

PRESENTENCE DETENTION IN U.S. DISTRICT COURTS: THE EFFECTS OF
RACE/ETHNICITY, GENDER, AND SOCIAL CONTEXT

by

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Abstract

Despite the substantial research conducted on racial and ethnic disparities in the criminal justice system, the majority of research focuses on final sentencing decisions. Less attention has been devoted to earlier stages in criminal processing, such as the presentence detention process. In fact, the analyses that did investigate presentence detention status mainly used state-level data, and there is only a handful of studies that have examined race/ethnicity and gender effects on detention and bail in the federal criminal justice system (e.g., Albonetti, 1989; Bak, 1998; Reitler, et. al., 2012; Spohn, 2009). Furthermore, recent analyses have uncovered that extralegal disparities in presentence detention outcomes, particularly racial and ethnic disparities, vary across court jurisdictions (e.g., Levin, 2008; Pinchevski & Steiner, 2013; Eisenstein & Jacob, 1977). Thus, the purpose of this study is to explore the effects of defendants' race/ethnicity and gender, and social context, on defendants' pretrial status. This study employs a multilevel modeling strategy and uses criminal sentencing data (N=130,120) from the U.S. Sentencing Commission (USSC) for fiscal years 2008 to 2010, across 89 U.S. District Courts, including supplemental data drawn from the U.S. Census Bureau and the Federal Judicial Center's Federal Court Management Statistics. The initial findings indicate that Black and Hispanic defendants are less likely than Whites, and females are more likely than males, to be released on bail and rereleased on their own recognizance (ROR). Regarding the district level, ROR is less likely for defendants processed in districts with a higher crime rate and higher socioeconomic disadvantage. On the other hand, bail is more likely for defendants processed in districts with larger courts (more judges). In cross-level interactions increase in percent Black, increase in crime rate, and increase in socioeconomic disadvantage are positively associated with bail for Black defendants, while increase in percent Hispanic and court size are positively associated

with bail for Hispanic defendants. Consistent with the courts as communities and focal concerns perspectives, this study found that the presentence process is influenced by local practices, norms, and concerns for organizational efficiency. These distinctive features of court jurisdictions interact with race/ethnicity and affect defendants' presentence status. Future research is needed to better assess the detention process with increased access to federal data. In addition, examination of intersectionality of race/ethnicity, gender and age at the presentence detention stage is required.

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Chapter 1 - INTRODUCTION

Arrest and imprisonment data show that racial and ethnic minority groups are overrepresented in the criminal justice system. Black and Hispanic defendants are incarcerated at rates roughly 4 to 6 times higher, respectively, than White defendants (Carson, 2014, p. 8). Over the last four decades, racial and ethnic disparities in the punishment phase have garnered considerable interest from sociologists and criminologists. The majority of empirical research, however, focuses on final sentencing outcomes, such as incarceration and incarceration severity decisions, and has devoted less attention to criminal case processing at earlier stages (Chiricos & Crawford, 1995; Feeley, 1979; Free, 1996; 2002; Johnson, 2014; Spohn, 2000). One such stage in the adjudication process that researchers have largely ignored is presentence detention, especially pretrial outcomes in federal district courts.

As a major reform from the Comprehensive Crime Control Act of 1984, the presentence detention process in the federal criminal justice system is shaped by the Bail Reform Act of 1984 (BRA hereinafter). Detention and bail decisions under the BRA—previously guided primarily by the assurance of appearance at legal proceedings (Bail Reform Act of 1966)—are determined by defendants’ assurance of appearance, risk of flight, and threat to community safety (American Bar Association, 2007:1; U.S. General Accounting Office, 1987:9). More specifically, a defendant may be deprived of liberty pending trial (or a plea) on personal recognizance (ROR) or unsecured bond if the release “will not reasonably assure the appearance of the person as required or will endanger the safety of any person or the community” (18 U.S.C. § 3142 (b)). Furthermore, the BRA restructured custodial release and bail practices, shifting the burden of proof from the prosecutor to the defendant (U.S. General Accounting Office, 1987).

An investigation of presentence detention outcomes is important for several reasons. The BRA guidelines, including with pretrial detention in general, may contribute to extralegal disparity during the early stages of the punishment phase. Pretrial proceedings are characterized by considerably less visibility and oversight relative to later proceedings such as trials and sentencing hearings, thus placing minimal constraints on court officials (Eisenstein & Jacob, 1977). This increases the likelihood of discriminatory practices during this early stage of the criminal process (Feeley, 1979; Free, 2002; Spohn, Gruhl, & Welch, 1987). For instance, presentence incarceration under the BRA is complicated by the fact that the legal determination of defendants' "risk" and "threat" may be shaped by extralegal characteristics. Presentence detention and bail decisions are influenced not only by the seriousness of offense and criminal history but also by defendants' "character, physical and mental condition, family ties, and financial resources, employment, length of residence in the community and community ties" (18 U.S.C. § 3144 (g)).

As a result of defendant personal characteristics being associated with pretrial decision-making, the conditional release and bail process may have negative consequences on criminal defendants who lack the financial resources or social capital to receive non-financial release or meet the requirements of bail (Foote, 1965; Goldkamp, 1978; Demuth, 2003). Most court jurisdictions in the U.S. rely on bond schedules—that is, a preset monetary amount based on current charges the defendant is facing (Pretrial Justice Institute, 2015). Thus, defendants with more financial or social influence can obtain their liberty while indigent defendants with limited personal or community resources may elicit a greater sense of "risk" or "threat" and remain in custody pending trial or a plea agreement (Beeley, 1927; Demuth, 2003; Pinchevski, 2016). Pretrial release practices substantially disadvantage minority groups, as they are more likely to

live in poverty and less likely to afford bail (Beeley, 1927; Demuth, 2003; Demuth & Steffensmeier, 2004b; Johnson, Ulmer, & Kramer, 2008; Reitler, Sullivan, & Frank, 2015; Wooldredge, Frank, Goulette, & Travis, 2015).

Extralegal disparities related to defendants' race/ethnicity and gender are most pronounced during earlier stages of punishment (Chiricos and Crawford, 1995; Spohn, 2000; Zatz, 2000). These findings suggest that in addition to having less financial resources, minority defendants may be viewed as a greater threat and thus less likely to secure release under personal recognizance, or bail, or bond (Beeley, 1927; Demuth, 2003; Foote, White & Hallett, 2005). In fact, the Pretrial Justice Institute (Pretrial Justice Institute, 2015) reports that bail amounts are 35% higher for African Americans and 19% higher for Hispanics when compared to amounts set for White defendants. Existing research indicates that Black and Hispanic defendants are more likely to face harsher treatment prior to trial—a higher likelihood of being detained and facing higher bail amounts—in state courts (e.g., Demuth, 2003; Demuth & Steffensmeier, 2004; Schlesinger, 2005; Williams, 2003; Wooldredge, Frank, Goulette, & Travis III, 2015) and federal district courts (e.g., Oleson, Lowenkamp, Cadigan, VanNostrand, & Wooldredge, 2014; Reitler et al., 2015; Spohn, 2009). In addition, recent analyses have uncovered that racial, ethnic, and gender disparities in presentence detention outcomes, and detention and bail decisions in general, vary across court jurisdictions (e.g., Levin, 2008; Pinchevski & Steiner, 2013; Eisenstein & Jacob, 1977).

Beyond producing extralegal disparities, pretrial decisions affect defendants' legal case outcomes and personal life. Pretrial custody precludes defendants from adequately preparing for a defense (Foote, 1954; Pretrial Justice Institute, 2015). Furthermore, research on the relationship between pretrial detention and incarceration decisions has revealed that detention prior to trial

significantly affects imprisonment outcomes (Leiber & Fox, 2005; Philips, 2012; Rankin, 1964; Spohn, 2009). Early on, Blumstein and colleagues (1983) noted that being detained before adjudication may produce a label that stereotypes defendants in presentence custody as a greater threat or danger, and thus elicit a harsher punishment (see also: Goldkamp, 1979; Lafree, 1985).

More recently, Philips (2012) found that presentence detention significantly increased the likelihood of incarceration and receiving a greater sentence. A study by the Pretrial Justice Institute (Pretrial Justice Institute, 2015). found that defendants detained during the entire presentence period were four times more likely to be sentenced to jail, three times more likely to be sentenced to prison, had three times longer jail sentences, and faced two times longer prison sentences than those who were released at some point prior to trial (see also: Kutateladze, Andiloro, Johnson, & Spohn, 2014; Williams, 2003). As Williams' (2003, p. 314) study on imprisonment outcomes in Florida concluded, "A defendant who is out on bail can show the sentencing judge not only that he or she is not dangerous but he or she is willing to change." Equally important, scholars have uncovered that even short periods of presentence imprisonment have detrimental effects on family life, employment stability, and community ties (Clear, 2007; Irwin, 1985; LaFree, 1985).

As mentioned above, research on pretrial status is of great importance for multiple reasons. Pretrial detention decisions continue to have detrimental effects on individuals, families, and communities at large. Although the number of defendants awaiting trial accounts for 95% of jail growth since 2000 (Pretrial Justice Institute, 2015), only a handful of studies examined the unwarranted disparities during the presentence detention stage. Thus, there are a number of gaps in the empirical literature concerning the presentence detention process.

