An examination of legal representation on plea bargained sentencing outcomes for criminal defendants.

by

Johnathan Grube

B.A., University of Kansas, 2007
M.S., Oklahoma City University, 2008
J.D., Washburn University, 2012

AN ABSTRACT OF A DISSERTATION

submitted in partial fulfillment of the requirements for the degree.

DOCTOR OF PHILOSOPHY

Department of Sociology, Anthropology and Social Work
College of Arts and Sciences

KANSAS STATE UNIVERSITY
Manhattan, Kansas

2024

Abstract

This dissertation examines the pervasive notion that retained attorneys offer superior legal defense compared to appointed attorneys. Such beliefs hold substantial implications for justice equity, as a defendant's financial resources should not dictate the caliber of their defense or the subsequent sentence they receive. Yet, a dearth of understanding persists regarding the influence of attorney type on sentencing outcomes. This study bridges this gap through a quantitative examination of attorney type and its impact on sentencing.

Indigent defendants, unable to bear the financial burden of legal representation, are informed by a judge of the attorney appointed to represent them in criminal proceedings. Judges appoint attorneys because these defendants may lack the means to retain an attorney with a proven track record of trial success, which financially able defendants can readily secure. Consequently, a defendant's limited resources may hinder appointed attorneys from mounting a robust defense, potentially affecting the decision to pursue trial. Therefore, it is crucial to ascertain whether indigent defendants receive equitable representation compared to those capable of retaining their own legal counsel.

To address this concern, this dissertation employs bivariate logistic regression models to analyze the impact of defense attorney type on the plea negotiation process, as evidenced by negotiated sentencing outcomes, within Kansas state district courts. Specifically, utilizing sentencing data from the Kansas Sentencing Commission spanning fiscal years 2015 to 2019, this study applied logistic regression analysis to investigate the impact of attorney type across three distinct research questions pertaining to sentence disposition, departure sentences, and the choice between concurrent and consecutive sentences. Notably, all three models yield statistical significance and identified significant variables for each research question. Alongside numerous

significant demographic variables, the analysis reveals attorney type as a significant predictor of both sentence disposition and departure sentences. The implications of these findings, alongside theoretical and policy considerations, are thoroughly discussed, aiming to inform future academic and policymaking endeavors.

An examination of legal representation on plea bargained sentencing outcomes for criminal defendants.

by

Johnathan Grube

B.A., University of Kansas, 2007
M.S., Oklahoma City University, 2008
J.D., Washburn University, 2012

A DISSERTATION

submitted in partial fulfillment of the requirements for the degree.

DOCTOR OF PHILOSOPHY

Department of Sociology, Anthropology and Social Work
College of Arts and Sciences

KANSAS STATE UNIVERSITY
Manhattan, Kansas

2024

Approved by:

Major Professor
Kevin F. Steinmetz

Copyright

© Johnathan Grube 2024.

Abstract

This dissertation examines the pervasive notion that retained attorneys offer superior legal defense compared to appointed attorneys. Such beliefs hold substantial implications for justice equity, as a defendant's financial resources should not dictate the caliber of their defense or the subsequent sentence they receive. Yet, a dearth of understanding persists regarding the influence of attorney type on sentencing outcomes. This study bridges this gap through a quantitative examination of attorney type and its impact on sentencing.

Indigent defendants, unable to bear the financial burden of legal representation, are informed by a judge of the attorney appointed to represent them in criminal proceedings. Judges appoint attorneys because these defendants may lack the means to retain an attorney with a proven track record of trial success, which financially able defendants can readily secure. Consequently, a defendant's limited resources may hinder appointed attorneys from mounting a robust defense, potentially affecting the decision to pursue trial. Therefore, it is crucial to ascertain whether indigent defendants receive equitable representation compared to those capable of retaining their own legal counsel.

To address this concern, this dissertation employs bivariate logistic regression models to analyze the impact of defense attorney type on the plea negotiation process, as evidenced by negotiated sentencing outcomes, within Kansas state district courts. Specifically, utilizing sentencing data from the Kansas Sentencing Commission spanning fiscal years 2015 to 2019, this study applied logistic regression analysis to investigate the impact of attorney type across three distinct research questions pertaining to sentence disposition, departure sentences, and the choice between concurrent and consecutive sentences. Notably, all three models yield statistical significance and identify significant variables for each research question. Alongside numerous

significant demographic variables, the analysis reveals attorney type as a significant predictor of both sentence disposition and departure sentences. The implications of these findings, alongside theoretical and policy considerations, are thoroughly discussed, aiming to inform future academic and policymaking endeavors.

Table of Contents

List of Tables x
Acknowledgements xi
Dedication xii
Chapter 1 - Introduction 1
Problem Statement 3
Kansas' Indigent Defense System 5
Dissertation Aims 8
Dissertation Organization 9
Chapter 2 - Literature Review 12
Historical Contexts 12
Legal Right to Counsel 14
Attorney Type and Sentencing 16
The Role of the Prosecutor 24
Demographic Characteristics and Sentences 34
Legally Relevant Case Characteristics 42
Theoretical Context 43
Chapter 3 - Methods 49
Introduction 49
Missing Data/Data Limitations 65
Power Analysis/Solutions 67
Analytic Method 68
Conclusion 69
Chapter 4 - Results 70
Descriptive Statistics 70
Overall Model Fit 75
Dependent variable analysis 76
Conclusion 85
Chapter 5 - Discussion 87
Introduction 87

The Importance of Attorney Type 87
Demographic Variables 91
Legal Variables 94
Theoretical Implications 96
Implications For Future Research 98
Limitations 103
Chapter 6 - Conclusion 105
References 109

List of Tables

Table 3.1 53
Table 4.1 71
Table 4.2 71
Table 4.3 72
Table 4.4 77
Table 4.5 80
Table 4.6 83

Acknowledgements

I would like to thank Dr. Kevin Steinmetz, my committee chair, whose unwavering guidance was instrumental throughout the entire dissertation process. Without your invaluable support, I would not have reached the finish line.

I also wish to acknowledge the esteemed faculty of Kansas State University's Sociology Department, particularly Dr. Lisa Melander, who not only served on my dissertation committee but also generously offered assistance and guidance throughout my graduate program journey. To my friends and family, your unwavering support and encouragement sustained me through every challenge. Special thanks to Ebo Browne, whose support transcended academic boundaries into our professional endeavors, fostering a lasting friendship and appreciation.

My heartfelt love and appreciation goes out to my wife, Whitney Grube, whose intelligence and support, both academically and personally, propelled me forward. Your own achievements serve as an inspiration, and your role as both wife and mother surpass all accolades that I can give. You are my best friend, and I would not be the man I am today without your love and support. I have loved every moment of our journey together and your support throughout this entire process has been unwavering. I am clearly and obviously blessed to have you in my life, and I cannot wait to see where the next step in our journey takes us.

Lastly, I am immensely grateful to my daughter, Greenleigh, whose arrival in the middle of this academic pursuit added depth and purpose to the entire process. Her positive spirit always puts a smile on my face, and I hope that I can make her as proud of me, as I am of her.

Dedication

This dissertation is dedicated to Lee Chiles: for long walks, deep thoughts, and reading between the lines.

Chapter 1 - Introduction

There is an old adage that goes, "you get what you pay for." While that may be the case in some contexts, it is unclear if that is the case for legal defenses in the criminal justice system. In the U.S., a legal defense can consume a significant amount of a person's financial resources. Because the US Constitution guarantees a right to legal counsel in criminal cases and financial constraints may render impoverished defendants unable to afford an attorney and, thus, forgo representation, the US Supreme Court decided in *Gideon v. Wainright* (1963) that the government must provide representation in cases of indigency. As such, criminal defendants who meet certain poverty threshold guidelines and are unable to afford their own legal defense, are appointed legal counsel by the court—creating questions pertaining to the attorney type (appointed or retained) and the quality of the defense received. *Appointed* attorneys are given to those defendants who cannot afford their own defense, while *retained* attorneys are paid for by the defendant. There are two types of court appointed attorneys: public defenders and court appointed private attorneys. A public defender is appointed only in jurisdictions that operate a public defender office while a court appointed private attorney is appointed when a public defender is unavailable. Court appointed private attorneys often operate their own private legal practice but will accept criminal defense work in which their legal fees are paid for by the state. Estimates show between 85 percent and 90 percent of all defendants are represented in criminal proceedings by a court appointed attorney (Bureau of Justice Statistics, 2019; Kansas Sentencing Commission, 2022).

There is a widely held belief that retained attorneys offer more effective defenses compared to appointed. If true, this has significant implications for justice equity as a defendant's financial resources should not dictate the quality of their defense, and subsequently

the sentence they receive. Yet there remains a dearth of information regarding the impact attorney type has on sentencing outcomes. This dissertation addresses this gap through a quantitative study of attorney type and its impact on sentencing. Specifically, the dissertation uses bivariate logistic regression models to examine the impact of defense attorney type on the plea negotiation process, as measured by plea negotiated sentencing outcomes, in state district courts in Kansas. To accomplish this task, sentencing outcome data from the Kansas Sentencing Commission was utilized. This dataset includes all felony convictions from fiscal year 2015 thru fiscal year 2019. This five-year period provides a robust number of data points (over 12,000 felony offenders each year) and will not be impacted by the COVID-19 pandemic. Data collected during the pandemic (fiscal years 2020 thru 2022) may be skewed, as there were significantly less felony convictions in Kansas and significantly less prison sentences, as is reflected in the Kansas prison population (Chang & Grube, 2020, 2021; Grube, 2021(a); Grube, 2021(b); Grube & Lamprecht, 2022). Sentencing outcome data, including prison sentence length, sentence disposition, departure data, and other relevant outcome and demographic data was utilized to determine whether attorney type has a significant impact on a defendant's final sentence.

Because there is minority overrepresentation within indigent populations throughout the United States, including Kansas, the dissertation also examines whether there exist unequal plea negotiated sentencing outcomes across racial and ethnic groups in Kansas, as court appointed counsel are utilized at higher rates within minority populations (Kansas Sentencing Commission, 2021). Additionally, because males are also overrepresented in the criminal justice system, this dissertation examines whether male defendants in Kansas are disadvantaged regarding plea

bargained sentencing outcomes, as well as examining whether the intersection of being both male and a minority has a negative impact on plea bargained sentencing outcomes.

Problem Statement

Many studies have examined the impact of race, ethnicity, and gender on plea bargained sentencing outcomes. Relatively few, however, have examined the impact that legal representation has on final sentence (Beck & Shumsky, 1997; Cohen, 2014; Feeney & Jackson, 1990; Gist, 1989; Hoffman, Rubin, & Shepherd, 2005; Kutateladze & Leimberg, 2019; Williams, 2017). Because of the high number of defendants who are represented by appointed counsel, coupled with the fact that defendants with appointed counsel meet some level of indigency and are potentially an at-risk population, it is crucial for sentencing scholars to examine whether attorney type has a significant impact on a defendant's final sentence.

An appointed attorney, whether a public defender or a court appointed private attorney, is not chosen by the defendant. Indigent defendants, due to their inability to bear the financial burden, are informed by a judge who will represent them in their criminal proceedings. Their financial situation eliminates their freedom to choose who they would like to represent them. The indigent defendant cannot afford or "shop" for the same high-priced attorney, with a long track record of trial success, that a defendant with ample financial means can obtain. Conversely, because appointed counsel may have fewer resources than expensive retained attorneys, it may be impossible for appointed attorneys to mount the type of defense necessary to make taking a case to trial a good decision. This is in addition to the overburdened, overworked, and underpaid nature of appointed criminal defense attorneys, especially public defenders (Payne, 2018). For instance, assuming the police and prosecutor followed the constitution and the rules of evidence, the defense attorney must still rebut the evidence brought against their client. Expert witnesses,

for example, are often essential to mounting a proper defense at trial but can be burdensomely expensive and therefore unlikely to be utilized in the defense of the indigent. It is thus entirely possible that counsel type may significantly impact case outcomes. For these reasons, it is of the utmost importance to determine whether indigent defendants receive equitable representation compared to defendants able to retain their own attorney.

Yet, the situation may be different in cases where defendants enter a guilty plea. For definitional purposes, a guilty plea is an **admission of blameworthiness by a person accused of a crime**. They are often made as part of a plea bargain to reduce the charges or punishment severity in exchange for the plea, as well as save the court's time and expense of a trial (McConville & Mirsky, 2005).

When a case is resolved by plea, the defendant gives up some of their constitutional rights, such as the right to have their case tried before a judge and jury. As a result, there is no admission of evidence, there is no witness testimony, and no compelling arguments made before a judge or jury. Unfortunately, pleas are often the result of defendant's financial circumstances and their inability to pay for the necessary expert witnesses, scientific evidence, and the inability to obtain a capable lawyer, investigators, and other expert assistance that could help sway a jury (Bright & Sanneh, 2012). There is an alarming number of cases resolved by the plea-bargaining process, as estimates indicate over 95 percent of cases never reach trial and are therefore resolved by pleas (Kansas Sentencing Commission, 2022; Bureau of Justice Statistics, 2019). As such, because of the high number of appointed attorneys handling criminal cases along with the high number of cases resolved by plea, there is an open question: does attorney type affect the likelihood that a defendant enters into a plea agreement (The American Bar Association, *Criminal Justice Debt Problems,* 2019)? Therefore, this dissertation addresses whether

defendants using court appointed counsel receive significantly different sentencing outcomes than similarly situated defendants able to retain defense counsel of their own choosing.

Kansas' Indigent Defense System

Because this dissertation focuses on Kansas criminal court cases, there is a need to further consider indigent defense in Kansas. Here, most felony defendants receive appointed counsel paid for by the government (Kansas Sentencing Commission Felony Sentencing Database, 2020). In fiscal year 2021, 85 percent of felony defendants in Kansas received some form of government appointed counsel (Kansas Sentencing Commission, 2021), which is congruent with other state jurisdictions (Bureau of Justice Statistics, 2019).

There are two types of appointed counsel in Kansas: court appointed private counsel and public defenders (Kansas Annotated Regulations § 105; Kansas State Board of Indigent Defense). Court appointed private counsel are privately practicing attorneys that the district court appoints to represent clients who are unable to afford their own legal defense (Cohen, 2014). These attorneys often handle a variety of legal cases in addition to appointed criminal cases, such as family law, divorces, and civil suits. Court appointed private attorneys are utilized in jurisdictions that do not have a public defender office. Because they are paid on a case-by-case basis, the more cases a court appointed private attorney handles, the more they get paid.

Contrary to court appointed private attorneys, public defenders exclusively handle criminal cases (Cohen, 2014; Kansas Annotated Regulations § 105). In Kansas, public defenders are employed by the Board of Indigent Defense Services and earn a yearly salary, regardless of the number motions they might file on a case or the total number of cases they may handle. Additionally, public defenders have access to publicly salaried investigators, administrative staff, as well as support from an office of other criminal defense attorneys. Court appointed private

attorneys may or may not have access to such staff, and if are court appointed, are not able to charge the state for certain administrative costs.

Retained counsel, on the other hand, are attorneys that defendants pay for out of their own pocket. Fees for retained counsel are generally negotiated between the parties prior to taking the case, where additional services likely mean additional charges. If the client has the financial ability to pay for more services, the attorney will be able to arrange for them. For example, if a particular expert witness or crime scene reconstructionist would benefit their defense, retained counsel can pay for an expert's services by charging the defendant as such. So long as the client has the financial ability to pay, the attorney can continue to provide additional services (assuming they are legally relevant). This includes the potential for adding additional attorneys for preparation, conducting mock trials, and bringing in jury selection experts, all of which comes with a price tag. This creates the potential for unequal legal representation based on a defendant's ability to pay. Highly documented criminal cases, such as the cases against O.J Simpson or Michael Peterson, reflect circumstances where a defendant's tremendous financial resources increased their ability to pay for their defense, resulting in trial preparation and strategy not afforded to the typical defendant, who is likely indigent.

As noted previously, in Kansas, there is a high percentage of defendants appointed counsel. Additionally, in Kansas, the percentage of cases that are resolved by plea bargain, as opposed to jury trial, is high. In Fiscal Year's 2015-2019, over 96.9 percent of felony criminal cases were resolved through a plea bargain (Kansas Sentencing Commission, 2019). The prevalence of pleas in Kansas mirrors other jurisdictions (Bright, 2011). As such, it is prudent to examine sentencing outcomes associated with cases resolved by the plea-bargaining process as opposed to trial outcomes. While trial outcomes are important to understanding the *entire*

landscape of sentencing outcomes, there are a limited number of datasets that provide accurate data for trial acquittals. In fact, the Kansas Sentencing Commission Felony Sentencing dataset, which is utilized for this dissertation's analysis, does not contain data for trial acquittals. Like most available datasets, the data to be utilized for the dissertation only includes data pertaining to defendants found guilty. Thus, there would be no variance in the trial outcomes being examined. Also, defendants found guilty at trial receive no benefit of a plea bargain at sentencing, skewing sentencing outcome data towards harsher penalties (Kansas Sentencing Commission, 2019). *What is examined in this analysis, however, is the impact that a retained attorney, and the potential for a more robust legal defense if the case were to proceed to trial, has on the plea-bargaining process. Similarly, this dissertation examines whether there is a significant impact on sentencing outcomes for appointed attorneys when a jurisdiction utilizes a public defender office.*

Because of the high percentage of cases that combine government appointed counsel and plea-bargains, it is important to fully examine whether these relationships impact sentencing outcomes. For example, does the type of defense attorney (i.e., appointed or retained) have a significant impact on the plea-bargaining process and overall sentencing outcomes for a defendant. As alluded to previously, the potential for disparate sentencing outcomes presents a question of social justice: are defendants in poverty receiving the same quality of legal defense as defendants who can retain (afford) an attorney of their choosing? Are minority and female defendants receiving inherently less effective counsel than similarly situated white counterparts? Does the type of appointed counsel (i.e., public defender or court appointed private counsel) produce disparate sentencing outcomes? These questions are addressed after an in-depth analysis of defense counsel's impact on plea bargained sentences is completed.

Dissertation Aims

This dissertation aims to add to the sentencing literature by addressing whether there are quantitatively differential plea-bargained sentencing outcomes for defendants based upon their counsel type, i.e., retained, appointed, or public defender. A plea-bargain occurs when a defendant gives up their right to a trial by pleading guilty, often in exchange for a more lenient sentence. It is important to note that this dissertation's analysis does not examine jury trial outcomes as the dataset does not provide any data on whether there is a jury trial acquittal. Data only exists if there is a conviction. When there is a conviction at trial, there is no ability to plea bargain the charges. Thus, there will be no chance for departures or charge reductions, and the conviction will result in a guideline sentence. Because over ninety-five percent of cases are resolved by plea, the number of jury trials is already quite low. Without knowing the ratio of attorney types that are successful at trial, it is impossible to give an accurate depiction of whether a particular type of attorney significantly impacts trial outcomes. Thus, this dissertation focuses exclusively on plea bargained sentencing outcomes, and in particular, it examines the role of attorney type on concurrent v. consecutive sentences, sentence disposition (prison or probation), and whether the defendant received a departure from the sentencing guidelines.

By answering these questions, this dissertation addresses an existing gap in the sentencing literature. Currently, most sentencing literature fails to examine whether defense attorney type (appointed v. retained) impacts prosecutors' plea bargaining, as well as charge bargaining, decisions (Johnson et al., 2014; Wright & Engen, 2006). Additionally, this dissertation analyzes the impact of defense attorney type on both the plea-bargaining process and final sentencing outcomes across all jurisdictions in Kansas, unlike prior analyses which have tended to be limited to one or two large jurisdictions (Bowen, 2009; Kutateladze, 2019;

Williams, 2017). Kansas, with its' Midwestern location and large number of rural jurisdictions, provide an additional layer of enlightenment concerning sentencing outcomes, as most previous literature has focused on data from large coastal jurisdictions as well as the federal system.

Dissertation Organization

This dissertation is organized into six chapters. The current chapter reviews the relevant context for the dissertation's research questions and describes the problem presented by attorney type as one worthy of investigation. Chapter one also includes a description of the dissertation's main aims and objectives. Specifically, this chapter addresses why analyzing whether a defendant's attorney type, court appointed or retained, has an impact on plea negotiated sentencing outcomes and the social implications associated with such outcomes.

Chapter two provides a review of relevant sentencing scholarship and literature. Additionally, chapter two describes the dissertation's theoretical framework. Included in chapter two is an overview of the courts as communities perspective, as well as the focal concerns and inhabited institutions perspectives. The aforementioned frameworks provide context for jurisdictional level concerns and patterns that may have significant impacts on sentencing decisions across judicial districts.

The third chapter details the dissertation's methodology. Included in chapter three are three research questions, each to be answered by quantitative analysis. Additionally, chapter three includes hypotheses, a detailed description of the dataset used to answer the research questions, an explanation of key variables to be included in the analytic models, and the operational definitions of key variables. Chapter three also provides context for the chosen method of analysis and why said methods produce both relevant and impactful results that will

inform future policy decisions related to the legal representation of felony defendants across Kansas.

Chapter four analyzes this dissertation's results. Those include results for logistic regression analysis on three separate research questions addressing sentencing disposition, i.e., prison v. probation, as well as sentencing departures and concurrent v. consecutive sentencing decisions in cases with multiple charges. All three models were statistically significant as a whole, and each model found multiple statistically significant variables, including attorney type for research questions one and two, which is the main predictor variable in this dissertation. Chapter four also discusses the interesting and contradictory findings related to attorney type between research questions one and two, where appointed attorneys secured better outcomes in research question one but better results were achieved by retained attorneys in research question two.

The fifth chapter provides a robust examination of this dissertation's results. Included in chapter five is a discussion of relevant and significant variables for each of the three research questions, including whether or not the results are supported by the relevant literature. Additionally, chapter five discusses the implications of this dissertation on future research in the sentencing field. Those include the implications regarding whether defendants in poverty receive equal justice under the law via sentencing outcomes, as well as the potential for race to function as an exacerbating factor in the sentencing process. Additional attention is given to the results' support of the theoretical context within the literature, including both courts as communities theory and focal concerns, and how these results can be utilized in practice to improve the sentencing process in Kansas for all defendants, regardless of financial status.

Finally, the sixth chapter provides a succinct conclusion to this dissertation. The conclusion provides an overview of each chapter's findings, as well as a summation of this dissertation's importance and relevance within the sentencing literature and future research goals moving forward.

Chapter 2 - Literature Review

This chapter reviews the relevant sentencing outcome literature including literature related to the historical progression of legal representation in criminal proceedings, prior literature examining attorney type, sentencing outcomes and pleas, the role of prosecutorial discretion and decision making in sentencing outcomes, and a review of relevant demographic variables often included in sentencing literature such as race, gender, and ethnicity. Towards the end of this chapter, there is also a review of relevant theoretical approaches that supplies context to the dissertation's findings. These theories include courts as communities theory, focal concerns theory, and inhabited institutions.

Historical Contexts

During most of the twentieth century, sentencing schemes across the United States were indeterminant and premised on the concept of rehabilitation. Sentencing outcomes, however, lacked predictability, reasoning, systematic oversight, and appellate review (Frankel, 1973). The indeterminant system provided for a broad range between minimum and maximum sentence terms (Johnson, 2014). During this period, sentencing discretion did not rest with the prosecutor, as judges determined the sentencing range for offenders, while the parole boards and prison officials determined when the offender would be released from imprisonment.

