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Race, Ethnicity, and Habitual-Offender Sentencing

A Multilevel Analysis of Individual and Contextual Threat

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Although sentencing research has expanded over the past decade, very little has been published in the area of habitual-offender statutes. The current research revisits and updates two of the few studies that focused on these sentencing enhancements. Crawford, Chiricos, and Kleck (1998), and later Crawford (2000), examined the application of the habitual-offender sentence enhancement for offenders in Florida in 1992 and 1993. Consistent with the prior research, this study includes individual-level as well as county-level variables and also updates the analysis by examining more recent data, including a measure of ethnicity, and using hierarchical general linear modeling to simultaneously model individual-level data nested within counties. The racial threat perspective serves as the backdrop to explain racial and ethnic disparity in punishment decisions based on contextual as well as individual threat. The findings indicate that racial and ethnic sentence disparity exists when habitual-offender status is invoked in Florida.

Keywords: *habitual offenders; sentencing; racial threat*

Introduction and Statement of the Problem

Nearly a decade ago, Crawford, Chiricos, and Kleck (1998) reported numerous significant and detrimental race effects for African American males sentenced as habitual offenders in Florida from 1992 to 1993. They argued that where racial threat exists, African Americans were at increased odds of being sentenced as habitual offenders. They concluded that “for habitual offender sentencing in Florida, race matters, especially for property and drug crimes” (p. 507). Later, Crawford (2000) found a similar situation existed for female defendants. Specifically, he argued that the research indicated that a “get tough” approach to crime has “affected women’s incarceration, most notably in the area of drug offenses” (p. 264).

To date, there is no research that has replicated or revisited either of these studies. One of the downfalls of much social science research is the lack of replication. The purpose of the current research is to revisit, rather than replicate, Crawford et al. (1998)

and Crawford (2000). To do so, this research explores the application of the habitual-offender sentence enhancement for both male and female offenders in Florida from 1994 to 2002. In addition to examining more recent data on habitual-offender sentencing in Florida, the current study extends the previous research in several ways. Whereas the two previous studies used logistic regression analyses to model the effects of individual-level and county-level factors, the current research uses hierarchical general linear modeling (HGLM) to simultaneously model individual-level data nested within counties (Raudenbush & Bryk, 2002). Recent sentencing research has highlighted the importance of considering the multilevel influences on outcomes by using hierarchical modeling (Bontrager, Bales, & Chiricos, 2005; Britt, 2000; Johnson, 2005; Ulmer & Johnson, 2004).

The results reported here also consider the effect of a major policy change on habitual-offender sentencing and provide more detailed controls for prior record. The data used in the Crawford studies (fiscal year 1992 to 1993) consist of cases sentenced under Florida's 1983 sentencing guidelines. Drastically revised guidelines took effect as part of the Safe Streets Initiative (1994), which completely restructured Florida's sentencing policy. Subsequently, in 1998, the state legislature revised the sentencing policy again by implementing the Criminal Punishment Code (CPC, 1998). The CPC maintained the point structure of the previous policy, but increased punitiveness and eliminated upward bounds on sentences. Although these policy changes did not directly alter the habitual-offender statutes, it is likely that the general sentencing policy in effect influences the use of the habitual statutes. The current analysis examines the effect of Hispanic ethnicity, in addition to race, on habitual-offender sentencing. The importance of including Hispanics in the current research is highlighted by the recent fact that the Hispanic population increased by 57.9% in the United States and by 70.4% in Florida from 1990 to 2000 (Guzman, 2001).

Habitual-Offender Sentencing and Theoretical Issues

The earlier research conducted by Crawford et al. (1998) used the racial threat theoretical perspective based on the work of Blalock (1967) and Liska (1992). The racial threat perspective views the criminal law, the criminal justice system, and the sanctions meted out by that system as tools used to control racial and ethnic minority groups that pose a threat to the positions and safety of those in power. According to this view, "in the contemporary United States, Blacks and Hispanics tend to be objects of crime fear and are seen as particularly threatening" (Ulmer & Johnson, 2004, p. 144). Therefore, the racial threat perspective posits that Blacks and Hispanics receive harsher treatment in the criminal justice system based on stereotypes that associate minorities with crime, which translates into a threat to the majority community.

At the macro or contextual level, racial threat is reflected in more severe sentencing outcomes in communities with larger minority populations. There is greater

threat to “mainstream America” in those communities because the threatening population—Blacks and/or Hispanics—is larger. Similarly, because crime is associated with racial and ethnic minorities, higher crime rates are often linked with increased racial threat. At the individual level, racial threat is translated into disparate sentences for racial and ethnic minorities because judicial decision makers rely on “stereotypical images of which defendant is most likely to recidivate” (Albonetti, 1991, p. 250). Both Albonetti’s attribution/uncertainty avoidance theory and Steffensmeier and associates’ focal concerns perspective (Steffensmeier, Kramer, & Streifel, 1993; Steffensmeier, Ulmer, & Kramer, 1998; Ulmer & Johnson, 2004) argue that decision makers sometimes view Black and Hispanic offenders, as well as males, as being more blameworthy and dangerous, and as more suited for or capable of handling prison.

The racial threat perspective helps to explain racial and ethnic disparity in punishment decisions based on contextual racial composition as well as individual racial differences. Like the earlier studies by Crawford and associates, this research is guided by the racial threat perspective, along with the related attribution/uncertainty avoidance and focal concerns frameworks. Before discussing the current study, the following review of the literature highlights the focus of the scant habitual-offender research published since 1998 and details the Crawford et al. (1998) and Crawford (2000) studies.