Research Gaps

Several gaps in the literature are addressed in this study. First, until recently, the research on detention and bail outcomes has primarily focused on state court systems. There are only a small number of studies that have tested race/ethnicity effects on detention and bail in the federal criminal justice system (e.g., Albonetti, 1989; Bak, 1998; Reitler, et. al., 2012; Spohn, 2009). An investigation of presentence detention in federal courts is important given that detention is more prevalent among federal defendants than state defendants. In fact, whereas three-fifths of felony defendants in the nation's most populated urban court jurisdictions are released from pretrial custody each year, 75% of federal defendants remain in confinement prior to entering a plea, being sentenced, or going to trial (Bureau of Justice Statistics, 2014). Second, the small number of districts examined by studies in the past has precluded a comprehensive analysis of contextual variation in presentence detention practices. With one known exception (Reitler et. al., 2012), work produced on detention status in federal courts has been limited to studies that look at less than 10 districts. Furthermore, more than half of the research on detention among federal defendants used data collected before the passage of the BRA of 1984.

Third, federal studies have neglected the fact that detention and release outcomes reflect a two-stage process (Demuth, 2003; Goldkamp, 1979). Most studies that examine the federal pretrial process use a binary outcome measure of detention (detained or not detained). Thus, a dichotomous measure for detention does not capture whether defendants were released on recognizance (non-financial release), or under bail/bond. Lastly, and most importantly, the influence of organizational and social context in presentence detention practices in federal courts has not been examined. The literature on structural variations in sentencing shows that sentencing outcomes are not only influenced by extralegal factors, but are also conditioned by

courtroom characteristics, such as jurisdiction's caseload size, minority population composition, socioeconomic disadvantage, and sociopolitical factors (e.g., Dixon, 1995; Eisenstein & Jacob, 1977; Fearn, 2005).

The Current Study

The overall purpose of this study is to explore the relationship between race/ethnicity, gender, and social context and defendants' pretrial status. Thus, four research objectives are proposed in the current study. First, the effects of defendants' race/ethnicity and gender on the presentence detention status are examined. Next, this study tests whether presentence detention outcomes vary across court jurisdictions. In addition, the study investigates the extent to which federal districts' organizational and social characteristics directly influence presentence detention outcomes. Lastly, the study analyzes whether defendants' race/ethnicity conditions the association between social context and presentence decision. Accordingly, criminal sentencing data from the U.S. Sentencing Commission (USSC) for fiscal years 2008 to 2010, across 89 U.S. District Courts, including supplemental data drawn from the U.S. Census Bureau and the Federal Judicial Center's Federal Court Management Statistics, are drawn to test for the influence of extralegal factors and social context on presentence status. The following section will turn to empirical status of punishment decisions, specifically on presentence detention process and social context.

Chapter 2 - LITERATURE REVIEW

Race/Ethnicity and Gender Effects on Punishment Decisions

Since the 1980s, crime and punishment scholars have systematically examined the relationship between race/ethnicity and sentencing outcomes. Extensive reviews of the literature on racial and ethnic disparities in sentencing have concluded that Black defendants, and in some cases Hispanic defendants, receive considerably harsher penalties than similarly situated White defendants (Chiricos & Crawford, 1995; Mitchel, 2005; Pratt, 1998; Spohn, 2000; Zatz, 1987, 2000). Early on, a comprehensive review of the courts and sentencing literature by Zatz (1987) conceptualized four waves of research on extralegal sentencing disparities. Wave I, which encompassed studies from the 1930s to the 1960s, uncovered direct and disproportionate treatment against non-White defendants. Wave II (1960s to 1970s) reflects empirical research that uncovered “no discrimination” in sentencing practices, arguing that racial minorities were overrepresented in the criminal justice system due to their greater involvement in criminal activities. Wave III (1970s to 1980s) witnessed advances in data availability and analytic strategies, leading to a new wave studies on bias in decision-making. Research conducted during this wave uncovered that race/ethnicity can indirectly affect sentencing outcomes. In Wave IV (data from late 1970s-1980s, conducted in 1980s) studies showed that racial disparity effects can occur indirectly.

Contemporary research has focused on race/ethnicity effects in punishment outcomes after the introduction of sentencing guidelines across state courts and federal district courts (Crawford, Chiricos, & Kleck, 1998; Engen & Gainey, 2000; Steffensmeier & Demuth, 2000; Johnson, Ulmer & Kramer, 2008; Petersilia, 1983; Zatz, 1987). Comprehensive reviews of the literature on extralegal effects on sentencing outcomes support the presence of racial and ethnic

disparities (Pratt, 1998; Spohn, 2000; Mitchel, 2005; Ulmer, 2012). For example, Spohn's (2000) review of forty studies on race and sentence severity drew a series of conclusions regarding the effects of race/ethnicity in the sentencing reform era, beginning in the 1980s, when the punishment process in U.S. courts shifted from indeterminate sentencing to determinate sentencing practices. During the sentencing reform era, presumptive sentencing guidelines and mandatory minimum penalties were implemented across state and federal courts to reduce racial disparities and discriminatory practices, removing discretion from judges. Spohn, however, concluded that sentencing reforms implemented nearly three decades ago have not achieved their goal and continue to produce unwarranted disparities in sentencing practices. More specifically, she reported that Blacks and Hispanics are more likely to receive significantly harsher sentences than similar situated White defendants. A meta-analysis by Mitchel (2005) on incarceration severity in state and federal courts reported that Blacks were punished more harshly than Whites, even after controlling for offense seriousness and prior criminal history. Most importantly, his study found that recent analyses of federal sentencing outcomes revealed larger effects of race when compared to studies conducted in the 1980s and early 1990s.

Another line of research indicates that legal actors' decisions are influenced by extralegal characteristics despite the existence of mandatory sentencing guidelines, which were enacted to reduce extralegal disparity and restrict judicial discretion (Albonetti, 1991, 1992; Bushway & Piehl, 2001; Shermer & Johnson, 2010). For instance, Albonetti's (1997) study of sentencing practices under the federal guidelines found that Black and Hispanic defendants receive more severe sentences than do White defendants. Similarly, Everett and Wojtkiewicz's (2002) analysis of racial/ethnic bias in federal sentencing practices revealed that Black defendants were 50

percent and Hispanic defendants were 39 percent more likely than White defendants to receive higher sentences despite the use of the federal guidelines.

Empirical research on the influence of defendants' race/ethnic on sentencing decisions has also investigated the effects of gender and found that female defendants are treated more lenient than their male counterparts (e.g., Cano & Spohn, 2012; Freiburger & Hilinski, 2013; Koons-Witt, 2002; Spohn, 2002; Steffensmeier, Kramer, & Streifel, 1993). An early analysis by Daly (1987) reported that married women, and especially married women with children, were treated less harshly by judges due to their familial responsibilities. Stacey and Spohn's (2006) study of three U.S. District Courts situated in the Midwest found that female offenders received sentences that were approximately ten months shorter than male offenders with similar offenses. Cano and Spohn (2012) examined Assistant U.S. Attorneys use of substantial assistance downward departures—sentence discounts granted for cooperation with the government—and found that female offenders were more likely than male offenders to receive substantial assistance departures, including larger sentence discounts (see also: Hartley et. al., 2007; Johnson, Ulmer & Kramer, 2008; Spohn & Fornango, 2009).

In addition, a growing body of work that closely examined the effects of race on sentencing outcomes uncovered that in some circumstances, the effect of defendants' race is masked by gender (Cano & Spohn, 2012; Doerner & Demuth, 2009; Freiburger & Hilinski, 2013; Spohn & Holleran, 2000; Steffensmeier, Ulmer, & Kramer, 1998). Steffensmeier, Ulmer, and Kramer (1998), for instance, examined the joint effects of race and gender, in addition to age, on sentencing outcomes in Pennsylvania. They found that young Black males receive harsher sentences than young White males. Research on punishment in federal district courts has reached similar conclusions. A recent study by Doerner and Demuth (2009) examined the joint

effects of race/ethnicity, gender, and age on sentencing outcomes in U.S. District Courts. They found that Black and Hispanic male defendants are punished harsher than White defendants. Overall, the punishment literature indicates that male and minority defendants are more disadvantaged in criminal justice system than female and White defendants. The following section will focus on race/ethnicity and gender effects, specifically during the presentence detention process.

Race/Ethnicity and Gender Effects on Presentence Detention Process

The punishment literature on unwarranted sentencing disparities suggests that harsher treatment of minorities is more likely to be present in earlier stages of criminal case processing (Chiricos & Crawford, 1995; Demuth, 2003; Eisenstein & Jacob, 1977; Free, 1996; Spohn, 2000). Furthermore, research in both state and federal courts has revealed that presentence detention status exacerbates subsequent sentencing decisions and outcomes (Goldkamp, 1979; Johnson, Ulmer, & Kramer, 2008; Spohn & Holleran, 2000; Stacey & Spohn, 2006; Spohn, 2009; Oleson, et. al., 2014). For this reason, it is important to examine the effects of extralegal defendant characteristics on presentence detention/release decisions.

