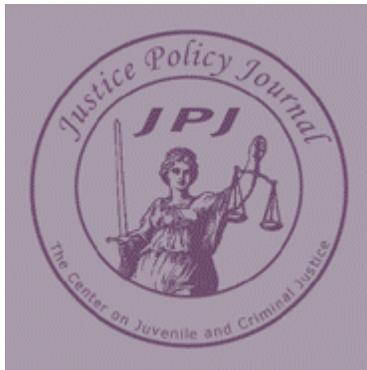


**Intra-Ethnic Variation in  
Sentencing for Hispanic Drug  
Offenders**

**Durant Frantzen and Robert Worley\***



Volume 5 – No. 1 – Spring 2008

*\* Durant H. Frantzen is an assistant professor at Texas A & M International University. Robert M. Worley, Ph.D. is an assistant professor at the University of Texas of the Permian Basin.*

## **Abstract**

*Over the last two decades most research on sentencing disparity has focused on inter-racial differences as opposed to intra-group variations. As the Hispanic immigrant population increases sentencing policy must adapt to changes in the dynamics of the offender population. Toward this end, research is needed to explore the effects of case processing and socioeconomic factors on sentencing outcomes among homogeneous groups such as Hispanics. This study examined the collective effects of case processing and socio-demographic factors on sentencing dispositions among an exclusive sample of Hispanic felony drug offenders. Multinomial logistic regression showed that case processing factors significantly affected the odds that an offender received a particular type of sentencing disposition, e.g., case dismissal, probation, or prison. Binomial logistic regression analysis indicated that legal factors such as the offender's prior criminal history significantly affected the odds that one received prison as opposed to probation. The implications from these findings are discussed and recommendations for future research are suggested.*

## About the Authors

Durant H. Frantzen is an assistant professor at Texas A & M International University. He received his Ph.D. in 2006 from Sam Houston State University. Prior to completing his degree, he worked as a financial crimes investigator for ten years. He is coauthor of *The Death Penalty: Constitutional Issues, Commentaries and Case Briefs*. Dr. Frantzen's research interests include legal topics in criminal justice and court systems. Specific areas of interests include police liability, police interrogation, and constitutional law topics. His e-mail is: dfrantzen@tamiu.edu

Robert M. Worley, Ph.D. is an assistant professor at the University of Texas of the Permian Basin. His research has appeared in journals such as *Deviant Behavior*, *Criminal Law Bulletin*, and *Criminal Justice Review*. His research topics focus on inmate-guard relationships, white-collar crime, capital punishment, and legal issues in criminal justice.

## **Intra-Ethnic Variation in Sentencing for Hispanic Drug Offenders**

### **Introduction**

Scholars have often linked disparity in judicial sentencing to racial stereotypes, claiming that disadvantaged minorities are more likely to receive harsher sentences than are non-minorities. One theory supporting this perspective is the “focal concerns” model, which attempts to explain sentencing disparities for offenders according to racial, ethnic, and socio-demographic differences (Spohn & Holleran 2002; Steffensmeier, Ulmer, & Kramer 1998; Steffensmeier & Demuth 2000). Representing the opposite end of the continuum is the organizational or case processing approach, which argues that offender processing is more a function of contextual variables as opposed to socio-demographic factors (Emerson 1983; Sudnow 1965; Woolredge 1998). In this latter approach, decisions about criminal processing are based on overall case workload and courtroom efficiency and not stereotypes (Emerson 1983; Steen, Engen, & Gainey 2005). Regardless of the approach taken, research has inherently focused on the use of multi-racial and ethnic samples but few studies have analyzed sentencing disparities within specific groups of offenders. Further, evidence shows that the ethnic composition of state prison populations is changing rapidly. Between the years 1990 and 2005 the Hispanic and black offender populations in state and federal prisons have increased 22% and 13% respectively (Males 2007). As Hispanic immigration rises, the factors affecting judicial processing of certain groups of offenders ultimately changes as well.

The focus of this study was to examine sentencing disparity among an exclusive population of Hispanic drug offenders in a state with an indeterminate sentencing scheme. Data for this study were collected via a random systematic sample of disposed felony drug cases (e.g., dismissals, probation, or prison sentences) for the years 2002-2005. Specific hypotheses were

generated about the effects of case processing and demographic factors on sentencing dispositions and tested using multinomial logistic and binomial logistic regression techniques.