Literature Review

Since Crawford et al. (1998) provided an exhaustive review of the race and sentencing literature conducted prior to their study; it seems far more efficient to focus on what has been done since then and with particular attention to the habitual-offender literature.

Crawford et al. (1998) reported that “while there is apparent consensus among reviewers that length of sentence is unrelated to race when prior record and offense seriousness are controlled, there is also a growing recognition that the decision to incarcerate or not is related to race, in particular contextual circumstances” (p. 485). They describe in great detail the results of studies addressing race and sentencing in noncapital offenses (see, e.g., Hagan, 1974; Kleck, 1981), historical context (Zatz, 1987), crime seriousness (Kramer & Steffensmeier, 1993; Spohn & Cederblom, 1991), type of crime (Myers & Talarico, 1986), drug crimes (Myers, 1989; Peterson & Hagan, 1984; Unnever, 1982; Unnever & Hembroff, 1988), and place (see, for example, Chiricos & Crawford, 1995; Myers & Talarico, 1987). Recent reviews reiterate the importance of race in sentencing (Mitchell, 2005; Spohn, 2000).

Crawford et al. (1998) reported only one study that “considered the impact of race on the sentencing of defendants as habitual offenders” (p. 488). This document was produced by the Economic and Demographic Research Division (EDR, 1992) as the result of “the Joint Legislative Management Committee in the Florida legislature [that] examined the status of the population under custody or supervision of the Florida

Department of Corrections” (p. 488) and remains unpublished. Given the fact that the Crawford et al. study was the first of its kind and given the value it added to the literature, it is curious that it has not been revisited or replicated.

Crawford’s (2000) analysis of female habitual offenders in Florida was a logical extension of his previous work with colleagues. Using the same fiscal year (1992 to 1993) as his earlier work, Crawford found that females were not often sentenced as habitual offenders, but when they were “it appears to be done in a racially discriminatory fashion against African American women, and in a targeted, geographically localized manner” (p. 278). Furthermore, he argued that although there may be pockets of racial discrimination, this “can easily appear as a widespread systemic problem” (p. 278), thus emphasizing the importance of properly controlling for county contextual variation.

The debate about whether sentence enhancements reduce crime continues. For example, some scholars argue that crime reduction is achieved via a deterrent effect because offenders who receive a sentence enhancement would have received a prison sentence in the absence of the enhancement (Kessler & Levitt, 1999). Others argue that “a deterrent impact fails to withstand scrutiny when more complete and more detailed crime data are used and the comparability of ‘control’ groups is carefully examined” (Webster, Doob, & Zimring, 2006, p. 417). Conversely, Kovandzic (2001) argued that although there were minimal crime reductions realized in Florida under habitual-offender sentences, “the weight of the evidence suggests that the impacts, although small, are primarily because of incapacitation” (p. 200).

DeLisi’s (2001) research included 500 habitual offenders and analyzed their criminal history with particular attention being paid to those who committed “extreme” offenses (e.g., murder, rape, kidnapping). He found that these offenders had more violent arrests, more felony convictions and prison sentences, and a longer criminal career than other offenders.

The only other published research addressing habitual-offenders reports on the effectiveness of a national tracking system in Canada (Yessine & Bonta, 2006). They identified flagged offenders and compared them to known high-risk offenders, concluding that the flagging system was “successful in appropriately identifying offenders who pose a risk to the community” (p. 573).

As stated earlier, Crawford et al. (1998) and Crawford (2000) remain the only two scholarly articles addressing race and habitual-offender sentencing. The literature review now turns to a detailed discussion of that research and the contextual similarities with the current research project.

The imprisonment binge mentioned by Crawford et al. (1998) continues and its disproportionate impact on Blacks remains. Harrison and Beck (2003) report that at year-end 2002, the incarceration rate in the United States was 476 per 100,000, up from 387 in 1994 (Beck & Gilliard, 1995). The prison (state and federal) population exceeded 1.4 million, an increase of 2.6%. This increase was “twice the percentage increase recorded during 2001” (Harrison & Beck, 2003, p. 2). In fact, state prison

populations increased 24% since 1995 (Harrison & Beck, 2003). Whereas the overall incarceration rate was 476, the 2002 incarceration rate for males was 901 and 60 for females, an increase from 789 and 47, respectively, from 1995 (Harrison & Beck, 2003). The number of Black male inmates (586,700) outnumbered both White male (436,800) and Hispanic male inmates (235,000). The same disproportional representation existed for female inmates, as well, with 36,000 Black, 35,400 White, and 15,000 Hispanic female inmates. The 2002 incarceration rate for Blacks far outweighed rates for both Whites and Hispanics. For White inmates, the incarceration rate for males was 450 and 35 for females. The Black male incarceration rate was 3,437 and 191 for females. Hispanic males were incarcerated at a rate of 1,176 and 80 for females (Harrison & Beck, 2003). In fact, 10% of Black males between the ages of 25 and 29 were in prison in 2002. This national binge is mirrored and exacerbated in Florida.

