patterns as the arrests, where the same three areas have high rates of arrests, filings, and convictions per population. Figures 4 and 5 illustrate arrest rates and filing rates per population in thousands, respectively.

<insert figures 4.4 and 4.5 about here>

Areas with high concentration of drug arrests could be more likely to have weaker evidence when filed, particularly in the downtown area. Out of drug cases filed, the percent of cases dismissed in the downtown, Oak Park, and North Sacramento tend to be higher compared to the rest of the city. Moreover, drug arrests in the downtown area may serve more as a relocation or harassment function if prosecutors are less likely to file charges due to lack of evidence. Although downtown also has some of the highest filing rates per population, filings are only about 20-30% as a percentage of arrests, significantly lower than the rest of the city. Thus, either filings are proportionately lower, or cases filed downtown are more often filed as misdemeanors relative to the rest of the city. In either case, the relatively high rates of arrest compared to felony filing suggest that law enforcement is policing more minor drug crimes downtown. Unlike downtown, however, prosecution rates in Oak Park and North Sacramento relative to arrest rates are mostly higher than the median. This suggests that these two areas are either much more likely to have arrest charges filed as felonies, or prosecutors are filing misdemeanor charges at proportionally lower rates compared to the rest of the city. The table below reflects the mean and median percentage of filings and types of adjudication and sentencing outcomes.

<insert table 4.1 about here>

Based on charging practices, it appears that cases filed in high drug enforcement areas are also generally less serious compared to the rest of the city. Sentencing enhancements are additional charges to the initial drug crime that allow for increased penalties based on certain conditions of the offense or defendant. In drug cases, they are generally used in cases where there are large quantities of drugs, although they can also result from having multiple prior offenses, or other conditions. Nearly all tracts in downtown, Oak Park, and North Sacramento

indicate a lower proportion of cases that are filed with drug enhancements compared to the city as a whole. For example, most tracts in downtown and in North Sacramento tended to have 20-23% of filings with enhancements, compared to the median of 30.4%. Considering that those arrested in high enforcement areas would be more likely to already have a prior offense and would therefore be expected to have an enhancement, the fact that filings downtown have fewer enhancements suggest that low-level drug crimes are overpoliced in these areas.

<insert table 4.2 about here>

Relative to more serious drug crimes, drug possession is also policed at relatively higher rates in high drug enforcement areas. Like enhancements, the difference between possession and possession with the intent to sell is generally a function of drug amount, as well as the possession of large sums of money, electronic devices, or other indicators of drug sales (Barnes & Kingsworth, 1996). As reflected in table 2 above, on average 70% of arrests in tracts, and 68% of filings in tracts are for possession. Most tracts in the high drug enforcement areas have higher proportions of arrests and filings for possession (as opposed to possession with intent to sell/sales or trafficking), compared to the rest of the city. This suggests that the police are likely more often arresting low-level drug defendants in high enforcement areas.

After filing, however, adjudication and sentencing decisions reflect proportionate outcomes across tracts for drug defendants. For example, the percent of cases that are diverted tend to be similar to rates across the rest of the city, and of those convicted, those sent to probation are relatively close to the median. Oak Park has slightly lower diversion and probation rates compared to the median, but the difference is fairly small, particularly when considering the number of initial arrests and prosecutions per population. Ultimately, as a function of arrests and filings, downtown, Oak Park, and North Sacramento also have the highest rates of carceral

sentences and probation per population. While a median of 0.22 per 1000 people in a tract receive a prison sentence for a felony drug crime, and 0.59 receive a probation or alternative to incarceration, rates of imprisonment and probation are up to ten times greater in these high drug enforcement tracts compared to the rest of the city.

Ultimately, drug arrest and enforcement practices are geographically concentrated, but racial inequality is also maintained in the system through specific prosecution and correctional practices. This includes diversionary and alternatives to incarceration programs, which represents the most common sentence for all drug defendants. Approximately half of all filed cases, or two-thirds of cases that are convicted, receive a diversionary program or alternative to incarceration.

Discretion and (un)structured decision-making

Under California's determinate sentencing scheme, drug offenses are subject to three basic terms, plus enhancements. While it appears to be a structured sentencing system, the use of enhancements allow for considerable discretion by prosecutors. In practice, enhancements are used liberally in Sacramento; 44% of defendants with charges filed had at least 1 drug-related enhancement, and 88% had at least 1 enhancement of some type. Despite this flexibility in charging, the District Attorney's office has relatively strong local legal norms in terms of sentencing drug crimes. For example, probation violations were hardly ever sent back to prison, and instead probation would be reinstated with new terms. Although prison sentences for drug defendants are relatively rare compared to the SCPS sample, 10% of defendants who were sentenced received a prison term, mostly due to enhancements.

Because the District Attorney's office has discretion over filing a case and determining initial charges, they drive much of the sentencing via plea bargaining. For the time period

studied, over 75% of cases are settled through plea bargain; this includes defendants who are sent to diversionary programs for which they must initially plead guilty. Even though there are relatively fixed requirements for drug court and Proposition 36 treatment, eligibility is generally determined by the District Attorney's office and the Probation Department (Superior Court of California, 2014).