During the 1960s and 1970s, social unrest, including race riots, prison riots, and the Vietnam War, fueled general government mistrust in large segments of the United States population (Johnson, 2014; Kerner Commission, 1968). In addition to other civil rights reforms, due process in the legal system came to the public forefront through criticism of unchecked judicial discretion and the greater concerns over disparate sentencing outcomes (Johnson, 2014). Judge Marvin Frankel (1973), for instance, argued that judicial power in the American criminal

justice system was unchecked, claiming that the state of judicial authority was both terrifying and intolerable for a country that professed adherence to the rule of law. During this same period, an increase in violent crime led some conservative critics to identify rehabilitative sentencing practices as the presumed cause of the crime spike (Johnson, 2014; Wilson, 1975). This coincided with social science research that questioned whether rehabilitation was an effective punishment philosophy. For example, after a review of 231 rehabilitative correctional programs, Lipton, Martinson, & Wilkes (1975) concluded that rehabilitative programming in the field of corrections was ineffective.

Ultimately, the philosophical underpinnings of the impending sentencing reforms were formed through curious bedfellows. While the political Left was concerned with sentencing disparity and the growing threat of judicial power, the political Right was concerned with crime-control policy and unwarranted sentencing leniency (Johnson, 2014). The target of each side's dissatisfaction were the indeterminate sentencing policies at both the state and federal level. Indeterminate sentencing provides a specific, often broad, range for which a defendant can be sentenced, such 5 to 20 years. Determinate sentencing, on the other hand, is a specific amount of time, such as 10 years. Thus, indeterminate sentencing schemes had the potential to produce judicial discrepancy. For the Left, indeterminate sentencing created demographic sentencing disparity, but for the Right, it provided for sentences that failed to fully punish the offender through a potential early release. Consequently, both sides of the political aisle pushed for determinate sentencing polices that would reign-in judicial discretion as well as limit sentencing disparity, inequity, and leniency (Johnson, 2014).

While the push for determinate sentencing polices sought to control the discretionary power of both judges and parole officials, these reforms failed to address any of the discretionary

powers possessed by the prosecutor, or even consider prosecutorial discretion as a potential concern (Forst, 1999). Many jurisdictions passed truth-in-sentencing laws and abolished parole to ensure that offenders would serve most of their original sentence (Johnson, 2014). At the same time, mandatory minimum sentences burst onto the sentencing landscape, increasing the minimum sentence length for a multitude of different offenses. This was coupled with the adoption of state sentencing guidelines, which limited judicial discretion at sentencing to achieve greater sentencing uniformity (Johnson, 2014). These reforms fundamentally changed the way offenders in the US criminal justice system were punished, altered the philosophical underpinnings of sentencing at both the state and federal levels, and shifted sentencing discretion upstream towards the prosecutor (Nagel & Schulhofer, 1992).

Legal Right to Counsel

The United States Constitution states that "in all criminal prosecutions the accused shall enjoy the right…to have the assistance of counsel for his defense" (Sixth Amendment, US Constitution), however, the method for providing such counsel is not specifically addressed (Cohen, 2014). Thus, methods for assigning counsel to an indigent defendant can vary from state to state, and even county to county. The major types of government funded counsel throughout the country include some blend of contract attorneys, assigned counsel, and public defenders, with Kansas using the latter two forms (Cohen, 2014; Neubauer & Fradella, 2018; Spangenberg & Beeman, 1995).

The use of assigned counsel systems, which are utilized in numerous counties across Kansas, have been the subject of criticism (Cohen, 2014; Tiffany, et al., 1975; Williams, 2017). Assigned counsel systems have been accused of appointing attorneys to cases despite the lack of requisite skill or experience required to adequately represent their clients. In some ad hoc

appointment systems, recent law school graduates and attorneys with limited criminal defense experience will take appointed cases to gain courtroom experience or even just to supplement income (Beck & Shumsky, 1997; Cohen, 2014; Gist, 1989; Iyengar, 2007; Neubauer & Fradella, 2011; Spangenberg & Beeman, 1995). This creates a situation where indigent defendants are often assigned inexperienced legal counsel and are unfortunately left with little recourse to change that situation (Feeney & Jackson, 1990).

In contrast to appointment systems, public defender systems provide indigent defendants with attorneys who practice solely in the criminal law arena. Public defenders have access to numerous benefits that most private appointed attorneys are unable to provide. These benefits include in-house training and education, other in-house attorneys that can provide guidance on difficult cases, publicly funded support staff, as well as investigators provided and paid for by the state. (Champion, 1989; Cohen, 2014; Farole & Langton, 2011; Flemming, Nardulli, & Eisenstein, 1992; Hanson, Ostrom, Hewitt, & Lomvardias, 1992; Hartley, Miller, & Spohn, 2010; Heumann, 1978; Langton & Farole, 2011; Spangenberg & Beeman, 1995). Another major benefit includes regular and intensive interactions with local court personnel, including judges and prosecutors. These interactions provide public defenders the opportunity to create close relationships with key players involved in the courtroom process and use those relationships to their benefit during the plea-bargaining process (Flemming, et al., 1992; Hartley, et al., 2010; Heumann, 1978).

This is not to say, however, that public defenders are always at an advantage. Public defender offices suffer from the inability to keep experienced counsel on staff (Feeney & Jackson, 1990; O'Brien, 2010). After a public defender gains valuable experience handling criminal cases, many will leave for higher paying positions. Because the state determines a

public defender's salary, which is often much lower than other attorney positions, many public defenders leave for jobs that pay better without the stress of trial work and large caseloads (Guyer, 2009; Brennan, 2015; O'Brien, 2010). Thus, many low-level felonies are assigned to public defenders with very little experience, as higher profile and more complicated cases must go to public defenders with more experience and legal abilities. Therefore, it is possible that defendants charged with low-level felonies represented by public defenders are actually provided counsel with less experience than defendants with court appointed private counsel.

Attorney Type and Sentencing

The main focus of this dissertation is defense attorney type and the impact the type of defense attorney has on sentencing outcomes and plea negotiations. However, there are comparatively few studies that examine this issue. As such, this section examines the relevant literature examining both attorney type's impact on sentencing, as well as other relevant literature associated with sentencing outcomes.

While numerous sentencing studies have examined demographics' impact on sentencing outcomes, relatively few recent studies have examined the impact of attorney type on sentencing outcomes (Anderson & Heaton, 2012; Cohen, 2014; Feeney & Jackson, 1990; Hartley, Miller, & Spohn, 2010; Roach, 2014). This is despite the existence of demographic discrepancies intertwined within types of legal representation, as black and Hispanic offenders are more likely to have appointed counsel in comparison to white offenders (KSSC Felony Sentencing Database, 2020).

These prior studies have focused on the differences between retained attorneys (i.e., those attorneys who have been hired and paid by the defendant), and appointed attorneys (i.e., those attorneys who are assigned by a judge to represent a defendant because they are financially

unable to pay for an attorney without governmental assistance). Nationwide, over eighty percent of defendants require appointed counsel due to inability to afford a defense (Williams, 2004). This number is even higher in Kansas, as over 84 percent of felony defendants had appointed counsel in fiscal year 2020 (Kansas Sentencing Commission, 2020). In Kansas, there are two types of appointed attorneys: the public defender and court appointed private attorneys. The public defender is an attorney who works within a larger public defender office. Public defender offices employ numerous attorneys, whose salaries are paid by state governments. Their salaries, in general, are not impacted by the number of cases they process through the system.

Many jurisdictions throughout the state, however, do not have a public defender office or the benefit of a public defender. This, nevertheless, does not mean that there are no indigent defendants in these jurisdictions. In jurisdictions without a public defender, the court will appoint an attorney to defendants who cannot afford their own defense. Court appointed attorneys are paid by the case, and their salaries are directly impacted by the number of cases they move through the court system. Due to the size of most Kansas counties, and the overall availability of criminal defense clients, most court appointed criminal defense attorneys need more than just court appointed cases to make ends meet financially (J. Fishman & A. Fogleman, personal communication, October 5, 2021). Many attorneys taking criminal defense appointments are also taking civil law cases, including divorce and family law cases for which they have been paid a retainer or flat fee (J. Fishman & A. Fogleman, personal communication, October 5, 2021).).

Public defenders, on the other hand, handle criminal cases exclusively. Public defender offices also have inter-office hierarchies, equipped with supervisors and mentors that oversee how their attorneys are handling each case. Court appointed criminal defense attorneys, on the

other hand, are generally solo practitioners or members of small firms, who will have no one to answer to but themselves. Multiple studies have found that defendants with court appointed attorneys experience more negative sentencing outcomes in comparison to defendants with a public defender (Anderson & Heaton, 2012; Cohen, 2014; Joy & McMunigal, 2012; Roach, 2014; Thomas, Kirchner, & Myers, 2014). Court appointed private attorneys, contrary to public defenders, are paid by the case, raising the potential for financial incentives if they can ensure cases reach their conclusion more quickly, via a quick guilty plea. This may or may not impact final sentencing outcomes for defendants and warrants further examination. Furthermore, this may have a particularly negative effect on minority offenders, as they are more likely to require an appointed attorney.

Prior Findings

A defense attorney's role throughout the legal process is an important topic for not only the defense bar, but also judges, prosecutors, scholars, and policymakers (Cohen, 2014). Cohen (2014) directly addressed the role of the defense attorney regarding the probability of conviction and sentence severity. In his analysis, Cohen (2014) used data from the State Court Processing Statistics series, which covered cases filed from one particular month in both 2004 and 2006. That dataset included information on whether a defendant received a prison or probation sentence, as well as defense counsel type, plea information, pretrial status, and demographics. He found that retained attorneys and public defenders produce similar sentencing outcomes for their clients, but court appointed private counsel produce less favorable sentencing outcomes for their clients, measured by sentence length and disposition (Cohen, 2014).

Not all studies that have analyzed the impact of counsel type have found significant results. Williams (2002), for example, found that attorney type had no significant impact on

final sentencing outcomes for offenders, but rather charge severity and criminal history made the most significant impact (See also: Brantingham, 1985; Houldan & Balkin, 1985a; Nardulli, et al., 1988). Because Kansas is a sentencing guideline state, and thus determines an offender's sentence based upon criminal history and charge severity, there is a concern that the quantitative analysis will find no significant impacts based solely upon attorney types. However, this study includes an analysis of departure sentences, which is a good measure of whether a defendant received a benefit from their guilty plea, as a departure from the presumptive sentence will result in lesser punishment either by duration or disposition. Additionally, there is also an examination of whether sentences are running consecutively or concurrently to other charges. Concurrent v. consecutive sentencing is a previously unexamined variable but could be very illuminating. Prosecutors can significantly increase an offender's prison sentence by running each count/charge consecutively as opposed to concurrently. This dissertation will determine whether defense attorney types impact the likelihood of this punishing sentence.

It should be noted, however, that in the aforementioned study defendants who were on bond received shorter sentences than defendants who remained in jail prior to plea and/or sentencing (Williams, 2017). Numerous other studies have also found that the inability to post bond has a negative impact on final sentencing outcomes (Campbell, et al., 2020; Wooldredge, 2012; Wooldredge & Goulette, 2015). In addition to attorney-type, bond status can be used as an additional measure of indigency, as certain defendants are unable to come up with the ten percent of the bond amount necessary to be released. It is possible that those defendants who are unable to post bond are experiencing poverty at a higher intensity than defendants who are able to bond out jail, regardless of whether they were able to afford an attorney or needed an attorney appointed by the court. Defendants who can bond out of jail prior to their plea will be in a better

position to assist in their own defense, as their attorney will not be forced to discuss case details in the jail, be in a better position to meet with experts, and be less likely to feel pressure to take a plea merely to get out of the facility (Campbell, et al., 2020). Because Williams' (2017) study, however, was limited to one county, and Campbell, et al., (2020) was limited to nine counties, it is therefore very possible that a larger, statewide sample could have produced different results. As the theory section of this proposal explains, the plea-bargaining process is highly localized (Eisenstein & Nardulli, 1988; Hester, 2017), making a study with multiple jurisdictions of comparison imperative.

Roach (2014) also found that court appointed attorneys achieve statistically significant worse results for their clients than public defenders. This result was significant across several outcome measures, including sentence length, charge severity at conviction, and the timespan needed to resolve the case (Roach, 2014). One of the most interesting findings, however, was the impact that outside labor markets had on the sentencing outcomes. Thus, when job opportunities for attorneys were low, there was an influx of inexperienced attorneys seeking work via the court appointment system. When this occurred, and held true across jurisdictions, defendants with court appointed counsel grew significantly worse compared to similarly situated defendants with a public defender (Roach, 2014). From a policy standpoint, this begs for more research into whether court appointed attorneys are fully vetted and capable of handling criminal cases and whether different processes are needed to prevent defendants from being at a statistical disadvantage when they are given court appointed counsel, as opposed to the public defender, and whether more government funding is needed to expand public defender offices across the state.

Previous studies on jurisdictional difference have noted that "when it comes to sentencing, location matters" (Hester, 2017). For this study, it is important to note that there are only seven public defender offices in Kansas, but even in those jurisdictions with access to a public defender, not all defendants with appointed counsel are represented by a public defender. In-fact, many defendants in those counties (at times close to 50 percent) are represented by court appointed private counsel (State Board of Indigent Defense, 2020). Despite this potential data limitation, it does not take away from the potential sentencing implications the existence of a public defender office may have on the overall plea-bargaining process. For example, Eisenstein & Jacob (1977) found that courts develop their own processes based upon locality and the specific actors in the courtroom. Thus, the very existence of a public defender may impact "going-rates" for plea bargains. Therefore, plea bargains that have become the negotiated norm between prosecutors and public defenders may also become the going rate for defendants represented by retained and court appointed private attorneys. This study consequently controls for the presence of a public defender office within a county, via a yes/no variable, to determine whether the very existence of a public defender office inside the county impacts final sentencing outcomes for all defendants regardless of representation type.

The likelihood of success at trial also impacts whether a defendant and their defense attorney will accept a plea. Helm, et al., (2018) examined the role of the defense attorney on whether a client will take a guilty plea as opposed to going to trial. In this study, using hypothetical legal circumstances, researchers interviewed 189 defense attorneys across nine states to analyze the advice they would give for each individual plea-bargaining situation (Helm, et al., 2018). Of particular interest to researchers was the potential for defense attorneys to advise clients to plead guilty despite their claims of innocence. Researchers found that defense

attorneys were likely to advise potentially innocent clients to take guilty pleas when the punishment outcomes for pleading guilty were far less severe than the punishment risk of a guilty conviction at trial (Helm, et al., 2018). This held true across defense attorney demographics and experience. For example, neither the level of experience, nor political affiliation, had an impact on attorney decision making regarding whether to advise a potentially innocent client to plead guilty (Helm, et al., 2018). The risk of being found guilty at trial, in their minds, was *not* worth the potential risk of increased punishment.

There is also a line of literature that argues that plea bargaining is done in with the shadow of a potential trial looming in the distance (Bushway, Redlich, & Norris, 2014). This line of thought is supported by Helm et al., (2018) in that defense attorneys advised their clients to accept guilty pleas to lesser crimes prior to trial, even though their clients claimed innocence. Neither defense attorneys nor prosecutors want to risk a loss at trial when the case could be satisfactorily resolved with a guilty plea to a lesser crime (Bushway, Redlich, & Norris, 2014). There is a question, of course, as to whether this benefits the client, especially those who may be innocent. On the one hand, the client pleads guilty to a lesser crime and receives a lighter punishment as a result. Conversely, the client is forced to admit to a crime they may not have committed, and consequently accept a punishment they do not deserve. It is therefore a balancing act between what the client is willing to accept as punishment, while potentially ruining their name and reputation, and taking a risk that they might be found not guilty at trial, with a risk that their punishment could be more severe if they are found guilty. For example, an innocent defendant charged with robbery can accept a plea offer of theft and avoid prison time but ruin their name in the process via the guilty plea. Conversely, the innocent defendant could try to salvage their name and reputation at trial but run the risk of going to prison if convicted

(and still wind up with a ruined reputation). Unfortunately, a high percentage of defendants have prior, and sometimes significant, criminal history that makes taking a plea less problematic from a criminal history perspective. This problem should be given further examination in a qualitative piece based on defendant experiences with pleading guilty.

Prosecutors and defense attorneys, of course, are not the only players in the courtroom arena. For instance, Hester (2017) conducted interviews with 13 trial judges in South Carolina to gain the perspectives of both legal practices and legal culture within the state's courtroom communities. Judges in South Carolina travel a judicial circuit, as opposed to continually sitting in the same courtroom in the same jurisdiction (Hester, 2017). This was instituted so that multiple judicial perspectives would be present within each jurisdiction. While some judges in Kansas might move to different courtrooms within their judicial district, they do not "travel the circuit" like the Judges interviewed in South Carolina. As a result of different judges sitting within a particular court, Hester (2017) found that individual courtroom cultures were less likely to develop. Additionally, he found an increased likelihood that defense attorneys in South Carolina could "judge shop" to find a judge they believe will be most sympathetic to their client's interest (Hester, 2017). Thus, defense attorneys in South Carolina were still able to subvert the state's intentions of making sure that different judges and different judicial perspectives were making rulings. Instead, defense attorneys could merely wait for a particular judge to be sitting on the bench before entering a plea or arguing for a lighter sentence (Hester, 2017). Judicial rotation did, however, boost the likelihood that judges and prosecutors can share thoughts on legal philosophy, increasing the chances that exposure to different perspectives will decrease the potential bias that may develop due to the lack of different viewpoints (Hester, 2017).

In another example of how attorney type can impact the plea negotiation process, Bowen's (2009) ethnographic work examined the plea-bargaining process in King County, Washington through the observation of forty-two plea negotiations between prosecutors and defense counsel. Unlike Kansas, the King County District Attorney's Office has a unit that examines cases and recommends pleas that is separate from the attorney that would potentially take the case to trial. Thus, it is more likely that "going rates" and general plea uniformity exist regardless of whether the defense attorney is retained or appointed.

The Role of the Prosecutor

Understanding the importance of the prosecutor's role during plea bargaining is key to understanding the impact that a defense attorney may have on the defendant's final sentence. While the focus of this dissertation is defense type, understanding prosecutorial discretion and its relationship on sentencing and pleas is crucial to recognizing the extent to which a defense attorney may affect sentencing outcomes. Defense attorney ability, for example, can impact conviction certainty, which will greatly impact a prosecutor's decision to make concessions during the plea-bargaining process. The prosecutor-defense attorney relationship is a critical aspect of the plea negotiation, as both parties (along with the defendant) must agree to the terms. For example, a bad relationship with the prosecutor, or the lack of any relationship at all, may have a negative impact on plea negotiations.

Increased Prosecutorial Power

The prosecutor-defense attorney negotiation process has grown even more important as determinate sentencing schemes, like those found in Kansas, have shifted power at sentencing from judge to prosecutor. Over the last fifty years, the prosecutor's power in sentencing has grown exponentially (Simon, 2007). Amongst courtroom actors in the US criminal justice

system, prosecutors operate with the most discretion, while wielding the most power over the final sentencing outcome in a criminal proceeding (Frost, 1999; Reiss, 1974; Simon, 2007). Thus, it is critical to this dissertation's analysis to understand the prosecutor's role in the plea-bargaining process.

The prosecutor is involved throughout the entire criminal proceeding, (i.e., from initial arrest to final sentencing), arriving on the scene before a defense attorney is even aware of charges. Thus, prosecutors are intricately involved in the initial charging process. The initial charge, without a charge amendment/reduction during the plea-bargaining process, predetermines an offender's punishment under a determinate sentencing scheme, like the sentences set out in the Kansas Sentencing Guidelines. A prosecutor has the immense power to control a person's life and liberty by determining whether an offender goes to prison, whether they will have to be part of an offender registry, and whether an offender's criminal history will negatively impact future economic and social opportunities for the rest of their lives (Simon, 2007). This power begins at charging. Once a defendant is charged, the prosecutor must make a formal amendment to the charging document before any of the original charges can be reduced or modified.

Not only do prosecutors function as the chief charging authority, but they are also in control of the plea-bargaining process (Eisenstein & Jacob, 1978), which once again, will determine an offender's final sentence. A prosecutor does not have to plea-bargain. They can do so for any number of reasons, from avoiding a trial to deciding that an offender deserves a lesser charge/punishment. There is no legal reason (unless new evidence is introduced that necessitates amending current charges, which is not truly a plea bargain, but is in fact legally required) that requires a prosecutor to make a plea-bargain. Thus, a defense attorney's ability to advocate for

their client is on tantamount importance. In contrast to judges, whose sentencing decisions are often subject to public scrutiny, prosecutors retain relative anonymity during the charging and plea-bargaining process in nearly all but the highest profile of cases (Johnson, 2014). This is despite the fact that the prosecutor's initial charging and eventual plea decisions will have the greatest impact on an offender's sentence.

As alluded to above, the prosecutor controls a multitude of key decision-making outcomes during criminal proceedings. These decisions begin immediately after the offender is arrested by law enforcement. From the outset, the prosecutor determines whether an offender is formally charged with a crime (Gershman, 2010). This power also extends to charge declination. Despite an offender's arrest, a prosecutor's decision to decline charges allows an offender to avoid punishment without a determination of guilt (Gershman, 2010). Likewise, the prosecutor is also in control of post-charge plea negotiations with defense attorneys. Prosecutors determine whether charges are reduced, dropped, or if new charges will be pursued (Gershman, 2010). During the plea-bargaining process, it is the prosecutor that determines what concessions they will offer a defendant in exchange for the defendant's guilty plea.

Prosecutorial discretion is extended to more than just simple guilty pleas, as their discretion also includes whether to pursue specific enhancement penalties that may accompany a plea of guilty. For example, in most jurisdictions, the prosecutor determines whether they will ask for mandatory minimum sentences (Bjerk, 2005; Kautt & DeLone, 2006; Ulmer, Kurlychek, & Kramer, 2007), as well as whether they will seek three-strike sentencing penalties that include mandatory prison time (Crawford et al., 1998; Ulmer et al., 2007).

At both the state and federal level, prosecutors heavily influence which case specific facts are used against a defendant when determining conduct at sentencing (Wilmott & Spohn, 1995).

Additionally, prosecutors control whether a defendant will receive a sentencing discount by way of cooperating with other government investigations through their testimony in other criminal cases (Hartley et al., 2007; Johnson et al., 2008; Spohn & Fornango, 2009). For example, a defendant may offer witness testimony in another criminal matter in exchange for a reduced sentence or a reduced charge. This power also extends to decisions on bail. Defendant cooperation can lead to both sentencing discounts, as well as the higher likelihood of pretrial release, which has been demonstrated to positively impact sentencing outcomes for offenders (Johnson et al., 2010; Mustard, 2001).

Despite the immense sentencing power prosecutors possess, there are few external review mechanisms regulating prosecutor's plea-bargaining decisions (Feely, 1992; Free, 2002; Griffin, 2001; Kingsnorth, MacIntosh, & Sutherland, 2002; Mather, 1979). Johnson (2014) described the charging discretion of prosecutors as "largely unfettered, falling outside the purview of both public scrutiny and judicial review" (Johnson, 2014, p. 10). Frase (2000) argued that the discretion given to prosecutors creates "enormous sentencing power" because there are no mechanisms in place to review their decisions regarding initial charges, nor is there any mechanism to review what charge modifications occur during the plea-bargaining process (Frase, 2000, p. 440).