Relatively few studies, however, have examined the effects of extralegal characteristics in early criminal processing decisions, such as charging practices (e.g., Farnworth, Teske, & Thurman, 1991; Johnson, 2010; Shermer & Johnson, 2010; Wooldredge & Thistlethwaite, 2004), and presentence custody and bail decisions and outcomes (e.g., Demuth, 2003; Demuth & Steffensmeier, 2004; Schlezinger, 2005; Spohn, 2009; Wooldredge, 2012; Wooldredge, Frank, Goulette, & Travis III, 2015). For instance, a comprehensive review of the literature over three decades by Free (2002) looked at the effects of race and ethnicity on bail and pretrial release decisions. Free uncovered that racial disparities were found by the majority of the studies, even

when controlling for prior record and offense type among other legal factors. He specifically noted that African-Americans were significantly more likely to face higher bail amounts, be detained prior to trial, and be required to pay bail when compared to similar situated White defendants. Lizotte's (1978) early analysis of courts in Chicago found that defendants' race and occupation influenced sentencing outcomes indirectly through bail, in that non-White defendants with a low occupation were less likely to afford bail and more likely to be detained prior to trial than White defendants, which consequently affected their sentencing outcomes.

A more recent wave of research has focused on extralegal disparities in the presentence detention process in state courts. Demuth (2003), for instance, examined racial and ethnic differences in pretrial release decisions and outcomes in 75 large urban courts. He concluded that racial and ethnic disparity is most associated with drug cases than property or violent cases. More significant, while minority defendants were more likely to be detained, Hispanic defendants faced even higher odds of pretrial detention than Black defendants. Specifically, the odds of detention were 96% greater for Blacks and 150% greater for Hispanics when compared to Whites. For both Hispanic and Black defendants, the likelihood of detention was in part a result of inability to pay bail, as the odds of being held on bail were two times greater for minority defendants than for White defendants (see also: Foote, 1959; Patterson & Lynch, 1991). In a similar line of research, Demuth and Steffensmeier (2004), examined the effects of gender on a series of pretrial decisions and outcomes. They found that female defendants received more favorable pretrial treatment than their male counterparts. Particularly, female defendants were more likely to receive non-financial release and lower bail amounts than male defendants. Schlezinger's (2005) examination of state felony cases revealed that racial disparities were most prevalent in decisions to deny bail, while harsher treatment of Hispanics were most common in

decisions to grant non-financial release. Furthermore, Schlezinger argued that Hispanics were more disadvantaged than Blacks in those decision points, perhaps due to their citizenship status, as non-U.S. citizen Hispanic defendants may be perceived as more likely to flee the U.S. and not report to court. In sum, the existing literature on state courts supports the idea of leniency in the criminal justice system toward White and female defendants.

Comparatively, a small number of studies have investigated presentence detention in federal district courts (Albonetti, et. al., 1989; Bak, 1998a; Reitler, et. al., 2012; Spohn, 2009). For example, Spohn's (2009) study in three federal district courts showed that defendants' pretrial status is predicted by several legal (e.g., crime history and crime seriousness) and extralegal factors (offender's race and gender). The findings regarding defendants' gender and race/ethnicity showed that both Black and White females were less likely to be detained prior to trial than were Black and White males. Black offenders, however, faced higher odds of pretrial detention than White offenders due to their current involvement with the criminal justice system for a separate incident. On the other hand, White defendants with lower levels of education and higher rates of unemployment faced higher odds of being detained. A more comprehensive study across all federal district courts by Reitler, Sullivan, and Frank (2012) reported that, whereas race and ethnicity were modestly associated with the increased likelihood of being detained, criminal history, seriousness of the offense, and being under the supervision of the criminal justice system emerged as the strongest predictors of presentence detention. In sum, research using both state and federal data reveals differential treatment of minority defendants in the criminal justice system. In particular, the higher odds of presentence detention for Black and Hispanic defendants require further examination.

The Presentence Detention Process and Social Context

A largely neglected area in the courts and sentencing empirical research is whether punishment outcomes vary across court jurisdictions. The limited research has uncovered between-court variation in criminal case processing (Dixon, 1995; Eisenstein & Jacob, 1977; Feldmeyer & Ulmer, 2011; Kautt, 2002; Sampson & Lauritsen, 1997; Ulmer, 1997; Ulmer & Johnson, 2004). Four decades earlier, Eisenstein and Jacob (1977) examined variation between courts. More specifically, Eisenstein and Jacob examined felony case dispositions in Baltimore, Chicago, and Detroit, uncovering substantial variation across the three courts. For instance, they characterized Baltimore as a city of trials due to its public attitude of harshness toward defendants. Chicago was characterized as a city of negotiation among the courtroom members, where the political background of workgroup members primarily encouraged the disposition of cases through negotiations. In Detroit, judges and prosecuting attorneys encouraged plea bargaining in almost every case.

The existing literature on extralegal disparities and social contexts of court jurisdictions revealed that in addition to differences in punishment outcomes across courts, there are a number of organizational and social factors that influence decision making, such as jail capacity, political ideology, employment, poverty, crime rates and percent minority population. In her leading study on contextual variation in sentencing outcomes, Dixon (1995) found that the probability of incarceration significantly increased in courts with low prosecutorial bureaucratization (courts with established sentencing guidelines), while courts that exercised high prosecutorial bureaucratization (high complexity in the prosecutorial division of labor and high decentralization in prosecutorial decision making) showed more engagement in plea bargaining. When cases were processed in courts with *high judicial bureaucratization* (high complexity in

the judicial division of labor and high judicial decentralization in decision making) the probability of being sentenced to prison increased as well, whereas defendants' race had no effect on the incarceration decision. Britt's (2000) multilevel analysis of sentencing decisions in Pennsylvania courts found that an increase in percent of Black population increased the likelihood of incarceration for all defendants. In addition, his findings indicate that in counties with higher average violent crime rates, Black defendants were punished harsher than White defendants. Fearn's (2005) analysis of community effects on criminal sentencing from 39 large urban counties across 17 states revealed that offenders adjudicated in counties with higher degrees of income inequality, religious affiliation (specifically evangelical/fundamentalists) and higher rates of violent crime were more likely to receive harsher punishment. That is, being sentenced to prison instead of jail. In contrast, offenders adjudicated in counties in the Southern U.S. were more likely to be sent to jail than prison, which according to Fearn, may suggest that in the South, jails are perceived as harsher punishment than prisons. Krisberg, Litsky, and Schwartz (1984), however, found a small effect of violent and property crime rates on rates of detention of juveniles. Instead, they argued that bed space was the strongest predictor of juvenile pretrial detention. Along similar lines, Crawford et. al. (1988) did not find evidence supporting the argument that minority offenders are punished harsher than White defendants in areas with higher crime rates. A study by Johnson, Ulmer, and Kramer (2008) examined the effects of federal districts' caseload size, crime rates, socioeconomic disadvantage, and percent minority population on the likelihood and magnitude of a series of sentencing downward discounts. Their findings, for instance, revealed that defendants were more likely to be granted downward departures in districts with high caseload pressure. Regarding the influence of minority population, Black and Hispanic defendants were less likely to receive downward departures in

districts with larger Black and Hispanic populations. Additionally, Black and Hispanic offenders were less likely to get downward departures in districts with higher socioeconomic disadvantage.

As previously noted, contextual variation in the pretrial detention process has been examined to a lesser extent than the effects of social context on sentencing outcomes (D'Alessio & Stolzenberg, 2002; Levin, 2008; Pinchevski & Steiner, 2013). D'Alessio & Stolzenberg's (2002) study of 12 urban court jurisdictions reported that the likelihood of presentence detention was affected by a jurisdiction's level of unemployment, as the probability of confinement before trial was higher for unemployed defendants in cities with growing rates of unemployment. A study by Levin (2008) tested intra- and inter-county variations in pretrial detention and bail decisions for felony defendants charged in 63 urban counties. He uncovered that while county characteristics did not affect pretrial status for Hispanic defendants, Black defendants in counties with a higher percent of Black population faced higher amounts of bail. More importantly, Eisenstein and Jacob (1977) observed significant variations in bail outcomes between these three cities. Two-fifths of defendants in Chicago and Detroit stayed in jail awaiting trial, while in Baltimore, half of felony defendants were detained. The between-court differences may be explained by legal actors' practices in each court's jurisdiction. For instance, although bail amounts were set higher in Baltimore, release on recognizance (ROR) was moderately used. The court in Chicago had fairly low bail amounts, while ROR was uncommon. Finally, the court in Detroit emphasized the use of ROR and when financial bail was set, the amount was fairly low. Thus, Eisenstein and Jacob concluded that the presentence detention process in all three cities depended on the procedures and local norms used in each city.

A more recent, comprehensive study by Pinchevski and Steiner (2013) analyzed the effects of social context and defendants' gender on pretrial decisions and outcomes across urban counties in the U.S and found that relationships between defendant's sex and non-financial release, bail amounts, and held on bail all varied across counties. They reported that bail was more likely to be denied to defendants in counties with higher female violent crime rates, whereas non-financial release was less likely in more politically conservative counties. In addition, non-financial release was granted more often in counties with limited jail space, however, defendants were more likely to be held on bail when given a financial release. Lastly, bail amounts were set lower in counties with higher levels of socioeconomic disadvantage. On the other hand, Sutton's (2013) study did not find any evidence of greater racial/ethnic disparity in pretrial outcomes in counties with a high percentage of minorities. Furthermore, he found that income inequality had no effect on presentence detention decisions for either Black or Hispanic felony defendants, while concentration of poverty had a negative effect, suggesting that Blacks and Hispanics were treated more lenient than Whites in counties with greater disadvantage. Sutton's findings show that contextual effects do not have a large influence in the counties that were analyzed. Overall, the research shows racially and ethnically biased detention outcomes across court jurisdictions for similar situated defendants. Thus, it is important to understand the nature of the courtroom in which the case is processed, including the court jurisdiction's social characteristics that shape pretrial detention process outcomes.

