ABSTRACT

Title of Dissertation:	THE WEIGHT OF EVIDENCE IN DRUG CASES: A MULTI-METHOD STUDY OF DISCRETION AND SENTENCING IN TEXAS
	Jacqueline G. Lee, Doctor of Philosophy, 2017
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While guilty pleas dominate criminal sentencing, researchers are still working to understand the inner workings of plea bargaining. Furthermore, much sentencing research focuses on guideline jurisdictions and many readily-available datasets do not include information on evidence or arrest circumstances, which are likely important for prosecutorial decisions. This dissertation starts to fill these gaps with a multi-method study using newly collected set of drug cases from a large, urban county in a state (Texas) with an indeterminate sentencing structure. Cocaine is particularly salient given its role in the War on Drugs and little is known about how drug cases are currently processed in state criminal courts.

Practitioners in this jurisdiction depict a casual bargaining process that occurs in the vast majority of cases. Plea bargaining is described as a haggling process much like car buying and each defense attorney has their own personal negotiation strategy.

Descriptions of "typical" cocaine defendants vary, but most participants believe that evidence and criminal history are the most important factors for bargaining. Interviews further reveal that popular operationalization of "criminal history" may be lacking, there are several layers of control over assistant district attorneys, and practitioners favor the indeterminate sentencing structure currently in place.

With regards to evidence, cash seized at arrest, a search being performed, and selling to the police are particularly relevant. Further, larger substance quantity predicts a more serious distribution charge but does not impact charge reductions. For sentence length, drug quantity's main role seems to be to place offenders into statutory categories; once in these categories, quantity is less impactful. Few extralegal covariates are predictive of charge type decisions, charge reductions, or sentence length, though descriptive statistics show minority defendants to be overwhelming majority of this sample.

This project highlights a need for further detailed data collection and replication in additional jurisdictions, the value of qualitative research, and a need to better understand the role of defendants and their attorneys in court outcomes. A number of policy implications can also be gleaned from these results, including a potential inspection of quantity ranges in controlled substance laws and negotiation training for defense attorneys.

THE WEIGHT OF EVIDENCE IN DRUG CASES: A MULTI-METHOD STUDY OF DISCRETION AND SENTENCING IN TEXAS

by

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Dedication

This dissertation is dedicated to the memory of Dr. Ray Paternoster, Professor of Criminology and Criminal Justice and Emperor of Wyoming. His work on deterrence, rational choice, and the death penalty altered the landscape of criminology and criminal justice. And as a professor, he taught us to read the originals, to ask the right questions, and most importantly - not to take anything (including ourselves or graduate school) too seriously. His contributions will live on through all of us.

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Chapter 1: Introduction

The United States criminal justice system is centered on plea bargains. Depending on the jurisdiction, plea bargaining rates hover around 95% (Pastore & Maguire, 2005). For better or for worse, this means that the vast majority of discretion in sentencing processes rests in the hands of prosecutors (Davis, 2007; Jacoby & Ratledge, 2016). However, despite this knowledge, little is known about *how* prosecutors exercise this discretion (Frederick & Stemen, 2012; Ulmer, 2012). In fact, in a recent review of sentencing literature, Ulmer stated, "the largest gap is in understanding prosecutorial discretion, the importance of which sentencing researchers have agreed on and desired to fill since the 1970s" (Ulmer, 2012: 25). Their nearly boundless (and largely unreviewable) discretion is difficult to study, particularly with the current data limitations of most large-scale sentencing datasets. Further, while much research has been focused on guideline jurisdictions and specifically the impacts of sentencing guidelines (see, e.g., Marvell & Moody, 1996; Koons-Witt, 2002; Mustard, 2001; Stolzenberg & D'Allessio, 1994), the influence of prosecutorial discretion in the remaining states with indeterminate sentencing has been largely unstudied (Koons-Witt et al., 2014). The importance of prosecutorial discretion and the ability for prosecutors to shape sentences is determined in no small part by the sentencing scheme under which they operate and the collective pressures they face to enforce the laws that society deems most important at the time.

The 1980s and 1990s were important decades for both sentencing innovations and American drug policy. In response to allegations of disparity in sentencing and concerns over unchecked power in American courtrooms (Frankel, 1973), legislators drastically

revised sentencing strategies beginning in the 1970s. One proposed solution was implementation of sentencing guidelines that provide guidance to judges on appropriate sentences, generally based upon criminal history and the seriousness of the current offense (Tonry, 1987). Despite some scholars' recommendations to implement at least presumptive guidelines in all jurisdictions (see, e.g., Tonry, 2014), half of the states in the U.S. currently operate under an indeterminate structure (Frase, 1999; Kauder & Ostrom, 2008; Koons-Witt et al., 2014). Several states have considered guidelines and rejected the premise (Frase, 1999) and some, such as Texas, are staunchly opposed to any restriction on courtroom actor discretion (Deitch, 1993).

While sentencing reforms such as guidelines and mandatory minimums were being implemented, the War on Drugs was being waged across the United States. A moral panic in the 1980s led to demonization of crack offenders and sentences for cocaine grew considerably in the following decades (Reinarman and Levine, 1997; Musto, 1999). In the federal system, the notorious 100-to-1 ratio was implemented in 1986 and required a defendant to have 100 times the amount of powder cocaine than crack cocaine to receive the same punishment (Musto, 1999). Many states followed suit and enacted their own harsh sentencing policies in the 1980s and 1990s; each state has had their own unique reaction to the War on Drugs and also the recent recognition that this "war" was unsuccessful (Reinarman and Levine, 1997; Mauer & Ghandnoosh, 2014). While much drug crime research is performed in the federal system (see, e.g., Albonetti, 1997; Kautt & Spohn, 2002; Sevigny, 2009; Sevigny & Caulkins, 2004) many more drug offenders (particularly low-level possession offenders) are sentenced in state court than in federal court (Taxy et al., 2015; Carson & Anderson, 2016). Consequently, to truly

understand the landscape of drug sentencing in the United States, it is imperative to examine state-level data.

Within the extant body of sentencing work, there are a few common themes. First, a few guideline states have been examined in more detail (Koons-Witt et al., 2014, in part because of the establishment of sentencing commissions which facilitated data release to researchers, including Ohio (see Griffin & Wooldredge, 2006; Wooldredge et al., 2005, Wooldredge, 2009), Minnesota (see Miethe & Moore, 1985; Miethe, 1987; Stolzenberg & D'Allessio, 1994; Koons-Witt, 2002) and Pennsylvania (see Steffensmeier et al., 1998; Johnson, 2003; Blackwell et al., 2008; Ulmer & Bradley, 2006). The type of information included in these datasets is generally similar: defendant demographics and criminal history, degree/severity of offense, offense charge, and final charge and sentencing outcomes (see, e.g. Ulmer & Bradley, 2006; Blackwell et al., 2008; Wooldredge, 2009). Second, much of the research in these determinate sentencing jurisdictions (federal and state) has been focused on the effects of guidelines (Koons-Witt et al., 2014), including such as assessing whether they have reduced unwarranted disparity or decreased incarceration rates (see, e.g., Marvell & Moody, 1996; Griffin & Wooldredge, 2006; Koons-Witt, 2002; Mustard, 2001; Stolzenberg & D'Allessio, 1994; Stemen & Rengifo, 2011).

Third, final sentencing outcomes such as sentence length or the decision to incarcerate have been the subject of much research (Ulmer, 2012) and there are a range of factors known to impact final sentences. Disparities based on race and ethnicity (Zatz, 1987; Miethe & Moore, 1985, Mitchell, 2005; Ulmer et al., 2014), gender (Steffensmeier et al., 1993; Daly & Bordt, 1995; Bontrager et al., 2013), and age (LaFrentz & Spohn,

2006, Bushway & Piehl, 2007; Steffensmeier, 1995), as well as combinations of the three (Steffensmeier et al., 1998, Spohn, 2000; Franklin, 2010) have all been studied considerably.

Fourth, while much early work focused on discretion and sentencing by judges (Albonetti, 1991; Steffensmeier et al., 1998; Bushway & Piehl, 2001), there is an increasing desire to better understand prosecutors and a realization that their discretion is at least as important as that of judges (Stith & Cabranes, 1998; Davis, 2007; Frederick & Stemen, 2012; Ulmer, 2012; Johnson et al., 2016; Jacoby & Ratledge, 2016). The power of the prosecutor could grow due to the implementation of guidelines that render the actual charge – which is under the purview of the prosecutor – the main determinant of sentencing (see e.g., Miethe, 1987; Stith & Cabranes, 1998; Shermer & Johnson, 2010), but there is nevertheless considerable room for prosecutorial discretion in indeterminate sentencing jurisdictions, particularly with the rise of plea bargaining (Davis, 2007; Jacoby & Ratledge, 2016).

Despite the research that has been performed in the field of sentencing, there is much to be learned, particularly with regards to plea bargaining and sentencing of drug offenders. A great deal of the existing research is performed in guideline jurisdictions and much less is known about the process of negotiation and sentencing in states that operate under an indeterminate sentencing structure (Koons-Witt et al, 2014). There has been some work in other jurisdictions such as South Carolina, Oregon, and Florida, but these studies are few and far between (see e.g. Koons-Witt et al., 2014; Merritt et al., 2006; Metcalfe, 2016). While a substantial body of literature exists on final sentencing outcomes, fewer studies have been performed on the processes that lead to the final

sentence (Holmes et al., 1987; Piehl & Bushway, 2007; Ulmer, 2012), which is frequently the result of negotiation and plea bargaining (Devers, 2011). There have been calls for better research on plea bargaining processes for many years, yet it continues to be the "black box" of criminal sentencing (Blumstein et al., 1983; Eisenstein et al., 1988; Ulmer, 2012; Johnson et al., 2016). With the sustained presence of plea bargains in the American criminal justice system, it is important to improve on the current state of knowledge regarding plea bargaining and negotiation.

Another area deserving of more research attention is the role of evidentiary factors in case processing and sentencing. Evidence is frequently cited as one of the most important considerations (if not the most important) in prosecutorial decision-making (Albonetti, 1987; Jacoby & Ratledge, 2016; Kutateladze et al., 2015), but this type of information is rarely available to researchers for study. Collecting this information is a laborious task that requires extensive knowledge of case processing as well as a great deal of time (Kutatledze et al., 2015). The growing literature on the importance of evidence is mixed, with some studies finding that its impact is significant (Albonetti, 1987; McCoy, 2012), while others find evidentiary measures to be less predictive than expected (Kutateladze et al., 2015; Kutateladze et al., 2016). The importance of evidence may also depend upon the stage of the process (see e.g., Spears & Spohn, 1997) and few studies have examined evidence and final sentencing outcomes (cf. Nir & Griffiths, 2017).

Further, there is little recent sentencing research that has either focused on an individual court system or has included a qualitative component. Many seminal studies that utilized an in-depth multi-modal approach to study a few jurisdictions are now quite

dated (see Eisenstein & Jacob, 1977; Eisenstein, 1988; Wheeler, 1988; Nardulli et al., 1998). This type of analysis can significantly add to researchers' understanding of quantitative findings and can also serve as a valuable independent analysis on its own.

Though there are a number of states that have not yet been examined, the current research site of Texas is an important one for several reasons. Texas continues to be in the top five for both prison population and incarceration rates (Council of State Governments, 2009; McCullough, 2015). Drug crimes are a major contributor to the state correctional population; individuals convicted of drug possession and drug trafficking accounted for 13.9% of offenders in prison and 36.9% of offenders in state jails in Texas in fiscal year 2014 (Texas Department of Criminal Justice [TDCJ], 2014). Drug offenders also have some of the highest recidivism rates in the state. In a 2013 report, it was found that 49.2 percent of drug offenders in Texas were rearrested within 3 months of release and that drug offenses were the most prevalent offenses for which people were re-arrested and also for which parole was revoked (LBB, 2013). Moreover, the current drug policy landscape in the state is complicated. Despite increased funding towards rehabilitation and diversion in 2007, there is still substantial pushback in the state legislature against lowering penalties for drug offenses (Martin, 2013). Current laws on the books in Texas also allow for lengthy prison terms (sometimes life in prison) for possession of small amounts of controlled substances if defendants have prior felony convictions. A recent Human Rights Watch Report (2016) found that seven people were sentenced to life in prison from 2005-2014 for possession of 1-4 grams of a controlled substance because they had prior felony convictions.

Texas is a state with both indeterminate sentencing and very high negotiated plea rates, which could lead to increased influence of prosecutorial discretion. Since the vast majority of sentences in the current jurisdiction (in this sample, approximately 90%) are the result of a negotiated plea (which are very rarely rejected by a judge), actual sentences "on the books" are highly reflective of a negotiated plea process between prosecutors and defense attorneys. Further, Texas statutes, as currently written, create generous "windows for discretion" and opportunities for bargaining between parties. Controlled substance offenses are defined by quantity ranges that are unchanged from the 1990s; these ranges delineate both offense degree and punishment range. For example, possession of 4-200 grams of cocaine is a 2nd degree felony in Texas with a punishment range of 2-20 years in prison (Sec 481.112(d)). Lacking any sentencing guidelines or official guidance, it is technically possible for an offender with 5 grams could be sentenced more harshly than someone with 40 grams, depending on the "bargain" they receive from a prosecutor.

Furthermore, to convict an individual of possession with intent to distribute in Texas requires possession and that "the person knowingly manufactures, delivers, or possesses with intent to deliver" the controlled substance (Texas Health and Safety Code, sec. 481.112). However, the statute does not indicate how a prosecutor, judge, or jury is to determine whether the person intends to deliver the substance. Certain physical evidentiary measures such as cash being recovered, drug paraphernalia being present, or a cell phone being seized may indicate a drug enterprise, but empirical research has not been performed on this issue. Other information regarding the arrest, such as whether the defendant was caught selling to police, or other people were arrested, may also provide

insight. Given the unsettled drug policy backdrop, discretion is of utmost importance; with such a wide range of punishments, local elected officials' or individual prosecutor's beliefs about treatment and their exercise of discretion can meaningfully impact sentencing. These broad quantity ranges and vague statutory language, coupled with expansive punishment ranges and high rates of negotiated pleas, make this topic one of great importance.

Current Research Aims

This dissertation has three main goals. The first aim for this dissertation is to investigate criminal case processing of drug offenders qualitatively and to look closer at plea-bargaining processes. Many seminal pieces in the courts and sentencing literature (see Eisenstein and Jacob, 1977; Eisenstein, 1988; Nardulli et al., 1998; Steffensmeier et al., 1998) have included interviews with practitioners, but empirical research that includes a qualitative component is still quite rare. While the trend is moving towards including more qualitative work, criminology and criminal justice research is often focused on quantitative findings and the knowledge and experience of ground-level employees and practitioners is not adequately utilized (see Copes et al., 2016). Qualitative semi-structured interviews with court actors in the jurisdiction are performed to better understand how plea bargains are negotiated. Other topics investigated with interviews include an assessment of a "typical cocaine defendant" in the county and the importance of substance and quantity evidence in plea offers/acceptance and final sentencing outcomes.

The second main aim is to provide a profile of felony cocaine offenders entering into either Texas state jails or prisons in 2014 in a more detailed manner than has been

available previously. For the offenders themselves, demographics were collected as well as detailed criminal history information. In addition, quantitative data on the arrest, evidence, and case progression was hand-coded starting with police reports, which provide an account of the offense that is lacking in other sources. Police officer narratives describe how and why the officers initiated contact with the offender, whether other people were present at the scene, and what physical evidence was seized. Central to the issue of whether substance quantity is directly related to sentencing outcomes, officers also recorded the actual weight of the cocaine at arrest. Other relevant documents further illuminate the court process, including arraignment, election and appointment of counsel, plea bargains, and final conviction. Given that so little is known about the importance of arrest circumstances and evidence in prosecution, this study provides detailed descriptive statistics on the defendant's arrest and court case, from start to finish.

Lastly, the third aim is to examine the importance of substance quantity, evidence, and arrest circumstances, in both interim case processing and final punishment outcomes for this group of convicted offenders. While final sentencing outcomes are certainly important, earlier decision points can also have lasting impact and deserve additional research attention (Ulmer, 2012). Evidence likely impacts initial charging decisions because evidence (recovery of a cell phone, cash/currency, a gun, or drug paraphernalia) may be reflective of a drug enterprise as opposed to simple possession. Further, charge reductions are an interim plea bargaining process within the discretion of the prosecutor; weaker or stronger evidence could play a role in a prosecutor's decision to reduce the severity of charges (Davis, 2007; Jacoby & Ratledge, 2016).

As the vast majority of cases in this jurisdiction (90%) are resolved with a negotiated plea bargain,[1] the importance of cocaine quantity and evidence in predicting sentence length is also a reflection of plea bargaining practices. A prosecutor may offer a better sentence "deal" in a case with weaker evidence in an attempt to avoid the uncertainties of trial. Texas's cocaine offense categories are determined solely by substance quantity and the ranges vary widely. For example, one category of offense includes less than one gram, while another includes all offenses with 4 to 200 grams (Texas Health and Safety Code, sec. 481.112, 481.115). Thus, another goal of this project is to examine potentially different effects of substance quantity for individual offenses.

Each of these objectives is explored using data from a large county in Texas. For anonymity purposes, this county will be referred to as "County A." This data is the result of a new collection of information from several different sources. In addition to quantitative information coded from police reports and case documents, qualitative semi-structured interviews with defense attorneys, prosecutors, and judges in the jurisdiction aid in increasing understanding of the plea bargaining and negotiating process. All of this is being undertaken with a goal to illuminate the day-to-day processes of a large urban county in a sizeable state that convicts and incarcerates thousands of drug offenders each year.

This dissertation continues as follows: Chapter 2 describes the extant literature on plea bargaining and sentencing, Chapter 3 is devoted to the role of evidence in case processing and sentencing, Chapter 4 delves more deeply into the War on Drugs and its

[1] Approximately 5% are resolved via an open plea and approximately 4% are resolved via trial.

historical significance as well as specific work on sentencing in drug cases, Chapter 5 describes the current research context and sentencing and corrections in the state of Texas, and Chapter 6 addresses the theoretical basis and contributions of this project. A description of the data collection and analytic methods is found in Chapter 7. Qualitative results can be found in Chapter 8. Descriptive statistics and results of multivariate regression are presented in Chapter 9. Finally, Chapter 10 concludes with a summary and discussion of the results as well as study limitations, policy implications, and future directions for research.

Chapter 2: Prior Literature on Guilty Pleas, Plea Bargaining, and Sentencing

Guilty pleas are an integral part of the United States criminal justice system and are most certainly the modal method of case resolution (Johnson et al., 2016). However, pleas have not always been the common method of resolution and they were at times frowned upon by legal scholars (Alschuler, 1968; Friedman, 1979). As their prevalence has increased, scholars have recognized the importance of studying the mechanics of pleading guilty and not simply the final sentencing outcomes (Blumstein et al., 1983; Ulmer, 2012; Johnson et al., 2016).

Unfortunately, the state of knowledge on plea practices continues to be sparse. These processes are rarely officially documented in the same way as final sentences, and prosecutors are wary to work with researchers (Frederick & Stemen, 2012). However, there are some valuable studies which shed light on guilty plea processes and there is a vast literature on the factors which influence final sentencing outcomes. This section begins by tracing the history of plea bargains in America and continues by describing the motivations of individual actors in plea bargaining. The next section focuses on empirical studies of plea bargaining outcomes such as charge reductions, and the chapter concludes with a brief summary of other legal and extralegal factors that are implicated in the sentencing process.

The History and Growth of Plea Bargains and Prosecutorial Discretion

English common law and early American courts viewed trials as being the most effective way to achieve "justice" (Alschuler, 1968). Even as late as the 1920s, American legal scholars and practitioners resisted pleas. Over time, however, guilty

pleas have become a mainstay in the United States courts and sentencing landscape. Their use has been increasing for the last 50 years, and approximately 75 percent of cases were resolved via guilty plea by the 1970s (Friedman, 1979). Today, that number is closer to 95%, depending on the jurisdiction (Pastore & Maguire, 2005).