While many prosecutorial jurisdictions have formal plea-bargaining policies, these are generally in-house rules, with little-to-no review from outside agencies (Johnson, 2014). The lack of review only increases the decision-making power of prosecutors, as there is no system of checks and balances or legal recourse in place to challenge their decisions. For example, a prosecutor's plea-bargaining decisions occur off the record with defense attorneys and are not subject to appellate review. Thus, without case notes that address specific decisions, it is

difficult to discern exactly why particular charges were dropped or added before sentencing, and why certain sentencing concessions were made in exchange for a plea of guilty. Therefore, it is possible that certain defense attorneys have a greater impact on prosecutor decision making. For example, a retained attorney with a vast array of resources may influence a prosecutor's decision to avoid losing at trial. In a study of New York City defense counsel, this time examining domestic violence cases, Kutateladze & Leimberg (2019) found that cases handled by private attorneys were "markedly less likely" to receive incarceration compared to defendants with appointed counsel. These results were exacerbated post-arraignment, as charges for defendants with private attorneys were more likely to be reduced compared to defendants with appointed counsel (Kutateladze & Leimberg, 2019). Thus, the closer a case got to trial, the better the results for defendants with retained counsel.

It is also important to note that because prosecutors have an enormous amount of discretion, it is possible implicit bias, in the form racial, ethnic, or gender bias, from the prosecutor may have disparate impacts on sentencing and pleas. This is addressed in more detail in subsequent sections of this dissertation.

As noted above, the sentencing reforms that have occurred over the last several decades have shifted a significant amount of power to prosecutors (Miethe, 1987; Coffee & Tonry, 1983; Alschuler, 1978). As a result of determinate sentencing schemes, the power at sentencing merely shifted, as opposed to reducing individual court room actor discretion. Instead of the power resting with the bench, as it did under indeterminate sentencing schemes, it instead moved upstream to the prosecutor (Spohn & Fornango, 2009). This shift became known as "hydraulic displacement" or the "zero-sum" discretion thesis (Johnson, 2014; Miethe, 1987). This thesis argues that constricting the discretionary power of one courtroom actor will merely result in an

increase in discretionary power for other actors (Miethe, 1987). Thus, for determinant sentencing schemes, the decreased discretion of judges resulted in an increase of discretionary power for prosecutors.

Previous scholarship has critiqued the determinate sentencing movement's ineffectiveness at reducing potential disparity at sentencing. For example, Alschuler (1978) commented that fixed and presumptive sentencing schemes were unlikely to reduce disparity if the power of the prosecutor remained unchecked. Likewise, Miethe (1987) argued that the hydraulic shift thesis is so well-accepted that it is not a question of whether it occurs, but instead is assumed that it exists across all jurisdictions. Empirical support is mixed, however, as Miethe (1987) found little evidence in a pre-and-post guideline examination that prosecutorial discretion has increased under determinate sentencing guidelines in Minnesota. (See also: Woolredge & Griffin, 2005), while others have found increased discretion post-guideline implementation (Cohen & Tonry, 1983; Johnson, 2014; USSC, 2011).

Previous scholarship does, however, demonstrate that prosecutors' decision to reduce charges prior to sentencing does significantly impact plea bargained sentencing outcomes. For example, at the federal level O'Neill, Shermer, & Johnson (2007) found that offenders who obtained charge reductions received prison terms that were nearly 20 percent shorter than those who did not, as the charge reduction moved the offenders into different cells within the sentencing guidelines. In an examination of charge reductions in North Carolina, Wright & Engen (2006) found that prosecutors would regularly utilize their discretion to reduce charge severity and those charge reductions substantially impacted final sentencing outcomes. They argued that the examination of such discretion is even more relevant to the analysis of current sentencing outcomes due to the increased role of prosecutorial, as opposed to judicial, discretion

(Wright & Engen, 2006). As alluded to above, because the prosecutor has no requirement to plea bargain, one can glean that defense attorneys significantly impact this process. Thus, analysis of defense attorney impact on sentencing will make a significant contribution to the sentencing field.

Despite the shift in discretionary power, prior scholarship has noted the lack of empirical examination into prosecutorial discretion in comparison to judicial discretion (Clare & Winter, 2018; Engen, 2008; Hester, 2017). However, one of the key problems is that previous examinations of prosecutorial discretionary power are focused on punishment outcomes, as opposed to the potential for punishment manipulation (Johnson, 2014). For example, two separate works from the same authors, Nagel & Schulhofer (1992) and Schulhofer & Nagel (1997) found that federal sentencing outcomes are characterized by guideline circumvention. While the authors acknowledge that prosecutorial circumvention of the guidelines does not appear to radically change the sentence likely pronounced by the judge, it did inevitably remove said sentencing decisions from the judge (Nagel & Schulhofer, 1992). They also note that there was circumvention variation by district (Nagel & Schulhofer, 1992), which lends support to courts as communities theory, where courts develop "going-rates" that heavily influence the plea-bargaining process (Eisenstein & Jacob, 1978).

Several researchers have noted the importance of continued examination into the impact that prosecutorial discretion has on sentencing outcomes (Johnson, 2014; McDonald, 1979; Ulmer, 2011). Ulmer (2011) even concluded that the biggest gap in the study of criminal punishment is the understanding of prosecutorial discretion. Despite the emphasis from leading sentencing scholars regarding the need for further analysis of prosecutorial discretion, there is a dearth of research that examines what, if any, impact the defense attorney plays in the

prosecutorial decision-making process. An important aspect to understanding a prosecutor's decision-making process is recognizing and examining whether opposing counsel impacts their decision-making process. Courtroom workgroup dynamics are essential to understanding just how important defense attorney type is to the plea negotiation process and eventual final sentencing outcomes for offenders, making this dissertation extremely relevant.

Coupled with the use of discretion when crafting a plea bargain, there is also evidence suggesting prosecutors are more likely to pursue charges on cases they believe to be strong (Albonetti, 1987; Eisenstein, 1978; Steffensmeier, Ulmer, & Kramer, 1998). For example, cases that include more serious offenses (Mather, 1979), include better evidence of guilt (Albonetti, 1987) and are comprised of more blameworthy defendants (Spohn & Holleran, 2001) are more likely to be fully prosecuted and result in harsher sentencing outcomes (Forst, 1999).

In addition to case-level factors, demographic factors have been shown to influence prosecutorial decision-making. A plethora of sentencing studies have examined the impact of both racial and sexual bias on sentencing outcomes. Even though the empirical evidence is mixed, many previous studies have found that extralegal characteristics of both the offender and the victim significantly impact prosecutorial discretion (LaFree, 1980; Kutateladze, Andilorio, & Johnson, 2016; Paternoster & Brame, 2008; Spohn & Spears, 1986; Spohn et al., 1987). This research, however, has produced a pattern of sorts. One of the most important aspects that influence prosecutorial decision-making is *still* the likelihood of conviction. Thus, specific case characteristics influence whether a prosecutor believes they can obtain a conviction, and in-turn, influences how cases are processed and negotiated (Albonetti, 1986, 1987; Frohmann, 1997; Mather, 1979; Nagel & Hagen, 1983; Spohn & Holleran, 2001; Steffensmeier, Ulmer, & Kramer, 1998).

Some of the earliest work on prosecutorial decision-making began with the initial decision of whether to file charges. Albonetti (1987), for example, analyzed over 6000 felony cases from the Superior Court of Washington, D.C. In her determination of whether a prosecutor files charges in a case, she determined that certainty of conviction was of utmost importance (Albonetti, 1987). Thus, if individual case-level facts affected whether there would be a conviction, prosecutors were far less likely to file charges. Likewise, prosecutors would be more willing to negotiate during the plea-bargaining process if they believed that a conviction under the initial charges was uncertain (Albonetti, 1987). In a later study, Albonetti (1992), used data from 400 burglary and robbery cases in Jacksonville, FL, to analyze prosecutors' decisions to reduce charges from felonies to misdemeanors. In this instance, she found that prosecutors weigh factors such as the severity level of the charges and the offender's criminal background when deciding to reduce charge severity (Albonetti, 1992). Within her analysis, she also explained that the level of harm that a particular charge caused heavily impacted the decision-making process. Thus, combining Abonetti's (1987, 1992) analyses, prosecutors become focally concerned with certainty of conviction, as well as the level of harm done to society/victim and the public's perception of what punishment is appropriate for that particular case.

Frohman (1997) also examined prosecutor decision-making. Using ethnographic data from over 40 sexual assault cases in a western metropolitan city, Frohmann (1997) found prosecutors construct "discordant locales" using case specific demographic information. "Discordant locales" are areas of disadvantage within a particular community. She found that victims from "discordant locales" were less likely to see their cases pursued and more likely to see their cases rejected for charging, under the guise that it is harder to obtain convictions when the victims hail from traditionally disadvantaged communities (Frohmann, 1997). Thus,

conviction certainty was used to justify their decisions. Results found that prosecutors used factors such as race, class, and gender in their decision-making processes, which worked to reproduce stereotypes in case processing (Frohmann, 1997).

Kingsnorth & MacIntosh (2007) also found that case level demographics were significant factors for charging cases, however, they examined cases that involved intimate partner violence, as opposed to sexual assault. In their study, victim injuries produced more negative sentencing outcomes for males than they did for females, whereas marriage and employment increased the likelihood of filing charges against males. For both males and females, employment reduced the likelihood of felony charges and actually increased the likelihood that charges against females would be dropped altogether (Kingsnorth & MacIntosh, 2007). Once again, prosecutors made decisions based upon perceived conviction certainty and the jury's potential positive or negative perception of the defendant at trial.

Several other studies have analyzed the prosecutor's decision to file charges. Schmidt & Steury (1989), for example, found that past and current behavior of the defendant impacted the prosecutor's decision to file domestic violence charges. Spears & Spohn (1997), conversely, found the victim characteristics were significant in decisions to file charges in sexual assault cases. When prosecutors believed that victim characteristics were potentially going to hinder their certainty of winning at trial, they were less likely to file charges (Spears & Spohn, 1997). Spohn & Holleran (2001) also found that questions about a victim's character in sexual assault cases influenced prosecutor decision-making, especially in acquaintance rape cases, perpetuating stereotypes of "real rapes" and "genuine victims" (Spohn & Holleran, 2001).

Numerous studies have also evaluated the prosecutor's decision to reduce charges, as well as offer sentencing departures. Wright & Engen (2006), for example, evaluated over 11,000

felony cases from North Carolina. They found that prosecutor's decision to reduce charges were more likely when charges were the most severe, as there is more room to maneuver downwards, as opposed to moving downward from charges that already have a lower starting point (Wright & Engen, 2006). Supporting Wright & Engen's (2006) findings, O'Neill, Shermer, & Johnson (2010) found that charge reductions at the federal level were also more likely to occur in cases with higher severity level charges. Hartley, Spohn, & Madden (2007) in an analysis of crack- and powder-cocaine offenses at the federal level found that crack offenses were less likely to receive substantial assistance departures from prosecutors at sentencing. Their findings indicate that the odds of receiving a departure were lower for non-citizen, black, and Hispanic offenders (Hartley, Madden, & Spohn, 2007). Meanwhile, Johnson, Ulmer, & Kramer (2008) analyzed departure cases at the federal level and found that prosecutor decisions were influenced by jurisdiction-level organizational contexts. Those include factors such as caseload pressure and the environmental conditions of the jurisdiction (Johnson, Ulmer, & Kramer, 2008). Thus, offenders were more likely to receive departures if the prosecutor handling their case felt pressure to get cases off their desk.

Demographic Characteristics and Sentences

Because it is nearly impossible to separate demographics from sentencing literature, the previous section did address several demographic findings within broader sentencing issues related to prosecutorial power and discretion. This section, however, provides a direct discussion of studies that produced findings of demographic biases related to sentencing outcomes. An examination of demographic characteristics and their potential impacts on sentencing outcomes is vital to this dissertation. Because appointed attorneys represent indigent defendants, and racial/ethnic minorities and female defendants are more likely to be indigent, an analysis of basic

demographics will potentially indicate whether attorney types can negatively impact sentencing outcomes for minority and female defendants.

Sentencing outcomes and the plea-bargaining process is a well-developed area of criminological literature, and within that field of study there are numerous studies that have examined the relationship between various defendant demographic variables. The analysis of demographic variables is important to determining whether sentencing outcomes for certain groups of people are negatively impacted. For example, are black defendants more likely to receive a prison sentence compared to similarly situated white defendants? This is also important when examining the impact of attorney types on sentencing, as it is crucial to determine whether certain groups are receiving less effective legal assistance.

While the analysis of purely demographic variables does not explain every reason for outcome discrepancy, it does provide a snapshot of who is receiving disparate sentences via plea bargains. Identifying who is receiving negative sentencing outcomes can provide a starting point for future analyses that goes beyond mere demographics and begins to examine why said demographic variables are significant. Thus, this section examines studies related to demographic sentencing discrepancies in more detail than the discussion in the previous section.

Gender

Over the last several decades there has been a significant increase in female criminal justice involvement and female incarceration (The Sentencing Project, 2020). Additionally, over 60 percent of incarcerated females have a child under 18 (The Sentencing Project, 2020). Thus, the sentencing process for female offenders can create a plethora of potential social problems related to general child welfare in addition to the numerous other issues that come with incarceration and supervision. It is also important to note that across the U.S., females of color

are more negatively impacted by the sentencing process, as black females are 1.7 times more likely to be incarcerated than white females, while Hispanic females are 1.3 times more likely to be incarcerated (The Sentencing Project, 2020). This is coupled with the fact that female defendants are more likely to be indigent and need appointed counsel. In FY 2022, only 10 percent of female defendants in Kansas had the benefit of retained counsel compared to nearly 17 percent of male defendants (KSSC, 2022).

These female sentencing discrepancies have occurred despite the reduction of extralegal disparities being a primary goal of sentencing reforms over the last several decades (Kim, Wang, & Cheon, 2019). While the major reform efforts have focused on more equal treatment of race and ethnicity at sentencing, gender has received different type of treatment, to which some scholars have referred to as a "unique problem" (Blumstein, Cohen, Martin, & Tonry, 1983; Kim, et al., 2019). In the name of equality, women are now facing more severe punishment outcomes than they received prior to sentencing reform efforts, such as punishments equal to their similarly situated male counterparts (Daly & Tonry, 1997). Under determinate sentencing schemes, such as the federal system and Kansas, sentencing guidelines do not separate males and females into separate grids. Both groups face punishments based upon their criminal history and crime severity level, regardless of sex.

Numerous scholars, however, have examined the moderating effects that demographics and present circumstances, both social and economic, have on sentencing outcomes. These include the type of crime (see Koons-Witt, Sevigny, Burrow, & Hester, 2014; Rodriguez, Curry, & Lee, 2006) race (see Hester & Hartman, 2017; Johnson, 2014; Koons-Witt, et al., 2014; Ulmer, Painter-Davis, & Tinik, 2016; Ward, Hartley, & Tillyer, 2016), criminal history (see Tillyer, Hartley, & Ward, 2015), and family circumstance (see Daly, 1987a, 1989; Freiburger,

2010; Logue, 2011; Pierce & Freiburger, 2011). This line of scholarship has led to numerous studies finding that female defendants receive preferential treatment at sentencing when compared to their similarly situated male counterparts (see Doerner, 2012; Doerner & Demuth, 2010, 2014; Griffin & Woolredge, 2006; Koons-Witt, 2002; Rodriguez, et al., 2006; Spohn & Beichner, 2000; Steffensmeier & Demuth, 2006).

Despite the breadth of research that has narrowly examined sentencing outcomes, some scholars have argued for the need for the examination of broader socio-political contexts that are specific to female offenders (Daly & Bordt, 1995; Helms & Jacobs, 2002; Kruttschnitt & Green, 1984). Researchers have argued that previous literature has not addressed these broader issues because the theories used to explain gender disparity in sentencing emphasize gender stereotypes that can differ across different ecological contexts (Kim, et al., 2019). Additionally, while recent studies have determined that social contexts can impact sentencing outcomes (Ulmer, 2012), few studies have examined social context and its effect on gender disparity (Kim, et al., 2019; but see Helms & Jacobs, 2002: results found that sociopolitical environments within jurisdictions directly impact sentencing outcomes for both women and African Americans, with females receiving a benefit of shorter sentences than males within conservative political jurisdictions).

Traditionally, gender disparities in sentencing have been explained through two different theories: the chivalry hypothesis and the evil woman hypothesis (Griffin & Wooldridge, 2006; Kim, et al., 2019). The chivalry hypothesis asserts that in comparison to their male counterparts, women receive beneficial outcomes at sentencing because of a paternalistic criminal justice system (Anderson, 1976; Curran, 1983). Conversely, the evil woman hypothesis suggests that female offenders are in violation of traditional gender stereotypes, especially those female offenders who commit violent crimes (i.e. masculine crimes or crimes that do not represent

traditional femininity), are treated worse than their similarly situated male counterparts (Farnworth & Horan, 1980; Rache, 1975). Both perspectives are of particular interest for this dissertation, as they could potentially help explain female sentencing outcomes in Kansas, especially when trying to explain differential outcomes within the female population based upon the severity of the crime. Because a female defendant's legal defense may hinge upon perception by the prosecutor, judge, and jury, a defense attorney's effectiveness at rebutting such perceptions may be key to securing a lighter sentence.

Other sentencing theorists have argued that gender disparity is shaped by focal concerns within the local court system (Steffensmeier, Kramer, & Streifel, 1993). For example, judges who sentence female offenders more leniently may view women as less blameworthy and/or less dangerous to the community than male offenders. Daly (1987a, 1989) proposed that focal concerns, like blameworthiness, influence judicial decision making, and that many judges view female offenders as better candidates for probation and rehabilitation. Additionally, the very nature of the crimes committed by females make them less worthy of stiffer penalties than their male counterparts, as female offenders are more likely to commit less violent property crimes. Furthermore, judges will consider female offenders' past victimization into sentencing decisions, as well as the female offender's role within their family unit (Daly, 1987a). While the available quantitative data for this dissertation will be unable to account for family dynamics and victimization history for female offenders, future qualitative works should examine whether judges and prosecutors consider issues related specifically to the female offender, such as whether a female offender is the sole provider for children before they decide to sentence a female offender to prison or probation. That being said, it is incumbent upon the defense

attorney to argue that family dynamics and personal circumstances warrant better plea bargains that include less severe punishment.

This dissertation includes a county level variable that will allow for analysis across jurisdictions. This is key to an analysis of gender because it is possible that treatment of females at sentencing could vary by location. Kim, et al. (2019), for example, examined the role of local courtroom focal concerns and the potential for variation from district to district based upon localized concerns. Through an examination of religiosity and political conservatism, they found that districts defined as more religious and politically conservative tend to sentence women more equal to men, as opposed to jurisdictions with more liberal political views and less church attendance. Helms & Jacobs (2002), however, found the opposite to be true. Thus, future studies may find similarly dissimilar results using other sociopolitical measures, as specific focal concerns will likely differ between areas with different population demographics and different regions of the country. This may be particularly applicable to Kansas, as there are distinctly urban, suburban, and rural counties. Thus, a focal concern for rural Kansas counties may be completely different than those in large urban/suburban counties. For example, large counties with more criminal cases may be less concerned with female criminality not conforming to traditional stereotypes than a small rural county. Likewise, small, rural counties may be more concerned with female criminal behavior as it does not conform to traditional family values prized by more traditional communities. Of course, small town paternalism might also exist in more rural areas, producing better sentencing outcomes for female offenders via the chivalry hypothesis (Anderson, 1976; Curran, 1983). Therefore, this dissertation examines sentencing outcomes for female offenders across counties to determine whether population demographics

impact female sentencing outcomes, and whether the particular type of defense attorney handling the case within those different jurisdictions makes a significant impact.

The sociopolitical beliefs of a particular jurisdiction may not be the only potential reason for jurisdictional differences in the treatment of female offenders. Applying the courts as communities perspective, it is possible for particular courtroom workgroups to emphasize particular aspects of crimes differently. For example, female drug use may be punished more severely in one district while property crimes are treated more leniently. Conversely, one district over, the opposite might be true. Thus, disparate sentencing outcomes may exist based upon the focal concerns within the courtroom workgroup, which are completely separate from the political or social views of the populace within the district. Therefore, an examination of female sentencing outcomes across districts is the first step towards explaining bias towards females at sentencing.

Race and Ethnicity

The potential for racial and ethnic bias at sentencing are important to examine, but most studies only identify the existence of bias (Mitchell, 2005). They fail to identify or explain "why" the disparate treatment is occurring (Hagen & Bumiller, 1983; Mitchell, 2005). This next section reviews relevant literature regarding the existence of racial and ethnic bias at sentencing, however, this dissertation hopes to add to the "why" question by examining the impact of attorney type on sentencing outcomes, a variable that has been generally ignored by the literature despite its' potential to explain sentencing outcomes across socioeconomic classes. The difference between a retained and appointed attorney generally comes down to finances. This is a particularly important variable within the discussion of racial and ethnic bias at sentencing, as minorities in America are more likely to be impoverished than their white counterparts. Thus, an

examination of attorney type provides a lens for examining whether financial status has any significant impact on plea bargained sentencing outcomes.

As noted above, prior studies have specifically addressed the existence of racial disparities prior to trial. Race has been studied extensively throughout sentencing literature but the findings have been mixed. Numerous studies have found that race is a significant predictor of disparate sentencing outcomes for defendants. For example, studies have found that black defendants are at a disadvantage at sentencing compared to their white counterparts (Crow & Kuselman, 2009; Johnson, 2014; Kutateladze & Andiloro, 2014; Mitchell, 2005;). This has been studied across a number of different outcome measures, including charge severity (Martin, 2014; Woolredge, et. al., 2015), sentence length (Feldmeyer & Ulmer, 2011; Freiburger & Sheeran, 2020), and sentence disposition (Demuth & Steffensmeier, 2004; Kutateladze, 2018; Steffensmeier & Demuth, 2006). There are also studies, however, that have found that race has no significant impact on sentencing outcomes, or is conditioned by other factors, such as criminal history (Franklin & Henry, 2020). Thus, it is important to determine whether the race of the defendant impacts sentencing outcomes depending upon what type of defense counsel they may have.

Shermer & Johnson (2010) found that racial minorities were not at a disadvantage regarding plea bargained charge reductions. In fact, they found that Latino defendants were 20 percent more likely to have charge reductions for drug related crimes compared to other racial groups. Additionally, Latinos without legal status were more likely to receive plea bargains containing reduced sentences than Latinos with legal status (Shermer & Johnson, 2010). Conversely, Rehavi & Starr (2014) found that there were sentencing discrepancies across racial and ethnic groups at the federal level.

Kutateladze, Andiloro, & Johnson (2016) examined discrepancy surrounding marijuana offenses in New York City. While researchers found that Black and Hispanic defendants were more likely to have their cases dismissed compared to similarly situated white defendants, they did find that Black and Hispanic defendants were more likely to receive plea bargains that included incarceration (Kutateladze et al., 2016). When controlling for case level factors, such as the strength of the evidence and potential for witness cooperation, these disparities were greatly reduced (Kutateladze et al., 2016). Despite controlling for case level factors, Black defendants were still more likely to receive plea offers that included jail time (Kutateladze et al., 2016).

