

RACIAL DISPARITY AND THE CRACK COCAINE
FEDERAL SENTENCING GUIDELINES

by

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ABSTRACT

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Racial disparities throughout the Federal Prison System are perhaps more apparent today than ever largely due to the fact that people are becoming increasingly cognizant of disproportionate sentencing for various types of crimes, most notably for crack cocaine versus powder cocaine offenses established under the Federal Sentencing Guidelines. Regardless of their legal origins, or who or what is most responsible for their continued utilization, the uses of disproportionate sentences for similar offenses are part of an alarming trend occurring in our criminal justice system. It is crucial, therefore, to have a better understanding of the magnitude of this problem, both academically, and statistically, so that further efforts can be made to reduce and or prevent this trend from continuing and causing additional devastation. The purpose of this research was to determine if retroactive crack cocaine federal sentencing reforms have been effective in reducing racial disparity rates in the Federal Prison System. A collection of literature, combined with comparison T-tests of federal sentencing data, was analyzed to compare disparity rates before and after the sentencing reform.

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CHAPTER 1

INTRODUCTION

The United States' Prison System comprises one of the largest populations of convicted criminal offenders in the entire world. In fact, almost a quarter of the world's 10.1 million prisoners reside within both federal and state correctional institutions in America (Walmsley, 2011). Perhaps more troubling is the fact that the prison system in America, including the Federal Prison System, also contains rather large percentages of racial disparities among the inmate population. There are a multitude of possible factors that have contributed to this phenomenon, particularly the tremendous growth of inmates during the past 20-30 years. None are more apparent however than African-American offenders convicted and sentenced to federal mandatory minimum sentences for the use, distribution, and or sale of crack cocaine. This alone is considered to be one of the greatest causal factors for racial disparities and corresponding rising populations within the federal prison system (Schwartz, 2007).

For many years, professionals in the criminal justice system, as well as scholars in many other academic fields, have studied the cause(s) of racial disparity, and essentially why so many racial minorities are sentenced to prisons every year in the United States. Above all, the disproportionate percentages of African-Americans sentenced to federal penal institutions, compared to their total population within the U.S., has created a problem more alarming than many could have anticipated when America's "war on drugs" (Reinarman & Levine, 1997, p. 1) first began. Despite apparent connections between increases in crack cocaine arrests, primarily involving African-Americans, and subsequent rising federal prison populations during the last few decades, it was not until the passing of the 2007 Crack Cocaine Amendment that Congress finally adopted legislation in efforts to reduce the unwarranted racial disparity levels in the Federal Prison system.

Certain evident factors of crack cocaine itself can largely be to blame for the disparity though; particularly the fact that it is cheaper and more often sold out in the open, usually in lower income neighborhoods comprised primarily of the most vulnerable minority population (U.S.S.C., 1997). Persons who sell or use crack cocaine are generally more visible and therefore more frequently caught by law enforcement. Powder cocaine, on the other hand, is more expensive than crack, and is typically sold in more private, non-minority residential settings (Hartley & Miller, 2009).

In addition to being caught and arrested more often, and despite the fact that the drug is cheaper, crack cocaine users and distributors also receive harsher mandatory minimum punishments for their offenses than do powder cocaine offenders (Hartley & Miller, 2009). For example, during the late 1980s and early 1990s, five grams of crack cocaine, which was established as the base quantity for a five year mandatory minimum punishment after Congress consulted with drug enforcement experts on drug markets at the time (USSC, 1997), will produce anywhere from 10 to 50 doses and has an average street value of approximately \$225 to \$750. On the other hand, 500 grams of powder cocaine is the base quantity level necessary for a five year mandatory minimum punishment, and this amount will produce between 2,500 to 7,500 doses, at an approximate street value between \$32,500 and \$50,000 (Sacher, 1997; as cited in Chappell & Maggard, 2007).

Statistical data provided by the U.S. Sentencing Commission from 1992-1993 showed that blacks accounted for 88 percent of all federal crack cocaine offenses, and as a consequence the 100:1 mandatory minimum sentencing ratio that was established for crack cocaine crimes versus powder cocaine offenses fell disproportionately on black offenders. When interviewed, Juanita Hodges, director of the Seekers of Justice, Equality and Truth Inc., told the Commission that she felt that if young white males were being sentenced for crack cocaine offenses at the same rates as young black males, amendments to the federal sentencing guidelines would have been changed years ago. She did, however, disclose to the

Commission that it was not new information that blacks in America were being sentenced more harshly than whites (Reske, 1995).

The Sentencing Commission initially proposed an amendment in 1995, which aimed to equal the levels of punishment for offenders found guilty of both crack and powder cocaine offenses. As stated earlier, it was determined that crack cocaine offenders, including both users and distributors, received penalties 100 times harsher than similar crimes involving powder cocaine. Further illustrating the disparity between the sentences for both drugs, according to the federal sentencing guidelines, a first-time offender found guilty of possessing or selling five grams of crack cocaine would receive the same 5 year mandatory minimum sentence as an offender who was found selling or in possession of 500 grams of powder cocaine, thus resulting in a 100:1 sentencing disparity between the two types of drugs (Reske, 1995).

Historically, many judges have universally disagreed on the level of unfairness of the crack cocaine mandatory minimum sentencing guidelines on the poor racial minority population, though none have had a more significant effect than the ruling by the U.S. Supreme Court in the 2007 case of *Kimbrough v. United States*. Under the mutual agreement of the inequality of the 100:1 drug quantity sentencing disparity between crack and powder cocaine, the U.S. Supreme Court ultimately ruled that a federal judge had the discretion to sentence a crack cocaine offender less than what was established under the guideline range of the mandatory minimum sentencing structure. This was a landmark decision because it eventually led to the U.S. Sentencing Commission's approved proposal to Congress to decrease the sentencing guidelines' ranges for crack offenders, and to later apply this amendment retroactively (Hartley & Miller, 2009).

The Crack Cocaine Amendment of 2007, as it became known, was approved in December, and the retroactive punishment application was officially signed into law in March of 2008. By mid-2008 the majority of the nearly 25,000 federal crack cocaine offenders who had immediately applied for sentence reductions were determined to be eligible for average

sentence reductions of 26 months, or a 17% average sentence reduction. In total, over 16,000 convicted crack offenders, or 64% of all crack offenders in federal prison were deemed eligible for reduced sentences due to the retroactive application of the sentence (USSC, 2011). Though the amendment did not resolve the 100:1 sentencing disparity, it did decrease the punishment guideline range by two levels, which consequently made an immediate impact on the federal prison population.

In March of 2010, the Senate Judiciary Committee passed an amended bill which called for further reduction in the sentencing disparity between federal crack and powder offenses. This bill, which would later become the Fair Sentencing Act, raised the amount of crack cocaine needed to trigger a 5 year mandatory minimum sentence, from 5 grams to 28 grams, and additionally raised the amount from 50 grams to 280 grams needed to trigger a 10 year mandatory minimum sentence. As a result, the 100:1 sentencing disparity between crack and powder was reduced to just an 18:1 level of disparity. It further eliminated mandatory minimum sentences for simple possession offenses, yet increased the range of punishment for aggravated offenses committed while possessing or distributing crack cocaine. In a unanimous decision by the Senate, the bill was passed, and in early August of 2010, the bill was officially signed into law by President Barack Obama (Berman, 2011).

The relatively recent passing of both the 2007 Crack Cocaine Amendment and the Fair Sentencing Act in 2010 provided a viable opportunity for criminal justice professionals and lawmakers to directly address the causes of and potentially reduce racial disparity levels in the Federal Prison System. The purpose of the current study will be to evaluate the effectiveness of both the 2007 Crack Cocaine Amendment and the 2010 Fair Sentencing Act, each with retroactive punishment reductions, in reducing racial disparity in the U.S. Federal Prison System since their adoption into law. The study will additionally provide historical and qualitative data gathered from previous literature relating to the subject, as well as statistical analysis of secondary data available from multiple government agencies on federal crack cocaine

offenders. The majority of statistical data on federal crack offenders to be used for statistical analysis will be gathered from the United States Sentencing Commission, particularly regarding the Sourcebook of Federal Sentencing Statistics from 1996 through 2011, and the Retroactive Application of the 2007 Crack Cocaine Amendment.

The following chapters will cover a review of the literature on federal crack cocaine offenders and the racially disparate sentencing guidelines. The methods utilized for researching and analyzing the effects of the 2007 Crack Cocaine Amendment, and the Fair Sentencing Act, upon racial disparity rates in the federal prison system will be included in Chapter III. Chapter IV will include findings and a discussion regarding the findings resulting from the analysis. Chapter V will discuss the conclusions of the present research, implications, and future recommendations for research on the topic.

CHAPTER II

LITERATURE REVIEW

1980s Crack Cocaine Epidemic

Reinarman and Levine (1997) provide an informative and historical analysis of the crack cocaine epidemic which led to the eventual disparities in the federal prison system. Crack cocaine was first introduced to impoverished inner city African-American and Latino neighborhoods in large cities like New York, Los Angeles, and Miami during late 1984, and early 1985. During the spring of 1986, numerous magazine, newspaper, and television media outlets began publishing stories and articles about how the widespread use of crack cocaine in many cities and suburbs throughout the United States was destroying American society. However, later research revealed that the use of crack predominantly occurred among only small groups of the poorest and most marginalized populations in these communities (Reinarman & Levine, 1997).

The beginning stages of the 1980s crack cocaine drug epidemic were also referenced by authors Hartley and Miller (2009). The authors criticized the federal narcotics sentencing policy of the 1980s regarding the severity of punishments for crack cocaine offenders, and specifically the racial disparities resulting from the punishment. Hartley and Miller (2009) suggested many people in fact believed that the Reagan administration's "get tough" (p. 67) approach to drug offenders was inspired by the dramatized media reports of the abuse of crack cocaine by African-Americans in inner-city neighborhoods in the 1980s. Further, they indicate, that it was the highly publicized death of college basketball star Len Bias in 1986 from an apparent cocaine overdose that actually spurred the response (Hartley & Miller, 2009).

Popularly referred to as the “War on Drugs” (Reinarman & Levine, 1997, p. 1), this crack cocaine craze prompted many politicians from both Democratic and Republican parties to demand that a definitive stance be taken. The fears and hysteria created by the crack cocaine media barrage even led to former U.S. President Ronald Reagan and former Vice President George H.W. Bush having their own urine tested to disprove any suspected use of cocaine, as well as a number of other illegal narcotics. Despite the media reports and political anti-drug speeches, most people who have ever tried crack cocaine reported that they did not continue to use it after their initial experience, and many people felt that it never really became a predominantly abused drug in American society (Reinarman & Levine, 1997). Additionally, Hartman and Golub (1999) claimed that the fast increase of crack users slowed over time and was primarily limited to a particular group of users, who were already abusers of other illegal narcotics and who simply wanted to experiment with crack cocaine. Chappell and Maggard (2007) further stated that despite the fact that crack cocaine is indeed a dangerous drug, most users tended to only be occasional users, similar to powder users, and usually never abused it to the point of serious harm.

Although statistical data failed to show that crack cocaine use was any more prevalent than the use of powder cocaine at the time, the media overlooked this information by turning the attention of the nation to the supposed rampant crack cocaine use by minorities within inner city neighborhoods. American citizens subsequently became the recipients of a bombardment of anti-drug information from schools, churches, political organizations, advertisers and members of various foundations in the years that followed, thus creating an unwarranted level of panic and fear by society (Hartley & Miller, 2009). For instance, in 1986 just 3% of all Americans believed that drugs were a major problem; however, by 1989 nearly 64% believed that drug abuse was the single most important problem in the country (Berke, 1989; as cited in Hartmann & Golub, 1999). Though there were a few solid, factual reports about drug abuse, among all of the contributing journalist’s news reports, newspaper articles and other publications, the

majority of the information was unjustified and often lacked credibility (Reinarman & Levine, 1997).

Political and media creation of a scapegoat for social problems plaguing the nation has become a fairly common practice in recent history. Arguably, associating the crack cocaine “epidemic” with a threatening group, like poor inner city African-Americans or Latinos, is one such example (Hartley & Miller, 2009). Federal drug sentencing data from 1994 supported this claim, indicating that 90.4% of all crimes relating to crack involved African-Americans, and that a third of all powder cocaine users were black as well. While African-Americans represented only 12% of the total U.S. population in 1994, they accounted for nearly 90% of those sentenced for crack cocaine offenses, and nearly 30% for persons sentenced for powder cocaine offenses.

After years of reporting the supposed addicting effects and consequences of crack cocaine upon this population, a Newsweek article in 1990 revealed that crack cocaine, like several other illegal narcotics, was not addictive according to the many users of the drug (Reinarman & Levine, 1997). Republican Cincinnati City Councilmember Charles Winburn (1997) on the other hand regarded crack cocaine as “instantly physically addictive” (p. 37), further stating that if a person gets high on using it just one time, that person’s body will coerce them to use it again and again to get the same reaction. Councilmember Winburn determined that it is the instant physical addiction of crack cocaine that had led to judicial systems punishing crack users more harshly than those who use powder cocaine. He also associated more criminal acts occurring, primarily robberies, thefts, assaults, and burglaries, to crack abusers’ willingness to do nearly anything to satisfy their need to get high (Winburn, 1997).

Winburn (1997) criticized the drug-sentencing laws passed in the 1980s, claiming that although they were created as a race-neutral sentencing approach for cocaine offenses, he felt that they should have in fact been harsher. Similarly, the U.S. Sentencing Commission determined that the dangers associated with crack cocaine use were more serious than that

involving powder cocaine, and concluded that more severe punishments, or mandatory minimum sentences, for crack cocaine rather than for powder cocaine offenses were necessary. In fact, many of the dangers involving crack cocaine, and perhaps the largest supporting factor for more harsh punishments than powder cocaine, is that crack cocaine is typically connected to more systemic crimes, or rather crimes normally linked with the distribution and selling of illegal narcotics, such as: violent acts involving street gangs, guns, serious bodily injury and potentially even death (U.S.S.C., 1997).

Like many others during this epidemic, Councilmember Charles Winburn, believed that it was both the drug dealers and abusers of crack cocaine that were destroying the neighborhoods and communities in inner-city areas across America. He determined, however, that it was crucial and more effective for law-abiding citizens, instead of government intervention through mandatory minimum sentencing guidelines, to assist law enforcement officials in removing crack dealers and abusers from the streets. As part of his drug coalition with the Cincinnati police, Winburn described how community members, working hand-in-hand with law enforcement officials, had been the most effective approach to removing drug dealers from the streets of Cincinnati, and contributed to several arrests involved in the largest crack cocaine bust in the city in 1996 (Winburn, 1997).

Crack versus Powder Cocaine

What distinguishes crack cocaine from its inhalable powder form is that it is a smokeable form of cocaine, easily produced by combining a mixture of powder cocaine, water, and baking soda and cooking it on a basic kitchen stove (Reinarman & Levine, 1997). Once the substance hardens, it is placed into molds where it dries, and is then cut into small pieces, also known as rocks (USGAO, 1991). Named after the crackling sound that it makes when heated, it is most often smoked through a glass pipe, or is crushed and mixed with tobacco or marijuana cigarettes (USGAO, 1991). This illegal narcotic also produces more immediate and intense psychotropic and physiological effects on the body than powder cocaine, thus increasing the

likelihood of addiction for the user (U.S.S.C., 1997). Crack is usually marketed to a different demographic population compared to powder cocaine, and is typically sold by young African-Americans and Latinos in tiny packages, envelopes or containers which, during the late 1980s and early 1990s, was priced anywhere from \$5 to \$20 (Reinarman & Levine, 1997).

Initially, cocaine was thought to be non-addictive, however later studies have shown that there is a strong potential for addiction because of the positive reinforcement it provides users when consumed. For example, when cocaine is smoked, it is quickly absorbed into the pulmonary circulatory system, and is transferred to the brain in just a matter of seconds. Immediately after smoking crack, the drug provides the user with an intense and addictive feeling of euphoria. Just a few minutes after smoking crack however, the intense feeling of euphoria wears off, and the user experiences feelings of depression and extreme cravings for more crack cocaine (USGAO, 1991).

There are other methods of consuming cocaine however, including injecting cocaine directly into the bloodstream and freebasing, which is simply a technique for smoking powder cocaine. Freebasing involves heating powder cocaine with the flammable gas ether, but due to the difficulty and costs associated with preparation it restricted the ability of smoking cocaine. All three methods produce a quicker effect on the user, when compared to sniffing or swallowing powder cocaine, because the drug rushes to the brain faster and provides the user with a more immediate high or sense of euphoria. Injecting cocaine into the bloodstream poses a more serious health disadvantage over smoking crack cocaine, as it increases the risks of contracting HIV or hepatitis. Snorting cocaine also poses a disadvantage to the user as it potentially causes serious damage to the nasal membranes. While it is potentially less harmful to the body than these other methods, an additional advantage of smoking crack is because it is cheaper, and users can consume it many times for a lower cost than other methods of consuming powder cocaine (Hartman & Golub, 1999).

Even with extensive research by many governmental agencies suggesting more harmful and addictive properties are caused by crack rather than by powder cocaine, many scholars believe that both powder and crack cocaine contain the same psychologically addictive properties and can produce equally harmful side effects, such as seizures, strokes, or even death when used in large doses (Chappell & Maggard, 2007). In addition, several scholars feel that there is little research truly indicating that crack is any more harmful than consuming equal amounts of powder cocaine, and that “a pharmacologist cannot differentiate between the two drugs once they have entered the body” (Goode, 1999; as cited in Chappell & Maggard, 2007, p. 265). Regardless of personal or political opinion, and because crack is relatively inexpensive when compared to powder cocaine, this altered chemical substance soon became the cheaper, more potent and more accessible alternative to its powder counterpart for the poorer and more vulnerable minority population (Reinarman & Levine, 1997).