The rise of guilty pleas over the last several decades can be attributed to many factors, including both the rise in public and professional police and prosecutors and the relationships and goals between court actors (Friedman, 1979). Other scholars have also noted that as crime rates increased, beginning in the 1960s, so did the average length of a criminal trial (Alschuler, 1968). These factors together led to an increased cost in maintaining a trial-based criminal justice system. As pleas have continued to be the modal method of case disposition, prosecutors and their discretion have grown to be a topic of interest for researchers, though the work has moved slowly at times (Forst, 2002; Johnson et al., 2016). Plea "bargains" can come in the form of either a sentence bargain, where the parties bargain and negotiate over sentence terms, or a charge bargain, where a prosecutor agrees to lessen the actual charged offense, generally moving the offense into a category with a lower sentence range (Devers, 2011).

Further, the reasons for the paucity of trials are likely due, at least in part, to the interests of the court actors and defendant involved in the plea bargain process (see Alschuler, 1968, 1975, 1976). In almost all jurisdictions, a guilty plea is the normative response to a criminal charge and each party has their own reasons for choosing a plea over a trial (Johnson et al., 2016). One scholar on plea negotiations has described that "plea negotiations take place within a tension between the rational interests of the players – including the defendant, the prosecutor, the judge, and the defense attorney – and the

ethical obligations of the defense lawyer" (Uphoff, 1995, as cited in Roberts & Wright, 2016: 1456 (quotations in original)).

Prosecutors and district attorneys, who likely feel political pressure, may prefer guilty pleas for many reasons, chief being that because they are certain convictions (Johnson et al., 2016). Alschuler (1968) also notes several other roles that prosecutors may be filling when bargaining with defendants. First, as administrators, they are motivated to grant concessions to defendants in order to efficiently dispose of as many cases as possible. Second, prosecutors may act as advocates and take into account the likelihood of acquittal at trial when determining whether and how to bargain with a defendant. Third, prosecutors may view their role as more judicial if they believe a bargain is the best option for a defendant because of the specific circumstances of the case. Fourth, prosecutors may adopt a more legislative role where if they feel that the statutory penalty is too high, they offer a bargain to the defendant to avoid an overly harsh punishment.

There are several reasons that other courtroom actors may prefer plea bargains. Judges want to clear their dockets and pleas generally resolve more quickly than trials (Alschuler, 1976). They may also want to preserve their reputation, keep their caseload low, and reduce the number of cases overturned on appeal. The defendant and his or her counsel may view a guilty plea as an opportunity to both placate other court actors and to obtain the least severe sentence possible as criminal defendants are routinely offered some form of "discount" (a charge or sentence reduction) in exchange for a guilty plea (Alschuler, 1975). Public defenders may feel pressure from prosecutors and judges to plead guilty and may thus encourage clients to accept a plea offer to prevent backlash

from these same prosecutors and judges in future cases (Alschuler, 1975). Lastly, defendants may have practical reasons for preferring pleas: trials generate high attorney fees and garner more attention than a plea (Johnson et al., 2016). They may also be aware of the so-called "trial penalty" (see LaFree, 1985; Ulmer & Bradley, 2006) and wish to avoid the uncertainty of potentially harsher punishments at trial.

Adding to the literature on individual motivations, Eisenstein and Jacob (1977) found that trial rates differed across jurisdictions based on relationships between courtroom actors. While all actors are working to avoid uncertainty, uncertainty can be avoided in a number of ways. One way to reduce it is through familiarity between court actors. In their seminal study of three cities, Eisenstein and Jacob (1977) found that courtroom workgroups and the familiarity and similarity of workgroup actors affected the plea rate in each jurisdiction. Jurisdictions with more familiarity between actors and longer relationships were less likely to use formal case processing. Trials require much time, money, and effort and plea bargains can bring about more efficient case outcomes.

Nardulli and colleagues (1988) built on this with a multi-method study of nine rural jurisdictions in Michigan, Illinois, and Pennsylvania and also found that contextual and environmental factors of the jurisdiction were important in charge reductions and plea processing. They began their study with a discussion of two different models of plea bargaining: concessions and consensus. Under the concessions view, researchers and practitioners (generally critics of plea bargaining) argue that plea bargaining is more coercive and that "charging manipulations and sentencing concessions grease the wheels of justice" (Nardulli et al., 1988: 205). On the other hand, the consensus model stresses shared understanding. Advocates of this view acknowledge that concessions and explicit

bargaining are important, but only in a small number of cases with extraordinary circumstances. Instead, they contend, "the absence of factual ambiguity in most criminal cases looms large as an explanation for the defendant's decision to plead guilty within the consensus paradigm" (Nardulli et al., 1988: 211). Nardulli and colleagues' court community theory contends that there are many levels of influence for courtroom functioning and thus case outcomes: environmental (media, politics, jurisdiction-level factors), contextual (norms, "going rates," court-level factors), and individual (based on the case, defendant, and the court actor).

Under this framework, they assessed the charge and plea bargain function and process in several jurisdictions. Regarding environmental factors, they concluded that ecological influences were not overly predictive for case outcomes, but they might be important for "other aspects of the criminal court milieu" (Nardulli et al., 1988: 368). Environmental factors such as stability of the political system outside of the courtroom impacted the relationships and cohesion between court members, which then affect case processing. Second, contextual factors relating to the courthouse community and courthouse norms were imperative for properly understanding court function, both directly and indirectly. Several factors were implicated in the court's infrastructure for understanding charge reductions obtained through the plea process: screening processes, charging practices, structure of plea offers, and the overall plea agenda. Lastly, despite their predictions that individuals played a crucial role in case processing, they found that overall, individual court actors or their traits were not as important as predicted. Nardulli and colleagues (1988) argue that these different levels of influence combine to create policy in a jurisdiction and that "the different patterns of charge reductions observed, in

particular, suggest that they are not inevitable consequences of nontrial dispositions, but rather, may be the result of conscious policies, practices, structure, or other such influences" (1988: 260). While they did find considerable variation between jurisdictions, within jurisdictions they found more consistency. And despite the fact that offenders who were sentenced at trial did receive harsher punishments than those who plead guilty, they did not conclude that overwhelming bias or coercion was present in any of the nine counties. While these studies brought to light many of the important and nuanced processes inherent in plea bargaining, there was little movement towards replication of these multi-method in-depth studies for several decades afterwards.

Recently, many scholars have highlighted the continued need to better understand prosecutorial discretion in a modern sentencing landscape. Prosecutors are now generally viewed as holding the most power in plea bargain negotiations and are they not subject to the same review as judges (Stith & Cabranes, 1998). How they employ this generous discretion is still largely unknown because internal policies are rarely revealed or discussed with non-prosecutors (Frederick & Stemen, 2012). Davis's examination of the role of the American prosecutor begins bluntly by stating "prosecutors are the most powerful officials in the criminal justice system" (Davis, 2007: 5). Their daily decisions are wholly discretionary and essentially not available for review; Jacoby and Ratledge confirm that the "core set of decisions defining the prosecutor's discretionary power are unreviewable" (2016: 5). These include participating in plea negotiation, informal discovery, making sentencing recommendations to judges, and a variety of post-conviction activities.

Further, American prosecutors, unlike their other counterparts in the judiciary or legislature, lack checks and balances. In fact, the Supreme Court held in 1985 that if a court second-guesses a prosecutor's decision, this "delays the criminal proceedings, threatens to chill law enforcement by subjecting the prosecutor's motives and decision making to outside inquiry, and may undermine prosecutorial effectiveness by revealing the Government's enforcement policy" (*Wayte v. U.S.*, 470 U.S. 598, 607). Thus, prosecutors are purposefully shielded from the review that is mandatory for other government actors. Some scholars have gone so far as to argue that prosecutors and their vast exercise of discretion are responsible for disparity and injustice in the current criminal justice system; for example, Davis describes their decision-making as "often arbitrary, hasty, and impulsive" (Davis, 2007: 140). It is important to remember, however, that *some* exercise of discretion is necessary and that otherwise, it would be impossible to ensure that the punishment fit the crime (Jacoby & Ratledge, 2016). Nardulli and colleagues (1988) also argue that there are, in fact, informal checks on individualized discretion. Both the social dimension and infrastructure of the court community can act as limitations on discretion. In the words of the authors: "no one wants to reinvent the wheel with each new case" (Nardulli et al., 1988: 376). While this literature serves to explain individual actor motivations and relationships in the plea bargaining process, a separate literature empirically examines specific outcomes controlled by prosecutors.

Charge Bargaining, Sentence Bargaining, and Sentencing Departures and Enhancements

As stated above, in addition to making specific plea offers, several other key decisions are completely in the hands of a single prosecutor: moving forward or bringing charges, dropping charges or dismissing an entire case, and applying sentence enhancements or departures (Davis, 2007; Franklin, 2010; Spohn et al., 2001; Jacoby & Ratledge, 2016). This section will discuss the extant literature on charge and sentence bargaining as well as sentence departures controlled by prosecutors.

Charge bargaining, where a defendant eventually pleads guilty to a less severe charge than he or she was initial indicted for, has been examined as an interim decision point where prosecutorial discretion can have significant impacts. Bernstein and colleagues' (1977) seminal examination of charge reductions within the labeling perspective found that the likelihood of a charge reduction was dependent on the "values of reactors, statuses of the alleged deviant, and bureaucratic constraints" on the court (1977:362). Interestingly, individuals who had a prior arrest (but no prior conviction) fared better than those with no prior record for charge reductions. The authors attribute this to a potential learning effect; more experienced defendants may be more knowledgeable about the negotiation process. White defendants and older defendants were also more likely to receive better charge reductions than black and young defendants. From court observations, the authors concluded that organizational variables such as the desire to "process as many cases as possible" and to maximize plea bargains over trials due to their cost could also explain some of the charge bargaining decisions of the jurisdiction (Bernstein et al., 1977: 382).

Holmes and colleagues (1987) analyzed a sample of burglary and robbery cases to estimate whether certain defendant characteristics, such as race/ethnicity, private counsel,

or pretrial release affected charge reductions and final outcomes. Researchers predicted that charge reductions would be "especially receptive to status influences," but this was not supported (Holmes et al., 1987: 233). They found that at final disposition, defendants with private counsel and who were released prior to their trial were favored in that they were sentenced to shorter terms. However, at the charge reduction stage, black defendants actually received greater charge reductions than whites in one jurisdiction and Hispanic defendants received greater charge reductions in another. They conclude that the unexpected lack of race and ethnicity effects may be the result of preliminary overcharging of minority defendants.

Albonetti (1992) followed Bernstein and colleagues' (1977) lead and studied charge reductions at the initial screening decision. Using data from burglary and robbery cases in Jacksonville, Florida, she analyzed whether the prosecuting attorney chose to reduce police-recommended felony charges to a misdemeanor or instead prosecuted at the original felony level. Similarly to Bernstein and colleagues' (1977) finding regarding criminal history, individuals with a prior conviction were more likely to receive a reduction. There were no main effects of race and gender and cases where the victim and perpetrator were strangers were less likely to be reduced than cases where they were friends/acquaintances. Surprisingly, the evidentiary measure of having a two or more witnesses (as compared to one or none) decreased the likelihood of a reduction in this study. For case seriousness, individuals who used or implied that they were in possession of a weapon during the offense were much less likely to have charges reduced. Albonetti (1992) also analyzed some interaction effects and found that burglary suspects whose offense did not include a weapon were much more likely to have a charge reduction,

indicating that there are differential effects of using a weapon depending on the offense charged. Albonetti (1992) concluded that case seriousness, the suspect's character, and case characteristics all play a role in prosecutors' decisions to reduce charges at initial screening.

In a more modern examination of charge reductions under state sentencing guidelines, Piehl & Bushway (2007) confirmed that charge bargaining plays a significant role in final sentencing outcomes. Using data from two different states, they found that the most significant impact of charge reduction was in the state that had stricter sentencing guidelines (Washington). This is due to the fact that a charge reduction in such a state can significantly alter the punishment range for which an offender is eligible. While there were higher rates of charge bargaining in Maryland, the impact (measured as "distance travelled") was actually higher in Washington.

Another perspective on charge bargaining is that it controls sentencing outcomes in guidelines jurisdictions by moving offenders into different punishment categories. Using linked federal sentencing data, Shermer and Johnson (2010) analyzed prosecutorial discretion over charge reductions. They found that there were some effects of extralegal factors. For example, while there was no overall racial prejudice uncovered, male offenders were far less likely than females to have their initial charges reduced. Importantly, receiving a charge reduction resulted in significant reductions (on average, 23%) in final sentences. This study confirmed Bushway and Piehl's (2007) findings that charge reductions are directly related to sentence reductions and that within a guideline system, this occurs by moving offenders into lower punishment zones.

Bloch and colleagues (2014) recently examined what factors predicted a charge reduction from a felony to a misdemeanor or to a lesser felony in North Carolina, a jurisdiction with structured but also highly discretionary sentencing.[2] They were focused specifically on the "status characteristics" of race, gender, and age and the potential interactions between these three characteristics. In the model predicting reduction to a misdemeanor, both males and individuals under the age of 25 were less likely to receive a charge reduction. When interacting these variables, black males continued to be disadvantaged. Further, a variety of other factors decreased the likelihood of a reduction, including being charged with a more serious offense and having a more extensive criminal history. In the second charge reduction model of reduction to a lesser felony, some interesting findings emerged. Black defendants and individuals under the age of 25 were actually more likely to be reduced to a lesser felony. Prior record was insignificant and having more serious charges increased the likelihood of a reduction. Bloch and colleagues conclude that race does not "uniformly predict charge reductions or sentence length" (2014: 431). The literature on charge bargaining overall concludes that a variety of characteristics regarding the offender and the offense play a role in the likelihood of a reduction, and that charge reduction bargains can significantly reduce sentence lengths.

There has been less work that explicitly examines sentence bargaining procedures and practices. One researcher captured sentence bargaining in Minnesota before and after implementation of sentencing guidelines (Miethe, 1987). In this study, Miethe's (1987) main objective was to measure whether discretion had been shifted, but he also

[2] For example, for many low-level offenses, a judge can generally decide between probation, intensive supervision probation, or prison.

created several dependent variables to measure sentence negotiations and whether a case had an overall plea bargain. A case was considered to have a sentence bargain if it had a plea bargain on either a sentence concession or sentence length. Sentence concessions included an agreement to limited or zero jail time, a stay of imposition, allowing sentences to run concurrently, or a reduction of a felony to a misdemeanor. In his sample, 41-51% received some form of sentence negotiation and 65-76% received a plea bargain of some kind.

Miethe (1987) found that a plea concession was more likely for offenders with less criminal history and multiple offenses. This finding may be due to the fact that there is simply more to bargain with when an offender has multiple charges pending. The fact that less criminal history is significant also indicates that prosecutors may be more sympathetic and willing to bargain with offenders viewed as less serious. Miethe (1987) concludes that prosecutors will not always choose to exercise the greater discretion they were thought to have received post-guidelines implementation. Similar to Nardulli and colleagues (1988), he states that there are internal constraints (in the form of social expectations) and external constraints (in the form of "courthouse culture" and informal office policies) that may limit abuses of prosecutorial discretion in bargaining (Miethe, 1987).

In addition to bargaining over specific charges or sentence length, there are a variety of methods by which a prosecutor can either lower or increase a defendant's punishment. In guideline systems, there are certain avenues that prosecutors can pursue in order to "work around" sentencing guidelines. Two of these are sentencing departures, which work to lower a defendant's sentence, and enhancements, which increase the

sentence (see Johnson et al., 2008; Spohn & Fornango, 2009). Both guideline and non-guideline systems also often include provisions to enhance a sentence. These frequently include habitual offender laws which increase a sentence based on prior criminal convictions or a firearm enhancement which can be applied if the offender utilizes a firearm during the commission of the crime (Crawford et al., 1998; Crawford, 2000; Hofer et al., 2000). While the current project is performed in a non-guideline state, this state's sentencing scheme includes enhancement paragraphs that increase the defendant's punishment and the process by which these paragraphs are added and bargained over may operate similarly to enhancements and departures in guideline systems.

In one of the earliest studies to examine this issue, Nagel and Shulhofer (1992) qualitatively analyzed three federal jurisdictions to examine sentencing both before and after guideline implementation. Each district reported different rates of departures as well as justifications; some stated that they wanted to save the time of going to trial while others reported not agreeing with the guidelines. What sort of defendant behavior that constituted "substantial assistance" to qualify for a departure varied significantly based on the district. Nagel and Shulhofer (1992: 523, 533) also found that some U.S. Attorneys manipulate charges in order to evade or circumvent mandatory minimums that they found to be too harsh; certain "sympathetic" or "salvageable" offenders were more likely targets for mandatory minimum evasion.

More recently, and after over two decades of federal guideline implementation, Johnson and colleagues (2008) also estimated inter-district variation in sentencing departures across all federal districts. They found that several district-level factors impacted the likelihood of a defendant receiving a departure. Districts with higher

caseload pressure and higher proportions of racial and ethnic minorities were more likely to utilize substantial assistance downward departures, while the discount granted by a departure in larger districts and those with higher crime rates were more substantial. Based on findings from cross-level interactions indicating that the probability of a departure for Hispanic defendants is based upon the proportion of Hispanics in that district, they further conclude that "the legal contours of federal sentencing, therefore, are likely to be shaped by district-specific social environments" (Johnson et al., 2008: 767).

In a rare study to include individual prosecutor identity in a federal jurisdiction, Spohn and Fornango (2009) studied whether particular assistant U.S. Attorneys were more or less likely to seek downward departures in three different federal jurisdictions. While the majority of disparity in application of departures (and thus sentencing "discounts") could be attributed to legal factors, they did also conclude that there was significant variation in individual prosecutors' decisions to seek a departure. Overall, the literature on departures indicates that both court actors and jurisdictional differences can impact the likelihood and magnitude of a departure. While these decisions are within the purview of the prosecutor (and subject to judicial approval), one of the few decisions that the defendant has sole control over is whether he or she will plead guilty or exercise his or her right to trial.

The "Trial Penalty?"

While this project is focused on plea bargains, there are some trials included in the data and it is important to note that there are consequences for a defendant who chooses to exercise his or her right to trial. A substantial body of literature indicates that individuals who choose to go to trial as opposed to plead guilty experience harsher

punishments, though whether this disparity should be considered a trial penalty or a plea discount is still debated (LaFree, 1985; Smith, 1986; King et al., 2005; Nardulli et al, 1988; Ulmer & Bradley, 2006). LaFree's (1985) study of guilty pleas and trials in a sample of robbery or burglary cases was one of the earliest studies to examine this issue was. He aimed to address several of the criticisms of plea bargaining, namely that the informality and secretive nature of plea bargaining would increase the likelihood of false confessions and unjust punishments and that more charge reductions would occur for experienced offenders because they know how to manipulate the system. He found that defendants with more criminal history and earlier pleas did not receive more lenient punishments and that while adjudication type (i.e. trial vs. plea) was an important predictor of sentence length, it was not the most important. LaFree (1985) also highlighted that when the probability of acquittal is included in the guilty plea-jury trial comparison, any "trial penalty" disappeared.

The third important finding was that some extralegal factors did impact punishments achieved through plea bargains. In jurisdictions with a high level of control on lower-level prosecutors,[3] nonwhite defendants who pled guilty received more severe sentences than white defendants. However, he concluded that the early criticisms of plea bargaining were likely exaggerated. While some extralegal factors did affect pleas, there was no evidence that experienced offenders manipulated the system or that plea bargaining unjustly punished defendants who chose to go to trial. In Smith's (1986) study of felony cases in five jurisdictions, he similarly determined that when the

[3] As measured by minimizing plea bargaining and emphasizing screening and requiring approval from higher-level prosecutors before dismissal.

likelihood of acquittal was considered, there was not substantial evidence for the hypothesis that individuals are coerced into pleading guilty.