Chapter 3 - THEORETICAL FRAMEWORK AND RESEARCH HYPOTHESES

A number of theoretical perspectives have been used to guide investigations regarding the effects of race and ethnicity on criminal justice legal decision-making. These social-psychological, organizational, and conflict theories attempt to explain racial/ethnic disparities in the criminal justice system. Albonetti's (1991) uncertainty avoidance/causal attribution theory lays out the foundation to explain legal actors' decision-making process. Albonetti suggests that prosecutors and judges work in an uncertain environment and do not possess sufficient information and resources to make accurate predictions of defendants' culpability and future criminal behavior. Therefore, court actors develop a bounded rationality to make attributions on blameworthiness and dangerousness based on defendant stereotypes and ascribed characteristics. Thus, legal actors take into account not only legally relevant factors, but also consider extralegal factors linked to the defendants' race/ethnicity, gender, age, and social class (Albonetti, 1987, 1991; see also: Albonetti & Hepburn, 1996; Bridges & Steen, 1998; Kramer & Ulmer, 2002). As a result, Black and Hispanic defendants are viewed as more culpable, dangerous and violent than White defendants. For instance, negative stereotypes that present Blacks as unemployed, dangerous drug offenders, and irrespective of authority (Spohn & Sample, 2008; Rodriguez, 2007; Rodriguez & Zatz, 2006) and Hispanics as foreigners, gang-members, and illegal immigrants (Martinez, 2014; Martinez, Stowell, & Lee, 2010; Wilson, 2010).

Drawing from uncertainty avoidance/causal attribution theory, the focal concerns perspective, developed by Steffensmeier, Ulmer, & Kramer (1998), provides a framework to better understand the process by which extralegal characteristics affect sentencing decisions (see also: Spohn & Holleran, 2000). The focal concerns perspective has also been used to shed light

on decision-making at the pretrial detention stage (Demuth, 2003; Kutateladze, Andiloro, Johnson, & Spohn, 2014; Reitler, Sullivan, & Frank, 2012). Steffensmeier and colleagues suggest that courtroom decision makers draw from three focal concerns—blameworthiness of the offender, safety and protection of the community, and practical concerns and consequences. Blameworthiness reflects the defendant’s culpability and the degree of injury caused, including criminal history. For instance, defendants with extensive and serious criminal histories are characterized as more blameworthy than first-time offenders. Male offenders are also considered to be more dangerous and culpable than female offenders (Spohn, 2002; Stacey & Spohn, 2006; Steffensmeier et. al., 1993). Concerns for community safety and dangerousness consist of taking into account the defendant’s potential danger if she or he were to be released into the community. Perceptions of dangerous defendants have been associated with Black and Hispanic males (Spohn & Sample, 2008). Concerns for practical constraints and consequences reflect considerations of the justice system’s resources, such as jail and prison space or caseload pressure, and the consequences of the decision for the defendant, such as health conditions and childcare responsibilities. For example, presentence detention may lead to family disruption, particularly for female defendants, as dependents may be left without an appropriate caregiver (Koons-Witt, 2002; Stacey & Spohn 2006). Based on these theoretical perspectives, coupled with the prior research on the effects of race/ethnicity and gender on the presentence process, the following three hypotheses are derived:

Hypothesis 1: Presentence release under release on recognizance (ROR) and bail will be less likely for male defendants than female defendants.

Hypothesis 2: Presentence release under release on recognizance (ROR) and bail will be less likely for Black and Hispanic defendants than White defendants.

U.S. District Courts apply a uniform set of statutes in decision making process. Research, however, shows that sentencing outcomes vary across federal district courts (e.g., Feldmeyer & Ulmer, 2011; Johnson et. al., 2008; Kautt, 2002). In addition, theoretical perspectives suggest that legal decisions and outcomes and the focal concerns that influence decision-making vary across court jurisdictions (Eisenstein & Jacob, 1977). The courts as communities perspective suggests that between-court variations are directly tied to the relationships between the court and sponsoring organizations (Eisenstein & Jacob, 1977; Eisenstein, Flemming, & Nardulli, 1988; Helms & Jacobs, 2002; Ulmer & Johnson, 2004). Specifically, the differential treatment of defendants may be shaped by courts' concerns for efficiency, values, resources, and the political climate. Considerations about prison overcrowding and caseload pressure, which vary across courts, may affect prosecutorial and judicial discretion, and consequently presentence decisions and outcomes. In addition, courtroom workgroup members, in an effort to promote efficiency in case processing, have established beliefs or expectations about efficient case disposition and "going rates" for certain types of offenders and crimes (Eisenstein & Jacob, 1977; Eisenstein, Flemming, & Nardulli, 1988). Legal decision makers may also be influenced by the political environment in their jurisdiction, such as developing a "tough on crime" orientation, which may in turn affect punishment practices, perhaps in more punitive punishment for certain offenders.

Beyond individual-level-explanations for the differential treatment of defendants across courts, a separate body of work suggests contextual variation reflects a group process, not an individual process. In addition to organizational concerns, theories have been derived from a conflict perspective to explain differential treatment of racial/ethnic groups in the criminal justice system (Lilly et. al., 2006). For instance, Chambliss and Seidman (1971) argue that lower classes, such as poor and minority groups, are politically and economically less powerful and are

therefore targeted for harsher punishment (see also: Liska, Chamlin, & Reed, 1985; Spitzer, 1983). Their theoretical perspective derives from Marxist conceptions of social class and focuses on poverty and low status in criminal case processing (Hawkins, 1987; Petrocelli, Piquero, & Smith, 2003). Quinney (1973), for example, argued that the ruling class uses the criminal justice system to maintain and promote dominant economic interests.

Drawing from the conflict perspective, Blalock's (1967) racial power threat approach comprehensively explains Black-White punishment differences across crime types. Blalock argued that racial and ethnic minorities and economically disadvantaged groups that grow in the population pose a threat to White majority population. In other words, growing minority racial groups are likely to develop more power, political, and economic resources, and thus compete for employment opportunities and economic resources. In response, Whites may take various measures to control and suppress the growing power of minority groups. More specifically, the White majority may increase the social control of minorities to maintain their own political power and dominance (Eitle, D'Alessio, & Stolzenberg, 2002; King, 2007). This view has found support in many studies conducted by criminologists in recent years, especially in criminal sentencing (Myers & Talarico, 1987; Britt, 2000; Ulmer & Johnson, 2004; Wang & Mears, 2009). For example, Jacobs's (1979) study of inequality and police strength found that by 1970s large metropolitan areas with higher numbers of Black citizens had stronger law enforcement agencies than areas with fewer Black citizens. Crawford, Chiricos, and Kleck (1998; also see: Crawford, 2000) tested whether racial threat conceptualized the relationship between race and habitual offender sentencing in Florida. They indeed found strong race effects on habitualization of drug offenders, which according to Crawford et. al. was propelled by the "war" on drugs and media accounts about crack use spreading from "ghettos".

More recently, studies have tested ethnic threat on sentencing outcomes (Rodriguez, 2010; Feldmeyer & Ulmer, 2011; Kutateladze, Andiloro, Johnson, & Spohn, 2014). For example, Wang and Myers (2009) found strong support for the racial threat hypothesis rather than for the ethnic threat hypothesis. They report that larger minority populations and political threat effects were more noticeable for racial threat (Black population) than the effects of ethnic threat (Hispanic population). The authors suggest that Whites may perceive Hispanics as less dangerous than Blacks, and in the racial and ethnic hierarchy, Hispanics maybe seen as culturally assimilated, while Blacks are considered as physically and culturally different (see also: Dixon, 2006). Similarly, research by Johnson et. al. (2008) reports that judges in federal judicial districts with larger Black and Hispanic populations are less likely to grant downward departures (sentence discounts) to Black and Hispanic defendants.

Moreover, the degree of racial and ethnic disparity in criminal case processing may also be shaped by other district characteristics. For example, differential treatment of minorities may be further exacerbated in politically conservative districts due to legal actors' more punitive ideologies (Unnever & Cullen, 2006; Unnever, Cullen, & Applegate, 2005) and existing "tough on crime" policies. In addition to political environment, presentence detention outcomes for minorities may be conditioned by the level of socioeconomic disadvantage and crime rates in the district, because Black and Hispanic defendants are more likely to come from poor disadvantaged communities and therefore pose greater threat to the community (Britt, 2000; Liska et. al. 1981; Lizotte & Bordua, 1980). Thus, the presentence detention outcomes specifically for Black and Hispanic defendants may not only be influenced by the percent of minority populations in the district, but other district characteristics which increase the likelihood of harsher treatment of minorities. Taking into consideration the propositions of focal concerns

across court communities, and conflict theories, it is expected that presentence detention process will vary across federal district courts and will be influenced by federal districts organizational social context. In addition, the treatment of Black and Hispanic defendants across districts will be conditioned by districts' organizational and social contexts. Thus, the following research hypotheses are derived:

Hypothesis 3: Presentence release under release on recognizance (ROR) and bail will vary across federal district courts.

