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Sentencing young minority males for drug offenses

Testing for conditional effects between race/ethnicity, gender and age during the US war on drugs

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Abstract

Using a random sample of Texas felony drug offenders sentenced during the height of the US War on Drugs, results from the present research show main and conditional effects of race/ethnicity, gender and age on sentence severity. The probability of receiving prison time was greater and sentences were longer for African Americans, African American males and African American males ages 22–30. The likelihood of going to prison was also higher for Hispanic males, and Hispanic males ages 31–40, but no differences were observed for sentence length. These findings generally support hypotheses that young minority males will pay a penalty cost at sentencing, and comport with recent research on drug sentences and the conditional effects of race/ethnicity, gender and age on sentencing.

Key Words

age • drug offense • gender • race/ethnicity • sentencing

Theory and research on sentencing outcomes among racial/ethnic groups has lately witnessed a number of refinements. These advances include expanding the racial/ethnic comparison to include Hispanics as well as non-Hispanic African Americans and non-Hispanic Whites;¹ assessing whether race/ethnicity interacts with or is conditioned by offender gender or age; and whether race/ethnic effects are stronger or more likely for particular offenses, such as drug offenses (see also Steffensmeier and Demuth, 2006). Recent findings tend to show that Whites receive milder sentencing outcomes than minorities; although findings are mixed regarding whether Hispanics or African Americans receive the harshest sentences (see Mitchell, 2005; Steffensmeier and

Demuth, 2006). Among studies of interactive or conditional effects between race/ethnicity and other offender characteristics, Steffensmeier et al. notably found a 'punishment cost of being young, black, and male' (1998: 763) – findings that were largely replicated by Spohn and Holleran (2000), who also included Hispanics. Research on drug offenses also represents an area of recent attention by sentencing researchers, with results from a recent meta-analysis showing that racial/ethnic disparities were more pronounced for such cases (Mitchell, 2005).

Research on race/ethnicity and sentencing that includes Hispanics, focuses on offenses where disparities may be most pronounced, and employs hypotheses regarding the intersection of multiple offender statuses, represents advances in sentencing scholarship and dovetails with earlier calls for researchers to identify the particular situations where sentencing differentials are most likely (see Hagan and Bumiller, 1983; Peterson and Hagan, 1984; see also Spohn, 2000). The present study seeks to connect these advances in sentencing research. Using a random sample of offenders convicted of drug felonies, hypotheses regarding the effects of race/ethnicity on sentencing outcomes, including conditional effects of gender and age, are tested. These data have the advantages of being collected during 1991, the peak of the Reagan–Bush drug war, when fears and prejudices regarding minorities and drug crimes were heightened (see Tonry, 1995); and, because these data come from Texas, they contain sizable proportions of Hispanics and African Americans, as well as Whites. In addition to addressing these emerging issues in research on race/ethnicity and sentencing, the present research contributes to the broader understanding of fairness and equal treatment before the law and issues of inequality and stratification in American society more generally. We briefly review theory and research on: (1) sentencing outcomes among Hispanics; (2) conditional effects between race/ethnicity, gender and age; and (3) sentencing for drug crimes.

SENTENCING RESEARCH ON HISPANICS

Until recently, the vast literature on race/ethnicity and sentencing focused heavily on African Americans and Whites. An extensive review by Chiricos and Crawford (1995) of methodologically rigorous studies conducted between 1975 and 1991 concluded that African Americans are consistently more likely than Whites to be sentenced to imprisonment (the in/out decision), but that for those receiving incarceration no systematic race differences are observed for the length of those sentences. Meta analyses of in/out (Mitchell, 2005) and sentence length decisions (Pratt, 1998; Mitchell, 2005) largely support these conclusions, as does a more recent survey of research findings (Spohn, 2000; but see Wilbanks, 1987; Sampson and Lauritsen, 1997).

Marjorie Zatz (1984) was among the first to argue for the need to include Hispanics, a distinct race/ethnic group, in sentencing research. In addition to hindering the understanding of potential differences among Hispanic, African American, and White offenders, studies that compare only Blacks and Whites may inadvertently classify Hispanics as Whites or Blacks, which not only precludes analyses of Hispanics but may also underestimate potential Black–White differences in sentences. Sentencing researchers appear to have taken these concerns seriously and increasingly included Hispanics in their research. The findings of these studies are addressed next.

Among federal sentencing cases, Steffensmeier and Demuth (2000) found that Whites were less likely than African Americans or Hispanics to be incarcerated and, among those receiving incarceration, Whites received shorter sentences and more downward departures from sentencing guideline standards. Their findings also indicated that differences between Hispanics and Whites were greater than differences between Blacks and Whites, especially for drug cases and for Hispanics who were also Black. Other studies of federal offenders reported similar findings, showing that Blacks and Hispanics were more likely to be sentenced to incarceration than Whites, less likely to receive favorable departures from sentencing guidelines and received longer sentences (Albonetti, 1997, 2001–2, 2002; Mustard, 2001; Everett and Wojtkiewicz, 2002).

Comparable results come from studies of sentencing in Pennsylvania, which showed that Hispanics were the most likely to receive incarceration and had the longest sentences; Whites received the mildest outcomes with African Americans in the middle, but closer to Whites than Hispanics (Steffensmeier and Demuth, 2001; Johnson, 2003; Ulmer and Johnson, 2004). Research from other jurisdictions found similar results. For example, in Sacramento, California, African Americans were more likely to be incarcerated than Hispanics who in turn were more likely to be incarcerated than Whites, with Whites receiving shorter sentences than the two minority groups (Barnes and Kingsnorth, 1996). Findings from Washington State also showed that longer sentences were meted out to Hispanics compared to Whites (Engen and Gainey, 2000). A study of misdemeanor sentences received by women in New York City showed that Hispanic and African American women were more likely to be sentenced to jail than White women (Brennan, 2006).

