

Disparity or Discrimination:  
Interaction Effects of Race, Ethnicity, and Gender  
On Probation Failure in a Midwestern Sample

by

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## **Abstract**

At year end 2016 over 3.7 million Americans were under probationary supervision. In response to institutional overcrowding, the U.S. has been increasingly reliant on community corrections. Though there has been extensive research into various aspects of the criminal justice system, the area of community corrections, specifically probation, has seen relatively little scrutiny. Through quantitative analysis of probationary data, this study examined a Midwestern population of closed probationary cases. Through a framework of intersectionality, various intersectional identities are examined for likelihood of failure. Focusing on the prevalence of negative outcomes for not only racial and ethnic minorities, but also intersections of race, ethnicity, and gender. Utilizing logistic regression analysis, each model examines race, ethnicity, and sex against probation failure. After an initial baseline model, intersections of race/ethnicity were run. Using probation success as a control outcome in each of the models. Across all models, race and ethnicity were found to be significantly and positively associated with probation failure. Additionally, standardized coefficients indicate Black and Black/Hispanic categories to represent strong effect on negative probation outcome. Of note, sex though unreliable in numerous models, was found only to be a significant and strong predictor in the model examining Black probationers. Possible explanations, study limitation, future research, and policy implication are offered in the discussion and conclusion section.

## **Keywords**

probation, community corrections, race and ethnicity, intersectionality, quantitative analysis, Midwestern, probation failure, colorblind, post-racial

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## **Dedication**

TO

My Children, Marcus and Cecelia

Marcus, thank you for being my rock, always encouraging and supporting me. Without you in my life, I don't know where I would be today. Cecelia, your strength and fierce independence has inspired me and will lead you to do amazing things in this life.

My Mother

Thank you for always pushing us to work harder and never settle.

An example of intelligence, strength, patience, and kindness.

Wie die Mutter, so die Töchter

My Sister, Evelyn

Your passion for life and unending ability to see the good in everyone is your gift,  
don't ever change.

Finally, I'd like to dedicate this work to all those who have found themselves at the mercy of racial or ethnic injustice and found the courage to fight back.

## **Chapter 1 - Introduction**

Probation, an alternative to incarceration, supervises offenders within the community, while simultaneously imposing strict sanctions, steep financial penalties, and a criminal record. Data shows a probation population in which racial and ethnic minorities are overrepresented (Kaeble & Bonczar, 2016). Further, minorities are more likely to experience negative probation outcomes (Gray et. al., 2001; Johnson and Jones, 1998; Morgan, 1994; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Warren, 2016). These marginalized groups of Black and Latinx minorities are often believed to exist within mutually exclusive groups of race or ethnicity: Black or White, Latinx or Non-Latinx. This oversimplified view obscures the complexity of racial and ethnic identity and overlooks the role of gender.

Through quantitative analysis of probationary data, this study will examine a Midwestern population of closed probationary cases. The analysis will seek to determine if within the population, racial and ethnic minorities are more likely to experience probation failure, second, compare the relative likelihood of failure for various intersections of race and ethnicity. And finally, if and to what extent gender may affect the likelihood of failure for intersectional groups. The examination of likelihood of failure will explore possible racial and ethnic disparities, differentiating between possible explanations of disparity and forms of discrimination. A framework of intersectionality will be utilized to examine intersections of race, ethnicity, and gendered effects upon probationary outcomes.

A central focus of this study is to investigate the prevalence of negative probationary outcomes for offenders of color. Is there a higher likelihood of failure for Black and Latinx offenders? If so, is it simply a consequence of racial disparity; or could it be a result of systemic discrimination? Racial disparity, while detrimental to racial minorities, refers to a tangible

difference between races that may or may not be attributed to a form racism. The overrepresentation of minorities in crime statistics, for instance, could be attributed to higher rates of crime among minority neighborhoods. Contrastingly, racial discrimination refers to intentional or institutional racism (Walker, Spohn, & Delone, 2004). Could the overrepresentation of racial minorities in failure statistics be a result of a form of institutional racism in the form of racially targeted policies? (Tonry, 2008). This distinction, explored further in the discussion section, is vital when seeking to understand differential outcomes of racial and ethnic minorities through a lens of colorblind ideology.

Discussions of racial and ethnic inequality are often focused upon blatant and overt incidents easily identified as discriminatory with the assumption that such inequity is the result of intentional racism stemming from individual ignorance and hatred. Further, they are framed as isolated incidents that are exceptions and perpetrated by a few ‘bad apples’. This narrow focus upon overt and blatant racism overshadows the pervasive systemic racial and ethnic inequality that continues to exist in American society. Systemic racism refers to more hidden or nuanced forms of discrimination that occur through operation of institutions. Examples of which include differential access to quality education, hiring practices that favor White applicants, gerrymandering, and the focus of this study, a criminal justice system that differentially targets people of color (Alexander, 2010; Bonilla-Silva, 2010). Despite these problems, many insist that we live in a “post-racial” society, free of problems of systemic racial inequality.

The post-Civil Rights era ushered in a paradigm shift from deliberate and overt forms of discrimination to a more discrete form of racism founded upon an alleged colorblind ideology. While promoting equality and homogeneity, this ideology tends to explain issues facing people of color as failures of personal character rather than systemic racism and, similarly, does not

regard racial disparities in the criminal justice system as problematic (Alexander, 2010; Bonilla-Silva, 2010; Pager, 2013; Taylor, 2016). This colorblind ideology combined with changes in criminal legislation have intensified racial and ethnic inequality and criminal justice processes at every level (Alexander, 2010; Taylor, 2016; Zatz & Rodriguez, 2006). Centuries of criminalization of people of color has been successfully woven into American culture, hiding differential treatment of minorities in plain sight.

With an objective to reveal possible disparate treatment and outcomes within various criminal justice operations, a significant portion of research has been aimed at police practices (Knowles et. al., 1999; Nix et. al., 2015; Tyler, 2005; Websdale, 2001), courts and sentencing (Albonetti, 1991; Doerner & Demuth, 2009; Spohn & Holleran, 2000; Steffensmeier et. al., 1998; Zatz, 1987), and the prison industrial complex (Brewer & Heitzeg, 2008; Davis & Shaylor, 2001). Relative to studies focusing upon racial and ethnic inequality throughout criminal justice, forms of community-based corrections programs such as probation receive disproportionately less attention (Albonetti & Hepburn, 1997; Gray et. al., 2001; Johnson & Jones, 1998; Lieber & Boggess, 2012; Morgan, 1994; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Warren, 2016).

Of the various criminal justice structures responsible for the supervision and management of offenders, community corrections encompasses the largest segment of the corrections population. At year end 2015 an estimated 4,650,900 offenders were under community corrections supervision (Kaeble & Bonczar, 2016). Offenders supervised through probation comprise 81 percent of the community corrections population, and 56 percent of the total correctional population (Kaeble & Bonczar, 2016). Of the abundant studies across criminal justice investigating racial and ethnic disparities and possible bias, relatively little focus has been

given toward probation, particularly in comparison to other areas of corrections (Johnson & Jones, 1998). The lack of focus in the area of probation is somewhat perplexing when the substantial number of individuals under probationary supervision is taken into account.

Further, as is evident throughout the criminal justice system, data present a probationary population in which people of color are overrepresented. At year end 2015 an estimated 3,789,800 people were under probationary supervision (Kaeble & Bonczar, 2016). While the White, Non-Latinx population comprises the largest portion of the criminal justice system at 55 percent, it comprises an even larger portion of the general U.S. population 61.6 percent (Kaeble & Bonczar, 2016). Black and Latinx individuals make up 30 percent and 13 percent of the total 3,789,800 probationers, respectively (Kaeble & Bonczar, 2016) while making up only 13.3 percent and 17.6 percent of the U.S. population, respectively (U.S. Census Bureau, 2015).

It has been well documented that the effects of incarceration and a criminal record are long-term and far-reaching not only for the offender and their family and communities of color, but American society in general (Alexander, 2010; Pager, 2003; Trusts, 2010, Websdale, 2001). As people of color are largely overrepresented in the criminal justice system, these consequences are more detrimental in Black and Latinx communities. Consequences of contact with the criminal justice system entail significant financial, professional, social, and emotional hardships, further exacerbating the already disproportionate social disadvantage of poor neighborhoods of color (Anderson, 1999; Pager, 2009; Websdale, 2001). The stigma attached to a criminal record severely limits opportunities of entire communities, further supporting the criminalization of an entire racial group through colorblind ideology and tough on crime legislation (Alexander, 2010; Bonilla-Silva, 2010; Pager, 2009).

As described racial and ethnic minorities are overrepresented within the extensive probationary population. This overrepresentation may present disastrous consequences for minority populations. Although probation allows the offender to remain within the community, the negative effects of a criminal record are not negated. Consequences including loss of opportunity, costly court and probation fees, varying intensities of demeaning supervision, and potential to be rearrested for seemingly minor ‘technical’ violations have all been associated with probation and a criminal record (Alexander, 2010; Pager, 2012; Trusts, 2010).

This study, through empirical analysis of probation outcomes, will investigate possible differential treatment of offenders based upon race, ethnicity, and gender and additionally the intersectional identities that exists between these categories. Any evidence of differential outcomes will lend support to a hypotheses of systemic racial inequality that extends to areas of community corrections, specifically probation. The preceding introductory section establishes the ideological and systemic nature of racial and ethnic discrimination, and touches upon probation’s role in such a system. The remainder of the introductory chapter will elaborate further on the purpose and practice of probation, including examples of probationary restrictions. Racial and ethnic inequality will be broadly discussed, followed by racial and ethnic inequality within corrections, and further narrowed to inequality within probation. The conclusion of this chapter will summarize the information given and outline the remainder of this study including the literature review, methodology, findings, and discussion.

## **Probation**

Community corrections, an intermediate sanction, allows offenders to remain within their communities while supervised and meeting the requirements of their outlined sentence. Intermediate sanctions serve as an alternative to incarceration, alleviating institutional

overcrowding and saving money, but still meet the need for punishment (Tonry & Lynch, 1996). Community corrections consists of two forms of intermediate sanction: probation and parole. As part of community-based supervision, probation is often overseen closely with parole. Probation is a court-ordered period of correctional supervision in the community and is generally used as an alternative to incarceration. Parole is a period of conditional supervised release in the community following a prison term. Probationers accounted for the majority (81%) of adults under community supervision, and the probation population constitutes more than four times the parole population.

Although often confused with parole, probation serves as an alternative to incarceration, rather than subsequent to a sentence of incarceration, as parole. Although the terms are often used interchangeably, probation is a unique sentence that forgoes incarceration in favor of community-based supervision. While at its outset an advancement toward a progressive paradigm shift that emphasized rehabilitation, this form of corrections is today, more a technique to alleviate extensive prison overcrowding (Clear & Hardyman, 1990).

The seemingly advantageous liberty offered through probation, in comparison to prison's confinement, conceals the strict and intrusive nature of correctional supervision as well as the short-term and long-term effects of a criminal record. Probation entails various levels of stringent supervision, substantial financial obligation, a criminal record, and possible obstructive stigma to the offender (Alexander, 2012b; Pager, 2008). Precarious freedom hinges on strict adherence to the probation terms outlined during sentencing which is enforced by a probation officer.

The terms of probation can vary and may include treatment options such as drug and/or alcohol treatment, and anger management. They may also include other parameters such as a curfew, unscheduled drug/alcohol testing, countless meetings with probation officer, and

community service hours (Petersilia & Turner, 1993). Abstention from further criminal activity is a general requirement of probation. The conditions of an offender's probation, in theory, are specific to that offender's needs. For instance, an individual convicted of driving under the influence of drugs may be required to undergo drug treatment as well as having a suspended license. Violation of any of the probation terms or committing new offenses can result in the enactment of the underlying jail or prison sentence. In other words, an errant probationer may face incarceration.

Probation's viability is determined through measured outcomes of failure and success. Probation success is the discharge of an offender through completion of probation by expiration of the probation sentence or early completion (Kaeble & Bonczar, 2016). Conversely, probation failure is the revocation of probation following technical violations, new offenses, or some other criteria. Technical violations stem from behavior that generally does not qualify as a crime, but for a probationer violates the terms of their probation. Behaviors such as failing to remain employed, missing a set curfew, or testing positive for drugs/alcohol (Connecticut General Assembly, 2001). New criminal charges stemming from the commission of new crimes can also lead to a probation violation and are in fact more likely to lead to probation revocation. New crimes are treated more harshly and dealt with swiftly, as they pose a tangible risk to public safety (Belshaw, 2011). Although new crimes are a risk to the community and are used as a measure of the effectiveness of intermediate sanctions, technical violations have been found to be the most common form of violations (Gray et. al., 2001; Sims & Jones, 1997). During 2015 technical violations accounted for more than half of the revocations across the U.S. (Kaeble & Boczar, 2016).

Probation revocations are guided by due process laws similar to those guiding sentencing, but the protections offered for probationers are less strict (Mank, 1987). Established by the Supreme Court, probationers facing revocation are afforded minimum due process requirements (Nahari, 1986). A hearing initiated by the probation officer is held in front of a judge, prosecutor, and defense. The revocation process requires little in the way of evidence. Only a written record of the violations from the probation officer or transcript of the hearing is required to ensure due process in most jurisdictions (Nahari, 1986). With a low standard of proof and minimal due process rules guiding revocation hearings, probation serves less as a promising alternative, and more as a booby trap for those who had previously avoided incarceration (Jay-Z, 2017). The consequences of committing one or more violations, as decided by a judge, may result in a change in the length and/or intensity of the probationary sentence, additional fines, and could possibly result in revocation of probation resulting in incarceration.

Probation failure involves serious and expensive consequences for probationers. This study considers probation outcomes, seeking to compare negative outcomes against individual markers of race, ethnicity, and gender. If, once legal factors are controlled for, an outcome of failure is applied differentially to individuals based upon non-legal factors such as race/ethnicity and gender, beyond discrepancy, systemic discrimination is a possible cause and warrants investigation.

## **The Problem of Race, Ethnicity, and Criminal Justice**

### **Racial and Ethnic Inequality**

The overrepresentation of minorities throughout the various stages of the criminal justice process is rife with racial disparity and indicative of systemic racism. The criminal justice system specifically operates as an apparatus of the larger system of oppression and exploitation, aimed

at maintaining a racial and ethnic hierarchy. The police apply their authority to enforce laws differentially, courts sentence offenders of color more harshly, and corrections experiences disproportionately high populations of Black and Latinx offenders under state and federal supervision.

This application of selective justice disproportionately effects people of color and has dire consequences for their communities. Gutting a community of men and women of color, returning many as marked criminals, depriving communities and families of vital social bonds, and further isolation from the outside world (Alexander, 2010; Anderson, 2000; Pager, 2010). As colorblind or post racial ideology works to conceal systemic racism, it highlights negative images of crime, poverty, and drugs. Effectively, this combination of hidden inequality and showcased ‘ghetto’ lifestyle upholds beliefs that contact with the criminal justice system and the consequences thereof are that of inherent criminality of minority groups.

Probation, one of numerous institutional structures, is often over-looked in discussions of systemic racism, but has far reaching effects upon those it supervises. Upon sentencing, offenders are supervised at various levels by probations officers. Offenders are required to submit to intrusive drug tests, and paternalistic sanctions that include frequent meetings with the assigned probation officer, submitting proof of employment and housing, and hefty fines that increase the hardships most individuals already face. Further, a record will lead to blocked opportunity, access to public assistance is denied, and the permanent stigma of being marked a criminal. These consequences converge and are felt most apparently in already strained communities of color. This study seeks to uncover possible evidence of the unequal treatment that is a fact of life for people of color through an examination of probationary data.

Studies have found that gender may influence associations between race/ethnicity and criminal justice outcomes (Doerner & Demuth, 2010; Spohn, 2009; Spohn & Holleran, 2000; Steffensmeier et. al, 1998). Such studies have found that men of color are especially at risk for negative encounters with the criminal justice system and the significant consequences carried with such encounters (Nunn, 2002). Examination of this phenomenon should be underpinned by a theoretical framework that examines race/ethnicity as well as gender simultaneously. To this end, this study is guided by intersectionality which will allow for a complex examination of the experiences of multiple overlapping identities including race, ethnicity, and gender (Crenshaw, 1989, 1991; Davis, 2008; McCall, 2005).

Discussions of color-blind racism, colorblind ideology, and racial inequality in general are greatly focused upon the social construct of ‘race’ that focuses upon Black or African American identities. Latinx individuals are considered ethnicities and are typically lumped into groups of ‘people of color’ and tend to be overlooked discussions of race. Further, within these racial and ethnic categories, the focus falls primarily upon the experiences of men. Viewing colorblindness through a perspective of intersectionality allows not only for a focused examination of ethnicity as a social identity but highlights the experiences of marginalized women.