## **Literature Review**

### ***Factors Affecting Sentencing Outcomes***

The offender's prior criminal record and the seriousness of the offense are generally regarded to be the main variables affecting sentencing dispositions. Beyond these factors there is disagreement about what factors truly affect sentencing disparity. In contrast to perspectives that rest entirely on the relationship between socio-demographic or case processing factors and sentencing outcomes, a "holistic" approach takes into account elements from each of these perspectives. One of the pioneers of this research was the work of Emerson (1983), who noted that it "is not so much the individual case as it is this larger set of cases that they [control agents] are organizationally and administratively responsible" (426). Recent research by Steen and colleagues (2005) has built on this theory, arguing that a similar approach is needed to "bridge the gap" between racial stereotypes, case processing factors and criminal sentencing. This research suggests that the effects of race, age, and employment on sentencing dispositions are contextualized by case processing characteristics, such as whether the defendant elected to have a trial or whether there were accomplices involved in the offense.

### ***Race and Sentencing Disparity***

A significant literature has explored the relationship between race/ethnicity and sentencing outcomes (Farnworth, Teske, & Thurman 1991; Steffensmeier, Ulmer, & Kramer 1998; Tonry 1996; Zatz 1987). Although a full review of this research is outside the scope of this paper, most studies have shown that Black defendants disproportionately receive harsher sentences than whites, particularly for certain types of offenses (Gross 1997; Walker, Spohn, &

Delone 2006). Other research has indicated that race and other demographic factors do not affect sentencing outcomes once legal variables are controlled for (Chiricos & Waldo 1975; Pasko 2002). Studies show that there are main effects for race or ethnicity on sentencing outcomes, but the bulk of this research stresses the relevance of interactive effects of race, age, and gender (Spohn & Holleran 2000; Steffensmeier, et al. 1998). More specifically, young, minority males are more likely to be sentenced the most severely among all offenders. Additionally, research has examined disparities in sentencing by accounting for ethnic differences, such as including Hispanics as a separate minority group (Pasko 2002; Steffensmeier & Demuth 2001). These studies have shown that “Hispanic defendants are most at risk to receive the harshest penalty for both the in/out term length sentence decisions and for both drug and non-drug cases” (Steffensmeier & Demuth 2001: 170). Farnworth, et al. (1991) found that Hispanic stereotypes, such as “poverty, lack of education, and temporary or illegal residency place Hispanics in a more disadvantaged social position than other minority groups” (Pasko 2002: 310). Similarly, Spohn and Holleran (2000) noted that “Hispanics, like Blacks, are perceived by Whites to be poor, lazy, uneducated, unintelligent, and prone to violence” (282); and therefore, these stereotypes will result in more punitive sentences for Hispanics. In the federal system, Steffensmeier & Demuth (2000) showed that Hispanics were more likely to be discriminated against than were Blacks and Whites.

These studies demonstrate the inherent connection between racial discrimination for Hispanics relative to other groups. However, when judicial processing outcomes are examined in regions predominantly occupied by Hispanics discrimination based on age, gender, and economic status may become neutralized. The regional effects for judicial processing of Hispanics may be affected by the specific processes that operate within that particular culture of

the population and hence the threat of discrimination based on socioeconomic factors may become nonexistent. If this assumption holds true then it follows that case processing factors will better explain variation in sentencing for specific groups, particularly minorities.

### ***Case Processing Factors and Sentencing Outcomes***

Organizational work group theory holds that legal actors make prosecutorial decisions based on the required effort it takes to obtain a conviction against a defendant and overall case flow (Emerson 1983; Steen, et al. 2005; Waegel 1981; Walker, et al. 2006). According to this model, the emphasis shifts to contextual factors instead of offender characteristics. Further, offenders who commit their crimes as part of a group may be perceived as more difficult to prosecute than those who do not, requiring more organizational resources and manpower. One of the seminal works dealing with the case processing perspective is Sudnow's (1965) research on "normal crimes." According to this perspective, legal actors maintain certain perspectives about what crimes are considered routine or deserving of more investigative attention. In brief, the issues underlying the case processing approach may be based on any combination of factors related to organizational culture, evidentiary standards, or courtroom efficiency.