The geographic inequality of case processing appears to be in areas of greater discretion—in arrest and filing—whereas sentencing in practice tends to be more uniform after initial arrest and charging. In other words, since arrest and filing behaviors are driven largely by proactive policing of specific geographic areas, the discretion in these areas can compound later in sentencing. This occurs through the use of sentencing enhancements and prior criminal records in particular; if defendants in certain geographic areas are more likely to be arrested and convicted in the first place, then they are more likely to have a record, which is used as a legally-relevant (and racially-neutral) factor in later prosecutions. Thus, observed disparities in sentencing are largely a reflection of earlier decisions.

"No contest" convictions

Plea bargains and "no contest" pleas[41] are the modal method of adjudicating cases, and because Sacramento has a relatively well-developed diversionary programs and alternatives to incarceration, drug defendants are most often sentenced to probation or one of these programs. Figure 6 below illustrates how drug cases filed by the Sacramento District Attorney's office between 2005-2010 were adjudicated and sentenced. Defendants essentially either have their

[41] I use pleading guilty and pleading no contest here interchangeably. While they do differ legally (defendants that plead guilty admit to both the facts of a case and the legal consequences, and defendants that plead no contest just admit to the facts, but not the guilt), in practice they are treated similarly by the District Attorney's office in terms of sentencing.

charges dismissed (about 25% of filed cases), or they plead guilty (nearly 75% of cases). For the time period, less than 1% of felony drug cases that were filed ended up going to trial.

<insert figure 4.6 about here>

About 25% of defendants are given a prison or jail sentence, and 50% are given diversion, probation or an alternative to incarceration. Defendants who are given diversionary options are given a deferred entry of judgment, so that they must plead guilty before the diversionary program, and if they fail, then the conviction on their record stands. In other words, unless the charges are dismissed, diverted defendants are adjudicated as guilty, and the burden falls on the defendant to remove the conviction. Charges in diversionary programs are only dismissed if the defendant successfully completes the substantial treatment requirements. Drug court success includes a "consistent pattern of clean tests, employment or enrollment in vocational or educational programs, and other proof of a stabilized lifestyle" (Superior Court of California, 2014). Conviction is nearly guaranteed unless he or she is able to both qualify for and comply with the restrictive treatment requirements.

The District Attorney's office can also dismiss a defendant's charges through deferred entry of judgment for those sentenced to probation, which they colloquially call a "Thanksgiving dismissal." In practice, defendants that successfully complete probation have their charges dismissed by the District Attorney's office. This does not mean that the offense is removed from the defendant's record, however. A defendant must petition the court for an order of non-disclosure so that potential employers cannot learn about the case, which occurs rarely in practice. According to the District Attorney's office, it can be a "grey area" for employment boxes, where a defendant may not have to check the box if an employer asks them about prior convictions. Because the records are still public knowledge, however, employers could still find

out about the past conviction. Thus, the practice of Thanksgiving dismissals serves largely a symbolic role for defendants than a real avenue for removing a conviction.

Thus, not only are defendants highly likely to receive a sentence that places them under criminal justice control through the plea bargaining process, but in practice, defendants are waiving their rights and pleading to a conviction (unless their charges are dismissed) because there are strong incentives to do so. While they might receive a lighter sentence than they would otherwise get, they are largely left with a conviction on their record with little avenue to contest guilt. In other words, there literally is very little avenue for defendants to contest guilt in practice once they are arrested. As many others have demonstrated (for examples, see Pager, 2007; Uggen & Manza, 2006; Western, 2006), there are significant consequences of having a conviction as a barrier to obtaining housing, employment, public assistance, and other rights. Given the spatial concentration of arrests, these consequences are also racially and geographically stratified, particularly in the case of drug crimes (Massey, 2007). For Sacramento and other places, it serves to keep poor, largely Black and Latino men in a permanent underclass and under criminal justice system control.

Punitive and surveilling sanctions

While the county has many diversionary and alternatives to incarceration programs, including drug court, Proposition 36 treatment programs, Alternative Sentence Project, and the Sheriff's Work Project, many of them have significant surveillance components and requirements. The Sheriff's Work Project, for example, is one of the major alternatives to incarceration in Sacramento, where convicted defendants work under close supervision on community service and public maintenance projects in exchange for a jail sentence reduction

(Sacramento County Grand Jury, 1999; Sacramento County Sheriff, n.d). The drug court involves regular status hearings with scheduled court appearances on the defendant's progress (Boles, Young, Moore & DiPirro-Breard, 2007).

Not only do the requirements serve as surveillance opportunities through their strict monitoring, but many of the programs' requirements are punitive rather than treatment-oriented, and present significant barriers to successfully completing the programs. For example, "treatment" compliance and success in drug court has numerous requirements, including enrolling in treatment on time, submitting to frequent drug tests, and appearing at compliance hearings (Boles, Young, Moore & DiPirro-Breard, 2007). Defendants can fail to meet requirements by having a positive drug test, admitting use, missing a drug test or refusing to test, or failing to appear at a compliance hearing. The Sheriff's Work Project has even more vague regulations, where participants can be terminated and sent back to jail if they engage in "fighting, disruptive behavior, insubordination, or drug or alcohol use" (Sacramento County Grand Jury, 2013). If participants stop reporting or attending the project, they receive a warrant for their arrest (Sacramento Bee, 2012).

All of these alternatives to incarceration operate under the threat of carceral sentences and in the case of diversionary programs, retaining a conviction. Given the strict requirements and high surveillance, it is unsurprising that these programs result in many re-arrests, and thus serve as a method of prolonged and intensified control by the criminal justice system. For example, of those enrolled in the Work Project, about half of the participants do not successfully complete the program (Sacramento County Grand Jury, 2013), and over 15% of drug arrests made by the Sheriff's department were of those on the Sheriff's Work Project. Completion rates for the drug courts (and their treatment comparison group) were both around 64%.