The Florida Department of Corrections (FDOC) reported a total prison population, at midyear 2002, of 73,553; an increase of 2.1% from 2001 and a 10 year increase of 56.5% (FDOC, 2002). Furthermore, Harrison and Beck (2003) report that Florida was one of only five states that had an increase of over 2,000 inmates; Florida's fiscal year 2001 to 2002 increase was 2,806 inmates. Just over 53% of all Florida prisoners are Black males. This represents a decrease since 1992 when 58.2% of inmates were Black males. The 2002 incarceration rate in the state was 440 per 100,000, compared to a rate of 408 in 1994 (FDOC, 1996). There were more Black males in Florida prisons than ever before. In fact, there were more Black males (37,121) than either White (30,383) or "Other" (1,660) males; a trend that existed for at least the previous decade. The same is true for Black female inmates in Florida (FDOC, 2002). Sixty-eight percent of Florida's prisoners in 2002 will serve at least 85% of their sentence before being released.

Crawford et al. (1998) also argued that prison populations were increasing at a time when crime was decreasing or remaining stable. The same scenario existed during the years in the current study. The Uniform Crime Reports (UCR) indicate a decrease in index crime rates for adults from 1994 to 2004. The violent crime rate in 1994 was 713.6 per 100,000 and dropped to 465.5 by 2004. For the same time period, property crime rates also showed a decline from a rate of 4,593 to 3,517.1 (UCR, 1995, 2004). Concomitantly, arrest rates declined during this time. In fact, not only did both violent and property crime arrest rates decrease during this time period, but every single violent and property crime within the respective category showed arrest rate decreases. For example, the index crime arrest rate (per 100,000) for adults was 1,098.9 in 1993 and dropped to 789.2 by 2001 (UCR, 2003). Klaus (2002, 2004) reported that The National Crime Victimization Survey data generally reveal decreases for both violent and property victimizations for about the past decade. In 1994, 25% of households experienced a violent or property crime; by 2000 that had decreased to 16%, and by 2002 it had dropped another percent. In fact, she states, "All categories of households experienced a decline in crime, 1994-2000, regardless of race or ethnicity" (2002, p. 2).

As discussed earlier, Crawford et al. (1998) used a “racial threat” backdrop to explain the disparate habitual-offender sentencing for African American males. Borrowing from Blalock’s (1967) “power threat” hypothesis, they argued that “the putative threat posed by minorities, especially Blacks, has been gradually recast in terms of crime” (p. 483). According to Crawford et al., a racial threat may exist when “counties with high or rising rates of violent crime or drug crime, both of which have been typified in racial terms, may have a different ‘prevalent sensitivity’ (Lofland, 1969) than counties with less violence or drugs” (p. 493). In other words, people may be more fearful of crime and/or victimization in counties with higher rates because of the prevalence of crime. The prevalence of crime results in people being likely to be more sensitive of crime. Because crime is often typified in racial terms, people are likely to be more sensitive to the “threat” posed by racial minorities. Other county demographics that indicate a level of racial threat include the percentage of the county population that is African American and the income inequality between Whites and African Americans. For example, Crawford et al. found that “habitual offender sentencing is also more likely for defendants from counties with a higher percentage of Blacks in the population and a higher violent crime rate” (p. 496). Concerning drug crimes, Crawford et al. found that drug offenders being prosecuted in a county with high rates of arrest for drugs were less likely to be habitualized. However, that finding does not hold when considering Black drug offenders: “The combination of being Black and being charged with a drug offense substantially increases the odds of being sentenced as habitual” (Crawford et al., p. 496).

In his later work, Crawford (2000) highlights the literature identifying females as the “forgotten offenders.” Furthermore, he chronicles the patterns of the increase in the number of female prisoners and incarceration rates for female offenders increasing at a faster rate than that for males. He argues that “criminal sanctions across the nation have taken on new forms and intensity, pulling more female offenders into the nation’s prisons” (p. 264).

The Crawford et al. (1998) study included defendants sentenced to prison in Florida during fiscal year 1992 to 1993. This included 9,690 males who were eligible for habitual-offender status. Of those who were eligible, 19.8% (1,924) were sentenced as habitual offenders. Their overall findings revealed prior record, seriousness of the offense, high percentage of Black county residents, being a Black drug offender, and higher violent crime rate increased the likelihood of being sentenced as a habitual offender. Furthermore, Crawford et al. report “the strongest odds of being sentenced as a habitual offender are those associated with being black” (p. 496).

When Crawford (2000) looked at female offenders from the same data, he found 1,103 women who were eligible to be sentenced as habitual offenders with only 66 (6%) women receiving this designation. Crawford found that, not surprisingly, prior record increased the odds of being sentenced as a habitual offender. One key difference for the female offenders is that the seriousness of the offense, county violent crime rate, drug arrest rate, Black population in the county, and the Black/White

income difference “had no impact on the odds of habitualization” (p. 268). In addition, females convicted of a drug offense were less likely than property and violent offenders to be sentenced as habitual offenders. In fact, Crawford reports, “Perhaps the most unsettling result was for drug-related offenses, in which Black females were more than nine times as likely to be sentenced under this statute than white females” (p. 273). However, it is also important to note that Crawford urged caution with his findings. Clearly, the habitual-offender statute is not used often for female offenders and thus “is probably not a main factor in the rising female population” (p. 276). And, while there seems to be one geographic area that was largely responsible for the significant findings, he argued, “The importance of this new knowledge is that we must come to terms with the fact that race, gender, crime, and punishment are indeed contextual” (p. 278).

