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April Miller

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The Effects of Gender, Race, and Age on Judicial Sentencing Decisions

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A thesis

presented to

the faculty of the Department of Criminal Justice and Criminology

In partial fulfillment

of the requirements for the degree

Master of Arts in Criminal Justice and Criminology

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by

April Michelle Miller

August 2015

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Dr. Courtney Crittenden, Chair

Dr. Jennifer Pealer

Dr. Gregory Rocheleau

Keywords: sentencing discretion, driving while impaired, gender, race, age, legal counsel

## ABSTRACT

### The Effects of Gender, Race, and Age on Judicial Sentencing Decisions

by

April Michelle Miller

Previous research has found significant effects of gender, race, and age on sentencing decisions made by state and local court judges (e.g. Johnson, 2003; Mustard, 2001; Steffensmeier, Ulmer, & Kramer, 1998). The current study used criminal district court data from two counties in western North Carolina to further research of the effects of the aforementioned variables on sentencing. Using knowledge acquired from past studies, the hypotheses for the current study asserted that younger offenders, male offenders, and nonwhite offenders would be more likely to be found guilty of their offense and receive fines than their respective offender counterparts. The results of the binary regression analysis models did not support many of the proposed hypotheses; however, significant relationships unsupervised probation, supervised probation, and active time were found with defendants who used privately retained counsel. Implications are discussed, as well as limitations and research recommendations for the future.

## DEDICATION

For my grandparents, who have fully supported my educational endeavors and have been my guiding light throughout life.

## ACKNOWLEDGEMENTS

First and foremost, I would like to thank my grandparents for all of their mental and emotional support throughout the past twenty-five years. They have always encouraged me to approach each task to the best of my ability and have never doubted my chances of succeeding. Without their support, I would have never made it to college in the first place, let alone enrolled in the graduate program at East Tennessee State University. Words cannot express how grateful I am that my grandparents took me under their care and gave me access to opportunities that I never imagined I would have. Many thanks are also due to Crystal and Dustin Miller and their wonderful children, Dawson and Dallas, for brightening dreary days and truly making Ashe County feel like home. Thank you to Mary Ellen Lyall-Morgan, for teaching me the ins and outs of the legal system, being my “number one fan”, and for being one of the best friends and supporters I could ever ask for.

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## CHAPTER 1

### INTRODUCTION

Sentencing disparity within the criminal justice system of the United States has been widely researched over the years (Crawford, 2000; Doerner & Demuth, 2010; Johnson, 2003; Koons-Witt, 2002; Mustard, 2001; Rodriguez, Curry, & Lee, 2006; Steffensmeier, Ulmer, & Kramer, 1998; Thomson & Zingraff, 1981). Disparity or discrimination occurs in sentencing when offenders who commit similar offenses and have comparable criminal histories are given substantially different sentences (Travis III, 2012). Factors influencing sentencing decisions that have been commonly identified across literature include legal variables, such as mitigating and aggravating circumstances regarding the offense, as well as extralegal variables involving demographic and individual characteristics (Bontrager, Bales, & Chiricos, 2005; Demuth, 2003; Johnson, 2003; Mustard, 2001; Steen, Engen, & Gainey, 2005; Steffensmeier et al., 1998; Steffensmeier & Demuth, 2001).

Reasoning behind the apparent disparity in sentencing decisions is extrinsic and complicated, although research has provided multiple avenues of explanation (Walker, Spohn, & Delone, 2012). Statistics have consistently shown that African Americans and Hispanics are more likely to be sentenced to incarceration sentences than whites, though they do not commit the most crime (Walker et al., 2012). Younger offenders are more likely to receive harsh sentences than elderly offenders, and males are more likely than females to be sentenced to prison or jail time (Doerner & Demuth, 2010). However, though court and prison statistics have remained constant over time, researchers cannot agree to a single explanation as to why these disparities occur. Statistics provided by criminal justice agencies assist researchers with creating

a basis on which to form their research, but ultimately, the question of why sentencing discrimination occurs is left in the hands of researchers and scholars.

Many states utilize sentencing guidelines for judges in an attempt to lower the occurrence of bias in sentencing decisions. This issue is important to the American criminal justice system because justice becomes compromised when sentencing strays from a fair and unbiased method of reprimanding the country's criminal offenders. Based on laws and policies set forth in American courts to provide equality and justice for all citizens, the judicial system should determine sentences based on the details of the offense and the offender's prior record, not personal characteristics. Sentencing discrimination and disparity occurs across the country, at both federal and state levels, when extralegal variables, such as race, age, gender, and marital status, are utilized in incarceration decisions and sentence length (Steffensmeier & Demuth, 2001; Doerner & Demuth, 2010). Sentencing discrimination deserves special attention from researchers so that studies may be utilized to find patterns of disparities, as well as helping formulate an answer to resolve the matter.

Previous literature has investigated several factors relating to sentencing disparity including: race, ethnicity, social class, and age (Mustard, 2001). One study by Doerner and Demuth (2010) claims that there is an overrepresentation of minorities, such as Hispanics and African Americans, within both the court system and prisons, and that this fact presents a possibility of discrimination by police and courtroom actors. However, researchers have been unable to agree as to what extent these disparities occur (Austin & Williams, 1977). Some studies have shown that extralegal factors, namely race, ethnicity, age, and gender, have effects on sentencing decisions (Mustard, 2001), while others have concluded that there are far too many methodological and conceptual issues within sentencing research to assume any findings as valid

(Thomson & Zingraff, 1981). Although there is a lack of theoretical framework in regards to sentencing, Steffensmeier and his associates (1998) attempted to explain the topic with their focal concerns theory. They posited that sentencing decisions take into account the blameworthiness of the offender, the need for protection of the community in which the offense occurred, and the practical implications of the sentence. These three factors, according to Steffensmeier and his colleagues (1998), are of the highest importance when a judge sentences an offender, though other variables may affect the sentencing process.

The subject of sentencing disparity is important to the American court system and its operation within various communities across the nation. Although the United States promotes justice, fair treatment, and equality, these values are not always present in the courtroom. Researchers have questioned the integrity of giving offenders special or preferential treatment based on their physical qualities as opposed to using uniform sentencing guidelines for all offenders based on the qualities and characteristics of the offense itself (Nagel & Johnson, 1994). For example, the lenient treatment of female offenders is often seen as a blessing to those involved, but it leads society further away from the notion of equal treatment of women. Therefore, sentencing researchers have focused on the extent of the sentencing disparity problem and what may be causing judges to use bias against certain offenders. The variables of gender, race, and age have been given special attention in more recent studies (Steffensmeier et al., 1998). Results from various studies have shown the importance of these demographic characteristics, especially race, in judicial decisions in courts across the nation (Walker et al., 2012).

The current study will focus on the above-mentioned extralegal variables that may have an effect on sentencing decisions made by district court judges. The purpose of the study is to

further extend research on sentencing disparity and judicial discretion while specifically looking at cases of driving while impaired charges in two counties in western North Carolina. The study will focus on driving while impaired charges because there are a multitude of these cases in the western North Carolina area. Also, under North Carolina Law, district court judges are required to follow sentencing guidelines in these cases. This data will add to the already existing body of research by providing sentencing data specifically for driving while impaired charges, as previous research has not provided a focus on this type of offense. Because past research has mainly focused on federal sentencing, the current study will provide a different outlook on sentencing discretion through state-based data.

## CHAPTER 2

### REVIEW OF THE LITERATURE

In this chapter, I will provide a brief history of sentencing disparity and judicial discretion. I will also address a theoretical perspective of the topic and introduce previous literature on sentencing disparity in regards to gender, age, and race. Past studies have found the strongest correlation with sentencing disparity in the intersection of gender, race, and age (Doerner & Demuth, 2010; Steffensmeier et al., 1998; Steffensmeier & Demuth, 2006); therefore, the current study will focus on this intersection, but address relevant research in all three of the variables independently as well. Due to the lack of research conducted specifically in regards to driving while impaired charges, the literature review will focus primarily on sentencing research that has been conducted using national sentencing data that is not specific to one type of offense. Lastly, I introduce the current study and the hypotheses that will be tested.