Hypothesis 4: Presentence release under release on recognizance (ROR) and bail will be less likely in federal districts with larger Black and Hispanic populations, higher crime rates, higher socioeconomic disadvantage, higher political conservatism and will be more likely in federal districts with a larger court size, and higher caseload pressure.

Hypothesis 5: Presentence release under release on recognizance (ROR) and bail will be less likely for Black and Hispanic defendants than White defendants in federal districts with higher Black and Hispanic populations, higher crime rates, higher political conservatism, and higher socioeconomic disadvantage.

Chapter 4 - METHODS

Data

To test the proposed research hypotheses, this study takes on a multilevel form (Britt, 2000; Feldmeyer & Ulmer, 2011; Johnson et. al, 2008; Kautt, 2002; Ulmer & Johnson, 2004). Individual-level sentencing data are combined with district-level measures to investigate the social context of the presentence detention process in federal district courts. Thus, cases are nested within federal districts. Sentencing data, which comprise the first level of analysis, come from the U.S. Sentencing Commission's (USSC) Monitoring of Federal Criminal Sentences Offender Datafile, which include all criminal convictions (N=223,252) across 89 federal district courts during fiscal years of 2008, 2009, and 2010. Data from the Offender Datafile provide in-depth information on defendant and case-prescribed characteristics, such as defendants' primary offense, criminal record, recommended sentence under the U.S. sentencing guidelines, age, race/ethnicity, gender and education. Additionally, data from the USSC are used to compile district-level measures at the second level of analysis that capture the organizational context of the presentence detention process, compiling measures such as caseload pressure and court size. Moreover, at the district level, supplemental data used to generate measures to examine the social context of presentence detention status are drawn from two sources: Uniform Crime Reports (UCR), the U.S. Census Bureau, and the Federal Judicial Center's Federal Court Management Statistics. Specifically, county-level measures from the 2000 decennial census are aggregated to federal districts, while measures from the Federal Judicial Center are originally reported by district. The study uses these measures to examine the influence of the minority population, socioeconomic disadvantage, and political conservatism on defendants' presentence detention status.

A small number of cases were excluded from the sentencing data for several reasons. First, due to substantial missing information, cases from federal districts of the District of Columbia, Guam, Marianna Islands, Puerto Rico, and U.S. Virgin Islands were omitted and reduced the number of cases by approximately two percent (N=219,579). Second, case processing and decision-making in immigration cases is different than for all other offenses, due to fact that most immigration defendants' illegal status precludes their release on recognizance or bail. Furthermore, Hispanics account for almost 88% percent of immigration offenses and the inclusion of those cases may not allow the study to accurately capture ethnicity effects. Thus, these cases were removed from the analysis (N=149,088). Lastly, although contemporary research on sentencing has focused on Asians and Native Americans defendants, due to the small number of those cases and the theoretical focus of this study on being disadvantaged minority groups, cases where defendants' race and ethnicity is identified as other than White, Black, or Hispanic were excluded from the study. The final sample for the analysis was left with 130,120 cases.

Although minimal, issues with selection bias are still present in this study. Since initial charging data are not available and the USSC data files exclude cases that do not result in a conviction, this study examines presentence status only in cases where defendants were convicted. This, however, does not present a big threat because more than 90 percent of criminal cases originally charged in the federal criminal justice system result in a conviction (Administrative Office of the U.S. Courts, 2009).

Dependent Variable

This study examines one dependent variable that captures several dimensions of the federal presentence detention process. The variable is a multinomial outcome with three

exclusive categories of presentence status—whether the defendant was in detention at any time before entering a plea or exercising the right to trial (3), whether the defendant was released on his or her own recognizance, a non-financial release from detention (ROR) (1), or whether the defendant secured release with bail. (2).

Individual-Level and Case-Level Variables

The data compiled by the USSC provide detailed information at the individual case level. In relation to case characteristics used in this study, an indicator for the *presumptive sentence* under the U.S. Sentencing Guidelines is a continuous measure which is compiled by calculating the defendant's offense severity level (1 to 43 points) with the defendant's criminal history score (0 to 6). A separate measure for the defendant's *criminal history* score, which ranges from 0 to 6 in severity, is introduced as a control measure to capture any effects beyond the presumptive sentence (see also: Johnson et. al., 2008; Ulmer et. al., 2010). Diagnostic tests revealed that the presumptive sentence measure was highly and positively skewed (skewness = 10.911). Thus, presumptive sentences with sanctions beyond 470 months were capped at 470 months to capture a more appropriate measure of imprisonment in relation to life expectancy (Johnson et. al., 2008), and to create a normal distribution (skewness = 2.090). Beside the presumptive sentence and criminal history, additional case variables were included in the study. The primary *offense type* is reflected in a series of dummy variables that determine whether the defendant was convicted for a drug related offense (1 = yes, 0 = no), violent offense (1 = yes, 0 = no), firearm offense (1 = yes, 0 = no), fraud or white-collar offense (1 = yes, 0 = no), or property/other offense (1 = yes, 0 = no), with drug offense being the reference category. The variable *criminal justice status* (1 = yes, 0 = no) controls for whether the defendant was already under the supervision of the criminal justice system for a separate offense.

Also at the individual level, a wide range of defendants' characteristics are examined in the current study. Defendants' *race* and *ethnicity* are represented by a measure that indicates whether the defendant is Black (1 = yes, 0 = no), Hispanic (1 = yes, 0 = no), or White (1 = yes, 0 = no), with White being the reference category. A measure for *gender* determines whether the defendant is female (1 = yes, 0 = no). A continuous measure for *age* represents the defendant's age at the time of the offense. A dummy variable for *dependents* is an indicator of familial ties, which reflects whether the defendant has any dependents (1 = yes, 0 = no). A control for *education* status reflects the defendant's level of education, indicating whether the defendant has at least a high school diploma or equivalent (1 = yes, 0 = no). *Citizenship status* is measured using a dummy variable for U.S. citizenship (0 = yes, 1 = no).

District-Level Variables

Contemporary sentencing research has demonstrated that social and organizational contextual factors also play a role in shaping pretrial and final punishment decisions. Scholars have argued that the inclusion of community-level measures allows data analyses to uncover extralegal disparity at the organizational and community level. For these reasons, county-specific measures from the U.S. Census Bureau were accumulated at the district level to test for association between presentence detention and minority representation and structural disadvantage. Measures of racial and ethnic threat are specified by the percentage of the minority population in each district—*percent Black* and *percent Hispanic*. A measure for *socioeconomic disadvantage* is also constructed from the 2000 decennial census. This measure is a factor score of a series of well-established and highly correlated indicators of disadvantage: percent female-headed families with children, percent male joblessness aged 16 and older, percent persons living below poverty level, and percent persons without high school diploma aged 25 and older.

Because districts' political ideology may influence decision-making at the organizational and social level, a measure for political affiliation is created. A measure for *conservatism* is a measure of citizens who voted for President Bush (ICPSR, 2007).

Furthermore, case-specific measures from the USSC are used to generate measures to capture the effects of organizational context, such as concerns for case-processing efficiency, at the district level. A control for court size is captured by the number of judges presiding in the district, a measure which consists of both active and senior federal judges comes from National Judicial Center. Caseload pressure is obtained by dividing the number of cases in the district by the number of authorized judgeships, and dividing by 10 for interpretation purposes (Johnson, et. Al, 2008). Using county-level data extracted from the UCR and merged to federal districts, crime rate is measured as an annual rate captured by the total number of index crimes per 1,000 citizens. Correlations for level 2 variables are shown in Table 1.

Analytic Approach

To test the hypotheses, this study employs a multilevel modeling strategy to account for effects at the individual level and community level. Bryk and Raudenbush (1992) suggest the use of hierarchical linear models when structure of the data is hierarchical in nature. In this study, criminal cases are nested within districts. The research has suggested that within-court effects vary across court jurisdictions (Eisenstein & Jacob, 1977; Britt, 2000; Ulmer & Johnson, 2004). Thus, multilevel modeling has the ability to aggregate cases at the district level and test individual and group effects on the outcome variable at the same time (Bryk & Raudenbush, 2002). Hierarchical linear models represent a two-level equation system, in which each of the levels is formally represented by its own individual equation. These equations express relationships between variables within a given level, and can identify how variables at one level

affect relations at another level. With these possibilities, a hierarchical linear modeling strategy makes it possible to accomplish several goals in the research process that are not possible with traditional regression models (Britt, 2000; Feldmeyer & Ulmer, 2011; Johnson et. al, 2008; Kautt, 2002; Ulmer & Johnson, 2004). First, while traditional regression models represent expected change in Y for a unit change in X (individual level or level 1), multilevel models capture the expected change in Y for a unit change in X, while accounting for change at the district level of analysis (level 2). Second, hierarchical liner modeling allows for the partitioning of variance within and between jurisdictions, which allows us to evaluate the amount of variation at each level of analysis. Third, hierarchical liner modeling adjusts the degrees of freedom to accurately represent the number of level 2 units in the analysis. Fourth, hierarchical liner modeling allows accurate estimations of cross-level interactions, measuring the moderating effects of Level 2 and Level 1 variables (Bryk & Raudenbush, 2002). And more importantly, hierarchical liner modeling corrects misestimated standard errors of regression coefficients that could result from clustering of the data and provide properly adjusted statistical significance tests.