Philosophical Sentencing Change

Mandatory minimum sentences, also known as determinate or structured sentences, were developed in the mid-to-late 1970s as a way of transitioning from indeterminate sentences, which had been used almost exclusively in sentencing from 1930 to the 1970s. Ideally, they were created to eliminate unwarranted racial, ethnic, and gender disparities in the prison system resulting from potential judicial prejudice and bias, as indeterminate sentences had previously provided judges with nearly complete discretion on the length and type of punishment to deal to criminal offenders. Instead, mandatory minimum sentences all but eliminated judicial discretion, and consequently reduced potential prejudice and bias by requiring judges to follow a certain set of punishment guidelines applicable to specific types of crimes. The guidelines additionally provided lawmakers and politicians with the ability to alter and change sentencing patterns whenever necessary in order to fulfill particular jurisdictional goals (Tonry, 2000).

Previously, indeterminate sentences enabled criminal offenders to be treated and or punished on a more individual level, where certain punishments and treatment programs could be tailored by the judge, and also by probation officers, in order to best protect the needs of society, as well as effectively rehabilitate the offender. They also provided criminal offenders the opportunity, in many circumstances, to accumulate sentence reductions based on good behavior and, for some, the eligibility of being released early on parole. In other words, indeterminate sentences basically acknowledged that each and every offender was unique, whether by criminal background, personality disorders, or other extenuating circumstances, and punishments and treatment could best be determined according to the nature of the particular crime committed and individual offender. This in turn was believed, or at least intended, to have enhanced the professionalism of the criminal justice organization, as both judges and correctional officers had more specialized knowledge of the system, along with more experience in dealing with the majority of offenders, and were therefore better able to manage the prisoners in the system (Tonry, 2000).

The disadvantages of the indeterminate sentencing strategy however, and the ultimate reason for the design of determinate or structured sentences, was to reduce and potentially eliminate the likelihood of unwarranted disparate sentences for people who committed similar types of crimes. Following the 1970s, it was presumed that over the next few decades many of the indeterminate sentencing strategies would eventually be replaced with guideline punishments. Many states, like Washington, Oregon, Pennsylvania, and North Carolina as well as the Federal system, adopted the structured or mandatory minimum sentences early on for the punishments of misdemeanors and felonies, as well as for the ability to better manage prisons and jail facilities. The disadvantages expressed by many, however, were that the new guideline punishments were regarded as too impersonal and treated each offender the same, regardless of individual circumstances in each crime. Additionally, discretion by judges, corrections officers, and other professionals within the criminal justice system was drastically

reduced and offenders were ironically faced with the many racial, ethnic, and gender injustices due to the rigidity of the new mandatory sentences (Tonry, 2000).

Reaction by Congress

In response to the media induced fears and societal panic during the crack cocaine epidemic, Congress responded by creating mandatory minimum sentences for illegal narcotics, such as the Anti-Drug Abuse Act of 1986, and the Omnibus Anti-Drug Abuse Act of 1988. Specifically, these statutes differentiated between crack and powder cocaine (Chappell & Maggard, 2007), and focused on increasing the severity of punishments specifically associated with crack cocaine offenses by creating lengthy mandatory minimum prison sentences for future offenders. The U.S. Federal Prison population meanwhile tripled. It has been suggested that this increase is, in part, a result of mandatory minimum sentences for federal crack cocaine crimes resulting in one of the largest increases in convicted offenders in U.S. history (Reinarman & Levine, 2004; as cited in Hartley & Miller, 2009). Blumstein (1993) additionally reported that the initial \$2 billion worth of federal money set aside for combating drug abuse in the United States during the crack cocaine epidemic had swelled to nearly \$16 billion by 1998. Coincidentally the prison population had become increasingly filled with black offenders convicted of drug crimes (Blumstein, 1993; as cited in Hartman & Golub, 1999).

Impact of Crack Cocaine Federal Sentencing Guidelines

Despite the intended effects of structured or mandatory minimum sentences, the controversy faced when dealing specifically with federal drug sentences, is that they usually target lower level offenders with harsher punishments, predominantly African-American crack cocaine users, instead of offenders dealing and selling larger quantities of drugs. Consequently, the disparity in the federal prison system is largely due to the fact that minorities represent a disproportionate number of federal inmates convicted for crack cocaine offenses compared to offenders convicted for other narcotic offenses (Hartley & Miller, 2009). Winburn (1997) asserts, however, that the longer sentences primarily associated with African-American crack cocaine

users have nothing to do with issues of racism, but rather the judicial system itself by simply punishing crack cocaine offenses more harshly than powder cocaine offenses (Winburn,1997).

The U.S. Sentencing Commission (April,1997) claimed that no evidence exists to support racial bias behind the guidelines, despite the fact that nearly 90 percent of offenders sentenced to Federal Prison for the distribution of crack cocaine are African-American, while the majority of crack cocaine users are actually white. They did, however, acknowledge that sentences for the possession and or distribution of crack cocaine do appear harsher and more severe for racial minorities, and thus are perceived as unfair by their design. Michael Gelacak, Vice Chairman of the United States Sentencing Commission, described how it is the responsibility of both the Congress and the Sentencing Commission to ensure that fair sentencing standards are established within the criminal justice system, and that all offenders in similar situations are sentenced fairly. He noted, however, that their joint efforts in promoting fairness and equality have ultimately failed, resulting in severe and racially disparate sentences for offenders (U.S.S.C., 1997).

Tonry (1994) further reflected on the nature of racial disparities within the criminal justice system since the early 1980s. In particular, he stated that the political agendas of both ex-presidents Ronald Reagan and George H.W. Bush, and their harsh drug and crime control policies, were the underlying cause for increases of racial disparities in the system. He reports that the large increases in arrests, combined with the massive levels of imprisonment for lower-level drug dealers, was in fact the single most contributing factor for disparity; though he also claims that unwarranted effects of certain social policies are sometimes inevitable, as in this case, regardless of the social or political environment (Tonry, 1994).

Furthermore, Tonry (1994) claims that the War on Drugs' crime and drug control policies implemented during both administrations were not morally based, and could not be ethically defended, because through their design they essentially favored one race over another. Had a good-faith system been adopted by either president, he insists that the overall

goals of the policies would have been achieved, and crime and drug control would have been effectively reduced. The author suggests that racial disparities even worsened during this time specifically because of the drug control policies of Presidents Reagan and Bush, and not because of the commonly agreed notion that blacks were also committing larger proportions of other major crimes like homicide, rape, robbery or aggravated assault. For example, arrest rates for blacks involved in violent offenses during the 1980s and early 1990s actually fell from 47.5% to 44.8%, yet disparity rates increased as blacks represented 54% of the federal inmate population in 1992 (Tonry, 1994).

Additional data collected on arrests and confinement trends in both prisons and jails during the 1980s concluded that, although racial bias and stereotyping indeed play a large role in the tremendous growth of disparity levels, they are not the major cause of the growing disparity. Instead, researchers attribute racial differences in offending patterns as the biggest long-term problem for racial disparities, even though the unwarranted effects caused by the War on Drugs and the increased desire for the use of incarceration for drug offenders, were to be expected. For instance, Blumstein (1982) revealed that 80% of racial disparities in prison could be explained by differences in arrest patterns. Further, Klein, Petersilia, and Turner (1990) concluded that once criminal history and other legal differences were taken into account, the race of the offender had no independent predictive effect, particularly in the state of California, on the length or severity of the offender's prison sentence (Tonry, 1994).

Meanwhile, data collected from the Bureau of Justice Statistics on prisoners in Federal and State prisons from 1960 to 1991 revealed, on several occasions, that the percentage of African-American inmates compared to white inmates had exceeded the percentages of American citizens who were black. Furthermore, the data revealed that overall percentages of African-American inmates have dramatically increased since 1980. The data, however, does not necessarily indicate a particular reason for disparity rates having risen so sharply during this time.

Tonry (1994), on the other hand, claims that the War on Drugs, and not differential involvement, is the main reason for such high racial disparities in incarceration. For example, 22% of new admissions, and 25% of the total federal prison population in 1980 were listed as drug offenders, yet, by 1992, 42% of new admissions and 58% of the total inmate population were drug offenders (Tonry, 1994). Data from California, North Carolina, and Virginia showed large increases in African-American offender populations due specifically to the admittance of drug offenders (Tonry, 1994). Clark (1992) reports that black male prison admissions for drug crimes in 1980 increased nearly four times faster than compared to whites, or at a rate of 1,613% compared to 477%. In California, for example, there were more black drug offenders in state prisons in 1991 than there were total offenders in 1979 for all crimes, simply due to the increases in the enforcement of drug control policies (Clark, 1992). Further, surveys taken by the National Institute on Drug Abuse in 1991 on the reported drug use of American citizens indicated that blacks are no more likely than whites to have used most drugs that are abused (Tonry, 1994).

Although there have been large increases in the incarceration of drug offenders since the adoption of Reagan and Bush's crime and drug control policies, Tonry (1994) states that there are no valid justifications for the adverse effects on African-Americans. Whether the real fundamental goal of harsh drug and crime control policies is for political gain, as suggested in previous literature, or whether it is the materialization of the will of the American people, as Tonry suggests, the disadvantages brought upon the black population by mandatory minimum sentencing guidelines cannot be vindicated. Further, he claims that the foreseeable disparate effects of these policies should never have been adopted "as means to the achievement of White politician's ends, that must in the end be justified" (Tonry, 1994, p. 492).

By the mid 1990s, debate regarding crack cocaine sentencing was evident. According to Attorney General Janet Reno, "there should be some reduction in the sentencing disparities, dealing in crack rather than powder cocaine should still merit higher sentences" (Reske, 1995,

p. 30). Reno also opposed any legislation that failed to show the true effects that crack cocaine had across communities in America. On the other hand, Chair of the Sentencing Commission, Judge Richard P. Conaboy, claimed that it was wrong to have a difference in penalties between crack or powder cocaine as there were ultimately no differences between the two, even though he attributed more problems in society due to the use of crack cocaine. Contradictory to his first response to Attorney General Reno's statement, Judge Conaboy later emphasized that he believed crack cocaine indeed had more addictive psychological effects than powder cocaine (Reske, 1995).

Although some prominent, and more visible, individuals in society felt that crack cocaine had more serious and harmful effects and therefore deserved harsher sentences than powder cocaine, others argued that regardless of the debate of harmful effects, the sentencing guidelines produced equally harmful outcomes. In a concurring opinion to the 1997 Cocaine and Federal Sentencing Policy submitted to the Congress, Vice Chairman of the United States Sentencing Commission, Michael Gelacak, expressed how it is unfair to ignore the impact that mandatory minimum sentences for drugs have upon African-Americans, as it is a very real and existent problem in American society. He claimed that black Americans are fully aware of the unfairness of these guideline punishments, and that younger African-Americans are typically the ones receiving federal crack cocaine punishments (U.S.S.C., 1997).

The following year, Henry Reske (1996) readdressed the initial amendment presented to Congress on lowering federal crack cocaine sentences equal to those of powder cocaine. He claimed that President Bill Clinton ultimately rejected the U.S. Sentencing Commission's plea to Congress for equal federal penalties for crack cocaine and powder cocaine. Included in the rejected bill, however, were provisions submitted to the Sentencing Commission by members of the Congress, stating that penalties for crack cocaine should inherently be harsher than penalties for powder cocaine, and that any attempt to argue for future changes in the levels of the sentencing disparity should still include harsher penalties for crack (Reske, 1996).

U.S. Sentencing Commission Vice Chairman Gelacak explained that the problems with the mandatory minimum sentencing guidelines are that they basically punish users and distributors of crack more severely than users and distributors of powder cocaine instead of ridding neighborhoods and communities from drug use and distribution as a whole as efforts originally intended. In other words, Gelacak suggested that the guidelines are only effective in punishing crack users more harshly than powder users, thus resulting in disparate sentencing practices, while at the same time failing to protect members of the community by minimizing punishments for other types of illegal narcotics, namely powder cocaine (U.S.S.C., 1997). Additionally, statistical data gathered from the Sentencing Commission revealed that racial disparities were clearly existent in federal prisons at the time, and the effects of the sentencing disparity between crack and powder cocaine offenses were already proving to have devastating effects on African-Americans both in and outside of the prison system (Reske, 1995).

The 1991 National Household Survey on Drug Abuse, however, indicated that, although drug use was typically higher in larger metropolitan areas than in smaller metropolitan and non-metropolitan areas, black and Hispanic youth were often less likely than Caucasian youth to become involved with illegal narcotics (Hartman & Golub, 1999). According to Murphy and Rosenbaum (1997), the biggest problem lies with the lack of support networks for racial minorities to help them overcome drug addiction. The authors conducted a case study on the effects of drug abuse which compared two women, one from a middle class family, and one from an inner city family. The results indicated that the young woman from the middle class family was able to return to a normal lifestyle after succumbing to illegal drug use, due to the support she received from her family. The young woman from the inner city family however was not able to overcome her involvement with drugs and was not able to recover socially or economically without external support (Hartman & Golub, 1999).

On May 22, 2002, United States Senator Patrick Leahy (2002) offered his own interpretations of the tangible impact caused by the federal sentencing guidelines for crack

cocaine, through his testimony to the Senate Judiciary Committee's Subcommittee on Crime and Drugs hearings on the Federal Cocaine Sentencing Policy. Senator Leahy (2002) illustrated the clear disparities that existed between the 100:1 mandatory minimum sentencing guidelines between crack and powder cocaine. According to data provided by the U.S. Sentencing Commission in 2000, Leahy (2002) claimed that the average crack cocaine sentence resulted in a punishment four years longer than that for powder cocaine offenses, and illustrated that African-Americans were most often the ones receiving the sentences for crack cocaine. He referenced the 1986 [Anti-Drug Abuse Act] law passed by Congress as a large contributor to the disparities, stating that Congress ultimately failed to stop the spread of major drug traffickers by focusing on the lower level offenders, like crack cocaine users (Leahy, 2002).

Although he believed crack cocaine to have more psychological effects than powder, Senator Leahy (2002) criticized the Justice Department for their failure to admit to any degree that the mandatory minimum guideline sentences for crack cocaine were too harsh. He further claimed that the only alternative offered by the Justice Department to reduce levels of disparities between the two drugs was to raise the penalties for powder cocaine, therefore offsetting the differences between them. Before taking office, President George W. Bush even claimed that there was no need for the disparity between the two drugs, and sought to address the problem by equalizing the penalties for both drugs by raising the five and ten-year mandatory minimum threshold levels for crack cocaine equal to powder cocaine. In fact, just two days before taking office, President George W. Bush claimed that his administration should address the problem "by making sure the powder cocaine and the crack cocaine sentences are the same" (Leahy, 2002, p. 14).

In order to reduce the levels of disparity, Senator Leahy (2002), like President Bush, recommended raising the five-year mandatory minimum threshold for crack cocaine to at least 25 grams, and the 10 year threshold to 250 grams, while making no changes to the threshold level for powder cocaine. He also urged that the Sentencing Commission provide more

appropriate sentencing enhancements to offenders who engage in more harmful conduct while using or distributing crack cocaine, as well making these enhancements apply to all other forms of illegal narcotics. By doing so, the Sentencing Commission estimated that the average sentence for a crack cocaine offense would be reduced nearly 30 months, while the average powder cocaine sentence would consequently increase by almost 12 months (Leahy, 2002).

In the years following the Sentencing Commission's 1995 report to Congress for changes in sentencing strategies, several scholars and criminal justice professionals conducted extensive research and qualitative studies on the effects of the crack cocaine mandatory minimum sentencing strategy that still remained in place. In March of 2002, Paula Kautt, a program analyst at the Drug Enforcement Administration, and Cassia Spohn a Criminal Justice professor working for the University of Nebraska Omaha, contributed to a study that tested for common interactions among offenders on the basis of race, drug type, and sentencing strategy in Federal drug sentences. The study analyzed the relationships between an offender's race and the type of drug used, and more specifically how these two affect sentencing outcome. Additionally, the authors aimed to prove whether or not racial variations occur in the sentencing phase for federal drug offenses due to the use of certain drugs by specific segments of the population (Kautt & Spohn, 2002).

The authors claim there have been a number of explanations accounting for the disparities in sentences among federal drug offenders. One perspective is the "focal concerns theory," which claims that judges' sentencing decisions for federal drug crimes are often based on their measure of an offender's level of guilt, their overall desire to protect the community by removing an offender from the street, and their concerns about the social burdens placed upon society as a result of their sentencing decision (Steffensmeier, Ulmer, & Kramer, 1998; as cited in Kautt & Spohn, 2002). However, judges often lack enough credible information in which to fairly assess the totality of the circumstances involved in the case. Instead, they are typically forced to determine a sentence which they feel is appropriate based upon common stereotypes

and criminal attributes, or based off of “perceptual shorthand” often associated with age, race, and gender (Hawkins, 1981, p. 280; Steffensmeier, et. al, 1998, p. 768; as cited in Kautt & Spohn, 2002). In other words, the interaction of each of these attributes, combined with preconceived judicial ideas or images presumably associating an offender with violent criminal social groups, often influences the sentencing outcome (Steffensmeier et al., 1998, p. 768; as cited in Kautt & Spohn, 2002). Albonetti (1991, 1997) referred to this as “bounded rationality” (p. 4), sentencing racial minorities to harsher punishments due to the judge’s propensity to stereotype racial minorities as more likely to engage in repeated criminal activity, and specifically more dangerous and violent crimes (Kautt & Spohn, 2002).

Conversely, Dixon (1995), argued that racial disparities in federal sentencing may, instead, be a result of indirect institutionalized processes. Under this notion, it is all of the individuals directly involved with the operation of the court system who are inherently responsible for the disparities through their encouragement of white offenders pleading guilty in order to receive lower sentences, while in turn preventing the same opportunities for racial minorities by handling their caseloads differently. Therefore, it is a structural process which is to blame for the levels of sentencing disparities that are often present (Dixon, 1995; as cited in Kautt & Spohn, 2002).