While not all studies would refer to these differential outcomes a "penalty," there continues to be substantial evidence that defendants who go to trial are sentenced more harshly than those whose cases are resolved via plea bargain. King and colleagues (2005) found that in their sample of cases in five different guideline jurisdictions, there were "process discounts" for those who were convicted via plea as compared to trial and the magnitude of this discount varied by jurisdiction. Using Pennsylvania state data, Johnson (2003) found that trials resulted in longer punishments than pleas and that racial and ethnic disparities varied based on the mode of conviction (negotiated or non-negotiated plea, bench or jury trial). Ulmer and Bradley (2006) also analyzed whether there was a trial penalty for violent offenders in Pennsylvania and whether it varied based on the offense, defendant characteristics, or a variety of court and community-level factors. They found that there was evidence of a trial penalty and that was not consistent across individuals or counties. Ulmer and Bradley caution that while "the U.S. legal system guarantees every criminal defendant the right to a jury trial, [. . .] we find that defendants accused of serious violent offenses are substantially penalized if they exercise this right and then lose" and that this penalty is not evenly assessed across offenders and community contexts (2006: 662). While the literature is somewhat mixed on this issue, there are important differences between final sentencing outcomes for those defendants who exercise their right to trial and those whose cases are resolved via plea bargain. The extant literature has also found that a number of legal and extralegal factors also impact final sentencing outcomes, and those will be discussed briefly below.

Legal Factors Impacting Sentencing

Much research has found that legal factors are the most important for predicting final sentencing decisions (see Zatz, 2000; Spohn, 2000). This section will briefly outline the importance of several of these factors: pretrial detention, criminal history, and offense seriousness. A significant body of literature indicates that decisions made early on in the case, particularly those with regards to charging and bail and pretrial detention, can have significant impacts on final outcomes. The relationship between detention and conviction/sentencing has been known for quite some time; overall, detained defendants face harsher outcomes than released defendants (see Gottfredson & Gottfredson, 1998). In an examination of New York state data, Phillips (2008) found that detained defendants were more likely to be convicted than released defendants. Individuals who spent more days in detention were both more likely to be convicted and less likely to have charges reduced. In addition, being detained significantly increased the likelihood of an incarceration sentence such as jail or prison as opposed to a sentence not involving incarceration.

Several other studies have also found that detention is associated with both incarceration and longer sentence lengths. LaFrentz and Spohn (2006) studied a sample of drug offenders in federal prisons and found that even after controlling for demographic variables such as age, race, sex, and employment, detained individuals' sentences were significantly longer than released individuals' sentences. Spohn (2009) used this same sample to analyze potential cumulative disadvantage. She found that male defendants were both more likely to be detained and were also sentenced to longer imprisonment terms, and that black defendants were more likely to be detained and receive longer

sentences than white defendants. Further, using Florida data, Tartaro and Sedelmaier (2009) found that even after controlling for a number of legally relevant variables, detained defendants were disadvantaged at both the in/out stage and at sentencing. Lastly, Sacks and Ackerman (2014) studied the relationship between pretrial detention, the in/out decision, and sentence length. While pretrial detention was associated with longer prison terms, it had no significant effect on the decision to incarcerate. In sum, the literature indicates that pretrial detention can be a significant predictor of later sentencing outcomes and is generally associated with higher likelihood of conviction, incarceration, and longer sentences.

In the vast majority of sentencing studies, a measure is included for prior criminal history and offense seriousness and in almost every instance, individuals with more criminal history and who are convicted of more serious offenses receive more severe sentences. Criminal history can be included as prior arrests, prior convictions, or a scale. For studies using federal data, criminal history is sometimes included in regression models in the same way as it is measured within the federal sentencing guidelines grid. A criminal history score for the federal system ranges from one to six and includes only convictions (United States Sentencing Commission, 2015a). As this score is directly included in the federal sentencing guidelines, it is not surprising that it is a significant predictor of sentence length (see e.g., Spohn, 2009, Johnson & Betsinger, 2009).

In the Sacks and Ackerman (2014) study mentioned above, offense severity and criminal record (measured as number of prior convictions) were statistically significant predictors of both receiving a sentence of incarceration and longer sentence length. Less frequently, prior arrests are also included as a measure of prior criminal history.

Kutateladze and colleagues (2014) examined race and ethnicity across a variety of decision points to investigate cumulative disadvantage in a sample of New York County cases. The count of prior arrests was a significant predictor in the expected direction for several stages. Individuals with more prior arrests were more likely to be detained, more likely to receive a custodial plea offer, and were sentenced to longer terms. It is also very important to include a measure for offense severity, because as Mitchell (2005) argued, offense severity can sometimes become confounded with racial disparity. In his meta-analysis, he found smaller racial effects in studies that included more precise measures of the offense involved. So, detailed measures of both criminal history and offense type are necessary for accurate statistical modeling. In sum, legal factors such as pretrial detention, criminal history, and offense seriousness are important predictors of final sentencing outcomes. In addition to these legal factors that affect sentencing decisions, there are a variety of extralegal factors that have also been studied for their relationship to sentencing outcomes.

Extralegal Factors Impacting Sentencing

While much research finds that legal factors are the most important determinants of sentencing, there is no disagreement that extralegal factors also come into play (Spohn, 2000; Zatz, 2000). These extralegal factors include a host of sociodemographic variables such as attorney type, race, gender, and age. Extant research on attorney type has generated inconsistent results. In 2004, the American Bar Association published a report concluding that indigent defense counsel across the country was falling far below what would be expected (ABA, 2004). They found that there was a significant lack of funding for indigent defense, inadequate representation (due sometimes to high caseloads), and

structural inadequacies that all led to "broken promises" after the landmark decision in *Gideon v. Wainright* (1963) that guaranteed representation to all criminal defendants.

Numerous studies have examined whether disparities exist in outcomes for those represented by paid counsel and those represented by indigent defense; several have also questioned how attorney type may interact with socioeconomic status. Clarke and Kurtz (1983) found that racial effects were nonexistent once attorney variables were included in statistical models. They concluded that racial and socioeconomic effects might be masking attorney type effects because black defendants were more likely to require court-appointed counsel (assigned or public defender). In another study of two Southwestern jurisdictions, Holmes and colleagues (1996) examined bail outcomes and sentence severity. They concluded that both ethnic minorities and those who were unemployed were disadvantaged, in part because they were more likely to be represented by indigent defense and individuals represented by private attorneys had more positive bail outcomes and less severe sentences.

The finding that privately-retained attorneys secure better outcomes has not been replicated in all research, however. In a more recent study using data from Cook County, Illinois, Hartley and colleagues (2010) found that public defenders were "as effective as private attorneys" for several case outcomes, including the in/out decision and sentence length (2010: 1069). In that jurisdiction, both public defenders and prosecutors are assigned to a courtroom and thus develop working relationships over the course of several months. In one study using nationwide data from large, urban counties, private attorneys and public defenders obtained comparable results for their clients over a range of outcomes: conviction, the in/out decision, and prison vs. jail/non-incarceration

punishments (Cohen, 2014). However, individuals with assigned counsel were more likely to be convicted and received sentences that were 25.9% longer than individuals represented by a public defender. Overall, there is no clear conclusion on attorney effects. It is possible that they are highly dependent on the courtroom dynamics and relationships. Given that Texas lacks a statewide public defender system and that half of the current sample is represented by assigned counsel, the impact of an attorney in this jurisdiction is important.

Demographic variables such as age, gender, and race have been studied considerably with regards to sentencing. In general, age effects are inconsistent. Older offenders are sometimes punished more harshly (LaFrentz & Spohn, 2006) and in some instances, age on its own is not a significant predictor of sentencing (Shermer & Johnson, 2010). Other research has found that younger offenders are punished more severely than older offenders (Bushway & Piehl, 2001, Engen & Gainey, 2000). In addition, there is growing evidence that the effects of age may be non-linear (Steffensmeier et al., 1995; Bushway & Piehl, 2007).

The literature is clearer on the effects of gender, though not all studies find the same results. Steffensmeier and colleagues (1993) found that in their sample of Pennsylvania cases, women were treated about the same as similarly situated men; after inclusion of a number of control variables, gender exhibited a minor effect on imprisonment but no effect on sentence length. Daly and Bordt's (1995) review of gender and sentencing studies from 1960-1990 concluded that women were at an overall advantage as compared to men. Since then, significant methodological advances have been made and Bontrager and colleagues (2013) recently published a meta-analysis

updating Daly and Bordt's findings. They conclude that across a variety of different methodologies, women continue to be sentenced more leniently than men. However, they also note that the gap between male and female sentence lengths seems to be becoming smaller.

Race has been studied extensively with regards to criminal sentencing and many have concluded that racial and ethnic minorities are disadvantaged at several stages of the sentencing process. In a review of extant sentencing research, Zatz (1987) concluded that early work on race and sentencing that found consistent bias against minorities was hindered by simplistic statistical techniques. As research methodologies have advanced, researchers have begun to control for other factors that may impact sentencing and for interdependency between stages. However, there is still evidence that racial differences exist. Much recent work on race has been examining whether sentencing guidelines have been successful in their goal of reducing disparity and has found that while disparity may be reduced, it continues (Miethe & Moore, 1985, Tonry, 1996, Wooldredge, 2009). Spohn's (2000) updated evaluation of racial disparity in sentencing reviewed 40 studies and concluded that race and ethnicity continue to play a role in sentencing, particularly when the offender is young, black, male, unemployed, or the victim is white. In addition, Mitchell's (2005) meta-analysis of race and sentencing found that African-Americans were generally sentenced more harshly than whites, even after proper statistical controls, but that this effect was highly variable.

In sum, plea bargaining has continued to grow in the United States and each actor involved in the process has pressures and motivations which affect their behavior within the courtroom workgroup. While prosecutors may be fueled in part by a desire for

certainty and political pressure, judges also want to reduce the size of their dockets and defense attorneys may be seeking discounts for their clients (Alschuler, 1968, 1975, 1976; Friedman, 1979; Albonetti, 1999). Furthermore, relationships between actors and community-level factors also impact plea bargaining and sentencing practices (Eisenstein & Jacob, 1977; Nardulli et al., 1988). In the current sentencing landscape, prosecutorial discretion carries significant weight and researchers are working to better understand the exercise of this discretion (Stith & Cabranes, 1998; Davis, 2007; Frederick & Stemen, 2012; Jacoby & Ratledge, 2016; Johnson et al., 2016). This dissertation aims to contribute to this growing knowledge.

Prosecutors have considerable control over initial charging, charge bargaining, and sentence bargaining. The literature examining these decisions has found that charge reductions are affected by evidence, the defendant's criminal history, and sociodemographic characteristics (Bernstein et al., 1977, Holmes et al., 1987, Albonetti, 1992; Bloch et al., 2014) and that charge bargains can significantly lower a defendant's final sentence (see Piehl & Bushway, 2007; Shermer & Johnson, 2010). There is also evidence that application of a sentencing departures (a form of "bargain" in the federal system) depends on the specific jurisdiction and courtroom actors (Nagel & Shulhofer, 1992; Johnson et al., 2008; Spohn & Fornango, 2009). Furthermore, defendants who choose not to accept any offered plea term and instead exercise their right to trial are frequently sentenced more harshly (King et al., 2005; Nardulli et al., 1998; LaFree, 1985; Smith, 1986). This "penalty" varies depending on both individual and jurisdiction-level factors (Johnson, 2003; Ulmer & Bradley, 2006).

In addition to these considerations, a variety of other legal and extralegal factors are implicated in final sentencing decisions. Early case decisions have been shown to have effects far past their initial determination; individuals detained prior to sentencing are disadvantaged in almost all studies examining the issue (Gottfredson & Gottfredson, 1988; Phillips, 2008; LaFrentz & Spohn, 2006; Spohn, 2009; Tartaro & Sedelmaier, 2009). In addition, legal factors such as charge seriousness and prior criminal history are both associated with harsher punishments (Spohn, 2009; Johnson & Betsinger, 2009; Sacks & Ackerman, 2014; Kutateladze et al., 2014). While it is generally acknowledged that legal considerations are the most relevant for sentencing decisions (Zatz, 2000; Spohn, 2000), a significant body of research has also pointed to the influence of extralegal factors such as attorney type and race, gender, and age. While findings on attorney type are mixed (Hartley et al., 2010; Cohen, 2014), the field is generally in agreement that racial and ethnic minorities are treated more harshly in the justice system (Zatz, 1987; Tonry, 1996; Mitchell, 2005). Further, women are often treated more favorably (Steffensmeier et al., 1993; Daly & Bordt, 1995; Bontrager et al., 2013), and the impacts of age are mixed (Steffensmeier et al., 1995; Bushway & Piehl, 2007). This chapter provides a review of the literature on plea bargaining and sentencing in a variety of case types. One important consideration that is lacking from a majority of sentencing datasets and studies, however, is evidence. As it has been argued to be the most important factor for prosecutors (Jacoby & Ratledge, 2016), the next chapter provides an overview of the growing body of literature that does examine the impact of evidence on a number of court outcomes.

Chapter 3: The Role of Evidence in Case Processing and Sentencing

The literature above provides a description of plea bargaining and both legal and extralegal factors that play a role in sentencing decisions. What most of these studies lack, however, are evidentiary measures. In large-scale sentencing datasets, evidentiary measures are unfortunately rarely available. Why they are not included in datasets is an unanswered question; however, it is likely that the time, difficulty, costs associated with collecting them is a hindrance (Kutateladze et al., 2015). While it is possible to utilize survey methodology to understand the role of evidence (see, e.g. Pezdek & O'Brien, 2014), the majority of modern sentencing research on the topic uses information gathered on evidence from actual cases (Albonetti, 1987; McCoy et al., 2012; Kutateladze et al., 2015; Kutateladze et al., 2016)

The importance of evidence in criminal case processing is vast and can impact decisions ranging from the initial arrest decision to the sentencing and punishment phase. For the initial charging decision, specific evidence can help prosecutors determine the appropriate charge. For example, in the current study, evidence may help prosecutors determine whether to charge a drug case as possession or distribution. Perhaps most importantly, the presence and quantity of evidence in any case is indicative of case strength, which plays an important role throughout the process (Spohn, 2000; Jacoby & Ratledge, 2016). Prosecutors are motivated (at least in part) by a desire to move cases and a case with weak evidence will place different pressures on a prosecutor than a case with strong evidence. To avoid the uncertainties of trial, prosecutors may be more likely

to offer terms more favorable to the defendant in cases with weaker evidence (Jacoby & Ratledge, 2016). They may be more likely to offer a charge reduction in order to encourage a plea, or they may offer a less harsh plea term in order to resolve a case.

The type and scope of evidence available and relevant in a case can vary widely. Some cases have more objective evidence available for analysis, sometimes law enforcement is more or less motivated to investigate and thus collect evidence, and characteristics of offenders and victims may also impact evidence collection and utilization (Cooney, 1994). The impact of evidence itself is the main topic of interest for some researchers, while others take it further and analyze the totality or quantity of evidence. The extant study adds to the literature by examining the role of evidence in both interim case processing decisions and final sentencing outcomes. While there is still much to be learned, a few studies shed light on this issue for several different time points in the case, starting with charging and ending with sentencing.

First, the literature indicates that evidence plays a role in prosecutor decisions to charge the case. Albonetti's (1987) analysis of prosecutors and the decision to file charges was one of the first to use a large sample to empirically study prosecutorial decision-making; prior to this, much work in the area was done using a case study methodology. In her examination of the prosecutor's decision to move forward with charges, she found that prosecutors were most likely to file charges when a conviction was likely. In other words, charges were most likely to be pursued in cases with legally relevant evidence and physical evidence. Using the organizational theory of rational choice, she stated that humans are not rational and though they desire certainty, they are unable to obtain it (Albonetti, 1987). This is especially true in a prosecutor's line of work

where they are forced to make quick decisions about a large number of cases and there is pressure to move cases along in a timely fashion.

Spears and Spohn (1997) have analyzed this issue with regards to sexual assault cases. Using arrest data from Detroit, they were interested in how evidence factors and victim characteristics affected prosecutors' decision to charge these cases. Similarly to Albonetti (1987), prosecutors in this sample wanted to avoid uncertainty in that they more likely to pursue formal charges if there were no uncertainties about the victim's character or behavior at the time of the incident, the victim was an adult or teenager, or for adult victims only - if it was reported quickly. They found, surprisingly, that strength of evidence and suspect characteristics did not matter. However, the fact that the victim behavior variables emerged as significant was indicative that prosecutors are concerned with how a jury might view a victim; they may want to pursue those cases they believe they can win at trial.

Walsh and colleagues (2010) have also analyzed initial charging decisions with child sexual assault cases. Using a sample of cases reported to the police, researchers analyzed whether corroborating evidence impacted whether a charge was filed or whether the case was not pursued. They found that evidentiary considerations were highly predictive of the decision to charge a case. Charges were more likely to be filed in cases with a confession, child/victim disclosure, a corroborating witness, or an additional report against the offender was present. However, in a case that did not have an otherwise strong evidentiary foundation, the presence of a corroborating witness increased the chances that a charge would be levied. They also found that regardless of whether there

was a disclosure by the child, a case with a charge was likely to have at least two types of evidence.

Not all studies, however, find that evidence is an important predictor of charging decisions. Baskin and Sommers (2011) analyzed a large sample of burglary cases to determine the likelihood of the case being charged and/or solved. Forensic evidence was included in several different forms, including a DNA match, whether the suspect was linked to the crime in any way, and whether there was physical evidence of a crime such as stolen property or the victim's identification. In contrast to some of the above studies, evidentiary concerns were overall not predictive of charging or conviction. The only evidentiary consideration that predicted charges was a witness report that linked the suspect to the arrest. This factor was not predictive for charging decisions, nor were any of the remaining evidence variables. This outcome of nonsignificance for charging and conviction was also found by these researchers in a sample of homicides (Baskin & Sommers, 2010) and assaults and robberies (Baskin & Sommers, 2012). They did, however, find that victim and/or witness availability did impact case movement through the criminal justice system for assaults and robberies, indicating that "case solvability" may hinge on witnesses and victim cooperation for some violent offenses (Baskin & Sommers, 2012: 204). Overall, the literature on charging decisions is mixed; some research indicates that prosecutors do take evidence into account when determining whether to charge a case, but other studies find that evidentiary considerations are not predictive.

Evidence has also been implicated in the decision to dismiss a case. McCoy and colleagues (2012) utilized a unique dataset of driving while intoxicated (DWI) cases from

Harris County, Texas, to examine which factors predicted prosecutorial dismissal of charges. The dependent variable in this study was whether the prosecutor dismissed the case or proceeded to fully prosecute the case. The authors predicted that strength of evidence, specifically physical evidence of intoxication (from a blood test or a breathalyzer) would play a crucial role in this decision. Their findings supported their hypothesis. Individuals who submitted to the breathalyzer test were more likely to be prosecuted than those who did not. On top of that, when considering only those who submitted to a breathalyzer, blood alcohol concentration (BAC) was a significant predictor of prosecution.

The authors concluded that failing to include evidentiary measures may lead to spurious relationships; when BAC was included in the second model, age and race were no longer significant. They do not, however, conclude that race and ethnicity play no role in criminal justice processing. On the contrary, African Americans were more likely than whites or Hispanics to submit to testing and submission at all was a significant predictor in the dismissal decision. This surprising cooperation with police who are largely distrusted in minority communities leads to less favorable outcomes. Interestingly, those who had prior DWI charges were also more likely to refuse testing – an indication that perhaps they have learned that charges are more likely to be dismissed with less evidence (McCoy et al., 2012). This study demonstrates the importance of analyzing criminal justice processes as multiple steps and gaining a full picture of the data; the results at first glance may not represent a practical reality.

In addition, evidence has been studied in the plea bargaining process. One recent study in New York City focused specifically on cumulative disadvantage and how race

and ethnicity affect plea bargaining with a dataset that included several evidentiary measures (Kutateladze et al., 2016). With a newly-collected dataset of marijuana cases, researchers examined whether race or ethnicity was associated with two dependent variables: plea offer to a lower charge and custodial vs. noncustodial plea offer. Many variables that are generally not included in sentencing datasets were collected in this new dataset, based upon the researchers' conclusion that "prior research consistently emphasizes the importance of evidentiary issues in prosecutorial decision-making" and that these measures are seldom available for researchers (Kutateladze et al., 2016: 400). They also note that bargaining choices by prosecutors require individualized appraisal of each case including an estimation of the likelihood of conviction; without information on how prosecutors likely evaluate these considerations, is difficult to accurately evaluate disparity in prosecution. Thus, they collected evidentiary measures, including whether the defendant was observed using drugs, whether they were selling drugs, and whether they were stopped for reasons other than drug activity. Information was also collected on whether currency was seized during the arrest and whether there was a witness present.