#### History of Sentencing

The agencies in the criminal justice system are one of the few that widely advocate the use of discretionary decision-making in our nation. Police, prosecutors, and judges are allowed and encouraged to use their best judgment in each situation as necessary, even if their decisions differ from those prescribed by rules or guidelines (Nagel & Johnson, 1994). Judicial discretion in the U.S. dates back to the creation of our federal laws and has been used, tested, and debated by legal and justice scholars and agents ever since (Stith & Koh, 1993). In order to provide fair and equal justice to all, the United States Sentencing Commission was created in 1984 to provide guidelines of which judges were to follow in their courtrooms at the federal level (Stith, 2008). The purpose of these guidelines was to limit the discretionary decision judges were able to make, as they were now required to follow strict sentencing procedures for certain offenses. The

sentencing guidelines also required that judges provide reasoning for any and all sentencing decisions that differed from the specific sentence prescribed by the guidelines. The guidelines created during this sentencing reform specifically state that a judge may not use race, gender, income, or ethnicity as an influence on his or her sentencing decisions (Mustard, 2001).

Following the implementation of guidelines in federal courts, many states soon followed suit and formed their own sentencing guidelines (Stith, 2008). As a result, judicial discretion became limited, and the hope for equality in the criminal justice system became closer to reality.

Despite these guidelines, both federal and state judges continue to exercise their discretion in discriminatory ways. Special treatment still occurs in American courts (Johnson, 2003; Nagel & Johnson, 1994; Steffensmeier & Demuth, 2000; Steffensmeier & Demuth, 2006). Though race, gender, and age are the focus of the current study, researchers have found other factors that may influence judicial decisions (e.g. criminal background, offense severity, type of legal counsel). In order to gain a theoretical perspective on sentencing disparity, Steffensmeier and his colleagues (1998) created their focal concerns theory in which they expand upon why judicial officials often disregard sentencing guidelines and utilize discretion in their decision making process.

#### Focal Concerns Theory

The issue of judicial decision-making has very few ties to theory. Because there were no existing theories that could explain this issue, Steffensmeier and his associates (1998) proposed a focal concerns theory in the late 20<sup>th</sup> century. The three concerns of this theory that were attributed to the explanation of judicial sentencing disparities were “offender blameworthiness and the degree of harm caused the victim, protection of the community, and practical implications of sentencing decisions” (Steffesmeier et al., 1998, p. 766). The focal concern of

offender blameworthiness was further explained as the liability of the offender as well as the degree of harm inflicted upon the victim. For example, a crime involving physical harm to a victim may warrant a stricter punishment than a victimless crime, such as drug crimes.

Researchers agree, according to Steffensmeier and his colleagues (1998), this is the most significant factor in judicial sentencing. Factors that are typically taken into account by the judge in regards to offender blameworthiness include prior criminal history, prior victimization, and the offender's role in the offense (Steffensmeier et al., 1998). These variables are commonly referred to as legal variables, and are typically incorporated into state's sentencing guidelines. Offenders with extensive prior criminal histories are more likely to receive a harsh sentence. Defendants who were an accomplice to the crime at hand and helped put the offense into motion, but did not actually commit the act, may receive a more lenient sentence than the defendant who is ultimately at fault for the offense. Other legal factors include offense severity, number of charges, and the method of conviction (e.g., plea bargain or trial; Doerner & Demuth, 2010).

Protection of the community is considered a focal concern within sentencing research because judges characteristically sentence offenders based on what is going to provide the greater good for the jurisdiction in which he or she serves. Therefore, judges tend to sentence based on the threat the offender presents to the community. For example, if a defendant has an extensive history of violent criminal acts, such as assault or rape, a judge may sentence him or her to a longer period of incarceration in order to relieve the community of the danger posed by this person. The larger a threat to the community an offender is seen to be, the larger or more serious their sentence may be.

The focal concern of practical constraints and consequences refers to the concerns of courtroom officials, victims, and offenders (Steffensmeier et al., 1998). Sentencing can affect



the flow of productivity within the courtroom in respect to working relationships and workloads; therefore, the judge must take into account how his or her sentencing decisions will affect the people that s/he works with on a daily basis. Judges must consider the offender's ability to serve the sentence imposed on them, while keeping in mind how the sentence will affect the offender in terms of familial relationships, health conditions, and employment opportunities. Judicial officials must consider their own well-being as far as local politics and standing within the community. The decisions they make in court could affect their relationship with the public (Steffensmeier et al., 1998). Judicial decision-making affects all of the individuals involved in the case, not simply the offender. Therefore, the implications of the sentence must be examined from several different viewpoints and the judge must weigh the pros and cons before entering his or her sentencing decision.

The intersection of all three focal concerns described by Steffensmeier and his colleagues (1998) create a framework for judicial decisions and explain why a judge may deviate from the prescribed guidelines of sentencing within their district or state. The circumstances surrounding the case, as well as individual offender characteristics, and the general opinion of society towards crime all play a part in directing the decisions of court officials. Critics of judicial sentencing often forget that judges are simply human, just as they are, and may allow other factors to influence their courtroom decisions. Stereotypes perpetuated by the media and community often influence decisions of many different types, including sentencing decisions (Steen et al., 2005). Much like any other aspect of the criminal justice system, judges form stereotypes and prejudices in accordance with the opinions of greater society (Walker et al., 2012). Laws also change due to societal influences. For instance, in recent years the public has formed an opinion of no tolerance towards impaired driving, as seen with the formation of groups such as Mothers

Against Drunk Driving (Travis III, 2012). In return, laws have been rendered more strict towards offenders who choose to drink and drive. Some states require those convicted of driving while intoxicated to serve mandatory incarceration sentences, regardless of the factors surrounding the offense (Travis III, 2012).

Just as legislators may change laws in response to social change, judges may allow societal influences to modify their decision-making strategies. Research has found that gender, race, and age are three variables that are highly influential within the court of law. Steffensmeier and his associates (1998) found that being young, black, and male increases ones chances of receiving discriminatory dispositions. While the variables of age, gender, and race have been found to have effects on judicial discretion, the intersection of the three has been found to be more statistically significant than the individual variables (Walker et al., 2012). There are many ways researchers have measured sentencing departures in regards to gender, age, and race. For each of the sections below, I have organized findings by upward and downward departures in sentencing based on guidelines, lengthened or shortened sentence length, and the likelihood of the offender being sentenced to incarceration or community corrections.

### Gender

The impact of gender on sentencing discretion has been evaluated by many researchers (Crawford, 2000; Doerner & Demuth, 2010; Johnson, 2003; Rodriguez et al., 2006; Steffensmeier et al., 1998), though mixed results have been found. Gender is an important concept to study in relation to sentencing because of the historically paternalistic and chivalrous view of the criminal justice system (Rodriguez et al., 2006). Women offenders are often seen by the legal system as less responsible for their actions and rather than be punished, they need to be protected (Mustard, 2001; Rodriguez et al., 2006). Consequently, the court system tends to treat

female offenders differently than male offenders. While some studies have found no significant difference in the sentencing of male and female offenders (Kruttschnitt & Green, 1984), the majority of research on gender and sentencing has found that females are sentenced more leniently than males, even when the two offenders have committed the same offense and have similar criminal background histories (Nagel & Johnson, 1994). In previous research, judges themselves have confirmed the preferential treatment of female offenders by the court (e.g. Johnson, 2003; Nagel & Johnson, 1994; Simon & Ahn-Redding, 2005). There are multiple factors that may influence a judge to treat a female offender differently than a male, such as pregnancy, being a single mother, or having been victimized in the past (Nagel & Johnson, 1994).