One common characteristic between these differing perspectives, however, is that they both suggest that the influence of race on sentencing outcomes is not consistent, but rather constantly changes according to the time, place, and or circumstances of the situation. With the focal concerns theory, the combination of a person’s characteristics, and the circumstances of the crime may merit a particular type of sentence from one judge, whereas another judge may decide a completely different sentence outcome based upon their own interpretations and stereotypes. Similarly, with Dixon’s institutional viewpoint, the sentencing outcomes may be entirely dependent upon the goals and desires of the particular organization involved, and that

the race of the defendant when deciding the sentence may weigh differently from one organization to the next (Kautt & Spohn, 2002).

As a result of this phenomenon, the authors predicted that the length of a sentence will operate differently for white and black offenders. Although federal minimum sentencing guidelines require that certain sanctions be met according to the level of severity of a crime, certain factors like racial stereotypes and race-linked attributes will still affect each individual differently. Based upon the focal concerns theory and institutional perspectives, the authors claimed that racial differences would influence the effect of mitigating factors, specifically enhancing them for whites, while adversely enhancing the aggravated effects for blacks. In particular, the aggravating effect of a conviction for a crack related offense will be greater for blacks, and the threat of harm caused by the offense committed, as well as the direct threat of the individual will result in longer sentences for blacks than for whites (Kautt & Spohn, 2002).

The authors declared that the factors influencing the sentencing outcomes for both white and black offenders are not operating identically, and that the effects of sentencing determinants for federal drug crimes will indeed vary by race, drug type, and certain sentencing interventions as mentioned earlier. They tested their hypotheses by categorizing federal drug-offense sentences into three different groups, including: offenses that carry a mandatory minimum sentence; offenses that fall under a mandatory minimum statute but do not receive minimum sentences, also referred to as hybrids; and offenses that are guideline cases. They included statistical data from the U.S. Sentencing Commission on defendant's sentences in 1997-1998, and separated each of the offenders according to the three different sentence groups (Kautt & Spohn, 2002).

A two-stage partitioning strategy, often used by researchers to test for differences between groups on all relevant factors, was used to separate the data according to sentencing strategy and the race of the defendant. The types of drugs used by the defendants were the independent variables, while the duration of each sentence, measured in months, was the

dependent variable. The remaining factors related to the types of drugs involved were considered independent variables, including: drug amount in grams, offense code, criminal history, and the length of mandatory minimum sentencing for the offense. Control variables included factors considered by the U.S. Sentencing Commission to be legally relevant in measuring the amount, or threat of harm done to society by the offender. They also controlled for age, race, gender, ethnicity, education, citizenship status, and number of dependent children to name a few (Kautt & Spohn, 2002).

The results of the study were somewhat surprising, and contradictory to much prior literature on the subject. For instance, many factors were identified that were more beneficial to black defendants than they were for whites, which did not fully support the initial hypotheses of the authors. One example was when the type or amount of drug used had a direct effect on the sentencing strategy it most often provided blacks with greater mitigated sentences and fewer aggravating effects than for whites. Specifically, convictions for crack cocaine offenses mitigated the length of sentences, which benefitted black guideline drug offenders more so than white offenders. This was also evident with hybrid heroin offenses, which resulted in more beneficial mitigating sentences for black offenders, whereas white offenders received more aggravating effects. The differences between the sentences for both groups supported part of their hypotheses, but failed to support the fact that sentences for black offenders would be more unfavorable than for whites.

Kautt and Spohn (2002) explain that this could perhaps be a deliberate attempt by federal court lawyers and judges to reduce disparity levels as a response to public concerns. In particular, they suggest that the judicial discretion to purposely mitigate crack cocaine sentence lengths for African-American offenders to where it benefits them over white offenders could be the result of external pressures, and or ulterior motives. They further claimed that the results of their analysis made the discrepancies between races and sentencing outcomes more difficult to distinguish, and that the predictors of federal determinant sentencing strategies are more

complicated than they originally appeared, or rather “not as uniform as the framers of either the guidelines or the mandatory minimums intended them to be” (Kautt & Spohn, 2002, p. 33). They suggested, however, future research attempting to reveal the true impact of the federal sentencing guidelines on both white and black offenders.

Pasko (2002) also used data from the U.S. Sentencing Commission in an effort to uncover effects of regional variation on determinate sentencing for drug offenders. Data on drug offenders of various social backgrounds sentenced under federal statutes in 1995 were included in the study. A multiple regression research design was utilized in order to determine the effects of race on sentencing, as well as analyzing demographic variables while controlling for other factors. The length of imprisonment of the offenders was the dependent variable used in the study, while demographic, case-processing, and offense-specific variables were designated as the independent variables (Pasko, 2002).

The authors claim that several factors affect sentences dealt to federal drug offenders, including behaviors varying from one geographical region to the next, bias or stereotypes, different judicial environments, and the use, or lack of, applied discretion. They focused their analysis on four different regions representing the eastern, southern, northern, and western regions of the United States. They suggested that, depending on the region, the impact of race, age, and education level upon sentencing outcomes varied greatly. Furthermore, they conclude that drug offenders who commit the most serious crimes, and usually deserve the harshest punishments, also vary between the four regions. They did agree, however, that offenders from all four regions who fail to accept responsibility for their crimes most often result in the longest punishments, regardless of race/ethnicity (Pasko, 2002).

When controlling for case-processing and offense-specific variables, ethnicity resulted in significantly longer sentences for Hispanics. For example, Hispanics received a sentence nearly 6.8 months longer than whites, though no differences were reported between blacks and other racial groups. Pasko (2002) concluded that determinate sentencing laws do not eliminate

racial/ethnic disparities. She also suggested that a number of other factors, such as: gender, type and amount of drug, and other aggravating factors have a direct effect on sentencing. Furthermore, her findings supported previous research whereby case-processing and offense-specific characteristics usually have the greatest effect on determinate sentencing outcomes (Pasko, 2002).

The study ultimately determined that there are both legal and extralegal factors that influence sentencing decisions and that guideline sentences vary from one region to the next. Case-processing and offense-specific variables are beneficial to judges in determining which offenders are most at fault, which more often results in longer sentences for offenders with prior criminal history records. Pasko (2002) suggested that offender/offense stereotypes differ by geographic region, which may have an impact on sentencing outcome. In addition, certain judges utilize the pre-sentencing report more often than other judges, which could also play a role in the use of extralegal factors and the sentencing of a particular offender.

The goal of determinate sentencing is to create uniformity among sentencing policies, including reducing racial disparity. The results of the Pasko (2002) study indicate, however, that sentencing guidelines are applied differently from one region to another, and that many legal and extra-legal factors influence the sentence outcome. This also indicated that Hispanics most often received disparate sentences and were affected by cultural and racial discrimination more often than blacks or whites. The significance of this research is enhanced as it goes beyond the typical black-white disproportionality discussion by shedding light on other racial/ethnic groups. It further suggests flaws in previous research on this topic, claiming that Hispanics are rarely shown to be receivers of racially disparate sentences for drug crimes. More research and data is needed on the Hispanic federal prisoner population, as this area of research would benefit from analysis of additional races.

In 2004, on behalf of the United States Department of Justice, and before the U.S. Sentencing Commission, Assistant Attorney General Christopher Wray provided an informative

and updated analysis on the federal prison population in America, in anticipation of Congress approving federal sentencing reforms. It was estimated then, according to data gathered from the Bureau of Justice Statistics, that the total federal prisoner population had risen nearly 81% from 1995 to 2003, nearly three times the rate of state prisons during this same time period. In fact, more than 55% of the federal prison population included non-violent offenders serving time for drug offenses, and only 13% for violent offenses. Additionally, approximately 72% of all offenders in federal prison were listed as non-violent with no history of previous violence in their record (Wray, 2004).

Furthermore, due to the disparities between the sentences for crack and powder cocaine, African-American drug offenders reportedly had a 20% greater chance than white drug offenders and nearly 40% greater chance than Hispanics of being sentenced to prison. From 1994 to 2002 the average drug sentence for an African-American increased by nearly two years. Data estimates from 2002 revealed that 81.4% of crack cocaine defendants included African-Americans, yet nearly two-thirds of the total numbers of estimated crack cocaine users were either white or Hispanic. Moreover, African-Americans received equal sentences for drug crimes as whites received for violent crimes (Wray, 2004).

It has been evident through the majority of academic research and statistical data that the federal sentencing guidelines, up until the application of the 2007 Crack Cocaine Amendment, were inherently unfair to persons, mainly racial minorities, convicted for crack cocaine offenses. African-Americans convicted for federal crimes involving crack cocaine most often bore the brunt of the inequalities between sentences for powder and crack cocaine, than did any other race. The Bureau of Justice Statistics indicated that in 2006 African-Americans comprised almost 40% of the entire U.S. Federal Prison population, while accounting for only 13% of the country's population (U.S. Bureau of Justice Statistics; as cited in Brook, 2008). These statistics were then compared to the U.S. Census of 2002, which revealed that African-Americans sentenced to federal prison were estimated at 2,290 per 100,000 residents,

compared to 742 per 100,000 for Hispanics, and only 412 per 100,000 residents for whites (Brook, 2008).

Brook (2008) highlights some of the sentencing disparities in her article as she reflects on the U.S. Supreme Court decision regarding sentencing guidelines in the *United States v. Booker*, 543 U.S. 220 (2005) trial, which ultimately gave courts the authority to stray from guideline punishments that were responsible for creating disparities, instead of the intended punitive effects of the sentences (United States. V. Booker). Specifically, a federal district court judge had increased the mandatory minimum sentence of the defendant, Freddie Booker, based simply on facts that the judge had chosen. The Supreme Court, however, ruled by majority opinion that allowing judges to enhance guideline sentences based on facts that had not yet been reviewed by a jury was in violation of the Sixth Amendment right to a trial by jury. This case was appealed due to a previous case, *Blakely v. Washington*, 542 U.S. 296 (2004), where the Supreme Court ruled that the Sixth Amendment right to trial by jury made it necessary for judges to use only facts that had been proven to a jury when sentencing an offender beyond the standard guideline range (Blakely v. Washington). As a direct result of the Supreme Court decision, defense attorneys were required to illustrate the inequalities of the mandatory minimum sentencing guidelines for future similar cases. Federal prosecuting attorneys were also expected to acknowledge the clear disparities in the sentencing guidelines, while still advocating for the government and justice department (Brook, 2008).

Nearly 20 years after the initial guidelines were enacted, the Open Society Institute reported that, “a defining characteristic of America’s criminal justice system is its disproportionate impact on the poor and people of color, particularly young men of color” (Beane, 2008; as cited in Brook, 2008, p. 15). District Judge Lynn Adelman and law clerk Jon Dietrich stated that the average sentence for African-Americans is approximately 25% longer than for a white offender, though many scholars disagree on the cause of this disparity. The Sentencing Commission, however, has no doubts that the sentencing guidelines are the main

contributors to racial disparities in the system, and specifically state that the sentencing guidelines and mandatory minimum statutes have a more unfavorable effect on black offenders than discretionary decisions made by judges before the enactment of the guidelines (Brook, 2008).

A 15 year study was conducted by the Sentencing Commission on the racial impact of the “career offender guideline” (p. 15), or rather a provision of the sentencing guideline that raises an offender’s criminal history to the highest level if he or she has two prior drug trafficking convictions. In 2000, the Sentencing Commission reported that African-Americans comprised only 26% of offenders sentenced under the federal sentencing guidelines, though represented 58% of offenders subject to the career offender provision. Consequently, African-Americans were also reported to have a higher risk of incarceration for drug trafficking due to ability by law enforcement to more easily find and detect drug dealing in the open air markets found in poorer urban neighborhoods (The Sentencing Project, Washington D.C., 2007; as cited in Brook, 2008, p. 3).

No empirical studies were performed by the Sentencing Commission on whether the federal sentencing guidelines themselves create racial disparities however. Studies later showed, nonetheless, that many individual sentencing guidelines, and guidelines as a whole, actually do create disparities within the system. These studies were significant as they showed that changes to the sentencing guidelines were necessary in order to avoid racial disparities. The opinion supports the hypothesis because it addresses a problem in the system that truly needed to be fixed; a problem that was eventually tackled by the application of the 2007 Crack Cocaine Amendment. It further complemented previous articles that argued that changes in the sentencing guidelines were necessary to reduce the disparate treatment of African-Americans convicted of federal crack cocaine crimes, versus offenders convicted of powder cocaine offenses. The 2007 Crack Cocaine Amendment addresses these issues of racial disparities that

were the result of the initial mandatory sentencing statutes under the federal sentencing guidelines, and reduces them through retroactive application.

2007 Crack Cocaine Amendment

In May of 2007, The United States Sentencing Commission provided their fourth report to Congress on the Cocaine and Federal Sentencing Policy. In light of their initial report in 1995, in which the Commission first expressed their disagreement with the Sentencing Guidelines on crack cocaine penalties, this report illustrated a renewed interest in the federal cocaine sentencing policies after the Supreme Court's decision in *United States v. Booker* (discussed below in greater detail). Ultimately, the decision created a series of disagreements between the federal courts on how to appropriately address the 100:1 sentencing disparities between crack and powder cocaine. Moreover, it led to the creation of new legislation to directly target sentencing disparities in an effort to promote the intended goals of the Sentencing Reform Act of 1984, which initially sought to reduce unwarranted sentencing disparities among inmates found guilty of similar criminal acts (Report to Congress:, 2007)

The Sentencing Commission specifically addressed the two-tiered structure for federal cocaine offenses that was currently in place, which established unequal mandatory minimum sentences for crack cocaine and powder cocaine based specifically off of drug quantity. Under this sentencing structure, it required 100 times more powder cocaine to equal the same level of punishment as a crack cocaine offense, yet crack cocaine punishments typically resulted in sentences 3 to 6 times longer than powder cocaine even with similar quantities. The sentencing structure also sentenced crack cocaine offenders to longer and harsher punishments than for other types of federal drug offenses, including: marijuana, heroin, and methamphetamine (Report to Congress:, 2007) The new recommendations provided to Congress by the Commission urged them to do the following: increase the five-year and ten-year statutory mandatory minimum threshold quantities for crack cocaine offenses in order to focus more on major drug traffickers; repeal the mandatory minimum penalty provision for simple possession

of crack cocaine offenders under the age of 21; reject addressing the 100:1 drug-quantity ratio by decreasing the five-year and ten-year mandatory minimum threshold quantities for powder cocaine offenses, as there is no evidence to support a reason for the disparate sentencing penalties between the two drugs. In addition, the Sentencing Commission recommended legislation that enabled the Commission to apply an amendment to any future changes in the Federal Sentencing Guidelines. This recommendation primarily sought to address any new discrepancies that were the result of sudden changes to the guideline, and propose a quick and efficient solution to the problem (Report to congress:, 2007)

For the first time, Congress upheld all the proposals addressing the 100:1 sentencing disparity between crack and powder cocaine. In fact, the Amendment, which went into effect on November 1, 2007, modified the drug quantity thresholds in the Drug Quantity Table downward by two levels so that future offenses are not subject to penalties in excess of the statutory mandatory minimum penalties for crack cocaine. Specifically, penalties based on the quantity of the drug returned to the levels originally set within the guideline ranges for mandatory minimum penalties established years earlier (Report to congress:, 2007). The Sentencing Commission stressed that the 2007 Crack Cocaine Amendment was a step in the right direction, though future changes were still needed to reverse the effects of the 100:1 sentencing ratio for crack cocaine versus powder cocaine offenses. The 100:1 sentencing ratio in fact remained in place; however the punishment levels for crack cocaine offenses were reduced by two levels.

On December 27, 2007, Marc H. Mortal, President and CEO of the National Urban League, submitted an editorial for the New York Amsterdam News on the recent passing of the 2007 Crack Cocaine Amendment. He credits the passing of the amendment to the combined efforts of the U.S. Sentencing Commission, the United States Supreme Court, and President George W. Bush. In fact, within a few short hours of the amendment being passed, President Bush commuted the sentence of Michael D. Short, whom had been convicted years earlier for aiding a crack-cocaine ring. This was fairly significant as Michael Short was one of just five

commutations that President Bush signed off on during his entire presidency. The day after the amendment was signed, the U.S. Sentencing Commission announced that nearly 20,000 federal crack cocaine offenders would immediately be eligible for reduced sentences under the reformed sentencing guidelines. Again, the initial guidelines in the 1986 Anti-Drug Abuse Act declared that persons possessing 50 grams of crack cocaine would be sentenced equally to someone convicted of possessing 100 times more powder cocaine (Mortal, 2007).

. The distorted visions of crack cocaine reported in the 1980s and 1990s primarily created by the media, politicians and other prominent leaders, were influenced in part by an “expert” government witness who claimed that crack cocaine was more addictive than powder. As a result the Anti-Drug Abuse Act was passed and U.S. prisons began being filled with trivial low level drug offenders. Furthermore, Mortal (2007) claimed the disproportionate number of “petty criminals” (p. 13), including roughly 85% African-American offenders, instead of the drug lords and high volume drug dealers were actually causing the widespread societal problems (Mortal, 2007).

Ironically, the reversal was partially on the same grounds. Justice Ruth Bader Ginsburg, a proponent of the decision to apply the 2007 Crack Cocaine Amendment stated that powder and crack cocaine result in “the same physiological and psychotropic effects” (p. 13), and therefore felt that users of both types of narcotics were deserving of the same punishment. The passing of the amendment also suggested that the 1986 [Anti-Drug Abuse Act] law was both disproportionate and unjust, and was considered a major contributor to the racial disparities in the federal prison system. The U.S. Bureau of Justice however stated that the federal sentencing guideline reform for crack cocaine offenses was not likely to have a great impact on reducing levels of drug offenders in federal prison, as the majority of all drug offenders reside in state prisons (Mortal, 2007).

The claim made by the Bureau of Justice in 2007 that significant changes in the federal system might be limited due to the majority of drug offenders residing in state prisons is valid. It

is conceivable, however, that the changes to the sentencing guidelines on the federal level will result in changes to the state sentencing guidelines at some point in the future. The opinions expressed by the author throughout the article are beneficial to changes in the future, nonetheless, as he recognizes that although changes may not immediately and fully resolve the levels of disparity in federal prison, the effects of the federal guideline reform will likely prove to be beneficial in reducing levels of racial disparities, and it is probable that many states will eventually decide to adopt similar, if not identical, sentencing strategies as included in the 2007 Crack Cocaine Amendment in efforts of reducing overcrowded and racially disproportionate state prison populations.