Studying racial, ethnic, and gendered inequality within criminal justice allows for inquiry into the innumerable ways the criminal justice effects intersectional identities. Collins (2015) describes the ways in which a mono-categorical view of violence against women may greatly impede solutions to such violence. If viewed through a singular racial lens, for instance, issues of police violence against Black men would be seen more important than domestic violence against Black women (Collins, 2015). Applied to the current study of probation outcomes, an

intersectional framework allows for more involved policy implications that may be tailored toward offenders' needs, areas where women of color are often overlooked.

### **Confronting Race and Ethnic Inequality in Probation**

Recent changes in the criminal justice and corrections landscape have direct and tangible consequences upon community corrections and demand empirical study. The 2016 election, has ushered in a return to 'tough on crime' ideology. This reversal in criminal justice reform will have critical consequences for many, but especially dire consequences for communities of color.

One example, the Corrections Corporation of American (CCA), a leading for-profit corrections company, now rebranded as CoreCivic, is expanding its scope (Gómez & Cataldo, 2016). Under its new name, this major effort to expand and reinvigorate the criminal justice system will extend to community corrections, guaranteeing a widening net that will surely bring increasing numbers of Black and Latinx individuals into the reinvigorated criminal justice juggernaut.

Latinx individuals have been especially targeted by 'tough-on-crime' legislation of the incumbent administration, exploiting anti-immigrant sentiment to pass "zero-tolerance" immigration policy (Pierce, Bolter, & Selee, 2018). These policies have substantially increased the funding to and broadened the discretion of the anti-immigration task force, ICE (Immigration and Customs Enforcement) to arrest, detain, and deport immigrants (Abrego, et. al., 2017). Through these policy changes, the private prison industry was reinvigorated, seeing over 353,000 individuals passing through detention centers during 2016, generating over \$7 billion (Luan, 2018).

The recent changes in the criminal justice landscape notwithstanding, any system of interrelated departments that have such far-reaching and long-standing effects on the lives of so

many individuals, especially marginalized groups, warrants continuous examination. Existing literature studying the prominent role institutions, such as the criminal justice system, have played in the continued and evolving marginalization of racial and ethnic groups is extensive and thorough. Major focus of these studies has been upon the costs and consequences of the War on Drugs and incarceration trends (ex: Alexander, 2010; Carson & Anderson, 2016; Hari, 2015; Websdale, 2001). Community corrections, in comparison, has seen far less examination.

Institutional racism affects every part of the criminal justice system, including community corrections. Offenders supervised under community corrections, much like those incarcerated in the prison system, find themselves at the mercy of their criminal records (Pager, 2010), face an accumulation of fines and fees, and a loss of liberty through stringent surveillance by agents of the criminal justice system. Possible differential treatment of racial and ethnic minorities warrants closer scrutiny of all aspects of the criminal justice system, including community corrections.

Examinations and discussions of the effectiveness of probation have been studied and debated, including possible gender and minority bias (Albonetti & Hepburn, 1997; Gray et. al., 2001; Jalbert & Rhodes, 2012; Morgan, 1994; Olson & Lurigio, 2000; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Verrecchia & Ling, 2013; Warren, 2016). As the U.S., has transitioned from a treatment-oriented criminal justice system to a more retributive one, the nation's prison population has ballooned leading to overcrowding. This overcrowding at many of the nation's prison facilities, has increased interest in alternative methods and punishments including intermediate sanctions and community corrections.

Along with the heightened interest in intermediate sanctions, there has also been an interest in the possible racial and ethnic bias and negative effects upon those supervised. Studies

examining racial and ethnic bias in probation have found that Black and Latinx offenders are more likely to experience negative probation outcomes (Gray et. al., 2001; Ho et. al., 2014; Johnson & Jones, 1998; Morgan, 1994; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Warren, 2016). The collateral consequences experienced by communities of color through the revolving doors of prisons, are further exacerbated by a large number of individuals under probationary supervision and seemingly inevitable probation failure. Rose and Clear (1998) depict high crime communities as socially disorganized communities who lack self-regulatory mechanisms or local controls and therefore rely on state control. However, rather than return control locally, these neighborhoods are further disrupted by state control measures like high police presence and incarceration rates that sever vital networks. In line with this argument, high rates of probation violation in high crime neighborhoods adds more state control through probationary surveillance, further weakening local controls.

Studies examining possible bias within community corrections have traditionally focused on singular identities of bias, such as race, ethnicity, class, gender, education, employment, or age (Gray et. al., 2001; Morgan, 1994; Olson & Lurigio, 2000; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Verrecchia & Ling, 2013; Warren, 2016). Examinations of multiple overlapping identities at once, such as race *and* gender, are few, and have been rare within probation literature. The finding that Black men in particular are disproportionally drawn into the criminal justice system, for example, can be interpreted through an intersectional framework.

Intersectionality, as presently interpreted, is a relatively new school of thought, and can be applied to numerous areas of study, allowing for a more complex understanding of identity and experiences. It has been thoroughly applied within feminist studies and has found success in

application in areas of criminal justice. Interaction effects have been employed in previous studies within criminal justice but have not been examined through an intersectional framework. In their examinations of sentencing outcomes, Steffensmeier et. al. (1998) and Spohn & Holleran (2000) found that young men of color specifically received disproportionately harsher sentences than other combinations of age, race/ethnicity, and gender. Though examined through a focal concerns perspective, the identities created are a result of interaction effects of multiple overlapping variables. Studies within probation are similarly situated, relying on single variable examinations. Johnson and Jones (1998), Morgan (1994), Olson & Lurigio (2000), Sims and Jones (1997), Steinmetz and Henderson (2015), and Steinmetz and Anderson (2015) are among the few that examine interaction effects of race, ethnicity, and gender as well as other variables upon probation outcomes.

Examinations of a disproportionate ‘justice’ within the criminal justice system focus upon race and ethnicity as clearly separated and delineated concepts. Viewing race as Black and White and ethnicity as Latinx and Non-Latinx, ignoring a multitude of complex racial and ethnic identities within both communities. Among Black and Latinx populations, a further marginalized population exists within the convergence of these two marginalized groups. If gender is considered, the literature is further reduced and again, situated within feminist studies. The current study will examine the effect of overlapping identifiers upon probation outcomes through a framework of intersectionality. Further, this study will combine race and ethnicity, creating racial/ethnic categories to represent a more complex and marginalized group of offenders. The new categories created will allow for an examination that will include the of experiences of a marginalized group that exists between race and ethnicity.

Following this introductory chapter, the subsequent chapters will include a review of existing literature, methodology, results, and discussion chapters. The literature review will discuss the two theoretical orientations that were considered for this study, focal concerns and intersectionality. Focal concerns theory, though included for consideration, was ultimately found not to be suited for the available data. To this end, the primary focus will be on intersectionality as the theory utilized. The previous literature examined discusses studies pertaining to racial, ethnic, and gendered issues within criminal justice processes.

This review will begin with a broad overview of significant literature addressing racial and ethnic inequality within criminal justice that will highlight major institutional issues. This will include previous literature examining policing and sentencing. Next, literature examining racial and ethnic inequality in corrections will narrow focus from corrections in general to probation specifically. Community corrections, an aspect of corrections will be included in the review. Finally, the review of probationary literature will examine gender-based studies separately from race and ethnicity. Reviewing gender as separate from race and ethnicity will allow for examination of the potential influence gender has on probationary outcomes, prior to examining the power of race/ethnicity/gender simultaneously.

Chapter three will describe the data and methodology in detail. The data includes the aggregate overview of the population, the population it represents, and the racial, ethnic, and sex makeup of the probationary population. The independent and dependent variables will be described at length. Next, the fourth chapter will present the results of the statistical analysis and will include descriptive statistics along with the results of the logistic regression analysis. Finally, the fifth chapter will discuss the results, interpretation of findings, and future policy implications.

## **Chapter 2 - Literature Review**

To date, a great deal of research has been devoted to uncovering possible ways in which various criminal justice institutions and their processes may contribute to racial and ethnic inequality (Anderson, 2015; Bonilla-Silva, 2001; Carson & Anderson, 2016; Epp et. al., 2014; Gelman et. al., 2012; Gray et. al., 2001; Morgan, 1994; Petit & Western, 2004; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Taylor, 2016; Romero, 2006; Spohn, 2009; Spohn & Holleran, 2000; Warren et. al., 2006; Warren, 2016; Zatz, 1984). Findings support, for instance, a strong association between the War on Drugs and marked increases of contact with the public at every level of the criminal justice system (Alexander, 2010; Websdale, 2001; Steffensmeier et. al., 1993, 1998). The massive increase in contact with the criminal justice system for all races and ethnicities coincides with the declaration of war on drugs labeled dangerous to society (Alexander, 2010; Hari, 2015). Numerous studies have focused upon the crucial role drug legislation, law enforcement practices, and sentencing policies have had upon crime trends and specific attention focused upon minority communities and the racial and ethnic groups that inhabit them (Bobo & Johnson, 2004; Bush-Baskette, 1998; Chin, 2011; Nunn, 2002). Though a major factor in the continued oppression and marginalization of minorities, the U.S. War on Drugs is only one such method in a history laden with legally sanctioned discrimination. Reevaluating the evolution of American race relations through an examination of various aspects of the criminal justice system in general and probation specifically will offer insight into a system that is an integral part of its framework and continues to thrive in today's post-racial society (Alexander, 2010).

As a simplified examination of racial and ethnic inequality fails to adequately dissect and address the multiple overlapping identities within racial and ethnic classifications, a framework

of intersectionality will explore how one's race and/or ethnicity may be affected by sex, age, and class. A fairly recent development, intersectionality offers a more complex viewpoint. By examining the multiple overlapping social identities, power and oppression can be understood as a continuum, rather than as rigid binary categories of White and non-White (Crenshaw, 1989, 1991; Davis, 2008; McCall, 2005).

The forthcoming literature review will encompass an overview of the theoretical orientations explored for this study and will include colorblind ideology, focal concerns, and intersectionality. Focal concerns, a considered framework, was ultimately found not to be a good fit, but is included in the literature review to offer a theoretical framework for future research in the area of probation. Though this study does not explicitly test any theory of racial inequality, these theories are useful for providing context for the study. Further, the theories discussed do not represent a complete list of possible perspectives that may explain or situate the problems explored in this study. These theories, however, were found to be significant for establishing a frame for discussion of inequality within criminal justice.

## **Theoretical Orientations**

### **Focal Concerns**

As this study seeks to examine how multiple factors may influence probationary outcomes, the theoretical framework should address the influence of multiple factors upon outcomes. The first theoretical orientation explored, but ultimately rejected, to potentially be applied to this study examines how various factors may influence sentencing decisions. Albonetti (1991) hypothesizes that judicial discretion seeks to diminish uncertainty in sentencing decisions by assessing a defendant's likelihood of committing future crime. The factors that judicial actors base this assessment upon often include extra-legal factors, such as race, gender, and age.

Institutionally, a practical constraint, such as prison overcrowding, may pressure judges to consider community corrections for an array of crimes that would typically result in incarceration. Based on Albonetti's (1991) causal attribution in punishment framework, Steffensmeier, Ulmer, and Kramer (1998) theorize that judicial discretion is based on consideration of three specific foci of importance that occur during sentencing: blameworthiness, protection of the community, and practical constraints and consequences.

The first of these concerns, blameworthiness can be understood as the retributive philosophy of "just desserts", wherein the offender, having been found guilty will now receive what s/he deserves. Culpability of the offender and the serious nature of the crime are considered, does the sentence fit the crime? Secondly, taking into account possible practical constraints involves several institutional and individual level factors. Institutionally prison overcrowding may pressure judges to consider community corrections for an array of crimes that would typically result in incarceration. An offender's family may weigh on the decision as well. A mother of small children may receive a lighter sentence than a woman with no children. These various individual and institutional levels consequences play a large role in sentencing decisions. Finally, community safety is considered. Here the dangerousness of the offender and the seriousness of the offense are assessed to determine risk of harm to the community if this offender were to be released. (Steffensmeier et. al., 1993, 1998). The complex interaction of these focal concerns leaves a great deal of discretion to the deciding authority. Although complex and rational, these focal concerns leave uncertainty when judging an offenders' blameworthiness and risk of recidivism.

While central to the sentencing decision, these rational focal concerns do not address the uncertainty of extra-legal factors that may influence judicial discretion. Blameworthiness,

community safety, and practical constraints still leave a degree of uncertainty in anticipating risk of recidivism. To address this uncertainty, various legal and extra-legal factors may be considered (Albonetti, 1991; Steffensmeier et. al., 1993, 1998). Weighing extra-legal factors that include the offenders' race/ethnicity and gender then, often plays a part in the decision-making process.

As sentencing outcomes can have serious long-term implications for not only the offender, as well as the community, judges must weigh the criteria associated with the offender (criminal history, severity of crime committed, etc.) and the risk of the offender to the community. Therefore, judges, as well as other criminal justice professionals, must make sentencing decisions based upon various criteria, weighing just punishment against possible risk of recidivism and community safety. Although there are indeterminate sentencing practices, there is much room for discretion, charging and departures.

A dominant theory within sentencing literature (Albonetti, 1991; Crow & Bales, 2006; Freiburger, 2009; Sharp et. al., 2016; Spohn, 2007; Steffensmeier et. at., 1993, 1998), but also utilized within parole literature (Huebner & Bynum, 2006), focal concerns theory has been utilized to examine multiple aspects of criminal justice processes. Police discretion, similar to discretion of the courts, relies on assessing multiple factors. Police however must assess these factors in practice while patrolling and investigating, whether to perform a search during a traffic stop (Higgins et. al., 2011) and use of force (Crow & Adrion, 2011). Other studies include: parole decisions (Huebner & Bynum, 2006), juvenile court decisions (Harris, 2009), and the causality of juvenile gang delinquency (Miller, 1958).

As community corrections relies heavily on automated risk assessment, focal concerns theory has been applied sparingly within existing probation literature (Harris, 2009; Verrecchia

& Ling, 2013). Here, the narratives of probation officers are examined through focal concerns and considered during the decision-making process of the actors within the juvenile court system (Harris, 2009) and adult probation revocation (Verrecchia & Ling, 2013). Processes within the juvenile justice system, although modeled after the adult criminal justice system and following a similar trajectory of retribution over rehabilitation, offers more discretion in the hands of professionals such as judges, prosecutors, probation officers, etc. Focal concerns theory serves as a framework to assess this problem-solving discretion.

As will be discussed in further detail in the next chapter, the current study employs social identities such as race/ethnicity, gender, and age to examine how these overlapping variables may affect an individual's likelihood of probation failure. As has been discussed, focal concerns theory provides a framework that supports the complex issues associated with criminal justice discretion by depicting specific criteria that are central to the decision-making process. It is not valid or useful however in the examination of probationary outcomes. Sentencing decisions rely on human discretion and involves issues of bias (Albonetti, 1991; Doerner & Demuth, 2009; Spohn & Holleran, 2000; Steffensmeier et. al., 1998; Zatz, 1987) and are fraught with human error. Conversely, probationary risk assessments rely on complex software-based algorithms, limiting human discretion and human error.

Focal concerns theory highlights specific concerns that influence the human judgement. This study recognizes that while focal concerns examines multiple factors that may influence an outcome, human judgement is a vital component of the theory's framework. The data utilized should involve elements of discretion, such as interviews, reports, or transcripts. Though the current study examines the convergence of factors that influence probationary outcomes, data concerning probation officer discretion is not included and could not directly be measured.

Therefore, a theory of focal concerns does not serve as a proper framework to examine the way in which various measurable data influence prediction of probationary failure. Additional theory should be considered for proper fit for examining and interpreting the data. The following section will examine a similar theory that also incorporates numerous variables into its framework, yet does not narrowly apply this framework to concerns of judicial discretion.

### **Intersectionality**

As noted, the data utilized in the current study relies solely upon information regarding individual probation cases, including risk assessment scores, data pertaining to criminal justice professionals was not available. To this end, the current study sought to include a theoretical perspective that examines multiple factors that could potentially affect the outcome without examining aspects of human discretion. Seeking such a theoretical foundation, intersectionality was considered.

Intersectionality is a relatively new theoretical orientation (Crenshaw, 1989). First coined and applied to a critical analysis of the experience of Black women within antidiscrimination law, antidiscrimination politics, and feminist theory by Kimberlé Crenshaw (1989). Feminist theory, though a diverse field of study that encompasses various points of view, has been criticized by numerous scholars. One such criticism contends that early feminist studies overlooked the multiple intersections of identity amongst women, further marginalizing women of color and of lower class standing (McCall, 2005).