Not only do many of these programs have strict rules and high surveillance components, but they have a significant financial benefit to the local economy through the defendants' free labor. The Alternative Sentence Project and the Sheriff's Work Project both operate around community service for sentencing credits without compensation. The Sheriff's Department recently estimated that labor provided is valued at over 5 million dollars annually, making the program financially self-sufficient (Sacramento County Grand Jury, 2013). Moreover, defendants in the Sheriff's Work Project must pay to get into the program and are charged a daily fee for "the privilege of working off their sentences outside a jail environment" (Sacramento County Grand Jury, 1999).

Discussion and Conclusion

As Barnes and Kingsworth (1996) found when they studied Sacramento drug enforcement twenty years ago, my analysis suggests that initial arrests drive racial disparities in prosecution and sentencing. Specifically, I find that this occurs through the geographically concentrated policing of drug crimes in three largely Black and Latino neighborhoods. My analysis also suggests that the larger geographic and racial disparities occur more in criminal justice stages with greater discretion, namely in arrests and filings. While defendants in high enforcement areas are more likely to have their charges dropped (likely due to lack of evidence), sentences are otherwise relatively uniform by area. In this way, the geographic concentration of arrests serves as a biased funnel for later stages in the justice system.

These geographically concentrated arrest patterns in poor Black and Latino communities feed into a system of default convictions and "treatment" by punitive criminal justice programs under threat of a carceral sentence. These diversionary programs and alternatives to incarceration

is a significant way that the system cycles people back when they fail to meet program requirements. In this way, program requirements have the potential to be more nefarious; compared to the punitive conditions of incarceration, relatively little attention is paid to the punitive conditions and practices of non-carceral programs.

I find that there are three related mechanisms of inequality in the justice system maintained through the geographic concentration of policing and prosecutions. First, even though California has a determinate sentencing system, there is considerable discretion in charging, adjudication, and sentencing decisions through the use of enhancements. Because the District Attorney's office controls much of the power over initial charging decisions and program eligibility, it also has significant power in sentencing. While the majority of defendants received a non-prison sentence, they still carry the burden of a conviction record in most cases. The District Attorney's office practice of ensuring convictions through offering diversionary programs such as drug court as a post-plea remedy places the burden on the defendant to remove the conviction. Similarly, the practice of "Thanksgiving dismissals" is an even bigger misnomer, where a defendant who successfully completes probation retains his or her conviction. Finally, many of the "alternatives" to incarceration and diversionary programs have stringent requirements and significant surveillance components that function as reroutes back into the criminal justice system.

Future work should also address the narratives surrounding drug use and drug enforcement in these areas; other work (e.g. Lynch et al., 2013) has found different styles of policing and racialized narratives of drugs and crime in two neighborhoods connected to larger economic interests. Drawing from that paper, I would expect different narratives about styles of policing and prosecution between these three areas. Initial research suggests that at least in the

case of downtown and in Oak Park, some "revitalization" efforts have been coupled with high arrest rates in the area, serving as a system of control for the poor. Beckett and Herbert (2009) similarly find that criminal trespassing is heavily used in areas that have recently experienced gentrification in Seattle as one method of keeping "disordered" people out of these newly-gentrified spaces. Efforts to "revitalize" areas, particularly from San Francisco Bay Area residents looking for affordable housing and other out-of-towners simply represent the newest form of "transforming historically undercapitalized sites of racial segregation to new sites of capital accumulation" (Hernandez, 2009; p. 292).

Criminal justice practices are often presented through race-neutral narratives by popular media and criminal justice practitioners, and these narratives should be investigated in future research. For example, specific narratives may include policing "high crime" and "disordered" places, or using (pseudo-) "scientific" methods for decision-making. For example, communities like Oak Park's local park is described by a newspaper as "overrun with undesirables and is a more likely spot for drug deals than play dates" (Rubenstein, 2012). Thus, enforcement of minor crimes may be justified through its efforts to clean up the area. This framing plays a significant role in the ability to reproduce racial inequalities while maintaining the "racial innocence" of the criminal justice system.

Tables

Table 4.1: Percent of drug arrest and prosecution in tracts (N=123)

	Mean	SD	Median
Of arrests			
% filings	42.91	29.41	38.93
Of cases filed			
% with drug enhancement	33.38	13.16	30.39
% dismissals	25.38	9.78	24.64
% acquittals	0.12	0.51	0.00
% diverted	24.86	9.59	25.00
% guilty pleas	49.08	11.40	50.00
% guilty trials	0.56	1.12	0.00
Of cases sentenced			
% prison	18.89	10.94	18.00
% jail	34.94	14.54	34.43
% probation or alternative	46.17	15.60	46.15

Table 4.2: Percent of charge for drug arrest and prosecution in tracts (N=123)

	Mean	SD	Median
Arrests			
% Possession	69.81	8.17	71.67
% Possession with intent to sell/sales	13.79	6.27	12.66
% Manufacturing/trafficking	1.44	1.86	0.81
% Other	14.97	7.33	13.33
Filings			
% Possession	67.90	14.86	70.79
% Possession with intent to sell/sales	29.70	15.11	26.67
% Manufacturing/trafficking	2.32	3.56	0.97
% Other	0.07	0.54	0.00