Just one month after Congress approved the 2007 Crack Cocaine Amendment, thereby reducing the base sentencing levels for crack cocaine, the Sentencing Commission (2011) requested the amendment be applied retroactively. The retroactive application went into effect on March 3, 2008, and U.S. Federal Courts were immediately authorized to modify the sentences of federal crack cocaine offenders in prison. The Commission indicated that there were 25,515 motions for retroactive application of the 2007 Crack Cocaine Amendment, and 16,433 were granted; 9,082 motions were denied, of which 7,665 were declared legally ineligible due to other factors associated with their crimes (USSC, 2011).

The Sentencing Commission determined that the average decrease in sentences for the 16,433 offenders was 26 months. Many offenders were released immediately after the retroactive application went into effect as they had already served a significant portion of their original sentence. Other offenders were still eligible for reduced sentences, but it was determined that many remain in prison until they satisfactorily completed an appropriate length of punishment under the new guidelines. The Sentencing Commission at that point decided to conduct a study on recidivism rates of those offenders immediately released due to retroactive application of the amendment, versus offenders released before the application of the

amendment who had all served the entirety of their unaltered sentence for crack cocaine offenses (USSC, 2011).

The general purpose of the study was to determine whether or not the reduction in prison sentences for offenders released after the retroactive application of the 2007 Crack Cocaine Amendment had any effect on the recidivism rates compared to offenders released prior to the application of the amendment. It was presumed that offenders released after the application of the 2007 Crack Cocaine Amendment, and prior to the conclusion of their original sentence, would pose a higher safety risk than offenders who completed their entire sentence before the amendment went into effect (USSC, 2011). The two groups used in the study included the offenders released after the retroactive application of the 2007 Crack Cocaine Amendment (2007 Crack Cocaine Amendment Group) and the comparison group of offenders released prior to the 2007 Crack Cocaine Amendment (Comparison Group), offenders released 12 months prior to March 3, 2008. All criminal records were reviewed for both groups. There were a total of 848 offenders in the 2007 Crack Cocaine Amendment Group participating in the study and 484 offenders in the Comparison Group.

For all intents and purposes of the study, recidivism was defined as any of the following: a re-conviction for a new offense; a re-arrest with no case disposition information available; or a revocation of an offender's supervised release. The results concluded that there were no statistically significant differences between the recidivism rates for the 2007 Crack Cocaine Amendment Group and the Comparison Group. For example, of the 2007 Crack Cocaine Amendment Group, 30.4% of the offenders re-offended within two years; meanwhile, 32.6% of the Comparison Group offended within two years. Additionally, new arrests occurred in 23.2 percent of all offenders in the 2007 Crack Cocaine Amendment Group, compared to 25% in the Comparison Group. Lastly, revocations of an offenders' release occurred among 7.2% of the Crack Cocaine Amendment Group, and in 7.6% of the Comparison Group (USSC, 2011).

Offenders arrested for new crimes from both study groups were similar, including: re-arrests for drug possession, drug distribution, assault/and or battery, and driving under the influence. The time periods in which both study groups re-offended was also similar, in that they both increased incrementally, and by 24 months both groups reported recidivism rates of over 30% of the total numbers in each group. Demographic variables were also similar between the groups. In particular the majority of offenders from both groups were African-American males of similar ages (USSC, 2011).

This study lasted for 3 years, and compared the rates of recidivism between offenders released an average of 20 months early due to the retroactive effect of the 2007 Crack Cocaine Amendment, and offenders released prior to the retroactive application of the 2007 Crack Cocaine Amendment (USSC, 2011). The results of the study provided no significant indications that recidivism rates were higher for one group compared to the other. Specifically, offenders released early, per the 2007 Crack Cocaine Amendment, were not any more likely to re-offend or return to prison than the comparison group. These findings indicate that the 2007 Crack Cocaine Amendment and its retroactive application does not increase risks to public safety, but rather increases the likelihood of immediate benefits to the federal prison system.

Additional Evidence Supportive of Reform

Following the approval of the 2007 Crack Cocaine Amendment, and the retroactive application to punishment, additional studies were conducted by scholars seeking to further highlight the disparities between the two sentences and promote additional changes to the sentencing guidelines. Schwartz (2007) recounts the famous Supreme Court case involving Derrick Kimbrough, which prompted groundbreaking changes to the crack cocaine sentencing guidelines. Kimbrough was found by police in Norfolk, Virginia in 2004 to have been selling over 200 grams of both powder and crack cocaine. More specifically, the 56 grams of crack cocaine possessed by Derrick Kimbrough at the time of his arrest was 6 grams above the legal statutory

limit for a minimum 10 year prison sentence under the original sentencing guidelines (Schwartz, 2007).

In addition to drug possession charges, Kimbrough was also charged with unlawful possession of a handgun. This could have added an additional 9 years to his already 10 year minimum sentence, however a federal judge agreed to lower the sentence to only 15 years total because of his personal disagreement with the federal mandatory minimum sentencing guidelines, and their disparate punishments. However, an appellate court judge did not agree with the initial ruling and said that a judge cannot lower a prison sentence simply because of a personal disagreement with the sentencing policy. The case eventually landed before the Supreme Court who upheld the original ruling and decided that a federal judge could, in fact, sentence less than the sentence lengths established under the mandatory minimum sentencing guideline for crack cocaine offenses (Schwartz, 2007).

Further analysis by Schwartz (2007) revealed that violence was only involved in about seven percent more cases involving crack cocaine than involving powder; later studies by Leigey and Bachman (2007), however, failed to find any difference in violence associated with crimes involving crack or powder cocaine. Additionally, Schwartz (2007) examined earlier reports by the Sentencing Commission, which revealed that more than 80 percent of all federal crack cocaine offenders during the late 1980s and early 1990s were black, compared to only 9 percent who were white. This finding supported a 1995 Sentencing Commission statement that the biggest differential for the disparate sentences between white and black men was due to crack cocaine, which ultimately resulted in higher incarceration rates for African-Americans. Consequently, Schwartz (2007) surmised that the disparities in sentencing and incarceration rates for African-Americans leads directly to the high levels of animosity and distrust by minorities when dealing with law enforcement.

Leigey and Bachman (2007) investigated the relationships specifically between violent behavior and crack cocaine for offenders sentenced after the 1988 Anti-Drug Abuse Act. The

1988 Anti-Drug Abuse Act increased the severity of the mandatory minimum penalties that were initially applied by the 1986 Anti-Drug Abuse Act, and was inherently responsible for the 100:1 sentencing disparity. The researchers specifically aimed to discern whether crack cocaine or powder cocaine offenders were more likely to have been incarcerated for violent crimes. Data, which were gathered from the *Survey of Inmates of State Correctional Facilities* (1991) and compiled by the Bureau of Justice Statistics, included 13,986 inmate interviews (Leigey & Bachman, 2007).

Incarceration for a violent offense was the dependent variable used in the study, while race of the inmates, age, income level, gender, prior criminal history, and the influence of crack cocaine were determined to be the independent variables. Because the study relied on the admittance of the inmates on several of these issues, particularly the direct involvement in a crime, there was concern for the validity of the responses. Inaccurate answers, uncertainty of information, and false responses were also validity concerns in the study. The participants in the study were assured that all responses were strictly confidential and were allowed to respond in a private location within the facility (Leigey & Bachman, 2007).

The results of the cross-sectional logistic regression model used in the study ultimately indicated that crack cocaine most often had a negligible influence on violent offenses and that alcohol was the most common contributor to violent crimes. Powder cocaine was slightly more of a contributor in violent crimes than crack cocaine, but was still significantly less of a causal factor than alcohol. The race of the offender in violent crimes involving both powder and crack cocaine presented no substantial differences, although males were more likely than females to be involved. The final results indicated that alcohol was determined to have the greatest impact on violent crimes, further proving that powder and crack cocaine use among offenders were essentially equal contributors to violent offenses, even though neither drug was considered a significant causal factor in violent crimes (Leigey & Bachman, 2007).

The results illustrate the important, yet seldom discussed relationship between crack cocaine and violent offending. Specifically, that crack cocaine is not a main contributor of violent offenses, as commonly perceived by lawmakers and politicians, and thus suggests that crack cocaine was not deserving of the original 100:1 sentencing disparity. In fact, powder cocaine showed to have more of an effect on violent crimes than crack cocaine, further pointing to the unfairness of the sentencing laws between the two narcotics (Leigey & Bachman, 2007).

Schlesinger (2008) discussed the failure of mandatory minimum sentences and the resulting effects of mass racialized incarceration percentages in state prisons in the United States. She begins by highlighting the history of the tremendous prison growth during the last century in America, and specifically how the construction of prisons quadrupled in size from 149 in 1974 to 628 by the year 2000 (Bureau of Justice Statistics, 2003; as cited in Schlesinger, 2008). Additionally, prison admission rates more than doubled from 1983 to 2001 (Bureau of Justice Statistics, 2005; as cited in Schlesinger, 2008). But more striking is the fact that African-Americans are six times more likely to be incarcerated than Whites. Although racial disparity in U.S. prisons is a phenomenon dating as far back as the emancipation era (Curtin, 2000; Sellin 1976; as cited in Schlesinger, 2008), currently, approximately 5% of black men in America are either residing in federal or state prisons (Bureau of Justice Statistics, 2007; as cited in Schlesinger, 2008),

During the 1970s to the 1990s, the federal government made efforts to reduce the effects of unwarranted racial disparity by rewriting many criminal codes and adopting new and improved sentencing guidelines. The disparity remained, however, due to the fact that mandatory minimum sentencing often applies strict punishments to specific types of crimes that are usually associated with racial minorities; including crimes that typically occur within public housing complexes or crimes that African-Americans are more likely to engage in such as crimes involving a firearm. As a result, disparities within the prisons continue to climb and “modern racism” (Bonilla-Silva, 2003; Gotanda, 1991; McConahay & Hough, 1976; McVeigh,

2004: Sears & Kinder, 1971; as cited in Schlesinger, 2008) is often used to explain why these problems continue to occur. The author in fact refers to the effects of the sentencing guidelines as colorblind racism (Bonilla-Silva, 2003), or “a system of racial inequality that is produced and maintained through formally race neutral policies, practices and ideologies” (Schlesinger, 2008, p. 58).

Even in light of the current disparities, several theories call into question whether the sentencing policies actually have a racially disparate impact on the prison populations. For instance, conflict theory suggests that because of stratification within society, certain policies, like the mandatory minimum sentencing guidelines, will basically emphasize already existing stratification. Consensus theories, on the other hand, state that certain behaviors and characteristics are simply punished more severely because society agrees that these are more harmful to the general population. While it is not the aim of the current paper to evaluate either theory, it can be said that mandatory minimum sentencing policies are not inherently discriminate by design, regardless of whether they result in disparate effects among the prison population (Freeman, 1977-1978; Greene, 1989-1990; as cited in Schlesinger, 2008).

In contrast to consensus or conflict theories, critical race theorists study the effects of policies which are believed to replicate racial disparities through their implementation, and further argue that race neutral policies are in fact the root cause of racial inequalities within the prison system (Alfieri, 1999; Freeman, 1977-1978; Gotanda, 1991; Seigel, 2001; as cited in Schlesinger, 2008). Many studies have tested this assumption by examining the effects of these policies on prison populations. Most have generally found that mandatory sentences do in fact increase prison populations (Bales & Dees, 1992; Fischer, Thakler, Stewart, & McDaniel, 1992; Iowa Statistical Analysis Center, 1985; Miller & Blumstein, 1979, Morelli; 1986; Petersilia & Greenwood, 1977; as cited by Schlesinger, 2008) because inmates are simply forced by the sentencing guidelines to serve lengthier sentences. There have been other studies, however, that claim that mandatory minimum sentences do not have a disparate impact on the prison

populations (Marvell & Moody, 1995; as cited in Schlesinger, 2008), or increases in prison admission rates (Sorensen & Stemen, 2002; as cited in Schlesinger, 2008).

The author suggests that more recent studies on the disparate impact of mandatory minimum sentencing policies only analyze how the court systems apply these policies, and not the actual direct impact on the prison populations. For the most part, recent studies reveal that white offenders are the least likely to be sentenced to mandatory minimum sentences, and are instead more likely to benefit from downward departures in sentences than black offenders. Accordingly, black and Hispanic offenders are more likely to be sentenced to mandatory sentences than whites, despite having similar legal characteristics (Crawford, 2000; as cited in Schlesinger, 2008). A study by Kautt & Spohn (2002), as discussed earlier, tested whether state and federal governments enacted disproportionately mandatory terms for crimes that African-Americans are usually more likely to be arrested for. The results indicated that there were differences in mitigating and aggravating factors for black defendants when compared to white defendants, but their study, like many others, was met with limitations as it only examined disparities among sentence lengths of the offenders sentenced to the same mandatory minimum sentences (Schlesinger, 2008).

Schlesinger (2008) attempted to bridge the gap regarding this issue by focusing on the effects of changes in sentencing policies on racial disparities in punishment outcomes. First and foremost, a longitudinal analysis on state-level prison admission rates, specifically focusing on race, was conducted. The researcher was guided by the following: whether or not mandatory minimum sentencing enhancements increase or decrease state-level prison admissions rates of black or white men; whether the effects of race neutral policies vary by race; do mandatory sentencing policies have more consistent or substantial effects on prison admission rates for some races as opposed to others; and whether the effects of mandatory minimum terms are different than those of sentencing enhancements (Schlesinger, 2008).

In order to answer these questions, Schlesinger (2008) constructed a data set by merging information on several sentencing policies through data from many public libraries with data from several publicly available databases, including the National Corrections Reporting Program (NCRP). There were certain limitations within the study, particularly the fact that her data did not include female offenders, only included five guideline states, and simply categorized offenders as only blacks or whites, et cetera. The five states that were included, however, represented nearly one-third of the entire prison population in the country. This enabled her to portray the effects of race-neutral, mandatory minimum sentencing policies on a large set of prisoners, which can in turn be representative of a large prison population such as the federal prisoner population (Schlesinger, 2008).

The dependent variable in the study was the number of prison admission rates, represented by the number of white and black men per 100,000 admitted into a state's prison system. Data was collected from the U.S. Census Bureau, as well as the NCRP, which included statistical data from 1983 to 2001. During this time period, and due primarily to increases of drug offenders, white offenders' admission rates increased by 33%, while black offenders' rates increased by 59%. White offenders rates in 1983 were less than one-fourth the rate of black offenders during the same year, indicating that any significant change for white offenders would only be minute compared to black offenders. Sentencing policies meanwhile were the independent variable, and included data from state law libraries in each of the five states included in the study (Schlesinger, 2008).

The results of the cross-sectional time-series analysis presented four distinct findings. First, both mandatory terms and sentencing enhancements throughout each state increased admission rates for both white and black offenders. Second, admission rates for black offenders were disproportionately affected by both mandatory terms and sentencing enhancements. The effects of these policies were stronger and more consistent when dealing with the admissions of violent offenses. Lastly, the effects of the adoption of sentencing enhancements upon

admissions were more consistent than the effects of the adoption of mandatory terms. Schlesinger (2008) stated that it was not surprising that mandatory terms and sentencing enhancements both increased prison admissions; however, these findings supposedly discredit the “continuing discretion thesis” that these policies shift discretion to the prosecutors in each case, and ultimately change sentencing decisions from normally unregulated judicial decisions (Engen & Sheen, 2000; as cited in Schlesinger, 2008, p. 73).

Furthermore, the results cast light upon sentencing enhancements as opposed to just mandatory terms, which are often given more attention in the media, by the public, and by scholars researching punishment. Schlesinger (2008) states that it is alarming how both mandatory terms and sentencing enhancements disproportionately affect black offenders and suggests that it is critically important to evaluate all aspects of the sentencing process, including all sentencing policies, as opposed to just limiting research to one particular aspect like what has typically been done in the past. She also claims that because admissions in violent offenses increased as a result of both policies, the validity of her results further proved that racial inequality is being produced in prison systems throughout America due to colorblind, or racially neutral, sentencing policies (Schlesinger, 2008).

Brennan and Spohn (2008) reviewed a series of empirical studies on state and federal sentencing reforms following the application of the 2007 Crack Cocaine Amendment. Their purpose was to address and analyze the results of several previous studies testing whether or not state and federal sentencing reforms implemented during the past three decades have been effective in their approaches of restructuring the sentencing process, restraining judicial discretion, and ultimately eliminating racial disparities within the system. The authors state that although there is a fair amount of published information on sentencing policies, many questions arise from the studies on the true effectiveness of state and federal sentencing reforms (Brennan & Spohn, 2008).

They report that several of the sentencing reforms are not resulting in the desired outcomes, as mentioned earlier. Results show that crime rates are not decreasing, despite an enforcement of harsher punishments for crimes, and that extralegal variables like race, gender, and ethnicity still play a significant role in the sentencing process for offenders. The authors reference several academic studies conducted on failed reformations of both state and federal sentencing policies, including California's three strikes law, as well as sentencing guidelines in North Carolina. California, specifically, includes some of the nation's toughest laws for repeat offenders, which supposedly result in more crime-reduction overall than in states with less rigorous laws (Brennan & Spohn, 2008).

The results of a time-series, cross sectional analysis indicated that the three-strike habitual offender law is actually no more effective than in other states that use alternate sentencing guidelines. In fact, the study revealed that the crime reduction benefits to society are minimal, at best, and do not achieve their intended goals of overall crime reduction. Meanwhile, the authors examined sentencing outcomes for felony drug offenders in North Carolina, specifically focusing on the differences between a group of Hispanic, black, and white offenders sentenced under the state's 1994 guidelines. The results indicated that Hispanic offenders received harsher punishments than blacks or whites, regardless of all three being sentenced under the same guidelines. Brennan and Spohn (2008) claim that the results add to a growing number of state sentencing policies that have ultimately failed to achieve desired results of limiting discretion and reducing disparities.