Although the above-mentioned sentencing discrepancies are typically beneficial for female offenders, resulting in downward sentencing departures or community corrections instead of incarceration, some scholars believe that the favoritism shown by judges towards females leads society to believe that women are helpless and are not capable of making responsible decisions (Moulds, 1980). Judges are often biased in which females they choose to help as well. Rodriguez and his associates (2006) found that although females often receive preferential treatment in sentencing compared to men, they were only given downward sentencing departures if their crime did not violate gender norms. Typical crimes attributed to female offenders include shoplifting, drug use, and forgery (Rodriguez et al., 2006). Women that commit masculine crimes, or those involving violence, are seen as “evil” and are not likely to receive preferential treatment from judges (Rodriguez et al., 2006). Crawford (2000) studied gender in relation to habitual offender sentencing. For crimes such as murder or arson, females were strictly

sentenced. For other crimes, such as minor drug offenses or other petty charges, the habitual offender statute was often ignored in regards to female offenders (Crawford, 2000).

Johnson's (2003) study of sentencing departures from guidelines concluded that females had a 63% greater chance of getting a more lenient sentence than the guidelines called for, and the odds of a male getting a more severe sentence were 31% greater than that of females (Johnson, 2003). Mustard (2001) also found a large instance of gender-related sentencing departures, accounting for 67% of all federal sentencing disparities from 1987 to 2001. However, Johnson (2003) believed that these departures from sentencing guidelines may have involved complicated processes that were difficult to control for and varied over time and context, and were therefore challenging to blame specifically on the effects of gender (Johnson, 2003). For example, factors involving the severity of the crime may vary between genders and have more of an impact on sentencing decisions rather than the actual gender of the offender. Females are typically less violent than males; therefore, a female and a male offender that have committed the same crime may have used varying levels of violence or harm. The violence may have been more influential in the sentencing decision than the gender of the offender (Johnson, 2003).

Another factor noted by Mustard (2001) that may affect the sentencing of females is that they often have less extensive criminal histories than men. Males on average had a higher offense level and a longer criminal history score than women (Mustard, 2001). Parenthood may also play a role in the downward departures of sentences as Koons-Witt (2002) found that female mothers were sentenced more leniently than females without children, men without children, and men with children. Women are typically seen as the primary caretakers of the family; therefore,

their imprisonment could have a negative effect on their innocent children and sometimes judges try to avoid this during sentencing (Nagel & Johnson, 1994).

Gender has also been attributed to the type of sentence imposed on an offender, as evident in Steffensmeier and his colleague's (1998) study. Steffensmeier and his associates (1998) hypothesized, in their study, that male offenders would be more likely to receive a sentence of incarceration, and that their sentences would be longer than those imposed on female offenders. Their study yielded results that provided that the odds of incarceration for a female are half that of a male, but when they do receive prison or jail sentences, the term is an average of 6.5 months less for females than for males. It is important to note that the researchers found that gender effects on sentencing were more significant than those found of race and age (Steffensmeier et al., 1998). Rodriguez and his colleagues (2006) also found that females were given preferable sentences, as they were 12 to 23 percent less likely to be sentenced to prison than men, and that cultural stereotypes, such as paternalism, may instigate this effect. The researchers also found that males were 2.1 times as likely to be given prison sentences than females, and that female prison sentences were on average 3 years less than those imposed on males (Rodriguez et al., 2006).

Sentence length is often shorter for female defendants than for males. A study conducted by Mustard (2001) used a large sample of federal offenders sentenced after the 1984 Sentencing Reform Act to examine the prominence of gender based sentencing discrimination. The Sentencing Reform Act prohibited the influence of certain defendant characteristics, such as race, sex, national origin, creed, socioeconomic status, or religion on sentencing decisions (Mustard, 2001). Empirical testing of the sample provided that the average sentence for a male defendant was 278.4% greater than that of a female. It is important to note that most researchers

have found these results vary across different margins and may be affected by other variables, such as socioeconomic class or the details of the offense (Mustard, 2001). For example, race may be a contributing variable, as minority females have historically been sentenced more strictly than white females (Nagel & Johnson, 1994). These findings assert that while gender is often a factor that effects sentencing decisions, components not accounted for may influence the decision as well.

### Race

Racial discrimination can be seen in almost any aspect of American society, as many have seen through recent political and legal issues, such as the riots in Ferguson, Missouri or the Eric Gardner case in New York. Similarly, the American Criminal Justice System is not immune to racial discrimination and disparity (Bushway & Piehl, 2001). The criminal justice system has been criticized of racism in many different agencies, including police departments, prosecutor's offices, and the court (Blair, Judd, & Chapleau, 2004). Minority incarceration rates are much higher than that of whites, and many researchers attribute the disproportionate amount of minority inmates to racist tendencies of sentencing judges (Walker et al., 2012). For example, because judges are imperfect humans as well, they may tend to adhere to the negative social stereotypes attributed to minorities. Blair and her colleagues (2004) found that these stereotypes are often taken into account by judges, especially if the offender has typical "afrocentric" features or features commonly attributed to minority groups.

Other bodies of research have found varying explanations of racism in the courts. Five reasons explaining racial disparity within the courts were proposed by Walker and his colleagues (2012). The researchers believed that minorities may commit more serious crimes and have more serious criminal histories, they are more likely to be poor, and are more often affected by

seemingly neutral legislation (i.e. crack laws). They also thought that the judges may use socially reinforced stereotypes against minority offenders in sentencing, and that racial disparities only occur in certain contexts (Walker et al., 2012). The researchers also explained that race is often tied to variables such as socioeconomic status, which may influence judicial decision-making. For example, when deciding a sentence for an African-American defendant, a judge may assume that because of his race he would not be able to afford to pay fines or probation fees, and choose to sentence the defendant to a jail term instead of a community corrections sentence. Socioeconomic status has also been found to increase the severity of an offender's punishment, as judges may use a poor or destitute status of the offender to rationalize the belief that the offender will recidivate and should receive a more punitive sentence that would keep them off of the street and deter them from re-offending (Starr, 2014).

Race and sentencing departures, both upward and downward, have been found to have a significant relationship. Many studies have shown that white defendants receive less severe sentences than non-white defendants (Johnson, 2003; Steffensmeier & Demuth, 2001; Thomson & Zingraff, 1981). For instance, Johnson (2003) found that the odds for a lessened departure from sentencing guidelines is 25% less for blacks than whites and a striking 56% less for Hispanics compared to whites (Johnson, 2003), or that white defendants were more likely to receive a more lenient sentence than were black or Hispanic defendants. Additionally, for upward sentencing decisions in which harsher sentences were applied, being a black defendant increased the chances of being punished more severely by 21%, and being a Hispanic defendant increased the chance by 39% (Johnson, 2003). This corresponds with previous findings from 1977 that nonwhites had the most severe sentences, while whites had the least severe sentences (Thomson & Zingraff, 1981). Mustard (2001) found that sentencing departures accounted for

56% of the racial disparities discovered in his study. These departures consisted of any sentence that strayed from the prescribed guidelines for the offense, including both downward (more favorable sentences) and upward (more harsh sentences) departures (Mustard, 2001).

Steffensmeier and Demuth (2001) found also that disparities between races were significant, and whites were found to be sentenced the most leniently in both drug and non-drug offenses.

Blacks received harsher penalties than whites, and Hispanics received the harshest punishment out of any of the racial groups (Steffensmeier & Demuth, 2001). The researchers proposed that this Hispanic “disadvantage” was statistically important to the research of sentencing discretion (Steffensmeier & Demuth, 2001). While these results show that race does influence downward and upward departures, it is notable that researchers have stipulated that factors such as prior incarceration and inter-racial victimization may be more influential on sentencing decisions than just race (Thomson & Zingraff, 1981). Still, race does seem to play a role.