One of the most common issues that affects case processing is plea bargaining, which is a necessary tool in our system of justice. In fact, a defendant's unwillingness to plea bargain has been linked to an increase in sentence severity. In her study on federal sentencing outcomes, Pasko (2002) noted that factors likely to enhance an offender's sentence were "going to trial, refusing to accept responsibility, and refusing to assist the court in the prosecution of other *drug* offenders" (312). In the federal system, defendants are given sentence reductions for providing "substantial assistance" to federal prosecutors where multiple actors are involved. However, research focusing on state-level sentencing has produced different results. Harrington et al.

(2007) recently examined a large sample of convicted offenders in a state with indeterminate sentencing and found that plea bargaining did not significantly affect the decision to incarcerate (e.g., prison vs. jail) as compared with a probation sentence. As a practical matter, most defendants are offered the chance to plea bargain early in the pre-trial process. As Harrington et al. (2007) note, judges have been known to impose a “trial penalty” on defendants who choose to take their case to court as opposed to those who resolve their case early through early plea agreements.

### *Type of Counsel*

The effect of counsel type on sentencing disposition has always been a controversial issue, although the research on this topic is relatively scant. Although all criminal defendants have a Sixth Amendment right to counsel and a Fourteenth Amendment right to due process, the effectiveness of court-appointed attorneys has remained questionable. Research indicates that public defender systems suffer from poor funding and overburdening caseloads (Ogletree 1995). As a consequence, studies have shown that those who are represented by public defenders receive harsher sentences than those represented by private attorneys (Hanson, Hewitt, Ostrom, & Lomvardias 1992; Stover & Eckhart 1975). The validity of this assertion, however, has been criticized on the basis of organizational and work group theory effectiveness (Savelsberg 1992; Walker, Spohn, & Delone 2006). These authors suggest that public defenders are more likely to negotiate a lenient sentence for their clients than are private attorneys because of their familiarity with courtroom actors such as prosecutors and judges. Support for this contention was demonstrated by Williams (2002), who analyzed roughly 10,000 disposed felony cases in one Florida county during the years 1994-1996 and found that sentence dispositions (e.g., probation, incarceration, sentence length) did not vary according to type of legal representation. In general,

the authors determined that legal variables had the most significant effect on sentencing dispositions.

The type of legal counsel a criminal defendant receives has important policy implications for taxpayers, counties, and the families of indigent criminal defendants. Minority defendants, many of which are poor and unemployed, are likely to be represented by public defenders and not private attorneys. From a theoretical standpoint, Spohn & Holleran (2000) suggest that the link between unemployment and sentence severity is strong: “the assumption is frequently made that if you are a young, Latino youth, and especially Latino male, you are a gun-wielding, drug-selling gang-banger” (Portillos 1998:156). According this perspective, Hispanic drug offenders would ostensibly receive more punitive sentences than those represented by private attorneys due to racial and economic stereotypes.

### **Methodology**

The main objective of this study was to examine intra-ethnic differences in sentencing outcomes within a population of Hispanic felony drug offenders. Accordingly, the study tested the effects of selected case characteristics and demographic variables on type of sentence (e.g., prison, probation, or dismissal). Second, the study examines these factors in a state with indeterminate sentencing, where judges and prosecutors retain much broader discretion in terms of sentencing options.

### ***Data Sources***

The current study consisted of a total sample of 393 disposed felony drug offender cases for the years 2002 to 2005 from the district courts of two counties located along the Texas-Mexico border. According to the Department of Justice, seventy-one percent of the Texas population is defined as Caucasian, 11.5 percent African American; and 14 percent are defined

by another race or more than one race (DOJ 2003). Thirty-two percent are defined as Hispanic. Combining the data for both counties surveyed in the current study, most were of Hispanic origin (94.4%). Accordingly, the demographics of the study sample were commensurate with those of the region— 97 percent of the offenders were Hispanic; 3 percent were identified as non-Hispanic.