Plan of Analysis

A series of two-level multinomial hierarchical generalized linear models (HGGLM) are estimated in this thesis to analyze the presentence detention process, as criminal cases are nested within federal district courts. The plan of analysis for this study is as follows: First, descriptive statistics are presented for variables at both levels of analyses. Second, to test Hypothesis 1 and Hypothesis 2, the first set of models include defendant and case predictors at the individual level. Next, to test Hypothesis 3, unconditional models are estimated to predict the probability of ROR and bail across federal district courts. Then, to address Hypothesis 4, the models include

predictors at the individual level and district level of analysis. Lastly, to test Hypothesis 5, cross-level interactions models are estimated to determine whether defendants' race/ethnicity conditions the association between social context and presentence decision.

Chapter 5 - RESULTS

The primary research objective of this thesis is to examine the relationship between race/ethnicity¹, gender, and social context and defendants' presentence status in federal courts. First, descriptive statistics are discussed for all cases. Second, the predicted likelihood of receiving ROR or being released on bail are presented, as well as evidence that presentence detention outcomes vary across court jurisdictions. Next, the extent to which federal districts' organizational and social characteristics directly influence the presentence status of minority, female, and male defendants are assessed. Finally, cross-level interaction models testing the effects of critical contextual characteristics on granting ROR and release on bail for Black and Hispanic defendants are presented.

Descriptive statistics

The distribution of all the individual-level and district-level variables are presented in Table 2. With respect to the outcome measure, slightly more than two thirds of all defendants are detained prior to trial and one third are released. While 24 percent of those who were released were out on bail, 6 percent were out on ROR. The descriptive statistics show that the majority of defendants convicted in the federal criminal justice system were minorities, with Blacks and Hispanics representing 32 percent and 29 percent of all defendants, respectively. The population of defendants is comprised of 85.6 percent male and 14.4 percent female defendants. Sixty two percent of all defendants had one or more dependents at the time of offense. Sixty percent of all defendants had at least a high school diploma or equivalent at the time of offense. The average

¹ The slopes for Black ($S^2 = 1.65$, $SD = 1.28$, $\chi^2 = 10430.58$) and Hispanic ($S^2 = .56$, $SD = .75$, $\chi^2 = 8238.27$) defendants were allowed to vary across districts in all models. This serves as an empirical foundation for the

age at the time of the offense was 35 years, with the youngest defendant being 17 and oldest defendant being 88 years of age. Twenty percent of defendants are non-citizens.

Regarding individual case-level characteristics, the minimum presumptive sentence or the recommended sentence under the federal guidelines is 0 and maximum is 470 months, with a mean of 77.48 months. The minimum criminal history score is 0 points and the maximum is 6 points, with a mean of 2.44 points. Twenty-five percent of defendants were already under the supervision of the criminal justice system for a separate offense. With respect to the type of offense, forty-nine percent of defendants committed drug-related offenses (reference category), 4 percent committed violent offenses, 16 percent committed firearm offenses, 18 percent committed fraud or white-collar offenses, and 13 percent committed property and other offenses.

District-level measures reveal the extent to which federal courts vary in size and the composition of their constituencies. The measure for courts size shows that there are several federal districts which have only one judge, while others have up to twenty eight judges (Mean = 10.34). The mean crime rate (centered) is -24.53 index crimes per 1,000 citizens, which ranges between a low rate of -14.94 and a high rate of 12.23. The size of the racial and ethnic population also varies by districts, showing that several district are composed of less than 1 percent of Blacks and Hispanics, whereas other districts have populations that are almost 45 percent Black and 50 percent Hispanics. With a mean of 57.18 percent, the level of political conservatism varies considerably between federal districts, with the percentage of votes for George W. Bush in the 2004 presidential election in districts ranging from 34.55 percent to 77.45 percent. The magnitude of districts' socioeconomic disadvantage (i.e., percent female-headed families with

estimation of cross level interactions to test whether race/ethnicity condition the association between social context and the presentence detention status.

children, percent male joblessness aged 16 and older, percent persons living below poverty level, and percent persons without high school diploma aged 25 and older) varies from -1.97 to 2.33.

Race/ethnicity and Gender Effects on Release on Recognizance and Bail

This section provides the results from the multinomial generalized hierarchical models examining the likelihood of presentence outcomes focused on defendants' race/ethnicity and gender, while controlling for legal and extralegal factors. As presented in the Table 4, the model using only individual-level and case level predictors at level 1 revealed that both legal and extralegal factors were significant predictors of whether a defendant is detained or released prior to trial. Among extralegal defendant characteristics, being a female, being older, having at least high school education, and having dependents increases the likelihood of both types of release. Female defendants were 82 percent more likely to receive ROR and 63 percent more likely to be released on bail when compared to male defendants. This finding provides support for Hypothesis 1. Although an increase in age has a positive effect on detention status, it has a very modest effect overall. Having an education increased the likelihood of receiving ROR by 54 percent and bail by 47 percent. Having dependents also increased the odds of receiving ROR by 26 percent and being released on bail by 20 percent. Black and Hispanic defendants are less likely to be released compared to White defendants, which was predicted by Hypothesis 2. Black defendants were .77 times as likely than Whites to receive ROR and .81 times as likely than Whites to be released on bail. Similarly, Hispanic defendants are .57 times as likely than Whites to receive ROR and .61 times as likely than Whites to be released on bail. Additionally, citizenship status has an effect on presentence detention status, slightly reducing the likelihood of both types of release for non-citizens.

Among case-level predictors, the presumptive sentence has a large, negative effect on both types of release, which indicates that an increase in the guideline-recommended minimum sentence decreases the likelihood of both ROR and release on bail. Criminal justice status also has a negative effect on the odds of being released, indicating that defendants who were already under the supervision of criminal justice system at the time of offense are .70 times as likely to get ROR and .68 times as likely to be released on bail than those were not under the supervision of criminal justice system at the time of offense. An increase in criminal history reduces the likelihood of getting ROR by .62 times and release on bail by .66 times. Certain types of offense weigh in favor of release, whereas other types weigh in favor of detention. For example, being charged with a violent offense reduces the odds of getting ROR by .44 times and bail by .38 compared to drug offenses. Defendants charged with firearm offenses have odds of being released on bail by .90 times compared to drug offenses, while ROR was not associated with this type of offense. When compared to drug offenses, being charged with fraud and property/other crimes significantly increased the odds of getting ROR and release on bail.

Unconditional Models of Detention Status

Interdistrict variations in presentence detention status are supported by the unconditional models presented in Table 3. The significant variance components at level 2 for each outcome measure offer evidence of district-level variations in presentence detention status. The significant level 2 variance component for the outcome measure suggests that federal districts have varying procedures and local norms that affect the probability of being released prior to trial.

The estimated likelihood of a defendant being released on recognizance (ROR) is 6 percent, whereas estimated likelihood of a defendant being released on bail is 23 percent². In two thirds of federal districts, the probability of being released on recognizance fluctuates between 2 percent and 19 percent, whereas the probability of being released on bail fluctuates between 12 percent and 38 percent (Johnson, et. al. 2008). In general, the unconditional models provide compelling evidence to support Hypothesis 3, which predicts that presentence release under release on recognizance (ROR) and bail will vary across federal district courts. The rest of the analyses will explain these variations focusing on district-level variables.

The effects of contextual variables on Release on Recognizance and Bail

Table 4 displays the results for the influence of contextual variables on presentence detention status. Several characteristics associated with federal districts produced effects on presentence detention status in federal courts, while others were non-significant. An increase in the district's crime rate is associated with lower odds of receiving ROR. In addition, courts in districts with higher socio-economic disadvantage were less likely to grant ROR to defendants. The size of the court, however, has a positive effect on bail, which indicates that release on bail is significantly associated with larger courts than smaller size courts. Percent Black and percent Hispanic have no effect on ROR and bail. These findings partially support the Hypothesis 4, which predicted that ROR and bail will be less likely in federal districts with larger Black and Hispanic populations, higher crime rates, higher socioeconomic disadvantage, and political conservatism and will be more likely in federal districts with a larger court size and higher caseload pressure.

² The intercept in the unconditional models represents the estimated likelihood of being released prior to trial whereas the variance components represent the degree to which each outcome varies across federal districts.

Beyond the independent effects of districts' social context on presentence status, this study tested whether race and ethnicity condition the association between social context and presentence status. The results from the cross-level interaction models are presented in Table 5. Hypothesis 5 predicts that both types of release are less likely for Black and Hispanic defendants in areas with growing minority populations. Cross-level models, however, revealed that, while an increase in percent Black and Hispanic populations in the district is not associated with granting ROR for Black and Hispanic defendants, it increased the odds of being released on bail for Black and Hispanic defendants. Furthermore, the cross-level interaction models revealed that whereas higher crime rate in the district did not predict ROR for Black and Hispanic defendants, it had a positive effect on granting release on bail for Black defendant's only. Specifically, Black defendants in districts with higher crime rates are slightly more likely to be released on bail than White defendants. Although these findings are unexpected and contradictory to this study's theoretical expectations, they are consistent with Myer and Talarico's (1986) argument that Whites are similarly disadvantaged as Blacks in districts with predominantly Black populations and more serious crime problems (also see, Crawford et. al., 1998; Myer & Talarico, 1987). In addition to effects of crime rate, socioeconomic disadvantage has also shown to have a positive effect for Black defendants, while it was non-significant for Hispanic defendants. An increase in socioeconomic disadvantage in the district increases the odds of getting ROR by 16 percent and getting released on bail by 13 percent for Black defendants only. Overall, results of the analyses revealed that defendant's presentence detention status is predicted by a combination of legal, extralegal, and district-level characteristics. Theoretical explanations and implications of these findings will be discussed in the next section.