Traditionally, feminism has translated the experiences of women to the experiences of White women, a singular view of oppression that emphasizes gender and ignores race and class (Collins, 1993). Identity categories, such as race and gender, in typical discourse are treated as mutually exclusive groups, ignoring identities of marginalized groups that exists between these

groups, straddling multiple marginalized identity groups. Black and Latinx women, for instance, straddle two oppressed groups, those of women *and* people of color, two marginalized groups. The experiences of women of color have been largely ignored, further pushing their oppressed experiences to the background.

Addressing the differential experiences among women based on race and class, black feminist scholars acknowledged the need for a knowledge base that discussed the hierarchies that existed between women based in privilege and power (Lutz et. al., 2011). Seeking to highlight the ways in which feminism has continued the tradition in scholarship to ignore racially based experiences of women, Crenshaw (1991) utilized a theory of intersectionality. Although this theory rose to prominence to specifically highlight the further marginalization of women of color, innumerable intersections of race, class, gender, sexuality, etc.

Social identifiers, represented as variables throughout research, are typically discussed and studied as separate and isolated characteristics. According to intersectionality, social identities such as race, class, and gender exist within a complex matrix (Crenshaw, 1991). Each factor overlaps with others in unique ways within the matrix. As each identifier is related to certain degrees of power within the social structure, social identity inherently carries relative power and oppression. Together, these configurations of identity characteristics can be seen as “multiple dimensions of domination” (Crenshaw, 1991, p. 1297). Through this depiction, the relationship between social identities and their relative power can be better imagined, allowing for a clearer understanding of how social identity may influence criminal justice outcomes.

Literature examining the relationship between race/ethnicity, class, gender, and sexuality though largely situated within feminist studies lends itself to greater application across numerous disciplines. As a theory, intersectionality examines multiple, intersecting inequalities (Burgess-

Proctor, 2006) and serves as a framework to discuss the inequality found in criminal justice practices. Within the sentencing literature, intersectionality examines the various and obvious differences between the numerous social intersections of identity (Doerner & Demuth, 2010; Spohn, 2009; Spohn & Holleran, 2000; Steffensmeier et. al, 1998).

Studies within sentencing utilizing a framework of focal concerns have found that the judicial decisions have affected young men of color more than any other combination of age, race, ethnicity, and gender. Examining the length and severity of prison sentences in Pennsylvania, Steffensmeier et. al. (1998) found that the effects of sentencing were harshest on one particular combination of intersectional identities: young Black males. This group was more likely to receive the harshest penalty. Doerner and Demuth (2010) similarly examine the individual and joint effect of race/ethnicity, gender, and age on sentencing outcomes, finding that young men of color receive harsher and longer sentences. While this study analyzed variables such as gender and age, other studies have included more dynamic variables such as employment (Spohn & Holleran, 2000), pretrial detention (Spohn, 2009), offense related criteria (Huebner & Bynum, 2006). The results of these studies support the need for examination of additional offender characteristics to uncover how race and ethnicity impact criminal justice outcomes. Though these studies sought to understand how judicial decisions, through focal concerns, affect offenders based upon extra-legal factors, they shed led upon which individuals are affected the most.

The interdisciplinary capabilities and applications of examining joint effects of an unlimited number of variables makes this a theory versatile and useful. Focused and primarily applied to a wide array of foci within feminist studies, intersectionality highlights the oft hidden challenges faced by those with social identities such as those faced by people of color and

women. Studies utilizing intersectionality vary from those examining disparity in public health (Wemrell et. al., 2017), to issues within business (Romero, 2016; Valdez, 2016). Examinations of data within criminal justice processes are just one of many applications.

As a theoretical approach, numerous criticisms have been directed at intersectionality and its possible applications. One such critique questions the assumptions of time and geography. Transnational feminism questions the acceptance of global and national boundaries as fact. That this acceptance of boundaries ignores interrelationships between historical and geographical boundaries relative to gender, race, class, etc. As Patil (2013) describes "...categories of race, ethnicity, sexuality, culture, nation, and gender not only intersect but are mutually constituted, formed, and transformed within transnational power-laden processes such as European imperialism and colonialism, neoliberal globalization, and so on" (p. 848).

Another critique sees the social identities examined as fact when they are relative characteristics that are misleading and divisive. McCall (2005) asserts that a possible consequence of an intersectional approach lies in its reliance upon categorical demarcation. Categorizing identities may lead to reification of socially constructed identities. Placing individuals into categories by identifiers such as race, class, gender, age can "create categorical reality rather than the other way around" (McCall, 2005, p. 1777).

For this study, intersectionality will serve as the framing theory. As colorblind ideology (mentioned above) works to disguise marginalized groups by treating race and ethnicity as outdated constructs, intersectionality works to not only to uncover these same groups, but further examines complex identities within marginalized groups. Disparity findings also depend on modeling strategy, that's why intersectionality is important gender tends to mask association between race/ethnicity and punishment outcomes. The groups of individuals that are the focus of

the current study, Black and Latinx male and female probationers, will be examined as distinct intersections of gender and race/ethnicity. Specifically, seeking to examine any possible differential experiences of Black and Latinx probationers, relative to White probationers. Any differences will be explored through a lens of colorblindness and intersectionality within the criminal justice system.

### **Racial and Ethnic Inequality in Criminal Justice**

Countless numbers of men and women of color find themselves in contact with police, courts, and corrections at a higher rate than their White counterparts (Alexander, 2010; Bonilla-Silva, 2001; Taylor, 2016). Police stop and investigate racial and ethnic minorities more frequently than any other racial or ethnic group (Epp et. al., 2014; Gelman et. al., 2012; Romero, 2006; Warren et. al., 2006), they receive longer and harsher sentences than their White counterparts (Spohn, 2009; Spohn & Holleran, 2000; Steffensmeier et. al., 1993, 1998; Zatz, 1984), and are overrepresented throughout corrections (Alexander, 2010; Anderson, 2015; Carson & Anderson, 2016; Gray et. al., 2001; Morgan, 1994; Petit & Western, 2004; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Warren, 2016). This long list of literature points to a pattern of inequality drawn along racial and ethnic lines, that remains strong even in the era of colorblindness (Alexander, 2010; Bonilla-Silva, 2010; Taylor, 2016).

Of the various aspects of modern society that maintain and perpetuate systems of ethnic and racial discrimination the criminal justice juggernaut has far reaching consequences and detrimental implications that can affect entire communities. The current study examines inequality as a consequence of intersecting identities of gender, race, and ethnicity as it pertains specifically to probation. As an exhaustive examination of all forms of inequality would be an

insurmountable undertaking, instead this probation study will include a short overview of inequality within criminal justice to create a framework for understanding of the complex ways in which each aspect individually and as a system, perpetuate and maintain an oppressive racial and ethnic hierarchy.

The following literature review will be organized by specific aspects of the criminal justice system. First, pertinent literature regarding issues of racial and ethnic discrimination in policing will be discussed. This discussion will include a historical development of American policing with a focus on the racialized nature of its inception. A comparison between paternalistic slavery-era policing and modern policing will lead to a discussion of modern police and police practices that continue the legacy of oppressive and discriminatory actions toward people of color. Next, relevant literature examining racial and ethnic bias in sentencing will be reviewed. The discussion of sentencing will discuss the importance of ‘tough on crime legislation’, judicial discretion, and the various extra-legal factors that may affect sentencing outcomes.

## **Policing**

As the initial point of contact and most visible element, the police are an integral part of the criminal justice system. Police officers act as the gateway to the criminal justice system, exercising extensive autonomy in their decision-making authority. This authority places police in a uniquely commanding position, straddling a line between protecting the rights and liberties of individuals and violating these same rights and liberties (Kesić, 2012). The decision of whether someone will officially enter the criminal justice system, lies within the authority of police officers.

Recent high-profile incidents involving police use of deadly force toward unarmed Black men and Immigration and Customs Enforcement (ICE) raids have reignited intense scrutiny of policing agencies, officers, and their seemingly differential treatment of minority populations. The 2014 officer-involved deaths of Michael Brown and Eric Garner quickly brought attention to long-standing racial tensions and racialized police violence (Goodman & Baker, 2014). Following the non-indictments of the police officers involved, numerous city-wide protests and intense violence held public attention. Movements such as #BlackLivesMatter formed to address not only the racialized police violence but also exigent issues facing the Black community (Bassett, 2015; Garza, 2014; Taylor, 2016).

Studies examining police and policing vary greatly and address a range of contradictory viewpoints and findings. Numerous studies have sought to determine what variables, including factors such as race/ethnicity, location, influence attitudes toward police (Lai & Zhao, 2010; Lundman & Kaufman, 2003; Nix et. al., 2015; Schuck et. al., 2008; Schuck & Rosenbaum, 2005; Webb & Marshall, 1995), examine possible racial/bias within police practices (Durr, 2015; Golub et. al., 2007; Knowles et. al., 1999; Tyler, 2005; Waddington et. al., 2004; Websdale, 2001), determine racial bias in officer-involved shootings (Corell et. al., 2007; Geller, 1992; Goldkamp, 1976; Sadler et. al., 2012), and the historical development of modern policing (Bass, 2001; Harring, 1976; Hawkins & Thomas, 1991; Reichel, 1988).

### **Historical Development**

A critical examination of the criminal justice system and policing should include at minimum, a cursory evaluation of its racialized origins. Early American slave patrols that policed the daily lives and bodies of Black slaves have evolved into police forces that continue to police communities of color and the bodies that inhabit them (Websdale, 2001). Oversaturation

and differential treatment of these communities have been hotly debated during, especially during newsworthy events, and offer insight into the overarching effect of the criminal justice system upon racial stratification.

In his extensive ethnographic study of policing practices in poor, urban communities, Websdale (2001), draws parallels between modern social control of poor, ‘problem’ populations and pre-Civil War slave patrols. Though a pervasive Euro-centric view of America’s colonial beginnings conceals a foundation built upon racial and ethnic discrimination, a thorough examination of police origins traces the oppressive motives of policing. As early as 1704, slave patrols were created not to maintain justice and prevent crime, but rather to maintain the social hierarchies of Southern slave states by strictly regulating the lives and bodies of Black slaves (Kappeler, 2014; Websdale, 2001). After the emancipation of Black southern slaves, panic and fear of free Blacks prompted southern Whites to search for alternative means of maintaining the established status quo, ensuring the continued governing of Black bodies in public spaces. The infamous Black codes addressed notions of Black inferiority and fears of innate Black criminality (Richardson, 1969).

Through this historical development of American policing, a pattern of legalized discrimination can be observed. Slavery, Native American genocide, Black codes, immigration reform, and Jim Crow, all forms of legalized discrimination upheld through American policing. These significant moments in the development of American society contributed to the extensive history of oppression of minority populations through legalized discrimination. These historical traumas, supported through policing practices, serve as one of the strongest factors in the current social stratification of people of color (Durr, 2015).

## **Racial Profiling in Police Encounters**

In today's tense racial climate, issues of police bias are at the center of heated debates and extensive media attention. Racial profiling is at the heart of issues of heavy policing of minority neighborhoods, police brutality, and investigatory stops. Numerous studies have found racial/ethnic bias within police practices (Correll et. al., 2007; Gelman et. al., 2012; Harris, 1994; Knowles et. al., 1999; Ludman & Kaufman, 2003; Warren et. al., 2006; Weitzer & Tuch, 2002), few have shown contradictory findings (Fryer, 2016; Miller et. al., 2017). Still, others acknowledge racial/ethnic bias in police practices, finding that bias does not lead to Black suspects being more likely to be shot than White suspects (James et. al., 2016) or defending the practice and framing it as smart policing, strategically investigating crime by targeting the perpetrators in high-crime areas (Harcourt, 2004; Mac Donald, 2003; Taylor & Whitney, 2002).

Racial profiling most commonly refers to police practices that target minority populations based on common beliefs that minority populations are more likely to commit crime (Epp et al, 2014; Gross & Livingston, 2002; Weitzer & Tuch, 2002). Traffic stops are the most common interaction between police and the public. The Bureau of Justice Statistics in its collection of state traffic data found that Blacks are more likely to be stopped by police while driving than White and Latinx drivers. Of the nearly 212 million drivers in the U.S., 13 percent of Black drivers are pulled over compared to 10% of Latinx drivers and 10% of White drivers (Eith & Durose, 2011). However minor these figures may seem; it must be acknowledged again that people of color make up a relatively small portion of the U.S. population. Further supporting an argument of selective racialized policing, data show Black and Latinx drivers are searched at higher rates than White drivers. White drivers were searched only 2% of the time, while Black and Latinx drivers were searched 6% and 7% of the time, respectively (Eith & Durose, 2011). It

should also be noted that though Blacks and Latinxs are pulled over and searched at a higher rate a higher percentage of Blacks are released with no law enforcement action than Whites and Latinxs, suggesting that Blacks are being pulled over for investigatory stops, while Whites and Latinxs are pulled over for legitimate traffic infractions (Eith & Durose, 2011; Epp et. al., 2014).

Some conservative politicians, law enforcement, as well as some within academia believe profiling is not the discriminatory practice it is touted to be, rather it is a rational and empirically supported practice aimed at high crime populations (Harcourt, 2004; Mac Donald, 2003; Taylor & Whitney, 2002). One such view, one steeped in racialized ideas of criminality, claims that due to high crime rates among people of color, it is only logical that these groups receive more scrutiny than others. Relying on statistical data that specifically highlight select violent crimes and drugs as proof that Black and Latinx populations are violent criminals in need of heavy policing.

Those who see racial profiling in police practices as a necessary crime-fighting tactic often defend its inherently discriminatory nature through narrowly interpreted crime statistics (Taylor & Whitney, 2002), safety concerns of immigration enforcement (Arnold, 2007), and moral and political ideologies that paint crimes committed by minorities as more dangerous or wrong (Harcourt, 2004). The inherently discriminatory practice of racial profiling, has been argued to be an effective crime fighting tool by some (Harris, 1999; Mac Donald, 2003; Taylor & Whitney, 2002) regardless of the negative impact upon communities of color. While others offer a more economic rationale suggesting profiling could potentially be an invaluable tool of colorblind “criminal profiling” if carried out properly (Harcourt, 2004) but carries heavy burdens by those who suffer from racial profiling.

In their examination of police stops, Epp et. al. (2014) found that Blacks were 2.7 times more likely to be stopped in investigatory stops by police while driving than their White counterparts. Pretextual or investigatory stops are disproportionately experienced by people of color. Consequences of increased scrutiny upon minority populations have led to innumerable incidents of police brutality, excessive force, and deadly force. Numerous studies have found that discrepancies exist regarding police use of force (Hyland et. al., 2015; Kahn et. al., 2016; Newman, 2015). Hyland et. al. (2015) found that between 2002 and 2011, Black (3.5%) and Latinx (2.1%) individuals were more likely than Whites (1.4%) to experience nonfatal force by police. An oppressive and exploitative aspect of an already marginalized minority experience, supporters of racial profiling depict the discriminatory practice as a logical reaction to racialized criminality (Taylor & Whitney, 2002).

Though topics within policing vary greatly, the abundant studies focused on policing and minority populations portray a long-standing adversarial relationship. A historical legacy of policing slave populations, prevailing beliefs of minority criminality, and concentrated poverty within communities of color has had lasting consequences upon law enforcement practices, and the relationships fostered between people of color and law enforcement, particularly in minority communities. The logic of viewing minority populations as criminal and profiling as a necessary practice shifts the attention from systemic racism to brown criminals and racist individuals within the ranks of good police officers.

## **Sentencing**

The sentencing phase acts as the final stage in criminal justice decision-making process. Though some defendants go on to be incarcerated, and eventually released on parole, many others will not be incarcerated, rather they will face community corrections. Sentencing serves as

the final stage of criminal processing for many defendants, because sentencing outcomes can significantly differ according to circumstance and context. After the defendant is found guilty or pleads guilty, the judge will weigh existing sentencing guidelines along with the facts of the case to arrive at a decision, based upon multiple mitigating and aggravating factors, including legal and extra-legal elements, sentencing outcomes vary greatly.

The crime and criminal history of the offender are only two factors among many that may affect the outcome of the sentencing phase. Studies examining sentencing outcomes have greatly focused upon the various variables that may affect sentence type and length. These legal and extra-legal variables include but are not limited to race, gender, socio-economic standing, jurisdiction, type of crime, criminal history, education, and number of victims. It was found in some cases that extra-legal factors, such as if the defendant children, weighed upon sentencing decisions just as much or more as legal factors of the crime.

Sentencing decisions, no longer reached solely through judicial discretion, are largely guided by tough on crime legislation. Though discretion for certain crimes is limited, legal and extra-legal factors affect sentencing outcomes and can lead to patterns of racial and ethnic disparity (Albonetti, 1991; Steffensmeier et. al., 1993, 1998). Type of crime, cost of crime, number of previous offenses, etc. are all legal factors taken into consideration during sentencing. Taking context into consideration is widely understood as rational and necessary, judges will also consider extra-legal factors (race, ethnicity, gender, socio-economic standing, age, etc.). These factors, that seem unrelated to the crime(s), also play a role in a defendant's sentencing outcome (Steffensmeier et. al., 1993, 1998). Significant research examining this phenomenon has been conducted and studies have reported contradictory findings.