Table 1 contains information on the breakdown of case dispositions by year. The information on each case was collected through case files and court records made available to the public through the District Clerk's office. Data on all records were obtained through the office of one District Clerk, due to the fact that the larger of the two counties has court jurisdiction of the other. Only disposed or dismissed cases were counted as part of the sampling frame, active cases could not be reviewed. All case files were ordered sequentially by year and by case number, which allowed for identification and review of all disposed cases from the total population. For each year, the total number of dismissed and disposed cases was calculated. Each case was reviewed either through the case file or computer using a random systematic sampling method.

For offenders given probation or prison, the original court docket number was obtained via computer records and then cross-referenced to each case file. The sampling interval for years 2002-2003 was approximately every third case, and for 2004-5 every other case. In some instances disposed case files were not sequentially arranged, which caused the sampling interval to vary somewhat. In cases where original files could not be located, the next case file was selected by sequence.

**Table 1****Case Dispositions by Year (N=360)**


---

Year		Total	<i>n</i>	Percent
2002	Dismissed	75	15	20
	Disposed	171	60	35
2003	Dismissed	191	35	18
	Disposed	208	61	29
2004	Dismissed	212	41	19
	Disposed	139	61	44
2005	Dismissed	124	22	18
	Disposed	118	65	55

---

Note: The “disposed” category includes probation and prison groups.

All data for dismissed cases could be accessed readily from computerized records, thus there were no missing data associated with these cases. I selected approximately every fifth dismissed case from the computerized file. All available files and records were reviewed in order to obtain each offender’s relevant legal and extralegal information. Similarly, twenty-four of the probation and prison subject records could not be located due to fact that the case files were lacking necessary information or missing altogether. Because nine subjects were identified as non-Hispanic, these subjects were eliminated in order to make the entire sample homogenous. This resulted in a final sample of 360 cases.

***Dependent Variables***

The dependent variable consisted of all court disposition possibilities—probation ( $n=186$ ), prison ( $n=61$ ), or case dismissal ( $n=113$ ). For the multinomial logistic regression analysis, the final category (dismissed) was the reference category. Because there was no

information on the offender's prior criminal record for dismissed cases, these variables were excluded from the multinomial analysis. However, a separate logistic regression analysis was conducted for the probation and prison groups because prior criminal record was available for sentenced offenders.<sup>1</sup>

### ***Independent Variables***

The information regarding offender and offense characteristics are contained in Table 2. The independent variables used in this study consist of legal, demographic, and case processing characteristics. Demographic included the offender's age, measured as a continuous variable, and gender type, which was measured as a dichotomous variable (1=male, 0=female). Case characteristics included the number of weeks to case disposition from the time of arrest (continuous variable); codefendant status (1=codefendant present, 0=not present); and type of legal representation (1=private attorney, 0=public defender), which were measured as dichotomous variables. Legal variables included the number of prior felony and misdemeanor arrests, and offense seriousness, which were coded as continuous variables.

---

<sup>1</sup> For sentenced offenders, each offender's driver's license was queried in the county's criminal history record base. In most cases this information was matched on drivers' license number, but in some instances case information was cross-referenced via date of birth and arrest date.

**Table 2****Offender and Offense Characteristics by Case Disposition Type**

<b>Offender Characteristics</b>	<b><u>Dismissed</u></b>		<b><u>Probation</u></b>		<b><u>Prison</u></b>	
	<b><i>n</i></b>	<b>Percentage</b>	<b><i>n</i></b>	<b>Percentage</b>	<b><i>n</i></b>	<b>Percentage</b>
Age (mean)		32.6		29.47		30.4
Gender						
Male	102	90.3	171	91.9	56	91.8
Female	11	9.7	15	8.1	5	8.2
Counsel Type						
Private Attorney	53	53.1	84	45.2	23	62.3
Public Defender	60	46.9	102	54.8	38	37.7
Codefendant Status						
Present	60	46.9	73	39.2	39	63.9
Not Present	53	53.1	113	60.8	22	36.1
Weeks to Disposition (mean)		64.13		52.87		58.5
Prior Felonies (mean)		---		2.2		4.02
Prior Misdemeanors (mean)		---		2.15		5.2
Offense Seriousness (mean felony level)		2.18		2.21		2.25
Length of Sentence (mean)		---		58.28		29.38