Some studies, however, found no sentencing disparities among Blacks, Whites and Hispanics; while others found that differences were only present for the in/out decision and not for sentence length. An early study by Zatz (1984) showed no differences in the length of sentences for Hispanic, Black and White offenders. Spohn (1999) found no race/ethnic differences for incarceration likelihood or sentence length (see also Zatz, 1987; Spohn and Beichner, 2000). Results from Bushway and Piehl (2001) showed that Hispanics and Blacks were more likely to receive incarceration but no effects were observed for sentence length. A study of sentencing in the nation's 75 most populous counties found that the odds of incarceration were higher for Blacks and Hispanics compared to Whites for property and drug crimes, but not for violent crimes; with no differences in sentence length for any of the crime types (Demuth and Steffensmeier, 2004). Findings were also mixed for Holmes et al. (1996) who found that Hispanics received harsher sentences than Whites in one of two counties, but no differences were found between Blacks and Whites. A number of studies conducted in the Southwest, where African American populations are small and the number of Hispanics relatively large, showed no differences between Hispanics and Whites in sentence severity (see Holmes and Daudistel, 1984; LaFree, 1985; Wooldredge, 1998; Daudistel et al., 1999). A study of sentencing departures in Pennsylvania found that Hispanics were disadvantaged relative to Whites, but no differences were found between Whites and African Americans (Kramer and Ulmer, 2002).

Collectively, the sentencing research that includes Hispanic offenders discussed here tends to show main effects of offender race/ethnicity such that both Hispanics and African Americans receive harsher sentences than Whites; however, the degree of the

disadvantage in some cases is greater for Hispanics than African Americans, while in other cases it is greater for African Americans than Hispanics. Furthermore, much as with Chiricos and Crawford's (1995) conclusion regarding African Americans and Whites, findings of significant racial/ethnic disparities among Hispanics, Blacks and Whites are more consistent for the in/out decision than for sentence length (see also Spohn, 2000).

CONDITIONAL EFFECTS BETWEEN RACE/ETHNICITY, GENDER AND AGE

Until recently, the extensive literature on race/ethnic disparities in sentencing and the smaller, though considerable, body of research on gender disparities in sentencing (for reviews see Daly and Bordt, 1995; Curry et al., 2004) tended to be distinct, focusing on the main effect of either gender or race/ethnicity (see Zatz, 2000; Steffensmeier and Demuth, 2006). Lately, however, scholars are paying increasing attention to the potential for race/ethnicity and gender to intersect and yield interactive or conditional effects on sentencing outcomes. This research tends to show that among African American and White men and women, Black males have the greatest odds of being incarcerated (Spohn et al., 1985; Spohn and Spears, 1996; Steffensmeier et al., 1998; Spohn and Holleran, 2000; but see Farnworth and Teske, 1995). For the length of sentences, however, findings are mixed (cf. Steffensmeier et al., 1998; Spohn and Holleran, 2000). When Hispanics are included in analyses, findings show that Hispanic and African American men were more likely to receive incarceration than other combinations of race/ethnicity and gender (Spohn and Beichner, 2000; see also Spohn and Holleran, 2000). More recently, Steffensmeier and Demuth (2006) showed that African American and Hispanic males were both more likely to be sentenced to incarceration and to receive longer sentences. Research on federal drug offenders indicated that Black and Hispanic males were less likely to receive downward departures from sentencing guidelines (Albonetti, 2002) and that the sentencing advantage female offenders received was smaller for Hispanics compared to Whites and African Americans (Albonetti, 1997).

Among the more notable findings regarding conditioning effects between race/ethnicity and other social statuses are those of Steffensmeier et al. who concluded that the harshest sentences were meted out to 'young, black, males' for both the in/out decision and sentence length (1998: 763; see also Chiricos and Bales, 1991). A replication of the Steffensmeier et al. study by Spohn and Holleran (2000), which included Hispanics, partially supported these results – finding that both African American and Hispanic young males were more likely to be incarcerated than other combinations of age, gender and race/ethnicity, but that offender race/ethnicity was not conditioned by gender or age to influence sentence length. Additional results showed that young Hispanic males were less likely to receive downward departures from sentencing guidelines, but no effects were observed for young African American males (Kramer and Ulmer, 2002); and that young Hispanic males were more likely to be sentenced to incarceration, though no effects were observed for sentence length or for young African American males (Nobiling et al., 1998).

These findings tend to coincide with preliminary research concerning the effect of offender age on sentencing. Steffensmeier et al. (1995) were among the first to

explicitly address the effect of age and found that offenders in their 20s were sentenced more harshly than those who were younger or older. Findings from other research tend to support these results (Steffensmeier et al., 1993, 1998; Nobiling et al., 1998; Spohn and Holleran, 2000; but see Kramer and Ulmer, 2002).

A key implication of studying multiple offender statuses is that it represents a more comprehensive approach to understanding sentencing disparities and, therefore, may serve to organize a large body of sentencing research around a common theme. That is, findings from this research tend to show that women receive milder sentences than men; minorities receive harsher sentences than Whites (particularly at the in/out decision); and offenders in their 20s are sentenced more harshly than those who are younger or older. These findings may be seen as coalescing into a larger pattern that cuts across all three sources of stratification: *young minority males*.

The approach of including multiple offender statuses corresponds with extant theory concerning race/ethnicity and sentencing and with theorists of inequalities, such as Kathleen Daly (1997) who argues that social statuses like race/ethnicity and gender do not exist in isolation from each other and that researchers should consider patterns of 'multiple inequalities'. For example, if, as conflict theory suggests, minorities are viewed as a threat to White hegemony or as a criminal threat to Whites' personal safety (see Hawkins, 1987), then young minority males may be viewed as especially threatening and thus receive the harshest sentences. Tittle and Curran (1988) make a similar argument with their assertion that social perception of threat will be higher when populations of young minorities are larger because negative emotions, such as fear or envy, toward these groups will be heightened among elites.

While conflict theory focuses on the cultural and structural features of society, more recent theories consider how offender characteristics might influence the decisions that judges and other actors make in regards to sentencing. Building on the idea of 'bounded rationality', Albonetti (1991) theorized that, because information about offenders is incomplete and frequently contains inconsistencies and contradictions, judges will tend to manage such uncertainty by developing patterned responses when making decisions about offenders. Judicial attributions of offenders' likelihood to engage in future crime and the level of community threat they pose represent heuristics that judges may use to mitigate the problem of information uncertainty. To the extent that such attributions are linked to stereotypes about race/ethnicity and gender, harsher sentences will be meted out to minority males (see also Albonetti, 1997, 2002). Such attributions may be further heightened for minority males who are also young.