Numerous studies have sought to examine sentencing outcomes, looking for possible racial and ethnic disparities. Although many of these studies have found that differences do in fact exist across races and ethnicity (Sims & Jones, 1997; Spohn, 2009; Spohn & Holleran, 2000; Zatz, 1984), there remain others that have found that there were no significant differences across race and ethnicity (Jennings et. al., 2014; Morgan & Smith, 2008). Authors have admitted that existing literature is “replete with contradictory studies asserting that race does, does not, or might under some conditions effect sentencing” (Zatz, 1984, p. 147).

Examining the breadth of sentencing research spanning 50 years, Zatz (1987), depicts this research as occurring in four waves, beginning in the early 1930s. Similar to contemporary ideas of colorblind racism, Zatz (1987) asserts that racial and ethnic bias has always existed within the criminal justice system and describes an evolution from visible overt bias to a subtler bias hidden behind systematic and institutionalized means.

Although often grouped into the category of race/ethnicity, Latinx populations are often overlooked in discussions of criminal justice data and research. Addressing the lack of visibility of Chicano offenders in comparison to Black offenders, Zatz (1984) undertakes an examination of sentence length for Whites, Blacks, and Chicanos in the state of California after the implementation of determinate sentencing. Zatz found that the variations in sentence length vary across the races/ethnicities. Results support the categorical separation that examines ethnicity as distinct from both Black and White.

Numerous studies examining sentencing outcomes have supported these theories and hypotheses, finding that racial and ethnic bias does in fact occur within sentencing (Albonetti, 1991; Doerner & Demuth, 2014; Stacey & Spohn, 2006; Steffensmeier et. al., 1998; Zatz, 1984). Empirical findings of sentencing disparities serve as evidence of lingering inequality. Findings

within sentencing outcomes in which young men of color receive harsher and longer sentences depict a criminal justice system with differential treatment of minorities.

Revealing disparities in sentencing serves to further support the existence of systemic inequality across race and ethnicity. Retributive crime legislation such as the War on Drugs and the Violent Crime Control and Law Enforcement Act of 1994 exacerbated the overrepresentation of minority populations within the criminal justice system through disparate sentencing outcomes (Alexander, 2016). Sentencing trends follow the political and ideological shifts within the larger society. Sentencing legislation such as mandatory minimums, three strikes, and truth-in-sentencing reflect the ideological shift from treatment and rehabilitation to ‘get tough’ that focused upon communities of color. The American War on Drugs specifically has been cited as the foremost cause of the mass incarceration of people of color, specifically of Blacks and Latinxs (Alexander, 2010). To date 866,000, Blacks and Latinxs currently find themselves under state or federal prison supervision of the criminal justice system. Of this number a clear majority were convicted of drug-related crimes. While drug activity is not the singular activity that has led to the overrepresentation of minorities within the criminal justice system is it by far the most common. Drug crime garners harsher sentences for minorities relative to Whites than do more serious, violent crimes.

### **Racial and Ethnic Inequality in Corrections**

As discussed in the previous section, the criminal justice system has become a juggernaut of American society, leading the world in the number persons under correctional supervision, in jails, prisons, and community corrections. The soaring correctional population has been hotly debated and heavily scrutinized by countless observers and researchers. Staggering rates of

incarceration have been justified as a consequence of inflated crime rates fueled by widespread drug use (Tonry, 1999).

The War on Drugs, sold as a national campaign to combat a rampant drug culture that created unprecedented crime rates and a national crisis, actually preceded the crime wave (Alexander, 2010, Nunn, 2002). The ‘tough on crime’ policies gave extensive power and funding to the criminal justice system, enlarging the net with which people, specifically people of color, could be ensnared into the system. Colorblind ideology and colorblind rhetoric ensured that the War on Drugs and ‘tough on crime’ policies, applied unequally to people of color, was not seen as a consequence of systemic racism, but rather rising crime rates associated with the violence and drugs in ethnic communities (Alexander, 2010; Nunn, 2002; Websdale, 2001).

Reflective of the systemic inequality that would be strengthened by the War on Drugs, the number of individuals supervised by the criminal justice system swelled. In a 20-year period from 1985 to 2015, the Bureau of Justice of Statistics (1985; 2015) documents a 43 percent increase in people under correctional supervision from 2,904,979 to 6,741,400. Though the War on Drugs has invariably affected every aspect of the criminal justice system, a cursory examination of the corrections population, is a visual representation of mass incarceration and major racial and ethnic disparities.

Literature examining penal institutions is extensive and covers aggregate data of incarceration rates and trends, population data, but also include the long-term effects of incarceration (Pager, 2008; Rose & Clear, 1998; Travis & Waul, 2003; Trusts, 2010; Western, 2002; Websdale, 2001) racial and ethnic inequality (Alexander, 2010; Brewer & Heitzeg, 2008; Davis & Shaylor, 2001; Martinez & Valenzuela, 2006; Pettit & Western, 2002; Taylor, 2016), and the prison industrial complex that has thrived from the privatization of incarceration (Davis

& Shaylor, 2001; Fulcher, 2012; Lotke, 1996; Schlosser, 1998; Sudbury, 2002; Thompson, 2012; Welch, 2000).

Despite a great deal of scholarship focused primarily upon penal institutions and inmates, the U.S. correctional population encompasses all offenders under supervision of the criminal justice system, including community corrections (Kaeble & Bonczar, 2016). This supervision includes not only those incarcerated in state, federal, and private institutions, but also those under probation and parole. This is not to insinuate academic focus on incarceration is not unwarranted. On the contrary, with such a substantial population confined in overcrowded facilities, and the long-term consequences of incarceration upon families and communities, incarceration requires extensive examination and scrutiny. A review of incarceration and parole are included in this study to allow for a greater understanding of the extensive systemic inequality throughout corrections and criminal justice but will be relatively short.

At yearend 2015, the U.S. had an estimated 1,526,800 prisoners under correctional supervision (Carson & Anderson, 2016). A great deal of research traces the beginnings of the prison population boom to the 1970s and its cause as War on Drugs. Gottschalk (2011) asserts that while not untrue, this theory of causation is short-sighted and oversimplifies the complex political and ideological causes of today's carceral state. While the carceral state was created relatively rapidly over a 30-year period, it was not a simple straight forward package of legislation, rather it numerous contributing factors that was hidden from the public and may not even have been intentional. In the decades prior to the explosion of mass incarceration, factors including the crime rate, prison as industry, illegal drug trafficking, shifts in ideology, bi-partisan competition to seem 'tough-on-crime', and changes in American politics all seeds contributing to a carceral state (Gottschalk, 2011).

The steady numbers of those incarcerated contributing to the carceral state, saw a small reprieve recently. According to prison population data, the year 2015 saw a decrease in the number of individuals entering federal and state prisons, signaling the lowest prison population since 2005 (Carson & Anderson, 2016). The decrease occurred in response to Obama-era criminal justice reforms at the federal and state level. Under the Obama administration criminal justice reform reduced prison overcrowding through federal sentencing legislation, prosecutorial charging policies, and presidential clemency (Obama, 2016). Several states also worked to reduce prison overcrowding: responding to severe overcrowding California enacted the Public Safety Realignment act, diverting nonviolent non-serious felony offenders to county-level jurisdictions to be dealt with at the local level (Petersilia, 2014), rather than fueling the revolving door of incarceration and release (Abarbanel et. al., 2013).

Examinations of corrections often include a categorical breakdown of incarceration rates by race and ethnicity. Official statistics of prison populations show Blacks, followed by Latinxs are incarcerated at rates higher than those of their White counterparts. Typically, Blacks are incarcerated at five times and Latinxs two times that of Whites (Carson & Anderson, 2016). Further, the crimes for which they are convicted and sentenced are similar. Supporting sentencing literature that has found young Black and Latinx men face harsher sentences.

Examining state and federal prison statistics sheds light on the population most effected by mass incarceration through a detailed examination of age, gender, and race/ethnicity of inmates. Population statistics show men of color between 30 and 34 are imprisoned at much higher rates than White men of the same age group. Whereas White males are imprisoned at a rate of 1,101 per 100,000, the rates for Black men and Latinx men are 5,948 and 2,365 per 100,000 respectively (Carson & Anderson, 2016). The rates for females follows a similar

trajectory, with females 30-34 having the highest rates of imprisonment, and Black women being anywhere from 1.5 to 4.0 times more likely than White women and 1.1 to 2.0 more likely than Latinx women to be imprisoned (Carson & Anderson, 2016).

The idea of ‘justice’ has been shown to be inequitably applied to people of color. The evidence is shown in the oversaturation of police patrols in communities of color, legalized profiling by immigration enforcement agencies, and the extensive overrepresentation of these populations throughout the criminal justice system. Community corrections, often overlooked is not exempt from such racial and ethnic inequities.

## **Probation**

Probation, at its outset, served as a rehabilitative measure of the criminal justice system. Multiple sources trace the origins of probationary practice to 19<sup>th</sup> century America (Banks, 2005; Chambliss, 2011). During a time of progressive change and a disorganized criminal justice system, socially conscious groups placed an emphasis on rehabilitation and initiated individualized treatment and supervision programs. A treatment ideology underpinned the use of work-release and community-based correction initiatives (Chambliss, 2011). Grass-roots organizations and individuals, served as unofficial probation agents, working to release offenders back into the community to seek treatment and rehabilitation (Louden et. al., 2015).

Probation and other forms of community corrections continued to evolve and grow throughout states and regions across the U.S., finding regulatory practices and treatment methods based upon individualized determinants. The goal of these practices and methods was to modify offender behavior or more specifically transform offenders into respectable, abiding citizens (Garland, 1985). This focus on rehabilitation continued and thrived up to the late 1960s, including the President’s Commission on Crime (1967) which outlined a need for expanding community

corrections programs (Walker, 1978). Though the President's Commission on Crime supported a rehabilitative ideology, a major paradigmatic shift soon followed, greatly changing the U.S. penal system and racial and ethnic inequality.

The social upheaval and ideological shift of the 1970s wielded major changes in U.S. crime control policies. The shift from rehabilitative to retributive justice served not only to create harsher legislation and sentencing guidelines, but also reduced access rehabilitative services. From 1980 to 2004 the corrections system saw a massive increase in the population of individuals under its supervision. Largely attributed to the War on Drugs this increase sent millions of Americans to three pathways of criminal justice: probation, parole, and incarceration. Of the three, probation incurred by far the largest increase in population. The probation population increased from roughly 1,000,000 to over 4,500,000 (Bureau of Justice statistics, correctional surveys. 2005). The increase in numbers of individuals channeled through the criminal justice system requires a guided method for adjudication and sentencing.

Unlike the uncertainty inherent in judicial sentencing decisions, probationary sentencing decisions employ actuarial risk assessment instruments and software to minimize risk and uncertainty. Much like sentences resulting in incarceration, probation sentences vary in length and intensity. In contrast to incarceration, forms of community corrections, such as probation, face an increase in risk. Facing increased risk of recidivism and probation failure that is associated with the offender remaining in the community, actuarial tools assess this risk through logarithms and statistical probability. These actuarial mechanisms rely on complex statistical analysis to predict an individual's likelihood of failure. Considering demographic information such as race, sex, and age, these actuarial tools can also measure criminal history, employment status, and marital status. Risk, and by extension, uncertainty can be statistically minimized

(Bonta, 2002). To this end, the current study will utilize one such actuarial tool, the Level of Service Indicator-Revised (LSI-R) (Andrews & Bonta, 2000). A more detailed description and short literature review of this tool is provided in the methodology section in Chapter 3.

### **Probation Outcomes**

For probation to be considered a viable alternative to incarceration, it must protect public safety, while simultaneously reducing recidivism. To test probation's effectiveness in meeting these requirements, probation outcomes are studied and examined. Rates of success, recidivism rates, factors that affect offender success and failure (Albonetti & Hepburn, 1997; Jalbert & Rhodes, 2012; Morgan, 1994; Olson & Lurigio, 2000; Sims & Jones, 1997; Verrecchia & Ling, 2013).

Probationary outcomes serve as indicators not just of individual success or failure, but of trends within probation and the criminal justice system. Probation success is the completion of the set probation term without revocation or violation during that time. Failure is more complex, including technical violation, new misdemeanor, new felony, and administrative failure. The discretion of the assigned probation officer, the cooperation of the probationer, as well as the social and rehabilitative services available play integral roles in the success or failure of a probationary sentence.

Within the probation literature, outcomes are central to determining the trends of various probationary methodology. Studies examine the success rate of additional services (Baird, 1981; Morash, 2010), harsher probation parameters (Clear & Hardyman, 1990; Morash, 2010; Petersilia & Turner, 1993), individual level factors of race, ethnicity, age, gender (Gray et. al., 2001; Morgan, 1994; Olson & Lurigio, 2000; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Verrecchia & Ling, 2013; Warren, 2016), caseload (Jalbert &

Rhodes, 2012), philosophy of treatment versus retribution (Morash, 2010). Previous studies have found failure were higher for young men of color (Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015).

### **Racial and Ethnic Inequality in Probation**

Of the more than 4.6 million offenders under probationary supervision, Black and Latinx offenders make up 30 percent and 13 percent respectively of the total probation population (Kaeble & Bonczar, 2016). Reflecting the overrepresentation found throughout the corrections population, where minorities have a higher proportion within the criminal justice system than they do in the general population. Examining race and ethnicity in the context of probation, findings support a similar conclusion as sentencing in general: racial and ethnic minorities incur different outcomes than their White counterparts.

Studies of probation outcomes examine what risk factors have the strongest effects on a probationer's risk of failure. Factors such as age, gender, race, criminal history, marital status, employment status, educational level, etc. have been tested for statistical significance upon probation outcomes (Bloom et. al., 2003; Folsom & Atkinson, 2007; Funk, 1999; Holsinger et. al., 2003; Holtfreter & Cupp, 2007; Manchak et. al., 2009; Morash, 2010; Olson et. al., 2003; Schulenberg, 2007; Smith et. al., 2009; Van Voorhis et. al., 2007; Verrecchia & Ling, 2013; Vose et. al, 2009). Of the factors typically tested for possible predictive value upon probation success or failure, studies examining race and/or ethnicity have been limited (Gray et. al., 2001; Ho et. al., 2014; Johnson & Jones, 1998; Morgan, 1994; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Warren, 2016). With today's racial climate and accusations of institutionalized racism against minorities, such research is of great importance.

Though there are admittedly few studies specifically examining possible systemic bias of racial and ethnic minorities within probation. Studies that have examined numerous risk factors for probation failure, have found racial and ethnic minorities have differential outcomes. Of the studies found, few examined racial and ethnic variables specifically (Johnson & Jones, 1998; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015). These studies are discussed in further detail below.

Examining the effect of race and the American War on Drugs upon probationary outcomes, Johnson and Jones (1998) found that Black men were significantly more likely to experience probation failure for technical violations rather than new drug offenses, or felony offense. Other studies have found that Black and Latinx probationers were more likely to have their probation revoked for recidivism and technical violations than other racial/ethnic categories (Gray et. al., 2001; Morgan, 1994; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Warren, 2016). And still, others found differential outcomes for race, but not ethnicity (Gould et. al., 2011, Ho et. al., 2014). And few studies found that race/ethnicity had no statistical significance or were weak predictors of probation failure (Morgan, 1994; Roundtree et. al., 1984). While predicted to be strongly associated with failure, the current study acknowledges that racial and ethnic factors may be masked by additional factors such as gender and age. These additional variables will be explored.

### **Gender in Probation**

Throughout criminal justice literature, studies examining gender are extensive, assessing women's involvement in crime and victimization rates. Examinations of gender across offending (Chesney-Lind, 1986; Steffensmeier & Allan, 1996), sentencing (Doerner & Demuth, 2014; Steffensmeier et. al., 1998), and corrections (Binswanger et. al., 2010; Rafter, 1985) aim to

explore possible differential experiences between the genders. Studies predominantly have found that women, while increasingly more present in crime literature, in general commit less crime (Gartner, 2011; Steffensmeier & Allan, 1996; Steffensmeier et. al., 1998).

Of the factors associated with crime, gender has been found to be the strongest (Messerschmidt, 1993). Speculation exists as to the reasons for such differences in offending, some research supports biological differences (Denno, 1994; Marcus et. al., 1985), a preponderance of research however, suggests social construction of gender, women's lived experiences and lives, and the effects of socialization lead to differences in criminogenic behavior (Bloom et. al., 2003; Chesney-Lind, 1986; Messerschmidt, 1993). Feminist theories of female offending argue that similar to women's lived experiences in society, examinations of crime, criminal justice, and victimization tend to treat the experiences of women as additive variables examined in contrast to male offending (Bloom et. al., 2003).