The authors also analyzed data from the U.S. Sentencing Commission in 2003 on offenders charged with federal narcotics offenses in four federal courts: the District of Arizona, the District of Southern California, the District of Southern Texas, and the District of New Mexico. The researchers analyzed whether differences in legal and extralegal factors among the four homogenous districts had any effect on sentencing outcomes for the offenders. The results indicated that over 90% of all offenders were sentenced to prison throughout the four

districts, though the lengths of sentences in the Southern District of Texas were much higher. Although other factors played minor roles in the sentencing outcomes, like citizenship status and various sentence reduction qualifications for certain offenders, this was yet another example of judicial discretion leading to disparate results, especially among four similarly populated locations (Brennan & Spohn, 2008).

Following the application of the 2007 Crack Cocaine Amendment, Brennan and Spohn (2008) reviewed various state and federal sentencing policy reformations that have been implemented to help reduce discretion and remove incidents of racial disparities. As evident in North Carolina, as well as in Federal Districts in the south-western United States, the desired outcomes were not met and differential punishments for offenders still resulted in racial disparities. California also failed to produce any significant effects as a result of harsher punishments. These examples support the basis of the hypothesis by indicating that examples of racial disparity on both the state and federal level remain. The examples also present evidence of disparities more negatively effecting Hispanic populations, as compared to whites or blacks, which is rarely the focus in studies of racial disparity. This provides an opportunity for scholars in the future to study the effects of racial disparity on the growing numbers of Hispanics in the United States.

Speaking on behalf of the Subcommittee on Crime, Terrorism, and Homeland Security, U.S. Advocacy Director to the House Judiciary Committee, Carol Chodroff (2008) spoke in favor of eliminating racially discriminatory sentencing policies on any type of cocaine offenses. She claimed that even though the drugs warranted health, social, and economic consequences, the punishments awarded to offenders for either crack or powder cocaine were unjustified, and basically racist in their implementation. She demonstrated that crack cocaine offenders most often received harsher punishments when compared to offenders sentenced for other narcotics, due to the 100:1 sentencing disparity. In particular, African-Americans were most often the ones

who received the harsher and more unique sentences under these federal guidelines, which targeted crack cocaine specifically (Chodroff, 2008).

Chodroff (2008) noted that although there are more white cocaine offenders in the United States, according to data provided by the U.S. Sentencing Commission, black offenders accounted for more than 84% of all federal crack defendants in 2000. This statistic changed minimally during the next several years despite numerous attempts by the Commission and other advocates, to change the sentencing structure. In defense of racial disparities in law enforcement, Chodroff (2008) states that as long as there is no discriminatory intent, presumably a fact that would be hard to prove, disparity is not in violation of the U.S. Constitution. However, she explains that the racially disproportionate sentencing of crack versus powder is inconsistent with the United States' obligation to comply with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), a treaty which was ratified in 1994 (Chodroff, 2008).

In regards to the 100:1 sentencing disparity between crack and powder cocaine, Chodroff (2008) explained that there are no integral differences between the two drugs, and therefore no reason to punish one more harshly than the other. Unfortunately, the federal sentencing structure for crack has resulted in the waste of public resources through the mass incarceration of lower level offenders. In order to effectively stop the disproportionate punishments, it is necessary that the Sentencing Commission cooperate with Congress in promoting uniformity between the sentencing structures. Once uniformity is met between the sentences for both types of drugs, the U.S. would once again be in compliance with the treaty obligations set forth in the ICERD (Chodroff, 2008).

Fair Sentencing Act

After many studies following the adoption of the 2007 Crack Cocaine Amendment, and its retroactive punishment, and several years with scholars and criminal justice professionals fighting for further sentencing reforms, the Justice Department urged Congress to end the

disparity in punishment levels between crack and powder cocaine. Assistant Attorney General Lanny Breuer even stated in April of 2009, that the federal punishment levels failed “to appropriately reflect the differences and similarities between powder and crack cocaine” (Berman, 2011, p. 167). He went so far as to say that the disparities between the punishment levels for both drugs should be completely eliminated, though many legislators were hesitant to jump to such drastic measures due to symbolic concerns and the potential impact of such a measure (Berman, 2011).

Several advocates for sentencing reform, however, believed that with the President’s party in control of both houses of Congress, the possibility of achieving complete equality between the sentences for crack and powder were very likely. With the hesitance of many legislators pushing for total equality, Congress decided not to consider presenting the issue to the legislature in 2009, and the issue remained stagnant until March of 2010. Senator Richard Durbin’s bill, S.1789, became the focus of the Senate Judiciary Committee who proposed an amended version seeking reduction, instead of elimination of the sentencing disparity between crack and powder cocaine. The bill later became the text of what is now known as the Fair Sentencing Act, which raised trigger amounts of crack cocaine needed for both five and ten year mandatory minimum sentences. Meanwhile, the trigger amounts of powder cocaine needed for equal punishments remained the same. This reduced the previous 100:1 sentencing disparity between crack and powder to just 18:1 (Berman, 2011).

The bill was unanimously passed by the Senate, who voted for all of the sentencing changes proposed in the bill. Many sentencing reform advocates, as well as members of the House of Representatives, were disappointed, however, that the disparity between sentences was not completely eliminated and that the amendment did not do enough to reduce disparity levels. In fact, a press release by the American Civil Liberties Union complained that although the new amendment was “a step forward” (p. 168), there was still an unnecessary disparity between the two similar drugs (Berman, 2011).

Julie Stewart, president of the Families Against Mandatory Minimums advocacy group, claimed that it was a fair compromise to the disparity issue, and that it was likely the only bill that the Senate would have passed regarding the matter (Berman, 2011). The bill was signed into law on August 3, 2010 by President Barack Obama. By November 2010, additional amendments for retroactive application of the new guideline punishment levels were also signed into law, which enabled all federal crack cocaine offenders who committed offenses before August 3, 2010, and were not yet convicted, to be subjected to the revised sentencing provisions established under the Fair Sentencing Act (Berman, 2011).

Alternative Analyses on Causes of Racial Disparity

A large amount of previous research has been conducted on the effects of racial disparities and or discrimination within the U.S. criminal justice system. Unlike the majority of research and analyses of the disparities resulting from the Crack Cocaine Federal Sentencing Guidelines, as discussed in this paper, author Marc Mauer (2011) conducted a study on the trends and impact of incarceration on minority communities in America. Mauer (2011) primarily focuses on the effects of racial disparities resulting from certain policies and practices of the criminal justice system. Despite the historical significance of having elected an African-American as President of the United States, the issues of racism and other race based conflicts are still prevalent in our society. Issues of racism are clearly evident in the criminal justice system as well, and disproportionate rates of incarceration have had devastating effects on not only minority communities and public safety officials, but on the offenders themselves (Mauer, 2011).

Mauer (2011) reflects back to 1954, when there were approximately 100,000 African-American offenders incarcerated in prisons and jails throughout the United States. Today, he states that these numbers have multiplied to nearly 900,000 offenders and according to the Department of Justice, "1 of every 3 African American males born today can expect to go to prison in his lifetime" (p. 88S). Respective numbers for Latinos were estimated at a 1 in 6

chance, and for white males a 1 in 17 chance of going to prison. The estimates for women included 1 out of every 18 African-American women going to prison, a 1 in 45 chance for Latino women, and a 1 in 111 chance for white women (Bonczar, 2003; as cited in Mauer, 2011). He also states that African-Americans are three times more likely than whites to be victims of robberies, and two times more likely to be victims of aggravated assaults (Truman & Rand, 2010; as cited in Mauer, 2011).

Mauer (2011) concludes that a variety of factors, such as: the degree of involvement in a crime, disparate law enforcement practices, sentencing and parole policies and practices, and biased decision making by law enforcement officials are responsible for higher incarceration rates of minority offenders. Furthermore, he states that crime and arrests rates are not an accurate measurement of actual crimes committed as most crimes either go unreported, or do not end up in an arrest once they are reported. The author believes this makes it difficult to truly estimate the numbers of offenders who are actually involved in criminal acts (Mauer, 2011).

In 2009 African-Americans only represented 12% of the total U.S. population, meanwhile the FBI Uniform Crime Reports illustrate that African-Americans comprised nearly 30% of all persons arrested for property offenses, and approximately 39% of persons arrested for violent offenses in the same year (Federal Bureau of Investigation, 2009; as cited in Mauer, 2011). Mauer (2011) claims that what initially appears to be racially disproportionate crime data is a result of differences in social class. For example, a previous study done by researchers at Ohio State University concluded that rates of violence were much higher among very poor and disadvantaged neighborhoods, regardless of race, and that the differences in crimes between whites and minorities are a direct result of this (Krivo & Peterson, 1995, p. 642; as cited in Mauer, 2011).

Further, Blumstein (1982) analyzed the effects of disparities among the national prison population in 1979, and their involvement in crime. This study discovered that nearly 80% of the racial disparities could be explained by the offenders' involvement in crime; however the

remaining percentage of disparity could not be explained by statistical data. Follow-up studies concluded that the percentage of disparity among the national inmate population had been reduced to 76% in 1991, and only 61% of the total U.S. prison population of 2004. Mauer (2011) explains that much of the change in disparity percentage throughout the years can be attributed to larger overall prison populations offsetting the percentage of disparity, but that it is still evident of disproportionate law enforcement practices amongst different agencies throughout the country. Additionally, he claims that the result of these studies reflects the general prison populations of all 50 states, although some states may in fact have fewer percentages of imprisoned African-Americans (Mauer, 2011).

Mauer (2011) additionally describes how law enforcement practices are a large contributing factor to mass incarceration rates and the resulting disproportionate numbers of minorities imprisoned in the United States. Evidence to support this claim included media accounts of racial profiling on the New Jersey turnpike by New Jersey State Troopers in the 1990s. He states that many officers from various law enforcement agencies routinely detained drivers on the basis of race. Court orders were later created restricting these law enforcement practices from being performed in New Jersey, and also nationwide. The court orders limited, but did not totally prevent, disparate law enforcement practices from taking place. Data from 2005 data showed that African-American drivers were stopped and searched by police an average of 2.5 times more often than white drivers, and almost twice as much as Hispanic drivers (Durose, Smith, & Langan, 2007; as cited in Mauer, 2011).

In addition to disparate law enforcement practices, the prosecution stage is also considered to be a significant causal factor of racial disparities within the criminal justice system. The article states that nearly 90% of guilty verdicts are the result of plea bargaining, and that the influence of the prosecuting attorney overshadows that of the judge in most cases. It is also difficult to accurately assess the levels of fairness in the prosecuting stage as most of the negotiations that take place with plea bargaining are often done behind closed doors. The

author claims that there is even evidence of racial disparities within the prosecution stage dating back to a 1991 federal mandatory minimum sentencing study done by the United States Sentencing Commission. The commission found that prosecutors were more likely to offer white defendants plea bargains resulting in sentences less than the mandatory minimum sentence than they were to offer pleas to African-American or Latino defendants (United States Sentencing Commission, 1991; as cited in Mauer, 2011).

Mauer (2011) describes how the sentencing stage has also contributed to racial disparities. He reflects on studies conducted in the 1980s, which revealed that offender characteristics often produce strong racial outcomes in cases dealing with the death penalty. A previous study by David Baldus (1987) analyzed the data from the *McCleskey v. Kemp* case, which showed that “persons who kill Whites are about four times as likely to receive a death sentence as those who kill African Americans” (*McCleskey v. Kemp*, 1987; as cited in Mauer, 2011, p. 93S). Though he states that the Supreme Court generally denies claims of racial disparities in certain cases, despite patterns of statistical data, it does not mean that racial bias occurs in every case (Mauer, 2011).

Mauer (2011) conveys that in order to effectively change the levels of disparities throughout the system, a shift in opinions on how best to punish and treat offenders must take place. He explains that while there is still data on the obvious levels of disparity within the system, a recent analysis of persons incarcerated for drug offenses shows that rates have significantly declined since the year 2000. Furthermore, policy makers across the criminal justice system have now become more receptive to changes and reforms in drug sentencing policies in recent years, which have the potential to reduce costs and increase safety for the greater public. The author urges that continuing to build on these changes is still necessary for enhancing public safety in the future (Mauer, 2011).

Author Marc Mauer (2011) illustrated that nearly five years after the application of the 2007 Crack Cocaine Amendment, and its retroactive application, there is clearly still evidence of

racial disparities within the federal prison system. He blames the system itself, however, and not solely crack cocaine, as a significant contributor to the problem. Statistical data throughout the years shows that incarceration rates for African-Americans convicted of drug offenses have overall decreased, which suggests that the application of the 2007 Crack Cocaine Amendment, and presumably the 2010 Fair Sentencing Act have both made a direct impact in the system.

General Consensus on Disparity

With an abundance of literature on racial disparity within the federal prison system, it is apparent that most scholars agree, at least to a certain degree, that disparities exist and that mandatory minimum sentencing for crack cocaine offenses are arguably one of the leading causes of the disparities. Throughout the last three decades, and since the creation of the initial mandatory minimum 5 and 10 year prison sentences for federal crack cocaine offenses in the 1980s, numerous efforts have been made for the reformation of the federal sentencing guidelines for narcotic offenses by criminal justice professionals, scholars, and non-profit advocates. These efforts have been generally unsuccessful until the past several years, with the adoption of the 2007 Crack Cocaine Amendment, and the Fair Sentencing Act signed into law in 2010.

Both pieces of legislation reduce overall sentence lengths for federal crack cocaine offenders, and both also apply retroactively to offenders who were convicted and sentenced before the amendments were passed. The 2007 Crack Cocaine Amendment initially reduced overall sentence lengths for federal crack cocaine offenses by two levels, according to the quantity of narcotic involved in the offense. This, in turn, reduced the sentencing margins between crack and powder cocaine offenses and helped establish a fairer, yet still disparate, sentencing strategy. The Fair Sentencing Act is credited with reducing the 100:1 sentencing disparity to its current 18:1 level, in an effort to further reduce overall levels of racial disparity among offenders sentenced under the sentencing guidelines.

There is concern that even with obvious reductions in the lengths of sentences among offenders, and reductions in the overall sentencing ratio between crack and powder cocaine offenses, there may not be statistically significant reductions in racial disparity levels within the system due primarily to the relatively recent adoption of the amendments into law. In fact, it may be several years before any significant positive, and perhaps noticeable, changes in racial disparity levels result from the reformed sentencing policies. The only way to achieve true impartiality between sentencing outcomes between the two drug offenses is for further reform for equalized punishment levels between crack and powder cocaine offenses. This, however, does not guarantee reductions in racial disparity rates, as it is impossible to predict if offenders will or will not commit crimes, regardless of race or ethnicity.

Despite the identified limitations, this study attempts to reveal if disparity rates have been reduced by the adoption of the 2007 Crack Cocaine Amendment and 2010 Fair Sentencing Act. These two amendments have made immediate impacts on the sentences of several thousand federal crack cocaine offenders. Further, if they are shown to have effectively reduced unwarranted disparities, lawmakers and criminal justice professionals may support additional changes in the sentencing guidelines. Regardless of the immediate impact of the two amendments, it is also probable that over time these reformed policies may contribute to overall reduced disparity rates, and perhaps even reductions in overall prison population levels.

The following section, Chapter III, will explain the methods used in order to collect and analyze secondary data on federal prisoners convicted for federal crack and powder cocaine offenses. It will explain how and why specific data was selected. Chapter IV will present the results of the analysis of all relevant data to see if levels of disparity within the Federal Prison System have increased or decreased as a result of the 2007 Crack Cocaine Amendment and the Fair Sentencing Act.

CHAPTER III

METHODS

The researcher examined racial disparity in the United States Federal Prison System as a result of the mandatory minimum Crack Cocaine Federal Sentencing Guidelines. There is extensive qualitative and quantitative research on supposed contributors to racial disparity, and more specifically how the mandatory minimum guidelines themselves are believed to be a large factor for increases in disparity rates. There is, however, little research available on the effects of reforms to the Crack Cocaine Federal Sentencing Guidelines, and more recent rates of racial disparity within the federal prisoner population. A macro-analysis is conducted on crack cocaine offenders released pursuant to the 2007 Crack Cocaine Amendment and the Fair Sentencing Act, using disaggregate secondary data available through the U.S Sentencing Commission. The purpose of the study is to evaluate if significant statistical differences have occurred in levels of racial disparity between federal crack and powder cocaine offenders sentenced each year following the crack cocaine federal sentencing reforms.

Institutional Review Board

The researcher applied for Institutional Review Board (IRB) approval during the 2012 Summer Semester by providing both the IRB and the major professor with a copy of the application, as well as a written paragraph describing the objective of the study. Prior to conducting any research, the Institutional Review Board was required to approve the proposed methods of data collection for the statistical analysis. As only publicly available secondary statistical data is used for the analysis, and no use or study of live human or animal subjects, there were no ethical concerns raised by the IRB. The Researcher proceeded with the statistical analysis in the fall of 2012.

Sample Population

The sample included 114,250 white and black federal drug defendants sentenced under the United States Federal Sentencing Guidelines for drug offenses. The offenders included in the study were sentenced for either crack or powder cocaine offenses spanning from 1996 to 2011. Data provided by the United States Sentencing Commission (USSC) was made publicly available as far back as the year 1996. Consequently no prior sentencing data before 1996 was used for comparison. This sample was chosen largely due to previous literature highlighting racial disparity between white and black cocaine offenders sentenced under mandatory minimum crack cocaine federal sentencing guidelines. Although other races and other drug types were also included in the available USSC Sourcebook data, for the purpose of this study only sentencing data on white and black offenders of powder and crack cocaine offenses were used for statistical analysis and comparison.

Data Collection

Secondary statistical sentencing data were gathered from the USSC Sourcebook of Federal Sentencing Statistics from 1996 to 2011 for all white and black defendants sentenced for federal crack and powder cocaine crimes. The data used in the analysis included the total number and percentage of offenders by race and by drug type during each fiscal year from 1996 through 2011. It also included the average length of imprisonment each year specifically by drug type. The sample population of all white and black cocaine federal drug defendants were the units of analysis for the study.