Regarding sentence length, much like downward departures, white defendants receive significantly shorter sentences than defendants of other races (Mustard, 2001). For example, Mustard (2001) found that white defendants received an average sentence of 32.1 months, while Hispanics received 54.1 months and blacks 64.1 months. However, it was also noted that blacks had a more extensive average criminal history and a higher offense level than white defendants (Mustard, 2001). It was found that bank robbery and drug trafficking were the two offenses that exhibited the largest black and white defendant difference, and the difference between Hispanics and whites was mostly from drug and/or firearm trafficking (Mustard, 2001). Overall, the racial differences in sentencing were most apparent in the offenses of bank robbery and drug trafficking. This finding was attributed to the fact that these were two of the most frequently committed crimes at the time of the study, and that prior criminal records may have influenced



these departures from the prescribed sentence (Mustard, 2001). The results of Mustard's (2001) study also posited that being an American citizen was beneficial in all offense cases, which may disproportionately bias sentencing of Hispanics.

The likelihood of being sentenced to jail or prison also seems to vary by race. Steffensmeier and his colleagues (1998) found that both blacks and males were more likely to be given prison or jail sentences than any other classification of defendant, but that blacks and males also have higher offense levels and criminal record scores (Steffensmeier et al., 1998). Similarly, Steffensmeier and Demuth (2001) found that white offenders were least likely to be incarcerated and were likely to receive shorter sentences than blacks or Hispanics, however, the black and Hispanic defendants were also more likely to have more influential criminal histories. Research by Kramer and Steffensmeier (1993) found race to be an influencing variable only when compared to sentences of probation compared to sentences of active time. Black defendants were eight percent more likely to be sentenced to active time in jail or prison than whites, and were overall 1.54 times more likely to be sentenced to incarceration as compared to whites (Kramer & Steffensmeier, 1993). These studies have also shown that influence of legal variables, such as prior criminal history and offense details, were more influential in decision making than extralegal factors (Steffensmeier & Demuth, 2001). Additionally, Steffensmeier and colleagues (1998) noted that gender and age were stronger predictors of the likelihood of incarceration than race. However, this research is still important in relation to the effect of race on sentencing, as racial disparities were found.

Although the above-mentioned studies found statistical significance regarding race, other factors may have been influential in the results. Steen and her colleagues (2005) analyzed drug offense court cases in Washington from 1995 to 1998 and found that while race played a

significant part in sentencing decisions, there were multiple other factors that also played into the decision. The results of the analysis found that if a defendant more closely resembled a “typical” offender, meaning they were drug dealers with a prior criminal record, then the judge was more likely to sentence them harshly, both for white and black offenders. However, the results also found that judges were more likely to deviate from the sentencing guidelines for white offenders who did not fit the stereotypical offender description than for the non-typical black offenders (Steen et al., 2005). The researchers attributed these results to the fact that judges often do not have time to get to know the offender, nor their story, so they automatically associate them with the stereotype that fits them the best (Steen et al., 2005). While the results of this study showed that there was a presence of racial bias in sentencing decisions, one cannot be certain that the race of the defendant was the largest factor in the decisions. Straying from the socially constructed concept of race, Blair and her associates (2004) investigated the effects of afrocentric features on sentencing decisions, such as having dark skin, wide noses, and full lips. They believed that race did not fully account for the variance in sentencing disparities; therefore, they focused their research on identifying offenders with afrocentric features and analyzing their sentences compared to offenders who did not have such features. Blair and his colleagues (2002) found that offenders possessing these characteristics, whether they were white or black, were sentenced more harshly than those who did not possess such features.

Perhaps the most imperative research previously conducted on the effects of race on judicial sentencing decisions was a meta-analysis on race and sentencing conducted by Pratt (1998). The bulk of the research on variables effecting judicial sentencing decisions has been in regards to race. Pratt (1998) claimed that most of the research previously done on racial effects on the decision making by judges has been “contradictory and inconclusive” (p. 513). Pratt

(1998) analyzed data published from 1974 and 1996, and focused on how the researchers defined the variables of sentencing decisions and race. The results of the statistical analysis found that the only significant variable in relation to sentencing was offense severity. Pratt (1998) attributed this result to the fact that researchers operationalize race in several different ways, and that research should continue on race and judicial discretion because the absence of racially motivated decision-making cannot be empirically proven. Mitchell (2005) also conducted a meta-analysis and found similar results to Pratt (1998). He asserted that there may exist a small difference in sentencing that can be attributed to race, but the most important factor in sentencing decisions were legal factors, such as severity of the crime, type of attorney, or mitigating circumstances (Mitchell, 2005). In accordance with Pratt's (1998) findings, Mitchell (2005) claimed that sentencing research is flawed and often relies on a small amount of data. Measures of race and disparity are often defined differently across jurisdictions, which pose a threat to the validity of sentencing data.

### Age

The age of the offender being convicted or sentenced has the potential to influence prosecutorial and judicial decisions. Americans in general have displayed a tendency of treating younger citizens with more care and leniency because they do not necessarily expect them to know what is right or wrong in every circumstance. In the courts, offender age may influence the leniency of the sentence given (Doerner & Demuth, 2010). However, there has been very little prior research done on the effect of age, as most sentencing researchers simply control for age and expect a linear relationship. One study by Steffensmeier, Kramer, and Ulmer (1995) found that age has a curvilinear relationship with sentencing discrimination, meaning that the youthful and elderly offenders received lenient sentences and young adult or middle-aged

offenders received the harshest punishments. Johnson (2003) also found interesting results in regards to offender age with elderly defendants receiving lower sentences than young adults. Johnson (2003) deduced that older offenders are seen as less of a threat than the younger offenders; therefore they were likely to receive more lenient sentences. Doerner and Demuth (2010) also asserted, based on the results of their study, that older defendants received less harsh sentences than younger defendants, although this effect was less likely to appear in cases involving females.

Steffensmeier and his colleagues (1998) found that defendants under 21 and over 50 years of age received the most lenient sentences, while defendants aged 21 to 29 received the harshest. After age 30, the relationship is linear and decreases as the defendants rise in age (Steffensmeier et al., 1998). The researchers accounted for age-based judicial discretion in a similar way to Johnson (2003) and proposed that judges see youths and elderly as less of a threat to society than middle-aged adults. However, it was found that this influence of age is dependent on gender and race. The age effect only applies to female defendants if they are over 50 years of age. Both white and black young adult offenders are sentenced the most harshly out of any race and age combination (Steffensmeier et al., 1998). Though the above-mentioned studies found a significant relationship between age and sentencing discrepancies, other demographic variables, such as race or gender, may have influenced the observed correlations. Few studies include age as an independent variable; therefore, further research should include a closer look at age in order to identify any concrete causal relationships with sentencing decisions.

## The Intersectionality of Gender, Race, and Age

While most research on sentencing discrimination and disparity has focused on the individual effects of gender, race, and age on sentencing decisions, a small portion of research has been dedicated to the intersectionality of the three factors. In their 1998 study of sentencing disparity, Steffensmeier and his associates examined the role of gender, race, and age on sentencing decisions, as the researchers believed that the three were interconnected to each other and contended that no prior research had been done in this context previously. Using the Pennsylvania Commission on Sentencing's data from 1989 to 1992, a total of 139,000 cases were drawn for the sample and analyzed on three gender-race-age combinations. The results indicated that if a defendant is a young, black male, then he is the most likely to receive a harsh sentence. The effect of race was stronger on younger offenders than older offenders, specifically with males. The offender's age was more influential during sentencing for males than females. It was also determined by the study that each variable affects the other, and that the intersectionality of the variables was more significant than the variables on their own (Steffensmeier et al., 1998). These findings are significant because they bring heavy implications to light that actors in the criminal justice system should recognize, research, and attempt to fix.