Figures

Figure 4.1: Drug arrests and percent in poverty

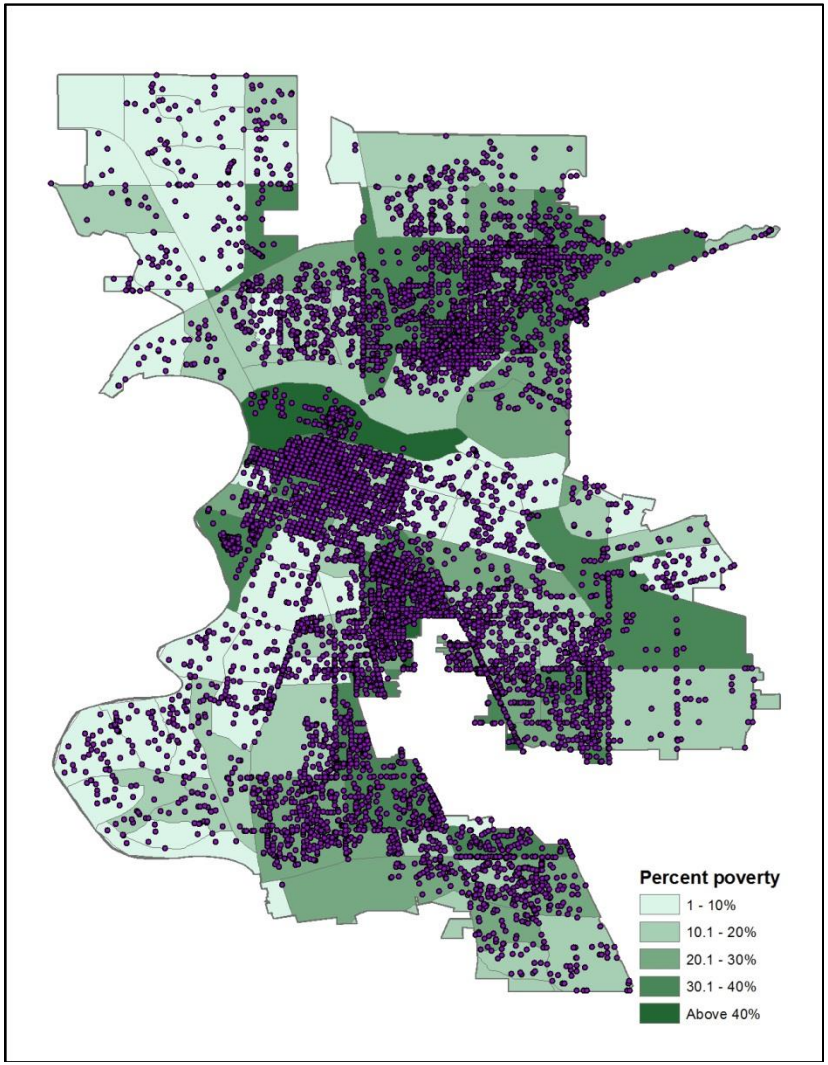


Figure 4.2: Drug arrests and percent Latino population