Tables

Table 1

Correlation Matrix for District-Level Variables

	Caseload	Court Size	Crime Rate	Conservatism	Disadvantage	Percent Black	Percent Hispanic
Caseload	1						
Size	0.1	1					
Crime Rate	-0.14	0.04	1				
Conservatism	0.28	-0.37	-0.04	1			
Disadvantage	0.44	-0.05	0.08	0.21	1		
Percent Black	-0.17	-0.02	0.13	-0.16	0.38	1	
Percent Hispanic	0.71	0.53	0.01	-0.002	0.36	-0.24	1

Table 2**Descriptive Statistics for Presentence Detention Data, FY 2008-2010.**

Variables	<i>N</i>	<i>Mean</i>	<i>SD</i>	<i>Min.</i>	<i>Max.</i>
Dependent Variable					
Detention	90,196		0.47	0	1
Bail	31,554		0.43	0	1
Non-financial release (ROR)	8,369		0.24	0	1
Individual-Level Variables (N-130,119)					
Presumptive sentence		77.48	84.62	0	470
Criminal history		2.44	1.8	1	6
Criminal justice status	32,256		0.43	0	1
Type of offense					
Violent offense	4,705		0.18	0	1
Firearm offense	21,189		0.36	0	1
Fraud or white-collar offense	23,984		0.38	0	1
Property/other offense	17,336		0.33	0	1
Age		35.9	11.45	17	88
Female	18,781		0.35	0	1
Race/Ethnicity					
White	49,639		0.49	0	1
Black	42,049		0.47	0	1
Hispanic	38,386		0.46	0	1
Dependents	79,005		0.48	0	1
Education	78,384		0.49	0	1
Non-U.S. citizen	26,157		0.4	0	1
District-Level Variables (N-89)					
District size		10.34	6.57	1	28
Crime rate (centered)		-24.53	22	-14.94	12.23
Percent Black		9.35	10.21	0.15	44.83
Percent Hispanic		12.76	14.58	0.53	49.46
Political conservatism		57.18	8.53	34.55	77.45
Socio-economic disadvantage		-0.0086	1.01	-1.97	2.33

Table 3**Unconditional HGLMs of Presentence Detention Status**

ROR		
Fixed Effects	<i>b</i>	SE
Intercept	-2.7	0.14***
Random Effects	S²	SD
Level 1		
Level2	1.65	1.28***

Bail		
Fixed Effects	<i>b</i>	SE
Intercept	-1.21	0.07***
Random Effects	S²	SD
Level 1		
Level2	0.75	.56***

*p = .05; **p = .01; ***p = .001.

Table 4

Two-level Multinomial HGLM Random Coefficient Models of Presentence Detention Status, FY 2008-2010

Variables	Released on Recognizance (ROR)			Released on Bail		
	<i>b</i>	<i>SE</i>	Exp (b)	<i>b</i>	<i>SE</i>	Exp(b)
Individual-Level Variables (N-130,119)						
Presumptive sentence	-0.01***	0.00	0.98	-0.009***	0.00	0.99
Criminal history	-0.47***	0.02	0.62	-0.40***	0.01	0.66
Criminal justice status	-0.35***	0.05	0.70	-0.38***	0.03	0.68
Violent offense	-0.80***	0.12	0.44	-0.94***	0.07	0.38
Firearm offense	-0.02	0.10	0.97	-0.10*	0.05	0.90
Fraud or white-collar offense	1.09***	0.08	3.00	0.70***	0.05	2.02
Property/other offense	0.71***	0.08	2.04	0.35***	0.05	1.41
Age	0.01***	0.00	1.01	0.01***	0.00	1.01
Female	0.60***	0.05	1.82	0.48***	0.03	1.63
Black	-0.25***	0.06	0.77	-0.20***	0.04	0.81
Hispanic	-0.55***	0.08	0.57	-0.48***	0.07	0.61
Dependents	0.23***	0.04	1.26	0.18***	0.02	1.20
Education	0.43***	0.04	1.54	0.38***	0.03	1.47
Non-U.S. citizen	-2.39***	0.17	0.09	-1.86***	0.15	0.15
District-Level Variables (N-89)						
District size	-0.04	0.03	0.95	0.04***	0.01	1.04
Crime rate	-0.04*	0.01	0.96	-0.01	0.01	0.98
Percent Black	0.01	0.01	1.01	0.00	0.00	0.99
Percent Hispanic	-0.02	0.02	0.97	0.00	0.00	0.99
Political conservatism	-0.01	0.01	0.98	-0.01	0.00	0.99
Socioeconomic disadvantage	-0.34***	0.17	0.70	0.03	0.10	1.03

*p = .05; **p = .01; ***p = .001.

Table 5

HGLM Cross-Level Interaction Models of Presentence Detention Status, FY2008-2010³

	Released on recognizance			Released on bail		
	<i>b</i>	<i>SE</i>	Exp (b)	<i>b</i>	<i>SE</i>	Exp(b)
Intercept	-0.29	0.60	0.75	-0.22	0.04	0.80
Black x Percent Black	0.01	0.00	1.00	0.008**	0.00	1.00
Intercept	-0.58	0.08	0.55	-0.52	0.06	0.59
Hispanic x Percent Hispanic	0.01	0.00	1.00	0.01***	0.00	1.01
Intercept	-0.31	0.07	0.73	-0.24	0.04	0.77
Black x Crime rate	0.01	0.00	0.01	0.01**	0.00	1.01
Intercept	-0.58	0.07	0.56	-0.51	0.07	0.60
Hispanic x Crime rate	0.00	0.01	1.00	0.00	0.00	1.00
Intercept	-0.32	0.06	0.72	-0.22	0.04	0.80
Black x District size	0.01	0.00	1.00	0.01	0.00	1.00
Intercept	-0.44	0.08	0.64	-0.51	0.07	0.59
Hispanic x District Size	0.01	0.00	1.01	0.016	0.00	1.01
Intercept	-0.29	0.06	0.75	-0.20	0.04	0.82
Black x Conservatism	0.01	0.00	1.01	0.00	0.00	1.00
Intercept	-0.59	0.07	0.55	-0.49	0.07	0.61
Hispanic x Conservatism	0.01	0.00	1.00	0.00	0.00	0.99
Intercept	-0.31	0.05	0.73	-0.22	0.03	0.80
Black x Socioeconomic Disadvantage	0.15*	0.05	1.16	0.13***	0.03	1.13
Intercept	-0.40	0.08	0.66	-0.49	0.07	0.60
Hispanic x Socioeconomic Disadvantage	0.03	0.06	1.03	-0.04	0.05	95.00

*p = .05; **p = .01; ***p = .001.

³ Cross-level interaction models for percent Black and percent Hispanic are ran in the same model, while the rest of the interaction models were estimated individually in different models

Table 6
Summary of Findings

Hypotheses		Released on recognizance	Released on bail
<i>Hypothesis 1:</i> Presentence release under release on recognizance (ROR) and bail will be less likely for male defendants than female defendants.		Supported	Supported
<i>Hypothesis 2:</i> Presentence release under release on recognizance (ROR) and bail will be less likely for Black and Hispanic defendants than White defendants.		Supported	Supported
<i>Hypothesis 3:</i> Presentence release under release on recognizance (ROR) and bail will vary across federal district courts.		Supported	Supported
<i>Hypothesis 4:</i> Presentence release under release on recognizance (ROR) and bail will be less likely in federal districts with larger Black and Hispanic populations, higher crime rates, higher socioeconomic disadvantage, and political conservatism and will be more likely in federal districts with a larger court size.	Percent Black	Not supported	Not supported
	Percent Hispanic	Not Supported	Not Supported
	Higher crime rate	Supported	Not Supported
	Higher disadvantage	Supported	Not Supported
	Larger court size	Not Supported	Supported
	Political Conservatism	Not Supported	Not Supported
<i>Hypothesis 5:</i> Presentence release under release on recognizance (ROR) and bail will be less likely for Black and Hispanic defendants than White defendants in federal districts with higher Black and Hispanic populations, higher crime rates, higher political conservatism, and higher socioeconomic disadvantage		Not supported	Not supported

Chapter 6 - DISCUSSION

Despite the substantial research conducted on racial and ethnic disparities in the criminal justice system, the majority of research focuses on final sentencing decisions and less attention has been devoted to earlier stages in criminal processing, such as presentence detention outcomes. In fact, the analyses that did investigate presentence detention status mainly used state-level data, and there is only a handful of studies that have examined race/ethnicity and gender effects on detention and bail in the federal criminal justice system (e.g., Albonetti, 1989; Bak, 1998; Reitler, et. al., 2012; Spohn, 2009). In addition, the prior research on presentence outcomes in the federal system has been limited to a small number of districts (with the exception of Reitler, et. al. 2012) and employed data prior to the passage of the BRA of 1984. Also, empirical evidence regarding differential treatment of minorities in various social contexts has been mixed and surprisingly offered few assessments of contextual variation in presentence detention.