Though gender-based inquiry is extensive throughout the criminal justice system, probation studies have focused primarily upon an aggregate examination of probation's population and outcomes. Gender serves as just one of several factors examined when examining existing probation population trends and outcomes. The various risk assessment tools utilized during probation sentencing have been examined and tested for reliability and utility based on gender (discussed further in the methods section in the following chapter) throughout juvenile, adult, and felony/nonfelony probation recidivism (Folsom & Atkinson, 2007; Funk, 1999; Holsinger et. al., 2003; Holtfreter & Cupp, 2007; Manchak et. al., 2009; Morash, 2010; Smith et. al., 2009; Vose et. al., 2009).

Throughout probation literature, numerous studies have found that women tend to be more successful while on probation (Olson & Lurigio, 2000; Steinmetz & Anderson, 2015;

Verrecchia & Ling, 2013). Women who do violate one or more parameters of their probation are less likely than men to have their probation revoked and be incarcerated (Verrecchia & Ling, 2013), supporting existing gendered sentencing outcomes. The gender differences in sentencing seem to extend to probationary outcomes. Whether women's success rates relative to men or a chivalrous explanation are responsible has been questioned, but not definitively established.

Probation studies spanning three decades support findings that women possess differential risk factors and needs than men, and that these gender differences are consistent in probationary outcomes (Frazier et. al., 1983; Van Voorhis et. al., 2007; Verrecchia & Ling, 2013). Examinations of probation outcomes find that while women tend to be more successful on probation, many of the factors associated with failure account for both male and female probation failure (Olson et. al., 2003). The focus on the similarities of the shared risk factors, conceals the gender-specific risk factors that affect women. The pathways perspective outlines numerous risk factors unique to women that may lead to future criminality include numerous forms of victimization: childhood trauma and abuse, poverty and homelessness, mental illness, drug abuse (Reisig et. al., 2006; Van Voorhis et. al. 2007). Studies examining gender-specific recidivism and probation have suggested gendered treatment programs that address these risk factors, aiding in successful probation completion and recidivism (Bloom et. al., 2003; Funk, 1999; Morash, 2010; Olson et. al., 2003; Schulenberg, 2007; Van Voorhis et. al., 2007).

Probation and parole programs, as with most government funded criminal justice programs focus on the types of crimes committed and attempt to curb recidivism through supervision, drug testing, and limited treatment options. Gender of offenders is rarely considered as a part of treatment plan, and therefore treatment options are typically based on men's needs. Morash (2010) contends that women's gender-specific concerns should be considered when

addressing probation and parole. What could be considered gendered stereotypes, Morash (2010) offers a treatment plan that is centered around women's relationship to their children, relationship to their partners, and substance-centered crimes. In her study, Morash (2010) compares the probationary/parole outcomes of two opposing styles of community corrections. As one county responds to community corrections with traditional supervision, the other applies gendered treatment/supervision. The results of this analysis show only a small difference in outcomes, as the traditional county experiences a failure rate of 46.2 percent, the gender responsive county sees only a few percentage points difference at a 42.2 percent failure rate. Morash (2010) openly admits that this difference is miniscule, but argues it has the potential to show that the gender-responsive probation and parole model could see greater success with fewer systemic issues (funding, organization, time).

The gender-responsive model, as Morash (2010) notes, relies somewhat upon stereotypes that women are primarily mothers and wives. Traditional community corrections focuses on gainful employment as a measure to reintegrate the individual into the community and avoid recidivism (Morash, 2010). The gender-responsive community corrections model focuses upon traditional female roles that center on children and home, while employment is given less importance (Chen, 2011). Further addressed in the original text, gender-responsive probation and parole rely on a more intensive form of supervision in which the officer has a great deal of contact and discretion over the client. This could have the reverse effect, more violations and/or recidivism (Morash, 2010).

Addressing the negative effects public policy upon women and women of color especially, Bloom et. al. (2003) discuss the consequences of ill-informed public policy and offer gender-responsive policies. Highlighting the critical effects of public policy, such as the War on

Drugs, has had on women, specifically citing findings that women are more likely than men to be arrested for drug-related crimes.

Gender as an indicator of recidivism allows probation officers and other criminal justice professionals to examine women as a group separate from men, that due to their marginalized status require different treatment options and considerations. But caution should be exercised when considering stereotypical views of women that would further marginalize or unnecessarily increase supervision (Morash, 2010). Considering gender as an important aspect of probation success, intersectional identities within gender should not be overlooked. The following section will highlight literature examining the oft overlooked identities found between race/ethnicity and gender.

### **Interaction Effects**

The interaction effects of offender characteristics against probation outcomes has not been extensively examined within the probation literature. Of those that have examined interaction effects, findings were significant and highlighted important intersectional issues. Various additional factors, including but not limited to gender, age, class, employment, education, marital status, number of children, and neighborhood context can be examined as interaction variables. Often, these variables are combined, and new variables created.

Investigating overlapping variables allows for a complex examination of the ways in which subgroups experience probation. As noted earlier, studies have found that Black and Latinx populations are more likely to face probation failure than White probationers (Gray et. al., 2001; Morgan, 1994; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Warren, 2016). When examining gender, studies find female probationers are more likely to successfully complete probation than males (Olson & Lurigio, 2000; Steinmetz &

Anderson, 2015; Verrecchia & Ling, 2013). Studies examining interactional effects, such as those examining gender, race, and ethnicity, highlight subgroups that are more likely to experience failure.

Steinmetz and Henderson (2015) examining individual variables and subsequent interactions of variables seek to identify subgroups that may be predicted to be more likely to experience probation failure. The study found that variables of race/ethnicity, gender, location, and offense severity are significant predictors of probation failure. Further, the study examines the interactional effects of race/ethnicity and gender as well as race/ethnicity and offense severity, finding that the Black males and Latinx felons are two subgroups are found to be statistically significant for probation failure.

Probation studies have focused primarily upon its viability. In recent years, the overcrowding in prisons has led to a reinvigoration of intermediate sanctions, to include probation. Rates of recidivism and the factors affecting recidivism offer insight into the viability of probation as a rehabilitative tool for less serious crimes. The current study will seek to analyze a sample of probationers to examine if probation is experienced by people of color unfairly.

The preceding literature review organizes previous studies spanning from policing to probation to portray the extensive role criminal justice plays in the continued marginalization and discrimination of people of color. The studies outlined above, while spanning the numerous parts of the criminal justice system, are only able to offer an abridged discussion. Investigations of the criminal justice system are vast and include a great deal of insight into institutionalized racial and ethnic bias.

While again, this is by no means an exhaustive inventory of studies conducted examining probation or the larger fields of corrections and criminal justice, this literature review outlines

the previous studies and examinations that frame the discussion. The results of these studies highlight the impact of various factors upon criminal justice outcomes, specifically how racial and ethnic groups are adversely impacted. The following chapter will summarize the plan of analysis and the methodology utilized to examine the probation data that comprises the current thesis.

## Chapter 3 - Method

### Data

Seeking to determine if and to what degree individual-level characteristics effect probation outcomes, this study relies on logistic regression. Previous studies have also relied on this method of analysis (Morgan, 1994; Olson & Lurigio, 2000; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Verrecchia & Ling, 2013). Individual-level data and state-level measures are examined to investigate the consequences of intersectional identities upon probation failure. The probationary data used in this study derives from the department of corrections in a Midwestern state and includes all closed probation cases over a ten-year period between November 2004 and November 2014 (N=13,552). Data included in the probationary records included individual-level offender characteristics, such as offenders' sex, race, ethnicity, marital status, and age; criminal history; and LSI-R score information of the offenders' criminal history, education/employment, alcohol/drug, etc. Probationary outcomes information includes whether offenders completed probation successfully or have failed. Failure included a further breakdown of type of failure, such as administrative, or revocations such as technical violation, new felony, and new misdemeanor<sup>1</sup>.

Some cases were removed from the sample for various reasons. Cases closed due to death or did not involve formal sentencing were removed. Further, cases with offenders in the

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<sup>1</sup> Within the models in this study, the outcome variable was examined as two distinct categories of success and failure. The models run did not include the categorical breakdown of probation failure outcomes. The models already included increasingly complex independent variables, that resulted in increasingly smaller numbers of probationers in racial/ethnic categories. In response to these small numbers, it was decided that including multiple categories for the dependent variable would likely have diminished sample numbers and made the models unreliable for interpretation.

“other” racial category (Asian/Pacific Islanders and Native Americans/Alaskan Natives) were removed. Relative to other racial groups, the proportion of these cases were relatively small (n=326). The small size of ‘other’ is commonplace in the Midwestern region of the U.S., where states are predominantly White. As this study and its theoretical foundations focus upon overrepresented minority groups, cases that listed the offender’s race and/or ethnicity as other than Black, White, or Latinx were removed from the regression models. Pacific Islanders for example comprise 1% of the probationary population and 0.2% of the U.S. population. Including groups in the analysis that comprise such a small portion of the population creates statistical issues for the analysis (like low statistical power) and their inclusion would thus offer limited insights into possible racial/ethnic factors that would affect probation outcomes. The final population for analysis was comprised of 13,529 cases.

### **Dependent Variable**

The three models, each utilizing logistic regression analysis, will examine various predictors and their impact on a dichotomous measure of probation failure (1 = failure; 0 = success). As previously explained, probation failure can occur in one of three ways: technical violation, new offense, or administrative failure. This sample includes 7,351 (54.24%) cases listed as failed and 6,201 (45.76%) listed as successful.

### **Individual-Level and Case-Level Variables**

*Extra-legal variables.* The official data obtained for this study includes multiple extra-legal offender variables which will be employed within this study. Of primary concern for this analysis, race is divided into a dichotomous variable Black (1 = Black, 0 = White). White serves as the referent category in this analysis as previous research and theorizing indicates that White offenders are more likely to be successful on probation than Black and Latinx offenders (Gray et.

al., 2001; Morgan, 1994; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Warren, 2016).

Ethnicity is also measured within this study (1 = Latinx, 0 = non-Latinx). Consistent with the U.S. Census and other sources of official data, ethnicity is measured separately from race. Non-Latinxs serve as the reference group for this measure as previous research indicates that this population is generally more likely to obtain positive correctional outcomes (Gray et. al., 2001; Morgan, 1994; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Warren, 2016). Across both race and ethnicity, Blacks comprise 29.25% of the population, White 70.75%, Latinxs 12.2%, and Non-Latinxs 87.8%.

Sex is also controlled for within this analysis (1= Male; 0 = Female). Unfortunately, our data cannot capture the fluidity of gender. As such, the biological sex of the offenders as recorded by corrections officials was used. Supporting exigent literature on gendered/sexed crime trends, males tend to generally outnumber females as criminal offenders (Gartner, 2011) and national probation populations (Kaeble & Bonczar, 2016), males account for a large majority of probationers at 76.82% (10,410) while females account for 23.18% (3,142). Though females in this sample represent a higher percentage than the national average, they still account for a much smaller percentage than their male counterparts.

The descriptive statistics show that the majority of probationers, 71 percent, are White, representative of the large disparity in the racial makeup of the region. The population of probationers is comprised of 76.8 percent male and 23.2 percent female. Examining probation failure, slightly more than half of all offenders experience probation failure. Of those that fail, half fail due to technical violation. Failure is shown highest among minority populations, Black and Hispanic offenders each fail at 61 percent, while Whites fail at 51 percent. An examination

of failure amongst offenders by sex, females and males make up 29 percent and 79 percent, respectively.

Other extra-legal variables included in this population include: marital status (1 = married, 0 = single), and age (range from 14 to 83 years). Marital status offers insight into possible life course transition that offer stability and lessen the likelihood of criminal behavior (Sampson & Raudenbush, 1997; Warr, 1998). For this study, marital status may affect an offenders' probation outcome. Previous studies have shown a strong relationship between age and crime (Farrington, 1986). The population utilized in this study, supports this same relationship. Probationer age data is positively skewed toward the modal age of 18.

Examining individual case-level data, the average age at the time of the offense is 29, while the most common age is 18. Age showed positive skewness and very low outliers. Attributed to coding errors, ages as low as two were found in the dataset. To remedy this, extremely low ages (below 14) were dropped. To normalize the distribution, a natural logarithm was applied.

*Legal/administrative variables.* In addition to extra-legal characteristics, various legal and administrative variables are considered. Offense type is included and measured dichotomously between person and non-person crimes (1 = person; 0 = nonperson crime). While cases can contain multiple offenses, for the purposes of this study and case containing at least one person crime was categorized as such. Typically, person crimes involve violent offenses or other crimes that directly target a person. Generally, these may be regarded as more serious crimes. In this sample, 3,902 probationers were sentenced for person crimes (28.85%) while 9,622 were sentenced for nonperson crimes (71.15%). When examining types of crime, forty-two

percent committed drug offenses, 31 percent property offenses, 29 percent non-sex person offenses, 2.5 percent sex offenses, and 28 percent committed “other” offenses.

Probation sentence length is controlled for as an ordinal measure ranging from one to five. The original data provided by the department of corrections showed probationary sentences ranging from 0 to 365 months. For this study, the sentences were broken into 5 categories of terms as either 12, 18, 24, 36, or greater months and were recoded from 1 to 5 in this study. The average sentence, in months, is 19 months. The minimum sentence is 0 and the maximum 365. The most common sentence with 17 percent of all probationary sentences lasting 12 months.

The actuarial risk assessment tool utilized in this study of probation is the Level Service Indicator-Revised or LSI-R (Andrews & Bonta, 2000). This actuarial tool employs a 54-item questionnaire of static and dynamic measures to determine the level of risk for recidivism/failure as well as services that would be beneficial to the offender (represented by a “needs score”). These items coalesce into 10 scale measures which are: “criminal history, education/employment, financial, family/marital, accommodation, leisure/recreation, companions, alcohol/drug problems, emotional/personal, and attitudes/orientation” (Andrews & Bonta, 2000, pg. 3).

The LSI-R has been widely utilized to assess offender risk while on community corrections (Smith et. al., 2009). Numerous studies have examined the tool’s validity and accuracy of the predictions generated (Austin et. al., 2003; Lowenkamp & Bechtel, 2007), possible differences in validity for assessing risk for female offenders (Folsom & Atkinson, 2007; Funk, 1999; Holsinger et. al., 2003; Holtfreter & Cupp, 2007; Manchak et. al., 2009; Morash, 2010; Smith et. al., 2009; Vose et. al, 2009) and possible bias for Black and Latinx offenders (Schlager & Simourd, 2007; Whiteacre, 2006). Overall, studies find that the LSI-R is a

useful tool for predicting and assessing risk. Table 1 below, presents the independent and dependent variables, as well as the averages and percentages of the sample population.

**Table 1: List of variables and descriptive statistics**

<b>Variables</b>	<b>n(mean)</b>	<b>percent (SD)</b>
<b>Sex</b>		
Female	3142	23.18
Male	10410	76.82
<b>Race</b>		
White	9798	72.42
Black	3405	25.17
<b>Ethnicity</b>		
Latinx	1653	12.2
Non-Latinx	11899	87.8
<b>Marital Status</b>		
Married	2222	17.54
Single	10445	82.46
<b>Age (range 14-83)</b>	29.38	9.56
<b>Probation Length (Months)</b>	19.31	9.6
<b>Person Crimes</b>		
Person	3902	28.85
Non-Person	9622	71.15
<b>Sentence</b>		
12 months	2339	17.26
18 months	614	614
24 months	533	3.93
36 months	168	168
36 + months	9898	73.04
<b>LSI-R Scores</b>		
Criminal History (1-10)	5.21	2.2
Education/Employment (1-10)	5.19	2.71
Financial (0-2)	1.21	0.72
Family & Marital (0-3)	1.85	1.16
Accommodation (0-2)	0.84	0.93
Leisure/recreation (0-2)	1.45	0.64
Companions (0-5)	2.69	1.31
Alcohol/drug (0-9)	4.09	2.28
Emotional/personality (0-5)	1.83	1.5
Attitude/orientation (0-4)	1.7	1.23
Total score (0-54)	26.1	
<b>Probation Failure</b>		
Failure	7351	54.24
Success	6201	45.76
<b>Probation outcomes</b>		
Successful	6201	45.76
Administrative failure	1250	9.22
Revoked: Technical violation	3660	27.01
Revoked: New felony	588	4.34
Revoked: New misdemeanor	1853	13.67

## **Analytic Approach**

The following chapter will include a detailed presentation of the statistics utilized in this study. First, univariate statistics will examine the binary legal and extra-legal independent variables and dependent variable. Next, an examination of bivariate statistics will examine cell frequencies and totals for confounding factors, such as skewness that may lead to large standard errors. Examinations of correlation will observe Pearson's chi-square to test for association. Upon the examination of univariate and bivariate statistics, the regression analysis will be conducted.