Another study, conducted by Steffensmeier and Demuth (2006), focused on the relationship between gender, race, and sentencing decisions. In regards to sentence length, men were found to receive incarceration sentences that were 20% longer than female sentences (Steffensmeier & Demuth, 2006). Contrary to popular belief promoted by the media, white females did not consistently receive more favorable sentencing decisions than minority females. Hispanic females received the shortest sentences and black females received the highest, while

white females fell in between the two (Steffensmeier & Demuth, 2006). Doerner and Demuth (2010) found that young black males were likely to receive the longest sentence out of any age-race-gender group. Opposing the findings of Steffensmeier and Demuth (2006), Doerner and Demuth (2010) found that black females received shorter sentences than Hispanic females, and both Hispanic and black females were sentenced more harshly than whites, which showed that white females did in fact receive preferential treatment. Overall, Hispanics and blacks were sentenced more harshly than whites, males were sentenced more harshly than females, and younger defendants were sentenced more harshly than older defendants (Doerner & Demuth, 2010). The findings of this study are important because of the Sentencing Commission's promise to exclude race, gender, and age from judicial sentencing decisions (Mustard, 2001). Although there may be other variables contributing to the above mentioned relationships, research has clearly found that judges are still somewhat relying on extralegal variables during their decision making process.

Research has also found differences in the chance of incarceration or community corrections based on gender, age, and race. Steffensmeier and Demuth (2006) found that Hispanic females had a 67% chance of being sentenced to incarceration. White and black females' likelihood of incarceration was much less, therefore presenting a disparity in the treatment of Hispanic females. The chance of males receiving an incarceration sentence was 71% higher than that of females, and females received more favorable sentences overall across the white, black, and Hispanic groups (Steffensmeier & Demuth, 2006). Hispanic and black men were more likely to be given a prison sentence than white males. The researchers found that gender differences were not consistent across racial and ethnic groups, in that the decision of sentencing of females to incarceration was not effected by their race (Steffensmeier & Demuth,

2006). Doerner and Demuth (2010) found that young Hispanic males were found to be the most likely to receive a prison sentence, though young black males were almost just as likely as the Hispanics. The researchers attributed some of these differences to legal factors such as culpability and criminal risk. However, these factors may have also been influenced by gender or race.

Research on the effects of age, race, and gender on sentencing decisions is important to the advancement of the criminal justice system because of the simple notions of justice and equality in our county. Although legal variables, such as offense severity, offense type, type of counsel, and previous criminal record are warranted to be taken into consideration during sentencing, no one, regardless of whether or not they are classified as an offender, should be judged or punished by the color of their skin, their age, or their gender. These are all factors that cannot be changed or eliminated and should be treated as such.

#### Current Study

The current study attempts to investigate sentencing discrepancies, especially disparities involving race, gender, and age in order to extend current literature on the topic. Current criminological literature lacks relevant research regarding sentencing discretion and disparity (Ulmer & Johnson, 2004). Although discretion is an important privilege to uphold for criminal justice agents and actors, both citizens and researchers alike have a duty to promote equality and fairness for all, even for those who have broken the law. The current study provides insight into criminal sentencing decisions in Ashe and Watauga counties in western North Carolina. The study adds a regional perspective to the subject, as previous research has focused on mainly on federal sentencing. Race, age, and gender were focused on specifically in order to detect any

judicial discrimination in the sentencing decisions in the selected cases. The research was guided by the testing of three hypotheses:

*H1.* Younger offenders are more likely to be found guilty of their offense and receive fines, probation, or active time than older offenders;

*H2.* Male offenders are more likely to be found guilty and receive fines, probation, or active time than female offenders; and

*H3.* Nonwhite offenders are more likely to be found guilty and receive fines, probation, or active time than white offenders.



CHAPTER 3  
METHODOLOGY

Data and Sample

To acquire data to examine the effects of age, gender, or race on sentencing, primary data collection was conducted of district court records of two western North Carolina counties: Ashe and Watauga. The target population of the data to be collected was all disposed district court cases of driving while impaired offenses within the years 2011, 2012, 2013, and 2014. A list of all disposed cases was collected from each county via civil revocation files. Probability sampling design was implemented to ensure a random sample. A simple random sample of these cases was taken by assigning each case file number a number and choosing one hundred cases from each county to be included in the sample through the assistance of a random number generator. All cases within the target population had an equal chance of being chosen for the study.

Once the sample was selected for each county, data was collected from the case files chosen. This data included demographic information, specifically: age, gender, and race. Type of legal counsel, disposition, and sentence were collected as well. Identifying information such as offender name, address, specific date of birth, social security number, and driver's license number were omitted from collection to insure confidentiality of the subjects included in the data and to reduce any bias that may occur based on the identify of the offender. The only identifying information collected from the case files was the county-assigned case number.

Measurement

The study included five dependent variables, each relating to the sentencing of the offender. The first dependent variable in the study was disposition type, which was gathered

from the case files and measured as follows. Disposition had two attributes: guilty or other. The attribute of “other” included not guilty dispositions as well as cases that were dismissed by the court. These attributes were coded as 0 for other and 1 for guilty. The remaining dependent variables were different types of sentences that the offender could receive as a result of being found guilty of their offense, and were each coded 0 for no and 1 for yes. These variables were fines, unsupervised probation, supervised probation, and active time in a correctional facility.

The independent variables in the study include age, gender, and race of the offender. The type of legal counsel was also included, along with county, as a control measure and was measured using the data collected from the case files. Age was measured on a ratio level using the age of the offender at the time of disposition and sentencing. Gender was simply determined as either male or female. Race was measured using the information from the case files as white or other, which includes any other race reported in the file. Type of counsel or attorney that represented the offender in the case was coded as 0 for no attorney or for a court-appointed attorney and 1 for a retained attorney. County was measured by including which county the case was from: Watauga or Ashe.

### Analytic Strategy

Statistical analysis was used to test the following hypotheses:

*H1. Offenders of a younger age are more likely to be found guilty of their offense and receive fines, probation, or active time than offenders of older age.*

*H2. Male offenders are more likely to be found guilty and receive fines, probation, or active time than female offenders.*

*H3. Nonwhite offenders are more likely to be found guilty and receive fines, probation, or active time than white offenders.*

In order to get the full picture of the independent variables effects on sentencing, several types of analyses were used. First, univariate analysis or descriptive statistics examining each of the variables was conducted. Next, cross-tabulations were used to describe the relationship between race and gender on sentencing decisions, separately. Then, independent sample t-tests were used to determine the average age of defendants for each dependent variable. Next, analysis of variance (ANOVA) was used to examine interactions between race and gender on sentencing decisions. Finally, binary logistic regression modeling was used for analysis in order to determine the effects of race, gender, and age on sentencing while controlling for other important factors. Because the dependent variables were measured at a binary or dichotomous level, binary logistic regression was appropriate (King, 2008). The models were estimated by the maximum likelihood estimate. A model was prepared for each dependent variable in relation to the independent variables.

## CHAPTER 4

### RESULTS

Data was collected from the two hundred selected cases and was analyzed both by the entire sample and by each county, one hundred cases being from Ashe County and one hundred from Watauga County. For the entire sample, 81 percent of the population was male, 84 percent of the population was white and 16 percent were nonwhite. As shown in Table 1, a vast majority of the defendants (79%) were found guilty. Fines were imposed in 78 percent of the cases. Over half (54%) of the guilty defendants were sentenced to unsupervised probation, while approximately 23 percent of respondents were sentenced to supervised probation, and another 23 percent to active time in custody of the corrections department. The average age of all two hundred defendants in the sample was 33 years. Regarding counsel, a majority of the sample (61.5%) had retained attorneys, while 39 percent had court appointed attorneys, had no attorney, or waived their right to counsel.

While demographics were similar for Ashe and Watauga counties as shown in Table 1, there were some differences. 86 percent of the defendants in Ashe County were male compared to 76 percent of the defendants in Watauga County. The average age of the defendants in Ashe County was 36 years, which was somewhat higher than the average of 33 years in Watauga County. The sample taken from Ashe County was found to be more racially diverse than that taken from Watauga County. While for both counties a large majority of the defendants were white, slightly less were white in Ashe County (78%) than Watauga County (89%). In Ashe County, 22 percent of the defendants were of nonwhite race, compared to only 11 percent of the Watauga County sample.

Table 1.