Legally Relevant Case Characteristics

Legal characteristics also play a role in shaping charging and sentencing outcomes. Research demonstrates that victim characteristics and evidentiary strength influence a prosecutor's decisions to charge and plea bargain cases (Spohn et al., 2001). This includes the level of victim cooperation (Spohn et al., 2001). Kutateladze et al. (2015) found that prosecutors are less likely to make defendant-friendly plea bargains when there is strong physical evidence linking the defendant to the alleged crime.

Research also demonstrates that charges are manipulated during plea negotiations to avoid harsher sanctions against defendants in particular cases. Prosecutors may decide to reduce charges or agree to a sentencing departure for defendants they believe can be rehabilitated or will be a low risk to the community upon release (Albonetti, 1987; Steffensmeier, Ulmer, & Kramer, 1998). However, because these decisions are left to the prosecutor's discretion, it is possible that preferential treatment is given to certain types of offenders based upon extralegal factors. This

type of discretion may actually increase the likelihood of continued disparity between certain types of offenders during plea negotiation (Nagel & Schulhofer, 1992).

Theoretical Context

To provide context to this study's hypotheses and outcomes, this dissertation details the courts as communities perspective (Eisenstein & Jacob, 1977; Dixon, 1995), as well as the closely related inhabited institutions perspective (Ulmer, 2019). Specifically, these perspectives help us make sense of the day-to-day interactions between prosecutors, judges, and defense attorneys that influence plea-bargained sentencing outcomes within jurisdictions, which is the crux of this dissertation's analysis.

In addition to courts as communities and inhabited institutions, this study also incorporates concepts from the focal concerns and causal attribution perspectives (Steffensmeier et al., 1998), as the focal concerns of individual jurisdictions and individual courtroom actors, especially prosecutors, likely impact the entire plea-bargaining process and eventual sentencing outcome for each individual case (Lynch, 2019). Combined, these theoretical approaches provide context to the results of the quantitative aspect of this dissertation.

Courts as Communities

The United States criminal justice system is a localized structure. In fact, most case processing occurs at the state and county level (Eisenstein & Jacob, 1977; Hester, 2017; Nardulli & Eisenstein, 1991). The courts as communities framework examines members of the courtroom organization, such as judges, prosecutors, and defense attorneys. The courts as communities perspective explains how individual court communities develop localized legal cultures that exhibit geographic variation in punishment outcomes, plea-bargaining practices and negotiation, as well as charging practices (Hester, 2017). This perspective was developed by

Eisenstein, Flemming, & Nardulli (1988) with the goal of examining the impact of individual courtroom actors, courtroom organizational contexts, and outside environmental characteristics on sentencing outcomes. Local district courts, for example, are policy arenas that create different norms and outcomes across different court jurisdictions that directly impact sentencing outcomes (Hester, 2017; Ulmer & Kramer, 1996).

The courts as communities perspective asserts that individual courtroom actors (judges, prosecutors, and defense attorneys) work together and interdependently to process cases through the court system, directly impacting the final sentencing outcome (Eisenstein & Jacob, 1977; Eisenstein, Flemming, & Nardulli, 1988). This collaborative process is impacted by a number of factors, including workgroup attitudes, as well as workgroup stability, similarity, and intergroup familiarity (Eisenstein, Flemming, & Nardulli, 1988; Hester, 2017; Ulmer, 1997). The organizational structure of the workgroup also impacts and exerts influence over the entire plea-bargaining process. For example, there can be district-level variation in individual prosecutorial style, judicial approach, or defense attorney familiarity with both the judge and the prosecutors in a particular jurisdiction. Furthermore, there are outside environmental factors that influence workgroup behavior, such as jurisdictional political leanings, social beliefs, and socioeconomic standing (Eisenstein & Jacob, 1977; Eisenstein, Flemming, & Nardulli, 1988). This can be especially important for jurisdictions where members of the courtroom workgroup are elected officials, as opposed to appointed or at-will employees (Hester, 2017; Nardulli, Eisenstein, & Flemming, 1988; Ulmer & Johnson, 2004). For instance, elected prosecutors in politically conservative jurisdictions may feel pressure to prosecute certain types of crime that politically liberal jurisdictions give little attention, such as marijuana possession. These outside political

pressures can impact charging policies and plea negotiations between the prosecutor and defense attorney.

From a theoretical perspective, courts as communities theory does not specifically predict this dissertation's outcomes. It does, however, explain why this dissertation expects to find disparate quantitative sentencing outcomes across jurisdictions that result from different courtroom work groups. Thus, this framework provides important context for framing this dissertation's results.

Inhabited Institutions

While the courts as communities perspective has been routinely applied to sentencing research for decades, Ulmer (2019) expanded upon courts as communities, and began examining sentencing outcomes through the lens of inhabited institutions. The inhabited institutions perspective builds upon the work of organizational sociologists. Ulmer argues that court systems are organizational fields (Ulmer, 2019). Thus, an important question for legal scholars examining sentencing outcomes through an inhabited institutions framework, is what factors influence the degree of organizational similarity or isomorphism (Morrill & McKee, 1993; Ulmer, 2019) in relation to the final disposition in a criminal proceeding. For this dissertation, this concept is applied by examining the composition of courtroom actors influencing sentencing outcomes. Each jurisdiction is comprised of different courtroom actors. However, within each jurisdiction, courtroom actors are often the same individuals, therefore, an informal organization within the jurisdiction is formed. The informal organization is then influenced by isomorphism, or the sentencing outcomes are determined because of the degree isomorphism or conformity that was among with informal organization. Three different types of isomorphism exist: coercive, normative, and mimetic (DiMaggio & Powell, 1983; Ulmer, 2019). Coercive isomorphism

involves forced compliance within an organization, while normative isomorphism produces conformity through institutional norms and perceived legitimacy, and mimetic isomorphism achieves conformity through shared cultural beliefs (Ulmer, 2019).

Prior to the inhabited institutions perspective (Ulmer, 2019), Scott (2008) presented similar concepts and argued there are three different influences that produce field conformity in organizations. First, regulative (or coercive) involves the pressure to conform through formal costs and benefits. Second, normative conformity is produced through fieldwide informal obligations, expectations, and morals. Lastly, cultural-cognitive (or mimetic) conformity is achieved through shared meanings and rationalities (Scott, 2008; Weick, 1995).

Based on the inhabited institutions perspective and the work of Scott (2008), it can be argued each different type of conformity exists within the courtroom workgroup and helps to further explain the plea-bargaining process. Depending upon the context of the organizational field, different levels and types of conformity exist. This results in localized adaptation and selective circumvention of formal control mechanisms (Ulmer, 2019). This is especially important for a complete understanding of the plea-bargaining process. Different levels of conformity can explain whether workgroups are willing to circumvent sentencing guidelines through creative sentencing recommendations or adhere to strict legal processes that refuse to stray from legislatively proscribed punishment outcomes. For Kansas, this may manifest itself differently from county to county, as some jurisdictions may adhere strictly to the Kansas Sentencing Guidelines, rarely offering a departure sentence, regardless of its potential impact of the outcome of the case. Conversely, other jurisdictions may regularly stray from the guidelines by using departure sentences to resolve cases.

Focal Concerns/Causal Attribution

While courts as communities theory provides the context for understanding the results of this dissertation, prior literature has demonstrated that the decision-making process of the courtroom workgroup, especially for prosecutors and judges, is heavily influenced by factors best addressed through focal concerns/causal attribution theory (Lynch, 2019). Causal attribution argues that prosecutors and judges make their decisions based upon how to best avoid the uncertainty of a conviction (Albonetti, 1986, 1987; Steffensmeier et al., 1998). Thus, convictability is of utmost importance (Steffensmeier et al., 1998). Prior research, however, has also demonstrated that there is a discrepancy between punishment decisions for white defendants, compared to both black and Hispanic defendants (Albonetti, 1987; Johnson, King, & Spohn, 2016; Kutateladze, 2017). This is both important and relevant to this dissertation, as both black and Hispanic citizens experience poverty at higher rates than their white counterparts. Additionally, despite controlling for extralegal factors (Johnson, 2014; Kutateladze, 2017) extralegal discrepancies exist concerning both charge dismissals and charge reductions (Johnson, 2014; Shermer & Johnson, 2010; Ulmer, 2012; Wolfe, Pyrooz, & Spohn, 2011). Understanding whether convictability is heavily valued within a jurisdiction provides important context to the courtroom workgroup dynamic and the plea negotiations and subsequent sentencing outcomes that occur within a particular jurisdiction.

Similarly, focal concerns theory asserts that prosecutors and other courtroom actors make decisions based upon the need to reduce uncertainty in potential outcomes (Albonetti, 1986, 1987). Focal concerns' holds that courtroom decision makers, (i.e. judges and prosecutors), make their decisions by considering three different aspects of the potential result: blameworthiness, the safety to the community, and the organizational constraints associated with a particular punishment decision (Steffensmeier et al., 1998). Likewise, prosecutors are

concerned with whether a case is worthy of going to trial, and whether a conviction at trial is likely (Albonetti, 1986, 1987; Frohmann, 1997). Prosecutors are often evaluated by their trial and conviction record, which may be used as a positive or negative aspect of a potential reelection campaign. Thus, effective punishment decisions may have long term professional effects for prosecutors. Because plea bargaining and charging decisions are crucial to accomplishing these goals, it is important for researchers to consider this process from start to finish, while evaluating the political and jurisdictional influences that effect their decisions. Focal concerns within jurisdictions help provide context to the plea negotiation process that occur within courtroom workgroups.

Chapter 3 - Methods

Introduction

This dissertation's primary objective is to examine whether defense attorney type has a significant impact on plea-bargained sentencing outcomes. This is accomplished through logistic regression analysis of multiple demographic and case specific variables established through prior research to determine whether indigent defendants receive the same level of criminal defense as those defendants with retained counsel, as measured through several case level sentencing outcomes.

As part of the analysis, this dissertation assesses numerous demographic variables, such as race, ethnicity, and gender to determine whether defense counsel type specifically impacts specific groups in negative ways. This is accomplished through a quantitative analysis of sentencing outcome data obtained from the Kansas Sentencing Commission. This analysis is necessary to fully grasp the impact that a defense attorney has on a defendant's final sentencing outcome that occurs via a plea-bargain.

Because plea-bargains are negotiated between a prosecutor and the defense attorney, it is possible that a prosecutor is more willing to negotiate with certain types of defense attorneys based upon working relationships and perceptions of legal ability. For example, is the regular working relationship that a prosecutor has with the public defender more likely to produce better plea bargains and sentencing outcomes? Are retained attorneys more likely to negotiate better plea bargains because of resources, both real and perceived? Thus, via an examination of final plea-bargained sentencing outcomes, this dissertation's analysis examines defense counsel's impact on the plea-bargaining process.

This chapter presents the dissertation's methodology, including research questions, key design features, study variables, methods used to address missing data concerns, and a description of the analytic methods. It should be noted, prior to any analysis, all study procedures will be approved through the Kansas State University's Institutional Review Board.

Research Questions

To achieve the dissertation's objectives, three primary research questions are being posed. The following section lists the research questions and their associated hypothesis and null hypothesis. Additionally, information is presented regarding the data source to be used to answer each question. Given that this analysis is interested in the role of defense attorney type in the sentencing process, this analysis is guided by three research questions:

> RQ_1: Does defense attorney type impact the final sentence disposition (prison/probation) a defendant receives as part of a plea bargain?
>
> RQ_2: Does defense attorney type impact whether a defendant receives a downward sentencing departure as part of a plea bargain?
>
> RQ_3: Does defense attorney type impact whether a defendant with multiple counts receives a consecutive sentence as part of a plea bargain?

These research questions are subsequently restated into the following testable hypotheses:

> H_1: Defendants with court appointed defense attorneys are less likely to receive a final sentence disposition of probation than similarly situated defendants with a retained defense attorney.
>
> H_2: Defendants with court appointed defense attorneys are less likely to receive a downward sentencing departure than similarly situated defendants with a retained defense attorney.
>
> H_3: Defendants with court appointed defense attorneys are more likely to serve consecutive sentences than similarly situated defendants with retained defense attorneys.

Sample and Data Collection

This dissertation will utilize felony sentencing outcome data from 2015 through 2019 gathered from the Kansas Sentencing Commission (KSSC). This is a five-year period that stops short of the COVID-19 pandemic, where plea bargains became increasingly lenient for many defendants based upon public health and safety, as opposed to case level factors (KSSC, 2021; 2022). Additionally, the laws governing punishment during that period remained stable and no significant changes to the Kansas Sentencing Guidelines occurred during that period (KSSC, 2020).

The data from the KSSC is comprised of data collected from felony sentencing information. In addition to data specific to attorney type, this database also includes data regarding the crime of conviction, sentence length, sentence disposition (prison or probation), criminal history, bail status, as well as numerous other case specific and demographic variables. This information comes to the KSSC from every county in Kansas after a felony journal entry from the district court is filed with the county clerk's office. The KSSC felony journal entry database goes back to 1993, when the Kansas Sentencing Guidelines were established. Over the last nearly thirty years, the database has grown to over 700 variables, ranging from basic personal information to complex special sentencing rules.

Data is entered into the KSSC felony journal entry database by a team of data entry specialists. After these specialists receive journal entries from the clerk's office, the information is entered in an SPSS database that is managed and cleaned by a senior research analyst to make sure the data is accurate. The KSSC receives between 12,000 and 15,000 journal entries every year. Data entry specialists are trained to ensure that the data within each journal entry is accurate and complete.

The dependent variable for research question one is sentence disposition (prison vs probation); the dependent variable for research question two is whether the defendant received a departure sentence (downward dispositional or downward durational); and the dependent variable for research question three is whether the offenders with multiple convictions serve their sentence concurrently or consecutively (concurrent or consecutive).

Study Variables

This dissertation seeks to address whether there are quantitatively different plea-bargained sentencing outcomes based upon a defendants' defense counsel type (i.e., retained or appointed). As indicated previously, sentencing outcomes are being measured by three dependent variables, disposition (i.e., probation or prison), departure (i.e., was the defendant given a sentence based on the guidelines or were they given a departure sentence), and whether a sentence for multiple convictions was concurrent or consecutive. These variables were selected for their ability to demonstrate whether a defendant received a bargain at sentencing, or if they were given a sentence with no apparent sentencing benefit. One dataset limitation is its' inability to indicate whether a defendant received a charge bargain. This dataset limitation is not a unique limitation as nearly all sentencing scholars agree there is an extremely limited number of datasets that collect information on charge reductions that occur prior to sentencing (Ulmer, 2017). A charge bargain occurs prior to sentencing and is generally part of the plea-bargaining process that occurs off the record. Unfortunately, this dataset will be unable to measure the impact that defense attorney type has on charge bargaining during plea negotiations.

For each research question, the primary independent variable is attorney type. In addition to attorney type, numerous variables are included in the statistical models as control variables or

co-variates. Table 3.1 contains information pertaining to the independent variables, as well as the control variables, co-variates, and their measurement type (i.e., continuous or categorical).

Table 3.1

Independent variables, control variables, and measurement type.

Variable Name	Measurement Type
Age	Continuous; age in years
Sex	Categorical; dummy coded; 0 = male, 1 = female
Race	Categorical; dummy coded; 0 = White, 1 = Non-White
Ethnicity	Categorical; dummy coded; 0 = Non-Hispanic, 1 = Hispanic
Citizenship	Categorical; dummy coded; 0 = US, 1 = Non-Citizen
Criminal History	Continuous; Nine categories
Offense Severity Level	Continuous; Eleven categories
Drug/Nondrug Crime	Categorical; dummy coded; 0 = Nondrug, 1 = Drug
County/Jurisdiction P.D. Office	Categorical; dummy coded; 0 = No P.D. office, 1= P.D. office in county
County Size	Categorical; dummy coded 0 = non-urban, 1 = urban
Bail	Categorical; dummy coded; 0 = in-custody, 1 = on bail
Concurrent/Consecutive	Categorical; dummy coded; 0 = concurrent, 1 = consecutive
Defense Attorney Type	Categorical; dummy coded; 0 = Court Appointed 1 = Retained

As indicated in Table 3.1, the following variables serve as control variables or co-variates: age, sex, race, ethnicity, citizenship, criminal history, offense severity level,

county/jurisdiction public defender office, county size, and bail status. Each of these variables have been specifically identified for inclusion as they have been established by previous sentencing literature as important variables that can potentially influence sentencing outcomes and are discussed at length later in this chapter.

Dependent Variables. The following discussion addresses the three dependent variables for the three research questions laid out above. There are several variables that are important to this dissertation's analysis and eventual conclusions regarding whether defense attorney type has a significant impact on plea-bargained felony sentencing outcomes in Kansas. These include case disposition (prison or probation), departure sentence (departure from the sentencing guidelines), and concurrent or consecutive sentence (whether offenders with multiple convictions serve their sentence concurrently or consecutively).

Disposition. Perhaps the most obvious variable to include in the analysis is case disposition, i.e., whether the defendant receives probation or must serve a prison sentence. While obvious, and still an important variable to include, Kansas is a sentencing guideline state. Therefore, case disposition is already determined by statute and is controlled for by crime severity level and the defendant's criminal history. A more critical variable to this analysis, as well as to future discussions regarding the effectiveness of defense counsel, is whether a defendant receives a departure sentence. A departure sentence bypasses the sentencing guidelines and imposes a sentence that can differ in disposition, length, or both. Agreed upon downward departures are quite normal in the plea-bargaining process and are regularly used as a method for resolving felony cases and avoiding jury trials. Thus, whether a defense attorney can negotiate a departure sentence for their client is a direct measure of their effectiveness during the plea-bargaining process.

Departure. As stated previously, a departure means that an offender received a departure from the statutorily proscribed sentencing guidelines. There are two types of departure sentences. First, a durational departure refers to a departure in the duration of time an offender will serve incarcerated. For example, if a guideline sentence prescribes a 24-month term of incarceration, a durational departure may include a six-month reduction to 18 months. There is also a dispositional departure. A dispositional departure changes the disposition, generally downward, from prison to probation. Upward departures are rare and are generally part of a plea agreement where an offender agrees to serve a short period in prison to avoid a potentially longer period on probation only to be revoked and sent to prison at a later date.

Concurrent or Consecutive. The third dependent variable is whether offenders with multiple charges serve their sentences concurrently or consecutively. The analysis for this variable utilizes a trimmed dataset that includes only cases with multiple counts. Case disposition will have no impact upon whether a case is included or excluded. An offender that receives probation as a disposition may have a very long underlying consecutive sentence that was the result of numerous convictions on that case. Previous analysis of felony defendants in Kansas reveals that roughly fifty percent of felony offenders will have their probation revoked in some fashion prior to completing the required probation period (KSSC, 2019). Thus, a probationer with a consecutive sentence may serve more time in prison than an offender originally sentenced to prison concurrently or on a single charge. Based upon personal experience, as well as on conversations with numerous current and former prosecutors, granting an offender probation with a long underlying consecutive sentence is common practice for multiple reasons. First, the case is resolved, and a guilty plea is entered. Second, prosecutors are keenly aware that certain offenders are unlikely to be successful on probation and the probation

sentence will quickly turn into a prison sentence, and a prison sentence that is likely longer than what the offender would have received had they just agreed to serve their sentence in prison**.**

Independent Variable. The goal of this dissertation is to determine whether defense attorney type impacts sentencing outcomes in plea bargained cases. Hence, as alluded to previously, the main independent variable for this dissertation is defense attorney type. For this dataset, defense attorney type can either be appointed or retained, and is therefore a categorical variable (0= appointed, 1= retained). Eighty-four percent of the dataset is represented by appointed counsel. The defense attorney type variable is included in every case analyzed and is not missing at any point in the dataset**.**

The legal tactics described in the previous paragraphs are supported by both focal concerns and courts as communities perspectives (Eisenstein & Jacob, 1977; Hester, 2017; Ulmer, 2017). Both prosecutor and defense attorney can be happy with the plea-bargained outcome. The prosecutor knows that a long sentence awaits an offender if they step out-of-line, assuring the safety of the community, while clearing a case from a large caseload. If the offender is successful on probation, the sentencing decision was good. If the probationer is unsuccessful, heavy-handed justice awaits. Alternatively, the defense attorney can hang their hat on securing their client probation and freedom from incarceration, as well as the potential for positive reviews and future clients facing similar charges. If their client is unsuccessful on probation, the defense attorney can shift fault to the offender as the defense attorney cannot act as a babysitter post-conviction to ensure the offender follows terms and conditions of probation.

Because this is a common practice by both prosecutors and defense attorneys during the plea-bargaining process, these results have the potential to shed light on a major problem within the criminal justice system in Kansas. Additionally, due to the overrepresentation of minority

defendants in Kansas, especially Black defendants (just over 20 percent of felony defendants in Kansas are Black, while the overall Black population in Kansas is between 6-8 percent), there is the potential for sentencing outcomes that are significantly harsher for minority defendants "down the line" as initial probation sentences are likely to turn into prison sentences after their probation is revoked.

It should be noted that sentence length is not analyzed in this dissertation. Sentence length is measured in months and establishes the amount of time an offender will (or may, if they are granted probation) serve in prison. Previous scholarship has found that this variable is heavily influenced by case specific variables, such as criminal history and crime severity. Because Kansas has predetermined sentencing guidelines, sentence length does not provide the context necessary to draw impactful conclusions regarding defense counsel's impact on sentencing outcomes. Without data on charge bargaining (which this dataset does not have), guideline sentences will provide no evidence of defense counsels' positive or negative impact on sentencing outcomes and is therefore unnecessary to analyze.

Control Variables. In addition to the main independent variable and dependent variables discussed in the previous pages, this dissertation's analysis will also include numerous control variables that previous sentencing literature has discussed at length. These control variables will provide context as to whether the previously discussed dependent variables (disposition, departures, and concurrent v. consecutive) affect, and to what extent they affect, sentencing outcomes. The following paragraphs explain the importance of including each separate control variable.

Age. The Kansas Sentencing Commission database utilized for this dissertation includes exact birthdates for all defendants at the time of sentencing and is thus a continuous variable.

Numerous theoretical works in criminology have postulated that criminal behavior and age are correlated (Blonigen, 2010; Gottfredson & Hirschi, 1990). As an offender gets older, they will "age out" of criminal activity because of offenders' increased self-control and responsibility associated with traditional adulthood (Gottfredson & Hirschi, 1990; Massoglia & Uggen. 2010). For this dissertation, it is important to determine whether a defendant's age impacts their potential defense and plea-bargaining power, as well as whether particular age groups are at a disadvantage regardless of defense counsel type. Therefore, examining whether age has an impact on sentencing outcomes via the plea-bargaining process in Kansas will be valuable to the entire criminological field.

Age may impact the plea-bargaining process in two possible ways. Outcomes may be less severe for younger offenders, especially those in their teens, as the justice system may view young offenders as prime candidates for rehabilitation and will therefore seek to avoid incarceration. Conversely, age may negatively impact sentencing outcomes and the plea-bargaining process as younger offenders may be viewed as more likely to reoffend and a greater risk to the community if allowed to serve their sentence on probation. For example, Doerner & Demuth (2010) found that younger offenders were more likely to receive harsher sentences than their older counterparts. This was especially true when age was combined with gender, race, and ethnicity, as young minority males were most likely to receive the stiffest penalties (Doerner & Demuth, 2010).