The current study utilizes multiple logistic regression models to examine the impact of race, ethnicity, gender, and other factors on likelihood of probation failure. This analysis specifically will include an examination of intersections of race, ethnicity, and sex. The results of this analysis, presented in Chapter 4, will explore the results of several logistic regression models. The first examines race and ethnicity as separate variables. The second model analyzes the intersection of race and ethnicity for its effects on probation failure through four dummy variables. Finally, the third model examines the overlap between race, ethnicity, and gender, bringing the number of dummy variables incorporated into the model to eight total. As will be discussed further in Chapter 4, the results for this model resulted in large standard errors. Because of this issue, an additional set of models examining race and ethnicity was introduced. Each of these models are elaborated below along with relevant research questions and hypotheses.

As the dependent variable is categorical, binary, only offering two possible outcomes (success and failure), a logistic regression analysis is appropriate. Each regression model seeks to capture the expected change in Y caused by the change in X. To assess goodness of fit, this

analysis will examine McFadden Pseudo-R<sup>2</sup>s in addition to chi-square statistics. To assess the effect of individual predictors on the likelihood of probation failure, p-values, odds ratios, and standardized coefficients will be examined.

The first model serves as a “baseline” model, examining each variable’s impact on probation failure. Importantly, in this model, race, ethnicity, and sex are included in the analysis as is—as separate dichotomous measures. Through examination of each variable individually, a foundation is established, allowing for comparison of individual and joint effects of race, ethnicity, and sex. Presented below is the central research question and hypotheses guiding this model.

**Research question 1: How do race, ethnicity, and gender effect probation failure?**

*Hypothesis 1: Black individuals within the sample will be more likely to fail probation than White individuals.*

*Hypothesis 2: Latinx individuals within the sample will be more likely to fail probation than non-Latinx individuals.*

*Hypothesis 3: Males within the sample will be more likely to fail probation than females.*

As already discussed, race and ethnicity, often treated as separate mutually exclusive categories in theory, are in practice, identities that may overlap. The probation experience, for example, of White Latinxs may not be the same as for those of White Non-Latinxs. For this reason, the second model examines the intersection of race and ethnicity through four dummy variables: White Latinx, White Non-Latinx, Black Latinx, Black Non-Latinx. The White Non-Latinx group will serve as the reference. Table 2 shows a visual representation of the dummy variables included.

**Table 2: A breakdown of model 2's dummy variables representing the intersection of race and ethnicity.**

	<b>White</b>	<b>Black</b>
<b>Non-Latinx</b>	White Non-Latinx* 8165 (60.4%)	Black Non-Latinx 3716 (27.5%)
<b>Latinx</b>	White Latinx 1407 (10.4%)	Black Latinx 241 (1.8%)

\* Indicates the variable omitted from the model to serve as a reference category

The research question and hypotheses addressed by this model can be summarized as thus:

**Research question 2: How do intersections of race and ethnicity effect probation outcomes?**

*Hypothesis 1: Black Latinx individuals within the sample will be more likely to experience probation failure than White Non-Latinx individuals.*

*Hypothesis 2: Black Non-Latinx individuals within the sample will be more likely to experience probation failure than White Non-Latinx individuals.*

*Hypothesis 3: White Latinx individuals will be more likely to experience probation failure than White Non-Latinx individuals.*

As prior research also indicates that the intersection between race, ethnicity, and gender matters, the third model in this analysis will expand on the dummy variables incorporated in the by further stratifying the dummy variables on the basis of gender. Table 3 details each of the dummy variables incorporated into model 3. Based on previous scholarship, it is not unreasonable to postulate that White, Non-Latinx females are more likely than other groups to be successful on probation. As such, this group is omitted from the model to serve as a reference category against which all of the other race/ethnicity/gender groups will be gauged.

**Table 3: A breakdown of model 3's dummy variables representing the intersection of race, ethnicity, and gender.**

	White		Black	
	Female	Male	Female	Male
<b>Non-Latinx</b>	White, Non-Latinx Female* 2066 (15.3%)	White, Non-Latinx Male 6099 (45.1%)	Black, Non-Latinx Female 745 (5.5%)	Black, Non-Latinx Male 2971 (22%)
<b>Latinx</b>	White, Latinx Female 269 (2%)	White, Latinx Male 1138 (8.4%)	Black, Latinx Female 53 (0.4%)	Black, Latinx Male 188 (1.4%)

\* Indicates the variable omitted from the model to serve as a reference category  
The research question and hypotheses for this model are detailed below:

**Research question 3: How does gender effect the probation outcome of racial/ethnic identities?**

*Hypothesis 1: Black Latinx Males within the sample will be more likely to experience probation failure relative to White Non-Latinx Females.*

*Hypothesis 2: White Latinx Males within the sample will be more likely to experience probation failure relative to White Non-Latinx Females.*

*Hypothesis 3: Black Latinx Females within the sample will be more likely to experience probation failure relative to White Non-Latinx Females.*

*Hypothesis 4: White Latinx Females within the sample will be more likely to experience probation failure relative to White Non-Latinx Females.*

*Hypothesis 5: Black Non-Latinx Males within the sample will be more likely to experience probation failure relative to White Non-Latinx Females.*

*Hypothesis 6: White Non-Latinx Males within the sample will be more likely to experience probation failure relative to White Non-Latinx Females.*

*Hypothesis 7: Black Non-Latinx Females within the sample will be more likely to experience probation failure relative to White Non-Latinx Females.*

The results of the three models will be examined and discussed in the following chapter.

Examinations of possible correlation and collinearity were also conducted. Tables displaying

these results, if of interest, are in Appendix A (correlation) and Appendix B (collinearity). Included with the results will be detailed analyses and tables, for each model. As indicated previously, the analysis of three additional models will be included as well. The final chapter of this study will include the conclusion and future implications of the findings. The conclusion will extend the findings of this study to more general implications of differential outcomes of criminal justice processes across race, ethnicity, and sex.

## Chapter 4 - Results

This analysis examines the relationship between probationer race, ethnicity, and sex and negative probationary outcomes. This chapter will outline the results of the analysis described in the previous chapter. The first model discussed is a logistic regression analysis of race, ethnicity, and sex. Second is a model analyzing the interaction of racial and ethnic variables.

Unfortunately, the third model conducted was found to have many inflated standard errors making interpretation of the model questionable. For this reason, three new models were added in an attempt to capture similar intersectional dynamics between race, ethnicity, and sex. These models are conducted on discrete racial and ethnic subsamples, Non-Hispanic Whites, Non-Hispanic Blacks, and Hispanics, to determine if sex and other variables had different impacts within racial/ethnic groups.

### **Model 1: Race, Ethnicity, and Sex Effects on Probation Outcomes**

To establish a baseline for comparison, the first model examines the effects of race, ethnicity, and sex without the inclusion of interaction effects (Table 4). Though the model was statistically significant ( $p < .001$ ), the pseudo- $R^2$  statistic indicates that the model only explains 12.9 percent of the variation in the dependent variable ( $R_L^2 = 0.1297$ ). In other words, the model appears to poorly predict probation failure, though it does not differ significantly from previous analyses in the area (Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Warren, 2016).

**Table 4: Model 1 Logistic Regression**

n = 11,461	<i>b</i>	$\beta$	Exp ( <i>b</i> )	<i>SE</i>	<i>z</i>
Black	0.346***	1.170	1.413	0.067	7.32
Hispanic	0.203**	1.068	1.225	0.081	3.08
Sex	0.119*	1.052	1.127	0.058	2.32
Age	-1.341***	0.645	0.262	0.018	-19.10
Probation Duration	0.02***	1.146	1.020	0.003	5.82
Person	0.344***	1.174	1.410	0.07	6.90
Criminal History Score	0.219***	1.622	1.244	0.013	20.91
Educational/Employment Score	0.074***	1.221	1.076	0.009	8.55
Financial Score	0.083**	1.062	1.087	0.035	2.61
Family/Marital Score	0.078***	1.095	1.082	0.022	3.87
Accommodation Score	0.08***	1.077	1.083	0.027	3.25
Leisure/Recreation Score	0.178***	1.123	1.194	0.042	5.11
Companion Score	0.076***	1.106	1.079	0.019	4.28
Alcohol/Drug Score	0.028**	1.065	1.028	0.010	2.78
Emotional/Personality Score	0.022	1.034	1.022	0.015	1.47
Attitude/Orientation Score	0.041**	1.052	1.042	0.019	2.24
-2 Log likelihood	-6899.548				
$R_L^2$	0.1297				
$\chi^2$	2055.56***				

\*  $p < .05$ , \*\*  $p < .01$ , \*\*\*  $p < .001$

When examining the individual predictors in the model, the main independent variables of interest, race ( $p < .001$ ), ethnicity ( $p < .01$ ), and sex ( $p < .05$ ), were found to be statistically significant and were associated with higher odds of probation failure. Being Black (Exp( $b$ ) = 1.413) was associated with 41.3 percent increase in the log odds of probation failure relative to White probationers. Hispanic ethnic status (Exp( $b$ ) = 1.225) was linked to a 22.5 percent increase in log odds of probation failure relative to White and Non-Hispanic probationers.

Most other predictors in the model were statistically significant and positively related to probation failure as well including probation duration (Exp( $b$ ) = 1.020;  $p < .001$ ), person crime (Exp( $b$ ) = 1.020;  $p < .001$ ), and the LSI-R scores including criminal history (Exp( $b$ ) = 1.244;  $p < .001$ ), education/employment (Exp( $b$ ) = 1.076;  $p < .001$ ), family/marital (Exp( $b$ ) = 1.082;  $p < .001$ ), financial (Exp( $b$ ) = 1.087;  $p < .01$ ), accommodation (Exp( $b$ ) = 1.083;  $p < .001$ ), leisure/recreation (Exp( $b$ ) = 1.194;  $p < .001$ ), companion (Exp( $b$ ) = 1.079;  $p < .001$ ), and

attitude/orientation ( $\text{Exp}(b) = 1.042$ ;  $p < .05$ ). While statistically significant, age was negatively associated with failure ( $\text{Exp}(b) = .262$ ;  $p < .001$ ). The model thus indicates that as a probationer ages, they are less likely to fail probation. The only non-significant predictor in the model was the emotional/personality score ( $p = .055$ ).

To determine which variables have the biggest impact on the dependent variable, this analysis examines the fully standardized coefficients for each predictor. The strongest predictors for this model were found to be criminal history score ( $\beta = 1.622$ ), followed by education/employment score ( $\beta = 1.221$ ), and person crime ( $\beta = 1.174$ ). The weakest included age ( $\beta = .645$ ), attitude/orientation score ( $\beta = 1.052$ ), and emotional/personality score ( $\beta = 1.034$ ). In addition to being Black ( $\beta = 1.170$ ) or Hispanic ( $\beta = 1.068$ ), an individual's sex ( $\beta = 1.052$ ) were found to be fourth, tenth, and thirteenth in rank order of magnitude, respectively. In other words, though race, ethnicity, and sex appear to be less important for predicting probation failure as than some other characteristics, they were still significant, and important predictors of failure. Being Black for instance, was one of the stronger predictor variables within this model.

To summarize, though ethnicity and sex were significant predictors of probation failure, other factors, like many of the LSI-R measures, had greater impacts on likelihood of probation failure. Being Black, however, was a relatively important predictor in the model. In other words, this model indicates that being Black may have a biggest impact on probation outcomes relative to Hispanicity or sex.

### **Model 2: Race/Ethnicity Effect on Probation Outcomes**

The second model builds upon the first by breaking apart race and ethnicity into specific subgroups: Non-Hispanic Whites (control group), Hispanic Whites, Non-Hispanic Blacks, and Hispanic Blacks. Like the first, this model was also found to be a significant but had a weak fit in

terms of predicting variation in probation failure ( $p < .001$ ;  $R_L^2 = 0.1308$ ). That said, the McFadden's  $R^2$  was slightly better than the one in the previous model, though not enough to necessarily claim this model was better for predicting probation outcomes. The results of model 2 can be found in table 5.

**Table 5: Model 2 Logistic Regression**

n = 11,474	<i>b</i>	$\beta$	Exp ( <i>b</i> )	<i>SE</i>	<i>z</i>
Black Hispanics	1.352***	1.196	3.866	0.835	6.263
White Hispanics	0.093	1.028	1.097	0.077	1.315
Black Non-Hispanics	0.294***	1.139	1.342	0.065	6.035
Sex	0.122*	1.053	1.130	0.058	2.378
Age	-1.338***	0.646	0.262	0.019	-19.074
Probation Duration	0.019***	1.144	1.02	0.003	5.745
Person	0.352***	1.178	1.422	0.070	7.08
Criminal History Score	0.221***	1.631	1.247	0.013	21.384
Educational/Employment Score	0.074***	1.224	1.077	0.009	8.636
Financial Score	0.07*	1.052	1.073	0.034	2.221
Family/Marital Score	0.071***	1.086	1.074	0.022	3.525
Accommodation Score	0.08***	1.077	1.083	0.027	3.256
Leisure/Recreation Score	0.178***	1.123	1.195	0.042	5.125
Companion Score	0.078***	1.108	1.081	0.019	4.366
Alcohol/Drug Score	0.026**	1.06	1.026	0.010	2.583
Emotional/Personality Score	0.016	1.024	1.016	0.015	1.068
Attitude/Orientation Score	0.046*	1.059	1.048	0.019	2.547
-2 Log likelihood	-6895.1187				
$R_L^2$	0.1312				
$\chi^2$	2081.71***				

\*  $p < .05$ , \*\*  $p < .01$ , \*\*\*  $p < .001$

For this model, both Hispanic and Non-Hispanic Black status were significant ( $p < .001$ ). Being a Hispanic Black person, was associated with 386 percent increase in the log odds of probation failure, relative to Non-Hispanic White probationers ( $\text{Exp}(b) = 3.86$ ). A larger standard error was found for this finding and it should be interpreted with caution. Non-Hispanic Black categorization, on the other hand, was associated with 34 percent increase in log odds of failing probation ( $\text{Exp}(b) = 1.342$ ). Being a Hispanic White person was not found to be significantly linked to the outcome measure ( $p = .192$ ).

Regarding the control variables in the model, age, probation duration, person, criminal history score, education/employment score, family/marital score, accommodation score, leisure/recreation score, and companion score were found to be statistically significant, with the model finding less than a .1 percent chance of the result stemming from error ( $p < .001$ ). Alcohol/drug score and attitude/orientation score were significant as well with their p-values being less than .01. The financial LSIR score's p-value was less than .05. These variables were all positively associated with increased log odds of probation failure with the exception of age ( $\text{Exp}(b) = .262$ ), similar to model 1. In this model, as was the case with the first model, the emotional/personality score measure was not found to be significant ( $p = .057$ ).

The standardized coefficients follow a similar pattern to the first model. The criminal history score ( $\beta = 1.631$ ) and education/employment score ( $\beta = 1.224$ ) had the strongest influence on likelihood of probation failure. These predictors were followed by Hispanic Black racial/ethnic status ( $\beta = 1.195$ ), person crime convictions ( $\beta = 1.178$ ), and probation duration ( $\beta = 1.144$ ). Non-Hispanic Black ( $\beta = 1.139$ ) and Hispanic White ( $\beta = 1.028$ ) categorization were sixth and fourteenth in rank order of relative magnitude. Because of the high standardized error occurring for Hispanic Black racial/ethnic status's, interpretations of this variable's relationship with the dependent variable should be approached cautiously.

### **Model 3: Race/Ethnicity/Sex Effect on Probation Failure**

The final model, examining interaction of racial, ethnic, and sex categorization upon the likelihood was conducted. Unfortunately, observations within certain racial/ethnic categories were relatively few. For instance, while White Non-Hispanic Males made up 45 percent of the sample population, Black Hispanic Females only comprised .39 percent. We attempted to execute models on these variables. Unfortunately, the low cell-counts for these groups appear to

have led to large standard errors and, therefore, unreliable findings (the results of this model are included in Appendix C). Because of this issue, a new strategy was needed to examine the combination of race, ethnicity, and sex. To this end, the original dataset was split into three new datasets based on racial and ethnic groups. For race, datasets for Non-Hispanic White and Non-Hispanic Black were created. To isolate ethnicity, offenders identified as Hispanic were placed into a third distinct dataset. Then, logistic regression analyses were conducted for each of these datasets with the previously outlined variables: sex, age, probation duration, person, and the LSIR scores. The purpose behind running separate analyses based on race/ethnic group is to see if certain predictors had different impacts for each group, with particular attention given to the role of sex. The results of each analysis is detailed below. Because of these changes, the hypotheses for research question #3 needed to be restated to be more congruent with the current approach:

**Research question 3: How does gender effect the probation outcome of racial/ethnic identities?**

*Hypothesis 1: Men within the African American sample will be more likely to experience probation failure relative to women.*

*Hypothesis 2: Men within the Hispanic sample will be more likely to experience probation failure relative to women*

*Hypothesis 3: Men within the White sample will be more likely to experience probation failure relative to women.*

*Hypothesis 4: Being a man will be a more powerful predictor of probation failure within the African American sample compared to the White sample based on standardized coefficients.*

*Hypothesis 5: Being a man will be a more powerful predictor of probation failure within the Hispanic sample compared to the White sample based on standardized coefficients.*

#### **Model 4: Race-Specific Regression Model: Non-Hispanic White**

The first of these subsequent models was conducted on the Non-Hispanic White subsample and was found to be statistically significant. Unfortunately, the model appears to provide a weak goodness-of-fit for the data analyzed, explaining only about 11 percent of the variation in the dependent variable ( $p < .001$ ;  $R_L^2 = 0.117$ ) which is less than the previous models. This is perhaps unsurprising given that the explanatory effects of race and ethnicity were removed in the creation of these subsamples. Next, this analysis turns toward examining the impact of individual predictors on probation failure within this racial subsample.