Models were estimated for both dependent variables beginning with a model that included only race as a predictor (Kutateladze et al., 2016). In unconditional models, black defendants received harsher offers in the form of no reduced charge offer or a custodial sentence offer. This effect remained significant as explanatory variables were added to the model, but its effect was lessened. As to the evidentiary variables, very few were predictive of either dependent variable. Cases in which currency was recovered were significantly less likely to receive a reduced charge offer, but this variable was no longer significant in the full model for custodial sentence offers. The authors concluded

that much (but not all) of the racial disparity seen in plea offers was explained with the introduction of legal and evidentiary factors, as well as defendant and prosecutor characteristics.

Similar to this work, Kutateladze, Lawson, and Andiloro (2015) also collected detailed case information for a sample of felony drug cases in New York. This paper examines the same dependent variables as the study described above: reduced charge offers (though here they examined a dependent variable of *not* receiving a reduced charge offer, essentially pleading to the initial charge) and custodial sentence offers. Again, data was hand-coded from paper files from several different sources. Information was gathered regarding arrest circumstances, defendant criminal history, evidence (currency recovered, paraphernalia recovered, whether the officer was acquainted with the defendant), and court actor characteristics. In final models, evidentiary factors were rarely predictive of charge or sentence offers, though a few factors were significant.

For example, evidence of audio-visual recordings was associated with significantly higher odds of no reduced charge offer, but was not significant for sentence offers. One factor which was predictive of both not being offered a reduction and being offered an incarceration term was currency being recovered; it increased the odds of no reduced charge offer by 1.46 times and the odds of a custodial sentence offer by 1.69 times. Generally, however, the evidentiary measures and arrest circumstances did not contribute significantly to the understanding of either dependent variable and there were also no consistent race or ethnicity effects. Charge seriousness and prior record (as measured by prior arrests and prior prison terms) were associated with higher odds of a custodial offer.

The authors concluded that overall, the impact of evidence was less than they expected and that it varied depending on the offer type (Kutateladze et al., 2015). Regarding the consistent significance of currency recovery, they offered the explanation that perhaps tangible evidence is viewed as more incriminating by prosecutors. They also concluded that there was limited support for focal concerns perspective. Offender blameworthiness, reflected in evidentiary measures and prior record, was significant in some cases, but a lack of consistent race/ethnicity, gender, or age effects indicates that court actors are not relying on stereotypes related to these characteristics for making decisions. While a change in plea offer was significant for both outcomes, caseload was not a significant predictor of either. This "suggest[s] that not all practical constraints are created equal" and that some may carry more force for prosecutors than others (Kutateladze et al., 2015: 440). The finding that the number of plea offers predicts less advantageous outcomes for defendants is consistent with the District Attorney of New York's internal policy of offering the best plea terms first. To the author's knowledge, there is no such policy in County A (and interviews indicated that aging a case is a frequent defense strategy for obtaining a shorter sentence), so this finding may be constrained to this particular jurisdiction. This paper highlights the need to examine multiple jurisdictions to extend courts and sentencing knowledge.

Recently, scholars have also addressed the role of evidence in final sentencing outcomes. Using a dataset collected previously by Peterson et al. (2013),[4] Nir & Griffiths

[4] Peterson et al. (2013) created their sample with information on "reported crime incidents" from forensic laboratories. This is different than most sentencing research, which generally begins with arrest or court records. This paper focused on whether collection of evidence predicted arrest or whether examination of any evidence impacted a variety of outcomes: referral to prosecutor, being charged, likelihood of conviction at trial, and sentence length. Evidence collection increased the probability of arrest and forensic examination of evidence was related to all outcomes described above with the exception of guilty pleas.

(2017) examined the effects of evidence type and quantity of evidence on sentence length. They categorized evidentiary measures into two categories ("witness-based" and physical) and focused on the overall quantity of physical evidence. Using a sample of violent convictions (homicide, rape, robbery, and aggravated assault), this study tested a number of hypotheses. First, researchers hypothesized that violent felony cases with more evidence would result in longer sentences. Second, they predicted longer sentences for cases in which the guilt-evidence phase included a forensic report or eyewitnesses. Lastly, researchers hypothesized that a case with more physical evidence collected at the scene (e.g. latent prints, biological evidence such as blood, natural and synthetic materials) would result in longer sentences.

Controlling for legally relevant sentencing characteristics such as offense seriousness, criminal history, and mode of conviction as well as race and sex, they found mixed support for their hypotheses. First, the existence of forensic evidence and a higher quantity of physical evidence did increase sentence length for both those convicted at trial and in a plea bargain. Researchers interpreted this as the judges re-visiting guilt and innocence while at the sentencing phase and that "the influence of type and quantity of guilt-phase evidence on sentencing severity suggests that judicial sentencing decisions may be motivated, at least in part, by a judge's confidence in the accuracy of the verdict" (Nir & Griffiths, 2017: 17). Interestingly, eyewitness testimony did not impact sentence length; this may be an indication that court actors are aware of its questionable objectivity and credibility. Overall, Nir and Griffiths (2017) found that physical evidence did significantly impact sentence lengths for violent offenders.

The literature on the impact of evidence indicates that evidence does play a role in cases, but that effect is sometimes less than authors would have anticipated and varies across both outcome studied and crime type. Albonetti's (1987) seminal study on charging and evidence found that prosecutors were most likely to pursue charges that are likely to lead to a conviction: cases with more legally relevant evidence. For sexual assault cases, a potential jury's perception of victims may matter more than evidence (Spears and Spohn, 1997). For a DWI case, which relies heavily on evidence proving intoxication, a defendant's cooperation with police is an important predictor of whether police are even able to gather this information (McCoy et al., 2012). For drug cases in New York City, evidentiary factors carried less predictive value than researchers had anticipated, though currency consistently predicted less favorable plea offers (Kutateladze et al., 2016; 2016). In one study of the impact of evidence on sentence length, the quantity of physical evidence collected was important, but the presence of eyewitnesses was not (Nir & Griffiths, 2017). These inconsistencies, coupled with the fact that this area of research is newly developing and has been implemented in only a few jurisdictions, provides an excellent opportunity to examine the importance of evidence in a new sample of drug cases in a state with indeterminate sentencing. While chapter describes the growing state of literature on evidence in sentencing, the next will provide more detail on The War on Drugs and sentencing in drug cases.

Chapter 4: The War on Drugs and Sentencing for Drug Offenders

Current drug policy must always be examined in light of the history and controversy of America's pointed (and failed) "War on Drugs." This chapter begins with historical context for the complicated relationship between policy and drug use in the United States, with a focus on the relevance of cocaine in the 1980s and 1990s. It continues with a more in-depth examination of the state of the literature for drug sentencing in particular.

American Drug Policy, the War on Drugs, and the Importance of Cocaine

Drug policy in the United States has moved in waves and many scholars have argued that moral panics and racial and ethnic biases have motivated many of these changes (Musto, 1999; Reinarman & Levine, 1997; Provine, 2011). In the first decade of the 1900s, there were no federal restrictions in the United States on the "importation, use, sale or manufacture" of either opium or cocaine (Musto, 1999: 33). Some notable local laws and ordinances addressed opium, however. A political campaign supporting an anti-opium ordinance in San Francisco "included lurid, fictional newspaper accusations of Chinese men drugging white women into sexual slavery" (Reinarman & Levine, 1997:2). The city of San Francisco, however, was certainly not the only governmental entity advocating for restrictions on drug use.

A few impassioned federal officials believed that federal legislation was necessary (Musto, 1999). According to one expert, in their zeal to pass domestic legislation on opium, they used statistics that "maximize[d] the danger of addiction, dramatize[d] a supposed crisis in opiate consumption, mobilize[d] fear of minorities" and yet still expressed unwavering patriotism for the United States (Musto, 1999: 33). In the

early 1900s, concern grew in fear of a criminal class of "dope fiends" whose use needed to be curtailed. This sentiment, combined with the anti-Chinese and anti-black, resulted in the passage of the Harrison Narcotic Act of 1914 (Musto, 1999). Use of these now-illegal substances was associated with negative stereotypes, many of them racially and ethnically motivated: "cocaine raised the spector of the wild Negro, opium the devious Chinese, morphine the tramps of the slums" (Musto, 1999: 65). Fears about cocaine were intricately tied to African-American users; myths were widespread that black men were driven to rape white women because of cocaine use and there were pervasive fears of black rebellion by white upper-class individuals.

The next significant piece of legislation in the quest to reduce drug use and crime was the Comprehensive Drug Abuse and Control Act of 1970, which created the drug-classifying schedule that is now used in the federal system. Due to its potential for medicinal use for pain relief and also high potential for abuse, cocaine falls into Schedule Two (21 U.S.C. Sec. 801 et seq.). Though not the prevailing sentiment, several proponents of cocaine in the 1970s echoed beliefs from the 1800s that cocaine was fairly benign, not physically addictive, and intensely enjoyable (Musto, 1999). As Musto (1999) points out, the effects of cocaine are frequently not apparent until a significant number of people continue to use the substance over a long period of time. Then, he states, "praise for a tonic changes to fear of a poison, and society desperately seeks ways to repress the substance" (Musto, 1999: 259).

The roots for the "War on Drugs" from the 1980s were laid during the Carter administration of the late 1970s. While "hippie culture" of the 1960s and early 1970s supported recreational drug use and the president himself supported states legalizing

marijuana possession, approval of drug use began to decline and the public become more fearful of the its effects (Musto, 1999). The "War on Drugs" as understood today is most closely associated with the next president (and his wife), Ronald Reagan, who was elected in 1980. The Reagan administration's stance on drug use was "uncompromising;" he increased funding for law enforcement while at the same time decreased funds for both treatment and research (Musto, 1999: 267).

Crack emerged in 1984 and 1985 in inner cities as a smokable form of cocaine (Reinarman & Levine, 1997). It was less expensive, did not require an injection, and circumvented the requirement of flammable liquids necessary to "freebase" cocaine. These reasons, combined with crack's very quick and very intense "high," contributed to its popularity in the late 1980s. The U.S. news media jumped on this new drug, frequently decrying it as an "epidemic" or "plague" (Reinarman & Levine, 1997). Politicians from both sides jumped on the feverish anti-drug campaign to prove that they were committed to a "drug-free America." Notable drug scholars describe this period (approximately 1986-1992) as a "drug scare" similar to the American reaction to Chinese immigrants smoking opium in the early 1900s. A drug scare characteristically "link[s] a scapegoated substance to a troubling subordinate group – working-class immigrants, racial or ethnic minorities, rebellious youth" (Reinarman & Levine, 1997:1). In order to demonstrate his hatred of drugs and his willingness to expend federal funds in the fight over drugs, in 1986 the President signed the ADA into law, which appropriated $4 billion to fighting drugs (almost entirely for law enforcement) and increased penalties for possession and distribution (Reinarman & Levine, 1997).

This enforcement mindset also materialized in several forms that relate to criminal sentencing. First, the 1984 Sentencing Reform Act (SRA) created the U.S. Sentencing Commission (USSC) and gave the Commission its first task: create sentencing guidelines (Musto, 1999). Second, the SRA followed the lead of the Rockefeller drug laws enacted in New York state in 1973 that included mandatory minimums for certain crimes, mandatory prison sentences for "serious" felonies, and enhancements for drug crimes committed with a firearm. As mentioned above, the second main piece of legislation that occurred during the drug war of the 1980s was the ADA in 1986 which created a series of mandatory penalties for cocaine offenses that were based on the amount of the substance.

Most infamously, the ratio between powder and crack was immense at 100-to-1. One would need to be in possession of 500 grams of powder to receive the same penalty as someone with 5 grams of crack. For possession of 5 grams of crack, the penalty was 4 to 40 years (with no possibility of parole or suspended sentencing). Crack was targeted in the ADA for several reasons, including moral panic and dramatic depictions in legislative hearings that crack was "far more powerful and damaging than powder cocaine" (Musto, 1999: 274). Soon after the passage of the ADA, many began to notice that such a policy could have racially disparate effects. Crack users tended to be black and come from impoverished inner-city neighborhoods, while white upper-class individuals favored powder cocaine (Musto, 1999). Nevertheless, it took many years for this policy to be changed.

Many states followed the lead of the federal system for their own drug policies. State and local law enforcement began to focus on drug problems in low-income

communities and many states enacted mandatory sentencing provisions. State systems still provide few alternatives to prison, though some jurisdictions increased funding for drug courts during the 1990s (King & Mauer, 2002). For example, New York already had stringent drug laws on the books (the infamous "Rockefeller Drug Laws" of the 1970s), but their enforcement on the streets in conjunction with broken windows and stop and frisk policies increased with the invention of crack (Mauer & Ghandnoosh, 2014). In Los Angeles, the chief of Police notoriously stated in a Senate hearing that "casual drug users 'ought to be taken out and shot,'" then continued to explain to lawmakers that law enforcement was in a war against treasonous drugs (Ostrow, 1990). Alabama enacted a series of policies that enhanced penalties for drug offenders, including a 10-to-1 drug ratio such that offenders with up to 5 grams of powder cocaine would be eligible for diversion, but those with crack cocaine could only be in possession of up to .5 grams of crack (Porter & Clemens, 2013). The current statutes applicable in the jurisdiction studied in this dissertation were passed in 1989 and the quantity ranges included at the time have not been changed since (Texas Controlled Substances Act. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989).

For numerous reasons, the Drug War died down by the end of 1992. First, the Clinton administration was not as fervently anti-drug as those that came before it. Clinton's "drug czar" avoided the phrase "War on Drugs" and Clinton stated during his campaign that strategies beyond supply reduction were necessary (Reinarman & Levine, 1997). In addition, many realized that "hard-core drug problems remained," even after spending billions on enforcement and imprisonment (Reinarman & Levine, 1997: 42). Third, the media, which played a significant role in rising American fear of drugs,

followed the White House and other political powers and stopped using crack as a ratings generator.

As the Drug War became less popular in the 1990s, in 1995, the USSC recommended that the 100-to-1 disparity be eliminated due to the symbolic message sent by incarcerating black offenders for much longer periods for the same base drug, though neither President Clinton nor Congress was in favor of this (Musto, 1999). In a 1997 report, the USSC noted that no racial prejudice was involved in the writing of the law, but acknowledged that because 90% of crack distribution convictions were for black offenders, sentences were harsher for minorities as a result of the law (USSC, 1997). The ratio, however, did not change until 2010 with the Fair Sentencing Act (FSA) (Provine, 2011). While the FSA did not eliminate the ratio entirely, it did lower the ratio to 18-to-1 and also abolished mandatory minimums for possession of crack (Provine, 2011). The aftermath of the war on drugs, however, has continued to affect individuals all over the country and Provine cautions that the FSA "should not be seen as a major shift away from the criminal approach to the use of recreational drugs" because of continuing public opinion regarding the drug war and because of the arduous institutional obstacles to the abandonment of the drug war (2011: 48). A lack of available data on many states precludes careful analysis of this issue; this project aims to begin to fill this gap.

The effect of these drug policies was to incarcerate offenders at higher rates and for longer periods of time; certain groups of individuals were affected more than others. Tonry and Meleweski (2008), in their analysis of the effects of the drug war on black Americans, conclude that policies that disproportionately affect and incarcerate African Americans have not been changed sufficiently. They even go so far as to state that they

have not been altered because "the white majority does not empathize with poor black people who end up in prison" (Tonry & Melewski, 2008: 1). In describing the ease with which the above-described harsh policies were implemented, Provine agrees that "[o]ver the years, legislators have encountered little opposition in short-circuiting the deliberative process to set harsh penalties for drug abuse because they were attacking a despised and feared minority with no political base" (2011: 48). Further, many have argued that the "War on Drugs" contributed to mass incarceration and specifically to the mass incarceration of racial minorities (Musto, 1999; Tonry & Melewski, 2008; Alexander 2010; Provine, 2011; cf. Pfaff, 2017). Significant costs, both financial and non-financial, are associated with the increasing number of incarcerated individuals (Western, 2006; Clear, 2008). As a result of this, both the federal government and individual states have attempted to implement policies that reduce prison entrants and recidivism. Many states are also moving towards a "Smart on Crime" approach as opposed to the "tough on crime" approach that contributed to mass incarceration (Mauer & Ghandnoosh, 2014). State governments in particular have also been motivated by a desire to reduce the financial burden of mass incarceration (Provine, 2011). While all of these changes have been going on at the policy level, researchers must also understand the process by which individual drug offenders are sentenced.

Sentencing in Drug Cases

Drug cases in particular may have unique factors at play and some research has focused on drug sentencing. In addition to the two Kutateladze and colleagues papers that were discussed in the chapter on evidentiary measures (2015, 2016), several other studies provide further guidance on factors that are most important for sentencing in drug

cases specifically. Sevigny and Caulkins (2004) utilized federal *Inmate Surveys* to analyze whether prisons were actually full of "low-level" offenders, as advocates of drug reform often assert. Their main research questions were to determine how to best define a "serious" offender and to see how many of those types of offenders were in federal prisons. They note that there are several different dimensions to be considered for this question: "dangerousness, culpability, and harm" (Sevigny & Caulkins, 2004: 401). They operationalized dangerousness as having a prior violent record (conviction) or firearm involvement. Culpability was measured based on an offender's role (high-level or low-level) in the immediate arrest and their behavior in a drug scheme in the last year and harm was measured using drug type and quantity.

Using these three dimensions they found that, contrary to popular belief, most federal drug offenders were neither kingpins nor mules; the vast majority fell into the middle of the spectrum (2004). According to their scheme, only 1.6% of federal offenders and 5.7% of state inmates were unequivocal low-level offenders. Regarding drug policy reform, they argue that decriminalizing possession likely would not make a significant difference in prison overcrowding. However, they did note that most state offenders were incarcerated for possession and not trafficking and that most offenders were not violent, though a majority did have some prior criminal justice involvement. One of the most important factors in determining sentence length was the quantity of drugs; individuals who possessed a greater amount of drugs were sentenced to longer prison terms.

Sevigny (2009) followed this paper up with another using the same data, but with a focus on proportionality and fairness in federal drug sentencing. Many have bemoaned

the federal system for creating "excessive uniformity" due to the guidelines' focus on drug quantity in sentencing, but few studies had empirically asked that question. The *1997 Federal Inmate Survey* provided a useful tool for Sevigny to examine this issue; it is a self-report survey and asks respondents (all federal prison inmates) about the drug type in question, their role in the offense, their criminal history, and other important factors such as gender, race, education, and citizenship status. Using a dependent variable of logged sentence length, this paper did find evidence of excessive uniformity and a lack of acknowledgement of offender culpability in sentencing. Sevigny (2009) ranked the factors predicting sentence length and found that drug quantity (the primary measure of offense seriousness in the study) had the strongest impact on sentence length. The next most important factors were criminal history and use of a firearm.

The offender's role had little to no impact on final sentence length. According to Sevigny (2009), overlooking of offender culpability indicates "that the central, organizing role of drug quantity in drug sentencing needs to be rethought" (2009: 173). To accomplish this would, however, require across-the-board overhaul of drug sentencing in the federal system and in many states. Though Texas has no guidelines, it does use a similar scheme whereby drug quantity is the only factor listed in Health and Safety Codes for punishment ranges and it is possible that the same overreliance on quantity may be disparately affecting drug defendants when other factors are not given sufficient weight in sentencing.

As mentioned above, race in particular has been implicated in the War on Drugs and thus some scholars have empirically studied the impact of race and ethnicity on sentencing outcomes for drug offenses. The results of these studies have been mixed,

with many (but not all) finding that minority offenders are disadvantaged. Much of this has been in the federal system.[5]. Kautt and Spohn's (2002) study on racial disparities in federal drug cases found that there were racial differences in a variety of contexts, though not all in the expected direction. A variety of aggravating factors operated the same for white and black defendants and at least one aggravating factor (number of conviction counts, amount of crack) impacted sentences for white defendants more than black defendants. In addition, black defendants charged with crack offenses were not directly disadvantaged, but race and drug type impacted sentencing indirectly through offense seriousness and other legally relevant factors to generate racial disparity in federal drug sentencing. They concluded that drug sentencing is much more complicated than initially believed and depends upon the specific type of sentencing strategy: guidelines, mandatory minimums, or a combination of both, and that "the predictors of federal determinate sentencing outcomes are not as uniform as the framers of either the guidelines or the mandatory minimums intended them to be" (Kautt and Spohn, 2002: 33).