Similarly, focal concerns theory predicts that judges manage information uncertainty through attributions of offenders in terms of three key criteria that represent a type of 'perceptual shorthand' employed when meting out sentences (Steffensmeier and Demuth, 2006; see also Steffensmeier et al., 1993, 1998; Steffensmeier and Demuth, 2001; Ulmer and Johnson, 2004). *Blameworthiness* refers to the perceived culpability of offenders and how deserving they are of particular punishments. *Protection of the community* focuses on attributions of how likely offenders are to recidivate and how much of a danger this represents to the community, as well as the goals of incapacitation and general deterrence. *Practical constraints and considerations* pertain to views of how specific punishments will affect offenders' spouses, children and other family members; the ability of offenders to withstand the rigors of specific punishments; fiscal

costs to the criminal justice system; and the public perception of courts and judges (see Steffensmeier and Demuth, 2006 for the most recent statement of the theory).

Judicial focal concerns are relevant to all offenders, and are primarily affected by offenders' current and prior offending. In addition to these legally relevant factors, focal concerns may also be linked to extralegal characteristics of offenders. African American and Hispanic offenders may receive harsher sentences than Whites because judges may believe that these offenders are, for example, more likely to re-offend, represent more of a threat to the community, more deserving of incarceration and better able to deal with time spent behind bars (see Steffensmeier et al., 1998; Steffensmeier and Demuth, 2006). Women may receive milder sentences because judges may perceive them as less culpable for their crimes, less of a danger to the community and having stronger ties to family and community than men (see Steffensmeier et al., 1993). Concerning age, Steffensmeier et al. (1995) predict that offenders in their 20s will receive harsher sentences because focal concerns pertaining to younger and older offenders lead to more lenient sentences for these groups. Older offenders will be seen as better able to avoid future crime and less of a danger to the community; their incarceration may be more problematic for prison staff and more expensive for society; and it may be more difficult for older inmates to withstand the difficulties of incarceration. In contrast, because of their youth, judges may view very young adults, those not yet 21, as less culpable for their crimes and more vulnerable to criminal socialization (and predation) by older, more hardened, inmates should they be sentenced to incarceration.

While race/ethnicity, gender and age may directly influence judicial focal concerns and sentencing outcomes, it may be more fruitful to consider how these offender characteristics operate in concert. Patterns of multiple inequalities (see Daly, 1997) may present a more realistic picture of how judges create perceptions of offenders in regards to focal concerns. Focal concerns theory may thus be more applicable to the sum of offender statuses, rather than to each status separately. If this latter portrayal is more accurate, then young minority males may receive harsher sentences due to views that they constitute the 'dangerous classes' (Steffensmeier et al., 1998: 769) who are seen as more committed to criminal lifestyles and, therefore, more culpable for their crimes, less deterrable and in greater need of incapacitation. Such commitment may also lead judges to believe that these offenders are a greater community threat, better able to serve time and that meting out harsh punishments to young minority males will reflect favorably on courts and judges.

RACE/ETHNICITY AND SENTENCES FOR DRUG CRIMES

In addition to hypotheses that young minority males, in general, will receive the harshest sentences, it may be that these effects are more likely in some types of crimes than others. Drug crime, for example, could represent offenses which symbolize the fear and threat that majority groups feel toward young minority males (see Tonry, 1995; Engen and Steen, 2000; Mitchell, 2005; Steen et al., 2005); thus, exaggerating or heightening the potential for focal concerns to increase the severity of sentences meted out to young minority males.

Research on sentences for drug offenders tends to show that racial/ethnic minorities received more severe sentences than Whites (Peterson and Hagan, 1984; Barnes

and Kingsnorth, 1996; Albonetti, 1997, 2001–2, 2002; Engen and Gainey, 2000; Steffensmeier and Demuth, 2000, 2001; Mustard, 2001; Everett and Wojtkiewicz, 2002; Kautt and Spohn, 2002; Demuth and Steffensmeier, 2004; Steen et al., 2005). Mitchell's (2005) recent meta-analysis supports these conclusions, finding that sentencing differentials among African Americans and Whites were most pronounced for drug crimes. These results may be due in part to perceived associations between certain races and ethnicities with different types of drugs. For example, African Americans and Hispanics may be associated with drugs such as crack cocaine and heroin, respectively, which are harshly punished in the court system; while Whites tend to be associated with drugs such as marijuana and powdered cocaine which may be viewed more leniently by the court system (see Barnes and Kingsnorth, 1996; Wooldredge, 1998; Steffensmeier and Demuth, 2000; Kautt and Spohn, 2002).

Race/ethnicity differences in drug sentencing may also be explained in light of changing conceptions of race and crime within a society (Peterson and Hagan, 1984; Steffensmeier and Demuth, 2000; Kautt and Spohn, 2002). In accordance with conflict theory, Barnes and Kingsnorth (1996) argue that social policy concerning drugs may not be just about controlling particular drugs but may also represent a response by society to attempt to control certain groups who are seen as threatening or problematic. For example, after the boom of railroad building ended over a century ago, the resulting surplus of Chinese laborers in many west coast cities appears to have represented an economic threat to certain groups, prompting newspaper stories and anti-Chinese propaganda that vilified the Chinese as a menace to the moral values of society by exaggerating their use of opium and urging authorities to enact harsh penalties for using this particular drug which, in many cases, they did (Musto, 1987). Similarly, a perceived association between African Americans and cocaine use in the post-bellum south, and prevailing beliefs that cocaine made Blacks disrespectful and violent, is thought to have spurred White southerners to criminalize this drug (Musto, 1987).