The results for this model are shown below in table 6. For Non-Hispanic White probationers, being convicted of one or more person crimes was associated with a 27 percent increase in the log odds of probation failure, relative to those convicted of non-person crimes ( $\text{Exp}(b) = 1.269$ ;  $p < .001$ ). The LSI-R criminal history score was associated with 25 percent increased log odds of probation failure ( $\text{Exp}(b) = 1.253$ ;  $p < .001$ ). Just like prior models, age was the only negatively associated predictor, showing a near 29 percent decrease in the log odds of probation failure ( $\text{Exp}(b) = .288$ ;  $p < .001$ ). Surprisingly, sex, was not found to be a statistically significant predictor among Non-Hispanic Whites ( $p = .580$ ).

**Table 6: Non-Hispanic White Logistic Regression**

n = 6,997	<i>b</i>	$\beta$	Exp ( <i>b</i> )	<i>SE</i>	<i>z</i>
Sex	0.035	1.016	1.036	.060	.553
Age	-1.246***	0.668	0.288	0.025	-14.110
Probation Duration	0.018***	1.129	1.018	0.004	4.223
Person	0.238***	1.113	1.269	0.081	3.719
Criminal History Score	0.225***	1.634	1.253	0.017	16.657
Educational/Employment Score	0.083***	1.258	1.087	0.012	7.638
Financial Score	0.087*	1.065	1.091	0.044	2.155
Family/Marital Score	0.087***	1.108	1.091	0.028	3.401
Accommodation Score	0.066*	1.064	1.068	0.033	2.130
Leisure/Recreation Score	0.191***	1.132	1.210	0.054	4.260
Companion Score	0.081***	1.114	1.084	0.025	3.559
Alcohol/Drug Score	-0.0003	0.999	1.000	0.012	-0.021
Emotional/Personality Score	0.017	1.025	1.017	0.019	0.892
Attitude/Orientation Score	0.047*	1.060	1.048	0.024	2.033
-2 Log likelihood			-4281.1586		
R <sup>2</sup>			0.1170		
$\chi^2$			1134.50***		

\*  $p < .05$ , \*\*  $p < .01$ , \*\*\*  $p < .001$

For this model, most of the predictor variables were found to be statistically significant and positively associated with probation failure. The odds ratios for this model include the LSI-R scores for education/employment (Exp(*b*) = 1.258;  $p < .001$ ), leisure/recreation (Exp(*b*) = 1.210;  $p < .001$ ), companion (Exp(*b*) = 1.084;  $p < .001$ ), family/marital (Exp(*b*) = 1.091;  $p < .001$ ), financial (Exp(*b*) = 1.091;  $p < .001$ ), accommodation (Exp(*b*) = 1.068;  $p < .001$ ), attitude/orientation (Exp(*b*) = 1.048;  $p < .001$ ), along with probation duration (Exp(*b*) = 1.018;  $p < .001$ ), person crime (Exp(*b*) = 1.269;  $p < .001$ ). The remaining predictors were found not to be statistically significant, emotional/personality score ( $p = .372$ ) and alcohol/drug score ( $p = .983$ ).

The standardized coefficients for this model were similar to those found within previous models. Criminal history score ( $\beta = 1.634$ ) and education/employment score ( $\beta = 1.258$ ) had the strongest effect on likelihood of probation failure. Looking at rank order of relative magnitude,

age ( $\beta = .668$ ) and alcohol/drug score ( $\beta = .999$ ) had the weakest effect on likelihood of probation failure.

### **Model 5: Race-Specific Regression Model: Non-Hispanic Black**

The second model to examine race separately from ethnicity, examines Black Non-Hispanic probationers (Table 7). This model is statistically significant but a weak fit ( $p < .001$ ;  $R_L^2 = 0.132$ ) explaining about 13 percent of the variance of the dependent variable. This model has a slightly stronger goodness of fit than the previous model examining White Non-Hispanic, but is still a poor predictor of probation failure.

**Table 7: Non-Hispanic Black Logistic Regression**

n = 3,103	<i>b</i>	$\beta$	Exp ( <i>b</i> )	<i>SE</i>	<i>z</i>
Sex	0.394***	1.169	1.483	.1534	3.796
Age	-1.505***	0.601	0.222	0.030	-11.089
Probation Duration	0.019**	1.143	1.019	0.007	2.845
Person	0.430***	1.229	1.536	0.148	4.456
Criminal History Score	0.214***	1.616	1.238	0.025	10.654
Educational/Employment Score	0.057***	1.161	1.059	0.018	3.347
Financial Score	0.042	1.030	1.043	0.066	0.666
Family/Marital Score	0.072	1.084	1.075	0.042	1.839
Accommodation Score	0.085	1.082	1.089	0.052	1.785
Leisure/Recreation Score	0.144*	1.098	1.155	0.077	2.167
Companion Score	0.091**	1.121	1.095	0.038	2.636
Alcohol/Drug Score	0.076***	1.183	1.079	0.021	3.882
Emotional/Personality Score	0.031	1.047	1.031	0.031	1.042
Attitude/Orientation Score	0.035	1.045	1.036	0.037	1.000
-2 Log likelihood	-1827.6636				
$R_L^2$	0.132				
$\chi^2$	555.72***				

\*  $p < .05$ , \*\*  $p < .01$ , \*\*\*  $p < .001$

For non-ethnic Black probationers, sex, along with criminal history score, age, and person crime, were found to be statistically significant ( $p < .001$ ). Sex was associated with a 48 percent increase in the log odds of experiencing a negative probation outcome. In other words,

being a Black male was associated with an almost 50 percent increase in log odds of probation failure relative to being a Black female ( $\text{Exp}(b) = 1.483$ ;  $p < .001$ ). Non-Hispanic Black probationers who committed person crimes were associated with a 53 percent increase in the log odds of probation failure, relative to those who committed non-person crimes, ( $\text{Exp}(b) = 1.536$ ;  $p < .001$ ). Criminal history score was associated with a nearly 24 percent increase in log odds, ( $\text{Exp}(b) = 1.238$ ;  $p < .001$ ). Age shows a 22 percent decrease in the log odds of probation failure ( $\text{Exp}(b) = .222$ ;  $p < .001$ ).

Other statistically significant predictors include: leisure/recreation ( $\text{Exp}(b) = 1.155$ ;  $p < .05$ ), probation duration ( $\text{Exp}(b) = 1.019$ ;  $p < .01$ ), companion score ( $\text{Exp}(b) = 1.095$ ;  $p < .01$ ); education/employment score ( $\text{Exp}(b) = 1.059$ ;  $p < .001$ ), and alcohol/drug score ( $\text{Exp}(b) = 1.079$ ;  $p < .001$ ). The remaining LSI-R score predictors were found not to be statistically significant: finance ( $p = .505$ ), family/marital ( $p = .066$ ), accommodation ( $p = .074$ ), emotional/personality ( $p = .297$ ), and attitude/orientation ( $p = .318$ ).

In comparison to the previous model examining non-ethnic White probationers, the standardized coefficients for this model follow a slightly different pattern. Though the LSI-R score for criminal history ( $\beta = 1.616$ ) is again the strongest, person crime ( $\beta = 1.229$ ) is shown to have the second strongest influence on likelihood of probation failure, and alcohol/drug score ( $\beta = 1.183$ ) is third. Contrary to the Non-Hispanic White model, wherein education/employment score was second in relative magnitude, this score ( $\beta = 1.161$ ) is fifth for Non-Hispanic Black probationers.

After alcohol/drug score, sex ( $\beta = 1.169$ ) was fourth in rank order of strength. In the previous model, sex was not found to be statistically significant. In this model, it is not only

statistically significant, but is also one of the stronger predictors. In other words, sex is an important predictor of probation failure for Black probationers, but not White probationers.

The weakest predictors for this model were age ( $\beta = .601$ ), leisure/recreation score ( $\beta = 1.155$ ), and companion score ( $\beta = 1.095$ ). For Black probationers, the criminal history score had the strongest influence on likelihood of probation failure, followed by person crime, alcohol/drug score, and sex. Education/employment score, though prominent for White probationers, was not as important, but still a strong predictor.

#### **Model 6: Effect of Ethnicity on Probation Failure: Hispanic**

The final model examines ethnicity separate from race, isolating Hispanic probationers to examine the predictors that effect likelihood of probation failure for ethnic minorities. This model was found to be statistically significant with a weak fit for the data, explaining only about 16 percent of the variation in the dependent variable ( $p < .001$ ;  $R_L^2 = 0.162$ ). That said, this model has the highest McFadden's  $R^2$  within this study.

An examination of the individual predictors found that few were statistically significant. Person crime ( $\text{Exp}(b) = 1.940$ ;  $p < .001$ ) in this model was associated with a 94 percent increase in log odds of probation failure relative to those who were not convicted of a non-person crime. Criminal history score ( $\text{Exp}(b) = 1.256$ ;  $p < .001$ ) was associated with a 25 percent increase in log odds of probation failure. Education/employment score ( $\text{Exp}(b) = 1.052$ ;  $p < .05$ ) was associated with a 5 percent increase in the log odds of probation failure. A few other predictors were found to be positively associated with probation failure and were statistically significant: probation duration ( $\text{Exp}(b) = 1.031$ ;  $p < .01$ ), accommodation score ( $\text{Exp}(b) = 1.206$ ;  $p < .05$ ) and age ( $\text{Exp}(b) = .194$ ;  $p < .001$ ). As with the previous models, age was the only predictor found to be negatively related to probation failure. Age was associated with a 19 percent

decrease in probation failure. As with previous models, as Hispanic probationers age, the likelihood of probation failure decreases. The remaining eight predictor variables were found not to be statistically significant. Sex ( $p = .829$ ), along with financial score ( $p = .071$ ), family/marital score ( $p = .843$ ), companion score ( $p = .805$ ), alcohol/drug score ( $p = .123$ ), emotional/personality score ( $p = .617$ ), leisure/recreation score ( $p = .091$ ), and attitude/orientation score ( $p = .410$ ).

Finally, standardized coefficients were considered to examine relative magnitude of effects. As with the previous models, criminal history score ( $\beta = 1.683$ ) was found to have the strongest effect on likelihood of probation failure, followed by type of crime, person ( $\beta = 1.387$ ), and probation duration ( $\beta = 1.243$ ). The weakest predictors were found to be age ( $\beta = .628$ ), education/employment score ( $\beta = 1.147$ ), and accommodation score ( $\beta = 1.182$ ). Compared to the model examining outcomes of White Non-Hispanic probationers, education/employment score was the fifth ( $\beta = 1.147$ ) in relative strength for Hispanic probationers. The results of this final model are displayed in Table 8.

**Table 8: Hispanic Logistic Regression**

n = 1,361	<i>b</i>	$\beta$	Exp ( <i>b</i> )	<i>SE</i>	<i>z</i>
Sex	.036	1.014	1.036	0.171	0.216
Age	-1.641***	0.628	0.194	0.046	-6.884
Probation Duration	0.030**	1.243	1.031	0.011	2.885
Person	0.663***	1.387	1.940	0.279	4.613
Criminal History Score	0.228***	1.683	1.256	0.038	7.503
Educational/Employment Score	0.051*	1.147	1.052	0.027	1.963
Financial Score	0.170	1.133	1.185	0.111	1.807
Family/Marital Score	0.013	1.015	1.013	0.065	0.199
Accommodation Score	0.187*	1.182	1.206	0.097	2.322
Leisure/Recreation Score	0.175	1.123	1.191	0.123	1.690
Companion Score	0.013	1.018	1.013	0.054	0.246
Alcohol/Drug Score	0.046	1.110	1.047	0.031	1.543
Emotional/Personality Score	0.023	1.035	1.024	0.048	0.500
Attitude/Orientation Score	0.046	1.058	1.047	0.058	0.824
-2 Log likelihood	-773.6855				
R <sub>L</sub> <sup>2</sup>	0.1617				
$\chi^2$	298.22***				

\*  $p < .05$ , \*\*  $p < .01$ , \*\*\*  $p < .001$

### Summary

Across the models, criminal history, person crime, probation duration, education/employment score were significant predictors of probation failure. Age was found to significant, and consistently negatively associated with probation failure. Supporting existing probation literature, race and ethnicity were significant and strong predictors throughout the analysis. Sex was not consistently relevant within the analysis, showing to be influential only in two of the models. The initial baseline model found that individually, variables of race, ethnicity, and sex were strong predictors of probation failure, race (4th) being stronger than both ethnicity (10th) and sex (13th) in relative magnitude. The intersectional model, combining race and ethnicity, found that likelihood of probation failure increased for Black *and* Hispanic individuals,

finding it to be the third strongest predictor, after criminal history and education/employment scores.

The education/employment score, significant across all models, was found to be among the strongest predictors of probation failure. In the baseline model, race/ethnicity interaction model, and Non-Hispanic White models the education/employment score was the second strongest. Contrastingly, in the Non-Hispanic Black and Hispanic models, education/employment score was fourth and fifth strongest, suggesting education/employment score was more influential in non-minority populations.

Especially of note in the analysis, sex which was throughout the analysis a generally weak predictor variable, was found to only be a strong predictor variable within one racial/ethnic category: Non-Hispanic Black. In other words, only for probationers identified as Non-Hispanic Black was sex a significant and strong predictor variable. The interpretation of this finding and others, will be discussed in further detail in the following chapter. To summarize the results for the reader, Table 9 presents each of the hypotheses presented in Chapter 3 and their corresponding results.

**Table 9: Summary of the Results of Each Hypothesis Tested**

Hypothesis	Result Summary		
	Partial Support	Full Support	No Support
<b>Research question 1: How do race, ethnicity, and gender effect probation failure?</b>			
H <sub>1</sub> : Black individuals within the sample will be more likely to fail probation than White individuals.		✓	
H <sub>2</sub> : Latinx individuals within the sample will be more likely to fail probation than non-Latinx individuals.		✓	
H <sub>3</sub> : Males within the sample will be more likely to fail probation than females.		✓	
<b>Research question 2: How do intersections of race and ethnicity effect probation outcomes?</b>			
H <sub>1</sub> : Black Latinx individuals within the sample will be more likely to experience probation failure than White Non-Latinx individuals.		✓	
H <sub>2</sub> : Black Non-Latinx individuals within the sample will be more likely to experience probation failure than White Non-Latinx individuals.		✓	
H <sub>3</sub> : White Latinx individuals will be more likely to experience probation failure than White Non-Latinx individuals.		✓	
<b>Research question 3: How does gender effect the probation outcome of racial/ethnic identities?</b>			
H <sub>1</sub> : Men within the African American sample will be more likely to experience probation failure relative to women.		✓	
H <sub>2</sub> : Men within the Hispanic sample will be more likely to experience probation failure relative to women			✓
H <sub>3</sub> : Men within the White sample will be more likely to experience probation failure relative to women.			✓
H <sub>4</sub> : Being a man will be a more powerful predictor of probation failure within the African American sample compared to the White sample based on standardized coefficients.		✓	
H <sub>5</sub> : Being a man will be a more powerful predictor of probation failure within the Hispanic sample compared to the White sample based on standardized coefficients			✓

## **Chapter 5 - Discussion & Conclusion**

The documented inequity and differential treatment of individuals of color throughout the criminal justice system are heavily debated and researched issues. Discussions about systemic racism are often centered on the war on drugs and mass incarceration, ignoring the extensive population of offenders under community corrections. In recent years, prison overcrowding and shifts in criminal justice reforms have led to an increase in the reliance upon probation and parole programs, expanding the breadth and reach of criminal justice into communities. Still, community corrections programs have received relatively far less scrutiny than their prison counterparts.