***Method of Analysis***

The hypotheses were tested using multinomial logistic and binary logistic regression techniques. For the entire sample, multinomial logistic regression was used. Guevara, et al. (2004) report that this method is “the most appropriate technique for a dependent variable with several categories” (354). Multinomial logit tests the effects of a set of independent variables on a dependent variable with unordered response groups. For example, it tests the probability that a

case will be classified in one category as opposed to a designated reference category (Guevara, et al. 2004). For the entire sample, the probabilities of being in the other two groups (e.g., probation or prison) were compared to the probability of being in the “dismissed” group (reference group).

The multinomial logistic regression analysis tested the main effects of five independent variables on sentencing dispositions—gender, age, type of legal representation, time to court disposition and codefendant status. The “seriousness of the offense,” measured as drug type and weight, was used as a control variable in the analysis. Texas has a four-level felony scheme comprised of a first, second, third, and State Jail Felony. The seriousness of the offense is dictated by the weight and type of controlled substance possessed. For example, the possession of a controlled substance in the range of 200 to 400 grams of cocaine is considered a first degree felony; 4-200 grams is a second degree felony; 1 to 4 grams is a third degree felony; and less than 1 gram is a state jail felony. Similarly, possession of 50-2000 pounds of marijuana is a second degree felony, 5-50 pounds is a third degree felony; and 40 ounces to 5 pounds is a state jail felony. Heroin and other forms of controlled substances are classified according to a similar structure. Whether the case involved distribution or possession of narcotics, this aspect of the offense was also controlled for in the charging scheme. This variable was reverse-coded and rank ordered to reflect the relationship between the seriousness of the offense and the felony grade. In cases where an offender was charged with more than one offense, only the most serious offense was counted.

The binary logistic regression analysis included two additional variables—the number of prior felony and misdemeanor arrests. For this statistical procedure, the sub-sample of dismissed cases was excluded to test the effects of the independent variables on sentenced offenders. Research has indicated that the addition of prior criminal record enhances the validity of findings

when dismissed cases have been eliminated and guilty defendants are independently examined (Woolredge 1998).

### ***Hypotheses***

The current study examined the effects of case characteristics (e.g., time to court disposition, codefendant status, and counsel type), and demographic variables (age and gender) on the sentencing dispositions among a population of Hispanic felony drug offenders, net of legal variables.

*Hypothesis 1:* Defendants charged with at least one accomplice are more likely to have their case dismissed and less likely to receive probation or prison than are those charged without a codefendant.

*Hypothesis 2:* As time to court disposition increases, defendants are more likely to receive prison or probation and less likely to have their case dismissed.

*Hypothesis 3:* Defendants represented by court-appointed attorneys are more likely to receive case dismissals and less likely to receive prison or probation.

### **Results**

#### ***Direct Effects***

Table 3 displays the results of the analysis for the multinomial logit analysis. The statistical analysis provided support for hypothesis one. Those who faced charges with a codefendant were significantly less likely to receive a prison sentence (-.814) than were those who were not charged with at least one accomplice. Similarly, the results showed that defendants who were originally charged with a codefendant were significantly less likely to receive a sentence of probation (-.67) and more likely to have their case dismissed than those who faced

charges without a codefendant. Therefore, the statistical results provided support for the first hypothesis.

**Table 3**

**Multinomial Logit Results for the Entire Sample (N=360)**

	<u>Probation</u>		<u>Prison</u>	
	<i>b</i>	Odds Ratio	<i>b</i>	Odds Ratio
Age	-.036	.965*	-.025	.975
Gender Type	-.144	.866	-.119	.888
Counsel Type	-.075	.928	-.339	.671
Defendant Type	-.67	.512*	-.814	.443*
Time to Disposition	-.008	.992*	-.003	.997
Offense Seriousness	.135	1.14	.24	1.27
Psuedo $R^2 = .074$				
-2Log Likelihood: 698.71				

*Note:* The reference category is dismissed.  
 \*estimates significant at  $\leq .05$ .