Sex. Sex is measured as a dichotomous variable, zero (0) for males and one (1) for females. Gender identity will not be included in this analysis, as Kansas currently recognizes only a defendant's birth assigned sex and incarcerates defendants based upon that designation. The examination of sex is of great consequence to the analysis of sentencing outcomes. The

sentencing literature has generally demonstrated that females are sentenced more leniently than their similarly situated male counterparts (Blackwell, et al., 2008; Bontrager, et al., 2015; Doerner, et al., 2014; Goulette, et al., 2015; Koons-Witt, et al., 2014). This is especially true for white female offenders, as they have been shown to receive better sentencing outcomes than their minority female counterparts (Goulette, et al., 2015; Kramer & Wang, 2019). Therefore, it will be imperative to determine whether female offenders in Kansas are disparately sentenced and whether those sentences are more lenient than male offenders, as has been found in numerous other studies (Blackwell, et al., 2008; Bontrager, et al, 2015; Goulette, et al., 2015; Kramer & Wang, 2019), or whether Kansas is an outlier in its sentencing of female offenders. Specific to this study, will be the determination of whether female offenders are receiving the same level of legal representation as their male counterparts. While it is likely, based upon the literature, that female offenders in Kansas will receive less severe plea-bargained sentences than males, it is necessary to determine whether there are any statistically significant differences within the female population based upon their defense attorney's status as appointed or retained.

As an additional layer of analysis for female offenders, it is imperative to examine whether significant sentencing differences for women exist across racial and ethnic lines. For example, numerous studies have found that minority women do not receive the same level of benefit as their white female counterparts at sentencing (Brennan & Spohn, 2009; Crow & Knuselman, 2009). Therefore, it is important to establish whether Kansas sees similar disparate outcomes for minority women after controlling for crime severity and criminal history.

Race and Ethnicity. Race is measured as a dichotomous variable, zero (0) white and one (1) as nonwhite. Despite the possibility of Asian, Native American, or other races included in the KSSC database, over ninety-five percent of non-white felony offenders in Kansas are Black.

Thus, use of a dichotomous variable for race is appropriate. Ethnicity is measured as a dichotomous variable, zero (0) non-Hispanic and one (1) as Hispanic. The KSSC database does not include any other ethnicities within the dataset.

The impact of an offender's race and ethnicity has received mixed results as some studies have found that race is a significant factor in sentencing outcomes. For example, Feldmeyer & Ulmer (2011) found that Black defendants received moderately longer sentences than their white counterparts. The same study, however, found that Hispanic offenders received sentences like white offenders (Feldmeyer & Ulmer, 2011). Numerous other studies have found that race is a significant predictor of disparate sentencing outcomes for defendants (Doerner & Demuth, 2010; Spohn, 2015; Woolredge, et al., 2015). This has been studied across many different outcome measures, including charge severity, sentence length, and sentence disposition. Additionally, scholars have used jurisdictional analysis to determine whether racial/ethnic bias is present based upon district level demographics (Blalock, 1967; Duxbury, 2021; Feldmeyer & Ulmer, 2011), which this dissertation also analyzes.

Citizenship. Citizenship is measured as dichotomous variable, zero (0) for citizen and one (1) for non-citizen. While the KSSC database does include the country of origin for non-citizens, over ninety percent of non-citizens come from Mexico and other Central American countries. As expected, nearly 100 percent of non-citizens from Mexico and Central America are identified as Hispanic. Prior sentencing literature has identified an offender's citizenship as a significant predictor of disparate sentencing outcomes (Koo, Feldmeyer, & Holmes, 2022; Light, Massoglia, & King, 2014; Wolfe, Pyrooz, & Spohn, 2011). Under federal law, felony defendants without legal status are subject to deportation upon conviction. Thus, it is possible that those defendants without legal status could receive beneficial plea bargains, regardless of

defense attorney type, because they will likely be deported. Consequently, the eventual deportation is treated as a de facto prison sentence, as prosecutors may be able to justify more beneficial pleas because the defendant will still be removed from the community.

Citizenship, or lack thereof, is very closely related to ethnicity in Kansas. While the KSSC database includes the country of origin for offenders who lack citizenship, most offenders without citizenship are Hispanic and are citizens of Mexico or another Central American country (KSSC Felony Sentencing Database). Therefore, examining whether citizenship has an impact on sentencing outcomes may provide additional support to the ethnic threat hypothesis (Blalock, 1967). From a legal standpoint, however, the lack of citizenship complicates the felony sentencing process, as most felonies still trigger deportation for non-citizens (8 U.S.C. 1227). Thus, results must be scrutinized as to whether the potential of a looming deportation significantly impacts sentencing outcomes. A prosecutor, for example, may be willing to provide a significant departure if they know the offender is likely to be deported post-conviction. Building upon focal concerns, a prosecutor may not want to use local resources to incarcerate an offender when they know the offender will soon be deported.

Criminal history. Criminal history is a continuous variable. Criminal history in Kansas ranges from A-I, with A being the most severe and I being the least severe. Criminal history is coded from 1-9, ranging from 1 being the most severe (criminal history A) and 9 being the least severe (criminal history I). All offenders in Kansas have a criminal history score, ranging from I (lowest, 1 misdemeanor or less) to A (highest, 3 person felonies or more). An offender's criminal history score directly impacts an offender's potential sentence under the Kansas sentencing guidelines. A higher criminal history score provides for longer sentences and the higher likelihood of going to prison. Thus, there is a potential for a high correlation between

criminal history and disposition. Therefore, departures are still important to examine, as defense counsel type may have a significant impact on whether a defendant receives a departure sentence when their criminal history score provides for a longer sentence.

Offense Severity Level. Offense severity level is a continuous variable. Offense severity in Kansas ranges from 1-10, with 1 being the most severe and 10 being the least severe. There are also off-grid felonies, which are the most severe and include certain murders and sex crimes. Offense severity is coded from 1-11. Grid felonies range from 1 being the most severe (severity level 1) and 10 being the least severe (severity level 10). Offense severity, like criminal history, is impacted by the Kansas Sentencing Guidelines. The more severe the offense, the more likely an offender is to go to prison and more likely an offender is to have a longer sentence. After completing multicollinearity tests, however, criminal history and offense severity level were not highly correlated. Therefore, it will be necessary to determine whether defense attorney type has a significant impact on departure sentences and concurrent or consecutive sentences as offense severity increases.

In Kansas, the sentencing guidelines are the starting point of every plea negotiation that occurs after initial charging. If not for a plea bargain, an offender would know their exact sentence based exclusively upon the severity level of the crime of which they have been charged and their criminal history score. And like criminal history, offense severity is likely to significantly impact sentencing outcomes due to the predetermined nature of the guidelines. It is possible, however, that other control variables may have a mitigating effect that offense severity has on sentencing outcomes.

Drug/Nondrug Crime. Drug crime is a dichotomous variable and is coded as zero (0) nondrug and one (1) drug. Whether a defendant is convicted of a drug crime is a necessary

control variable for any analysis of sentencing outcomes under the Kansas Sentencing Guidelines. Penalties for drug crimes in Kansas, as well as the federal system, are quite punishing in comparison to nonperson crimes on the nondrug grid. Thus, the plea-bargaining process is critical for offenders seeking to avoid potentially harsh sentence outcomes. Therefore, defense attorney type's impact on sentencing outcomes may also be affected by whether an offender is charged with a drug or nondrug crime.

County Public Defender Office. County public defender office is a dichotomous variable and is coded as zero (0) for no public defender office and one (1) for county has a public defender office. District court jurisdiction is central to this dissertation's analysis, as prosecutors from different jurisdictions may have varying relationships with different types of defense counsel. In Kansas, for example, not every district court jurisdiction has a public defender office. Prior research has demonstrated that regular interaction between courtroom actors has an impact on sentencing outcomes (Eisenstein & Jacob, 1977). This can create plea bargained "going rates" for particular types of crime. Regular interaction with public defenders may also create going rates for other types of counsel, including court appointed private counsel and retained counsel. Therefore, controlling for whether a district court jurisdiction has a public defender office may reveal significantly disparate sentencing outcomes for similarly situated offenders across jurisdictions.

County Size by Population Density. County size by population density is a categorial variable and is measured as zero (0) = non-urban (includes counties defined as frontier, rural, and densely settled rural) and (1) = urban (counties defined as both urban and suburban). It may be possible that urban v. non-urban counties will produce different sentencing outcomes across racial and ethnic lines. As such, using definitions provided by the University of Kansas' Institute

for Policy and Social Research (2020), this dissertation's analysis also includes county population density variables as control variables. Including control variables, such as county population density, in this dissertation's analysis provides greater depth to the overarching goal of the study, i.e., determining whether different defense counsel types impact sentencing outcomes, as certain counties have distinct methods for appointing counsel, counsel across jurisdictions have varying rates of racial and ethnic representation, and the jurisdictional development of different going-rates for plea bargains based upon courts as communities theory (Eisenstein & Jacob, 1977).

Building upon whether there is bias against a particular minority group on a statewide level, it is also important to consider whether bias exists at a more local level. In Kansas, there are only six urban counties (Kansas Institute for Policy and Social Research, 2020). In fact, most Kansas counties would be defined as Frontier counties, or counties that have a population density under six people per square mile and are overwhelmingly comprised of white residents (U.S. Census Bureau, 2020). Thus, including the county population density as a control variable helps this analysis determine whether county population density significantly impacts plea-bargained sentencing outcomes. If this dissertation's analysis demonstrates that counties with particular density types are imposing harsher sentences against particular groups of offenders, then additional analysis may be needed to determine whether there is any support for the racial/ethnic threat hypothesis based upon the demographic make-up and size of the counties in question.

Bail Status. Bail status is a dichotomous variable and is measured as zero (0) = not in custody at time of sentencing and one (1) = in-custody at time of sentencing. Bail status is often directly correlated with a defendant's financial circumstances. Defendants with the inability to meet the financial requirements necessary to post bond are also likely to be unable to retain their

own legal counsel. The inability to post bond has been previously demonstrated to negatively impact final sentencing outcomes. Defendants who lack the ability to meet regularly with their attorneys are less prepared for potential trials and may also be more willing to take guilty pleas that include their release from incarceration (Menefee, 2018; Sacks & Ackerman, 2012, 2014; Stevenson, 2018; Williams, 2017).

The KSSC database cannot distinguish whether defendants were required to pay a bond amount or were released on recognizance, nor does it record how early in the proceedings bond was made or granted. The database only records whether the defendant was out of custody at the time of sentencing. Thus, there is a potential limitation to the bond variable within the dataset, but the data still provides valuable insight into whether release at any period prior to sentencing has a positive impact on final sentencing outcomes.

Missing Data/Data Limitations

Felony journal entries in Kansas include a variable that distinguishes whether a defendant had appointed or retained counsel. This variable does not include whether appointed counsel was a public defender or court appointed private counsel. Not every county in Kansas, however, utilizes the public defender, and is therefore solely using the services of court appointed private attorneys. Thus, this study accounts for the existence of a public defender office within a county by including a yes/no variable for counties that have a public defender office. This method is supported by relevant sentencing theory and literature. Courts as communities theory asserts that working in close proximity with regular courtroom actors leads to more predictable, highly localized working environments, such as "going-rates" for pleas (Eisenstein & Jacob, 1977). Therefore, this study examines whether the mere existence of a public defender within a county has a jurisdiction wide impact on plea bargained outcomes for all types of defense counsel.

Additionally, one can assume that because the state must fund the cost of expert witnesses, additional testing, and crime scene reconstruction for both public defenders and court appointed private counsel, the funds for trial preparation will be equally limited between public defenders and court appointed private counsel. The cost assumption cannot be made of retained counsel, as retained counsel can charge their client for additional experts, ballistics testing, medical testing, crime scene reconstruction, etc. If a defendant can afford it, retained counsel can utilize expensive testing and experts in the presentation of their defense. Appointed counsel does not have that luxury.

Another limitation in the data is the inability to control for or provide any measure of charge bargaining as part of the plea-bargaining process. The data provides information regarding the final sentence. The data does not, however, provide any data on whether the charge pled to at sentencing was the original charge at case initiation. For example, a plea to simple robbery, a severity level 5, person crime, with a probation sentence, may not tell the whole story of the plea negotiation process. Did the defense attorney negotiate their way out of a higher severity level crime, such as Aggravated Robbery, a severity level 3, person crime with a presumptive prison sentence under the sentencing guidelines, regardless of criminal history? Or did the defense attorney have their client merely plead guilty as charged? This is an important aspect of the plea-bargaining process that cannot be measured by the current dataset but would be very illuminating in a future qualitative analysis of defense attorney effectiveness during plea negotiation.

Additionally, there is no data regarding the strength of the case for the prosecution. A sweetheart plea deal for a case with bad facts for the prosecutor may have nothing to do with the abilities of the defense attorney or the potential for a defense attorney to bring in experts or file

endless motions that muddy the legal waters. The case just might be difficult to prove to a jury. Thus, case facts determine the negotiation more than the defense attorney.

There is also no measure of whether the victims in a particular case experienced an unusual amount of harm compared to other victims of the same crime. While the data does provide black and white data regarding the sentence imposed, it does not provide input of whether the plea provided a good resolution for the victims. Focal concerns theory emphasizes that prosecutors are concerned with the safety of the community when they are making decisions (Albonetti, 1987; Steffensmeier, Ulmer, & Kramer, 1998). Thus, a prosecutor or judge may be less likely to grant a sentencing departure when there is an unusual amount of harm to the victim and the defendant is more likely to commit another crime if not incarcerated. This dataset provides no context as to the extent of harm caused to the victim, whether the community is safer due to a defendant's prison sentence, or whether there is a risk the defendant will be more or less likely to offend than they were prior to conviction.

Power Analysis/Solutions

Due to the size of the sample, analysis must consider the issue of being overpowered. The sample data is broken down by fiscal year. Each fiscal year of data will include over 12,000 felony defendants. Thus, five years of analysis will include over 60,000 separate case id's. As a result, it is entirely possible that modeled relationships will always be statistically significant, even if they do not have appreciable impacts on outcome measures. To address this potential concern, the analysis will deemphasize the statistical significance in the presentation of results. Because of the size of the sample, it would be more surprising if a measured relationship were *not* statistically significant. Thus, the analysis will focus more on model fit statistics, such as R-squared and pseudo R-squared, to determine whether particular variables are explaining a

reasonable amount of variation within the model. Standardized coefficients were generated for individual predictors using statistical analysis software for both linear and logistic regression models. Then a comparison of the relative magnitude of effect among the predictors was made. If a particular variable is important, it will have a greater impact on outcome variables than others. Inversely, variables with little impact on outcomes are also important to the analysis as they be of less concern to policymakers in the future.

Analytic Method

The dissertation analyzes the impact of attorney type on the three types of sentencing outcomes using three binary logistic regression models for the categorical dependent variables: sentence disposition, whether a departure sentence was imposed, and whether a sentence is concurrent or consecutive. These analyses were selected for several reasons. First, regression analysis is commonly used in sentencing literature to determine whether there are significant differences in outcomes (Franklin, 2013; Rodriguez, Curry, & Lee, 2006; Steffensmeier & Demuth, 2000). Additionally, regression analysis allows a researcher to identify which variables impact a particular outcome (Rosenthal, 2017). Performing a regression allows a researcher to determine which factors or variables matter most in determining a potential impact, which factors can be ignored due to lack of impact, and how these factors influence each other (Rosenthal, 2017). Specifically, logistic regression obtains an odds ratio in the presence of more than one explanatory variable (Sperandei, 2014). Multiple linear regression is like logistic regression, with the exception that the response variable is binomial. The main advantage of logistic regression is that it avoids confounding effects by analyzing the association of all variables together (Sperandei, 2014).

Conclusion

Using both logistic and linear regression analyses, this dissertation examined whether defense attorney type has a significant impact on plea bargained sentencing outcomes. The quantitative analysis included numerous independent variables that are both legally relevant from a practical standpoint and are also recognized by the literature as important social variables that need additional examination. This dissertation makes a significant contribution to the sentencing literature, as well as addresses a current gap in sentencing scholarship by determining whether a defendant's attorney significantly impacts their final sentence. Because attorney type is determined by a defendant's economic circumstances, this dissertation also makes a substantial contribution to sociological research. For instance, as outlined in the results section, research question two reveals that defendants from lower socioeconomic backgrounds received legal defense of empirically lower quality compared to their counterparts from higher social strata, as evidenced by plea-bargained sentencing outcomes. Furthermore, research question three indicates that non-white defendants were more prone to receiving consecutive sentences compared to similarly situated white defendants, leading to longer and more punitive sentencing outcomes. Likewise, research question one also produced significant findings across multiple variables. These results are presented and discussed at length in the following two chapters.

Chapter 4 - Results

The goal of this dissertation is to determine whether defense counsel type has an impact on plea-bargained sentences across three different potential sentencing outcomes: disposition (prison v. probation), a granted departure motion, and whether multiple counts are run consecutively. These three outcomes avoid the commonly studied sentence length variable which is almost entirely correlated with the predetermined sentencing matrix on the Kansas Sentencing Grid.

The following chapter will present the results of the three logistic regression analyses completed to answer the three main research questions discussed in the previous chapter. This will include a discussion brief discussion of descriptive statistics, whether the analysis produced significant results, and the proportion of the variation in the dependent variable that is predictable from each independent variable, or R-squared. Additionally, this chapter will include analysis of multiple interactive independent variables that are both legally and sociologically relevant that help to make up the entire model.

Descriptive Statistics

The original dataset for this dissertation included a total of 57,347 felony defendants in Kansas from fiscal years 2015-2019. County jail sentences, as well as nongrid probation sentences, were not included in the final analysis, as there is no possibility of a prison sentence for nongrid offenses. The following table is a breakdown of the descriptive statistics related to each of the dependent and independent variables included in this study, broken down by dependent variables, demographic variables, and legal variables.

Table 4.1

Dependent Variable Descriptives

Dependent Variables	N (%)
Sentence Disposition	
Probation	35,781 (73.9%)
Prison	12,644 (26.1%)
Departure	
Yes	9,346 (19.3%)
No	38,998 (80.7%)
Concurrent v. Consecutive	
Concurrent	2,733 (12.9%)
Consecutive	18,434 (87.1%)

Table 4.2

Independent Variable Descriptives (Demographic Variables)

Demographic Variables	N (%)
Age (average in years)	33.1 years
Gender	
Male	44,442 (77.5%)
Female	12,905 (22.5%)
Race	
White	44,647 (77.9%)
Non-white	12,700 (22.1%)
Ethnicity	
Non-Hispanic	50,989 (88.9%)
Hispanic	6,358 (11.1%)
Citizenship	
Citizen of U.S.	55,861 (97.4%)
Non-Citizen	1,486 (2.6%)
County Density	
Non-Urban	16,992 (29.6%)
Urban/Suburban	40,355 (70.4%)
Public Defender Office	
Yes	25,057 (43.7%)
No	32,290 (56.3%)

Table 4.3

Independent Variable Descriptives (Legal Variables)

Legal Variables	N (%)
Defense Counsel Type	
Appointed	47,757 (83.3%)
Retained	9,590 (16.7%)
Criminal History	
A	4,752 (8.3%)
B	4,904 (8.6%)
C	7,299 (12.7%)
D	2,915 (5.1%)
E	7,424 (12.9%)
F	3,633 (6.3%)
G	6,321 (11.0%)
H	6,362 (11.1%)
I	10,622 (18.5%)
N/A	3,115 (5.4%)
Severity Level	
1	433 (0.8%)
2	831 (1.5%)
3	2,805 (5.2%)
4	3,238 (6.0%)
5	17,759 (33.0%)
6	2,015 (3.8%)
7	6,856 (12.8%)
8	5,987 (11.1%)
9	12,667 (23.6%)
10	1,201 (2.2%)
Nondrug/Drug Grid	
Drug	36,915 (64.4%)
Nondrug	20,432 (35.6%)
Pre-Trial Status	
In-custody	26,933 (47.0%)
Released	30,414 (53.0%)

The descriptive statistics provide a breakdown of the each of the variables included in the analysis. The first dependent variable, sentence disposition, saw the bulk of defendants receiving probation as opposed to prison (73.9% v. 26.1%). This was expected as bulk of convictions occur on portions of the sentencing grid that fall into the presumptive probation category. Departure sentences made up 19.3 percent of all sentences which is also not unexpected as departures are routinely utilized during the plea bargain process, both for dispositional and durational sentencing purposes, coupled with the fact that this dataset cannot account for charge reductions during the plea-bargaining process that function as a mechanism for lowering statutory penalties. Finally, in cases of multiple convictions, concurrent sentences comprised only 12.9 percent of cases, which was not expected. This signals that plea-bargains that include multiple convictions, most defendants are also receiving longer prison sentences, or longer underlying prison sentences in cases of probation. There are, however, statutory requirements that require some convictions to be run consecutively which will be examined further in the discussion chapter for explanatory purposes.

Regarding demographic variables, most felony defendants in Kansas are white (77.9%) male (77.5%) non-Hispanic (88.9%) citizens (97.4%) living in urban counties (51.3%) without a public defender office (56.3%). These frequencies were expected, but it should be noted that the white population in Kansas is 85 percent (US Census, 2022), meaning that white defendants are underrepresented compared to the population as a whole. Black defendants, meanwhile, comprise only 6-8 percent of the Kansas population, but make up nearly 20 percent of the total felony defendant population. Likewise, males comprise 50.2 percent of the population in Kansas (US Census, 2022) but make up 77.5 percent of felony defendants.

The legal variables, including the study's predictor variable (defense counsel type), produced mostly expected frequencies. Approximately 83 percent of the felony defendant population was represented by appointed counsel, which closely mirrors statistics from other fiscal years in Kansas, as well as other states. The severity level and criminal history breakdowns were also expected. The severity level of crimes was heavily skewed toward odd numbered severity levels, which is a statutory creation, as most felonies committed in Kansas fall into an odd numbered severity level per law (Kan. Stat. Annot., 2023). Additionally, because drug possession is a severity level 5 crime and it is the most frequent felony conviction in Kansas, severity level 5 convictions were the most common of any severity level at 33.0 percent. While the criminal histories of cases analyzed were somewhat evenly distributed across the 9 classes, there were fewer criminal histories that fell into higher, violent categories. A criminal history (three-plus person felonies) and B criminal history (two person felonies) comprised 8.3 percent and 8.6 percent of the population, respectively. The lower, nonviolent categories I (no criminal history) and H (2 or less misdemeanors) made up 18.5 percent and 11.1 percent of the population, respectively.

The drug v. nondrug distinction was expected, but noteworthy. While the drug grid only contained 35.6 percent of the dataset, it should be mentioned that there are less statutory drug offenses, in total, to violate (Kan. Stat. Annot., 2023). Essentially, there are drug possession crimes and drug distribution or manufacturing crimes. Yet this relatively small number of statutory offenses still made up over one-third of all felonies in Kansas over the period of five fiscal years. Finally, in-custody defendants included 47 of the total felony population. This is notable, and unexpected, because 73.9 percent of defendants received probation. Thus, 26.9

percent of defendants receiving probation were required to remain in-custody prior to being released after their sentencing hearing. This will be considered further in the discussion chapter.