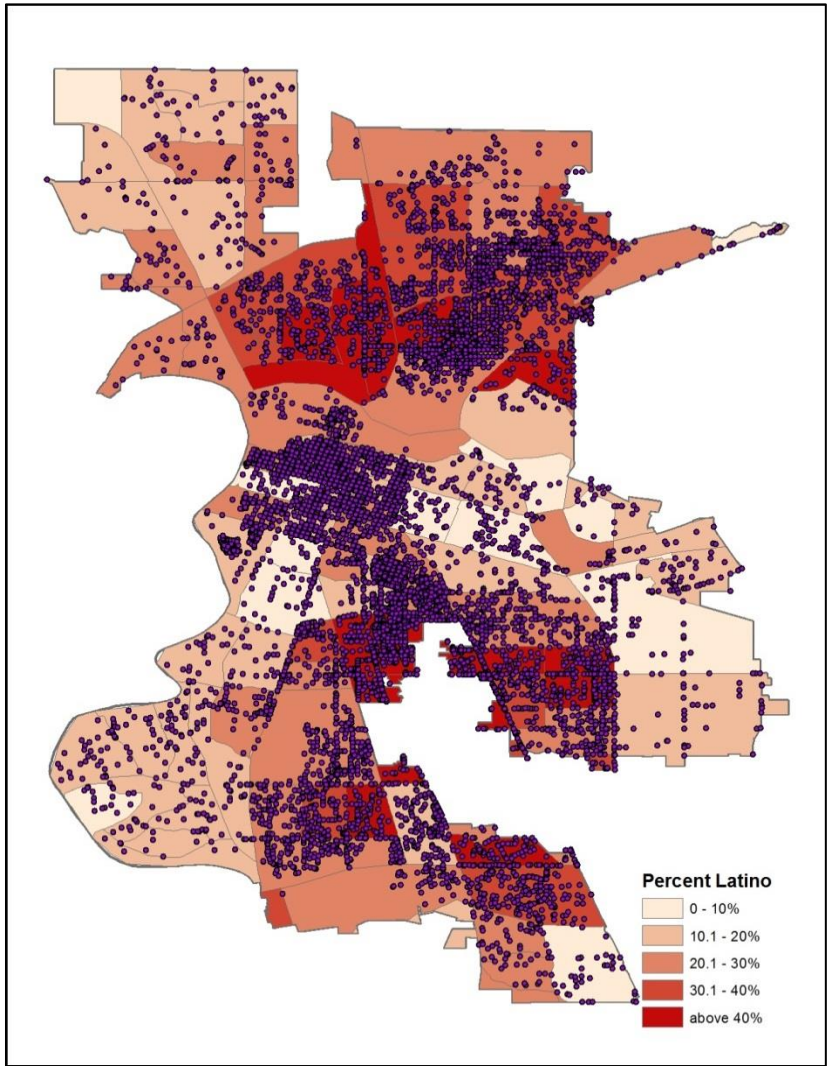


Figure 4.3: Drug arrests and percent Black population

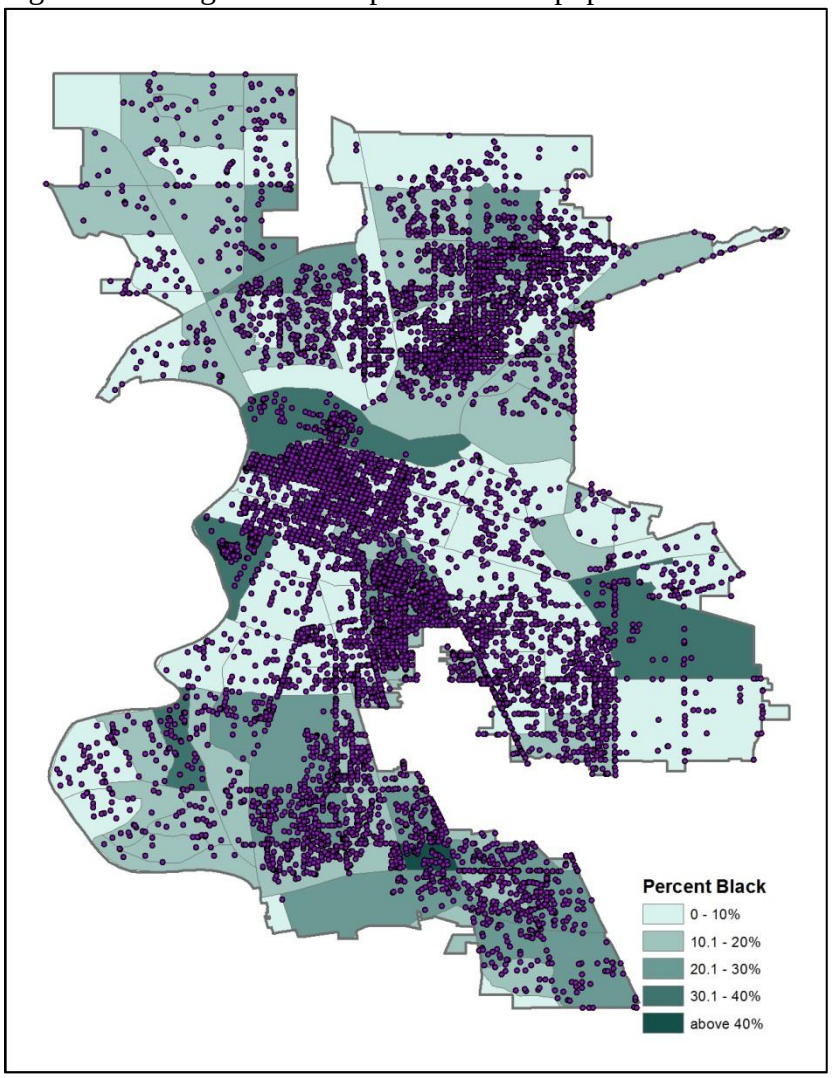


Figure 4.4: Arrests per population in thousands