The sentencing data included several statistical measurements for both white and black offenders, as well as sentencing data for crack and powder cocaine offenses during each fiscal year. Additionally, data from the USSC sourcebook for the 2004 fiscal year includes sentencing data for Pre-Blakely cases and Post-Blakely cases, which were separated into two data sets. Data for the 2005 fiscal year includes sentencing data for Pre-Booker and Post-Booker cases,

which were also separated into two data sets. For the purposes of this study, data were not separated between Pre-Blakely and Post-Blakely, or Pre-Booker and Post-Booker cases when analyzing statistical data, but rather separated by each individual year.

Table 3.1 provides the descriptive statistics for the sample included in the study. Included are variables such as: the number of white crack and powder cocaine offenders sentenced per year, the number of black crack and powder cocaine offenders per year, and the average sentence length in months for both white and black powder and crack cocaine offenders. The variables are listed in order for every year ranging from 1996 to 2011.

Table 3.1 – Federal Prisoner Sample Population

YEAR	WHITE CRACK OFFENDERS SENTENCED	BLACK CRACK OFFENDERS SENTENCED	WHITE POWDER OFFENDERS SENTENCED	BLACK POWDER OFFENDERS SENTENCED	AVG. SENTENCE IN MONTHS FOR CRACK	AVG. SENTENCE IN MONTHS FOR POWDER
1996	222	3,951	925	1,341	125.4	83.6
1997	298	3,901	965	1,445	125	82.2
1998	280	4,149	912	1,497	122.4	79.3
1999	278	4,391	969	1,570	120.3	79.1
2000	286	4,218	975	1,620	119.5	77
2001	349	4,140	968	1,633	115	77
2002	363	4,203	1,037	1,815	119.3	78.2
2003	428	4,408	1,037	1,470	123	80.6
2004 (Pre-Blakely & Post-Blakely)	373	4,060	893	1,414	123.5	82.2
2005 (Pre-Booker & Post-Booker)	427	4,354	866	1,568	127.7	83.1
2006	523	4,552	859	1,576	121.5	84.7
2007	479	4,528	993	1,710	129	86
2008	637	4,911	973	1,771	114.5	91
2009	558	4,476	1,031	1,684	114.8	86.7
2010	359	3,838	959	1,532	111	84.9
2011	265	3,614	949	1,474	104	81

Data Analysis

Statistical Package for Social Sciences, or SPSS, data analysis software was used to analyze sentencing data. Race of drug offenders by drug type, including both powder and crack cocaine, from 1996-2011, as well as the average length of punishment by both drug types is available in Table 3.1. Furthermore, the researcher charted the percentages of both white and black crack and powder cocaine sentences per year compared to the total amount of crack and powder cocaine sentences per year, and also the average percentage of change from year-to-year for white and black crack and powder cocaine offenders sentenced.

Independent-Samples T-tests were conducted by race and drug type, average sentences for crack and powder cocaine, and average difference in drug sentences for both drug types. Furthermore, each test compared two different groups within the selected population, including: groups of offenders sentenced before the 2007 Crack Cocaine Federal Sentencing Guideline Amendment, and offenders sentenced after the 2007 Crack Cocaine Amendment. Offenders sentenced before the amendment, or those sentenced between 1996 and 2007, were coded as 1, offenders sentenced after the amendment, or those sentenced from 2008 to 2011, were coded as 2.

Next, the disproportionality of the average number of black crack offenders sentenced each year compared to the average number of white crack offenders sentenced each year, and the same for black and white powder cocaine offenders sentenced each year was compared. To measure this, the researcher calculated how many more black crack cocaine offenders compared to white crack cocaine offenders were sentenced each year. The total number of white crack offenders sentenced per year was then deducted from the total number of black crack offenders sentenced per year, and the remaining number illustrated the sentencing disparity between races.

The researcher then compared the mean of how many more black crack offenders were sentenced per year in the Pre-Amendment group, to the mean of how many more black crack

offenders were sentenced per year in the Post-Amendment group to test for significance. Each step was completed identically in order to compare the disproportionality of black and white powder cocaine offenders sentenced per year. An additional T-test compared the average sentence lengths between crack cocaine and powder cocaine offenses each year and as groups before and after the 2007 Amendment. Lastly, difference in the average sentence length between crack and powder cocaine sentences were compared by year, and by groups sentenced either before or after the amendment.

The next section, Chapter IV, will include the findings from the statistical analyses conducted on the sample population with the purpose to highlight changes in levels of racial disparity in the federal prison system as a result of the crack cocaine sentencing guideline reforms. It will include both statistical data from the multiple independent-samples T-tests, as well as a descriptive analysis of the results for each test. The researcher will then describe the relationships of the tests, and specifically whether or not the results were statistically significant. Furthermore, the information presented in the charts, which were also used to measure certain variables related to the sample population, will be thoroughly examined and discussed.

CHAPTER IV

FINDINGS

This chapter will discuss the findings of multiple independent-samples T-tests, as well as statistical charts measuring federal sentencing data for crack and powder cocaine offenders from 1996-2011. Using the SPSS data analysis software, several graphs are presented in an effort to evaluate variables within the sentencing data. For instance, the average sentencing lengths in months is charted by race and drug type, in addition to charting the average number of sentences according to race and drug type. The researcher also charted the average percentage of white and black crack and powder cocaine offenders sentenced per year, as well as the average percentage change in black and white offenders by drug type from year-to-year.

Graphs

Figure 4.1 depicts the average number of sentences for white and black offenders sentenced under the U.S. Sentencing Guidelines from 1996 to 2011 for both crack and powder cocaine offenses. As illustrated, the average number of sentences per year for white crack cocaine offenders varied dramatically from the average number of sentences for black crack cocaine offenders each year. In fact, the lowest average number of sentences for white crack cocaine offenders was 222 in 1996, compared to the lowest average for black crack cocaine offenders of 3,614 sentenced in 2011. Meanwhile, the highest average number of sentences for white crack cocaine offenders was 637 in 2008, while the highest average number of sentences for black crack cocaine offenders was 4,911 in 2008.

Although there were obvious disparities in the average numbers of white and black crack cocaine offenders sentenced per year, the numbers for both races appeared to fluctuate

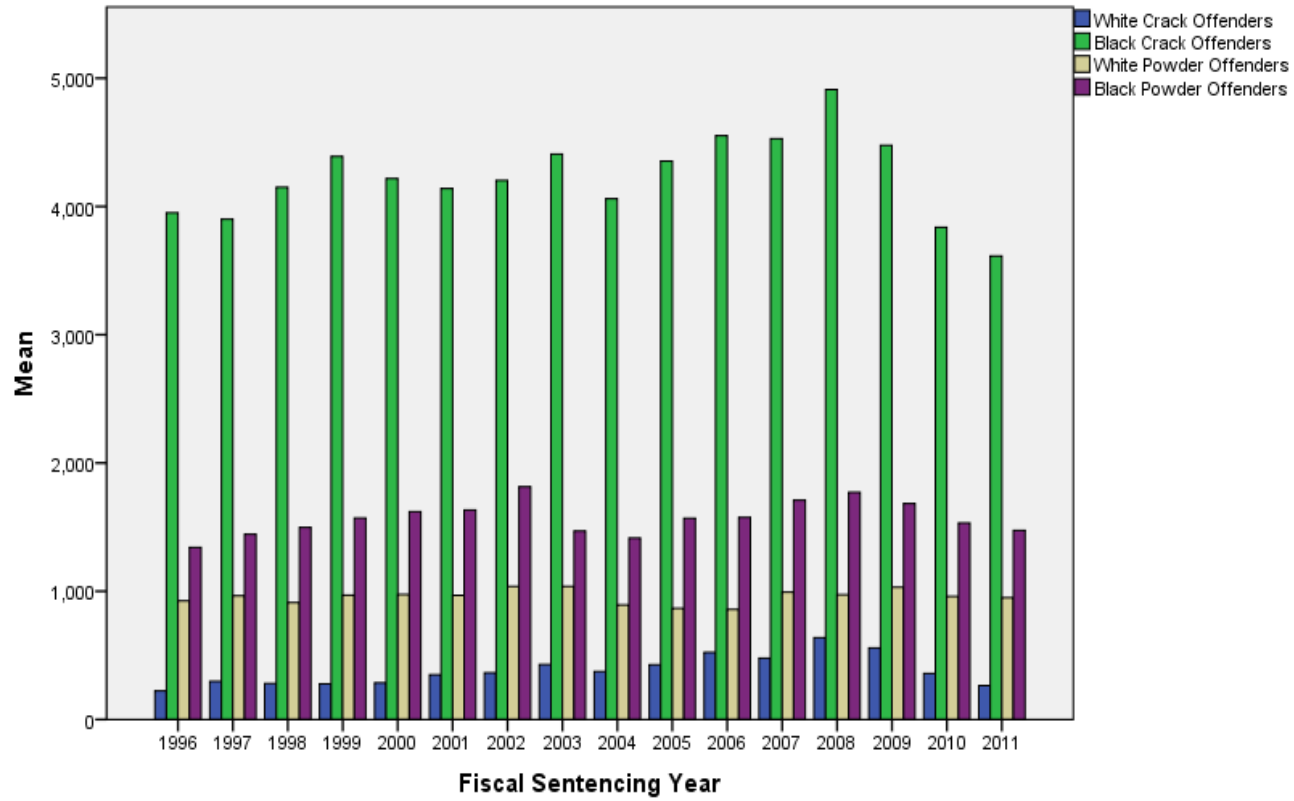


Figure 4.1 Graphical representation of the average sentences per year by race and drug type.

similarly, with averages of whites and blacks both rising and or declining in the same relative manner. The average numbers of sentences for white and black powder cocaine offenders were not as disproportionate as the average number of sentences for crack cocaine offenses. For example, the highest average for white powder cocaine offenders was 1,037, in both 2002 and 2003, while the highest average for black powder offenders was 1,815, and was also in 2002. Though there are obvious disparities in the average numbers of black versus white powder cocaine offenders sentenced, the disparity is not as striking as compared to offenders sentenced per year for crack cocaine.

Figure 4.1 indicates that the average number of sentences for both black and white crack cocaine offenders began to decrease after peaking in 2008. This effect may be indicative of the passing of the 2007 Crack Cocaine Amendment, which did not fully become implemented until March of 2008, but where several thousand offenders began receiving sentence reductions immediately after the retroactive punishment application went into effect (USSC, 2011). It could also be evident of the Fair Sentencing Act of 2010, which further reduced the disparity between sentences for crack and powder cocaine. The graph cannot show if the reductions in average sentences primarily for both white and black crack cocaine offenders was significant.

Figure 4.2 illustrates the average sentence length in months for both crack and powder cocaine offenses. Similar to the previous chart, this measures the average growth and or decline of sentence variations for federal cocaine offenses ranging from 1996 to the 2011 fiscal year. As was apparent in number of offenders sentenced, the chart indicates that there was a noticeable disparity between sentences for crack and powder cocaine over several years. The largest gap between sentence lengths occurred in 2005, where crack cocaine crimes received on average a sentence of 44.6 months longer than for powder cocaine offenses.

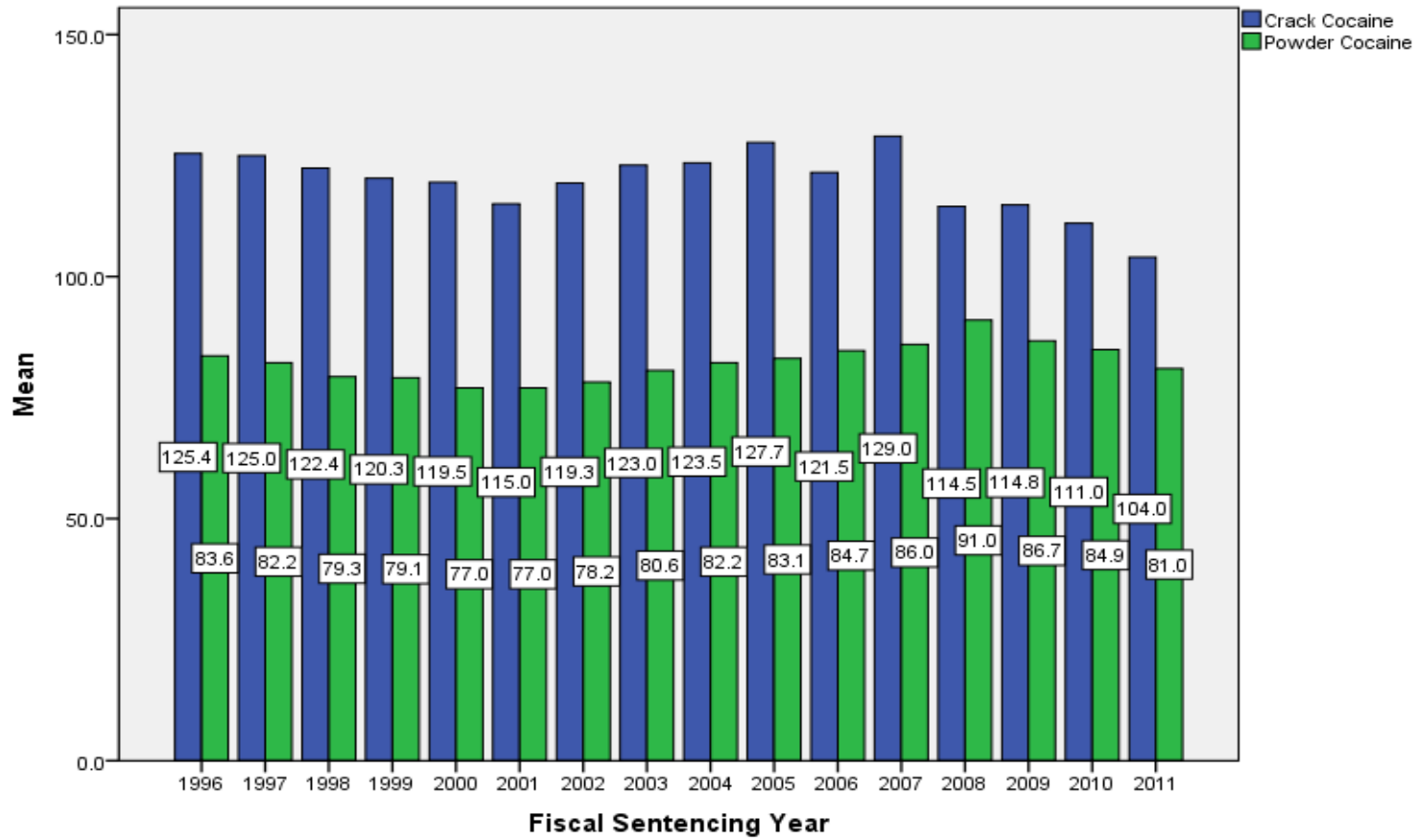


Figure 4.2 Graphical representation of the average sentence lengths in months by drug type.

According to the sentencing data gathered in the U.S.S.C. Sourcebook, the average difference in sentence lengths from 2008 through 2011 was nearly fifteen to twenty months lower than the average sentence lengths from the several previous years. This may be indicative of the adoption of the 2007 Crack Cocaine Amendment into law, and or the passing of the 2010 Fair Sentencing Act, which, as mentioned earlier, further reduced disparities between crack and powder cocaine sentences. Nonetheless, the chart clearly shows reductions in the average sentence lengths between crack and powder cocaine during these years. This perhaps suggests that future changes in sentencing disparity may continue to occur, which is supportive of the hypothesis.

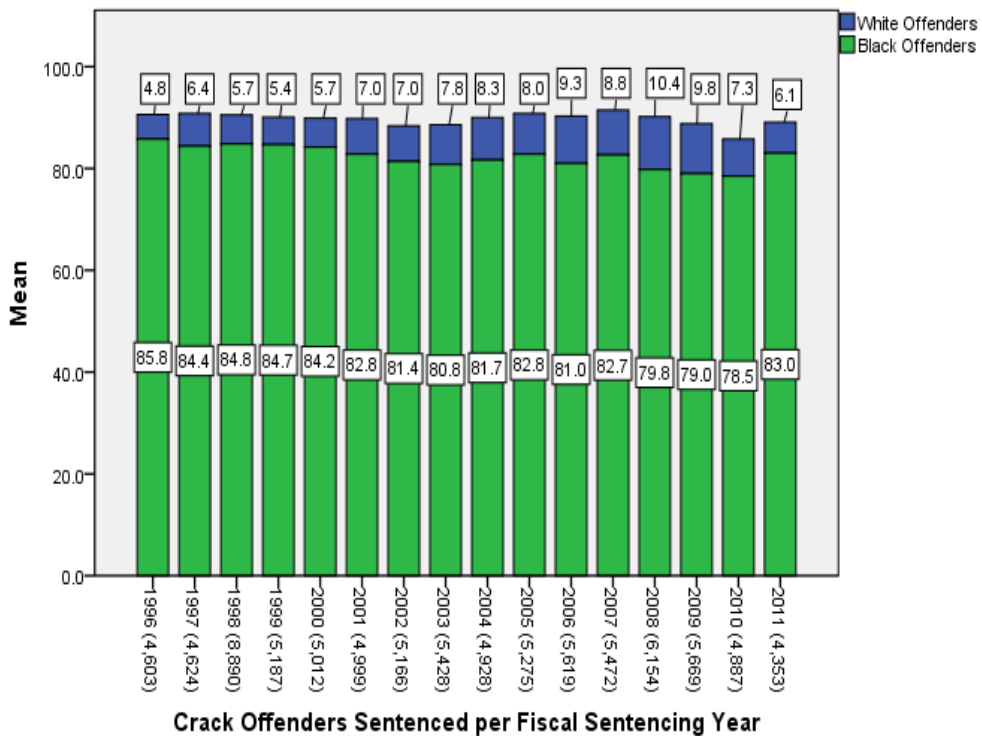


Figure 4.3 Graphical representation of the percentage of crack offenders per year.