Overall Model Fit

Model fit is crucial in regression analysis because it helps assess how well the chosen model represents the underlying relationship between the independent variables (predictors) and the dependent variable (outcome). A well-fitted model should accurately capture the patterns and variability in the data, allowing for reliable predictions and valid interpretations. As mentioned throughout this dissertation, all three research questions utilized logistic regression analysis to test the significance of relevant variables of particular sentencing outcomes. While all three models were statistically significant, the r-squared and pseudo r-squared were used to determine how well the statistical models fit the data. The r-squared, or coefficient of determination, is a statistical measure that determines the proportion of variance in the dependent variable that can be explained by the independent variable (Chicco, D., Warrens, M. J., & Jurman, G., 2021; Wright, 1921). Thus, the R-squared demonstrates the goodness of fit of the regression model (Chicco, D., et. al., 2021). For this dissertation, the main predictor variable is defense counsel type, i.e., appointed or retained for each of the three research questions. Also included are 11 independent variables covering relevant demographics and legal aspects of sentencing outcomes. The logistic regression analysis of the first research question, "does defense attorney type impact the final sentence disposition (prison/probation) a defendant receives as part of a plea bargain?" produced an r-squared of .464 and pseudo r-squared of .337. Therefore, the model addressed a significant amount of variability observed in the defense counsel type variable is explained by the logistic regression model. Likewise, the second research question, "does defense attorney type impact whether a defendant receives a downward sentencing departure as part of a plea

bargain?" also accounted for a reasonable amount of variability with an R-squared of .302 and pseudo r-squared of .225. Conversely, the logistic regression analysis of the third research question, "does defense attorney type impact whether a defendant with multiple counts receives a consecutive sentence as part of a plea bargain?" produced a low R-squared of .018 and pseudo r-squared of .012, signifying the model accounted for only a small amount of variability. Despite the low r-squared for research question three, the model was still significant and produced several interesting significant variables.

Dependent variable analysis

The main goal of this dissertation is to determine whether appointed counsel have the same impact and produces the same outcomes as retained. This was examined using logistic regression analyses to examine three dependent variables: sentence disposition, departure sentences, and concurrent v. consecutive sentences. The following three subsections address the findings from each regression analysis.

In line with numerous studies investigating sentencing outcomes, the primary inquiry of this dissertation focused on assessing the influence of the ultimate sentencing disposition, namely, the choice between incarceration and probation. The analysis of the final sentencing outcome variable in this study yielded several noteworthy findings. See table 4.4:

Table 4.4

Logistic Regression Results – Research Question One (Sentence Disposition)

Variable	b	B	S.E.	Sig.	OR	CI
Retained	.323	1.119	.042	***	1.382	[1.27, 1.50]
Age	.007	1.008	.001	***	1.008	[1.01, 1.01]
Female	-.293	.884	.036	***	.746	[0.70, 0.80]
Non-White	.026	1.011	.032		1.026	[0.96, 1.09]
Hispanic	.068	1.021	.046		1.070	[0.98, 1.17]
Non-Citizen	.480	1.073	.096	***	1.616	[1.34, 1.95]
Criminal History	.367	2.700	.006	***	1.444	[1.43, 1.46]
Severity Level	-.508	.346	.009	***	.602	[0.59, 0.61]
Drug Grid	-1.999	.380	.039	***	.135	[0.13, 0.15]
Public Defender Office	-.514	.773	.030	***	.598	[0.56, 0.63]
Urban/Suburban	-.061	.973	.034		.941	[0.88, 1.01]
In-Custody	-2.046	.360	.031	***	.129	[0.12, 0.14]
Constant	1.816		.080	***	6.145	

r-squared = .464; p = *≤.05; **≤.01; ***≤.001.

Sentence Disposition

This dissertation's first research question addressed whether attorney type impacts the final sentence disposition (prison/probation) a defendant receives as part of a plea bargain. Analysis found that defense attorney type was indeed a significant predictor (OR=1.382, b=1.119, p=.000, 95% CI [1.27-1.50]) of whether a defendant received a prison sentence. With an odds ratio of 1.382, a defendant with a retained attorney was found to be 37.5 percent more likely to receive a prison sentence compared to probation. Likewise, with a standardized coefficient of 1.119, it had the second most strong effect on sentence disposition. This result directly contradicts this dissertation's hypothesis, that retained attorneys would produce a better, i.e., nonprison, outcome. This outcome, and its' possible explanations, will be given greater discussion in the following chapter.

Several demographic variables analyzed yielded significant results. Those included age, sex, race, ethnicity, and citizenship status. Age was a significant predictor of sentence disposition (OR=1.008, b=1.008; p=.000, 95% CI [1.01-1.01]), however, with an odds ratio of 1.008, the likely impact of age on disposition appears to be small. A defendant's sex was also significant (OR=.743, b=.884; p=.000, 95% CI [0.69-0.80]), however, with an odds ratio of .743, females were over 25 percent less likely to receive a prison sentence than were male defendants, which is supported by the literature (Doerner, 2012; Doerner & Demuth, 2010, 2014; Griffin & Woolredge, 2006; Koons-Witt, 2002; Rodriguez, et al., 2006; Spohn & Beichner, 2000; Steffensmeier & Demuth, 2006). Interestingly, neither race nor ethnicity were significant predictors of sentence disposition. This was an unexpected outcome, as numerous scholars have found both race and ethnicity to be significant (Demuth & Steffensmeier, 2004; Kutateladze, 2018; Steffensmeier & Demuth, 2006). Unlike ethnicity, citizenship was significant (OR=1.596, b=1.073, p=.000, 95% CI [1.32-1.93]), and the odds ratio indicated non-citizens were 59 percent more likely to receive a prison sentence. Significant results were anticipated based upon previous sentencing research (Hartley, Madden, & Spohn, 2007; Johnson, Ulmer, & Kramer, 2008). Additional examination of the demographic variables and possible explanations of the results will be explored in depth in the following chapter.

In addition to demographic variables, analysis also included legal variables specific to sentencing outcomes in Kansas. These legal variables comprised criminal history, offense severity level, distinction between drug and nondrug grid felonies, and pretrial custody status. The Kansas Sentencing Grid, determined by an offender's criminal history score and offense severity level, served as the framework for this analysis.

Criminal history yielded a significant result (OR=1.444, b=2.700, p=.000, 95% CI [1.43-1.46]), indicating that higher criminal history scores were associated with a 44.3 percent greater likelihood of being sentenced to prison. Likewise, the standardized coefficient of 2.700 was by far the highest in the model indicating it had the strongest influence on sentence disposition. Similarly, offense severity level showed significance (OR=.602, b=.346, p=.000, 95% CI [.59-.61]), showing a 40.1 percent lower likelihood of being sentenced to prison for less severe offenses. Unlike criminal history, however, a defendant's offense severity level did not have a very strong influence as measured by the standardized coefficient score of .346. The distinction between nondrug and drug grid felonies was also significant (OR=.135, b=.380, p=.000, 95% CI [.13-.15]), revealing a 13.5 percent higher likelihood of being sentenced to prison for nondrug felonies, yet with a relatively low beta weight of .380. Pretrial custody status was likewise significant (OR=.129, b=.360, p=.000, 95% CI [.12-.14]), indicating a 12.9 percent higher likelihood of being sentenced to prison for defendants in custody prior to sentencing. Further discussion on these legal variables' outcomes will be provided in the subsequent chapter.

Additionally, two variables unique to this dissertation were explored: the presence of a public defender office within a county and county population density. The presence of a public defender office within the county was significant (OR=.593, b=.773, p=.000, 95% CI [.56-.63]), suggesting that defendants sentenced in counties with a public defender office were approximately 40 percent less likely to be sentenced to prison. This finding will be elaborated upon in the forthcoming chapter.

County population density was divided into two categories based on density levels, non-urban, which includes frontier, rural, and densely settled rural counties, and semi-urban, as well as urban/suburban which includes urban and suburban counties. For research question one, this

variable was not significant, but as described below, this variable was significant for the remaining two research questions. This result and its' impact on future work will be further explored in the discussion chapter.

Departure Sentence

This dissertation's second research examined whether defense attorney type impacts whether a defendant receives a downward sentencing departure as part of a plea bargain. Table 4.5 includes the results from the regression analysis for research question two.

Table 4.5

Logistic Regression Results – Research Question Two (Departure Sentences)

Variable	b	B	S.E.	Sig.	OR	CI
Appointed	.304	1.112	.039	***	1.352	[1.25, 1.46]
Age	.002	1.023	.001		1.002	[1.00, 1.01]
Female	.054	1.023	.035		1.054	[0.98, 1.13]
Non-White	.086	1.036	.032	*	1.085	[1.02, 1.16]
Hispanic	.174	1.055	.046	***	1.179	[1.08, 1.29]
Non-Citizen	.512	1.078	.103	***	1.660	[1.36, 2.03]
Criminal History	.429	3.189	.006	***	1.536	[1.52, 1.55]
Severity Level	-.585	.296	.009	***	.557	[0.55, 0.57]
Drug Grid	-1.198	.560	.036	***	.302	[0.28, 0.32]
Public Defender Office	-.096	.953	.030	***	.909	[0.86, 0.96]
Urban/Suburban	.274	1.133	.034	***	1.316	[1.23, 1.41]
In-Custody	.349	1.191	.029	***	1.418	[1.34, 1.50]
Constant	-085		.077		.918	

r-squared= .302; p = *≤.05; **≤.01; ***≤.001.

Like the findings of the first research question, analysis revealed that attorney type emerged as a significant predictor (OR=1.352, b=1.112, p=.000, 95% CI [1.25-1.46]). However, the odds ratio of 1.352 for this variable suggests an intriguing outcome: defendants represented by retained attorneys are 35.2 percent more likely to receive a departure sentence, as hypothesized. Additionally, a standardized coefficient of 1.112 demonstrated that attorney type

was the fourth strongest influence on whether a defendant received a departure sentence. This finding is particularly noteworthy. While defendants with appointed attorneys were less likely to receive a prison sentence compared to those with retained attorneys, the results reverse when considering departure sentences, favoring retained attorneys. This result, along with the divergent outcomes observed between appointed and retained attorneys for the second research question, will be thoroughly examined in the ensuing discussion chapter.

As in research question one, demographic variables—age, sex, race, ethnicity, and citizenship status—were included in the analysis of research question two. However, unlike the findings in research question one, age did not emerge as a significant predictor of whether a defendant received a departure sentence. Similarly, the defendant's sex was also found to be nonsignificant. These divergent results compared to those of research question one will be thoroughly explored in the subsequent discussion chapter.

Interestingly, akin to the disparities observed between age and sex across the two research questions, both race (OR=1.085, b=1.036, p=.011, 95% CI [1.02-1.16] and ethnicity (OR=1.179, b=1.055, p=.000, 95% CI [1.08-1.29]) yielded significant results, contrasting the findings of research question one. According to the odds ratios, Black defendants were 8.5% more likely and Hispanic defendants were nearly 18 percent more likely to receive a departure sentence, with 1.036 and 1.055 standardized coefficients, respectively. These results underscore positive sentencing outcomes for minority defendants in Kansas. Similarly, citizenship status remained significant (OR=1.660, b=1.078, p=.000, 95% CI [1.36-2.03]), with a notable odds ratio indicating that non-citizens were 66 percent more likely to receive a departure sentence and a standardized coefficient of 1.078, stronger than both race and ethnicity. Once again, concerning the sentencing outcomes of non-citizens, this finding aligns with expectations and is

corroborated by existing literature (Hartley, Madden, & Spohn, 2007; Johnson, Ulmer, & Kramer, 2008). Further exploration of the demographic variables and potential explanations for these outcomes will be subject to deeper investigation in the following chapter.

Like research question one, research question two also incorporated the same legal variables specific to sentencing outcomes in Kansas. Criminal history was shown to be significant (OR=1.536, b=3.189, p=.000, 95% CI [1.52-1.55]), and an odds ratio demonstrating the expected outcome that higher criminal history scores are 53.6 percent more likely to result in a prison sentence. Like the previous question, with a standardized coefficient of 1.536, criminal history had the strongest influence on whether a defendant received a departure sentence. Similarly, offense severity level was significant (OR=0.557, b=.296, p=.000, 95% CI [0.55-0.57]), with an odds ratio indicating that less severe offense severity levels were 44.3 percent less likely to lead to a prison sentence. The standardized coefficient for severity level, however, was much lower than criminal history at .296. The distinction between nondrug and drug grid variables was also significant (OR=0.302, b=..560, p=.000, 95% CI [0.28-0.32]), with an odds ratio suggesting that nondrug felonies were 30.2 percent more likely to be granted a departure sentence. This result aligns with the structure of the Kansas Sentencing Grid and the prevalence of drug possession convictions on the drug grid. Lastly, pretrial custody status was significant (OR=1.420, b=1.191, p=.000, 95% CI [1.34-1.50]), with an odds ratio indicating that defendants who were not in custody prior to sentencing were 42 percent more likely to receive a sentencing departure, with the second highest standardized coefficient of 1.191. Additional contextualization of the legal variable outcomes will be provided in the discussion chapter.

The two previously unexplored variables unique to this dissertation, namely the presence of a public defender office within a county and county population density, also yielded

significant results. A public defender office within the county was significant (OR=0.907, b=.953, p=.000, 95% CI [0.86-0.96]), with an odds ratio suggesting that defendants sentenced in counties with a public defender office were approximately 9.3 percent less likely to receive a departure sentence. The county population density was significant (OR=1.316, b=1.133, p=.016, 95% CI [1.04-1.52]). With odds ratios of 1.316 defendants were 31.6 percent more likely to be granted a departure sentence. The standardized coefficient score of 1.133, county density had the third strongest effect on whether a defendant received a departure sentence. This outcome will be further explored in the discussion chapter.

Concurrent v. Consecutive Sentencing

This dissertation's third and final research question examined whether defense attorney type impacts if defendants with multiple counts receive a consecutive sentence as part of a plea bargain. Table 4.6 includes complete results from the regression analysis for research question three.

Table 4.6

Logistic Regression Results – Research Question Three (Concurrent/Consecutive)

Variable	b	B	S.E.	Sig.	OR	CI
Appointed	-.014	.996	.069		.986	[0.86, 1.13]
Age	.002	1.024	.002		1.002	[0.99, 1.07]
Female	.027	1.011	.054		1.027	[0.93, 1.14]
Non-White	.171	1.076	.052	***	1.187	[1.07, 1.31]
Hispanic	.179	1.053	.076	*	1.196	[1.03, 1.39]
Non-Citizen	-.597	.940	.181	***	.550	[0.38, 0.79]
Criminal History	-.067	.851	.010	***	.935	[0.92, 0.95]
Severity Level	.063	1.133	.015	***	1.065	[1.03, 1.10]
Drug Grid	.051	1.024	.065		1.052	[0.93, 1.19]
Public Defender Office	-.030	.986	.050		.971	[0.88, 1.07]
Urban/Suburban	.365	1.161	.057	***	1.440	[1.29, 1.61]
In-Custody	-.075	.965	.045		.928	[0.85, 1.02]
Constant	1.163		.147		4.422	

r-squared= .018; Sig.= *≤.05; **≤.01; ***≤.001.

Overall, the results for research question three were less significant and predictive than the previous two. Unlike the preceding regressions, the analysis did not identify attorney type as a significant predictor, thus leading to the inability to reject the null hypothesis for this question. Furthermore, age, sex, the distinction between nondrug and drug grid variables, presence of a public defender office within the county, and in-custody variables did not yield significant results.

Despite the fewer number of significant results, several demographic variables stood out. Specifically, race was found to be significant (OR=1.187, b=1.076, p=.001, 95% CI [1.07-1.31]). According to the odds ratios, non-white defendants were 18.7 percent more likely to have their cases run consecutively, with the third highest beta score of significant variables. Ethnicity was also significant (OR=1.196, b=1.053, p=.05, 95% CI [1.03-1.39]), demonstrating that Hispanic defendants were 19.6 percent more likely to have their cases run consecutively compared to their non-Hispanic counterparts. Citizenship likewise showed significance (OR=0.550, b=.940, p=.001, 95% CI [0.38-0.79]), albeit in the opposite direction, the odds ratio indicated that non-citizens were 45 percent less likely to receive a consecutive sentence. Further exploration of the demographic variables, both significant and non-significant, will be conducted with greater scrutiny in the following chapter.

Like research questions one and two, research question three incorporated the same legal variables specific to sentencing outcomes in Kansas. Criminal history proved to be significant (OR=0.935, b=.851, p=.000, 95% CI [0.92-0.95]), with an odds ratio indicating that higher criminal history scores were 6.5 percent more likely to result in consecutive sentences, albeit slightly less than predicted. It is also noticeable that the standardized coefficient score was much lower than in the previous two questions, demonstrating that criminal history did not have as

strong an effect on whether defendants received a consecutive sentence. Likewise, offense severity level showed significance (OR=1.065, b=1.133, p=.000, 95% CI [1.03-1.10]), with an odds ratio, contrary to expectations, suggesting that less severe offense severity levels were 6.5 percent more likely to result in consecutive sentences. Further contextualization of each legal variable outcome, including those that were not significant, will be provided in the discussion chapter.

Among the two previously unexplored variables unique to this dissertation, the presence of a public defender office within a county did not show significance, while county population density yielded significant results. County population density (OR=1.44, b=1.161, p=.001, 95% CI [1.29-1.61]) indicated that defendants in urban/suburban jurisdictions were much more likely to have their cases run consecutively, with a strong odds ratio and the highest standardized coefficient in the model. Further investigation into this outcome and its potential causes will be conducted in the discussion chapter.

Conclusion

Analysis revealed significant variables across each research question. This dissertation aimed to learn the extent to which attorney type impacts sentencing outcomes across three distinct areas: disposition, granting of departures, and consecutive sentencing. The findings underscore the significance of attorney type as a sentencing variable, often overlooked but deserving of further investigation. Moreover, the results highlight the considerable influence of criminal history on sentencing outcomes, as evidenced by significance tests, odds ratios, and standardized coefficients for all three research questions. There is currently a growing interest in scrutinizing how a defendant's criminal history is constructed and its impact on sentencing. These results will provide additional evidence of its' importance. Given that race and ethnicity

emerged as significant predictors of departures and consecutive sentencing practices, understanding the role of offender demographics and criminal history in sentencing decisions becomes imperative for future research endeavors in sentencing.

Chapter 5 - Discussion

Introduction

This discussion aims to provide context for both significant and insignificant findings by evaluating their alignment with expectations and existing literature. Furthermore, it delves into the implications of these findings for current and future research, their theoretical foundations, and their practical relevance for professionals in the field. This chapter will elucidate why these findings not only enrich the current sentencing literature but also establish a foundation for future studies to expand upon these results. Additionally, it will explore strategies for addressing the limitations of this dissertation in future research endeavors, thereby bolstering the validity and robustness of subsequent investigations.

The Importance of Attorney Type

The primary objective of this dissertation was to assess whether a defendant's attorney type, appointed versus retained, significantly influenced outcomes related to each research question. The field needs the answer to this question because it presents a question of equal justice. If appointed attorneys are unable, or incapable, of achieving the same outcomes for their clients as do retained attorneys, it signals a system that favors those who can afford their own attorney, leaving the poor subjected to worse outcomes.

The first research question aimed to determine whether attorney type served as a significant predictor of a defendant's sentence disposition, which indeed proved to be significant. However, contrary to expectations that retained attorneys would yield better results, the analysis revealed that appointed attorneys were more likely to secure a probation sentence for their clients, even after accounting for preexisting legal variables such as criminal history and offense

severity. This intriguing finding suggests that defendants with appointed counsel may not necessarily be at a disadvantage during sentencing.

While the findings of research question one suggest that appointed attorneys were more likely to achieve favorable outcomes for their clients, the opposite trend emerged in research question two. Analysis of research question two revealed that retained attorneys were more likely to secure departure sentences for their clients. Defendants represented by retained counsel had an increased likelihood of receiving a departure sentence, whether in the form of a durational departure or a dispositional departure. This unexpected discrepancy underscores the complexity of attorney influence on sentencing outcomes and emphasizes the necessity for further exploration of these findings. These discrepant results (research question one's findings versus research question two's finding) highlight the importance of contextualizing cases and offender circumstances.

Research question two's findings raise important questions, such as whether appointed attorneys, due to their familiarity with judges and prosecutors, are less inclined to file departure motions. Further, are time constraints playing a role in appointed attorneys being able to file departure motions? As indicated previously, nearly 85 percent of felony defendants are unable to afford an attorney because they meet minimum poverty thresholds. As such, appointed attorneys could be experiencing capacity issues relating to case load sizes.

While findings from research question one would suggest better outcomes for appointed attorneys, thus alleviating concerns regarding poverty status and quality legal defense, research question two presents the exact opposite scenario. Why are defendants without financial resources receiving significantly worse outcomes regarding departures, compared to similarly situated individuals above the poverty line? This outcome, at face value, does not align with the

principle of justice for all but rather appears to favor those with the financial means to afford it. There are a number of potential explanations. Those include the time an attorney spends on a retained v. appointed case, attorney caseload size, and attorney experience. For example, many criminal defense attorneys began their practice out of law school as public defenders or prosecutors, with high caseloads and general low pay. After they gain experience, many criminal attorneys leave government work for a private practice and the potential for more money. It is possible that retained attorneys are generally more experienced, more motivated to charge a client for extra work on a case, and may not experience the same caseload pressures as some appointed attorneys, especially public defenders.

Other potential explanations exist as well. For instance, Roach (2014) discovered that court-appointed attorneys yield statistically significant inferior outcomes for their clients across various metrics, such as sentence length, charge severity at conviction, and case resolution duration. One particularly intriguing revelation was the influence of external labor markets on sentencing outcomes. Hence, during periods of low job opportunities for attorneys, there was an influx of inexperienced lawyers seeking employment through the court appointment system. Consequently, and consistently observed across jurisdictions, defendants represented by court-appointed counsel experienced significantly worse outcomes compared to similarly situated defendants with public defenders (Roach, 2014).

From a policy perspective, this underscores the necessity for further investigation into whether court-appointed attorneys undergo thorough vetting and possess the requisite skills to handle criminal cases. Additionally, it prompts consideration of whether alternative procedures are necessary to prevent defendants from being at a statistical disadvantage when assigned court-

appointed counsel as opposed to public defenders. Furthermore, it raises the question of whether increased government funding is essential to expand public defender offices statewide.

Lastly, the findings of research question three indicate that attorney type is not a significant factor in determining whether a defendant receives a consecutive or concurrent sentence. This question was posed to address a significant gap in the research examining concurrent versus consecutive sentencing. Consecutive sentences are notably punitive, potentially doubling an offender's sentence, thus making it a crucial aspect of sentencing literature. This finding could be attributed to statutory constructions or constraints requiring certain offenders to serve their sentences consecutively. However, this was not able to be accounted for in the analytic model. Additionally, because this dataset cannot account for charge dismissals, it is possible that attorneys (regardless of type) achieve dismissals for their clients that render a consecutive sentence legally impossible. That result would be highly advantageous for a criminal defendant and would provide an excellent measure for attorney effectiveness. Researchers should investigate this possibility in future research that examines both charge bargaining and/or attorney effectiveness.

To truly understand the implications of attorney type on sentencing outcomes, qualitative research is unavoidable. Large datasets provide rich empirical data, but they cannot explain what occurs during the plea-bargaining process. Charge dismissals, the threat of trial, and the threat of filing endless motions may influence a prosecutor's plea decision but does not show up in a singular datapoint. If criminal attorneys are truly putting more effort into their retained cases via motions, willingness to go to trial, or even general investigation of the case, then there may be a poverty penalty that indigent defendants are paying for based only upon their inability to afford retained counsel.