Data and Variables

The data used in these analyses consist of individual-level sentencing data and county-level characteristics. The individual-level data were obtained from the Florida Department of Corrections for the years 1994 through 2003. There were 236,673 offenders eligible for habitual-offender sentencing during this time frame, out of 660,338 offenders sentenced. Offenders are eligible for habitual status if they have two prior felony convictions or one prior violent felony conviction within 5 years of their current offense. Blacks comprised 42% of all offenders sentenced, 53% of those eligible for habitual-offender sentencing, and 68% of those sentenced as habitual offenders. Hispanics represented 10% of all offenders, 7% of those eligible for habitualization, and 9% of offenders sentenced as habitual offenders. The county-level data were compiled by the University of Florida Bureau of Economic and Business Research and include information on all 67 Florida counties.

The dependent variable used in the current study measures whether an eligible offender is sentenced as a habitual offender. Of those eligible, 22,332 (9%) were sentenced as habitual offenders (i.e., “habitualized”). Similar to Crawford et al. (1998) and Crawford (2000), the current authors categorize habitual-eligible offenders as those capable as being sentenced as either habitual or violent habitual offenders. Nevertheless, the 9% rate of habitualization for the current study is considerably lower than the rate of nearly 20% for males reported by Crawford et al. (1998) and slightly higher than the 6% rate for females reported by Crawford (2000). The authors posit that the difference is due to two factors. First, the current research includes both male and female offenders. Because males are habitualized at a higher rate than females, including female offenders in the current study likely lowers the habitualized percentage compared to the Crawford et al. study, while the higher rate of habitualization for males contributes to the higher percentage compared to the Crawford study, which only examines female offenders. Second, cases examined

here are sentenced under different policies than those cases examined in the previous studies. The newer policies (1994 guidelines and CPC) were both more punitive than the earlier policy (1983 policy). Therefore, it is likely that decision makers possessed more tools to obtain punitive sentences under the more recent policies, which resulted in less need to use the habitual-offenders statute to secure harsh sentences.

Independent Variables

Two types of independent variables are included in the analysis. Individual-level variables include both legal and extralegal factors that are predicted, based on theory and prior research, to have an influence on habitual-offender sentencing. The legal variables included in this research are offense seriousness and criminal history. Offense seriousness is measured using a scale based on the average points assigned to primary offenses in Florida from 1994 through 2002 (see Burton et al., 2004). Consistent with the previous studies by Crawford and associates, analyses are also presented that control for the type of offense.

In their conclusion, Crawford et al. (1998, p. 506) suggest that “a more comprehensive and crime-specific measure of prior record would also be helpful.” Following this suggestion, in the current study criminal history is measured through the inclusion of five variables. Four of these variables indicate the offender’s number of prior convictions for violent, sex-related, drug, and property offenses, respectively. The final criminal history variable is a continuous measure of the offender’s number of prior prison commitments. Previous research has shown that prior record is multidimensional, thus warranting the inclusion of multiple measures (Vigorita, 2001).¹

Several individual-level extralegal variables are also included in the analyses. Dummy variables indicating the offender’s race (1 = *Black*) and ethnicity (1 = *Hispanic*) and a dichotomous variable that identifies the offender’s sex (1 = *male*) are used. The inclusion of ethnicity represents an expansion to the earlier work by Crawford and associates. The offender’s age is also used as a control variable. Finally, the policy under which the sentencing occurred is included as a control variable.

The effects of several county-level independent variables are also examined in this study. The contextual variables were chosen to reflect those used by Crawford et al. (1998) and Crawford (2000). They include two measures of crime: the county rate of violent crime and the drug crime arrest rate within the county. The current authors also include two measures of the minority population within each county. Consistent with Crawford and associates’ prior research, the present study examines the effect of the percentage of a county’s population identified as Black. The analysis also includes the percentage of a county’s population identified as Hispanic, which was not available in the previous studies by Crawford and associates. Finally, in keeping with previous research, the research presented here controls for the county White-to-Black income ratio.

Table 1
Descriptive Statistics

Variable	<i>M</i>	<i>SD</i>	Min.	Max.	Description
Dependent variable					
Habitual offender	0.09	0.29	0.00	1.00	Offender sentenced as habitual offender = 1
Individual-level variables					
Black	0.53	0.50	0.00	1.00	Offender race, Black = 1
Hispanic	0.07	0.26	0.00	1.00	Offender ethnicity, Hispanic = 1
Male	0.87	0.34	0.00	1.00	Offender gender, male = 1
Age	33.13	9.07	14.00	89.00	Offender age in years
Offense seriousness	27.35	19.68	4.28	116.00	Offense seriousness scale
Prior violent	0.77	1.22	0.00	39.00	# of prior violent convictions
Prior sex	0.04	0.29	0.00	26.00	# of prior sex offense convictions
Prior property	2.24	3.79	0.00	229.00	# of prior property convictions
Prior drug	1.38	2.08	0.00	56.00	# of prior drug convictions
Prior prison	1.19	1.50	0.00	14.00	# of prior incarcerations
Policy	0.50	0.50	0.00	1.00	Sentencing policy, CPC = 1
<i>N</i> = 236,673					
County-level variables					
Violent rate	73.79	35.23	5.47	173.77	County violent crime rate per 10,000
Drug rate	37.15	8.80	7.98	92.94	County drug arrest rate per 10,000
% Black	14.04	10.12	2.00	58.26	County percentage Black population
% Hispanic	7.17	8.90	1.19	55.62	County percentage Hispanic population
Income ratio	4.38	7.86	1.66	43.90	County White-to-Black income differential
<i>N</i> = 67					

Note: CPC = criminal punishment code.