More recently, Tonry (1995) argues that the US War on Drugs is specifically directed toward minorities, particularly African Americans, with heavy law enforcement in poor minority areas and especially harsh penalties for 'minority drugs' such as crack cocaine. Tonry (1995) argues that politicians often sought to establish their tough on crime credentials by portraying inner city minorities as a criminal threat to the larger society and then advocating severe penalties for ghetto crime, such as possessing or dealing crack cocaine. Hispanics may also be seen as threatening because of their rapidly growing population size, their high immigration rates and the debate over how to deal with large numbers of illegal immigrants, as well as their perceived link to drugs such as heroin, and the 'narcotrafficante' stereotype associated with large-scale drug smuggling.

According to Steffensmeier and Demuth, 'moral crusades against drugs in the United States historically and national efforts currently to mobilize criminal justice resources against drug crime are intimately intertwined with the issue of race/ethnicity' (2001: 152). Research on 'moral panics' (see Mitchell, 2005) demonstrates how drug crimes may symbolize a larger perceived threat posed by minorities toward the larger society. In essence, according to these researchers, it is not necessarily concern about drug crimes per se, but rather that drug crimes serve as a stalking horse for society's fears of minorities, that could lead to particularly harsh sentences for minority drug offenders.

To the extent that minority groups are associated with specific drugs or with drug crimes in general, then existing patterns of sentencing disparity could be exacerbated. When applied to theory, young minority males who are convicted of drug crimes could embody the threats Whites may perceive about minority crime (see Hawkins, 1987) leading to especially negative emotional reactions to such offenders (see Tittle and Curran, 1988) and, hence, more severe sentences. In terms of focal concerns theory, young minority male drug offenders are predicted to be perceived as especially blameworthy for their crimes and deserving of punishment, more dangerous to society, more likely to recidivate and less likely to be deterred and better able to withstand the rigors of incarceration, thereby leading to harsher sentencing outcomes (see Steffensmeier and Demuth, 2000, 2001, 2006).

METHOD

Sample

Data come from a random sample of felony convictions in the seven largest metropolitan counties in Texas (i.e. Bexar, Dallas, El Paso, Harris, Nueces, Tarrant and Travis) between 1 January and 30 September 1991, for 10 major categories of crime, representing 93.3 per cent of all felony convictions in these counties (Fabelo, 1993). Because the hypotheses in the present research are specifically focused on drug crimes, the analyses below include only those offenders convicted of drug felonies – specifically, possession, delivery or possession with intent to deliver powdered cocaine, crack cocaine, heroin, methamphetamines and marijuana.²

In contrast to the narrow sentencing guidelines used by the federal government and some state governments, at the time these data were collected Texas utilized (and still uses today) an indeterminate sentencing structure that affords a considerable amount of discretion in the sentences convicted felons might receive. The offenders in our sample could receive a probationary sentence, deferred adjudication or prison sentence. For those offenders sentenced to prison, first-degree felony convictions may result in a life sentence or a sentence anywhere between five and ninety-nine years, sentences for second-degree felony convictions range between two and twenty years, and third-degree felony convictions between two and ten years.³ Beyond these broad provisions, the Texas code did not contain any presumptive sentencing guidelines or mandatory minimum sentences. Since this situation affords a vast amount of discretion for the both the in/out and sentence length decisions, it may be more likely that sentencing outcomes in Texas could be affected in the manner predicted by conflict and focal concerns theories compared to jurisdictions with sentencing guidelines.

Dependent variables

Because convicted offenders may face up to two distinct sentencing outcomes, alternative conceptualizations of sentence severity are used. The first outcome, the in/out decision, pertains to whether the primary sentence offenders received was a prison sentence or if they received probation or a deferred adjudication.^{4,5} A second outcome, sentence length, pertains only to those offenders who received prison time and refers to the number of years in their sentences. Analyses of sentence length employ: (1) the natural logarithm of this variable because of its skewness; and (2) a hazard function to

alleviate the potential effect of sample selection bias (see Wooldredge, 1998; Bushway et al., 2007). Descriptive results for incarceration likelihood and sentence length are in Table 1. The 66 cases where offenders received a 'split' sentence, involving both incarceration and some type of probation, such as shock probation, were excluded from all analyses because the measure of sentence length used in these data does not differentiate between time spent in prison and time spent on probation.

Independent and control variables

Race/ethnicity is measured with a series of dummy variables for Hispanic (of any race), non-Hispanic African American and non-Hispanic White offenders. Offender gender

TABLE 1 Coding and descriptive statistics for variables (N = 1556)

VARIABLE	CODING	MEAN	SD
Incarcerated in/out	0 = No, 1 = Yes	.53	.50
Sentence length (<i>n</i> = 825)	Years ^a	11.29	9.21
<i>Offender race/ethnicity</i>	Dummy coding		
Black		.50	.50
Hispanic		.22	.42
White		.28	.45
<i>Offender age</i>	Dummy coding		
Age 18–21		.15	.35
Age 22–30		.41	.49
Age 31–40		.33	.47
Age 41+		.12	.33
Offender gender	0 = Female, 1 = Male	.81	.39
Disposition seriousness	Ordinal (1–3)	2.24	.58
Prior convictions	Count	2.30	3.01
Total current convictions	Count	1.24	.62
<i>Offense type</i>	Block of nine offense dummy variables ^b		
Private attorney	0 = No, 1 = Yes	.30	.46
<i>County of conviction</i>	Dummy coding		
Bexar		.12	.32
Dallas		.27	.44
El Paso		.06	.23
Harris		.31	.46
Nueces		.06	.23
Tarrant		.11	.32
Travis		.08	.27

Notes:

^aThe natural log of sentence length is used in subsequent analyses.