Results of the multinomial logistic regression analysis did not support hypothesis 2. Interestingly, the results showed that an offender was slightly less likely to have received probation (-.008) and more likely to have had their case dismissed as the time to court disposition increased. However, time to court disposition did not affect the odds that an offender would receive a prison sentence rather than case dismissal.

Hypothesis three was also rejected. The type of legal counsel did not significantly affect the odds of an offender receiving prison or probation as opposed to a case dismissal.

For demographic variables, results showed that an offender's age (-.036) significantly affected sentence type. Specifically, the current analysis indicated that as an offender's age increases one is significantly less likely to get probation and more likely to have their case dismissed. However, the offender's age does not significantly affect the odds of whether a defendant will receive a prison sentence as compared to having their case dismissed. Likewise, an offender's gender type did not affect the odds of receiving prison or probation as opposed to case dismissal.

### ***Binomial Logit Analysis***

Logistic regression was also used to test differences between those defendants sentenced to probation rather than prison, net of legal covariates. Logistic regression analysis is appropriate for analyses with a dichotomous dependent variable (Studenmund 1997). Accordingly, dismissed cases were eliminated from the logit analysis.

Table 4 reports the results from the binary logistic regression analysis. After eliminating dismissed cases and accounting for the prior criminal history of defendants, a different picture emerged. The binomial logistic regression analysis indicated that only Prior Felony Arrests (1.15) and Prior Misdemeanor Arrests (1.15) significantly affected the odds of whether an offender received prison rather than probation. The seriousness of the offense, however, did not affect the odds that one would receive a prison term. Therefore, the binomial logit analysis shows that once legal variables are controlled for, case processing and demographic factors do not reliably distinguish between defendants sentenced to prison as opposed to probation.

**Table 4**

**Binomial Results for Defendants Sentenced to Probation or Prison (N=247)**

---

<b>Sentence Type (1=Prison, 0=dismissed)</b>	<b><i>b</i></b>	<b>Odds Ratio</b>
Age	-.015	.985
Gender Type	-.449	.683
Counsel Type	-.334	.716
Defendant Type	.146	.16
Time to Disposition	.005	1.0
Offense Seriousness	.286	1.33
Prior Felony Arrests	.143	1.15*
Prior Misdemeanor Arrests	.14	1.15*

Nagelkerke  $R^2 = .17$   
-2Log Likelihood: 246.46  
Overall Hit Ratio: 78.1 (null model=75.0)  
Hosmer and Lemeshow  
Chi-square 10.52,  $p = .23$

---

\*estimates significant at  $\leq .05$ .

**Discussion**

The goal of the current study was to examine intra-ethnic sentencing dispositions among a population of Hispanic felony drug offenders in a state with an indeterminate sentencing scheme. More specifically, this research explored the effects of case processing and demographic variables across sentencing dispositions (e.g., case dismissals, probation, and prison).

Multinomial logistic and binary logistic regression techniques were used to test the research hypotheses.

Research on racial disparity in sentencing has indicated that Hispanics receive harsher treatment from the judicial system relative to other groups (Albonetti 1997; Pasko 2002; Steffensmeier & Demuth 2000; Spohn & Holleran 2000). However, in a previous study on sentencing, Steen et al. (2005) indicated that “minority status may homogenize the perceptions of legal decision-makers, thus minimizing individual differences among cases” (464). Through an examination of an exclusive population of Hispanic felony drug offenders, this study attempted to neutralize the effects of ethnicity on sentencing disposition so that other demographic and case processing factors could be independently analyzed.

The multinomial logistic regression findings showed that case processing variables were better predictors of sentencing outcomes relative to demographic variables such as age and gender. More to the point, the results indicated that an offender charged with a codefendant was significantly more likely to have their case dismissed and less likely to receive a sentence of probation or prison. This finding supports the idea that prosecutors are less likely to offer attractive plea deals to offenders who are not charged with a codefendant. This result may be due to specific evidentiary problems encountered by prosecutors when deciding culpability among individual offenders when crimes are committed in groups rather than when offenders act alone.<sup>2</sup>

Contrary to the stated hypothesis defendants were more likely to have their case dismissed and less likely to receive probation as time passed from arrest to court disposition. Further, time to court disposition did not affect the odds of an offender receiving prison rather than case dismissal. This result confirms Harrington et al.’s (2007) recent finding that judges do

---

<sup>2</sup> Each of three Assistant District Attorneys, including the lead prosecutor, was interviewed individually regarding their experiences with prosecuting drug offenders. They all indicated that many cases are dismissed because the offender ultimately fled to Mexico to avoid prosecution. However, they also concurred that they had not determined a linkage between specific types of cases and the probability that offenders would abscond from justice.

not impose a “trial penalty” on defendants who elect to take their case to trial or prolong the dispositions of their cases.