*Descriptives for Dependent and Independent Variables*

<b>Variable</b>	<b>Full Sample (n=200) % or mean (SD)</b>	<b>Ashe County (n=100) % or mean (SD)</b>	<b>Watauga County (n=100) % or mean (SD)</b>	<b>Description</b>
<b><i>Outcome Measures</i></b>				
Guilty	79	80	78	0 = other; 1 = guilty
Fines	78	79	76	0 = no; 1 = yes
Unsupervised probation	54	40	68	0 = no; 1 = yes
Supervised probation	23	39	7	0 = no; 1 = yes
Active time	21	26	16	0 = no; 1 = yes
<b><i>Independent and Control Measures</i></b>				
Male	81	86	76	0 = female; 1 = male
Race				
White	83.50	78	89	0 = other; 1 = white
Other	16.5	22	11	0 = other; 1 = white
Age	32.98 (12.26)	36.20 (12.95)	32.98 (12.26)	Age in years (16-72)
Counsel				
Retained	61.50	37	86	0 = no; 1 = yes
Appointed/waived	38.5	63	14	0 = no; 1 = yes

In regards to disposition, as shown in Table 1, 80 percent of Ashe County defendants and 78 percent of Watauga County defendants were found guilty of driving under the influence. 79 percent of Ashe County defendants received fines as a result of their guilt, which was similar to the 76 percent in Watauga County. There were considerable differences in sentencing regarding probation between the two counties. Unsupervised probation was given in 40 percent of the Ashe County cases and 68 percent of the Watauga County cases. A higher percentage of the Ashe County defendants (39%) were sentenced to supervised probation than Watauga County defendants (7%). Active time in custody was given to a higher percentage of defendants in Ashe County (26%) compared to only 16 percent in Watauga County.

Bivariate descriptive analyses were conducted in order to assess the distribution of race, gender, and age across the dependent variables of guilt, fines, unsupervised probation, supervised probation, and active time. These analyses indicated that a higher percentage of whites (80.8%) were found guilty than defendants of nonwhite races (69.7%), as shown in Table 2. A higher percentage of white defendants (79.6%) were ordered to pay fines than nonwhite defendants (66.7%). White defendants were ordered to unsupervised probation at a higher rate (54.5%) than nonwhites (51.5%). Whites were also sentenced to supervised probation more (24.6%) than nonwhites (15.2%). A higher percentage of white defendants (21.6%) were sentenced to serving active time than nonwhites (18.2%).

Table 2.

*Sentencing by Race, Gender, and Age*

	Race		Gender		Age
	White (%)	Other (%)	Male (%)	Female (%)	Mean (SD)
Guilty	80.8%	69.7%	77.2%	86.8%	33.39 (12.12)
Fines	79.6%	66.7%	75.3%	86.8%	33.24 (12.00)
Unsupervised Probation	54.5%	51.5%	51.9%	63.2%	31.45 (12.05)
Supervised Probation	24.6%	15.2%	22.8%	23.7%	37.11 (10.96)
Active Time	21.6%	18.2%	22.2%	15.8%	35.45 (10.75)

N=200

In regards to gender, a higher percentage of women (86.8%) were found guilty than men (77.2%), as shown in Table 2. More of the women in this sample paid fines (86.8%) than men (75.3%) as well. A higher percentage of women were sentenced to unsupervised probation (63.2%) than men (51.9%), as well as supervised probation (23.7% and 22.8%, respectively). However, a higher percentage of men were sentenced to active time in custody (22.2%) than women (15.8%). Table 2 also shows the average age of defendants in each dependent variable category. The average age of both those found guilty and given fines was 33 years. The average

age of those who were given unsupervised probation was 31 years of age, while the average was 37 years for supervised probation. The average age of defendants given active time in custody was 35 years.

### Analysis of Variance (ANOVA)

Two-way ANOVA testing has been cited as the appropriate test to compare nominal or ordinal independent variables and their effects on the dependent variables (Szafran, 2012). Therefore, an ANOVA test was used to assess the intersectional effects of race and gender on the dependent variables of guilty, fines, unsupervised probation, supervised probation, and active time. Defendant race and gender were not found to be significantly correlated with guilt ( $F(1)=.020, p=.89$ ), fines ( $F(1)=.003, p=.96$ ), unsupervised probation ( $F(1)=.262, p=.61$ ), supervised probation ( $F(1)=271, p=.60$ ), or active time ( $F(1)=.461, p=.50$ ). In sum, no interactions were found to be statistically significant.

### Binary Logistic Regression

In order to examine the effects of the independent and control variables on the five dichotomous dependent variables, binary logistic regression modeling was used, which is appropriate for dichotomous dependent variables (King, 2008). Using binary logistic regression, three statistical models were created for each of the dependent variables of guilt, fines, unsupervised probation, supervised probation, and active time in custody. The models reflected the entire sample and Ashe and Watauga counties separately. For the dependent variable of guilt, the full sample model ( $p=.35$ ), the Ashe County model ( $p=.39$ ), and the Watauga County model ( $p=.54$ ) were not significant, and no significant relationships were found within any of the models, as seen in Table 3. However, it is important to note that the standard error for the variable of retained counsel for Watauga County was extremely high, as defendants who used an

appointed attorney or waived their right to counsel in this county were all found guilty of the offense. There were also no significant relationships found in the binary logistic regression models of fines as shown in Table 4.

Table 3.

*Binary Logistic Regression of Guilt*

Variable	Full Sample		Ashe County		Watauga County	
	B (SE)	e <sup>B</sup>	B (SE)	e <sup>B</sup>	B (SE)	e <sup>B</sup>
Male	-.64 (.52)	.53	-1.16 (1.09)	.31	-.31 (.64)	.73
Race						
White	.55 (.44)	1.74	.37 (.59)	1.45	.98 (.73)	2.66
Other (Reference)	-	-	-	-	-	-
Age	.01 (.02)	1.01	.01 (.02)	1.01	-.01 (.03)	.99
Counsel						
Retained	-.19 (.37)	.82	.65 (.57)	1.91	-20.21 (10613.67)	.00
Appointed/Waived (Reference)	-	-	-	-	-	-
Nagelkerke R <sup>2</sup>	.03		.06		.14	
N (defendants)	200		100		100	

p≤.001\*\*\* p≤.05\*\* p≤.10\*



Table 4.

*Binary Logistic Regression of Fines*

Variable	Full Sample		Ashe County		Watauga County	
	B (SE)	e <sup>B</sup>	B (SE)	e <sup>B</sup>	B (SE)	e <sup>B</sup>
Male	-.73 (.52)	.48	-1.17 (1.09)	.31	-.43 (.63)	.65
Race						
White	.62 (.43)	1.86	.58 (.58)	1.78	.82 (.70)	2.27
Other (Reference)	-	-	-	-	-	-
Age	.01 (.02)	1.01	.01 (.02)	1.01	-.02 (.02)	.98
Counsel						
Retained	-.11 (.36)	.90	.72 (.57)	2.06	-1.80 (1.12)	.17
Appointed/Waived (Reference)	-	-	-	-	-	-
Nagelkerke R <sup>2</sup>	.03		.09		.09	
N (defendants)	200		100		100	

p<.001\*\*\* p<.05\*\* p<.10\*

For unsupervised probation, retained counsel was found to have a positive significant relationship in both the full sample and Ashe County models (p=.00), as shown in Table 5. This finding indicates that those defendants who retained a private attorney had higher odds of receiving unsupervised probation than those who used a court-appointed attorney or had no attorney at all. In the Watauga County model, age had a slightly significant (p=.10) negative relationship with unsupervised probation, meaning that older defendants had lower odds of receiving unsupervised probation than younger defendants.

Table 5.