^bThe offense dummy categories are delivery or intent to deliver powdered cocaine, crack cocaine, heroin, methamphetamine and marijuana; possession of powdered cocaine, crack cocaine, heroin and methamphetamine. Possession of marijuana is used as the reference category.

is a dummy variable (1 = male, 0 = female). Following Steffensmeier et al. (1995; see also Steffensmeier et al., 1998; Spohn and Holleran, 2000), we hypothesize a curvilinear effect of age such that the youngest offenders and oldest offenders will receive milder sentences than those in their 20s. Offender age is thus measured with a series of dummy variables for ages 18–21, 22–9, 30–9 and 40 and above.⁶ Offense seriousness refers to the degree of disposition for the most serious disposed offense (1 = third degree, 2 = second degree, 3 = first degree). Prior felony convictions refer to the number of prior felony convictions offenders had, while multiple convictions refers to the number of convictions in the current sentencing event. Type of offense is controlled with a series of dummy variables (see Table 1) using possession of marijuana as the reference category.⁷ In addition to these fundamental legally relevant variables, which must be controlled in any rigorous study of sentencing outcomes, we also control for use of a private attorney (1 = yes, 0 = no) and county of conviction, which is measured with a series of dummy variables for each county, with Harris (Houston) county as the reference category. Descriptive results for these variables are in Table 1.

These data also contain a number of other potentially useful measures that may be controlled in sentencing research, such as whether or not offenders employed a weapon, pleaded guilty or went to trial, were convicted of an aggravated offense, were officially labeled as a habitual or repeat offender or whether judges or juries meted out sentences. None of these measures, however, showed enough variation to warrant inclusion in analyses. Whether or not offenders were released on bond contained a prohibitively high number of missing cases and was highly correlated with use of a private attorney ($r = .54$) and, therefore, was not included in analyses.

To address the issue of multicollinearity, variance inflation factor analyses were performed on all models. Results showed that the highest VIF score in any of our models was 6.4 (with nearly all of the rest below 4.5), indicating that multicollinearity does not appear to pose a problem in our analyses (Cohen et al., 2003: 423–5; see also Belsley et al., 1980).

RESULTS

Incarceration likelihood

Table 2 presents results for the direct effects of offender race/ethnicity, gender, age and control variables on the likelihood of receiving prison time for the total sample. To facilitate interpretation of these results, odds ratios are converted to probabilities for all significant theoretical variables to obtain the difference in probabilities between the categories of interest and the corresponding reference category using the following formula: probability difference = [odds ratio/(odds ratio + 1)] - 0.5 (see Cohen et al., 2003: 487–90; see also Hanushek and Jackson, 1977). The hypothesis that minorities receive harsher sentences is partially supported as the probability of receiving a prison sentence was 9 percent higher for African American offenders compared to Whites, all else being equal; however there was no difference between White and Hispanic offenders. Compared to offenders ages 18–21 (the reference category), those ages 22–30 and 31–40 were 11 percent and 10 percent, respectively, more likely to be incarcerated, but no difference was found for those over age 40. These results support the hypothesized curvilinear effect of age on incarceration likelihood such that the youngest and

oldest offenders were the least likely to be incarcerated, while those in the middle were more likely. This relationship was confirmed in separate analyses that employed: (1) the raw scores of age, which was not significant; and (2) both age and the square of age, both of which were significant and support findings from Steffensmeier et al. (1995) and Steffensmeier et al. (1998) who also found a curvilinear effect of age on sentencing (but see Spohn and Holleran, 2000). Results for gender also support predictions and show that male offenders were approximately 22 percent more likely to receive a prison sentence than females. The effects of the legally relevant variables were all significant and in the predicted directions. Using a private attorney decreased the probability of incarceration. Compared to Harris county (the reference category) the probability of incarceration was lower in all other counties save for Tarrant county.

Table 3 presents results that test whether the effects of offender race/ethnicity were conditioned by offender gender using a series of dummy variables for each combination of gender and race/ethnicity. Because the results for the control variables are essentially the same as for Table 2, they are not repeated here. Because Table 2 showed that Blacks

TABLE 2 Main effects of race/ethnicity, age, gender and controls on incarceration likelihood (N = 1556)

	B	ODDS RATIO	DIFFERENCES IN PROBABILITIES ^a	p
Black	.36	1.44*	.09	.05
Hispanic	.26	1.29		.23
Age 22–30	.46	1.59*	.11	.02
Age 31–40	.42	1.52*	.10	.04
Age 41+	.09	1.10		.72
Gender	.92	2.52**	.22	.00
Disposition seriousness	.58	1.78**		.01
Prior convictions	.53	1.70**		.00
Total current convictions	.80	2.22**		.00
Block of nine offense dummy variables	–	–		–
Private attorney	–1.01	.36**		.00
Bexar	–1.14	.32**		.00
Dallas	–.87	.42**		.00
El Paso	–.68	.51*		.04
Nueces	–.72	.49**		.01
Tarrant	.22	1.25		.36
Travis	–1.53	.22**		.00
Constant	–3.66	.03**		.00
Chi-square	636.98**			.00

Notes:

^a Probability differences are calculated for statistically significant theoretical variables only.

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

and males were more likely to receive a prison sentence, the combination of African American male was initially used as the reference category in this analysis. These results showed that the probability of incarceration was lower for all other combinations of gender and race/ethnicity except for Hispanic males, indicating no significant difference in the probability of incarceration between these two groups. Based on these results, the equation was re-analyzed suppressing both Black males and Hispanic males. These results are reported in Equation 1 of Table 3 and show that, compared to minority males, the probability of receiving a prison sentence was lower for White males and for females of all three race/ethnic groups. To better gauge the size of these differences the equation was analyzed again – this time comparing Black males and Hispanic males to the remaining combinations of gender and race/ethnicity (which become the reference group). These results show that Black males had about an 18 percent greater probability and Hispanic males a 17 percent greater probability of receiving a prison sentence than the combination of White males, White females, Black females and Hispanic females. Together, the findings from Table 3 support the hypothesis that minority males will receive more severe sentences.