Research regarding sentencing outcomes and type of legal counsel has conflicted. The organizational, or court work room theory posits that public defenders are more likely to negotiate favorable sentences for defendants than are private attorneys. Social disadvantage theory suggests quite the opposite - that private attorneys are generally better skilled and trained than are public defenders. This research adds to the body of sentencing literature supporting the former perspective. Although there is no statistical advantage to receiving court appointed counsel, there is no statistical *disadvantage* to court-appointed representation.

Only one demographic variable—the age of the defendant—was significant in the multinomial analysis. Specifically, the results showed that older offenders were less likely to receive probation and more likely to have had their case dismissed. However, older offenders were not more likely to have their case dismissed as opposed to receiving a prison sentence. This finding counters the more general trend across the U.S. that more punitive sentences are imposed on older offenders ostensibly because they are more likely to be repeat offenders. The offender's gender type had no effect in the multinomial analysis.

When dismissed cases were eliminated and prior criminal record was included in the analysis, a somewhat different picture emerged. The binomial logistic regression analysis showed that an offender’s prior criminal history significantly affected the odds that an offender would receive a prison as opposed to a probation sentence. Interestingly however, the seriousness of the offense did not. According to these results, judges appear to make judgments about an offender’s culpability and risk potential based upon whether or not they are a repeat

offender without giving much consideration for the seriousness of the offense, as Harrington et al. (2007) recently suggested in their sentencing study.

### **Conclusion**

Some forty years have passed since Sudnow (1965) developed a holistic approach to understanding criminal case processing based on the idea of “normal crimes.” Since that time many studies have emphasized interracial differences, but few have focused on homogenous samples of minority defendants. This study addresses this gap in the body of sentencing research by examining sentencing dispositions among Hispanic felony drug offenders across a number of case processing, legal, and demographic variables. The results showed that socio-demographic factors such as gender, age, and counsel type were the least influential of all variables tested in this study, while legal and case processing factors consistently affected results in the multinomial and logistic regression analyses.

In addition to race-based perspectives on sentencing, there is a need to examine alternative case characteristics that define the *mode* in which particular crimes are committed. This study specifically examined felony drug offenses, but future research should focus on the relationship between case processing variables and other crime types. These factors become particularly important when reference groups are eliminated and specific minority offender groups are examined. This study has important policy implications for the manner in which our judicial system processes offenders given the many states that retain indeterminate sentencing schemes where the potential for inequity is enhanced. It is essential that sentencing policy remains tailored to specific groups of offenders because of the shifting dynamics in our current state and prison populations. At the least, this study has provided new evidence on the subject of

sentencing disparity within groups and the manner in which the legal system processes Hispanic minorities in our contemporary system of justice.