Summary of findings

This study addressed these gaps and extended the research by examining the effects of race/ethnicity, gender, and social context on the presentence detention outcomes across federal court jurisdictions. The analyses yielded results that, for the most part, are consistent with the research, but still require explanation of certain findings which were surprising. In the first model with the individual-level predictors, detention outcomes are influenced by both legal and extralegal characteristics of the offender. Although presumptive sentence, criminal history, and criminal justice status had a large and significant association with detention outcomes, defendants' personal characteristics such as race, ethnicity, age, education, and dependents are also significant. The strength of legal predictors and presentence outcomes mirror decision

making based on bail and release statutes that require prosecutors and judges to ensure the safety of any person or the community from criminal defendants awaiting prosecution.

The first set of hypotheses predicted that female defendants will be more likely to receive ROR and bail than male defendants (Hypothesis 1), and that White defendants will be more likely to receive ROR and bail than Black and Hispanic defendants (Hypothesis 2). The results from the multinomial generalized hierarchical models support these predictions and are consistent with the theoretical expectations. Similar to previous research on presentence detention in state and federal courts, this study found that female defendants are more likely to receive both types of release compared to their male counterparts. This indicates that judges and prosecutors may view male defendants as more blameworthy and dangerous than female defendants and thus impose considerably harsher sanctions on male defendants (Demuth & Steffensmeier, 2004; Stacey & Spohn, 2006). On the other hand, lenient treatment of female defendants can be attributed to their traditional role of caregiver in the family (Stacey & Spohn, 2006). The control measures for age, education, and having dependents have a statistically significant positive relationship with detention outcomes. Having completed at least a high school has the strongest relationship with both getting ROR and bail, followed by having dependents, and being older. Citizenship status has also shown to have a modest negative effect on presentence detention outcomes. These findings indicate that when making decisions on presentence detention legal actors indeed take into consideration not only legal factors, but also defendants' personal characteristics, which may increase the likelihood of extralegal disparity.

The findings from the analyses that include contextual measures that capture inter-district variations in presentence detention status require more discussion. Although the federal criminal justice system is expected to operate under uniform statutes and rules, research findings reveal

the contrary. It is shown in unconditional models that presentence detention outcomes vary substantially from one district to another. As Eisenstein and Jacob (1977) concluded four decades ago, presentence detention outcomes are shaped by certain social environments which differ in their politics, culture, and socioeconomic status. The findings from models with contextual-level measures partially support Hypothesis 4 and indicate that judges and prosecutors are less likely to grant ROR in districts with higher crime rates and higher socioeconomic disadvantage. The decisions on bail are not influenced by the same district characteristics. In this particular case, judges and prosecutors may not grant ROR as a crime control strategy in areas with high crime rates and higher socio-economic disadvantage. Further, this study finds strong support for organizational differences that affect presentence detention practices. Larger courts are more likely to grant release on bail than smaller size courts, which is consistent with the argument that larger courts may be constrained by resources due to a high volume of cases and jail overcrowding. Overall, this suggests that local court contexts play a role in presentence status.

In sum, the findings regarding the interactive effects of race/ethnicity and contextual measures are especially interesting. For example, contrary to the prediction in Hypothesis 5, Table 5 presents evidence that an increase in percent Black and Hispanic populations increases the odds of being released on bail for Black and Hispanic defendants. Further, an increase in districts' crime rate has a modest, positive effect on granting release on bail for Black defendants. Lastly, an increase in socioeconomic disadvantage has a positive effect on both types of release for Black defendants only.

Theory and Policy Implications

The findings of this study have a few important implications for theory and policy. In sum, when considering only individual level variables minority defendants are more disadvantaged at the presentence detention stage. However, the findings get more complicated when district level measures are included. On one hand, the Black and Hispanic disadvantage at the pretrial stage is consistent with the causal attribution/uncertainty avoidance and focal concerns perspectives, which suggest that legal actors make their decisions based on the stereotypes and ascribed characteristics of the defendant and may view Black and Hispanic defendants as more dangerous and at a greater risk than White defendants. On the other hand, Black and Hispanic defendants are more likely to be detained due to their inability to post bail (Demuth, 2003; Demuth & Steffensmeier, 2004b). Moreover, Black and Hispanic defendants are disadvantaged in multiple ways as they enter the criminal justice system. They are more likely to have lengthier criminal records, more violent offenses, live in poverty, and have less formal education (Reitler, et. al., 2012). Thus, the current system of bail and release influenced by the individual's personal characteristics disparately impacts racial and ethnic minorities and indigent defendants.

Consistent with the courts as communities and focal concerns perspectives, this study found that the presentence process is influenced by local practices, norms, and concerns for organizational efficiency. These distinctive features of court jurisdictions interact with race/ethnicity and affect defendants' presentence status. More specifically, court size significantly affects the presentence decisions, with larger courts producing more lenient outcomes. In addition, to court size an increase in crime rate in the district is negatively associated with ROR for all defendants, but positively associated with bail for Black defendants

compared to White defendants. Further, consistent with Sutton's (2013) findings, the positive association between socioeconomic disadvantage and ROR and bail for Black defendants suggests that Black defendants may be treated more leniently in the jurisdictions they are most disadvantaged. Judges may treat Black defendants more leniently in socially disadvantaged districts due to attributing blame for their criminal behavior to economic marginalization and instability in the district. Although, these findings are unexpected, they still provide insight into practical constraints and consequences of punishment associated with focal concerns theory in that district's characteristics exert an influence on punishment decisions. However, to explain the direction of that influence, future research needs to examine individual differences (intra-district variation) among judges and prosecutors and their perceptions of defendants' risk and dangerousness. Because it is possible that within the same court, different judges may have different perceptions of the crime rate and/or disadvantage and thus may take different measures as a response (Britt, 2000).

Conflict theory and racial/ethnic threat hypotheses suggest that as the population of minorities' increases, the perceived threat of minorities also increases and thus, negatively affects the punishment decisions for minorities in the criminal justice system (Blalock, 1967). This study, however, found that an increase in percent Black and Hispanic populations increases the odds of being released on bail for Black and Hispanic defendants compared to White defendants. There are few possible explanations of these findings. First, it is possible that in areas with large minority populations racial and ethnic effects on punishment may possibly taper off and even decrease (Allport, 1954; Berg, 2009; Feldmeyer & Ulmer, 2011). Second, these effects can be explained by the notion of "normal crime", in that Blacks may be expected to commit crimes at higher rates than Whites, who are usually held at higher standards of behavior

(Sudnow, 1965). Thus, when Whites commit crimes, they are punished harsher than minority defendants (Steen, Engen, & Gainey, 2005; Sudnow, 1965). Lastly, a few studies have found that racial and ethnic threat is most noticeable not in the contexts with large minority populations, but in the contexts that are predominantly White, middle class, with lower crime rates, and low racial income inequality, where minorities are rather perceived as threat (Crawford et al. 1998; Feldmeier & Ulmer, 2011; Sampson & Laub, 1993).

Regarding policy, the results demonstrate that several features of court jurisdictions influence the presentence detention status despite the efforts of the Bail Reform Act of 1984 to structure bail decisions in the federal courts. Thus, more oversight is needed on how the guidelines for determining release on recognizance and bail are implemented to reduce racial disparities at the pretrial stage of criminal case processing. Furthermore, the system that relies on bail disadvantages poor defendants due to their inability to meet financial requirements of bail (Beeley, 1927; Demuth, 2003; Pinchevski, 2016). Thus, the wider use of release on recognizance for low risk defendants would reduce the burden that falls on the system with overcrowded prisons and potentially innocent defendants. In addition, since detention and bail decisions under the BRA are also shaped by extralegal characteristics, such as education, employment, family and community ties, collection of such information in an efficient way would assist the process of determination of release.

Future Research

This study has several limitations that warrant a discussion. First, as previously noted, there is an issue with sample selection bias, as the presentence detention data do not include all defendants charged in federal system, but only those defendants who were convicted. Second, the operationalization of the dependent variable *detained* precludes a comprehensive assessment

of custody, as detention as a result of judicial denial or the inability to pay bail (or bond) is collapsed into one single category. Indeed, statistical figures show that approximately 29 percent of federal defendants remain in custody during the pretrial phase of adjudication because they are unable to meet the financial requirements of bail (Bureau of Justice Statistics, 2007). The combination of these measures may have produced inaccurate findings with respect to detention. Further examination of presentence detention requires the inclusion of such information at the data collection stage, which would provide more accurate tests of racial and ethnic disparities in presentence detention. A third limitation of this study encompasses the lack of measures for “community ties” (e.g., employment and marriage), an integral element employed in courts’ determination of defendants’ flight risk and community danger (see Bail Reform Act of 1984). This shortcoming can be addressed with increased access to federal data sources. Moreover, the current study was unable to conduct examinations of intersectionality of race, gender, and age due to a small number of female defendants, which precludes a better assessment of race/ethnicity and gender effects on pretrial custody.

Conclusion

In sum, this study contributes to our understanding of how surrounding social contexts influence presentence detention outcomes in federal courts. The findings confirm that race/ethnicity, gender, and social context play a significant role in the federal pretrial detention process. The results suggest that focal concerns and courts as communities perspectives provide a good basis to better understand the decision-making process at the pretrial detention stage.

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