We next sought to test whether the effects of offender ethnicity were conditioned by offender age. Due to the small number of females in some categories of age and race/ethnicity, however, these analyses were restricted to males (the same situation and solution are also present in Spohn and Holleran, 2000). Very young White males (those aged 18–21) were used as the reference category based on theoretical predictions that they would be the least likely to receive incarceration. Findings in Table 4 show that compared to very young White males, the probability of receiving a prison sentence was 30 percent higher for Black males 22–30 and 31 percent higher for Hispanic males 31–40. The results from the remaining combinations of age and race/ethnicity were not significant, indicating no difference in the probability of incarceration for any of these

TABLE 3 Conditional effects of race/ethnicity, age, and gender on incarceration likelihood ($N = 1556$)

	B	EQUATION 1		
		ODDS RATIO	DIFFERENCES IN PROBABILITIES	<i>P</i>
White male	-.41	.66*	-.10	.03
White female	-1.07	.34**	-.25	.00
Black female	-.93	.39**	-.22	.00
Hispanic female	-1.64	.19**	-.34	.00
EQUATION 2				
	B	ODDS RATIO	DIFFERENCES IN PROBABILITIES	<i>P</i>
Black male	.77	2.16**	.18	.00
Hispanic male	.73	2.07**	.17	.00

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

TABLE 4 Males only: conditional effects of race/ethnicity and age on incarceration likelihood (N = 1263)

	B	ODDS RATIO	DIFFERENCES IN PROBABILITIES ^a	P
Black male 18–21	.73	2.08		.14
Black male 22–30	1.37	3.93**	.30	.00
Black male 31–40	.75	2.11		.13
Black male 41+	.40	1.50		.45
White male 18–21	reference cat.			
White male 22–30	.56	1.75		.26
White male 31–40	.64	1.89		.21
White male 41+	.82	2.26		.15
Hispanic male 18–21	.54	1.72		.39
Hispanic male 22–30	.74	2.10		.14
Hispanic male 31–40	1.47	4.37**	.31	.01
Hispanic 41+	1.08	2.94		.08
Disposition seriousness	.66	1.93**		.00
Prior convictions	.55	1.74**		.00
Total current convictions	.78	2.19**		.00
Block of nine offense dummy variables	–	–		–
Private attorney	–1.04	.35**		.00
Bexar	–1.17	.31**		.00
Dallas	–.78	.46**		.00
El Paso	–.66	.52*		.05
Nueces	–.75	.47*		.02
Tarrant	.31	1.36		.26
Travis	–1.27	.28**		.00
Constant	–3.08	.05**		.00
Chi-square	506.87**			.00

Notes:

^a Probability differences are calculated for statistically significant theoretical variables only.

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

groups compared to very young White males. In results not reported, this equation was re-analyzed using the combination of Black males 22–30 and Hispanic males 31–40 as the suppressed group. These results showed that the probability of incarceration was lower for 7 of the 10 remaining combinations of age and race/ethnicity (supporting predictions); however, the results were not significant for very young Hispanic males (18–20) or for the oldest (over 40) White or Hispanic males, which fails to support predictions. The hypothesis that young minority males receive harsher sentences thus receives qualified support in analyses of the in/out decision. First, the effect of age varied across minority groups – incarceration likelihood was higher among Black males aged 22–30, while among Hispanic males it was those aged 31–40 who were more likely to

go to prison. Second, the probability of incarceration for these two groups was only higher for 7 of 10 comparisons. However, compared to very young White males, only Black males 22–30 and Hispanic males 31–40 were more likely to be sentenced to prison, and the size of these effects was fairly large.

Sentence length

Table 5 reports results for analyses of sentence length for those drug offenders who were sentenced to serve prison time. These analyses employ the log of sentence length to correct for the skewness of this variable as well as a hazard function to control for the effect of selection bias at the in/out sentencing stage.⁸ Because sentence length is a logged variable, the effect of each unstandardized regression coefficient (B) can be interpreted as the percentage change in sentence length resulting from a unit change in the independent variable (see Wooldridge, 2003). Thus, similar to results for incarceration likelihood, when holding all else constant male offenders received 20 percent longer sentences than females and, for race/ethnicity, African American offenders received 19 percent longer sentences than Whites, while no main effect was observed for Hispanics. The effect of age, however, differed compared to in/out analyses. Compared to offenders ages 18–21, the length of sentences were between 19–21 percent

TABLE 5 Main effects of race/ethnicity, age, gender and controls on sentence length logged ($n = 825$)

	B	BETA	<i>p</i>
Offender gender	.20**	.09	.00
Offender Black	.19**	.12	.01
Offender Hispanic	-.01	-.01	.90
Age 22–30	.21**	.14	.01
Age 31–40	.21**	.13	.01
Age 41+	.19*	.08	.05
Disposition seriousness	.30**	.23	.00
Prior convictions	.06**	.26	.00
Total current convictions	.12**	.12	.00
Block of nine offense dummy variables	–	–	–
Private attorney	.19**	.10	.00
Bexar	.21*	.09	.02
Dallas	.14*	.07	.04
El Paso	.17	.04	.20
Nueces	.15	.04	.21
Tarrant	-.01	.00	.89
Travis	.01	.00	.90
Hazard Function	-.24**	-.15	.00
Constant	.92**		.00
R-square	.37		
F	17.87**		.00

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

longer for the three other age groups. In supplementary analyses not reported, no effect was observed for the raw age scores or for the combination of age and the square of age. These results do not support the hypothesized curvilinear effect of age on sentence length, nor do they show a linear effect of age; instead the findings show that very young offenders received shorter sentences compared to all other offenders. Control variables show positive effects on sentence length for disposition seriousness, prior convictions, total current convictions and, surprisingly, using a private attorney. County of conviction results indicate that sentences were longer in Bexar and Dallas counties compared to Harris county, but no differences were observed for the other counties. Approximately 37 percent of the variance in the log of sentence length was explained by the model.