## References

- Albonetti, Celesta A. (1997). Sentencing Under the Federal Sentencing Guidelines: Effects of Defendant Characteristics, Guilty Pleas, and Departures on Sentencing Outcomes for Drug Offenders, 1991-1992. *Law and Society Review* 31, pp. 789-822.
- Chiricos, Ted, and Gordon Waldo. (1975). Socioeconomic Status and Criminal Sentencing: An Empirical Assessment of a Conflict Proposition. *American Sociological Review* 40, pp. 753-72.
- Department of Justice. (2003). *Texas Drug Threat Assessment Report*. Washington, D.C.
- Emerson, Robert M. (1983). Holistic Effects in Social Control Decision-Making. *Law and Society Review* 17(3), pp. 425-56.
- Farnworth, Margaret, Raymond Teske, and Gina Thurman. (1991). Ethnic, racial, and minority disparity in felony court. In M. Lynch & E. Patterson (Eds.), *Race and Criminal Justice*. New York: Harrow and Heston.
- Guevara, Lori, Cassia Spohn, and Denise Herz. (2004). Race, legal representation, and juvenile justice: Issues and Concerns. *Crime and Delinquency*, 50(3), pp. 344-71.
- Gross, Samuel (1997). Crime, politics, and race. *Howard Journal of Law and Public Policy* 20(2), pp. 405-415.
- Harrington, Micheal P., and Cassia. Spohn. (2007). Defining Sentence Type: Further Evidence Against Use of the Total Incarceration Variable. *Journal of Research in Crime and Delinquency* 44(1), pp. 36-63.
- Hanson, Roger A., William E. Hewitt, Brian J. Ostrom, and Chris Lomvardias. (1992). *Indigent Defenders Get the Job Done and Done Well*. Williamsburg, VA: National Center for State Courts.
- Males, Mike (2007). Analyzing U.S. prison growth. *Center on Juvenile and Criminal Justice*, NCJ 218451. Available at: [www.cjcj.org](http://www.cjcj.org). Washington, D.C.
- Olgletree, Charles (1995). An Essay on the New Public Defender for the 21<sup>st</sup> Century. *Law and Contemporary Problems* 58, p. 81.
- Pasko, Lisa (2002). Villain or Victim: Regional Disparity in Federal Drug Offense Sentencing. *Criminal Justice Policy Review* 13(4), pp. 307-28.
- Portillos, Eduardo L. (1998). Latinos, gangs, and drugs. In Mann and Zatz (eds.), *Images of color, images of crime*. Los Angeles: Roxbury.
- Savelsberg, Joachim (1992). Law That Does Not Fit Society: Sentencing Guidelines as a

- Neoclassical Reaction to the Dilemmas of Substantivized Law. *American Journal of Sociology* 97, pp. 1346-81.
- Spohn, Cassia and David Holleran. (2000). The Imprisonment Penalty Paid by Young, Unemployed, Black and Hispanic Male Offenders. *Criminology* 38, pp. 281-306.
- Steen, Sara, Rodney L. Engen, and Randy R. Gainey. (2005). Images of Danger and Culpability: Racial Stereotype, Case Processing, and Criminal Sentencing. *Criminology* 43(2), pp. 435-468.
- Steffensmeier, Darryl, Jeffery Ulmer, and John Kramer. (1998). The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male. *Criminology* 36, pp. 763-97.
- Steffensmeier, Darryl, and Stephen Demuth. (2000). Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly? *American Sociological Review* 65(5), pp. 705-29.
- Steffensmeier, Darrell, and Stephen Demuth. (2001). Ethnicity and Judges' Sentencing Decisions: Hispanic-Black-White Comparisons. *Criminology* 39(1), pp. 145-178.
- Stover, Robert V., and Dennis R. Eckart. (1975). A Systematic Comparison of Public Defenders and Private Attorneys. *American Journal of Criminal Law* 3, p. 265.
- Studenmund, A.H. (1997). *Using Econometrics: A Practical Guide*. Reading, MA: Addison-Wesley.
- Sudnow, David (1965). Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office. *Social Problems* 12(3), pp. 255-76.
- Tonry, Michael (1996). *Sentencing Matters*. New York: Oxford University Press.
- Waegel, W.B. 1981. Case Routinization in Investigative Police Work. *Social Problems* 28(3), pp. 263-75.
- Walker, Samuel, Cassia Spohn, and Miriam Delone (2006). *The color of justice: Race, ethnicity, and crime in America* (4<sup>th</sup> Ed.). Belmont: Wadsworth.
- Williams, Marian R. (2002). A Comparison of Sentencing Outcomes for Defendants With Public Defenders Versus Retained Counsel in a Florida Circuit Court. *Justice System Journal* 23 (2), pp. 249-57.
- Wooldredge, John 1998. "Analytical Rigor in Studies of Disparities in Criminal Case Processing." *Journal of Quantitative Criminology* 14(2), pp. 155-79.
- Zatz, Marjorie S. 1987. The Changing Forms of Racial/Ethnic Biases in Sentencing. *Journal*

*of Research in Crime and Delinquency* 24, pp. 69-92.