Brennan and Spohn (2008) examined racial and ethnic differences in a sample of state drug offenders in North Carolina, a state with guidelines that allow for other sentencing options beyond incarceration for lower-level offenders and which permit judges to consider jail capacity when making a final punishment determination. They also had access to several variables not ordinarily available in sentencing research: length of residence in the state, employment and education, and whether the defendant had a

[5] While the federal system delineates between crack and powder cocaine, many states do not. Thus, racial differences for cocaine offenses specifically may vary depending upon whether data are from federal or state sources (Reirnaman and Levine, 1997).

criminal alias. Analyzing a variety of outcomes, they hypothesized that black and Hispanic offenders would have a higher odds of incarceration than white offenders and that Hispanic offenders would receive harsher sentences than black offenders.

White offenders, as predicted, were more likely to receive the lowest sentence severity (a community-based sanction) than black or Hispanic defendants. In addition, Hispanic offenders were sentenced more harshly than black offenders. They were less likely to receive an intermediate sanction than black offenders, though there were no differences between the two groups for the likelihood of community sanctions versus incarceration or for the likelihood of intermediate sanctions versus community sanctions. All in all, Brennan and Spohn found that "similarly situated offenders of different races and ethnicities received different sentences" (2008: 391). This study supports the notion that sentencing work should include race/ethnicity variables beyond white and black and should focus on specific jurisdictions with an understanding of their specific sentencing scheme; North Carolina's "loose" guidelines that take into account detention capacity are unique and likely affect the results of the study.

Drug sentencing in another guideline jurisdiction, Pennsylvania, has also been examined. Freiburger (2009) focused on race and focal concerns and had the benefit of additional measures on the defendant's background and community ties due to the inclusion of presentence investigation reports. Looking at the decision to incarcerate, they found several factors that increased the likelihood of incarceration: seriousness of offense, prior felony convictions, and lower education. Further, they found some race and gender differences; white women were the least likely group to be incarcerated. Separate models were also estimated by race and they found that lack of employment

affected black defendants more negatively than whites. Freiburger (2009) concluded that race and employment interacted to generate stereotypes of dangerous and blameworthy black offenders.

While the War on Drugs of the 1980s is no longer in effect, both its roots and lasting impact cannot be ignored when considering current drug and sentencing policy. Crack cocaine created both a media and political firestorm and resulted in significantly longer penalties for drug crimes (Reinarman & Levine, 1997; Musto, 1999; Provine, 2011). The federal system has slowly backed off of its ill-famed 100-to-1 ratio that penalized crack cocaine offenders far more harshly than powder cocaine offenders, but even in 2017, the ratio is still not 1-to-1 (Musto, 1999; Provine, 2011). State sentencing and correctional systems took note of federal action and in many places, similarly harsh penalties for drugs were instituted and enforced (King & Mauer, 2002; Mauer & Ghandnoosh, 2014; Ostrow, 1990; Porter & Clemens, 2013). Despite the realization that this war was not successful, the lingering effects of the War on Drugs can still be felt as mass incarceration of racial minorities continues (Tonry & Melewski, 2008; Alexander, 2010). As most would agree that harsh enforcement and sentencing did not effectively reduce drug use as intended, some jurisdictions are turning to a "Smart on Crime" approach and many states have been motivated by ambitions to reduce the financial responsibility of mass incarceration (Mauer & Ghandnoosh, 2014; Provine, 2011). Because each state has reacted to these concerns in their own way, it is important to understand individual jurisdictions' sentencing and correctional policy.

The overall picture of drug offense sentencing indicates that criminal history and use of a weapon during the offense are chief considerations for prosecutors, but that drug

quantity (when available to analyze) continues to be the most significant predictor of sentence length (Sevigny & Caulkins, 2004; Sevigny, 2009, Kautt & Spohn, 2002; Brennan & Spohn, 2008). Sevigny (2009) has gone so far as to argue that the federal system's reliance on quantity for sentencing does not allow for consideration of a defendant's role in a drug enterprise. Further, racial disparities, particularly with crack cocaine, have been found to be more complicated than previously imagined (Kautt & Spohn, 2002; Brennan & Spohn, 2008). A great deal of this work has been performed in the federal system and other guideline jurisdictions, demonstrating a need for greater diversity of study locations. The next chapter describes the state of corrections and sentencing in one particular state, Texas, known for its "tough on crime" mentality.

Chapter 5: Current Research Context

Because an integral contribution of this project is to look in-depth into one specific jurisdiction, it is important to understand the political and legal climate surrounding sentencing for drug offenders. Many scholars have noted the salience of local politics, priorities, and influences and believe that individual sentencing decisions cannot be studied without an understanding of these features of a jurisdiction (Eisenstein & Jacob, 1977; Nardulli et al., 1988; Dixon, 1995). The sample for this dissertation is solely felony cocaine offenders and this chapter provides a description of Texas's complicated history with drug policy as well as the history and current sentencing landscape for felony cocaine offenses.

Texas Drug Policy

The current state of drug policy in Texas can best be described as "complicated." There is some evidence that the state is taking a less harsh view towards drug crimes, but there is also a strong undercurrent of "tough on crime" that is still present in the state. Drug policy (as compared to other offenses) is particularly reflective of institutional and policy choices throughout the criminal justice system (Lynch, 2012). With other offense types (for example, burglaries and homicides), police are mainly reactive; they respond to an incident based upon notification that a crime has been reported. Drugs, on the other hand, require a more proactive law enforcement approach. Police use a variety of strategies in drug crimes that are not required as frequently (or ever) for other offenses: pretextual stops, surveillance, house raids, undercover buying and selling, and informants (Lynch, 2012). With all this in mind, it is particularly important to understand individual states' approaches to drug regulation.

As a rule, Texas has taken a hard line on drugs (Martin, 2013), though one judge from Harris County has made it his mission to reduce the draconian punishments currently applicable to offenders who are caught with a small amount of a controlled substance (McSpadden, 2013). It has been a politically charged topic and the enforcement of Texas drug laws varies significantly from jurisdiction to jurisdiction (Martin, 2013). Some jurisdictions provide drug courts, though they frequently serve a very small population. There is some evidence of a shift towards a more treatment-oriented philosophy, but at the close of fiscal year 2014, sixteen percent of TDCJ's total on-hand population (state jails plus prison) was imprisoned for a drug offense and twenty-nine percent (20,645 individuals) of the receives were for drug offenses (TDCJ, 2014).

Two excellent examples of the state moving closer to a rehabilitative view of drug offenders are state jails and the Justice Reinvestment Initiative of 2007. State jails were created in the 1990s to serve as an in-between from county jail to state prison. They were intended to be short-term facilities for lower-level offenders and were supposed to have more rehabilitation programs than state prisons had at the time (Deitch, 1993). These goals have not necessarily been met, but the intent was to provide more treatment for certain groups of offenders, including drug offenders (Moll, 2012). A more recent indication of Texas' movement toward a less punitive view of drug offenders is the Justice Reinvestment Initiative (JRI) of 2007 (Council of State Governments, 2009). JRI came about because in 2007, the legislature was faced with the choice of either spending half a billion dollars of taxpayer money to increase prison bed capacity or determining how to control prison growth. The Council of State Government's (CSG) Justice Center

was commissioned to conduct a study on the state's prison population. Using data on prison growth and capacity, they generated several policy recommendations to the legislature that helped avoid the need to further increase the state's prison capacity. Instead of spending $523 million for prison construction, the legislature appropriated $241 million for substance abuse and mental health treatment and intermediate sanctions (CSG, 2009). These initiatives have served many individuals since 2007 and helped curb the prison population growth, but Texas remains in the top 5 states for both prison rate and prison population (CSG, 2009, McCullough, 2015).

There is, however, also substantial evidence that Texas continues to hold a very punitive view towards drug crimes: to wit, a lack of a needle exchange program, a district attorney who was defeated in an election following a policy to *not* prosecute trace drug cases, and the continued refusal to punish many small-amount possession cases as misdemeanors (Martin, 2013). In fact, a recent Human Rights Watch report found that seven people had been sentenced to life in prison in the state for possession of 1-4 grams of a controlled substance with prior felony convictions (HRW, 2016).

In Harris County, home to Houston, there are many judges who believe that possession of less than 1 gram of several different controlled substances should not be a felony and instead should be a misdemeanor with a punishment of a fine up to $500 (Martin, 2013). As mentioned above, Judge Michael McSpadden, a conservative Republican sitting on a trial court bench, does not believe that individuals possessing small amounts of cocaine should be labeled as felons for the rest of their lives. He has made frequent pleas to lawmakers to no avail. In January 2013, McSpadden authored a letter to state Senator John Whitmire, the Chair of the Senate Criminal Justice

Committee, stating that Texas needs to re-examine its drug policies because of significant jail and prison overcrowding and high recidivism rates. There have been some movements towards decreasing punishments and increasing treatment and diversion programs in the state, but a wholesale examination and overhaul have not begun.

One former Harris County District Attorney, Pat Lykos, agreed with these sentiments so strongly that she instituted a policy in 2010 that her office would cease prosecution of "trace" cases which sometimes involve less than $1/100^{th}$ of a gram (Martin, 2013). Sometimes the amount of the substance was one flake on a person's collar or a fragment left in a crack pipe; she wanted to clear the docket and ease jail overcrowding caused by prosecuting so many trace amount cases. Prior to her policy, these cases were approximately 30 percent of Harris County dockets; this number fell to 10 percent after the non-prosecution policy was effected. During the implementation of this policy, crime went down and the number of jail inmates decreased, which saved Harris County more than $10 million over the course of two years (Martin, 2013).

However, the police and Lykos' constituency were not pleased with this policy change. When she ran for re-election in November 2011, the Houston Police Officers' Union organized a press conference to share their dissatisfaction with the policy. They argued that she was not enforcing the law and that she was exposing the public to more risk because crack users were on the streets and able to commit further crimes instead of being incarcerated. Former prosecutor and judge Mike Anderson defeated Lykos in the Republican primary in January 2012; he promised to reinstate prosecution of trace cases and has since followed through with that promise when he won the office (Martin, 2013).

There have been numerous bills presented in the Texas legislature attempting to lower the penalties for drug crimes in Texas; few if any have been successfully put into law. State Representative Sylvester Turner filed House Bill 2044 in early 2013 to lower possession of less than 1 gram of several controlled substances to a misdemeanor. This bill essentially died in the chamber and is currently still pending (Martin, 2013). Several other bills have been suggested to enable judges to place low-level felony drug offenders into drug treatment under community supervision. Senate Bill 1118 contained this provision and when it was brought up in 2009, former Williamson County District Attorney derisively coined it the "Drug Dealer Protection Act," arguing that anyone who is in possession of more than 1 gram of any substance is very likely to be a drug dealer (Martin, 2013). While there are movements towards reducing the prison population and creating more rehabilitation space, there is also a stringent resistance to lowering penalties for some drug offenses. While Texas has vacillated on its approach to drug policy, its resistance to limits on discretion in the criminal justice system has been unwavering.

Sentencing in Texas

Despite the fact that many states and the federal system have adopted some form of structured sentencing in the last forty years (Frase, 1999), Texas has never operated under sentencing guidelines and continues to balk at the application of any scheme that might remove discretion from either judges or juries (Deitch, 1993; LBB, 2013). The latest comprehensive sentencing review in Texas was performed in the mid-1990s at the behest of the Texas legislature (Deitch, 1993). This review, which followed another that was completed twenty years prior in 1973, was precipitated by four events.

First, there was significant growth of the prison population in the state and it was costing taxpayers millions of dollars. In early 1991, there was a fifty-two thousand bed prison capacity and over fifteen thousand more were under construction, with further funding for increased incarceration capacity approved (Deitch, 1993). Texas lawmakers were beginning to comprehend the expense of this system and were interested in lowering the cost. Second, county jails in Texas were tremendously overcrowded; fourteen counties had sued the state to remove backlogged prisoners destined for state jails or state prisons from their local county jails. Third, the state owed many counties fines and payments for these backlogged prisoners. And finally, the public lacked confidence in the criminal justice system, largely due to early releases. At the time, prisoners were serving only 13% of their actual sentences due to overcrowding. Several brutal crimes were committed by prisoners who were released early and the media firestorm that followed prompted legislative reform (Deitch, 1993).

To address these concerns, the Texas legislature created the Punishment Standards Commission (PSC) in August 1991 on a temporary basis. The PSC was "charged with making proposals to restructure the sentencing system and rewrite the state's Penal Code" (Deitch, 1993: 138). The PSC re-structured sentencing and proposed significant changes to correctional policy. One of the principal innovations was the introduction of state jails, a policy that is currently in place and unique to Texas. These were intended to be facilities for lower-level, nonviolent offenders serving shorter sentences and the main purpose of them was to be rehabilitate offenders. State jails were meant to be locally run and to be less expensive than state prisons. They were to be a

separate system in between jail and prison that served to both incapacitate and rehabilitate a certain class of offenders.

The PSC provided ambitious recommendations in 1993, including the premise that state jails were to be included in a sentence only in addition to a community corrections sentence. Subsequent legislatures pared down the recommendations for state jails and they currently fall far short of the plans that the PSC envisioned (Moll, 2012). The PSC recommended shorter sentence lengths for many crimes with the belief that the reforms would lead to a higher proportion of sentences being served, but the public and lawmakers were unhappy with these plans and instead existing sentencing ranges remained. Jury sentencing was also preserved; some have described this practice as "ingrained in the Texas political mindset" (Deitch, 1993: 141). Texas's custom of localized power for political and judicial decision-making is not to be disturbed.

The same resistance to the abolition of jury sentencing is reflected in the rejection of any sentencing guidelines, another issue broached by the PSC in the 1990s. There was "uniform opposition from prosecutors, defense attorneys, and other groups" who believed that such a transfer of discretion would have disastrous consequences (Deitch, 1993: 141). Guidelines were opposed on a number of grounds, including that they would interfere with jury sentencing and geographical disparity (believed to be a positive sign of jury-based sentencing), they would create inappropriately short sentences, and that financial resources should not dictate public policy. At the close of their initial task, members of the PSC urged the legislature to make the commission a permanent fixture but this recommendation was not followed.

In 2013, the Legislative Budget Board (LBB), a joint committee of the Texas Legislature whose job it is to develop budget and policy recommendations, analyze fiscal policies for proposed legislation, and conduct evaluations of state and local operations, included recommendations for Texas sentencing in their annual Effectiveness and Efficiency Report (LBB, 2013). The LBB noted that the only criminal sentencing data available to them for analysis was over twenty years old as it was collected by the PSC in 1991. Thus, the LBB stated it is unable to assess the effects of any proposed sentencing policy. The LBB specifically recommended that a statute be established creating a sentencing commission to review Texas sentencing laws every 10 years (as was the practice from 1970-1990) and that an appropriations bill also be placed to fund this commission. The LBB is focused on expenses of incarceration and they report that it costs over sixteen thousand dollars to house an individual in prison while it would cost approximately one thousand dollars to supervise the same offender on probation.

Noting that Texas has no sentencing guidelines because it instead "promotes judicial discretion and the state's unique jury sentencing system," the report concluded that incarceration has increased in Texas due to political pressure to make punishments more severe and the reliance on criminal penalties for punishment (LBB, 2013: 273). However, to Texas' credit, there have been recent reforms to reduce parole and probation revocation rates and provide new diversion options. These increased treatment programs, drug courts, and halfway houses have been successful; Texas has recently been experiencing a drop in its prison population since these reforms were instituted. Despite this recent movement, Texas continues to have one of the largest prison populations of

any state and is in the top 5 for incarceration rates at 792 per 100,000 people (McCullough, 2015).

However, as of 2016, there is still no sentencing commission, no sentencing guidelines in Texas, and little movement towards them (LBB, 2013; Moll, 2012). In addition, individuals who serve their sentences in state jails actually have higher recidivism rates than those who serve their term in state prisons (Moll, 2012). Though the LBB recommended explicitly in 2013 that Texas develop and fund a Sentencing Commission, no progress has been made on that front as of 2017.

Current Texas Cocaine Laws

The following section provides more detail into the specific statutes used to convict offenders within the current sample. The present project includes only felony cocaine offenders, both possession and possession with intent to distribute. Possession of any amount of cocaine is a felony in Texas (Texas Health and Safety Code, 481.001 et seq.). As described above, Texas's sentencing scheme differs from other states in that there are no guidelines and they have the unique dual system of state jails and state prisons. The lowest level offenses in Texas are misdemeanors and none are included in the current study.

The next most serious level is a state jail felony (SJF) and is named as such because the punishment is 6-24 months in a state jail facility, or a fine. A limited number of offenses fall into this category. The remainder of traditional felonies fall into several degrees and for this study; first, second, and third degree felonies are included. For these felonies, punishment includes an incarceration term in a state prison for 24 months to life and fines. Resembling the federal system, Texas classifies controlled substances on a

scale based upon perceived harm and they are separated into 5 penalty groups. Cocaine falls into Penalty Group 1, which carries the most severe punishments and includes substances such as opiates/heroin, narcotics such as codeine, phencyclidine (PCP), methamphetamines, and cocaine (Texas Health and Safety Code, sec. 481.102). For possession of cocaine, there are 5 total offense categories determined based solely on drug quantity (see Table 1).

Table 1: Punishment Categories for Felony Cocaine Possession

Drug Quantity	*Seriousness*	*Penalty*
<1g	SJF	6-24 mos in state jail; fine <10k
1-4g	Third degree	2-10 years prison, fine <10k
4-200g	Second degree	2-20 years in prison, fine <10k
200-400g	First degree	For life or, 5-99 years, fine <10k
400+g	First degree	For life, 10-99years, fine <100k

Looking at Table 1, one can see that the lowest penalty possible for possession is 6 months in state jail, which applies to the possession of less than 1 gram of cocaine (Texas Health and Safety Code, sec. 481.115). Similar to most states, but differing from the federal system, there are no differences in punishment for powder or crack cocaine. The next punishment category is 1-4 grams, which is a 3rd degree felony and punishable by 2-10 years in prison and fines less than ten thousand dollars.[6] The next several punishment categories have much wider quantity ranges: 4-200, 200-400, and 400 plus grams of cocaine. These also have much wider sentencing scopes, as one can see from Table 1. These ranges could potentially create situations where court actor discretion may play a larger role.

[6] Information in fines was collected but is not included in the current analysis. Fines are an understudied area of sentencing and this will be explored further in later research.

Looking at the possession with intent to distribute (WID), we see much of the same (see Table 2) (Texas Health and Safety Code, sec. 481.112).

Table 2: Punishment Categories for Felony Cocaine Possession with Intent to Distribute

Drug Quantity	*Seriousness*	*Penalty*
<1g	SJF	6-24 mos in state jail; fine <10k
1-4g	Second degree	2-20 years in prison, fine <10k
4-200g	First degree	For life or, 5-99 years, fine <10k
200-400g	First degree	For life, or 10-99years, fine <100k
400+g	First degree	For life, or 15-99 years, fine <250k

Possession with intent to distribute less than 1 gram of cocaine is a state jail felony, similar to simple possession of less than 1 gram. However, there is no third degree felony for possession with intent to distribute. If one is convicted of possession WID for 1-4 grams, this is a 2nd degree felony punishable with 2-20 years in prison and a fine of less than ten thousand dollars. With the exception of the least severe offense, all of the other offenses have more severe punishments for intent to distribute than for possession. For instance, possession of 400 grams has a lower limit of 10 years, while possession WID of 400 grams begins at 15 years.

In addition to the statutory minimums and maximums, there are also three ways to have a sentence enhanced in Texas. The first is drug-free zone laws (DFZ), which increase the minimum sentence by 5 years and double a maximum fine if committed within 300 feet of a public swimming pool or arcade, or within 1000 feet of an institute of higher learning, a school or youth center property, playground, or on a school bus (Texas Health and Safety Code, Sec. 481.134).