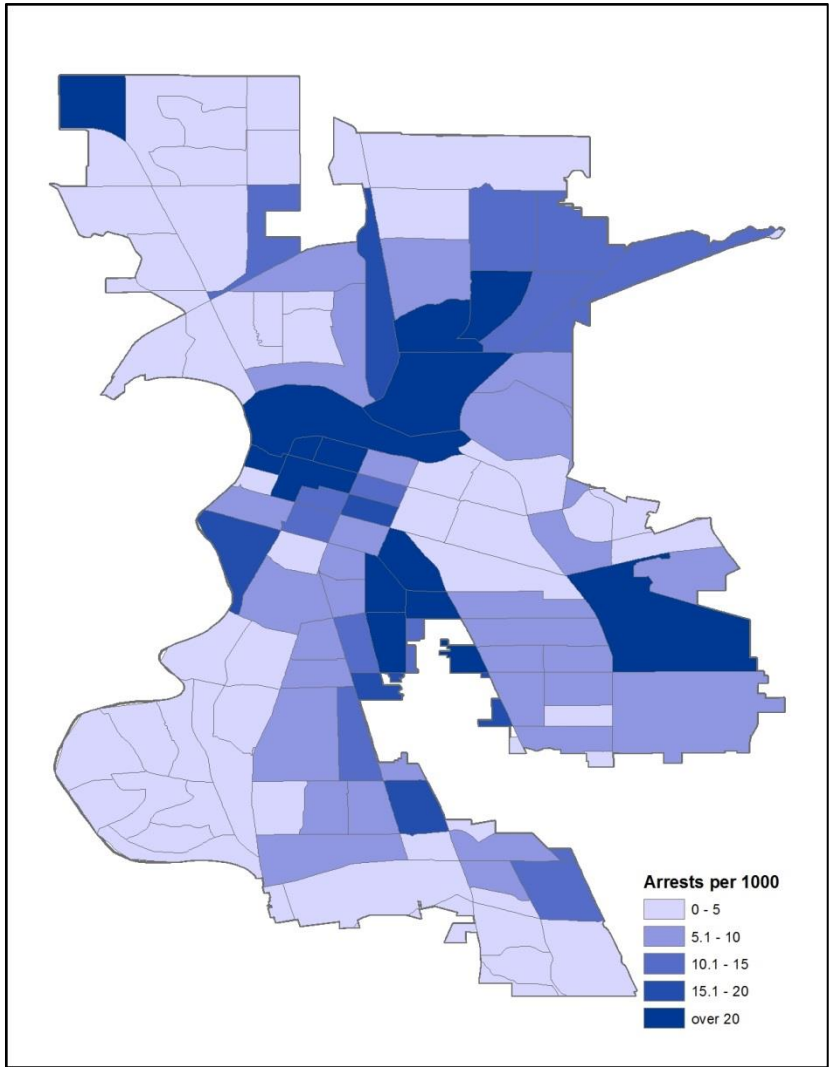


Figure 4.5: Filings per population in thousands

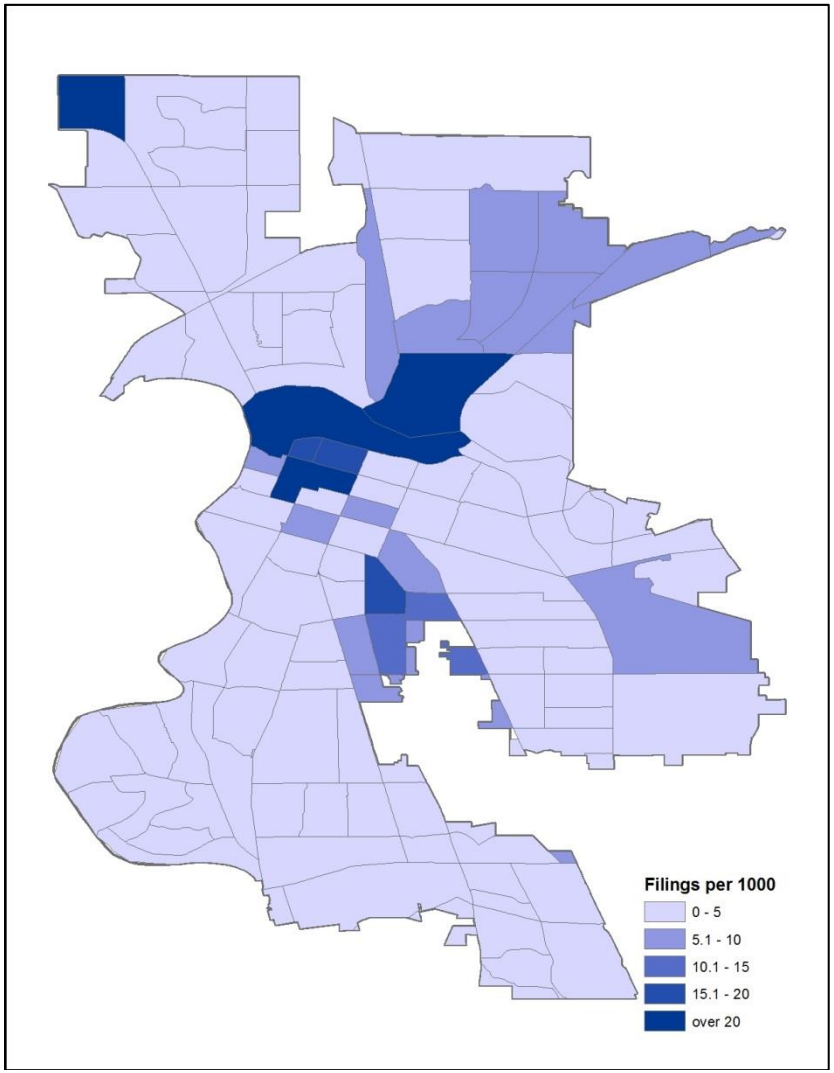
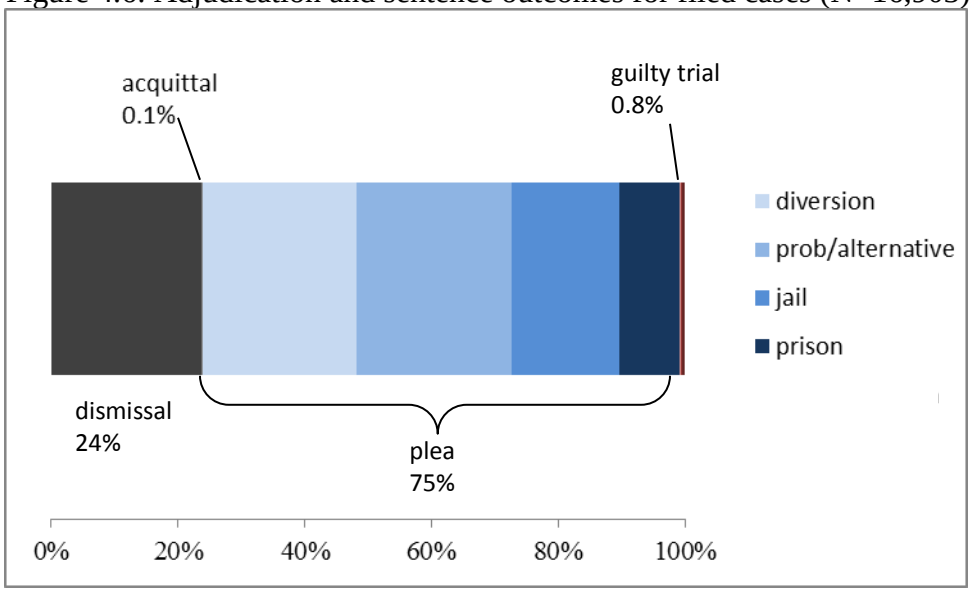