Demographic Variables

Like previous findings from other studies, analysis of multiple demographic variables were significant. Several variables produced expected findings. For example, female defendants were less likely to receive a prison sentence than males and offenders were more likely to receive a prison sentence as they aged, which justify little treatment within this chapter. Other demographic variables produced mixed, or unexpected results that warrant additional discussion below.

It is important to frame the demographic control variables as part of a broader sentencing picture that encompasses attorney type along with legal variables, which are discussed later in this chapter. As stated throughout the dissertation, attorney type is indicative of economic status. Demographic variables, however, may exacerbate socioeconomic problems, for example, being both poor and black, versus being poor and white. Specific demographics may create an additional layer of issues that impact both social and legal outcomes and are worthy of discussing.

Race and Ethnicity

The discoveries regarding race and ethnicity variables are intriguing when juxtaposed with findings from numerous studies that have scrutinized these same variables. Numerous other studies have identified race as a significant factor in sentencing outcomes (Crow & Kuselman, 2009; Demuth & Steffensmeier, 2004; Feldmeyer & Ulmer, 2011; Freiburger & Sheeran, 2020; Johnson, 2014; Kutateladze & Andiloro, 2014; Kutateladze, 2018; Mitchell, 2005; Martin, 2014; Steffensmeier & Demuth, 2006; Woolredge et al., 2015), along with ethnicity (Kutateladze et al., 2016). This dissertation found that race and ethnicity were significant factors, although not consistently across each research question. The findings of research question one indicated that

race and ethnicity *were not significant* in determining prison versus probation sentencing outcomes. In contrast, research question two's findings revealed that race and ethnicity *were significant* in determining departure sentences. Lastly, the findings of research question three indicated that race *was a significant* predictor variable, but *ethnicity was not.*

For research question one, because race and ethnicity were not significant within the analysis, it does indicate that the Kansas Sentencing Guidelines are functioning as an effective detriment to racial discrimination at sentencing, at least as it pertains to prison v. probation sentences. Meaning, because guidelines based upon legal variables are in place, it leaves little room for outcome bias based upon demographic variables, such as race and ethnicity. A black male, for example, was not significantly more likely to receive a prison sentence than was a similarly situated white male, contradicting prior literature (Crow & Kuselman, 2009; Hartley, Madden, & Spohn, 2007; Johnson, 2014; Kutateladze & Andiloro, 2014; Mitchell, 2005).

In contrast to research question one, which focused on sentence disposition, both race and ethnicity were found to be significant regarding departure sentences. Once again, the findings from research question two regarding race and ethnicity are inconsistent with those of research question one and deviate from prior literature in a noteworthy manner. Specifically, non-White and Hispanic offenders are more likely to receive a departure, which contrasts with existing research expectations. This finding is substantial and warrants further exploration in future projects. Descriptive results highlight a concerning and substantial overrepresentation of minorities, particularly Black males, convicted of felonies. However, findings from research question two suggest that at the sentencing stage, non-White offenders are not significantly disadvantaged when it comes to receiving a departure outcome. Rather, they have a slight increase in probability of receiving a departure sentence. This contradicts the findings from

numerous prior studies which have found negative outcomes for black defendants (Hartley, Madden, & Spohn, 2007; Johnson, Ulmer, & Kramer, 2008; Johnson, 2016), and is frankly, quite noteworthy.

While findings from research questions one and two indicate that race and ethnicity are either not significant in sentencing outcomes or slightly advantageous in departures, the findings of research question three suggest that race (not ethnicity) is significant in determining a consecutive sentence. Sentencing scholarship has consistently revealed negative outcomes for non-white offenders, particularly Black offenders (Crow & Kuselman, 2009; Hartley, Madden, & Spohn, 2007; Johnson, 2014; Kutateladze & Andiloro, 2014; Mitchell, 2005). In Kansas, the non-White population is relatively small, comprising just over ten percent (excluding Hispanic individuals). However, the Black population constitutes between 6-8 percent of the total population, making them the largest racial group within the non-white population (American Indian - 1.2%; Asian – 3.2%). Despite comprising between 6-8 percent of the Kansas population, Black defendants accounted for over 20 percent of offenders sentenced to prison. With this already imbalanced percentage in prison admissions, a consecutive sentence is even more punitive for a population experiencing higher rates of prison admissions than their counterparts from other racial groups.

This finding is supported by prior literature demonstrating Black offenders experience worse sentencing outcomes than White offenders and can be attributed, in part, to historical or systematic racism that has long plagued the U.S. criminal justice system. Additionally, because criminal history was so strongly predictive of sentencing outcomes, it is worth keeping in mind from a practical matter, that a defendant cannot have a consecutive sentence unless there are

multiple convictions. These multiple convictions are yet another indicator of criminal history which the analysis demonstrated powerfully impacts a defendant's final sentence.

Legal Variables

Criminal history scores and offense severity level in Kansas are established by the total number of offenses committed and the level of violence in the previous offenses, as defined by statute. The higher the criminal history score, the more likely a defendant will fall into a presumptive prison category on the Kansas sentencing grid. Thus, it was not unexpected that criminal history score and offense severity level were significant factors across all research questions and behaved in the manner as predicted, where increases in severity level and criminal history resulted in a greater likelihood of a prison sentence and the need for a departure sentence.

Consistent with prior literature, pretrial custody status was significant predictor of both sentence disposition and (Campbell, et al., 2020; Wooldredge, 2012; Williams, 2017; Wooldredge & Goulette, 2015). Defendants were much less likely to get a prison sentence and more likely to receive a departure if out-of-custody before sentencing, which is on par and is confirmatory of prior literature (Campbell, et al., 2020; Wooldredge, 2012; Williams, 2017; Wooldredge & Goulette, 2015). Unlike criminal history and severity level, this variable is statutorily constructed, but dictated a great deal by economic circumstances. These findings underscore the importance that offenders who remain out of custody prior to their sentencing often receive better sentencing outcomes. Offenders with financial means will invariably be more likely to bond out of jail prior to sentencing. This signals that defendants experiencing higher levels of poverty may be disadvantaged at sentencing and receive more negative sentencing outcomes based only upon their economic circumstance. At first glance, this

outcome seems to raise concerns about equal justice and warrants further investigation to safeguard against the unfair penalization of defendants due to their economic status.

Drug/Nondrug Crimes

Kansas classifies felonies into whether they are drug crimes, which include possession, distribution, and manufacturing offenses, and nondrug crimes, which includes all crimes that do not carry a drug distinction. There are two different grids, with different sentencing ranges and severity levels. As such, a variable was included in analysis to determine if the offender had a drug versus non-drug offense. This variable was significant for research questions one and two not, although not significant for research question three.

For research question one, if offenders were on the drug grid, they were much less likely to receive a prison sentence disposition. For research question two, it was found that offenders on the drug grid were less likely to receive a departure sentence. These results were unexpected. The drug grid, when compared in terms of sentence length, is much more punitive than the nondrug grid (refer to appendix I & II). Given the longer sentence lengths, there was an anticipation that more departure sentences would be granted. Additionally, attitudes towards drug possession convictions have become less punitive over the last decade, with many states advocating for rehabilitative and treatment-focused penalties (The Sentencing Project, 2020). Lastly, the drug grid, in contrast to the nondrug grid, has a higher proportion of presumptive prison sentences. This implies that offenders would be more likely to fall into a presumptive prison category and would require a departure sentence to avoid incarceration.

The number of convictions on the drug grid, however, is highly skewed towards drug possession. This means that most drug convictions fall into the presumptive probation category and would not necessitate a departure sentence. All but two grid boxes on the severity levels

covering drug possession on the drug grid fall into the presumptive probation category. The only presumptive prison categories on the drug grid are for those with the most violent history designation, criminal history A and B, who must have at least two person felonies in their history. Conversely, on the nondrug grid there are a number of violent crimes that fall into the presumptive prison category, regardless of criminal history. Several of these presumptive prison crimes are consistently within the top 10 of total felony convictions in Kansas each year (Kansas Sentencing Commission, 2023). Those include offenses like aggravated battery and robbery. Thus, defendants on the nondrug grid are more likely to need a departure sentence, regardless of attorney type. In totality, despite the more punitive drug grid construction, the overwhelming number of drug convictions bias the results. Drug use and possession is an increasingly recognized public health concern and often is thought of as an issue needing addressed in other disciplines, not through the sentencing or courts.

Theoretical Implications

Courts as communities theory, as well as the focal concerns perspective, help provide context for several results from this dissertation's analysis. For example, a potential factor influencing the unexpected finding regarding attorney type and sentence disposition in research question one, could be related to theoretical assumptions within the "Courts as Communities" framework. This framework emphasizes the interconnectedness between courtroom actors, suggesting that appointed attorneys within jurisdictions become integral parts of the inner workings of the justice system. Consequently, relationships may form, and these relationships could potentially serve as a mediator between offenders and their sentence disposition. For instance, if an appointed attorney has established rapport with a prosecutor and/or judge, these connections may inadvertently introduce a bias favoring the defendant represented by the

appointed attorney, thus negating some preexisting notions or concerns that those in poverty (if not able to afford quality legal representation) are at an inherent disadvantage (Williams, 2017).

In addition to attorney type, the impact of county size was examined to determine whether county population density influenced sentencing outcomes. Specifically, this variable was included to assess whether rural or urban counties produced significantly different outcomes. It is logical to assume that defendants in urban counties would be significantly more likely to receive more favorable sentencing outcomes, while defendants in small rural counties would be more likely to receive harsher sentencing outcomes due to capacity concerns and other factors related to the frequency of crime occurrence.

In totality, the results from the county density variable suggest that an offender's location within the state undoubtedly impacts their sentencing outcomes, further lending credence to the "courts as communities" perspective. Each district, functioning as its own community, possesses its own set of courtroom actors, which in turn establishes unique sentencing norms, thus resulting in slight variations in operations within each jurisdiction. While this variable may seem benign on the surface, results from this dissertation's analysis reveal that inequitable experiences and sentencing outcomes are occurring and are dependent on the county where the offense takes place.

Likewise, citizenship, which has been found to be a significant variable in prior sentencing research, was significant across all research questions. Research question one and two demonstrate positive odds ratios pertaining to citizenship status and the likelihood of receiving a prison sentence and a departure and opposite results regarding consecutive sentences. These finding were somewhat expected, as prior research has consistently demonstrated worse sentencing outcomes for non-citizens (Kutateladze, Andilaro, & Johnson, 2016). While ethnicity

biases may certainly be at play in the findings, focal concerns perspective, under the guise of immigration policies or laws, could potentially explain the research findings. Under federal law (8 U.S. Code Sec. 1227), non-citizens who are convicted of a felony can face deportation to their home country. The findings from this dissertation further supports the notion that prosecutors and district courts may be disinclined to allocate limited resources toward incarcerating non-citizens if there is the possibility of deportation, increasing the likelihood of departure sentences and making it less likely that a defendant serves a consecutive sentence. Deportation can function as a de facto prison sentence by removing any potential danger from the community, as well as easily dispose of a case in an efficient manner, satisfying both community safety and workload concerns.

Implications For Future Research

The findings from this dissertation add several intriguing insights to the existing sentencing literature. Previous research on sentencing, alongside outcomes, has often focused on demographic inequities inherent in the sentencing process. As referenced throughout this work, concerns regarding potential racial and ethnic bias are frequently addressed in studies analyzing sentencing outcomes.

In research question three, the results revealed that black defendants were 13 percent more likely to have their cases run consecutively. This finding underscores the necessity for future sentencing research in Kansas to investigate the possibility of what could be termed "penalties-within-penalties" for black offenders. If black offenders and white offenders are being sentenced for identical crimes, with comparable severity levels and criminal histories, as controlled for in the regression analysis, yet black offenders are experiencing significantly higher rates of consecutive sentencing, it raises questions about equal justice. Subsequent research

should delve into the underlying reasons behind this disparity and explore whether there are legal justifications for imposing consecutive sentences, such as special sentencing rules (Kan. Stat. Ann., 2023). Understanding the factors contributing to this outcome is essential for ensuring fairness and equity in the sentencing process.

Moreover, given that 95% of all cases involve plea bargaining, it is imperative for researchers to explore why black defendants are receiving less favorable treatment in terms of total sentence length in cases involving consecutive sentences. Additionally, if there are legal explanations, such as special sentencing rules or statutory provisions specific to the sentence, scholars should investigate the origins of these rules and whether potential racial bias was adequately considered or addressed.

For instance, the crack cocaine laws of the 1980s and 1990s disproportionately affected the black community across the nation. Researchers should examine whether there are similar legal provisions or sentencing practices in Kansas that may contribute to the observed bias. It is crucial to determine whether there are specific legal mechanisms that perpetuate outcome disparities based on race and whether meaningful efforts have been made to address or mitigate such biases within the legal framework.

The dataset used in this study comprised felony journal entry data from final sentencing hearings, yet it did not encompass probation revocation outcomes. Further investigation is warranted to examine whether female offenders on probation face revocation at the same rate as their male counterparts, or if they experience lower revocation rates. This avenue of research could be pursued using outcome data alone. However, relying solely on outcome data may not elucidate supervision approaches aimed at preventing revocation.

If males and females are subject to different supervision methods while on probation, it is plausible that certain supervision strategies yield better outcomes for one gender over the other. This would necessitate additional data from the community corrections agencies tasked with supervising these individuals. Nevertheless, such an inquiry may shed light on potential disparities in revocation rates between genders. Therefore, it presents an opportunity to delve deeper into understanding and addressing any discrepancies that may exist.

It's worth noting that the sample used in this study covers a time span (July 2014 to June 2019) that encompasses two presidential administrations: those of Obama and Trump. This timeframe also avoids potential conflicts arising from the COVID-19 pandemic and the significant shifts in sentencing trends that occurred from March 2020 through fiscal year 2022. Consequently, future research should investigate whether the observed results persist in the current context.

In future research on sentencing outcomes for non-citizen defendants, it's crucial to consider the impact of federal immigration laws, which mandate deportation for individuals convicted of certain felonies. This potential immigration penalty could significantly influence prosecutors' decisions during plea-bargaining. Simply knowing that a defendant will face deportation from their jurisdiction might sway prosecutors' choices regarding whether to pursue a prison sentence.

Furthermore, the financial burden of deportation falls on federal agencies rather than state or local governments, who would otherwise bear the high costs of incarcerating an individual for an extended period. Future research should investigate whether the severity of the crime also factors into prosecutors' plea-bargaining decisions involving non-citizen defendants. This aspect gains particular importance considering the enduring significance of US border and immigration

policies as a politically charged issue. It's essential that future researchers explore whether prosecutors adapt their plea-bargaining strategies in response to changing perceptions about the significance of deportation as a penalty or the effectiveness of deportation in removing individuals from the community. As such, future research in this area will shed light on how legal and policy frameworks interact to shape sentencing outcomes for non-citizen defendants in the United States.

President Biden assumed office in January 2021, succeeding President Trump, and it is conceivable that differing border security philosophies between the two administrations may impact the plea-bargaining process. Therefore, both sentencing and immigration scholars should explore whether potential changes to immigration policy across administrations have affected not only the deportation of non-citizens for felony convictions but also whether prosecutors are utilizing deportation as a de facto form of punishment while resolving their caseloads through probation plea bargains.

Jurisdiction level pretrial release policies are a hotly debated issue within the field of criminal justice, and many jurisdictions have moved away from strict monetary rules on the issue of posting bond. The findings of this dissertation align with previous literature indicating that defendants held in custody pretrial tend to experience worse sentencing outcomes compared to those who are released. To address this issue, future researchers should adopt a multi-faceted approach to examine who remains in custody pretrial. As discussed earlier regarding pretrial status, it's crucial to consider that indigent defendants constitute over 84 percent of the felony population in Kansas (KSSC, 2022), potentially leaving them unable to afford bail prior to trial. From a demographic perspective, researchers should investigate whether certain defendants are more likely to secure bail than others. For instance, are white males more successful in securing

bail compared to black females? Can non-citizens utilize bail bondsmen if they lack citizenship status? These questions merit exploration to ensure that specific demographic groups are not unduly disadvantaged in preparing for trial or negotiating plea agreements simply due to financial constraints.

Moreover, there may be varying levels of poverty within the indigent system. Hence, future research should ascertain whether defendants experience significantly different rates of securing bail at various income or asset levels. This inquiry should also extend across jurisdictions, as different counties may have conflicting rules regarding the posting of bail or pretrial release-on-recognizance, potentially leading to inequitable outcomes across jurisdictions. By examining these factors comprehensively, researchers can work towards ensuring fair and equitable treatment for all defendants, regardless of financial status or demographic characteristics.

Similarly, it's crucial to delve into the legal intricacies of individual cases. Each case is unique, and factors such as the severity of the alleged offense play a significant role. For instance, a defendant charged with murder is likely to face a much higher bond amount compared to someone arrested for forgery. Therefore, additional research should explore why certain individuals remain in custody pretrial. It's essential to understand whether pretrial detention is primarily for the potential safety of the community or solely due to financial constraints. Investigating bond violations among offenders may shed further light on this issue. For example, researchers could examine whether particular offenders are more likely to reoffend while on bond compared to others, considering both demographic factors and legally specific frameworks. By conducting such analyses, researchers can gain insights into the factors driving pretrial detention and the potential risks associated with releasing certain defendants on bond.

Lastly, the findings from this dissertation underscore previous assertions from sentencing literature regarding the opacity of charging information and charge amendments throughout the sentencing process, often referred to as the "black box" of sentencing research (Johnson, 2016). While the results from each of the three research questions offer valuable insights, additional contextual information is essential for researchers to grasp the intricacies of plea-bargaining and to provide additional benchmarks for assessing attorney performance within this process.

For instance, charging information could render a departure sentence unnecessary from a legal standpoint, representing a significant success for both the defendant and defense attorney. However, the absence of charging data in this dataset (and in most other datasets nationally) impedes the ability to measure how effectively an attorney navigated the plea-bargain. Therefore, future research endeavors should strive to acquire charge-bargaining information to create a comprehensive roadmap of the plea negotiation process and create a measure for distance travelled from initial charging decisions to final sentencing outcomes. Additionally, examining charging information from a demographic standpoint could reveal whether particular defendant groups are experiencing disparate charging outcomes compared to other demographic groups. By addressing the veritable "black box" of charging information, researchers can gain a deeper understanding of the plea-bargaining process and identify potential areas for improvement to ensure fairness and equity in sentencing outcomes.

Limitations

This dissertation is not without its limitations. From a data standpoint, the KSSC database used for analysis had limitations concerning jury trial outcomes. The dataset only included guilty verdicts, lacking the crucial aspect of jury trial acquittals, which are essential for understanding what constitutes a favorable legal outcome for cases taken to trial. Consequently, the dataset

could not interpret whether retained or appointed counsel perform better at trial. Jury trial convictions were, therefore, excluded from the analyses as they would only comprise guilty verdicts without the benefits of plea bargains, such as potential charge reductions, dismissals, or departure sentences. While appointed attorneys may potentially negotiate charge reductions, the dataset could not capture such nuanced legal strategies.

Furthermore, the dataset lacked information regarding the legal actions or strategies employed by defense attorneys, being limited to final outcomes only. Hence, it could not determine the number of motions filed, hearings requested, or the amount of time spent by attorneys on each case. While hours spent on a case might be accessible for analysis from private attorneys, it's unlikely to be available for salaried public defenders. To gather data on hours spent on cases or legal strategies, additional datasets or qualitative analysis cross-referenced against existing sentencing outcomes may be necessary.

Moreover, the dataset did not provide details about the factual circumstances surrounding each conviction. Not all convictions carry the same weight, as some cases may involve benign factual circumstances resulting in minimal harm to the community, while others may involve egregious behavior with significant impact. However, the dataset only captured the outcome, not the underlying circumstances. For instance, a case I personally prosecuted involved low-level theft from gravestones, which, while having a low severity level, had disturbing implications for the community. The media coverage and vocal victims limited negotiation during the plea-bargaining process. Such outlier fact patterns, influenced by client actions, can make it challenging for defense attorneys, both appointed and retained, to navigate the legal landscape, underscoring the difficulty in isolating potential outlier cases solely based on client behavior.

Chapter 6 - Conclusion

The aim of this dissertation was to investigate whether the type of defense attorney a defendant had (appointed or retained) significantly influenced their sentencing outcomes, with a focus on the principle of equal justice. Given that appointed attorneys are assigned to defendants meeting specific poverty criteria, it is crucial to assess whether individuals unable to afford legal representation are receiving fair treatment compared to those with the financial resources to retain their own attorney. Discovering disparities in sentencing outcomes for impoverished defendants would be unacceptable, necessitating further research and policy adjustments to ensure that favorable outcomes are not contingent upon financial status.

Previous sentencing research has extensively investigated variations in sentencing outcomes across various demographic factors, such as race (see Hester & Hartman, 2017; Johnson, 2014; Koons-Witt, et al., 2014; Ulmer, Painter-Davis, & Tinik, 2016; Ward, Hartley, & Tillyer, 2016), ethnicity (Kutateladze, Andilaro, & Johnson, 2016; Shermer & Johnson, 2010), sex (Blumstein, Cohen, Martin, & Tonry, 1983; Kim, et al., 2019), and citizenship status (Hartley, Madden, & Spohn, 2007; Johnson, Ulmer, & Kramer, 2008). While these studies have revealed disparities in sentencing outcomes for these groups, there has been limited attention given to their economic situations within the context of sentencing. Historically, these marginalized groups have been more susceptible to unequal treatment compared to their white, male counterparts. Hence, this dissertation aimed to explore the potential influence of economic status on sentencing outcomes. In contrast to broader sentencing research, there is a notable scarcity of studies examining the financial circumstances of defendants and their impact on sentencing outcomes. Consequently, this dissertation utilized the presence of an appointed

attorney as an indicator of experiencing certain levels of poverty or financial hardship across multiple outcome variables.

In addition to the examination of economic indicators and demographic variables, this dissertation used courts as communities theory to provide a theoretical context for potential discrepancies that occur across different jurisdictions. Courts as communities argues that sentencing differences that can arise between different localities within a single state (Eisenstein, 1977; Hester, 2017). Courtroom workgroups made up of judges, prosecutors, and defense attorneys who regularly work together to resolve cases develop jurisdiction specific going rates. Hence, this dissertation investigated potential outcome disparities among workgroups commonly represented by public defenders, as public defenders typically handle criminal cases for clients who cannot afford private defense. Moreover, unlike previous studies, this research delved into the influence of county population density, assessing how sentencing outcomes may differ between suburban and urban jurisdictions compared to rural, sparsely populated counties. The incorporation of these demographic and jurisdictional variables contributed to a comprehensive analysis, enriching the existing sentencing literature.

The analysis relied on data sourced from the Kansas Sentencing Commission (KSSC), encompassing all felony sentencing outcomes from fiscal years 2015 to 2019. These specific years were chosen to exclude sentences imposed during the COVID-19 pandemic, which were overall more lenient compared to those imposed before the pandemic, as well as sentences from the most recent fiscal year's data, which signaled a return to pre-COVID sentencing practices. Prior to analysis, tests were conducted to ensure data fit, including checks for multicollinearity and heteroskedasticity.