Analysis

One of the limitations to the research conducted by Crawford et al. (1998) and Crawford (2000) was their use of logistic regression to analyze the effects of both individual-level and county-level variables. Individual offenders are “nested” within counties, which is likely to result in cases sentenced within the same counties to have certain similarities. This is likely to lead to correlated residual errors within counties, which violates the assumptions of ordinary regression (Raudenbush & Bryk, 2002). Ordinary regression techniques that include both individual-level and contextual-level variables incorrectly base statistical significance for the contextual variables

Table 2
Unconditional Hierarchical General Linear
Modeling Habitual Offender Model

Fixed Effects	b	SE	T-Ratio	df	p value
Intercept	-2.74	0.09	-30.19	66	0.000
Random Effects	Variance	SD	χ^2	df	p value
Level 2	0.36	0.60	19479.84	66	0.000

on the number of individual cases (Ulmer & Johnson, 2004). To overcome these limitations, the current study employs HGLM for its simultaneous analysis of individual and contextual factors.

Hierarchical modeling introduces a unique random effect for each county-level equation to deal with the problem of correlated residual errors (Raudenbush & Bryk, 2002). It also adjusts the degrees of freedom to account for the nested nature of the data. Finally, HGLM provides a way to address heterogeneity of regression coefficients. Heterogeneity of regression coefficients occurs when the effects of an individual-level characteristic (e.g., race, gender, offense type, etc.) differ across counties. For these reasons, multilevel modeling is the appropriate technique for analyzing the effects of both individual and contextual factors on habitual-offender sentencing. Analyses for the current study were conducted using HLM6 (Raudenbush, Bryk, & Congdon, 2004).

Findings

Table 2 provides the results from the unconditional HGLM model for habitual-offender sentencing. The significant variance component indicates that the likelihood of an offender being sentenced as a habitual offender varies significantly across counties. This model establishes the important basis that, before controlling for any individual or county characteristics, there is contextual variation across counties in habitual-offender sentencing. This variation by geography is consistent with Crawford et al. (1998), Crawford (2000), and the unpublished report by the Economic and Demographic Research Division cited by Crawford et al.

The results from the random coefficient HGLM model are presented in Table 3. This model includes all individual (level 1) variables. The fixed effects examine the effect of individual-level variables, controlling for county, on the likelihood of an offender being sentenced as a habitual offender. The findings are consistent with those of Crawford et al. (1998) and Crawford (2000) regarding offender and case-related characteristics and also add some important new insight into habitual-offender sentencing in Florida. For example, consistent with the prior studies, Black offenders are significantly more likely to be habitualized than White offenders. Specifically, Blacks'

Table 3
Level 1 Random Coefficient Hierarchical General Linear Model

Fixed Effects	<i>b</i>	<i>SE</i>	Odds
Intercept	-2.42	0.02	0.09***
Black	0.25	0.02	1.28***
Hispanic	0.13	0.01	1.14***
Male	0.10	0.02	1.10***
Age	-0.00	0.00	0.99***
Offense seriousness	0.01	0.00	1.01***
Prior violent	0.04	0.01	1.05***
Prior sex	0.02	0.01	1.02*
Prior property	0.04	0.00	1.04***
Prior drug	0.04	0.00	1.04***
Prior prison	0.26	0.01	1.30***
Policy	0.16	0.02	1.17***
Random Effects	Variance	<i>df</i>	χ^2
Intercept, Level 2	0.63	62	756.54***
Black	0.05	62	136.80***
Hispanic	0.02	62	81.31*
Male	0.05	62	82.24*
Age	0.00	62	149.65***
Offense seriousness	0.00	62	433.53***
Prior violent	0.00	62	138.49***
Prior sex	0.01	62	73.24
Prior property	0.00	62	262.14***
Prior drug	0.00	62	159.15***
Prior prison	0.01	62	361.59***
Policy	0.25	62	834.18***

Note: $N = 236,673$.

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

odds of being habitualized are 28% greater than Whites' odds of being habitualized. The results presented here also indicate that Hispanic offenders are also more likely than White offenders to be sentenced as habitual offenders. Hispanics' odds of habitualization are 14% greater than those of Whites. Males are also significantly more likely to be sentenced as habitual offenders and older offenders are marginally less likely to be habitualized.

The findings presented in Table 3 also indicate that legally relevant variables affect the likelihood of habitualization. Offenders convicted of more serious offenses are more likely to be sentenced as habitual offenders. This is notable because the major focus of habitual-offenders sentencing is on recidivism, not necessarily current offense seriousness. Crawford et al. (1998) found that the more serious the offense, the more likely any offender was sentenced as a habitual offender. More consistent

with a recidivism focus, is that additional prior convictions, above those required to make one eligible as a habitual offender, also increase the odds of habitualization. The strongest effect among the measures of prior record is associated with having previously been incarcerated. It appears that decision makers look not only to the extent of an offender's criminal history, but also to the seriousness of that history.

Finally, the fixed effects in Table 3 show that the sentencing policy, generally, affects habitual-offender designations. Offenders sentenced under Florida's CPC are more likely to be habitualized than those sentenced under the 1994 sentencing guidelines. This finding may reflect the increased punitiveness associated with the change to the CPC (see Griset, 2002; Griswold & Dobrin, 2000).