Figure 4.6: Adjudication and sentence outcomes for filed cases (N=16,903)



Chapter 5: Conclusion

Although there has been significant research on drug crime and racial inequality in the wake of the war on drugs, most research focuses only on one specific criminal justice institution, such as policing, sentencing, or incarceration. Racial inequality may be difficult to detect in a single institutional outcome because disparities are often small or indirect at any individual stage. In my dissertation I bridge scholarship on organizations and racial inequality in sentencing to argue that racial inequality should be studied as a process of accumulation, rather than as a singular point in the criminal justice process or even a collection of singular points. This dissertation, along with some previous work on cumulative racial inequality in the court system (Schlesinger, 2007; Sutton, 2013), offers a starting place for thinking through different dimensions of racial inequality in state and federal courts, and suggests new approaches to investigate it.

I take a broader approach than the traditional cumulative disadvantage/cumulative inequality literature. When researchers have examined the cumulative impact of racial disparity, their approach has traditionally suggested a strict form of accumulation where future accumulation depends only on previous steps (DiPrete & Eirich, 2006; Merton, 1968). Another approach emphasizes group differences, and considers how race (or other factors) has both direct and indirect effects on outcomes such as criminal justice involvement. In both cases, the main focus of research is to estimate how much disadvantage accumulates over a system. My approach moves beyond this question to focus on the process of inequality by identifying several mechanisms of cumulative racial inequality, such as the geographic concentration of drug arrests by law enforcement in Black and Latino areas, the stratifying effects of pretrial detention, and

the use of mandatory minimums on one end of the spectrum, and more insidiously punitive diversionary programs and other alternatives to incarceration on the other.

In chapter 2, I conceptualize the expansive nature of punishment as Feeley (1979) suggests to include the court process as well as sentencing outcomes. I use a sample of state court cases to suggest that court processes are punitive in themselves. Combining measures of court process, including bail amount, pretrial detention, pleading guilty, and having a public defender or court-appointed attorney, I find that court processes are best conceptualized as a separate construct from sentence outcomes, and serve as a catalyst for inequality in the criminal justice system. While Latino defendants receive the most severe court punishment, Black defendants are particularly impacted by a punitive court process, and receive the most severe sentence outcomes as a result. Prior criminal history in early charging stages has a strong effect on court processing, but only an indirect effect on sentence outcomes for Black defendants especially. Thus, racial stratification in some cases occurs through court processing and is reflected in sentencing outcomes, rather than just appearing in sentencing directly.

Building on these findings, chapter 3 contrasts federal and state systems' processing of drug defendants, which has implications for how cumulative racial inequality should be studied as a function of different systems. Cumulative inequality is a useful conceptual model to view how inequality compounds over several stages, and how small racial differences at multiple stages of the court process disadvantage Black and Latino defendants. In the state systems, the greatest racial disparities occur earlier in the court process, and disparities in sentencing are more of the reflection of previous stages of pretrial detention and adjudication. The federal system has fewer racial disparities in these pre-sentencing stages, but more direct racial disparities in sentencing. This is because cumulative racial inequality in the federal system likely occurs

through prosecutorial tools, such as charge bargaining, substantial assistance, and mandatory minimums, which are then reflected in sentencing. Federal mechanisms are not reflected in adjudication and sentencing type outcomes because federal drug defendants most often plead guilty and receive a prison sentence, and so racial disparities are reflected in sentencing. In contrast, the state courts most often sentence drug defendants to non-carceral outcomes, including diversion, probation, or jail, and so examining variation in how defendants are adjudicated and sentenced show greater racial stratification. Future research will explicitly examine the cumulative role of federal prosecutorial tools such as mandatory minimums charge bargaining, and substantial assistance on sentence outcomes.

Finally, chapter 4 focuses on the single city of Sacramento, California to examine how cumulative racial inequality operates not only in court and sentencing stages, but also in drug arrest patterns and alternative to incarceration programs. Unlike large datasets, a single city case study can identify and contextualize local mechanisms of racial inequality, which are often embedded in formal local policies and informal practices. This chapter includes an examination of how cases enter into the criminal justice system through arrest patterns and prosecution within the city, and how other criminal justice agencies work alongside the court system to maintain inequality through punitive diversionary programs and alternatives to incarceration.