Second, Texas utilizes a system of prior enhancing felony convictions to increase punishments (Texas Penal Code, Sec. 12.42). These operate differently than the DFZ

penalties and have the effect of increasing a penalty to the next highest level if the offender has a qualifying prior felony. Any offense type can be included as a prior enhanceable felony, but for first, second or third degree felony offenses, only prior state prison felonies are eligible for enhancement. For a state jail felony to be enhanced, the individual must have two prior state jail felonies and in that instance, their punishment will be increased to a third degree offense.

Third, individuals who exhibit and/or use a deadly weapon during the commission of the offense are also eligible for enhancement (Texas Penal Code, Sec 12.35). These terms are not synonymous, but the use or exhibition must "facilitate" the felony in some manner (Stephens, 2013: 976). A deadly weapon is defined as "a firearm or anything manifestly designed, made or adapted for the purpose of inflicting death or serious bodily injury…" (Texas Penal Code, Sec. 107(a)(17)). If there is an affirmative finding of a deadly weapon while committing a state jail-level cocaine offense, defendants can also have their terms enhanced in the same way described above for prior felony convictions in that they will be punished as a 3rd degree felony (Texas Penal Code, Sec. 12.35). For first, second, or third degree cocaine felonies, use of a deadly weapon will enhance the punishment to the next highest degree.

Texas cocaine laws mirror those of the federal system in one aspect: degree of offense is determined solely based on substance quantity.[7] All punishments in the felony category involve time in either a state jail or a state prison and treatment is not mandated for any offense category. The minimum sentence available is a 6-month term in a state jail and the maximum is life; fines are also a potential punishment for each offense

[7] For a discussion of federal drug sentencing, see Sevigny (2009).

category. There are also 3 different categories of enhancements: drug-free zone, prior enhanceable felonies, and the use of a deadly weapon, each which can significantly impact final sentences. Importantly, their application (and potential removal) is highly discretionary and completely in the hands of prosecutors. All of these offense categories and potential enhancements create many windows for discretion and bargaining.[8]

The current research site of Texas is an interesting jurisdiction for several reasons. Its history with drug policy is complicated and currently uncertain; while some have advocated for more rehabilitation and diversion, others have stuck to strict enforcement of current laws on the books that dictate prison terms for very small amounts of cocaine (McSpadden, 2013; Martin, 2013; Moll, 2012; CSG, 2009). Furthermore, the corrections and sentencing landscape is unique, given its dual system of state jails and state prisons and its vehement rejection of any constraints on discretion (Deitch, 1993). Drug statutes in particular have very wide ranges for both substance quantity and sentence length (Texas Health and Safety Code, 481.001 et seq.). This dissertation aims to better understand the exercise of discretion in this indeterminate sentencing scheme. The next chapter describes the theoretical framework of this project.

[8] Texas case law was also examined and there was no relevant case law found for the current research questions.

Chapter 6: Theory

Theoretical bases for criminal court perspectives aim to explain decision making and resulting outcomes for cases in the criminal justice system. Many different perspectives and theories have been developed which consider a range of individual, courtroom, and contextual-level influences on sentences. As this dissertation adds to understanding of plea bargaining and prosecutorial discretion, this chapter begins by explaining the two theoretical perspectives that guide this project: Steffensmeier and colleagues' focal concerns theory (1998) and Jacoby and Ratledge's (2016) *Power of the Prosecutor*. The chapter continues by explaining how these two perspectives can be combined into a framework of the Primary Concerns of Prosecutors encompassing four factors that influence prosecutorial decisions: public interest, case-level concerns, offender-level concerns, and resource-related considerations. The chapter concludes with an application of this framework to the current research aims.

Focal Concerns and Jacoby and Ratledge's (2016) Power of the Prosecutor

This project is directed in part by the focal concerns perspective, which has frequently been used in other sentencing research (see, e.g. Spohn & Holleran, 2000; Spohn et al., 2001; Shermer & Johnson, 2010; Kutateladze et al., 2015). Focal concerns is pooled with Jacoby and Ratledge's (2016) recent book on prosecutorial decision making that delineated five specific factors impacting prosecutors' decisions (public interest, evidentiary strength, seriousness of the offense, nature of the offender, and system capacity, resources, and costs). The detailed descriptions of these factors provide worthwhile direction for this project and their ideas fit well with Steffensmeier and

colleagues' established focal concerns theory. Below, I discuss each of these works in detail and then explain how they will be synthesized.

Steffensmeier and colleagues (1998) postulate that when judges are determining appropriate punishments, they take into account three focal concerns: offender blameworthiness, community protection, and practical considerations. They are, however, also frequently asked to make decisions with incomplete information, potentially leading to decisions based on prior cases or stereotypes. Offender blameworthiness, the first factor mentioned, includes the offender's culpability and the amount of harm done. Community protection refers to whether the punishment should incapacitate the offender and keep the community safe; practical considerations can include factors such as jail or prison overcrowding and cost. Focal concerns perspective also states that judges develop a "perceptual shorthand" based on their experiences and that because they are frequently asked to make a large number of decisions with a small amount of information, sometimes their own stereotypes and biases may creep in (Steffensmeier et al, 1998: 767).

Uncertainty plagues courtroom actors (see also Albonetti, 1991) and they utilize a variety of strategies to reduce this uncertainty and add predictability to court outcomes. Thus, blameworthiness may be associated with certain extralegal characteristics such as race, gender, or age (Steffensmeier et al., 1998). Judges may make attributions based on their own shorthand and not necessarily the circumstances of each individual offender and case. In line with focal concerns' predictions, the vast majority of sentencing work finds that legal factors such as offense type and criminal history are the most important

predictors of sentencing decisions, but that extralegal factors continue to have influence in judicial decision-making (see generally Spohn, 2000; Zatz, 2000).

Focal concerns (and other criminal justice theories) often focus on judges as decision makers, though this perspective can also be applied to other courtroom actors. There are a few helpful existing studies that have utilized focal concerns to study prosecutors. In their study of sexual assault prosecution, Spohn and colleagues (2001) argue that the focal concerns for prosecutors are similar, but not exactly the same as those that guide judges. They posit that the most pressing practical consideration for prosecutors is "convictability;" prosecutors are concerned with their cases being convicted as opposed to the costs and availability of different forms of punishment (Spohn et al, 2001: 207). In addition, while a judge is focused on their perceptions of guilt and blameworthiness, prosecutors must instead make predictions about how the incident those involved in the offense (any potential victim and the suspect) will be perceived by a jury and/or a judge.[9] Because of this uncertainty, they utilize "perceptual shorthand" to make decisions (Spohn et al., 2001: 208, citing Steffensmeier et al., 1998). Spohn and colleagues (2001) were examining sexual assault cases and they note that factors influencing decisions in that context are different than for other case types.[10]

Further, Shermer and Johnson (2010) also extended focal concerns to prosecutors and stated that "prosecutors, like other organizational actors, are faced with uncertainty that may lead them to develop decision-making schema that incorporate past practices and reflect the subtle influences of social and cultural stereotypes in society" (2010: 402).

[9] Frohmann (1997) refers to this as their "downstream orientation."
[10] For example, stereotypes regarding rape victims and "real rape" are relevant for sexual assault cases (Spohn et al., 2001), but would not come into play for the current project which involves only drug offenses.

One important line of reasoning in both Spohn and colleagues (2001) and Shermer & Johnson (2010) is the uncertainty inherent in criminal prosecution; this is at the heart of all decisions made by prosecutors. With the extensive costs and high caseloads in most jurisdictions, prosecutors likely want to pursue cases that they believe will have a "successful" outcome, which in many cases is a conviction. These studies help shape the theoretical perspective for the current project, which focuses on plea bargaining and both interim decisions made by prosecutors and final sentencing outcomes that must be approved by judges. The vast majority of cases (over 90%) in this sample were resolved via negotiated plea bargain and in such a situation the judge's role is minimal. In the current jurisdiction, interviews clearly indicated that judges serve to approve or disapprove of plea bargains and they do it very rarely. Thus, in this sample, the actual sentence is almost always the result of a negotiated plea process in which the prosecutor's discretion is paramount.

The second central perspective is Jacoby and Ratledge (2016)'s recent book on prosecutorial power. They argue that prosecutors are the gatekeepers of the American criminal justice system, that their decisions are largely discretionary and rarely reviewed, and that these decisions are impacted by five factors: public interest, evidence strength, offense seriousness, nature of the offender, and resources. First, Jacoby and Ratledge (2016) note that "public interest reflects what a community thinks is important, its values and norms" (2016: 7). Second, and most relevant for the current study, prosecutors' decisions are impacted by the evidentiary strength of the case. This is the most important because, as they state, "if the evidentiary problems cannot be overcome, then prosecution is simply a waste of time and resources" (2016: 7). They break evidence down into three

aspects: physical evidence, testimonial evidence, and constitutional protections, which encompass both evidence that can be physically collected and witnesses to crimes. It is important to note that while evidence may be collected/seized, it may not be admissible in court for a variety of constitutional reasons. Thus, evidence must be of high quality and also constitutionally permitted to be used against the defendant.

Third, the seriousness of the offense affects prosecutorial decision making. Jacoby and Ratledge (2016) argue that some cases may be pursued even if evidence is not as strong, simply because a case is particularly odious. Fourth, the nature of the offender will impact the case. Specific aspects mentioned here are criminal history and the type of offense. And lastly, they argue that system capacity, resources, and costs will impact decision making. All in all, Jacoby and Ratledge (2016) argue that prosecutors are endowed with a vast amount of discretion, but that their decisions are guided by a weighing of these five factors.

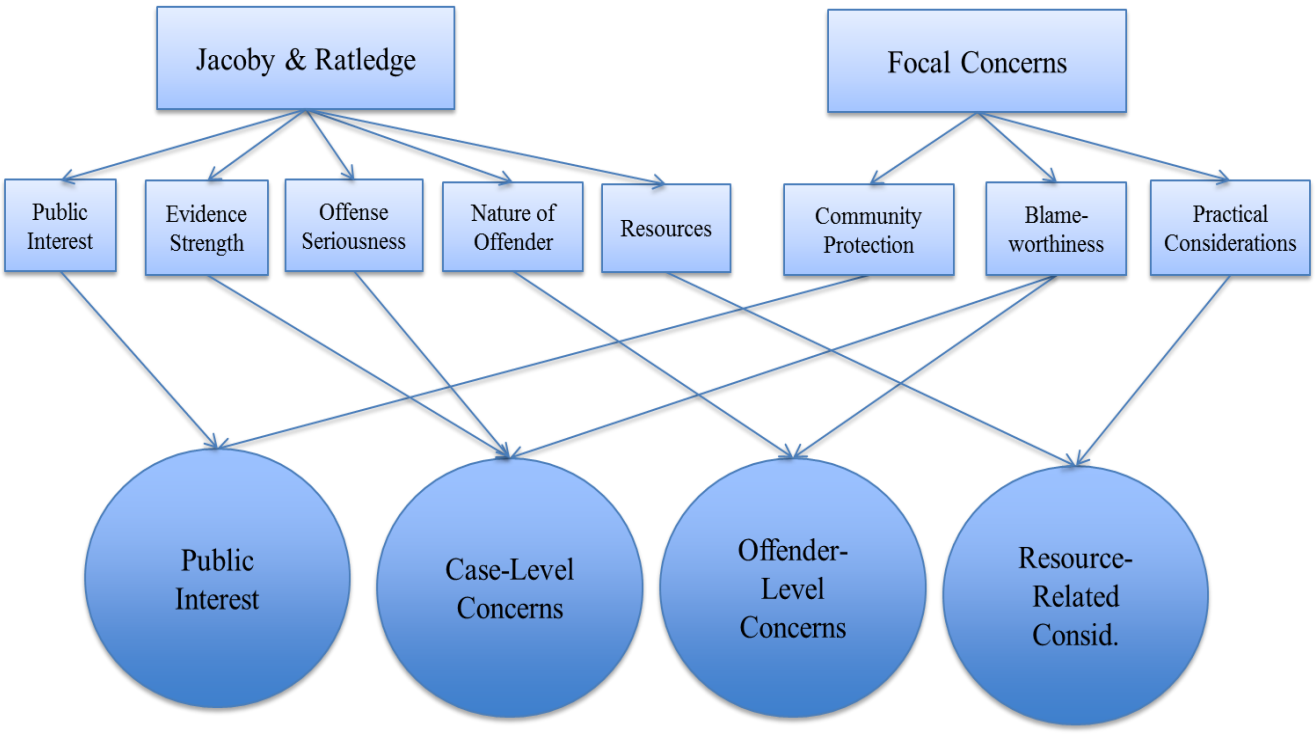
By examining the three factors in focal concerns and the five factors from Jacoby & Ratledge (2016), one can see that there is considerable overlap, but these two perspectives do not merge completely (see Figure 1). Both argue that community protection is a prime consideration for prosecutors and they both also note the importance of offender characteristics and practical considerations of community resources. However, Jacoby and Ratledge (2016) look more closely to specific factors such as evidence and offense seriousness and Steffensmeier and colleagues (1998) discuss the potential implication of stereotypes and attributions. By considering conceptual and theoretical overlap, I argue that these two perspectives can instead be merged into a total

of four factors. This chapter proceeds by explaining how these two perspectives can be combined to better understand prosecutorial decision making.

Combining Focal Concerns with Jacoby and Ratledge: The Primary Concerns of Prosecutors

Based upon analysis of these two perspectives, I argue that the four most important considerations that drive prosecutorial decisions are public interest, case-level concerns, offender-level concerns, and resource-related considerations. This section will describe how to combine the two perspectives into what will be referred to as the primary concerns of prosecutors.

Figure 1: Theory: The Primary Concerns of Prosecutors



First, within the primary concerns of prosecutors framework, *public interest* encompasses both Jacoby and Ratledge's public interest factor and focal concerns'

community protection arm. This can cover a wide variety of elements; while community protection and offender incapacitation are arguably the most important factor in this category, public interest can also take other forms. Sometimes communities are more concerned with specific offenses or offense types (an excellent example is the above discussion of the drug war) and this pressure will impact prosecutor decisions to charge and what bargains they are willing to accept for a final sentence. Public interest may also come from elected officials who set policy within the district attorney's office.

Second, *case-level concerns* includes Jacoby and Ratledge's evidence and case seriousness factors as well as focal concerns' blameworthiness. Thus, this factor also includes characteristics of the offense itself. Jacoby and Ratledge (2016) argue that evidence is the number one consideration for prosecutors and that based on an assessment of the evidence, they are likely to pursue cases that they believe they have a stronger chance of winning. In terms of plea bargains, a prosecutor may offer a more favorable sentence term to a defendant if they believe the evidence is weak. Further, while the research on sexual assaults indicates that "evidence" in the strictest sense may not be the leading factor, prosecutors are still well-aware of which cases they would prefer to take to a jury and which cases they would prefer to plead out. Blameworthiness falls into this category because sometimes aspects of the offense relate to blameworthiness. For example, a particularly heinous crime with a vulnerable victim, would, under Steffensmeier and colleagues' (1998) perspective, engender a large degree of blameworthiness. It is important to note for this factor specifically that the role of evidence and some other case-level concerns may be different depending on the specific stage of case processing. Criminal cases are resolved with a number of distinct decisions

which are often made by different decisionmakers. As will be discussed in more detail in the next section which applies theory to the specific research questions of this project, the relevance of evidence likely varies between charging and sentencing. For charging decisions, evidence is likely of the utmost importance; prosecutors likely decide to move forward based upon the amount of evidence available to them at indictment. With regards to the specific charge type, they likely choose the one they believe is most demonstrated by the existing evidence. By the time a case is at the sentencing phase, evidence may play much less of a role for prosecutorial decisionmaking.

The third factor of *offender-level concerns* in the primary concerns of prosecutors framework covers Jacoby and Ratledge's nature of the offender factor and focal concerns' blameworthiness. Jacoby and Ratledge (2016) note several aspects of the offender that may impact decision making, including criminal history. Blameworthiness is also considered part of offender-level concerns because it may be attributed to offenders based on their extralegal characteristics. Steffensmeier and colleagues (1998) posit that incomplete information available to decision makers, coupled with time constraints, can lead to court actors to consider stereotypes and extralegal factors such as age, gender, and race in their punishment calculus. Lastly, *resource-related considerations* are likely to play a role in prosecutors' decisions. Jacoby and Ratledge (2016) focus more on the availability of treatment and costs of prosecution, while Steffensmeier and colleagues (1993) note that jail and prison capacity may also impact decisions for sentencing.

In sum, when combining the perspectives by Steffensmeier and colleagues (1998) and Jacoby and Ratledge (2016), there are four total factors implicated in prosecutorial

decision making: public interest, case-level concerns, offender-level concerns, and resource-related considerations. I will now describe how these factors are implicated in the current study.

Application of Theoretical Perspectives to Current Research

Based upon the combination of perspectives described above, a variety of factors should affect case processing, plea bargaining, and sentencing. While legal factors such as offense seriousness, substance quantity, and evidence are likely the most important factors for prosecutors, other considerations such as social and demographic characteristics may also impact prosecutor decisions on plea bargains or sentences. Grounded in both Steffensmeier and colleagues (1998) focal concerns theory and Jacoby and Ratledge's (2016) work, the following section describes how the four factors that can be distilled from these two perspectives into the primary concerns of prosecutors framework (public interest, case-level concerns, offender-level concerns, and resource-related considerations) can be applied to the current research. There are a total of three research aims for this dissertation and each generates several specific research questions.

Research Aim 1: Describe the plea bargaining process through qualitative semi-structured interviews and obtain additional information on practitioner viewpoints regarding evidence, substance quantity, defendants, and other aspects of case processing.

RQ1a: How do plea-bargaining and negotiation play out among court actors and what does an "average" plea negotiation look like?

RQ1b: How do prosecutors generate sentence recommendations and what role do substance quantity and evidence play in them?

These questions serve illuminate the plea bargaining process and also to set the stage for the quantitative results. The process of plea bargaining and negotiation would be very difficult (if not impossible) to assess using solely quantitative information and thus RQ1a allows for an examination of the manner in which plea bargain cases are resolved. The first aspect of RQ1a is that practitioners describe the mechanics of plea-bargaining: who makes the first offer, how long does negotiation take, etc. The second aspect of RQ1a is concerned with other aspects that might affect plea bargaining: individual relationships and concerns (Eisenstein & Jacob, 1977; Nardulli et al., 1988) as well as political and societal interests (Eisenstein & Jacob, 1977; Nardulli et al., 1988; Dixon, 1995; Jacoby & Ratledge, 2016), or potentially relationships with police (see Spohn & Tellis, 2013). Resource-related concerns may be implicated in plea-bargaining; prosecutors may note their high caseloads as a reason for offering a plea bargain, or may cite other institutional concerns such as pressures and priorities from elected district attorneys. Judges may also report institutional pressures, caseload issues, jail/prison capacity, or their perception of public interest. Courtroom actors may report particularly challenging relationships with other judges, prosecutors, or defense attorneys. The view of negotiation may also vary depending on the actor; defense attorneys may view themselves as holding less power and this may impact their perceptions of the process. Further, because this is a sample of entirely drug cases and state policy regarding controlled substances is unclear, it is possible that specific prosecutor views on addiction, rehabilitation, and punishment could also influence decisions.

For the question regarding how plea offers are developed (RQ1b) and what factors are likely taken into account, the theoretical perspectives provide some guidance

and I predict that each of the four factors in the primary concerns of prosecutors framework (offender concerns, case concerns, and public interest, and resource-related considerations) will be mentioned at least in part, though the salience will probably differ depending on their position in the courtroom. Prosecutors will likely state that they are concerned with the facts of the case, the offender-level concerns (including criminal history), and an evaluation of the evidence they believe points to the defendant's guilt. Prosecutors are also likely to consider a jury or judge's assessment of the case. While social desirability bias would predict that prosecutors and are unlikely to report to an interviewer that race, ethnicity, gender, or age are determinants of a plea recommendation, there is evidence that these defendant characteristics are implicated in plea bargains and sentences (Mitchell, 2005; Zatz, 1987; Spohn, 2000; Kutateladze et al., 2014; Bontrager et al., 2013; Steffensmeier et al., 1995). Further, it will be very interesting to see whether prosecutors, judges, and defense attorneys believe that substance quantity is an important predictor of plea offers and sentences as compared to the quantitative data.