## Binary Logistic Regression of Unsupervised Probation

Variable	Full Sample		Ashe County		Watauga County	
	B (SE)	e <sup>B</sup>	B (SE)	e <sup>B</sup>	B (SE)	e <sup>B</sup>
Male	-.45 (.40)	.64	.32 (.67)	1.37	-.60 (.57)	.55
Race						
White	-.05 (.41)	.95	-.44 (.56)	.64	.32 (.68)	1.38
Other (Reference)	-	-	-	-	-	-
Age	-.02 (.01)	.99	.00 (.02)	1.00	-.04 (.02)*	.97
Counsel						
Retained	1.32 (.32)	3.73***	1.74 (.46)	5.70***	-.47 (.71)	.63
Appointed/Waived (Reference)	-	-	-	-	-	-
Nagelkerke R <sup>2</sup>	.15		.20		.07	
N (defendants)	200		100		100	

p≤.001\*\*\* p≤.05\*\* p≤.10\*

As shown in Table 6, the supervised probation binary logistic regression models found negatively significant relationships with retained counsel for both the full sample (p=.000) and the Ashe County sample (p=.004). These findings mean that defendants with privately retained attorneys had lower odds of receiving supervised probation than those with court appointed attorneys or no attorney at all. Race was found to have a slightly significant relationship with supervised probation in Ashe County, as whites had higher odds of receiving the sentence than nonwhites (p=.09). It is important to note that the white variable for Watauga County had a high standard error because all defendants in the supervised probation category for the Watauga model were white. None of the defendants in Watauga County who received supervised probation as a part of their sentence were of a nonwhite race.

Table 6.

Binary Logistic Regression of Supervised Probation

Variable	Full Sample		Ashe County		Watauga County	
	B (SE)	e <sup>B</sup>	B (SE)	e <sup>B</sup>	B (SE)	e <sup>B</sup>
Male	-.09 (.47)	.91	-.88 (.64)	.42	.59 (1.15)	1.80*
Race						
White	.86 (.56)	2.37	1.01 (.60)	2.74*	18.69 (11867.55)	130313828.00
Other (Reference)	-	-	-	-	-	-
Age	.02 (.01)	1.02	.01 (.02)	1.01	.03 (.03)	1.03
Counsel						
Retained	-1.88 (.39)	.15***	-1.44 (.50)	.24**	-.82 (.99)	.44
Appointed/Waived (Reference)	-	-	-	-	-	-
Nagelkerke R <sup>2</sup>	.24		.18		.11	
N (defendants)	200		100		100	

p≤.001\*\*\* p≤.05\*\* p≤.10\*

Regarding active time, the entire sample model found a slight, negative association with retained counsel (p=.03), as did the Watauga County model (p=.06), meaning that those with retained counsel had lower odds of receiving active time as a sentence as shown in Table 7. The Watauga County model also produced a slightly positive significance with gender, as males had higher odds of receiving active time than females (p=.09). No other significant relationships were found for active time.

Table 7.

## Binary Logistic Regression of Active Time

Variable	Full Sample		Ashe County		Watauga County	
	B (SE)	e <sup>B</sup>	B (SE)	e <sup>B</sup>	B (SE)	e <sup>B</sup>
Male	.42 (.49)	1.53	-.60 (.64)	.55	1.89 (1.11)	6.63*
Race						
White	.31 (.51)	1.36	.24 (.60)	1.27	.72 (1.15)	2.06
Other (Reference)	-	-	-	-	-	-
Age	.01 (.01)	1.01	-.01 (.02)	.99	.03 (.03)	1.03
Counsel						
Retained	-.81 (.36)	.44**	-.39 (.49)	.68	-1.43 (.75)	.24*
Appointed/Waived (Reference)	-	-	-	-	-	-
Nagelkerke R <sup>2</sup>	.06		.03		.18	
N (defendants)	200		100		100	

P<sub>≤</sub>.001\*\*\* p<sub><</sub>.05\*\* p<sub><</sub>.10\*

## CHAPTER 5

### DISCUSSION

The current study attempted to add to extant literature by examining extralegal factors and analyzing their effect on criminal sentencing decisions. Specifically, the study predicted that the independent variables of race, age, and gender would have varying associations with sentencing decisions for driving under the influence (DUI) charges (i.e., guilt, fines, unsupervised or supervised probation, and active time in correctional custody). The intersection of race, age, and gender was especially expected to have a significant relationship with guilt, since previous research has found that being a young, black male often leads to a more severe sentence (Steffensmeier et al., 1998). While the logistic regression models produced multiple significant relationships, some of the proposed hypotheses, which were postulated based on findings of previous research, were not supported by the statistical analysis of the sample provided by the present study. Additionally, the two-way ANOVA indicated no significant relationship between the interaction of race and gender on sentencing as well. There are many possible explanations as to why the expected relationships were not supported by the analysis, both relating to circumstances within the study and social forces outside the control of research.

As previously stated in the results, the binary logistic regression models of the guilt variable did not provide any significant findings. In regards to the first hypothesis that older offenders would be less likely to be found guilty or receive any of the aforementioned punishments, most of the models did not support the hypothesis. However, age was found to be slightly significant in the Watauga County model of unsupervised probation, meaning that older defendants had lower odds of receiving unsupervised probation than younger defendants. No other associations with age were found among the remaining dependent variable analyses. The

lack of findings may be attributed to the small sample size (N=200) of the study. There was only one slightly significant relationship in support of the second hypothesis, which stated that males would be more likely than females to be found guilty and receive fines, probation, or active time. In the Watauga County model for active time in custody, males were found to have slightly higher odds of receiving a sentence of active time than females. Otherwise, there were no significant relationships found in any of the models in regards to gender. This issue may be partly accounted for by the lack of gender diversity in the sample population, as 81 percent of the defendants were male.

The third hypothesis, which stated that nonwhite offenders would be more likely to be found guilty and receive fines, probation, or active time than white offenders, was not fully supported by the results of the analyses. Only the Ashe County model for supervised probation found a slight relationship with race, as whites were more likely to receive supervised probation than nonwhites. Based on previous research, this relationship was not expected, as minority defendants have typically been subjected to more severe sentences than whites (e.g. Blair et al., 2004; Johnson, 2003; Steffensmeier & Demuth, 2001; Thomson & Zingraff, 1981; Walker et al., 2012). This may be attributed to the fact that a majority of the offenders (83.5%) were white. Lack of racial diversity may have inhibited the proposed relationships for nonwhite defendants from being statistically significant.

One variable that was notable was type of legal counsel. The counsel for defendants was found to have an association with unsupervised and supervised probation, as well as active time in custody. In both the full sample model and Ashe County model of unsupervised probation, defendants using privately retained attorneys had higher odds of receiving an unsupervised probation sentence, which is the most lenient sentence observed in the current study. This

relationship was expected, as it is commonly believed that defendants who use a privately retained attorney fare better than those with no assistance of counsel at all (Neubauer & Fradella, 2011). Previous research has also found that privately retained attorneys often obtain more favorable outcomes for their clients than court-appointed attorneys or public defenders (Neubauer & Fradella, 2011). For supervised probation, the relationships regarding type of legal counsel changed. The Ashe County model supported a significant, negative relationship with retained attorneys, meaning that those with retained attorneys had a lower odd of receiving a supervised probation term than those with a court-appointed attorney or no attorney. The entire sample model of supervised probation also found a negative relationship with retained attorneys. This finding posits that for the entire sample, those who had some sort of attorney had lower odds of receiving a supervised probation sentence than those with no attorney at all. These results support the previous research that states that defendants who are under retained legal representation in the court typically fare better than those who choose to go without an attorney or have an appointed attorney (Neubauer & Fradella, 2011).

The ANOVA testing of the interactional effects of race and gender on each of the five dependent variables found no significant results, despite the fact that previous research indicates gender and race have a stronger effect on sentencing decisions when they are accounted for together (Steffensmeier et al., 1998; Steffensmeier & Demuth, 2006). This finding may be attributed to the small sample size used in the study, as well as the lack of diversity of race and gender among the sample population. However, this finding might also be positive in that it may indicate that judges did not hand down sentences based on extralegal factors in these cases, but rather based on the facts and circumstances of the case. Previous research has indicated that judges often utilize both legal and extralegal factors in their sentencing of defendants (Bontrager

et al., 2005; Demuth, 2003; Johnson, 2003; Mustard, 2001; Steen et al., 2005; Steffensmeier et al., 1998; Steffensmeier & Demuth, 2001), however it has been noted that race, gender, and age often play a large part in their decisions. In the current study, it appears that legal factors, specifically type of legal counsel, have a much stronger influence on sentencing than extralegal factors, such as race, gender, or age.