To address the overarching question, this dissertation employed three distinct logistic regressions to tackle three research questions. The first question examined whether attorney type influenced sentence disposition, while the second questioned the impact of attorney type on the imposition of departure sentences. The third question delved into the influence of attorney type on concurrent versus consecutive sentencing practices. These dependent variables served as robust measures of attorney effectiveness and formed the basis for evaluating the significance of attorney type in sentencing outcomes, alongside multiple control variables addressing demographic and legal facets of sentencing, supported by both theoretical frameworks and existing literature.

Overall, all three models yielded significant results, which was anticipated given the extensive dataset. The r-squared values for research questions one (disposition) and two (departures) indicated that the models explained 43% and 30% of the variance, respectively, falling within well accepted outcomes for social science research (Ozili, P.K., 2022). However, research question three (concurrent vs. consecutive) exhibited an exceptionally low R-squared, suggesting minimal variance explanation by the model.

Within each model, several variables emerged as statistically significant. Attorney type notably emerged as a significant predictor of both sentence disposition and the likelihood of a departure sentence. However, results revealed divergent outcomes between the first two research questions: appointed attorneys were more likely to secure probation sentences for their clients, whereas retained attorneys were more inclined to obtain departure sentences. These findings were extensively discussed in the previous chapter. Interestingly, race and ethnicity did not emerge as significant predictors of sentence disposition, contrary to the findings of numerous prior sentencing studies. Conversely, legal variables such as criminal history and offense severity

level proved to be significant and highly predictive of sentencing outcomes, in line with the structure of the Kansas Sentencing Guidelines and their role in determining outcomes.

Overall, the findings of this dissertation contribute significantly to the body of existing sentencing literature. They underscore the significant role of attorney type in shaping sentencing outcomes. Particularly noteworthy is the finding that retained attorneys are more adept at securing departure sentences for their clients, generally considered a favorable outcome. In Kansas, most departures are downward dispositional in nature, which implies that defendants who would typically receive prison sentences under the guidelines are instead granted probation. Moving forward, future research should expand upon these results and delve into the potential ramifications of retained counsel on charge bargaining (charge reductions and dismissals) throughout the plea-bargaining process.

In conclusion, the notable findings of this study address a critical gap in the existing literature by shedding light on the pivotal role of attorney type in the plea-bargaining process. Beyond its evident implications for sentencing, this issue also intersects with the fundamental principle of equal justice under the law. Given that appointed attorneys are assigned to defendants meeting specific poverty criteria, the observed disparate outcomes compared to defendants with retained attorneys demand ongoing scrutiny to safeguard against the notion that justice in state trial courts is contingent upon financial means rather than being administered impartially to all defendants, irrespective of their economic circumstances.

References

Albonetti, C. (1986). Criminality, prosecutorial screening, and uncertainty: toward a theory of discretionary decision-making in felony case processings. *Criminology 24*, 623-644.

Albonetti, C. (1987). Prosecutorial discretion: The effects of uncertainty." *Law & Society Review*, *21*(2), 291-314.

Albonetti, C. (1991). "An integration of theories to explain judicial discretion." *Social Problems, 38*(2), 247-266.

Albonetti, C. (1997). Sentencing under the federal sentencing guidelines: an analysis of the effects of defendant characteristics, guilty pleas, and departures on sentencing outcomes for drug offenses. *Law and Society Review, 31*, 601-634.

Albonetti, C. (1992). Charge reduction: an analysis of prosecutorial discretion in burglary and robbery cases. *Journal of Quantitative Criminology, 8*, 317-333.

American Bar Association. House of Delegates, & Center for Professional Responsibility (American Bar Association). (2006). Model rules of professional conduct. American Bar Association.

Anderson, J. D. (1976). Aunt Jemima in Dialectics: Genovese on Slave Culture.

Alschuler, A. (1978). Sentencing reform and prosecutorial power: A critique of recent proposals for fixed and presumptive sentencing. *Determinate Sentencing, Reform or Regression*. Washington, D.C., U.S. Government Printing Office.

Beck, J. C., & Shumsky, R. (1997). A comparison of retained and appointed counsel in cases of capital murder. *Law and Human Behavior, 21*(5), 525-538.

Beichner, D. & Spohn, C. (2005). Prosecutorial charging decisions in sexual assault cases: Examining the impact of a specialized prosecution unit. *Criminal Justice Policy Review*, *16*, 461-498.

Bjerk, D. (2005). Making the crime fit the penalty: the role of prosecutorial discretion under mandatory minimum sentencing. *Journal of Law and Economics*, *48*, 549-625

Blackwell, B. S., Holleran, D., & Finn, M. A. (2008). The impact of the Pennsylvania sentencing guidelines on sex differences in sentencing. *Journal of Contemporary Criminal Justice*, *24*(4), 399-418.

Blalock, H. M. (1967). *Toward a theory of minority group relations*. New York, NY: Wiley.

Blonigen, D. M. (2010). Explaining the relationship between age and crime: Contributions from the developmental literature on personality. *Clinical psychology review*, *30*(1), 89-100.

Blumstein, A., Cohen, J., Martin, S. E., & Tonry, M. H. (1983). Determinants of sentences. *Research on sentencing: The search for reform*, 69-125.

Bowen, D. M. (2009). Calling your bluff: How prosecutors and defense attorneys adapt plea bargaining strategies to increased formalization. *Justice quarterly*, *26*(1), 2-29.

Brennan, P. K., & Spohn, C. (2009). The joint effects of offender race/ethnicity and sex on sentence length decisions in federal courts. *Race and Social Problems*, *1*(4), 200-217.

Bright, S. B. (2010). Legal Representation for the Poor: Can Society Afford This Much Injustice. *Missouri Law Review*, *75*(3), 683-714.

Bright, S. B., & Sanneh, S. M. (2012). Fifty years of defiance and resistance after Gideon v. Wainwright. *Yale LJ*, *122*, 2150.

Champion, D. J. (1989). Private counsels and public defenders: A look at weak cases, prior records, and leniency in plea bargaining. *Journal of Criminal Justice*, *17*(4), 253-263.

Chang & Grube, (2020). Kansas Sentencing Commission Prison Population Projection Report.

Chicco, D., Warrens, M. J., & Jurman, G. (2021). The coefficient of determination R-squared is more informative than SMAPE, MAE, MAPE, MSE and RMSE in regression analysis evaluation. *PeerJ. Computer science*, *7*, e623.

Coffee, J.C. and Tonry, M. (1983). Hard choices: critical trade-offs in the implementation of sentencing reform through guidelines. In Tonry, M. and Zimring, F. (eds), *Reform and Punishment*, Chicago, University of Chicago Press.

Cohen, T. H. (2014). Who is better at defending criminals? Does type of defense attorney matter in terms of producing favorable case outcomes. *Criminal Justice Policy Review*, *25*(1), 29-58.

Crow, M. S., & Kunselman, J. C. (2009). Sentencing female drug offenders: Reexamining racial and ethnic disparities. *Women & Criminal Justice*, *19*(3), 191-216.

Curran, D. A. (1983). Judicial discretion and defendant's sex. *Criminology*, *21*(1), 41-58.

Daly, K. (1987). Discrimination in the criminal courts: Family, gender, and the problem of equal treatment. *Social Forces*, *66*(1), 152-175.

Daly, K. (1989). Gender and varieties of white-collar crime. *Criminology*, *27*(4), 769-794.

Daly, K., & Bordt, R. L. (1995). Sex effects and sentencing: An analysis of the statistical literature. *Justice Quarterly*, *12*(1), 141-175.

DiMaggio, P. J., & Powell, W. W. (1983). The iron cage revisited: Institutional isomorphism and

collective rationality in organizational fields. *American sociological review*, 147-160.

Dixon, J. (1995). The organizational context of criminal sentencing. *American journal of sociology*, *100*(5), 1157-1198.

Doerner, J. K. (2012). Gender disparities in sentencing departures: An examination of US federal courts. *Women & Criminal Justice*, *22*(3), 176-205.

Doerner, J. K., & Demuth, S. (2010). The independent and joint effects of race/ethnicity, gender, and age on sentencing outcomes in US federal courts. *Justice Quarterly*, *27*(1), 1-27.

Doerner, J. K., & Demuth, S. (2014). Gender and sentencing in the federal courts: Are women treated more leniently?. *Criminal Justice Policy Review*, *25*(2), 242-269.

Duxbury, S. W. (2021). Who controls criminal law? Racial threat and the adoption of state sentencing law, 1975 to 2012. *American Sociological Review*, *86*(1), 123-153.

Eisenstein, J., Flemming, R. B., & Nardulli, P. F. (1988). *The contours of justice: Communities and their courts*. Boston, MA: Little, Brown.

Eisenstein, J., & Jacob, H. (1977). *Felony justice: An organizational analysis of criminal courts* (p. 21). Boston: Little, Brown.

Farnworth, M., & Horan, P. M. (1980). Separate justice: An analysis of race differences in court processes. *Social science research*, *9*(4), 381-399.

Feeney, F., & Jackson, P. G. (1990). Public defenders, assigned counsel, retained counsel: Does the type of criminal defense counsel matter. *Rutgers LJ*, *22*, 361.

Feldmeyer, B., & Ulmer, J. T. (2011). Racial/ethnic threat and federal sentencing. *Journal of Research in Crime and Delinquency*, *48*(2), 238-270.

Fernando-Rodriguez, S., Curry, T. R., & Lee, G. (2006). Gender differences in criminal sentencing: Do effects vary across violent, property, and drug offenses? *Social Science Quarterly*, *87*(2), 318-339.

Flemming, R. B., Nardulli, P. F., & Eisenstein, J. (2016). *The craft of justice*. University of Pennsylvania Press.

Frankel, M. E. (1973). *Criminal sentences: Law without order*.

Franklin, T. W. (2013). Sentencing Native Americans in US federal courts: An examination of disparity. *Justice Quarterly*, *30*(2), 310-339.

Fernando-Rodriguez, S., Curry, T. R., & Lee, G. (2006). Gender differences in criminal sentencing: Do effects vary across violent, property, and drug offenses?. *Social Science Quarterly*, *87*(2), 318-339.

Freiburger, T. L. (2010). The effects of gender, family status, and race on sentencing decisions. *Behavioral sciences & the law*, *28*(3), 378-395.

Frohmann, L. (1997). Convictability and discordant locales: Reproducing race, class, and gender ideologies in prosecutorial decision-making. *Law and Society Review*, *31*, 531-555.

Gist, N. (1989). Assigned counsel: Is the representation effective. *Crim. Just.*, *4*, 16.

Gottfredson, M. R., & Hirschi, T. (1990). *A general theory of crime*. Stanford University Press.

Goulette, N., Wooldredge, J., Frank, J., & Travis III, L. (2015). From initial appearance to sentencing: Do female defendants experience disparate treatment?. *Journal of Criminal Justice*, *43*(5), 406-417.

Griffin, T., & Wooldredge, J. (2006). Sex-based disparities in felony dispositions before versus after sentencing reform in Ohio. *Criminology*, *44*(4), 893-923.

Grube, J. (2021). Kansas Sentencing Commission Annual Report.

Grube, J. (2021). Kansas Sentencing Commission Annual Prison Population Projection Report.

Grube, J. & Lamprecht, J. (2022). Kansas Sentencing Commission Annual Report.

Grube, J. & Lamprecht, J. (2022). Kansas Sentencing Commission Annual Prison Population Projection Report.

Hagan, J. & Bumiller, K. (1983). Making sense of sentencing: a review and critique of sentencing research. In Alfred Blumstein, Jacqueline Cohen, Susan E. Martin, and Michael H. Tonry, (eds.), *Research on Sentencing: The Search for Reform*. Washington, D.C.: National Academy Press.

Helms, R., & Jacobs, D. (2002). The political context of sentencing: An analysis of community and individual determinants. *Social forces*, *81*(2), 577-604.

Hester, R. (2012). *Criminal sentencing in the court communities of South Carolina: An examination of offender, judge, and county characteristics* (Doctoral dissertation, University of South Carolina).

Hester, R. (2017). Judicial rotation as centripetal force: Sentencing in the court communities of South Carolina. *Criminology*, *55*(1), 205-235.

Hester, R., & Hartman, T. K. (2017). Conditional race disparities in criminal sentencing: A test of the liberation hypothesis from a non-guidelines state. *Journal of quantitative criminology*, *33*(1), 77-100.

Iyengar, R. (2007). An analysis of the performance of federal indigent defense counsel.

Johnson, B.D. (2014). *The Missing Link: Examining Prosecutorial Decision-Making Across Federal District Courts*. U.S. Department of Justice. National Institute of Justice. Document No: 245351.

Johnson, B. D., King, R. D., & Spohn, C. (2016). Sociolegal approaches to the study of guilty pleas and prosecution. *Annual Review of Law and Social Science*, *12*, 479-495.

Kim, B., Wang, X., & Cheon, H. (2019). Examining the impact of ecological contexts on gender disparity in federal sentencing. *Justice Quarterly*, *36*(3), 466-502.

Koo, D., Feldmeyer, B., & Holmes, B. (2022). Citizenship and Sentencing: Assessing Intersectionality in National Origin and Legal Migration Status on Federal Sentencing Outcomes. *Journal of Research in Crime and Delinquency, 59*(2), 203-239.

Koons-Witt, B. A. (2002). The effect of gender on the decision to incarcerate before and after the introduction of sentencing guidelines. *Criminology*, *40*(2), 297-328.

Koons-Witt, B. A., Sevigny, E. L., Burrow, J. D., & Hester, R. (2014). Gender and sentencing outcomes in South Carolina: Examining the interactions with race, age, and offense type. *Criminal Justice Policy Review*, *25*(3), 299-324.

Kramer, K. L., & Wang, X. (2019). Assessing cumulative disadvantage against minority female defendants in state courts. *Justice Quarterly*, *36*(7), 1284-1313.

Kruttschnitt, C., & Green, D. E. (1984). The sex-sanctioning issue: Is it history?. *American Sociological Review*, 541-551.

Kutateladze, B. L., & Andiloro, N. R. (2014). Prosecution and racial justice in New York County—Technical report. New York, NY: Vera Institute of Justice.

Kutateladze, B.L., Andiloro, N.R., & Johnson, B.D. (2016). Opening pandora's box: How does defendant race influence plea bargaining? *Justice Quarterly, 33*(3), 398-426.

Kutateladze, B. L., Lawson, V. Z., & Andiloro, N. R. (2015). Does evidence really matter? An exploratory analysis of the role of evidence in plea bargaining in felony drug cases. *Law and Human Behavior*, *39*(5), 431.

Kutateladze, B. L., & Leimberg, A. (2019). The influence of type of defense counsel on prosecutorial and judicial decision making in domestic violence cases. *Crime & Delinquency*, *65*(12), 1623-1647.

Light, M. T., Massoglia, M., & King, R. D. (2014). Citizenship and punishment: The salience of national membership in US criminal courts. *American sociological review, 79*(5), 825-847.

Lipton, D. S., Martinson, R., & Wilks, J. (1975). *The effectiveness of correctional treatment: A survey of treatment evaluation studies*. Greenwood.

Logue, M. A. (2011). Downward departures in US federal courts: Do family ties, sex, and race/ethnicity matter? *Ethnic and Racial Studies, 34*(4), 683-706.

Massoglia, M., & Uggen, C. (2010). Settling down and aging out: Toward an interactionist theory of desistance and the transition to adulthood. *American journal of sociology*, *116*(2), 543-582.

McConville, & Mirsky, C. L. (2005). Jury trials and plea bargaining: a true history (Mirsky, Ed.; 1st ed.). Hart Publishing.

Menefee, M. R. (2018). The role of bail and pretrial detention in the reproduction of racial inequalities. *Sociology Compass, 12*(5), e12576.

Mitchell, O. (2005). A meta-analysis of race and sentencing research: Explaining the inconsistencies. *Journal of Quantitative Criminology, 21*(4), 439-466.

Morrill, C., & McKee, C. (1993). Institutional isomorphism and informal social control: Evidence from a community mediation center. *Social problems, 40*(4), 445-463.

Nagel, I.H. & Schulhofer, S.J. (1992). A tale of three cities: An empirical study of charging and bargaining practices under the federal sentencing guidelines. *Southern California Law Review, 66*, 501–66.

Neubauer, D. W., & Fradella, H. F. (2018). *America's courts and the criminal justice system*. Cengage Learning.

Ozili, P.K. (2022). The Acceptable R-Square in Empirical Modelling for Social Science Research. *Social Research Methodology and Publishing Results.*

Payne, T. (2018). Plight of the Public Defender: Excessive Caseload as a Non-Mitigating Factor in Sanctions for Ethical Violations. *Missouri Law Review, 83*(4), 1087+.

Pierce, M. B., & Freiburger, T. L. (2011). Assessing the influence of familial paternalism on child neglect sentencing decisions. *American Journal of Criminal Justice, 36*(4), 421-433.

Posner, E. A. (2008). Does Political Bias in the Judiciary Matter: Implications of Judicial Bias Studies for Legal and Constitutional Reform. *U. Chi. L. Rev., 75*, 853.

Rache, C. (1975). The female offender as an object of criminological research. In A. Brodsky (Ed.), The female offender. Beverly Hills, CA: Sage.

Rehavi, M. M., & Starr, S. B. (2014). Racial disparity in federal criminal sentences. *Journal of*

Political Economy, *122*(6), 1320-1354.

Rosenthal, S. (2017). Regression analysis, linear. *The International Encyclopedia of Communication Research Methods*, 1-15.

Sacks, M., & Ackerman, A. R. (2012). Pretrial detention and guilty pleas: If they cannot afford bail they must be guilty. *Criminal Justice Studies*, *25*(3), 265-278.

Sacks, M., & Ackerman, A. R. (2014). Bail and sentencing: Does pretrial detention lead to harsher punishment?. *Criminal Justice Policy Review*, *25*(1), 59-77.

Scott, W. R. (2008). Approaching adulthood: the maturing of institutional theory. *Theory and society*, *37*(5), 427-442.

Shermer, L. O. N., & Johnson, B. D. (2010). Criminal prosecutions: Examining prosecutorial discretion and charge reductions in US federal district courts. *Justice Quarterly*, *27*(3), 394-430.

Spangenberg, R. L., & Beeman, M. L. (1995). Indigent defense systems in the United States. *Law & Contemp. Probs.*, *58*, 31.

Sperandei, S. (2014). Understanding logistic regression analysis. *Biochemia medica*, *24*(1), 12-18.

Spohn, C. (2015). Evolution of sentencing research. *Criminology & Pub. Pol'y*, *14*, 225.

Spohn, C., & Beichner, D. (2000). Is preferential treatment of female offenders a thing of the past? A multisite study of gender, race, and imprisonment. *Criminal justice policy review*, *11*(2), 149-184.

Spohn, C., Beichner, D., & Davis-Frenzel, E. (2001). Prosecutorial justifications for sexual

assault case rejection: Guarding the “gateway to justice”. *Social problems*, *48*(2), 206-235.

Spohn, C., & Holleran, D. (2001). Prosecuting sexual assault: A comparison of charging decisions in sexual assault cases involving strangers, acquaintances, and intimate partners. *Justice Quarterly*, *18*(3), 651-688.

Steffensmeier, D., & Demuth, S. (2000). Ethnicity and sentencing outcomes in US federal courts: Who is punished more harshly?. *American sociological review*, 705-729.

Steffensmeier, D., & Demuth, S. (2006). Does gender modify the effects of race–ethnicity on criminal sanctioning? Sentences for male and female white, black, and Hispanic defendants. *Journal of Quantitative Criminology*, *22*(3), 241-261.

Steffensmeier, D., Kramer, J., & Streifel, C. (1993). Gender and imprisonment decisions. *Criminology*, *31*(3), 411-446.

Steffensmeier, D., Ulmer, J., & Kramer, J. (1998). The interaction of race, gender, and age in criminal sentencing: The punishment cost of being young, black, and male. *Criminology*, *36*(4), 763-798.

Stevenson, M. T. (2018). Distortion of justice: How the inability to pay bail affects case outcomes. *The Journal of Law, Economics, and Organization*, *34*(4), 511-542.

Tiffany, L. P., Avichai, Y., & Peters, G. W. (1975). A statistical analysis of sentencing in federal courts: Defendants convicted after trial, 1967-1968. *The Journal of Legal Studies*, *4*(2), 369-390.

Tillyer, R., Hartley, R. D., & Ward, J. T. (2015). Differential treatment of female defendants: Does criminal history moderate the effect of gender on sentence length in federal narcotics cases? *Criminal Justice and Behavior*, *42*(7), 703-721.

Ulmer, J. T. (1997). *Social worlds of sentencing: Court communities under sentencing guidelines*. SUNY Press.

Ulmer, J. T. (2012). Recent developments and new directions in sentencing research. *Justice Quarterly*, *29*(1), 1-40.

Ulmer, J. T. (2019). Criminal courts as inhabited institutions: Making sense of difference and similarity in sentencing. *Crime and Justice*, *48*(1), 483-522.

Ulmer, J. T. (2019). New theory and research on sentencing. *Justice Quarterly*, *36*(7), 1145-1147.

Ulmer, J. T., & Johnson, B. (2004). Sentencing in context: A multilevel analysis. *Criminology*, *42*(1), 137-178.

Ulmer, J. T., & Kramer, J. H. (1996). Court communities under sentencing guidelines: Dilemmas of formal rationality and sentencing disparity. *Criminology*, *34*(3), 383-408.

Ulmer, J., Painter-Davis, N., & Tinik, L. (2016). Disproportional imprisonment of Black and Hispanic males: Sentencing discretion, processing outcomes, and policy structures. *Justice Quarterly*, *33*(4), 642-681.

United States. National Advisory Commission on Civil Disorders, & United States. *Kerner Commission*. (1968). Report of the national advisory commission on civil disorders. US Government Printing Office.

Van Brunt, A., & Bowman, L. E. (2018). Toward a just model of pretrial release: a history of bail reform and a prescription for what's next. *The Journal of Criminal Law and Criminology (1973-)*, *108*(4), 701–774. https://www.jstor.org/stable/48572970

Ward, J. T., Hartley, R. D., & Tillyer, R. (2016). Unpacking gender and racial/ethnic biases in the federal sentencing of drug offenders: A causal mediation approach. *Journal of Criminal Justice, 46,* 196-206.

Weick, K. E. (1995). *Sensemaking in organizations* (Vol. 3). Sage.

Williams, M. R. (2017). The effect of attorney type on bail decisions. *Criminal Justice Policy Review, 28*(1), 3-17.

Wilson, J. Q. (1975). Lock'em up and other thoughts on crime. *The New York Times Magazine.*

Wolfe, S. E., Pyrooz, D. C., & Spohn, C. C. (2011). Unraveling the effect of offender citizenship status on federal sentencing outcomes. *Social Science Research, 40*(1), 349-362.

Wooldredge, J., Frank, J., Goulette, N., & Travis III, L. (2015). Is the impact of cumulative disadvantage on sentencing greater for black defendants?. *Criminology & Public Policy*, *14*(2), 187-223.

Wright (1921) Wright S. Correlation and causation. *Journal of Agricultural Research*. 1921; XX(7):557–585.

Wright R. & Engen R. (2006). The effects of depth and distance in a criminal code on charging, sentencing, and prosecutor power. *North Carolina Law Review*, *84*(6),1935–82