The potential for gender to condition race/ethnicity effects was tested in Table 6. Because there were so few Hispanic females, this group was deleted from analyses. Since this is a slightly different sample compared to Table 5, the results for control variables are reported here. Compared to Black males, the reference group, sentences were

TABLE 6 Conditional effects of race/ethnicity, age, and gender on sentence length logged (n = 814)

	B	BETA	P
Black female	-.29**	-.10	.00
Black male	reference cat.		
White male	-.23**	-.11	.00
White female	-.32**	-.08	.01
Hispanic male	-.21**	-.11	.00
Hispanic female	not included		
Age 22–30	.21**	.14	.01
Age 31–40	.22**	.14	.01
Age 41+	.19*	.09	.04
Disposition seriousness	.31**	.24	.00
Prior convictions	.06**	.26	.00
Total current convictions	.12**	.12	.00
Block of nine offense dummy variables	–	–	–
Private attorney	.19**	.10	.00
Bexar	.21*	.09	.02
Dallas	.13*	.07	.04
El Paso	.15	.04	.26
Nueces	.13	.03	.29
Tarrant	-.01	-.01	.86
Travis	.01	.00	.96
Hazard function	-.23**	-.15	.00
Constant	1.31**		.00
R-square	.37		
F	16.85**		.00

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

23 percent shorter for White males, 21 percent shorter for Hispanic males, 29 percent shorter for Black females and 32 percent shorter for White females. Supplementary analyses using Hispanic males as the reference group showed that Black males received longer sentences, but no significant differences were found for the other combinations of gender and race/ethnicity. These results provide mixed support for the hypothesis that minority males will receive longer sentences as Black males are sentenced more harshly than all other gender/race groups, including Hispanic males, but Hispanic males do not receive longer sentences compared to other gender/race groups.

The final analysis explored the potential for conditioning effects of age on offender race/ethnicity (Table 7). Due to small numbers in some groups it was necessary to restrict analyses to males and to delete very young (aged 18–21) White and Hispanic males. Because of the predicted curvilinear effect of age, White males over 40 were used

TABLE 7 Males only: conditional effects of race/ethnicity and age on sentence length logged ($n = 698$)

	B	BETA	<i>p</i>
Black male 18–21	.09	.03	.56
Black male 22–30	.27*	.15	.05
Black male 31–40	.25	.13	.07
Black male 41+	.20	.06	.20
White male 18–21	not included		
White male 22–30	.00	.00	.98
White male 31–40	.11	.04	.44
White male 41+	reference cat.		
Hispanic male 18–21	not included		
Hispanic male 22–30	.10	.04	.51
Hispanic male 31–40	.04	.01	.79
Hispanic male 41+	.01	.00	.95
Disposition seriousness	.30**	.24	.00
Prior convictions	.06**	.28	.00
Total current convictions	.16**	.15	.00
Block of nine offense dummy variables	–	–	–
Private attorney	.20**	.11	.00
Bexar	.19	.08	.06
Dallas	.11	.07	.11
El Paso	.13	.04	.34
Nueces	.13	.04	.28
Tarrant	–.08	–.03	.37
Travis	–.01	.00	.89
Hazard function	–.24**	–.14	.00
Constant	1.28**		.00
R-square	.36		
F	12.69**		.00

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

as the reference category. Results show that Black males aged 22–30 received 27 percent longer sentences than this group, but that none of the coefficients for the other groups were significant. These findings thus support the hypothesis that young minority males will receive harsher sentences for African Americans but not for Hispanics.

DISCUSSION

The present research was inspired by the findings of Steffensmeier et al. (1998) that young minority males paid a penalty cost at sentencing; by recent findings that race/ethnicity disparities at sentencing may be most pronounced for drug offenders (e.g. Mitchell, 2005); and by the need for sentencing research to include Hispanics (see Zatz, 1984). Tying together these recent advances in the literature, the present research tested for main and conditional effects of race/ethnicity, gender and age using a random sample of felony drug offenders convicted in 1991 from the seven largest metropolitan counties in Texas. Collected during the anti-drug crusade of the Reagan–Bush presidencies, where fears of drugs and of minority crime were at a fever pitch (see Tonry, 1995), we predicted that findings from our data would show that the harshest sentences were meted out to young minority males.

This effort is grounded in two main strands of sentencing theory: micro-level theory of judicial decision making, specifically focal concerns theory, and macro-level theories of inter-group conflict and threat. While conflict and focal concerns theories make similar predictions regarding sentencing outcomes for young minority males, they employ different explanations that may initially appear to be incompatible. However, the explanation for racial/ethnic disparities in judicial decision making presented by focal concerns theory appears to rest, at least in part, on many of the tenets of conflict theory, such as racial/ethnic stereotypes, fear and threat. When these two theories are viewed together, it may be reasonable to consider that the focal concerns of judges represent the more proximate cause of sentencing outcomes, but that the content of certain focal concerns is rooted in the features of culture and structure posited by conflict theory. In other words, the focal concerns of judges can be used to explain how the perceptions of racial/ethnic threat posited by conflict theory become manifested in differential sentencing decisions or, conversely, the arguments of conflict theory may help to account for the content of certain judicial focal concerns. Specific focal concerns pertaining to gender (see Steffensmeier et al., 1993) were, in a similar fashion, connected by Curry et al. (2004) to chivalry, a gender-based theory of cultural and structural influences on sentencing outcomes. Focal concerns pertaining to offender age may also have roots in conflict theories, specifically Tittle and Curran's (1988) argument that offender age may be linked to levels of perceived threat. Given the mutual relevance of macro-level conflict and chivalry theories and micro-level focal concerns theory, as well as the more complete explanation for sentencing outcomes these theories provide when viewed in tandem, we argue that together these theories represent a more complete framework from which to consider the combined effects of offender race/ethnicity, gender and age.

The findings from the present research are generally supportive of these theories, but key differences were found between the two minority groups in the jurisdictions we studied. While as a group African Americans were 9 percent more likely to receive a

prison sentence and received sentences that were 19 percent longer than Whites, no main effects were observed for Hispanics. Both Black and Hispanic males had incarceration probabilities that were 17–18 percent higher, but only Black males had longer sentences among those who were incarcerated. As analyses became more refined by including the conditional effect of age, the magnitude of the effects increased further. Hispanic males aged 31–40 were 31 percent more likely to be sentenced to prison, while Black males aged 22–30 were 30 percent more likely to receive a prison sentence and, furthermore, this group received prison sentences that were 27 percent longer. The sizes of these effects are somewhat larger than those in prior studies (Steffensmeier et al., 1998; Spohn and Holleran, 2000; see also Chiricos and Bales, 1991; Nobiling et al., 1998).