Figure 4.3 represents the average percent of crack cocaine offenders sentenced to prison each year according to race. As evident in the graph, there is a considerable disparity between the percentages of white and black crack cocaine offenders sentenced each year, as black offenders are sentenced disproportionately for crack cocaine crimes when compared to white offenders. For example, in 1996, white crack cocaine offenders only represented 4.8% of all crack cocaine offenders sentenced, while black offenders represented 85.8% of all crack offenders sentenced during the same year. The data remained relatively the same throughout the years, although average differences in sentence lengths between white and black offenders began to narrow during the later years.

The graph illustrates a change in sentencing percentages for black offenders after 2007, as the sentences for black offenders began to decline for the next three years. The percentages for white offenders on the other hand continued to steadily rise throughout the years, only before dropping again in 2010 and 2011. It appears, however, that in 2011 the disparity levels between the two sentences were once again relatively consistent with the majority of the earlier years in the chart. The percentage of black offenders sentenced for crack cocaine offenses rose nearly five percent higher than in 2010, despite fewer crack cocaine offenders sentenced during the year than any other previous year.

This graph does not appear to fully support the hypothesis that the federal crack cocaine sentencing guideline reforms have been effective in reducing disparity following the adoption of the amendments into law. In fact, the average percentages for black crack cocaine offenders in 2011 rose nearly five percentage points from the year before, which is not indicative of positive results seen in the previous charts. It should be noted, however, that the overall number of offenders sentenced for federal crack cocaine crimes in 2011 dropped significantly from the previous year, which may or may not be a positive effect of the sentencing reforms.

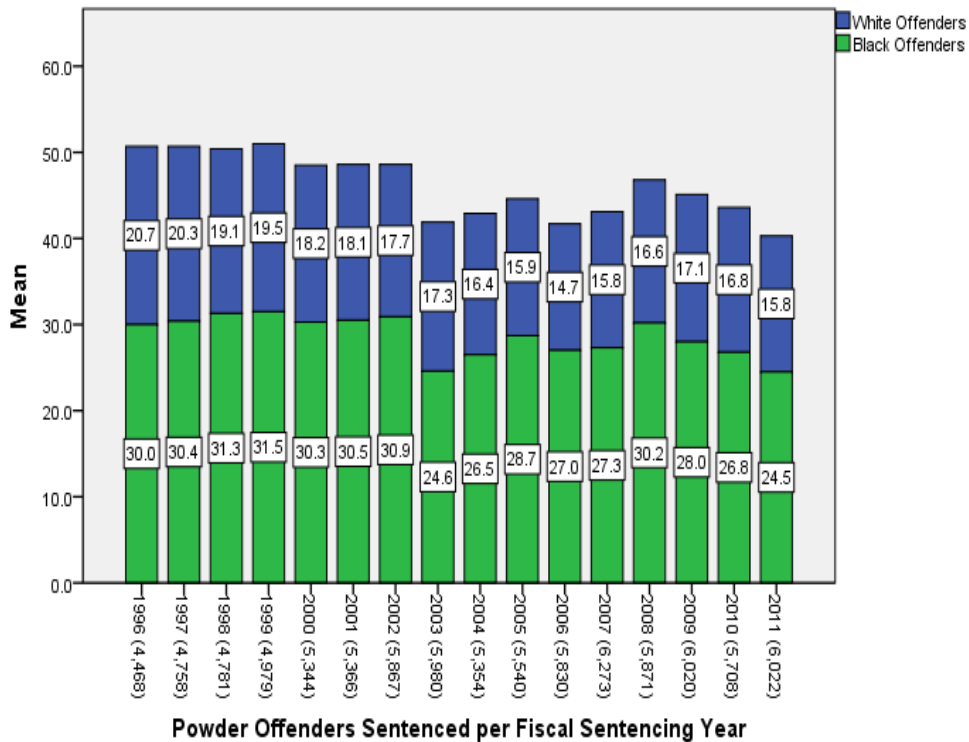


Figure 4.4 Graphical representation of the percent of powder cocaine offenders by race.

Figure 4.4, shown above, illustrates the average percentage of white and black offenders sentenced for powder cocaine offenses out of all powder cocaine offenders sentenced per year. Clearly evident from the chart is the fact that the percentage of black powder cocaine offenders sentenced each year is higher than the percentage of white powder cocaine offenders sentenced each year. The disparity between these sentences, however, appears significantly less than the disparity between average crack cocaine sentences for both races. In fact, white powder cocaine offenders represented, on average, a higher proportion of the total population of powder cocaine offenders per year than they represented for total crack cocaine offenders.

Unlike the chart measuring changes in average sentences for crack cocaine offenses, Figure 4.4 indicates a different trend. From 1996 to 2002 the numbers remained relatively the

same, with percentages for both races either rising or declining slightly from year to year. In 2003, however, the numbers for both races of offenders dropped, with black powder cocaine offenders representing the largest percentage of change. The percentages of black offenders varied gradually during the next few years, both rising and falling, though not to an extreme degree.

Although the crack cocaine sentencing guideline reforms did appear to have an observable effect in declining average sentences for black crack cocaine offenders when compared to white crack cocaine offenders, as seen in Figure 4.2, the reform did little to change disparity between black and white powder cocaine offenders. Instead, the guideline reforms only reduced sentence lengths for crack cocaine offenses, while sentences for powder cocaine offenses remained nearly the same. It is interesting though to see that disparities are also evident between offenders of other drug types like powder cocaine, as depicted in Figure 4.4, which raises the issue of whether or not similar reforms may be effective in reducing disparity levels between these drugs as they appear to have done for criminal defendants sentenced for crack cocaine offenses.

Figure 4.5 measures the average percentage change, from year-to-year, for both white and black offenders sentenced for either crack or powder cocaine offenses. As illustrated in the graph, most changes for each drug type never strayed more than 2 percentage points from one year to the next for either black or white offenders. There are a few exceptions, however, most notably the large percentage change for black powder cocaine offenders sentenced between 2002 and 2003. According to Table 3.1, there were 345 fewer black powder offenders sentenced in 2003 than in 2002, or a 6.3% drop in black powder cocaine offenders sentenced than in the previous year.

For crack cocaine offenders, the largest change in percentages from one year to the next occurred with black crack offenders sentenced between 2009 and 2010. According to the data from Table 3.1, there were 635 additional black crack offenders sentenced in 2011 than

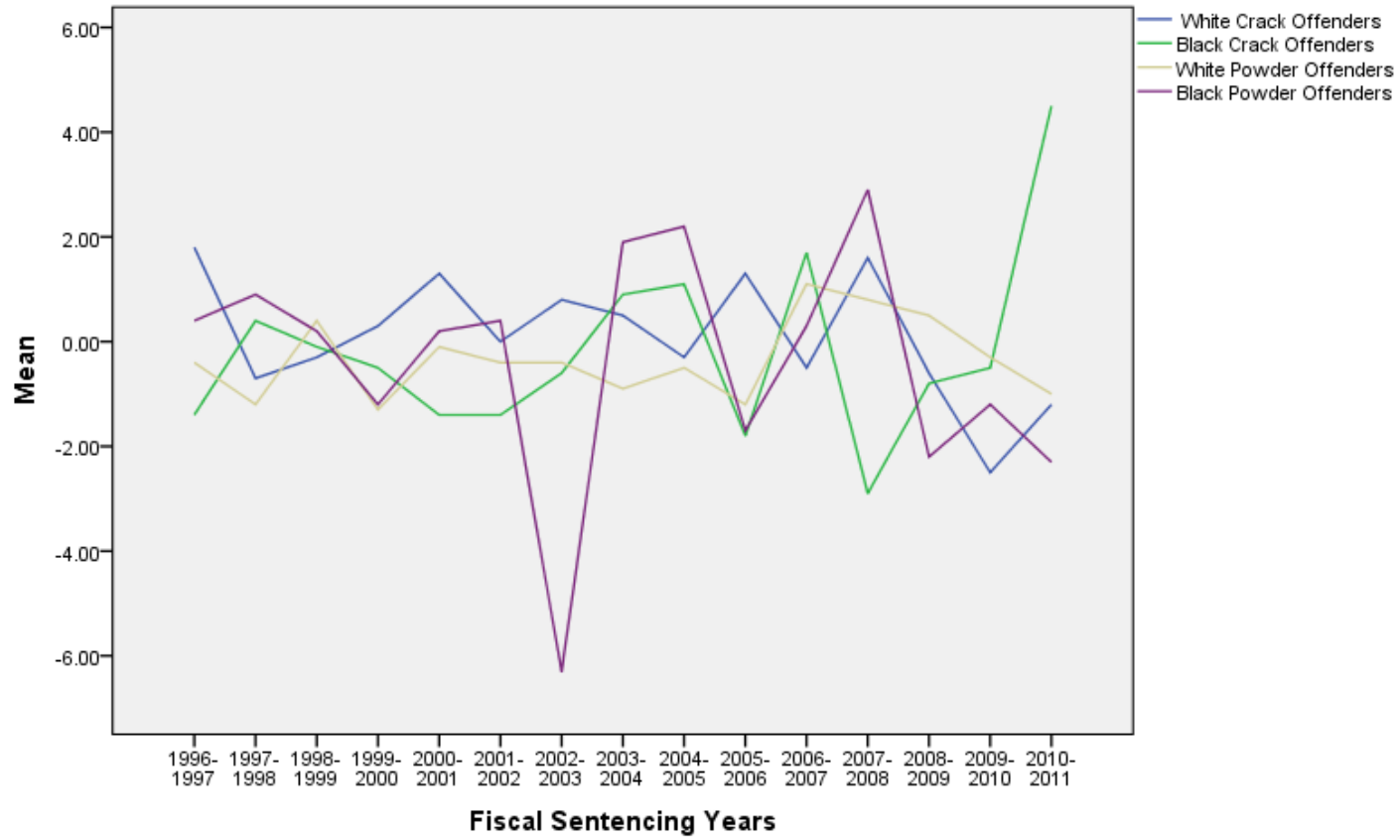


Figure 4.5 Graphical representation of percentage change per year.

there were in 2010, or rather a 4.5% increase in the total number of black crack cocaine offenders sentenced in 2011 compared to 2010. Furthermore, the increase of the average percentage of black crack cocaine offenders sentenced after the crack cocaine sentencing guideline reform in 2007 conflicts with the hypothesis that the reform had a positive effect on reducing disparity rates in the prison system. Instead, the data presented in the chart clearly illustrates that black crack offenders increased steadily up to 2011, while the average percentages for white crack cocaine offenders steadily declined during this same time period.

Independent-Samples T-tests

Table 4.1 - Disproportionality in Black vs. White Crack Cocaine Sentences

(Pre-Amendment: 1996-2007 vs. Post-Amendment: 2008-2011)

	Mean (Pre-Amendment)	Mean (Post-amendment)	P- Value
Avg. Disproportionate amount of Black Crack Cocaine Offenders Sentenced per year (1996-2011)	3879.08	3755.00	.385

The results of the T-test listed above indicate that there is not a statistically significant difference between the disproportionate means of the number of black crack cocaine offenders sentenced before the amendment, and the number of black crack cocaine offenders sentenced after the amendment. The mean of the disproportionate Pre-Amendment number of sentenced black crack cocaine offenders was 3,879.08, while the mean for the Post-Amendment number of sentenced black crack cocaine offenders was 3,755. The P-Value (.385) is not considered statistically significant because it is greater than .05, and there is a 95% confidence level supporting the results of the test.

Table 4.2 - Disproportionality in Black vs. White Powder Cocaine Sentences

(Pre-Amendment: 1996-2007 vs. Post-Amendment: 2008-2011)

	Mean (Pre-Amendment)	Mean (Post-amendment)	P-Value
Avg. Disproportionate amount of Black Powder Cocaine Offenders Sentenced per year (1996-2011)	605	637.25	.648

The results of the T-test listed in Table 4.2 above indicate that there is not a statistically significant difference between the disproportionate means of the number of sentenced black powder cocaine offenders sentenced before and after the amendment. The mean of the Pre-Amendment number of sentenced black powder cocaine offenders was 605, while the mean for the Post-Amendment number of sentenced black crack cocaine offenders was 637.25 The P-Value (.648) is not considered statistically significant because it is greater than .05, and there is a 95% confidence level in the results of the test.

Table 4.3 – Average in Crack Cocaine Sentence Lengths per Year

(Pre-Amendment: 1996-2007 vs. Post-Amendment: 2008-2011)

	Mean (Pre-Amendment)	Mean (Post-amendment)	P-Value
Avg. Crack Cocaine Sentence Length (Months) per year (1996-2011)	122.633	111.075	.000*

*significant at the .001 level

The results of the T-test above indicate that there is a statistically significant difference between the means of the crack cocaine sentence lengths of the Pre-Amendment group and the Post-Amendment group. The P-Value (.000) is less than .05, which indicates that there is a statistically significant difference between the means of the two groups. The mean of the sentences in the Pre-Amendment crack cocaine group was 122.633 months, while the mean of the sentences in the Post-Amendment group 111.075 months.

Table 4.4 – Average Difference in Powder Cocaine Sentence Lengths per Year

(Pre-Amendment: 1996-2007 vs. Post-Amendment: 2008-2011)

	Mean (Pre-Amendment)	Mean (Post-amendment)	P- Value
Avg. Powder Cocaine Sentence Length (Months) per year (1996-2011)	81.083	85.900	.023*

*significant at the .05 level

The results of the T-test employed by the researcher, listed above, indicate that there is a statistically significant difference between the means of the Pre-Amendment and Post-Amendment powder cocaine sentencing groups. The mean for the Pre-Amendment group was 81.083 months, and the mean for the Post-Amendment group was 85.900 months. As the P-Value (.023) is lower than .05, this indicates a level of statistical significance between the means of the two groups. The results of the study were further supported with a 95% confidence level. However, the Post-Amendment mean is significantly higher than the Pre-Amendment mean. This finding is further discussed in Chapter V.

Table 4.5 – Average Difference between Crack & Powder Sentence Lengths per Year

(Pre-Amendment: 1996-2007 vs. Post-Amendment: 2008-2011)

	Mean (Pre-Amendment)	Mean (Post-amendment)	P- Value
Avg. Difference in Sentence Length (Months) per year (1996-2011)	41.550	25.175	.000*

*significant at the .001 level

Average difference between sentence length of crack and powder cocaine sentences per year before and after the 2007 Crack Cocaine Amendment are presented in Table 4.5. According to the results listed above, the average difference in crack versus cocaine sentences is 41.550 months. After the 2007 Amendment, the average difference in crack versus cocaine sentences is 25.175 months. The P-Value (.000) was less than .05, which indicates that there is

a significant statistical difference between the means of the Pre-Amendment group and the Post-Amendment group.

CHAPTER V

CONCLUSION

This chapter offers a discussion on the findings related to changes pursuant to the 2007 Crack Cocaine Amendment and to what degree it has been effective in reducing levels of racial disparity within the Federal Prison System. In order to determine if levels of disparity have, in fact, been reduced, the researcher analyzed and compared several variables within the black and white federal inmate population, specifically dealing with offenders sentenced for crack and powder cocaine offenses. Independent-Samples T-tests were performed between offenders of both races, and for offenses involving both types of drugs. Comparisons were then made between the means of the groups of offenders sentenced before and after the crack cocaine federal sentencing guideline reform went into effect in order to test for statistical significance. Additional T-tests were also employed comparing the statistical significance between differences in sentence lengths for both types of drugs before and after the 2007 sentencing guideline amendment went into effect.

Independent-Samples T-Test Results

The results of the T-tests comparing the means of disproportionality between groups of white and black powder cocaine offenders, and between groups of white and black crack cocaine offenders, sentenced before and after the crack cocaine sentencing guideline amendment, were not statistically significant. Despite federal sentencing data and charts both showing noticeable differences between the average numbers of white and black offenders sentenced each year for crack cocaine and powder cocaine offenses, comparisons between the means of the groups of offenders sentenced before and after the application of the 2007 Crack Cocaine Amendment did not reveal significant statistical differences. While there were, in fact, overall reductions in the numbers of black and white offenders sentenced for both types of

drugs according to the sentencing data, when compared before and after the amendments, the T-tests revealed that the means between these differences are not statistically significant.

One likely explanation for why the means are not significant between the two groups is because there were not necessarily considerable amounts of change, relative to the total population of both groups, in the averages of both white and black cocaine offenders sentenced before and after the amendments. In other words, the averages of white and black crack cocaine offenders, and white and black powder cocaine offenders, both varied in typically the same manner by either increasing or decreasing. The proportions, although disparate, of black and white crack cocaine offenders sentenced each year, and black and white powder cocaine offenders sentenced each year, ultimately stayed the same before and after the 2007 Crack Cocaine Amendment, and therefore this result does not support the hypothesis.

With the exception of white powder cocaine offenders, there were decreases in the overall numbers of both black and white offenders each year following the 2007 Crack Cocaine Amendment. However, disparity rates between the two remained relatively the same before and after. The charts in Chapter IV further illustrate the trend in sentencing changes between the two races for crack and powder cocaine offenses. Nonetheless, it is also obvious that any decreases in powder or crack cocaine offenses by one race, whether before or after the amendment, is often matched by the other race. Consequently, this results in disparity levels remaining all but unchanged after the 2007 Crack Cocaine Amendment.

The researcher ran another set of independent-samples T-tests comparing the average sentence lengths of powder cocaine offenses and crack cocaine offenses, split into groups sentenced before and after the 2007 Crack Cocaine Amendment. The results of the tests indicate that there is a statistical difference between the sentence lengths of both groups, which is supportive of the hypothesis. According to Figure 4.2, in Chapter IV, there was an apparent change in sentence lengths for both types of drugs from 2007 to 2008, and continuing

through 2011. The most obvious difference though occurred between the average sentence lengths for crack cocaine offenses, which dropped by nearly 15 months following the 2007 fiscal year.