Though often viewed as a compassionate alternative to incarceration that allows the offenders to remain in the community, researchers and practitioners should remain mindful of potential negative consequences associated with this form of penalty. Like incarceration, the detrimental consequences of probation can be significant and enduring for probationers, their family, and the community (Alexander, 2010; Pager, 2003; Trusts, 2010, Websdale, 2001). The parameters of probation can be intrusive, degrading, and entrapping (Jay-Z, 2017). Probationers are required to be under supervision that involves visits to the probationer's home, job, and school; restrictions on interactions with other offenders, requirements for meetings with probation officers, random drug testing, and steep fines, to name a few (Petersilia & Turner, 1993). Failure to meet one or more of the many requirements can seem like a trap; one misstep and the offender may receive consequences more severe than those attached to the initial crime (Petersilia & Turner, 1993). Though these issues may be problematic on their own, this study and others indicate that negative probation outcomes may also be tied to race, ethnicity, sex, and inequality (Gray et. al., 2001; Morgan, 1994; Olson & Lurigio, 2000; Sims & Jones, 1997;

Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Verrecchia & Ling, 2013; Warren, 2016).

To this end, this study utilized numerous models to examine the effect of numerous variables upon likelihood of probation failure. To start, a base model was performed which compared which variables are significant predictors for all probationers in the population, seeking to specifically examine the ways in which race, ethnicity, and sex effect likelihood of probation failure. Though legal factors, such as criminal history score, education/employment score, and type of crime were the strongest predictors of probation failure, factors for Black, Hispanic, and sex were among the more important variables in the model and were significantly associated with an increased odds of probation failure. Of these, being Black was stronger than being Hispanic, and much stronger than sex.

The second model, examined the intersections of race and ethnicity on probation failure. This model found that being a Black Hispanic was positively associated with probation failure and was one of the most powerful predictors in the model, following directly behind criminal history and education/employment scores. Regarding the other race and ethnicity combinations, offenders that were Non-Hispanic Black were more likely to fail probation than were offenders that were Hispanic White. Intersectional identities of color, were more likely to fail probation than White probationers. In other words, Hispanic Black, Non-Hispanic Black, and Hispanic White probationers, were higher ranked relative to Non-Hispanic White probationers. While model one found that being Black had a bigger impact on probation failure than Hispanicity, the two categories appeared even stronger when taken together.

In the third model, dichotomous measures broken apart across combinations of race, ethnicity, and sex were conducted. Unfortunately, the model encountered problems concerning

standard errors, indicating the results were unreliable. Thus in lieu of a single model that measures the intersections of race, ethnicity, and sex, new models were conducted on specific sub samples of race and ethnicity to examine how variables, including sex, affected probation failure across racial and ethnic groups.

The results of these subsequent models, in line with the previous models, support findings that offenders of color are differentially affected by legal and extra-legal factors than White offenders. Although the criminal history score was, across the models, the strongest predictor of probation failure, the educational/employment score was only a strong predictor for non-ethnic White offenders. Type of crime was second in relative strength for both non-ethnic Black and Hispanic probationers. Most significantly, it was found that sex was only a powerful predictor for Black probationers. Sex, a variable of focus for this study, was only significant in the model examining Non-Hispanic Black probationers. In other words, being a Black man may be more important to the likelihood of probation failure than many legal/risk assessment factors. Supporting existent literature that Black men specifically, are more likely to experience negative criminal justice outcomes (Steffensmeier et. al., 1998).

Next, seeking to examine ethnicity separately from race, an examination of ethnicity of the probationary population found similar differential outcomes for Hispanic probationers. Much like non-ethnic Black probationers, the educational/employment score that was found to be a strong predictor of failure for White probationers was a weak predictor of failure for Hispanic probationers. Within the Hispanic population legal variables of criminal history, type of crime, and probation duration were found to be the strongest predictors.

Overall, this study, supporting previous findings, presents results that minority probationers were more likely fail probation than White probationers (Gray et. al., 2001;

Morgan, 1994; Sims & Jones, 1997; Steinmetz & Anderson, 2015; Steinmetz & Henderson, 2015; Warren, 2016). The results of this study show a pattern of inequity, one that has continuously been found throughout the criminal justice system. Black and Hispanic individuals are more likely to have negative interactions with the criminal justice system. Systemically this describes a community corrections program, that much like other segments of the criminal justice system, treats Black and Hispanic individuals differently than White probationers. An examination of the type of violations, further shows that technical violations are the most common form of violation amongst all probationers (Gray et. al., 2001). Technical violations, as previously described are not technically illegal, unless committed by someone on community corrections. These large number of violations are not a result of new crimes, but a failure to meet the strict guidelines set forth during sentencing and enforced by probation officers.

Taken alone, these findings support racial disparity, but not necessarily discrimination. The data and findings of this study can't pinpoint the results of differential probation outcomes to discrimination. Discrimination, though, is one possible explanation.

Exploring discrimination, the process of probation violations should be taken into consideration. Discretionary decision-making power lies directly in the hands of the probation officers supervising and overseeing the various cases under their charge. As with judicial discretion at work in sentencing, these decisions are more likely to find offenders of color receiving harsher treatment and negative outcomes.

Racially disparate effects of drug policy, like the war on drugs, have been documented extensively. A form of institutional discrimination, these policies have long targeted racial minorities, affecting Blacks more severely than Whites (Tonry, 2008). A similar phenomenon may be affecting probationers of color. Technical violations have been found to be the most

common cause for probation violations among all probationers, but specifically the most common for probationers of color (Demuth, 2003; Demuth & Steffensmeier, 2004; Johnson & Jones, 1998; Morgan & Smith, 2008; Olson & Lurigio, 2000; Steinmetz & Henderson, 2015). Probation policies pertaining specifically to technical violations, (including unpaid fines, maintaining gainful employment, avoiding contact with police), find poor probationers of color more likely to violate these terms, and more likely to experience negative probation outcomes. These findings support the likely possibility that institutional discrimination, in the form of racially biased policies may be the cause of the marked disparity of negative probationary outcomes.

Institutional discrimination within probation is all the more alarming when the lack of scrutiny within probation is considered. Rather than seen as an extension of the criminal justice system, probation has been presented as a more rehabilitative alternative to incarceration. For individuals under supervision, it may more closely resemble a form of incarceration rather than rehabilitative program. Offenders are closely supervised, subjected to intrusive testing and home visits, charged with an array of fees, and are often disenfranchised because of their criminal history and probationary status. Any violation of the numerous and strict terms of the probationary sentence could intensify the already strict parameters, or lead to a revocation of probation and prison time. If these consequences are applied differentially, probation finds itself just one of many of the numerous institutions that uphold and perpetuate racial inequity.

Overall, this study while supporting previous studies of inconsistent and higher risk of probation failure for men and women of color, it also highlights the role sex plays in the likelihood of probation failure. The finding that sex was only a relatively strong predictor for Black probationers, speaks to the importance of intersectional identities and the need for more

investigation and oversight into the probationary programs. And further, implementation of more intuitive probationary treatment programs that better address risk factors of those under probationary supervision.

### **Policy Implications**

Offender risk-factors should be examined, specifically, issues effecting race, ethnicity, and sex should be considered. Further, changes in probationary treatment should take into consideration the institutionally imbedded bias. Policy implications must address issues of racism. To combat the racial disparities in failure rates, clearly defined guidelines for violations that are applied fairly, and oversight holding probationary discretion accountable.

Policy implications for this study include an examination of not just an individual's risk factors utilizing an LSI-R style assessment, but to review the ways in which race, ethnicity, and gender effect risk of probation failure and recidivism. Taking a more intersectional understanding of risk factors for probation failure may allow for a more comprehensive program for treatment and reduce institutional bias. Including, but not limited to diversity training and more inclusive hiring practices for probation officers

Further, any comprehensive treatment programs must take into consideration the families and communities within which the large number of probationers exist. Often, individuals under probationary supervision are seen only as probationers, individuals under criminal justice control, sentenced to community corrections. This simplistic and short-sighted view ignores the eventual return to full citizenship within their families and communities. Programs should consider the offender as a citizen, one which will be rejoining the community at-large and becoming productive individuals. Sending stunted and criminally marked

Recent and inflammatory incidents of race-based violence and a resurgence of hate speech and demonstrations by White supremacist groups, have brought debates about race and race relations to the forefront of public discourse. Discussions of probation are rare, speaking to the overshadowed population of individuals under supervision. The recent upheaval in racial climate and dramatic shift in ideology that was reflected in U.S. politics negatively impacts those in the clutches of the criminal justice system. The ideological shift toward more right-leaning attitudes has undone years of progressive criminal justice reform and a return to tough-on-crime policies that will directly and negatively affect those drawn into the criminal justice system.

### **Study Limitations**

This study may suffer from issues of generalizability. The data utilized for this study was limited in its size and location. The probationary data was obtained from the department of corrections and examined only the population of probationers within that specific mid-western state. The predominantly White population of this sample led to a lack of minority representation in a study focused on the differential outcomes of minority probationers. The lack of minority representation can easily be attributed to the location the data was gathered. The population of Midwestern states is predominantly White, but still allows for insight into differential outcomes of minority probationers. Accessing a probation population of multiple states and in a region with a greater population of Black and Hispanic offenders could increase the number of probationers of color.

Another limitation for this study involves the categorization of individuals into distinct groups of race, ethnicity, and sex oversimplifies and reinforces social constructs. For this study, demographic variables were classified by relying upon the categories utilized during collection of official data. The official data utilized follows generally accepted categories of race, ethnicity,

and sex: race, broken down into Black and White, ethnicity into Hispanic and Non-Hispanic, and sex into male and female. Though a limitation, official data is often used in sociological research, and regularly used in criminological research.

Methodologically, this study relied on relatively weak measures of model fit. Such a weak measure suggests a great deal of variation that is unaccounted for, and possible variables that have been omitted from the analysis. Future research should find way to improve strength of predictive power. Though this short-coming is acknowledged, the measure of goodness-of-fit is within range of other criminal justice studies.

Despite these limitations, this study offers valuable insight into the differential probation outcomes based upon race, ethnicity, and sex of probationers. Further, this study sheds light on the ways in which community corrections is no less immune to systemic racism than other aspects of the criminal justice system. Individuals of color, both male and female, find themselves at greater risk of failure and are more likely to fail because of technical violation rather than commission of new crime.

### **Future Research Implications**

As mentioned above, an important result of the numerous models, found that sex was only a strong predictor in the model examining Non-Hispanic Black probationers. Expressed differently, being male or female, was found to only be an important distinction in the population of Black probationers underlies an important facet of the criminal justice system and is central to the intersectional theoretical framework of this study. Much like the crimes committed by women in general, the population of women under probationary supervision are at risk of failure for different reasons than men. The focus on men's crimes and men's issues, overlooks the problems in women's lives that lead them to fail probation. "...female offenders are more likely

to share a history of physical and/or sexual abuse; they are often the primary caretakers of young children at the time of arrest and they have separate, distinctive physical and mental needs” (Covington & Bloom, 2007). The higher risk and likelihood of probation failure of men, overshadows the unique gendered risk factors of women under probationary supervision. Leaving a large section of the probationary population even further marginalized within an understudied portion of the criminal justice system.

Including women’s issues within examinations of probation can be further scrutinized, taking into consideration intersectional identities. Specifically, to women of color. Existing within marginalized groups, Black and Hispanic women, straddling two marginalized groups, face unique consequences of their intersectional status. Much in the same way examinations of race are centered upon Black men, examinations of gendered experiences are centered on the experiences of White women. As women commit crime for different reasons, women of color offend for different reasons than White women. Overlooking these racial and sex based differences, leaves women of color at greater risk of failing probation, and at greater risk of revocation.

Further, future research should consider the major social changes brought with the recent reversal in criminal justice reform. The return to tough-on-crime ideology, revamped use of private prison industry, and the changes in immigration policy will see a major increase in the use of not only prisons and detention centers, but also major changes in the use of community correction centers and programs. How will the resurgence of for-profit prison industry and stricter immigration policies effect ethnic minorities within community corrections programs?

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## Appendix A - Correlation Matrix

<b>Correlations</b>	Black	Hispanic	Sex	Age	Probation Duration	Person	Married	Criminal History Score	Educational/Employment Score	Financial Score	Family/Marital Score	Accommodation Score	Leisure/Recreation Score	Companion Score	Alcohol/Drug Score	Emotional/Personality Score	Attitude/Orientation Score
Black	1																
Hispanic	-.120**	1															
Sex	.046**	.033**	1														
Age	-.040**	-.136**	-.075**	1													
Probation Duration	.068**	.067**	.068**	-.181**	1												
Person	.071**	.078**	.107**	-.181**	.423**	1											
Married	-0.008	.077**	-.039**	.084**	.066**	.049**	1										
Criminal History Score	.067**	-0.017	.097**	.140**	-.075**	.026**	.041**	1									
Educational/Employment Score	.050**	-0.016	-.050**	-.179**	.022*	.030**	-.063**	.211**	1								
Financial Score	.050**	-.060**	-.187**	.115**	-.030**	-0.013	.024*	.185**	.285**	1							
Family/Marital Score	-0.007	-.037**	-.143**	.022*	0.001	.026**	.046**	.197**	.253**	.273**	1						
Accommodation Score	.036**	-.034**	-.068**	-.042**	0.006	.030**	-.054**	.151**	.247**	.261**	.344**	1					
Leisure/Recreation Score	-0.015	-.019*	-0.001	-.088**	0.000	0.007	-.060**	.117**	.300**	.167**	.210**	.215**	1				
Companion Score	.042**	-0.008	-.033**	-.114**	-0.006	-.037**	-.067**	.168**	.301**	.196**	.276**	.248**	.323**	1			
Alcohol/Drug Score	-.140**	-0.014	-.047**	0.007	-.075**	-.092**	-0.014	.174**	.142**	.130**	.147**	.157**	.187**	.290**	1		
Emotional/Personality Score	-.101**	-.048**	-.206**	.078**	-0.002	.033**	.024*	.142**	.094**	.231**	.228**	.172**	.094**	.115**	.237**	1	
Attitude/Orientation Score	.064**	-0.001	.038**	-.049**	0.010	.065**	-.036**	.176**	.224**	.178**	.278**	.227**	.289**	.278**	.156**	.126**	1

\*\* . Correlation is significant at the 0.01 level (2-tailed).

\* . Correlation is significant at the 0.05 level (2-tailed).

## Appendix B - Collinearity

		Tolerance	VIF
1	(Constant)		
	Black	0.927	1.079
	Hispanic	0.948	1.055
	Sex	0.879	1.138
	Age	0.836	1.196
	ProbationDuration	0.795	1.259
	Person	0.777	1.287
	Married	0.960	1.042
	CrimHistScore	0.831	1.203
	EduEmpScore	0.757	1.322
	FinScore	0.784	1.275
	FamMartScore	0.749	1.335
	AccomScore	0.800	1.250
	LeisRecScore	0.802	1.246
	CompScore	0.748	1.336
	AlcDrugScore	0.824	1.214
	EmotPersScore	0.832	1.202
	AttOrientScore	0.815	1.226

## Appendix C -

### Model 3: Race/Ethnicity/Sex Effect on Probation Failure

n = 11,474	<i>b</i>	$\beta$	Exp ( <i>b</i> )	<i>SE</i>	<i>z</i>
BlackHispanicMale	0.750***	1.180	4.163	1.07	5.55
BlackHispanicFemale	0.041	1.078	3.238	1.345	2.83
BlackNonHispanicMale	-0.284***	1.176	1.48	0.107	5.45
BlackNonHispanicFemale	-0.013	0.997	0.985	0.101	-0.143
WhiteHispanicMale	-0.549	1.065	1.136	0.105	1.377
WhiteHispanicFemale	0.041	1.006	1.04	0.16	0.255
WhiteNonHispanicMale	-0.661	1.008	1.016	0.063	0.25
Age	-1.337***	0.646	0.263	0.018	5.65
Person	0.344***	1.174	1.41	0.7	6.89
Criminal History Score	0.219***	1.623	0.1245	0.013	20.88
Educational/Employment Score	0.074***	1.222	1.077	0.009	8.55
Financial Score	0.082*	1.061	1.085	0.035	2.55
Family/Marital Score	0.076***	1.092	1.079	0.022	3.75
Accommodation Score	0.078***	1.076	1.082	0.027	3.19
Leisure/Recreation Score	0.177***	1.122	1.193	0.012	5.07
Companion Score	0.077***	1.106	1.08	0.019	4.31
Alcohol/Drug Score	0.025**	1.058	1.025	0.01	2.51
Emotional/Personality Score	0.022	1.034	1.023	0.015	1.5
Attitude/Orientation Score	0.044*	1.056	1.045	0.019	2.42
-2 Log likelihood	-6899.3511				
RL2	0.132				
$\chi^2$	2093.25***				

\* p < .05, \*\* p < .01, \*\*\* p < .001