The random effects in Table 3 are evidence that the effects of nearly all individual-level variables vary across counties. Specifically, the effects of all extralegal factors (race, ethnicity, sex, age) and all legal factors except prior convictions for sex offenses vary to some extent across Florida counties. This finding is consistent with prior research on contextual variation (Britt, 2000; Fearn, 2005; Johnson, 2005). After establishing the effect of individual variables on habitual-offender decisions, the next step is to incorporate the county-level variables.

Table 4 presents the full HGLM model including both individual- and county-level variables. For the individual-level variables, the results are similar to the findings from the fixed effects models in Table 3. After controlling for county-level characteristics, Blacks and Hispanics are still more likely than Whites to be habitualized. Similarly, males still face greater odds of being habitualized and more extensive prior records, especially previous incarcerations, increase the odds of being sentenced as a habitual offender. Crawford (2000) found women with a prior record were more likely to be sentenced as a habitual offender.²

There is considerably less support for the effects of contextual variables on habitual-offender sentencing. Specifically, the only county characteristics that exert a significant impact on habitual-offender sentencing are the violent crime rate and the percentage of the population identified as Hispanic, although these effects are relatively small. Specifically, higher violent crime rates are associated with greater odds of habitualization. Again, this is consistent with Crawford et al. (1998) but not with Crawford's (2000) findings. Likewise, larger Hispanic populations are associated with a greater likelihood of all eligible offenders being habitualized. These findings offer very limited support for the threat hypothesis. In other words, increases in crime and minority population are minimally associated with the use of these particular mandatory minimum sentences. Again, caution should be exercised when interpreting these findings, as the effects are quite small.

The findings from a cross-level interaction model are presented in Table 5 to further examine the threat hypothesis. These cross-level interactions involve offender race and ethnicity interacting with county-level variables and also sentencing policy interacting with the racial and ethnic composition of counties. The results indicate several cross-level interactions are present, although the magnitude of the interactive

Table 4
Full Level 1 and Level 2 Hierarchical General
Linear Modeling Random Coefficient Model

	b	SE	Odds
Level 1 variables			
Intercept	-2.42	0.03	0.09***
Black	0.23	0.02	1.26***
Hispanic	0.17	0.02	1.19***
Male	0.10	0.02	1.11***
Age	-0.00	0.00	0.99***
Offense seriousness	0.01	0.00	1.01***
Prior violent	0.04	0.00	1.05***
Prior sex	0.02	0.01	1.02
Prior property	0.04	0.00	1.04***
Prior drug	0.04	0.00	1.04***
Prior prison	0.27	0.01	1.31***
Policy	0.11	0.02	1.12***
Level 2 variables			
Violent rate	0.00	0.00	1.00*
Drug rate	-0.00	0.00	0.99
% Black	-0.00	0.00	0.99
% Hispanic	0.01	0.00	1.01*
Income ratio	-0.00	0.00	0.99

Note: $N = 236,673$.

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

effects is relatively small. For example, interactions exist between race and the county drug rate and ethnicity and the county drug rate. In both instances, the impact of minority status on habitualization decreases slightly as the county drug rate increases. In other words, in counties with higher rates of drug crime, racial and ethnic disparity in habitual designations is somewhat less likely. Crawford et al. (1998) found similar results when examining all crimes together. Crawford (2000) found that the county drug arrest rate was not significantly related to habitual-offender sentencing. Similarly, the effect of an offender being a Hispanic decreases slightly as the percentage of the county population identified as Hispanic increases. These findings are contrary to what would be predicted by the threat hypothesis.

On the other hand, increases in the county violent crime rate are associated with a greater likelihood of habitualization for both Blacks and Hispanics; a finding consistent with Crawford et al. (1998) but not with Crawford (2000). Once again, these effects are small in magnitude, but indicate slightly greater racial and ethnic disparity in counties with higher rates of violent crime. Similarly, there are significant, but small, interactive effects involving sentencing policy and race and ethnicity. The punitive effects of the CPC are slightly decreased as the percentage of the county

Table 5
Full Hierarchical General Linear Modeling
Cross-Level Interaction Model

	b	SE	Odds
Level 1 Variables			
Intercept	-2.68	0.03	0.07***
Black	0.21	0.02	1.23***
Hispanic	0.05	0.02	1.05**
Male	0.20	0.02	1.22***
Age	-0.00	0.00	0.99***
Offense seriousness	0.01	0.00	1.01***
Prior violent	0.06	0.01	1.06***
Prior sex	0.02	0.01	1.02*
Prior property	0.04	0.00	1.04***
Prior drug	0.05	0.00	1.05***
Prior prison	0.31	0.01	1.36***
Policy	0.15	0.02	1.16***
Level 2 variables			
Violent rate	0.00	0.00	1.00
Drug rate	0.00	0.00	1.00
% Black	-0.00	0.00	0.99
% Hispanic	0.01	0.00	1.01*
Income ratio	-0.00	0.00	0.99
Cross-level interactions			
Black × Violent Rate	0.00	0.00	1.00**
Black × Drug Rate	-0.00	0.00	0.99***
Black × % Black	-0.00	0.00	0.99
Black × Income Ratio	0.00	0.00	1.00
Hisp. × Violent Rate	0.00	0.00	1.00***
Hisp. × Drug Rate	-0.00	0.00	0.99**
Hisp. × % Hispanic	-0.00	0.00	0.99*
Policy × % Black	-0.00	0.00	0.99*
Policy × %Hispanic	0.00	0.00	1.00*

Note: $N = 236,673$.