As mentioned earlier, the 2007 Crack Cocaine Amendment, by design, did relatively little to change the levels of racial disparity between sentences for powder cocaine offenses. Furthermore, average sentence lengths for powder offenses increased in 2008, and only slightly declined each year from 2009 to 2011. The amendment was effective, however, in the intended effects of reducing levels of disparity between sentences for crack and powder cocaine offenses. Both unintentional and intentional effects occurred for both crack and powder cocaine offenses following the amendment, however, more essential changes occurred for offenses involving crack cocaine. The graphical measurements listed in Chapter IV further illustrate the significance of the results of the independent-samples T-tests, and reveal that there were, in fact, positive, and some negative changes resulting from the adoption of the 2007 Crack Cocaine Sentencing Guideline reform.

The problem with the results of the statistical analyses employed by the researcher is that they do not fully support the hypothesis that the 2007 Crack Cocaine Amendment has been effective in reducing levels of racial disparity since its adoption into law. Instead, the results indicate that there were, in fact, no significant statistical differences when comparing levels of disproportionality for crack or powder cocaine offenders. Furthermore, it is apparent that any positive changes resulting in lower levels of racial disparity between offenders, following 2007, were offset by increases in sentences for black crack cocaine offenders in 2011.

Limitations

In this study, as with any, there were limitations and threats to the validity of the research conducted. The researcher, however, made efforts to minimize the potential for validity threats by using and analyzing available secondary statistical sentencing data published by the United States Sentencing Commission. This provided the researcher with accurate and current

federal sentencing data for prisoners convicted of powder and crack cocaine offenses. The researcher was, therefore, better able to compare population groups, from 1996-2011, according to specific variables needed to assess whether or not levels of racial disparity have actually decreased within the prison system.

One limitation encountered in the study was that the federal offender sentencing statistics were only publicly available as far back as 1996, and not when the sentencing disparity between crack and powder cocaine offenses originally began back in the mid-to-late 1980s. In order to more accurately measure changes of levels in disparity between the offender populations, it would have been beneficial to have sentencing data from when the Anti-Drug Abuse Act of 1986, and the Omnibus Anti-Drug Abuse Act of 1988 first went into effect. This would have provided the researcher with a better representation of disparity levels at the height of the crack cocaine drug epidemic in the 1980s, and would have essentially illustrated whether levels today are close in comparison.

Another limitation with the study is the lack of the availability of more current federal sentencing statistics following the Fair Sentencing Act of 2010. The researcher chose to use only the 2007 Crack Cocaine Amendment as the comparison variable, specifically with offenders sentenced prior to and after the amendment, as there was more available data with which to compare. Since the Fair Sentencing Act was passed so recently, there is relatively little available sentencing data to use for a quality comparison analysis. The researcher did not have the necessary resources to test and compare the effects of the Fair Sentencing Act, and therefore cannot accurately predict whether or not the reform has been effective since its adoption into law.

The researcher was also unable to obtain data on the average sentence length, according to race, for offenders sentenced for crack and powder cocaine offenses before and after the amendment. This was one of the biggest limitations encountered as it prevented the researcher from more accurately measuring changes in levels of racial disparity between

offenders who commit similar crimes. Therefore, it is unknown if average sentence lengths for crack and powder offenses either increased or decreased for each race following the amendment, and whether there were any significant differences in disparity levels before or after the amendment.

An additional limitation faced by the researcher in this study is that the results are limited merely to the specific sample population used. For instance, the study only involved white and black federal crack and powder cocaine offenders, and did not include offenders of any other race. The researcher focused specifically on the disparate sentences between the two types of cocaine, and only on white and black offenders due to prior literature suggesting that increases in the levels of racial disparity were caused by the disparate sentences. Furthermore, the study did not include offenders sentenced for other types of drug offenses, or any other types of offenses not relating to drugs. The results of the study, therefore, cannot be generalized to any other segment of the federal prisoner population. However, it is probable that any positive effects resulting from the crack cocaine sentencing guideline reforms may also translate to other types of inequalities in the federal prisoner population where reform may also be necessary.

Suggestions for Future Research

The results of this research indicate that the Crack Cocaine Sentencing Guideline reforms did have an immediate, and to some extent, positive impact on both the Federal Prison System, and the federal prisoner population. As total offender levels for crack cocaine offenses dropped, along with decreases in the average sentencing levels for crack cocaine offenders, it appears that the amendments have had some effectiveness since their application. Furthermore, the differences between the crack and powder cocaine sentences before and after the amendments indicate that the reforms are being administered appropriately, and that positive results are occurring.

Meanwhile, from the available data, the results of the study also indicate that levels of racial disparity between the white and black offender population did not decrease as a result of the crack cocaine sentencing guideline reforms. In fact, the disparity level between white and black crack cocaine offenders sentenced in 2011 increased, despite having shown signs of positive decline immediately following the application of the 2007 Crack Cocaine Amendment. Regardless of fewer total offenders sentenced in 2011 than in previous years before, there were a greater number of black crack cocaine offenders sentenced compared to white crack cocaine offenders, and thus racial disparity levels increased. It is not safe, therefore, to assume that changes in levels of racial disparity in the future would be any different than what the results of this particular study revealed, however, future research with larger and more updated sentencing data may indicate otherwise.

The benefit of the study is that the sentencing data used for comparison is publicly available through the United States Sentencing Commission, and is accurately published following each fiscal year. Also, there is extensive prior literature discussing the crack cocaine epidemic, and as well as the after effects of the federal sentencing guidelines which were originally drafted to reduce the effects of the epidemic. As more time passes, there will be greater amounts of statistical data available for research purposes, and more scholarly literature will be written dealing specifically with racial disparity levels in the Federal Prison System. Therefore, a more accurate assessment of the effectiveness of these sentencing reforms will be able to be pursued by future researchers, and perhaps more positive and significant results may also occur.

Additional Suggestions for Future Research

There has been relatively little research done on racial disparity levels within the prison system that has also included Hispanic offenders, and this research was no exception. It would be beneficial for that reason for future research to focus on racial and ethnic disparity levels including Hispanic crack cocaine offenders, along with white and black crack cocaine offenders,

when comparing the means of different population groups. With the rapid population growth of Hispanics in the United States, as well as in the Federal Prison System, it would be appropriate to include Hispanic sentencing data in order to have a more accurate comparison of disparity levels for offenders.

It would also be beneficial, if feasible, to do comparison tests for racial disparity levels within the state prisoner populations. The benefit of having used federal sentencing data for this particular study was that the researcher was able to use reliable governmental data sets, as well as a relatively small sample population of offenders. It is unknown, however, if all states have the resources to provide publicly available sentencing data, and or offense and sentencing specific data like the federal government is able to provide. For that reason, the possible researcher is basically taking a risk in encountering this obstacle if he or she chooses to pursue this same type of study. It would be helpful, nonetheless, for future criminal justice researchers to conduct academic and statistical tests on racial disparity levels using state sentencing data so that, if necessary, legislation could be applied for state level sentencing reforms.

REFERENCES

- (2007). Report to congress: Cocaine and federal sentencing policy. *Federal sentencing reporter*, 19(5), 297-319. Retrieved from: <http://www.ussc.gov>
- Berman, D. (2011). The many (opaque) echoes of compromise: Crack sentencing reform. *Federal sentencing reporter*, 23(3), 167-170. doi: 10.1525/fsr.2011.23.3.167
- Blakey v. Washington, 542 U.S. 296 (2004). *The oyez project at IIT chicago-kent college of law* (2003). Retrieved from: http://www.oyez.org/cases/2002-2009/2003/2003_02_1632
- Brennan, P. K., & Spohn, C. (2008). Empirical research on the impact of sentencing reforms: Recent studies of state and federal sentencing innovations. *Journal of Contemporary Criminal Justice*, 24(4), 340-344. doi: 10.1177/1043986208323265
- Brook, C. A. (2008). Racial disparity under the federal sentencing guidelines. *Litigation*, 35(1), 15-19.
- Chappell, A. T., & Maggard, S. R. (2007). Applying black's theory of law to crack and cocaine dispositions. *International journal of offender therapy and comparative criminology*, 51(3), 264-278. doi: 10.1177/0306624X06293601
- Chodroff, C. (2008). Cracked justice: Addressing the unfairness in cocaine sentencing. *Human Rights Watch*. Retrieved from <http://www.hrw.org/news>
- Hartley, R. D., & Miller, J. M. (2009). Crack-ing the media myth: Reconsidering sentencing severity for cocaine offenders by drug type. *Criminal Justice Review*, 35(1), 67-89.
- Hartman, D. M., & Golub, A. (1999). The social construction of the crack epidemic in the print media. *Journal of Psychoactive drugs*, 31(4), 423-431.
- Kautt, P., & Spohn, C. (2002). Crack-ing down on black drug offenders? testing for interactions among offenders' race, drug type, and sentencing strategy in federal drug sentences. *Justice Quarterly*, 19(1), 1-35.
- Leahy, P. (2003). Should congress to lower federal sentences. *Congressional Digest*, 12-28.
- Leigey, M. E., & Bachman, R. (2007). The influence of crack cocaine on the likelihood of incarceration for a violent offense: An examination of a prison sample. *Criminal Justice Policy Review*, 18(4), 335-352. doi: 10.1177/0887403407300177
- Mauer, M. (2011). Addressing racial disparities in incarceration. *The Prison Journal Supplement to 91* (3), 87S-101S. doi: 10.1177/0032885511415227
- Mortal, M. H. (2007). Recent crack-cocaine ruling brings early christmas present for some african americans. *New York Amsterdam News*, 13.

- Pasko, L. (2002). Villain or victim: Regional variation and ethnic disparity in federal drug offense sentencing. *Criminal Justice Policy Review*, 13(4), 307-328. doi: 10.1177/088740302237801
- Reinarman, C., & Levine, H. G. (1997). Crack in context: America's latest demon drug. *Crack in America: Demon Drugs and Social Justice*, 1-14. Retrieved from <http://ucpress.edu>
- Reske, H. J. (1995). Congress asked to lower crack penalties. *ABA Journal*, 81(7), 30.
- Reske, H. J. (1996). Congress asked to lower crack penalties. *ABA Journal*, 82(5), 40.
- Schlesinger, T. (2008). The failure of race neutral policies: How mandatory terms and sentencing enhancements contribute to mass racialized incarceration. *Crime & delinquency*, 57(1), 56-81. doi: 10.1177/0011128708323629
- Schwartz, E. (2007). Revisiting the case of a sentencing double standard. *U.S News & World Report*, 143(12), 36-37.
- Tonry, M. (1994). Racial politics, racial disparities, and the war on crime. *Crime & delinquency*, 40(4), 475-494. doi: 10.1177/0011128794040004001
- Tonry, M. (2000). Reconsidering indeterminate and structured sentencing. *Alternatives to incarceration*, 6(3), 17-21.
- United States v. Booker, 543 U.S. 220 (2005). *The oyez project at IIT chicago-kent college of law* (2004). Retrieved from: http://www.oyez.org/cases/2002-2009/2004_04_104
- U.S. General Accounting Office, (1991). *The crack cocaine epidemic: Health consequences and treatment* (GAO/HRD-91-55FS, January, 1991).
- U.S. Sentencing Commission. (1996). Table 29: Race of drug defendant by drug type, October 1, 1995 through September 30, 1996 [1996 Datafile, MONFY96]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/1996/tab-29.pdf
- U.S. Sentencing Commission. (1996). Figure I: Average length of imprisonment by drug type, October 1, 1995 through September 30, 1996 [1996 Datafile, MONFY96]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/1996/fig-i.pdf
- U.S. Sentencing Commission. (1997). Table 34: Race of drug offenders for each drug type, Fiscal Year 1997 [1997 Datafile, USSCFY97]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/1997/table34.pdf
- U.S. Sentencing Commission. (1997). Figure J: Average length of imprisonment for each drug type, Fiscal Year 1997 [1997 Datafile, USSCFY97]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/1997/fig-j.pdf

- U.S. Sentencing Commission. (1997, April). *Special report to congress: Cocaine and federal sentencing policy* . Retrieved from:
http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Drug_Topics/19970429_RtC_Cocaine_Sentencing_Policy.PDF
- U.S. Sentencing Commission. (1998). Table 34: Race of drug offenders for each drug type, Fiscal Year 1998 [1998 Datafile, USSCFY98]. Retrieved from
http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/1998/table34.pdf
- U.S. Sentencing Commission. (1998). Figure J: Average length of imprisonment for each drug type, Fiscal Year 1998 [1998 Datafile, USSCFY98]. Retrieved from
http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/1998/figurej.pdf
- U.S. Sentencing Commission. (1999). Table 34: Race of drug offenders for each drug type, Fiscal Year 1999 [1999 Datafile, USSCFY99]. Retrieved from
http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/1999/table34.pdf
- U.S. Sentencing Commission. (1999). Figure J: Average length of imprisonment for each drug type, Fiscal Year 1999 [1999 Datafile, USSCFY99]. Retrieved from
http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/1999/figurej.pdf
- U.S. Sentencing Commission. (2000). Table 34: Race of drug offenders for each drug type, Fiscal Year 2000 [2000 Datafile, USSCFY00]. Retrieved from
http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2000/table34.pdf
- U.S. Sentencing Commission. (2000). Figure J: Average length of imprisonment for each drug type, Fiscal Year 2000 [2000 Datafile, USSCFY00]. Retrieved from
http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2000/figurej.pdf
- U.S. Sentencing Commission. (2001). Table 34: Race of drug offenders for each drug type, Fiscal Year 2001 [2001 Datafile, USSCFY01]. Retrieved from
http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2001/table34.pdf
- U.S. Sentencing Commission. (2001). Figure J: Average length of imprisonment for each drug type, Fiscal Year 2001 [2001 Datafile, USSCFY01]. Retrieved from
http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2001/figurej.pdf
- U.S. Sentencing Commission. (2002). Table 34: Race of drug offenders for each drug type, Fiscal Year 2002 [2002 Datafile, USSCFY02]. Retrieved from
http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2002/table34.pdf

- U.S. Sentencing Commission. (2002). Figure J: Average length of imprisonment for each drug type, Fiscal Year 2002 [2002 Datafile, USSCFY02]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2002/fig-j.pdf
- U.S. Sentencing Commission. (2003). Table 34: Race of drug offenders for each drug type, Fiscal Year 2003 [2003 Datafile, USSCFY03]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2003/table34.pdf
- U.S. Sentencing Commission. (2003). Figure J: Average length of imprisonment for each drug type, Fiscal Year 2003 [2003 Datafile, USSCFY03]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2003/fig-j.pdf
- U.S. Sentencing Commission. (2004). Table 34: Race of drug offenders for each drug type, Fiscal Year 2004 [2004 Datafile, USSCFY04]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2004/table34.pdf
- U.S. Sentencing Commission. (2004). Figure J: Average length of imprisonment for each drug type, Fiscal Year 2004 [2004 Datafile, USSCFY04]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2004/fig-j.pdf
- U.S. Sentencing Commission. (2005). Table 34: Race of drug offenders for each drug type, Fiscal Year 2005 [2005 Datafile, USSCFY05]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2005/table34.pdf
- U.S. Sentencing Commission. (2006). Figure J: Average length of imprisonment for each drug type, Fiscal Year 2006 [2006 Datafile, USSCFY06]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2006/fig-j.pdf
- U.S. Sentencing Commission. (2006). Table 34: Race of drug offenders for each drug type, Fiscal Year 2006 [2006 Datafile, USSCFY06]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2006/table34.pdf
- U.S. Sentencing Commission. (2007). Table 34: Race of drug offenders for each drug type, Fiscal Year 2007 [2007 Datafile, USSCFY07]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2007/table34.pdf
- U.S. Sentencing Commission. (2007). Figure J: Average length of imprisonment for each drug type, Fiscal Year 2007 [2007 Datafile, USSCFY07]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2007/fig-j.pdf

- U.S. Sentencing Commission. (2008). Table 34: Race of drug offenders for each drug type, Fiscal Year 2008 [2008 Datafile, USSCFY08]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2008/table34.pdf
- U.S. Sentencing Commission. (2008). Figure J: Average length of imprisonment for each drug type, Fiscal Year 2008 [2008 Datafile, USSCFY08]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2008/figure-j.pdf
- U.S. Sentencing Commission. (2009). Table 34: Race of drug offenders for each drug type, Fiscal Year 2009 [2009 Datafile, USSCFY09]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2009/table34.pdf
- U.S. Sentencing Commission. (2009). Figure J: Average length of imprisonment for each drug type, Fiscal Year 2009 [2009 Datafile, USSCFY09]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2009/figure-j.pdf
- U.S. Sentencing Commission. (2010). Table 34: Race of drug offenders for each drug type, Fiscal Year 2010 [2010 Datafile, USSCFY10]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2010/table34.pdf
- U.S. Sentencing Commission. (2010). Figure J: Average length of imprisonment for each drug type, Fiscal Year 2010 [2010 Datafile, USSCFY10]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2010/figure-j.pdf
- U.S. Sentencing Commission. (2011). Table 34: Race of drug offenders for each drug type, Fiscal Year 2011 [2011 Datafile, USSCFY11]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2011/table34.pdf
- U.S. Sentencing Commission. (2011). Figure J: Average length of imprisonment for each drug type, Fiscal Year 2011 [2011 Datafile, USSCFY11]. Retrieved from http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2011/figure-j.pdf
- U.S. Sentencing Commission. (2011, May). *Memorandum: recidivism among offenders with sentence modifications made pursuant to retroactive application of 2007 crack cocaine amendment*. Retrieved from: http://www.ussc.gov/Research/Research_Projects/Miscellaneous/20110527_Recidivism_2007_Crack_Cocaine_Amendment.pdf
- Walmsley, R. (2011). World prison population list. *International centre for prison studies*, 9, 1-6. Retrieved from: <http://prisonstudies.org>
- Winburn, C. (1997). Fighting drugs with facts. *Headway*, 9(2), 37.

Wray, C. (2004, November). The federal prison population: A statistical analysis. *The Sentencing Project*. Retrieved from: <http://www.sentencingproject.org>

U.S. General Accounting Office. (1991, January). The crack cocaine epidemic: Health consequences and treatment. (Publication No. GAO/HRD-91-55FS). Retrieved from GAO Reports Main Page via GPO Access database: <http://www.gpoaccess.gov/gaoreports/index.html>

BIOGRAPHICAL INFORMATION

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