RQ1c: What are the views of courtroom actors in County A, Texas about felony cocaine defendants?

This research question serves to provide additional description regarding the "typical" defendant and no predictions are made for this question. While quantitative data can paint a picture of criminal defendants using their age, gender, race, and criminal history, this is an incomplete description of a criminal defendant. Court practitioners, particularly defense attorneys, are acquainted with defendants and might have additional perspective on what types of individuals are convicted of felony cocaine offenses.

Research Aim 2: Provide a detailed portrait of felony cocaine defendants, their arrests, and case dispositions.

RQ2a: Who is the "typical" felony cocaine defendant?

RQ2b: What are common features of felony cocaine arrests and what type of evidence is gathered?

RQ2c: What is the average amount of cocaine at arrest?

RQ2d: How does a felony case move from arrest to final disposition?

This research aim is descriptive and investigational. The vast majority of available sentencing datasets do not include information on evidence, arrest, or detailed charging information. Because these questions are descriptive and exploratory, there are no predictions to be made for the first research aim. Its intent is instead to describe this the defendants, this sample of cases, and their progression through the justice system in a fashion that is rarely possible.

Research Aim 3: Perform quantitative in-depth analysis of the role of evidence and arrest circumstances on charging, bargaining, and sentencing.

RQ3a: Do evidentiary measures and arrest circumstances predict the initial decision to charge possession vs. possession with intent to distribute?

This question directly implicates the case-level concerns described above in the primary concerns of prosecutors framework, as Jacoby and Ratledge (2016) argue that evidence is the most important factor for prosecutors to consider throughout the prosecution process. As mentioned above, it is likely that evidence will play the most significant role in these early decisions. This is the first time that a prosecutor is assessing the evidence and fact of the case and the first time that they are determining whether the

specific charge is "convictable" for that particular case. In the initial charge type decision, more physical evidence being seized at arrest (cell phone, gun, cash/currency, and paraphernalia) could lead a prosecutor to charge a case as possession with intent to distribute (WID) as opposed to mere possession. It is also possible that there is an additive effect here in that having all of these measures may be even more compelling to prosecutors than having only one or two (see Nir & Griffiths, 2017). Further, information that the defendant was directly involved in a drug sale to police would be more difficult to discredit and would be highly indicative of a drug enterprise.

RQ3b: How are these measures implicated in charge reductions?

RQ3c: How important are evidentiary measures and arrest circumstances for final sentence length for felony cocaine offenders in County A, Texas?

Research question 3b and 3c will be discussed in conjunction because they both encompass prosecutor decisions made throughout the plea-bargaining and negotiation process. While the sentence (and final offense type, which can include charge reductions) must be approved by a judge, in this jurisdiction, it seems that most negotiated pleas are not overturned by judges and thus the final sentence is highly related to the exercise of prosecutorial discretion. Again, case-level considerations within the framework are likely to be paramount here. Though evidence is probably the most relevant for earlier decision points, it is still possible that it plays into a prosecutor's calculus at these stages. For charge reductions, individual evidentiary measures or evidence strength could impact this decision because prosecutors may offer a better "deal" to cases with weaker evidence; we would then expect a negative relationship between charge reductions and evidentiary measures.

The direct effects of evidence and arrest circumstances on final sentencing decisions are largely unknown, with only a handful of studies examining this issue. In one such study, Nir and Griffiths (2017) found that evidence was related to final sentences and postulated that judges may be re-visiting guilt at this stage. With over 90% of the cases in the current sample being resolved via negotiated plea, prosecutors' offers for final sentences may be related to evidence; in order to encourage a plea bargain in a weaker case, they may offer and agree to a lesser charge or incarceration term. However, because most evidentiary measures are known to prosecutors at every stage,[11] it is possible that their residual impact on final sentencing outcomes may be little to none. The decision for sentencing may be based instead on the factors one would typically expect to be included in the matrix of a guideline jurisdiction; criminal history and offense seriousness may be the most important at the sentencing phase. Nevertheless, it is also possible that these arrest and evidentiary measures continue to influence decision making at the final phase of a criminal case. Certain factors may not come into play until the final stages, or perhaps certain criteria (selling to the police, attempting to flee from police at arrest, being the subject of a warrant or investigation, etc.) are so egregious or important that their impact can still be felt at sentencing.

<u>RQ3d:</u> What role does quantity of substance play in initial charge type, charge reductions, and sentence length and for sentence length, is its effect consistent across offense categories?

[11] It is likely that other evidentiary measures will be discovered throughout a case's progression. However, for this particular study, all evidentiary information was coded from initial arrest reports.

No study to date has included information on recorded substance quantity with state-level data and thus this is an exploratory study with regards to its relationship with plea-bargaining and sentence length. Again, the role of substance quantity is probably dependent upon the specific decision being made. First, for the initial charge, one would expect that quantity would predict a distribution charge; larger quantities are likely indicative of distribution. It is also possible that at that stage, the evidence is more important than the actual quantity; if police choose to seize cash, perhaps they do not need the quantity of the substance to prove a distribution enterprise. For a charge reduction, one might expect a similar relationship where larger amounts indicate a higher danger to the community and lower the odds of a charge reduction.

However, for the final decision of sentence length, it is unclear whether substance quantity itself or offense degree is the best indicator of case seriousness and/or blameworthiness in the mind of a prosecutor or a judge. While one would expect quantity to be predictive of sentences in the aggregate (because the quantity at arrest is the sole determinant of offense category and thus offense degree), it is possible that prosecutors do not look more at the actual quantity recorded more closely than that. Further, because the ranges across offense type/degree are so dissimilar (less than one gram, one to four grams, and four to 200 grams), it is possible that the effects of quantity vary depending on the specific offense. Particularly for the less than one gram category, there is not much room for variation in the quantity. However, in the four to 200 gram category, there is significant opportunity for the exercise of prosecutorial discretion. A prosecutor may view someone delivering four grams as being a very different offender than someone delivering 100 grams. Or, their main concern may simply be that it is a

first-degree offense with a penalty range of 5-99 years or life. Thus, quantity could serve only to place offenders into their offense category.

RQ3e: Are certain groups of offenders (namely, black offenders with crack cocaine) disadvantaged at any of these stages?

With this research question, the primary concerns of prosecutors of offender and case-level concerns are most relevant. Historically, black offenders with crack cocaine played a significant role in the War on Drugs, especially in the federal system (Reinarman & Levine, 1997; Musto, 1999; Provine, 2011), though Kautt & Spohn's (2002) recent study found that racial effects for drug crimes were more complex than initially anticipated. Furthermore, crack and powder cocaine are not treated any differently under Texas sentencing laws, so there may be even less of a reason for crack offenses to be punished any differently than powder offenses. An interaction term will allow for analysis of whether black offenders charged with a crack offense are disadvantaged as compared to black offenders with powder cocaine.

In conclusion, this study of interim court decisions, plea bargaining, and sentencing is guided both by the established focal concerns perspective (Steffensmeier et al., 1998) and also by Jacoby and Ratledge's (2016) more recent enumeration of the five most important considerations for prosecutors. By integrating these two perspectives into the primary concerns of prosecutors framework, a total of four important considerations emerge for prosecutorial decision making: public interest, case concerns, offender concerns, and resource considerations. All of these factors are vital determinants of prosecutors' decisions on a daily basis. The next chapter outlines data collection and analytical procedures used to analyze these research questions. Results of qualitative

analysis can be found in Chapter 8. Descriptive statistics as well as results of quantitative analysis are presented in Chapter 9.

Chapter 7: Data and Methods

This dissertation adds to the literature in many ways and one of its chief aims is to extend understanding of interim court outcomes and sentencing to one of the numerous understudied jurisdictions with indeterminate sentencing. To achieve this goal, data were collected from numerous sources. As a fundamental aim of this project is to combine quantitative analysis with semi-structured interviews that inform understanding of plea bargaining processes. This dissertation thus includes the added benefit of interviews with judges, defense attorneys, and prosecutors in the jurisdiction. For the quantitative portion, a coding scheme was developed and used to collect information from a sizeable number of drug cases. Several outcomes are analyzed, starting with indictment charge and ending with sentencing; this allows for examination of the impact of evidence and other factors over a case's life. This chapter begins with an explanation of data collection and continues by describing analytic methods for both quantitative and qualitative analyses.

Data Collection

The data for this study are part of an original data collection. There were a total of three main steps in the data collection process.[12] The first step in the data collection process began by contacting the Texas Department of Criminal Justice (TDCJ), who

[12] The data collection process is described here in the order in which it occurred (i.e. quantitative before qualitative). However, results are presented in the same order as research aims in order to allow the qualitative results to provide context for quantitative findings.

provided the researcher with a list of all felony convictions in County A in 2014. From this list, all drug offenses were identified using statute numbers. Each offense included the specific statute used to convict the offender and most included the specific drug type in parentheses. Next, all cocaine offenses (both possession and possession with intent to distribute) were pulled from the list. If the drug type was not listed in the spreadsheet, I looked up the case to see what substance was listed in the offense report. Unlike some other datasets which include each offender only one time by a "controlling" offense, this list included each offense so individuals could be included on the list numerous times if they were convicted of more than one felony in the time period. The document obtained from TDCJ listed each offender by their full name and includes basic information, including their TDCJ identification number, final conviction offense, case number from County A, date of offense, and incarceration term. While this information is useful, it provided little information about offense details or case progression. To supplement this basic information, many other sources were utilized. County A includes some information on their publicly available online case management system and other supplemental sources were also employed. After a conviction in Texas, police reports describing circumstances of arrest are considered public record and a number of valuable contextual variables were gathered from these offense reports. In addition, many case documents including indictment, appointment of attorney, and final judgments can be found online. These sources provide a vast amount of in-depth information that is lacking in other sentencing datasets.

To be eligible to be included in this dataset, an offender must have entered into TDCJ custody (state jail or state prison) from a felony cocaine conviction that occurred in

County A, Texas from January 1, 2014-August 31, 2014.[13] Eligible offenses are possession of a controlled substance and possession with intent to distribute a controlled substance.[14] As discussed earlier, there are various enhancements available (prior enhancing felony, drug-free zone, weapons), which did not affect eligibility. Offenders entering into TDCJ custody for a probation or parole revocation were not included in the sample as their original adjudications occurred in a different time period and there was significant variation in which documents were available for some of the much older cases. There were no restrictions placed on age, gender, or race. The offenders in this sample represent all new felony cocaine convictions (with sentences served in state jail or state prison) for possession or possession with intent to distribute cocaine for the first 9 months of calendar year 2014, with the few exceptions listed above. This resulted in a total of 445 usable cases in the dataset.[15]

After significant time researching what documents were included in all cases and what information was present for all cases in the sample, a coding scheme was developed. A number of variables were hand-coded from several online resources, in addition to basic demographic information included in TDCJ records. These variables include arrest circumstances, attorney appointment, case timing, and detention status.

[13] It is a limitation of this dataset that all offenders included were convicted of a felony offense. However, the sampling frame began with a list from TDCJ and thus included only those who came under correctional control. There is not a similarly available dataset for those whose cases were dismissed or who were sentenced to probation or treatment. It is an area for future research to explore how to obtain lists of those cases.

[14] Less than 5 individuals were convicted of felony attempted possession and another individual was charged with delivery of a controlled substance that lead to death. These cases were removed from the dataset. This resulted in the removal of less than 10 cases.

[15] Rarely, a case was missing a vital document such as a police report or indictment. These cases (less than 10) were removed from the dataset.

To supplement this information, a second data collection was performed from Texas Department of Public Safety's (DPS) website. While there is information in court records for prior enhanceable felonies added to an indictment, there is no comprehensive and consistent information on prior criminal history (arrest or conviction).[16] Using each individual defendant's TDCJ identification number, a detailed background check was collected from DPS for each offender in the sample. This website includes information on every arrest in the state of Texas and details the number of arrests for each incident, the arrest offense, and the disposition of each arrest. All custodies (jail and prison) are also included in the background check. The coding scheme for quantitative data can be found in Appendix A.

The third portion of data collection was qualitative semi-structured interviews from court practitioners in County A: defense attorneys, prosecutors, and judges.[17] Some of these questions (specifically those in the "sentencing" section) were developed with guidance from the unpublished work of Dr. Esther Nir (2016). These interviews were conducted to both better understand the plea bargaining process and to illuminate the quantitative findings. The interview questions can be found in Appendix B. All required IRB approvals were obtained for the three different stages of data collection.

Dependent Variables

The outcomes for this study are the initial charge type, charge reduction, and final incarceration term, which will be analyzed in the same temporal order that they occur in case processing. The first variable represents the clear exercise of prosecutorial

[16] Some arrest reports mention that officers performed a background check at time of arrest. However, this is not consistent across cases and information available at arrest is not always comprehensive.
[17] While data was collected in this order chronologically, results presented in the order of the research questions. It is presented in this order in this chapter to be consistent with actual collection of data.

discretion as the initial indictment charges are entirely in the purview of the prosecutor. The second and third variables (charge reduction and incarceration term) must be agreed upon by the judge, though approximately 90% of the convictions in this dataset were disposed via a negotiated plea. In interviews, practitioners indicated that these were almost never overturned by judges and while there is not clear information available on the number of negotiated pleas approved in their initial iteration, there is a great likelihood that very few of these negotiated pleas were ever altered by judicial intervention. Thus, while an incarceration term is technically the final sentence and must be approved by a judge, it is also highly reflective of prosecutorial discretion in this particular jurisdiction.

The first dependent variable is a dummy variable for the initial charge type. At the indictment phase for controlled substances offenses, prosecutors decide to charge a controlled substance case as either possession or possession with intent to distribute (WID). For WID, the statute requires possession of the substance and that "the person knowingly manufactures, delivers, or possesses with intent to deliver" the controlled substance (Sec. 481.112). While there is no specific guidance in statutes for what constitutes manufacture, delivery, or intent to distribute, the evidentiary measures and arrest circumstance data collected in this dataset are expected to be related to a distribution charge.

The second dependent variable is a dummy for whether the defendant received a charge reduction. This is coded as 1 in two instances: the offense degree was lowered

from the initial arrest offense[18] or indictment offense (i.e. from 1st to 2nd or from 3rd to state jail felony), or there were fewer enhancements (prior felony convictions, weapon, or drug-free zone) on the final conviction document than the indictment. While some have noted that charge reductions are complicated and require precise measurement (Piehl & Bushway, 2007), this variable does capture charge bargains and is intended to assess whether a case's overall severity is reduced in any way.

Third, sentence length (in months) is analyzed as a continuous measure. While this outcome has been studied more extensively than some other dependent variables (Ulmer, 2012), is still an important one to examine, especially in light of the plea negotiation and plea bargain approval process in the jurisdiction. This variable, particularly after the examination of the first two variables that examine earlier time points, will help explain prosecutorial discretion at different stages.

Independent Variables

The main independent variables in this study are evidentiary and situational arrest measures. These variables were chosen for their theoretical importance. The first independent variable for this project is the quantity of controlled substance recorded at arrest, measured in grams.[19] As this is the sole factor that determines offense category and thus degree, it is important to examine its relationship with final sentence length. The other physical evidence measures collected at arrest include whether paraphernalia, a

[18] Interviews indicated that almost all arrest charges are kept the same by the screening prosecutors at indictment. While this is largely true, in approximately 40 cases, the charge at indictment differed from the charge at arrest. This decision is within the purview of the initial prosecutor and these changes are thus included in this variable to capture prosecutorial discretion throughout the process.

[19] In the federal system, there can be documented fact bargains over drug quantity. The same sort of system is not utilized in this state. Approximately half of the cases in this sample did include a "stipulation of evidence" with conviction that sometimes listed a different quantity than at arrest. This information was not reliably available for the entire sample, however, and it is thus not included in any analyses.

cell phone, cash/currency, or a firearm was recovered (see Table 5). In line with Nir and Griffiths (2017), these four physical evidentiary measures are also combined into an index, with a range of 0-4. This will allow for comparisons of individual types of evidence and "strength of evidence." These four variables were all chosen because they are indicative of a drug enterprise.

In addition to physical evidence measures at arrest, there are a number of variables included about arrest circumstances. A total of eight arrest circumstance variables are included in additional specifications. These variables include a series of binary variables regarding how/why the arrest was initiated: citizen call, a warrant or investigation, or whether the defendant was involved in a sale to undercover officers.[20] Information is also available on whether anyone else was arrested, a search was performed or consented to, evidence was in plain view, and the defendant fled/attempted to flee at arrest. Again, these variables were chosen because of their theoretical relationship with prosecutorial discretion and sentencing outcomes. Prosecutors could potentially view an arrest initiated by a citizen call as one that has heightened implications for public safety. Further, selling to police could be viewed as particularly strong evidence and other people being arrested at the same time could indicate a more significant crime problem. Cases that required a search as opposed to evidence in plain view may indicate more serious cases and consent to search could potentially be a mitigating factor when prosecutors review cases. On the other hand, fleeing arrest could be viewed as an aggravating factor.

[20] These variables are *not* mutually exclusive.

Control Variables

Due to the extant literature's findings on the effects of socio-demographic variables (see Zatz, 2000; Spohn, 2000), there are also several extralegal controls included. Race/ethnicity, United States citizenship, age, and gender are all included in all models. Race/ethnicity is coded into three mutually exclusive categories: white, black, or Hispanic. Non-US-citizens are coded in a binary variable with "0" for citizen and "1" for non-citizen. Age in years is included as both a continuous measure and as a squared term to estimate whether the relationship is non-linear. Gender is included as a dummy coded as "1" for males. Unfortunately, there is no information available at this point in the study regarding education or marital status. A proxy for socioeconomic status is whether the individual was financially able to retain private counsel.[21] Dummies for attorney type are included (retained counsel, appointed counsel, public defender, or attorney missing) in charge reduction and sentence length models to control for potential attorney type effects.

There are also a number of legal controls included, several of which account for the offender's criminal history and detention status, which have also been shown to impact bargaining and sentencing (Gottfredson & Gottfredson, 1988; Spohn, 2009; Kutateladze et al., 2014; Sacks and Ackerman, 2014). An index was created from the number of prior arrests and number of prior felony convictions. Each was assigned a z-score based upon its position within the distribution and these two z-scores were then

[21] For the document in which defendants are requesting (or declining) appointed counsel, they are required to list both income and assets. This document was present for the majority of the defendants in this study, but many either left these columns blank or reported income of zero. These numbers were not verified in any way and may be unreliable and will thus not be utilized as accurate representations of SES, income, or assets.

added together to create the index. A separate variable is also included for whether any prior drug conviction (misdemeanor or felony; possession or distribution) was present; this provides information on a documented history of drug crime in general. Regarding detention, there is no theoretical basis for including it in the model predicting initial charge type as the defendant is not included in grand jury/indictment proceedings at all and prosecutors would have no knowledge of this. Detention at conviction operationalized as a dummy variable serves as the primary indicator of a defendant's pretrial detainment.[22]

Offense degree (state jail felony,[23] third degree, second degree, first degree) is included as a series of dummy variables with state jail felony as the reference and a distribution charge is also included as a binary covariate where 1=distribution and 0=possession. For the charge reduction model, these are two indicators included as they pertain to indictment because these are the starting point for bargaining. For sentence length model, conviction degree and distribution charges are entered because those are the statutorily relevant considerations for sentencing. Sentence enhancements[24] are not included in the first dependent variable of initial charge type decision because there is no theoretical reason why they would be relevant to that decision. Enhancements for the charge reduction dependent variable are based upon the number of enhancements charged on the indictment, in a count of 0-4. In the models predicting sentence length,

[22] Analyses were completed using a variety of indicators of pretrial detention (detained within 2 weeks of charging, never released, bail denied on another charge, bond amount, time served), and these variables were very rarely significantly associated with outcome variables. It is possible that this is due to the fact that so many offenders are detained at first (77%) and at conviction (96%). These high rates of detention are likely a result of the sampling frame of felony offenders.
[23] This is the least severe charge in the dataset.
[24] Enhancements can be added for drug-free zone, weapons, or prior felony convictions.

enhancements are included based upon what is listed on the final conviction document, also with a count of 0-4. Individuals with an active criminal justice status (on probation, parole, or had an active warrant out at the time of arrest) are denoted with a dummy variable. Multiple charges at either arrest or arraignment is controlled for with a binary indicator.[25]

Lastly, as these three outcomes are steps leading to a final decision, dependent variables become independent variables in subsequent analyses. Being indicted for distribution is included in the charge reduction specifications. Further, charge reduction is included as an independent variable in the final sentence length model. This allows for understanding of case disposition as a process as opposed to a single decision.