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

population identified as Black increases, but the policy effects increase as the Hispanic population increases. Thus, although there is evidence of several cross-level interactions involving race and ethnicity, these effects are small and offer only mixed support for the threat hypothesis.

The final stage of the analysis examines the effects of individual-level and county-level factors on habitual-offender sentencing partitioned by offense type. Table 6 presents the findings from models for violent, drug, and property offenses. The results are similar to previously discussed findings in that nearly all individual-level variables

Table 6
Full Level 1 and Level 2 Hierarchical General Linear Modeling
Random Coefficient Models by Offense Type

	Violent Odds Ratio	Drug Odds Ratio	Property Odds Ratio
Level 1 variables			
Intercept ^{ac}	0.09***	0.11***	0.08***
Black ^{abc}	1.28***	1.36***	1.08***
Hispanic ^{abc}	1.30***	1.51***	1.09***
Male ^{abc}	1.20**	0.94***	1.40***
Age ^{abc}	0.99***	0.99**	1.01***
Offense seriousness ^{bc}	1.01***	1.01***	1.02***
Prior violent ^{abc}	1.10***	1.05***	1.01
Prior sex	1.06***	1.08**	1.09***
Prior property ^{abc}	1.06***	1.01**	1.04***
Prior drug ^{bc}	1.04***	1.04***	1.01*
Prior prison ^{abc}	1.42***	1.21***	1.32***
Policy ^{bc}	1.18***	1.17***	1.05*
Level 2 variables			
Violent rate	1.01	1.00	1.00
Drug rate ^c	1.00	0.99	1.00
% Black ^{abc}	0.99	1.02*	0.98***
% Hispanic	1.01	1.01	1.01**
Income ratio ^b	0.99	0.99	1.00*
	N = 50,162	N = 82,244	N = 73,986

a. Significant difference between violent and drug offenders at $p < .05$.

b. Significant difference between violent and property offenders at $p < .05$.

c. Significant difference between drug and property offenders at $p < .05$.

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

attain statistical significance, whereas few county characteristics exert significant effects on habitual-offender designations. Interestingly, racial and ethnic disparity are present for all offense types, but the extent of that disparity differs across offense types. For example, Black drug offenders' odds of habitualization are 36% greater than White drug offenders' odds, compared to a difference of 28% for violent offenders and only 8% for property offenders. Similarly, Hispanic drug offenders face a 51% greater likelihood of being habitualized than White drug offenders, whereas the ethnic disparity is 28% and 9% greater odds of habitualization for Hispanic violent and property offenders, respectively. In other words, it appears that although racial and ethnic minorities are more likely to be habitualized for all offense types examined, the greatest disparity exists for drug offenses. This finding is consistent with Crawford et al.'s (1998) finding that for both property and drug crimes, Blacks are more likely to be habitualized than Whites. The findings here are also consistent with Crawford (2000) in terms of Black female drug offenders.

Another interesting finding presented in Table 6 involves the effect of an offender's sex on habitual-offender sentencing decisions. Whereas males are more likely to be habitualized when their current offense is violent or property related, female offenders are actually more likely to be sentenced as a habitual offender when the current offense is a drug crime. Crawford's (2000) findings indicated that female drug offenders were less likely than either property or violent offenders to be habitualized. But, similar to the current findings for both men and women discussed above, Black female drug offenders were more likely than White female drug offenders to be habitualized. It may be that female drug offenders are no longer being processed with leniency at sentencing for "being female." Rather, female drug offenders are viewed as engaging in a type of crime that poses a threat to mainstream values. Clearly, there is support in the current research for Crawford's argument that "sentencing practices have affected women's incarceration, most notably in the area of drug offenses" (p. 264).

There are also significant differences in the effects of county-level factors across offense types. Most notably, the effect of the percentage of population identified as Black differs across all three crime types. For violent offenses, the impact of the size of the Black population is not significant. For drug offenses, larger Black populations are associated with higher likelihood of habitualization, yet for property offenses larger Black populations correlate with lower odds of habitual-offender sentences. Perhaps this is evidence of the racial threat argument that indicates an association between Blacks and drug crime. Crawford (2000) found that the size of the Black population in a county was not significant except for Black females in some circuits. Crawford et al. (1998) found no effect of county characteristics for violent crime.

Finally, Table 7 displays the results for cross-level interactions by offense type. The findings indicate that there are significant interactions involving race and all county characteristics, plus ethnicity and county violence rate for property offenses. For drug offenders, race and county income ratio interact. Specifically, there is less disparity between Black and White drug offenders as county income inequality increases. For property offenses, racial disparity is reduced in counties with higher drug rates and larger Black populations and ethnic disparity is lower in counties with higher violent rates. Conversely, racial disparity for property offenders is greater in counties with higher violent rates and counties with greater Black/White income disparity. Crawford (2000) found that the income gap between Whites and Blacks was not significant in terms of habitual-offender sentencing for women. However, he did find that "Black females were more than twice as likely to be habitualized in places where the economic inequality between Blacks and Whites is relatively low" (p. 276). In the current study, this is true for property offenses only. It appears that when it is an economic crime, economic inequality matters. As Myers and Talarico (1987) stated, "Greater inequality implies the existence of elites who are motivated and able to use coercive mechanisms of social control to maintain their privileged position" (p. 238).