In terms of interpretation, the findings from the present research show that African American drug offenders as a whole were viewed as particularly threatening or, through the lens of focal concerns theory, more culpable for their crimes, more of a danger to their communities and were also penalized in light of practical constraints and considerations. These trends were enhanced for African American offenders who were male and young, and persisted across both the in/out and sentence length stages. In contrast, for Hispanics, unfavorable judicial attributions and perceptions of threat were more limited, being restricted only to males and the in/out decision. Focal concerns and threat perceptions also differed according to age, with Hispanic males aged 31–40 being especially likely to receive incarceration, while Black males aged 22–30 were more likely to be imprisoned and to receive longer sentences.

Based on these results, it appears that minority males are penalized for belonging to the 'dangerous class', representing greater perceived threat to elites and receiving more negative attributions through judicial focal concerns. These penalties, however, appear to be more general for African American males who are penalized at both sentencing stages, perhaps because of stereotypes that Blacks are prone to criminal involvement (see Steffensmeier et al., 1998) and thus seen as more threatening to elites, and a greater danger to the community by judges. Regarding differences in the effect of age, it may be that Hispanic male drug offenders in their 30s are viewed as more hardened and devoted to criminal lifestyles and more representative of the 'narcotrafficante' stereotype, and therefore come to be regarded as more of a threat to society and more culpable for their crimes. African American males in their 20s may be perceived as particularly dangerous due to a lack of self-discipline associated with their relative youthfulness (see Tittle and Curran, 1988).

The results presented here, however, must be considered in light of certain limitations in measures and analyses. Importantly, these data contained no information on offender income, education or occupation (however, use of a private attorney represents a proxy for income). No measure of 'family' variables, such as whether offenders were married or had children, was available. Because these data come from a sample of convicted felons, there was no information on arrest or prosecutorial decisions or the cumulative disadvantage that such decisions might have for certain groups of offenders. Had these additional data been available, the effects we observed might have been attenuated or even rendered non-significant. While we did control for county of conviction, we did not include other social contextual variables in our analyses. However, recent findings indicate that most of the 'action' at sentencing occurs at the individual level (Ulmer and

Johnson, 2004; see also Mitchell, 2005). The small number of offenders in some combinations of race/ethnicity, age and gender restricted analyses in some cases.

This study also has several strengths. Most importantly, these data included legally relevant measures of prior record, offense seriousness, total current convictions and offense type that are essential for sentencing research. Additionally, these data are also not limited to a single jurisdiction where idiosyncratic effects might be more likely to influence results. Finally, the analyses were rigorous in that models were checked for multicollinearity, and employed controls for social context (in the form of county of conviction) and, in analyses of sentence length, for selection bias.

In terms of specific contributions to the sentencing literature, this study helps to answer the call by Steffensmeier and Demuth (2006) for studies of race/ethnicity and sentencing outcomes to include Hispanics, to test for interaction or conditional effects between race/ethnicity and other offender characteristics and for such studies to focus on a single state or locality but to include multiple jurisdictions. The results of this study also address findings from Mitchell's (2005) recent meta-analysis that racial disparities tend to be stronger for drug offenses and speak to the need for sentencing research to focus on situations where disparities are most pronounced (Peterson and Hagan, 1984; see also Spohn, 2000). Future research should continue to employ precise hypotheses that include multiple offender characteristics in order to better predict and understand the causes of disparities in sentencing outcomes. Additional refinements to hypotheses could include, among other things, characteristics of crime victims (see Curry et al., 2004), focusing on specific types of crime, or on the times and places where disparities may be most evident. Researchers may also wish to develop a theoretical understanding of the tendency for racial/ethnic disparities to be more common at the in/out sentencing stage compared to the sentencing length stage. While recent literature reviews of race/ethnicity and sentencing by Chiricos and Crawford (1995) and Spohn (2000) acknowledge this pattern, no study to our knowledge has yet sought to understand it in a systematic way. In some cases, this pattern may reflect levels of judicial discretion (which may be more restricted in the case of sentence length), while in other cases, such as the finding in the present research, it may emerge because the in/out decision satisfies judicial focal concerns or threat perceptions thereby mitigating these factors when deciding the length of sentences.

Notes

- 1 From this point forward, non-Hispanic African Americans will be referred to as African Americans or Blacks and non-Hispanic Whites will be referred to as Whites.
- 2 Because they represented such a small percentage of drug felonies, those cases involving hallucinogens ($n = 23$) and conspiracy or manufacture of any drug ($n = 17$) were deleted from analyses.
- 3 The state jail felony sentence that Texas employs today was not implemented until 1994.
- 4 Article 42.12, section 5 of the Texas Code of Criminal Procedure states that a judge may defer an adjudication of guilt and place an offender on community supervision for a period not to exceed 10 years. Because of their similarity, deferred adjudications are combined with probation sentences in the analyses below to comprise the group of offenders who are not sentenced to prison.

- 5 Because only three of the offenders in our sample were sentenced to serve their time in a county jail, these subjects were deleted from analyses. This situation stems from the fact nearly all offenders who were sentenced to incarceration received at least a one-year sentence and, therefore, would serve their time in prison as opposed to jail. Removal of these three cases obviates the concern raised by Holleran and Spohn (2004) that jail and prison sentences may be distinct outcomes and require that analyses account for that distinction.
- 6 Because such a conceptualization of age is somewhat arbitrary, supplementary analyses (not reported) employed alternative measures of age – specifically, raw scores, a quadratic term and different cut-off points for dummy variables. None of these alternative measures, however, produced results that challenge the findings presented later.
- 7 Intent to deliver cases were combined with delivery cases because there were very few intent cases ($n = 180$) and because nearly all of the intent cases (90%) and delivery cases (95%) were disposed as first degree felonies.
- 8 The hazard term was created in accordance with the Heckman two-step procedure which employs a probit model and the inverse Mills ratio to calculate the probability of being incarcerated for each case followed by an OLS regression model that controls for this probability (see Bushway et al., 2007). However, while Bushway et al. (2007) caution that hazard terms may introduce multicollinearity into OLS models, our measures of model multicollinearity (VIF analyses) showed results that are substantially below commonly used thresholds of concern (Belsley et al., 1980; Cohen et al., 2003). As an additional precaution, supplemental analyses (not shown) of the models with the hazard term omitted yielded results that do not significantly change the findings presented here.

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