Similar to the broader state findings in the previous chapter, racial inequality appears to be greatest in early stages, such as in arrest and initial charging decisions, where there is significant discretion on the part of criminal justice actors. The geographic targeting of arrests particularly drives racial inequality in later stages of filing, adjudication, and sentencing. The high concentration of arrests in Latino and Black areas provide a racially stratified pool of defendants to be prosecuted. As reflected in both the interviews and statistical data, the district

attorney's office decisions are fairly structured in terms of pleading and sentencing for drug defendants, so that the same areas with high levels of policing also have the highest rates of sentencing. This analysis also illustrates how criminal justice organizations, including the police, district attorney, sheriff's departments, and some treatment providers, jointly create cumulative racial inequality in the system. This occurs through a series of overlapping decision points across the system, including the geographic targeting of police resources influencing the caseload for prosecutors, or how the sentencing of low-level defendants to alternatives to incarceration places them under control by the sheriff's department or treatment providers that have significant surveillance (and in the sheriff's case, arrest powers) over them. By considering how case processing functions through multiple criminal justice institutions, cumulative racial inequality also expands beyond the court system as in the previous chapters.

I also found that many of the diversionary programs, work programs, and other alternatives to incarceration are punitive in and of themselves, and serve as mechanisms to deepen low-level drug offenders' entrenchment in the criminal justice system. While other studies have revealed punitive conditions inside prisons and jails, these preliminary findings suggest that more attention should be paid to the punitive and surveillance-heavy aspects of non-carceral punishments, including diversionary programs (and drug courts), drug treatment, and work programs. These are common outcomes for drug defendants in Sacramento (as well as in other jurisdictions), and not only have burdensome requirements, but also are a significant mechanism for keeping defendants under criminal justice system control due to heavy surveillance.

Overall, my dissertation suggests that racial inequality is indirect and incremental at some stages, and that the stages vary as a function of jurisdiction. Proactive policing drives much of

the initial racial inequality through the use of geographically targeted policing that focuses on nonwhite neighborhoods. Even before sentencing outcomes, the court process acts as a stratification mechanism in itself, where many mechanisms of inequality, including bail and pretrial detention decisions, and diversionary programs, occur in pre-sentencing stages. Racial inequality may be difficult to detect by only examining outcomes at single stages of the process because disparities are often small at any individual stage, and because they occur mostly at early, less visible stages of the criminal justice process. They also occur indirectly through factors such as criminal history which in itself is partially a function of previous criminal justice system contact.

Racial inequality in the criminal justice system often operates under the guise of race-neutral policies and practices. The racial disparities in arrest statistics are a reflection of the geographic concentration of policing in "high crime" or "disordered" communities. Racial disparities also occur through bail amounts that are often set as a function of "risk factors" such as employment and ties to the community. As illustrated famously in the 100-to-1 federal crack mandatory minimums, policies surrounding certain types of drugs (or drug weight) can allow for significant racial stratification without being racially explicit. Even criminal history is seen as an objective factor to use in prosecution and sentencing without much acknowledgement of its role in racial stratification.

Study limitations and directions for future research

Like other studies using the SCPS and FJSP data, these datasets represent multiple jurisdictions with diverse informal practices and, in the case of SCPS, formal legal systems. While I considered some legal and caseload variation at the county (for SCPS) and district (for

FJSP) level, a next step in this research is to better understand sentencing structures and the penalties for different types of drugs between jurisdictions. Investigating drug type and weight would be particularly useful for future analyses. While federal models accounted for drug type, examining sentencing disparities by drug at the state level may be key to better understanding racial inequality locally. Future analyses might use prosecutorial jurisdiction of counties and federal districts (and racial inequality within each jurisdiction) as the primary unit of analysis. This analysis would focus more on the structural nature of cumulative racial inequality rather than individual-defendant differences, and could better highlight differences between jurisdictions. It would also necessarily require more theorizing about different jurisdictions organizationally, as well as allow a more explicit examination of the variability in racial groups between jurisdictions.[42]

While an ideal model of cumulative inequality would incorporate the justice system broadly, including anything from police stops to community correctional supervision, most of these data and analyses focus on court outcomes. While intermediate steps in the court process have been understudied, ideally linking data from other criminal justice institutions would paint a more complete picture of cumulative racial inequality. This is particularly important in the case of linking arrest to filing decisions in state-level data. There is considerable discretion in these stages, and results suggest that racial inequality is greatest in some of these early decision points.

While the results suggest tentative support for a focal concerns or stereotype perspective over racial threat, future research might directly test these theories as well as theories of institutional racism. I find that Black and Latino defendants are treated more homogeneously at different stages regardless of their criminal histories compared to White defendants, which could

[42] Alternatively, a more narrow focus on generalized racial inequality without considering context would suggest a fixed effects approach.

be explained by a combination of stereotypes and racialized policies that reinforce these stereotypes. An understanding of these theories likely requires a qualitative approach in a single system to identify both idiosyncratic local practices, as well as more generalizable structural influences.

Although there has been a retrenchment of some of the punitive policies passed during the war on drugs, including the Fair Sentencing Act, Attorney General Holder's announcement to disregard drug weights in federal prosecution, and the passing of medical (and recreational) marijuana in some states, racial inequality in drug enforcement is still likely to persist unless drug enforcement is seen in racial terms. This is not only likely because criminal justice actors are tied to local legal norms and practices that tend to resist change (Lynch & Omori, 2014), but also because the current system of mass criminal justice control is embedded in logics of colorblindness and race-neutrality. This analysis is one step towards thinking through ways to approach racial inequality, suggesting a shift from assuming race-neutral policies and practices, conceptualizing racism as an overt action, and isolating racial inequality to singular points. Instead, studies of race and the justice system should both conceptualize and analyze process-oriented models of inequality.

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