Table 7
Cross-Level Interactions by Offense Type

Cross-Level Interactions	Violent Odds Ratio	Drug Odds Ratio	Property Odds Ratio
Black × Violent Rate ^{ab}	0.99	1.00	1.00***
Black × Drug Rate ^{ab}	1.00	0.99	0.99***
Black × % Black ^a	1.00	0.99	0.99***
Black × Income Ratio ^{ab}	0.99	0.98**	1.01***
Hisp. × Violent Rate	1.00	1.00	0.99*
Hisp. × Drug Rate	0.99	0.99	1.00
Hisp. × % Hispanic ^a	0.99	0.99	1.00
Policy × % Black	1.00	1.00	0.99
Policy × %Hispanic	1.00	1.00	1.00
	<i>N</i> = 50,162	<i>N</i> = 82,244	<i>N</i> = 73,986

a. Significant difference between violent and property offenders at $p < .05$.

b. Significant difference between drug and property offenders at $p < .05$.

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

Policy Implications and Discussion

Kovandzic (2001) concludes his study of the effects of Florida's habitual-offender law on crime by stating that the law "has not been very effective at reducing crime" (p. 201). Given the evidence that habitual-offender sentencing is not having an appreciable impact on crime, the utility of maintaining these types of statutes is debatable. Why then, are habitual-offender statutes still being used? In the conclusion to their 1998 study, Crawford et al. (1998) suggest that their findings raise "the question of whether the national proliferation of enhanced sentences for targeted offenders is affording expanded opportunities for unwarranted race effects" (p. 507). Based on the research presented here, it appears that, at least in Florida's case, the statutes do offer additional opportunities for unwarranted racial and ethnic disparities. In fact, the results of this study are quite similar to those of the earlier studies by Crawford and associates. Even after improving the analytical technique used, updating the data, adding Hispanic offenders, and providing more comprehensive measures of prior record, racial and ethnic disparity in habitual-offender sentencing still exist.

In other words, race (and ethnicity) still matters for habitual-offender designations. This is particularly true for drug offenders and violent offenders. Theoretically, it is possible that minority drug and violent offenders are viewed as particular threats to dominant, mainstream values. In fact, Crawford's (2000) findings showed that only Black female drug offenders received the full force of habitual-offender sentencing. Several observers have noted the link between racial and ethnic minorities and drug crime and/or violent crime (Beckett & Sasson, 2000; Sampson & Laub, 1993; Steffensmeier & Demuth, 2001). It appears that stereotypical assessments of dangerousness and

culpability are linked to race and ethnicity, even after offense seriousness and prior record are controlled.

In terms of macrolevel racial threat, similar to previous studies, the findings presented here are mixed. In some instances, indicators of county-level threat are positively associated with a greater likelihood of habitualization. For example, larger Black populations are related to habitualization for drug crimes and larger Hispanic populations result in greater application of the habitual-offender designation for property offenders. In all likelihood, both Black and Hispanic populations are going to continue to grow in Florida. This does not bode well for drug or property offenders in those areas. On the other hand, increases in the Black population are associated with lower odds of habitualization for property offenders.

It is also interesting to note that the odds of an offender being habitualized increase for offenders sentenced under the more punitive CPC. In other words, even after the guidelines were revised to increase punitiveness, the habitual-offender statute was used to a greater extent. Prosecutors seem to use the sentencing enhancement, which falls outside of the guidelines, to increase the harshness of sanctions even when the guidelines permit substantially severe sentences. This seems to beg the question of just how far state legislatures and prosecutors need to go to be "tough on crime." Relative to the perceived need to be punitive, "Florida attempted to demonstrate the seriousness of a zero-tolerance policy with passage of 10 distinct mandatory minimum and enhanced sentence laws" (Kunselman, Johnson, & Rayboun, 2003, p. 234). In their analysis of one of these statutes, 10-20-Life, Kunselman et al. (2003) found racial disparity in the application of the statute. In the push to be punitive (e.g., the CPC, mandatory minimum, and enhanced sentences), Florida is also creating disparate and discriminatory sentences between White and non-White offenders.

It would seem then that habitual sentencing options do not reduce crime, do overlap and/or supersede other "get tough" legislation, and do contribute to racially disparate and discriminatory sentencing. The same questions have been raised over and over concerning racial discrimination in the criminal justice system. One commentator on these types of sentencing enhancement argues that "they are based on the concern for managing aggregates of 'dangerous' people" (Shichor, 1997, p. 486). In fact, Crawford (2000) asked, "Is there a level of racial discrimination in our justice system that is tolerable, and at what point do we take action?" (p. 277). Given the findings of over a decade of habitual-offender research that demonstrates racial and ethnic discrimination (unwarranted disparity), it may be time to reconsider the utility of habitual-offender statutes. As sentencing policies become increasingly punitive, the risk of unwarranted disparity seems to be increasing as well. Therefore, habitual-offender statutes may simply be another tool for discriminatory decision making. As with any policy, habitual-offender statutes can only maintain validity if they are implemented in a race-neutral manner.

Notes

1. Engen and Gainey (2000) advocated the use of the presumptive guideline sentence as a control for prior record. Florida Department of Corrections data do not include this measure, so the use of the presumptive sentence is impossible. Because the current research examines habitual-offender sentencing, the authors believe that it is appropriate to use multiple measures of prior record to analyze the potentially different effects of various types of prior record on the decision to habitualize.

2. Crawford et al. (1998) and Crawford (2000) examine individual-level interactions involving race and offense seriousness and race and prior record. The current study does not include these individual-level interactions because of the lack of statistical significance reported in the earlier studies.

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