Overall, the current study's findings were limited due to small sample size (N=200), limited diversity of defendant race (83.5% were white), a majority of defendants were male (81%), and most of the defendants were found guilty of their charges (79%). The two counties sampled have total populations ranging from around 27,000 in Ashe and 53,000 in Watauga (U.S. Census Bureau, 2015a; U.S. Census Bureau, 2015b). In Ashe County, about 97 percent of residents are white. Watauga County is similar in racial composition as well (95.3%) (U.S. Census Bureau, 2015a; U.S. Census Bureau, 2015b). Therefore, the sample obtained was somewhat representative of the total population of the areas, with the exception of gender, which is evenly distributed across the two counties as 50 percent female and 50 percent male. The lack of gender disparity in the sample can be attributed to the fact that men typically commit more crime than women (Steffensmeier & Allan, 1996).

Despite the ability of criminal court judges to use their discretion in sentencing offenders, it seems that driving under the influence charges are not sentenced in discretionary or discriminatory ways in our study. The current study found that overall, most defendants were found guilty of driving under the influence and were given the appropriate penalty based on the offense level. Although research has found that ever since the creation of the United States Sentencing Commission in 1984 (Stith, 2008) and the following mandates and policies implemented in states and localities thereafter, judges still continue to exercise discretion.



However, it seems that driving under the influence charges are treated uniformly, at least in western North Carolina, and are given very little discretionary attention. The results from the current study may reflect the opinions and social movements that have occurred over the past few decades that bring drunk driving in the spotlight and promote the importance of strict, severe punishment for those who commit the offense.

Prior to the 1960's, drunk driving was viewed by the public and the media as humorous and somewhat harmless (Fell & Voas, 2006). Accidents resulting from intoxicated drivers were often said to be caused by "driver error" during this time (Fell & Voas, 2006, p. 195). Even after the federal government began implementing policies regarding blood alcohol content levels and driving under the influence enforcement, the public still did not see drunk driving as a pressing social issue. It was not until 1980, when Candy Lightner's daughter was struck and killed by a drunk driver, that the media and the public began devoting their attention to the topic. After her daughter's death, Lightner created Mothers Against Drunk Driving, or MADD (Fell & Voas, 2006). MADD started as a small group that soon spread across America, advocating strict punishments for driving under the influence offenders, as well as victim assistance. Over a thousand new laws have been implemented as a result of MADD's work, all relating to the prevention and punishment of drinking and driving (El-Guebaly, 2005). Media portrayals of drinking and driving changed from what once was social, carefree drinking to drinking responsibly and always having a designated driver available (Fell & Voas, 2006). Society began viewing drunk driving as a serious criminal offense, not a humorous mistake, after the creation of MADD, and continues to do so today.

Perhaps the strongest driving force behind MADD and groups with similar philanthropies, such as Remove Intoxicated Drivers (RID) and Students Against Drunk Driving

(SADD), is their ability to influence social opinions (Schmidt, 2013). The stories behind many of these organizations, such as that of Candy Lightner's daughter, touch the heart of citizens and urge them to become involved in the push against drinking and driving. These organizations, specifically MADD, use emotion and fear to push their agenda forward and encourage communities across the nation to join the fight against drunk driving. Judges may have been impacted by the efforts of these anti-drunk driving organizations and subconsciously use these emotions and feelings of disdain in their sentencing decisions of driving under the influence offenders. Criminal justice researchers have found that social opinions and movements often influence the actions of justice system actors (Travis III, 2012). Judges are no exception to this rule, and their punitiveness towards drunk driving may be a result of social influence.

MADD has not only had success in motivating society to act against drunk driving and drunk drivers. The organization has also successfully influenced legislators and decision makers in regards to alcohol laws. They encouraged states to lengthen the license suspension period for DUI offenders. They helped pass multiple laws, such as zero tolerance for youth laws, .08 blood alcohol content laws, and increased sanctions for repeat offenders (Fell & Zoas, 2006). MADD even began a court monitoring process of which the organization hoped would increase sanctions and promote rehabilitation of the offender as well. The actions of MADD are still seen today in the American court system, as exhibited by both the aforementioned guidelines and the current social push against drunk driving.

#### Limitations and Future Research

There are multiple limitations to this study. External validity may be an issue because of the regional characteristics of the data that was collected and analyzed. While the results of the analysis may be generalized for western North Carolina, they should not be generalized any

farther. The sample may not be representative of other parts of the state, let alone any other part of the country. Sampling error may also be an issue, as the data collected for this study may not have been representative of the entire population of disposed cases in 2011, 2012, 2013, and 2014. The current study was not able to control for severity of offense in regards to mitigating and aggravating factors, which may have affected the significance of the results.

There may exist intervening or antecedent variables that were not controlled for within the analysis that were effecting the relationships found by the results. A spurious relationship may not be detected through the data analysis. Other variables, such as socioeconomic status, may have affected any relationship that would be found to be statistically significant. Because of the limited information available in the court files that were used to collect the data for this study, controlling for socioeconomic status would be difficult, as the files did not include any information on employment or marriage status.

In conclusion, the current study attempted to investigate the effect of race, gender, and age on judicial sentencing decisions. Using binary logistic regression, models were created based on the dependent variables of guilt, fines, unsupervised probation, probation, and active time in correctional custody. Results of the study found the strongest relationships between the variable of retained counsel in the models of unsupervised probation, supervised probation, and active time. Overall, no significant associations were found in relation to the three proposed hypotheses; however, the present study supplements the existing literature by adding a regional aspect to the study of sentencing discretion and disparity. The study also gives an insight to the usage of sentencing guidelines and the impact that social forces and causes can have on the criminal justice system in America. Although only driving under the influence charges were evaluated in the current study, the results show that in western North Carolina, judges take

charges very seriously and follow guidelines based on the severity of the offense. Discretion seems to be seldom used in these cases.

In future research, the study should be replicated in order to enhance reliability. Perhaps the study should be replicated in a different area of the state in order to examine the conviction patterns of driving while impaired cases across North Carolina. Other states could utilize the methods of this study in order to analyze the effects of race, gender, and age in their communities as well. A variety of criminal offenses could be included in order to provide a broader look into judicial sentencing decisions. Another call for future research is the need to compare social class with conviction rates. Though type of attorney could somewhat allow an inference to be made regarding social class or wealth of the defendants, the data used in the current study could not accurately account for social class. However, a study involving a survey instrument sent to those who have been charged in the state with a crime could. Another variable that is important to implement in future studies is offense level or severity. Because the current study used cases in which defendants were found both guilty and not guilty, offense severity was not included in the regressions, as those cases in which the defendant was found not guilty did not have an offense level noted. A study using only cases involving guilty defendants would be able to properly investigate the importance of mitigating and aggravating factors. Future research could also look at the difference between district court decisions and higher court decisions, such as superior or appellate court dispositions, to see if the lack of discretionary decision-making is apparent in the higher courts as well.

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VITA

APRIL MICHELLE MILLER

Personal Data:

Date of Birth: April 12, 1990

Place of Birth: Charlotte, North Carolina

Education:

Central Cabarrus High School, Concord, NC 2008

Appalachian State University, Boone, NC:

B. S. Criminal Justice, August 2011

East Tennessee State University, Johnson City, TN:

M. A. Criminal Justice and Criminology, August 2015

Professional Experience:

Graduate Assistant, Department of Criminal Justice and  
Criminology, 2013-2015

Honors and Awards:

Dean's List

Graduated Magna cum Laude, Appalachian State University

Distinguished Graduate Award, East Tennessee State University