Analytical Framework

The goal of this dissertation is to holistically examine prosecutorial discretion in case processing and sentencing, both quantitatively and qualitatively. Because prior research has indicated that early case decisions, including charge reductions, can have lasting impacts throughout a defendant's case and sentence (Zatz, 1987; Piehl & Bushway, 2007; Shermer & Johnson, 2010), the analysis will proceed with dependent variables in the order that they occur in a case, beginning with the charging of either possession or possession with intent to distribute. The initial charging/indictment decision is the first made in this dataset by prosecutors after arrest.[26] Second, charge reductions will be analyzed; they can occur at any point throughout a case, up until the

[25] Number of charges was not always consistent between arrest and arraignment. This occurred frequently where charges were added at arraignment, generally because pending charges were found after arrest or a probation or parole violation was added after arrest.

[26] The first decision made is whether the prosecutor will pursue charges or not; however, this information is not available in this dataset. Future research could improve upon this by constructing the sampling frame with an arrest cohort.

final conviction date. Finally, the incarceration term is the last decision within the court system and thus the dependent variable of sentence length is assessed last.

As the first two outcomes of initial charge type and charge reduction are binary variables, they are analyzed with a logit model. Analysis proceeds on the full sample and in four model specifications, each of which include a range of both legal and extralegal covariates; the only differences among the model specifications are the inclusion of evidentiary or situational arrest variables. The first model will include evidentiary measures as individual covariates and the second model will include the evidence index described above. The third and fourth specifications are replications of the first two, with the additional of the eight situational arrest covariates.

Sentence length is continuous and is analyzed using ordinary least squares (OLS) regression. As will be discussed further in the next section, both sentence length and the main independent variable of substance quantity are highly skewed and they are thus each logged to improve normality. In order to address the research question regarding substance quantity's impact across specific offense types, OLS analyses are performed in five different specifications on six different samples and sub-samples. This analysis is performed on disaggregated samples only for sentence length because the theoretical concern is for the impact of quantity on final punishment. There is a presumed relationship between quantity and sentence length based upon the writing of the statutes (with quantity ranges that correspond to offense degree) and the accompanying incarceration ranges. One would assume that a higher quantity within the specific offense would correspond to a higher punishment. There is no such implicit relationship between quantity and the initial charge type or charge reductions.

The first specification is a bivariate model estimating the relationship between substance quantity and sentence length. Second, demographic and legal controls as well as individual evidence measures are included. The third model is the same as the second, with the exception that the individual evidence measures will instead be included as an index of 0-4. Finally, the fourth model and fifth models replicate the second and third, but with the addition of situational arrest variables. The six samples and sub-samples are as follows: the first three sample categories are the full sample, all possession, and all with intent to distribute (WID) offenses. Ideally, analyses would have been performed on each individual offense category, but samples sizes did not allow for this. Thus, the remaining 3 samples are all offenses with less than 1 gram, all with one to four, and all with four to 200 grams. Disaggregation of the data in this fashion allows for better understanding of the relationship between quantity and sentence length in the wildly divergent quantity categories created by statute.

Analyses were performed using STATA and all outcomes except for the initial charge type decision[27] are clustered around the judge to generate robust standard errors because sentences might be more similar within individual judges. Clustering around prosecutors would have been another option and earlier analyses were performed clustering around both the prosecutor and the judge; results of each were substantively the same, with the exception of the coefficient for trials.[28] However, clustering around

[27] In this jurisdiction, the initial screening/indictment charge is made by screening prosecutors who are not situated within a district courtroom the same way that felony prosecutors are. There is no information available on the grand jury courtroom or prosecutors at this stage.

[28] In models clustering around the judge, a "trial penalty" appears indicating that going to trial is associated with a longer sentence. With clustering around prosecutors, the coefficient remains the same but the standard errors change and the trial variable is not significant. Closer examination reveals that a handful of prosecutors (frequently associated with the organized crime division that handles more serious drug cases) were more likely to go to trial; those particular prosecutors may seek higher sentences at trial. Clustering around the judge was chosen for final models for the reasons described above.

the judge was chosen because while judges rarely exercise their discretion to strike a plea bargain, it is still their final word when sentences are handed down. Further, there is a literature indicating that while prosecutors do exercise significant discretion in the plea process, they continue to operate in the "shadow of the judge" and still take into account the preferences of the judge who oversees the case (see Bibas, 2004; Bushway et al., 2014; Lacasse & Payne, 1999; Yang, 2014). Interviews also indicated that prosecutors make and accept sentence recommendations with their assigned judge in mind. In this jurisdiction, there are fairly stable workgroups where individual prosecutors are assigned to a felony courtroom and generally work entirely for the same judge, with only a few exceptions. So, clustering by judge does also somewhat account for prosecutorial discretion. Lastly, because of the sample size, statistical significance is assessed at $p<.10$. Results that are significant at this level are discussed as being marginally significant to conform to standard practice.

Qualitative Sampling and Analysis

Finally, to describe plea bargaining processes and assess practitioner viewpoints on plea recommendations and negotiations, the last portion of this project consists of semi-structured interviews that were performed over the phone. The intended sampling frame was constructed by creating a list of all prosecutors, judges, and attorneys who appear in the court documents from quantitative data collection. The initial plan was to directly email or call a random sample of defense attorneys, prosecutors, and judges in the sample to begin, but gaining their participation was more difficult than anticipated. Thus, the final sample is a convenience sample that includes participants from several sources: attorneys and judges whose names were present in the online court documents,

referrals from colleagues, and snowball sampling from both initial participants and referrals. All participants have experience with plea bargaining in felony cases in the county. In the end, I completed 16 interviews: 10 defense attorneys (4 retained, 3 public defenders, 3 with recent experience as assigned counsel in the jurisdiction), 3 prosecutors, and 3 retired and current judges. Regarding the sample size, "the goal of sampling in qualitative research is to reach a point of saturation (i.e. that no new themes are introduced from adding participants)" (Copes et al., 2013: 769). There is no magic number for qualitative analysis (Copes et al., 2013) and instead the researcher must ensure saturation by analyzing the consistency and uniqueness of themes introduced in each interview, though qualitative research has been published with as few as 12 or 13 participants (see Guest et al., 2006; Hester, 2017). By the end of interview 16, new responses did not differ meaningfully from the themes generated from existing interviews and thus saturation was achieved.

Phone interviews consisted of semi-structured questions and the interviews ranged from half an hour to about an hour. Defense attorney interviews were generally the longest. The interviewer transcribed during the interview itself (typing on a computer) and then immediately read and supplemented the typed notes to ensure accuracy and readability. Different (but similar) semi-structured questions were presented to each of these three categories of respondents: defense attorneys, prosecutors, and judges (see Appendix B). There were several groups of questions. First, respondents were asked about their backgrounds and motivations for working in their current positions. Next, they were questioned about who an average cocaine defendant might be and what the punishment might look like. All respondents were then questioned about

how prosecutors develop initial plea recommendations and were asked a number of questions regarding the process of plea negotiations. Next, a series of questions were presented about sentencing and discretion. Finally, a few questions were asked regarding rehabilitation for offenders. Only responses directly relevant to the research questions at hand are presented in this dissertation.

If a respondent already answered a question in a previous answer, the question was not repeated. This happened most frequently when respondents were asked for their opinions on sentencing guidelines. Many indicated quite strongly that they were not in favor of guidelines because they preferred wide discretion and individualized sentencing. These answers rendered the next question concerning tailored sentencing unnecessary. Further, probing questions were asked when appropriate. For example, when asked about whether community protection should be considered when determining the appropriate punishment, one respondent said that it should be important, but it is not the most important; the interviewer then probed by asking what, then, should be the most important factor.

The goal of these interviews was to provide insight into the day-to-day workings of the court, to better explain any quantitative results found, and to generate a more accurate picture of plea bargaining. There are numerous ways to describe the "average cocaine offender" with quantitative data: age, race, gender, socioeconomic status, prior criminal history, etc. However, court practitioners, and particularly the defense attorneys, could have more human ways of describing these individuals that cannot be ascertained from looking through court documents.

For the research question pertaining to the importance of drug quantity and evidence strength in plea bargaining and sentence length, interviews provide an additional perspective beyond quantitative results. Participants were asked what factors mattered for recommendations and final sentences and whether drug quantity was an important consideration. I was also interested to question the prosecutors specifically about how they generate plea offers, a question which cannot be answered with the available data. In addition, by asking the same questions of different actors (for example, asking prosecutors whether their offers become more or less punitive and then asking defense attorneys whether they believe plea offers become more or less punitive as time goes on), I also hoped to obtain some understanding of court actor interaction and negotiation dynamics.

Qualitative data analysis was performed using thematic coding, which is an optimal method for the current project because qualitative findings are meant to explain processes as well as illuminate and supplement the quantitative work (see Braun & Clarke, 2006; Charmaz, 2006). This method allows for flexibility and is accessible to researchers without significant qualitative experience. Results are comprehensible by the general public and it is useful for summarizing key features of a dataset. Thematic coding highlights both similarities and differences in a dataset and can generate some unanticipated insights from participants. Lastly, the method allows for social interpretations of data and can be very helpful for qualitative analysis related to policy development.

Thematic coding method has been used for many purposes in a wide range of disciplines.[29] This method can be applied in many contexts and because of its flexibility, ease of interpretation, and ability to emphasize both similarities and dissimilarities present in results, it is the ideal choice for the current project. Braun and Clarke (2006) describe a six-phase method for thematic coding. The first phase is for the researcher to familiarize themselves with the data. In this phase, the researcher transcribes the data, which facilitates familiarization. Second, researchers generate initial codes. The important part of this phase is to "ensure that all actual data extracted are coded, and then collated together within each code" (Braun and Clarke, 2006: 19). This was completed in this project by hand and no software was used because the number of interviews was less than twenty and because one person completed all interviews.

The third phase is to search for themes. During this phase, codes are sorted into a theme and the work is viewed in a broader sense. In addition, researchers begin to analyze codes at this stage to analyze how they fit together. In phase 4, themes are refined and reviewed. All codes and themes are examined and the researcher should examine any potential patterns in the themes. If proposed themes appear in a "coherent pattern," researchers should proceed to the second level (Braun and Clarke, 2006: 20). In level two, the individual themes identified in level one are considered in light of the entire data set.

[29] In a sample of South African offenders, Mapham and Heffron (2012) utilized thematic coding to study the impact of an offender rehabilitation program on desistance. Wilkinson and colleagues (2011) recently applied the method to investigate the relationship between schizophrenic thoughts and emotions and crime-based reasoning. In another example, researchers in the United Kingdom used thematic coding to examine whether social support after a traumatic incident affected police officers' wellbeing (Evans et al., 2013). It has also been used extensively in medical and nursing literature in a variety of contexts, ranging from midwives' experiences with patient requests to patient views on dealing with Hepatitis C infections (see Thompson, 2013; Rasi et al., 2014).

In phase 5, themes are both defined and named and each should be distilled down to its core. Each theme is thus considered on its own and also in relation to the other themes. By the end of this phase, a researcher should be able to identify both what a theme covers and what it does not cover. Finally, phase 6 requires producing an analysis and final write up report. The goal of write up is "to tell the complicated story of your data in a way which convinces the reader of the merit and validity of your analysis" (Braun & Clarke, 2006: 23). This method has been applied in the steps as described above for the 16 interviews that were conducted. The aim of these interviews was to gather practitioner beliefs and to provide more information regarding plea bargaining process and this method is the best choice for pulling themes and patterns from the data.

Using these data and methods, the following Chapters detail the interview findings, descriptive statistics for this newly-collected sample, and results from logistic and OLS regressions. Chapter 8 presents results from the interviews, including practitioner viewpoints on the "typical" felony cocaine defendant, the plea bargaining process, the importance of substance quantity and evidence in plea bargains and sentences, and a description of other emergent themes from the interviews. Chapter 9 includes all quantitative findings and begins with descriptive statistics then proceeds in the same order as the decision points for prosecutors: initial charging decision, charge reductions, and final sentence length.

Chapter 8: Qualitative Results

The first main aim of this dissertation is to describe the plea bargaining process, practitioner views on what factors are most important in that process, and any particularities of cocaine defendants in this jurisdiction. This chapter serves to place the quantitative findings in context and is organized into several sections. First, the plea bargaining process is explained from the perspective of practitioners, starting with a brief explanation of the setup of this jurisdiction's courtrooms and each actor involved in the process. Next, practitioner depictions of the "typical felony cocaine defendant" (and whether practitioners even believe there is one) are presented. The importance of evidence and substance quantity are discussed next and the chapter concludes with overall themes that emerged from interviews.

Plea Bargaining Process

The most pertinent set of questions for this project involved asking judges, prosecutors, and defense attorneys to describe the process of plea bargaining and negotiation. This section begins with the courtroom ecology of the jurisdiction and continues with describing the actual process by which an initial offer is made, negotiated over, and either agreed upon or rejected.

Courtroom Ecology and Courtroom Actors

First, it is important to understand the layout of this county's felony court system. There are a total of 10-20[30] criminal district courtrooms staffed by full-time judges. District judges are elected in partisan elections and their jurisdiction covers all types of

[30] Exact numbers are not provided for judges in order to avoid identifying the county.

felonies. Each district courtroom is staffed by several prosecutors. The most senior prosecutor is referred to as the "chief," and the others are frequently referred to by a number, based upon their position and rank. For example, the first assistant is often called the "2." While the District Attorney in the jurisdiction is also an elected official who runs on a party platform, assistant district attorneys (ADAs) are hired as routine state employees. Therefore, there is generally a stable workgroup between felony district court judges and the ADAs assigned to prosecute in their courtrooms. There are a few exceptions to this regular workgroup, including a few specialized units within the district attorney's office that handle fraud, drug, or organized crime cases. The elected District Attorney determines which cases are to be heard under this court and it is within each district judge's discretion to allow these cases to be handled by these divisions. There are also occasionally visiting judges, who sit on the bench and hear cases for a short period of time.

Defense attorneys, however, are a less stable member of the workgroup. There is a county-wide public defender (PD) system that lacks the capacity to provide representation for all indigent defendants. Public defenders typically work in multiple courtrooms and thus work with a variety of prosecutors and judges. The court turns to the appointment wheel for indigent defense case appointment where the PD's Office cannot represent the indigent defendant; these attorneys are referred to as "assigned counsel." Attorneys apply to be included on this wheel and there are varying levels of experience required depending on the seriousness of the case.[31] As this is a large county,

[31] All of these attorneys volunteer to be on this list and none are required to do so. While the American Bar Association does recommend a certain number of pro bono hours, this is not enforced.

there are many private defense attorneys who practice in felony courtrooms. Thus, the courtroom workgroup in this county consists of a fairly stable relationship between prosecutors and judges, with a number of different and less stable defense attorneys.

"Average" Plea Negotiation

In this section, the actual processes of plea bargaining and negotiation for felony cases in this jurisdiction are described. Each participant was asked to describe an "average plea negotiation." This open-ended format allowed for diverse descriptions of the process, though answers to this question were fairly consistent.

The first step is for a prosecutor to make an initial offer (referred to as a "rec") (see Figure 2). An offer is made by prosecutors in almost every case, unless there is a compelling reason that they wish only to go to trial.[32] This offer is communicated either in person at the first hearing or online prior to the date the case is set for first announcement. Very rarely, an "exploding offer" that expires at indictment is made after a preliminary hearing (where bail is set) but before an official indictment. The two main themes for the initial recommendation are facts and criminal history. In formulating an "initial rec," prosecutors generally consider the police (offense) report and criminal history, which they are able to check on a national level. "Facts of the case" has a range of meanings, including what occurred during the offense, what evidence was collected, witnesses, or any aggravating or mitigating aspects of the case (were weapons involved, were children "targeted," "did the defendant spit on the cop?"). Criminal history will be discussed further in the last section of this chapter because it has an impact across the

[32] Prosecutors indicated that these situations were very rare and would happen generally if the facts of the case were so odious that they believed a trial was warranted.

case and not simply for the initial recommendation, but overall it is clear that criminal history is a chief consideration throughout the process and that its influence is much more nuanced than expected.

Prosecutors reported a number of other concerns for the initial recommendation, including policy from the elected DA (pro-rehabilitation or anti-rehabilitation), the defendant's background with drugs and interest in treatment, and what they believed a jury would "do" with the case – both for guilt assessment and punishment.[33] Another clear theme that emerged for the initial recommendation for a felony drug case is charge reductions. A number of participants said that, particularly for a defendant with no or little criminal history, the modal first offer would be deferred probation (which can be removed from a criminal record after a period of time) or mandated treatment. For instance, one prosecutor said "in general, there is a feeling that if they have a low level of substance, we will try to treat them with probation or rehabilitation."

The second reason for favoring charge reductions is acknowledgement of collateral consequences. Numerous prosecutors and judges stated that they did not want to be the one to give someone their first felony conviction. One judge reported that if a defendant has no felony convictions, they "will not [approve] a prison sentence [plea bargain] under any circumstance." This judge seemed well-aware of the potential criminogenic effects of prison because they continued to say that when drug offenders are convicted of a felony "and substance use is not being addressed," they "will be back in the system." A number of defense attorneys also report discussing consequences of pleading guilty to a felony with their clients, with one public defender stating they "want

[33] In Texas, the defendant can elect for jury sentencing.

to make sure that they're [the defendant] making right decision for both now and the long term." So, it seems that many courtroom actors in this jurisdiction are well aware of collateral consequences and work to reduce the likelihood of individuals being impacted by them.

Several defense attorneys indicated that, as described by Eisenstein & Jacob (1977), a "courtroom regular" may get treated differently than someone who is unknown to the prosecutor, with one going so far as to state that "sometimes the prosecutor is giving you, not your client a deal" and that other times deals are made by "old buddies rubbing elbows." Moreover, some defense attorneys believe that at times, prosecutors have barely glanced at the police report by the time the case is set and instead make snap judgments about their clients. However, defense attorneys did also indicate that many prosecutors in this county are truly "trying to do what's right" and take a close look at the case prior to making an offer. While the concept of "going rates" has been discussed in sentencing literature, there is no agreement among these actors regarding whether going rates exist in the jurisdiction. All three prosecutors reported making "individual" and "case-by-case" decisions and refuted the concept of a going rate, but most defense attorneys and judges believed that there are "vanilla recs," a "price list," a "cheat sheet," or set offers made for a typical case. There was acknowledgement of recommendation "guidelines" in the misdemeanor system for "baby prosecutors," but there are no such guidelines for felony prosecutors. Prosecutors instead rely on their own judgment (one referred to it as an "internal matrix") and the guidance of their chief.

After the offer is communicated to the defense attorney, they are required by law to take it to their client. After discussing the offer with their client, there are three

options: acceptance of the initial offer, negotiation, or rejection of the offer and a setting for trial, with negotiation being the most likely outcome by far (see Figure 2). A few defense attorneys indicated they would accept an initial offer under rare circumstances, one being that the initial screening attorneys at grand jury somehow overlooked a client's prior felony conviction. When the defense attorney becomes aware that his or her client's minimum punishment could potentially be significantly increased with enhancement paragraphs, he or she may want to immediately accept an offer. Similarly, negotiation may not occur if case is so heinous that a prosecutor only wants to go to trial, or if a defendant simply refuses to negotiate and wants their day in court. In other very rare instances, negotiation fails and parties thus return to the initial offer; however, in most cases, the offer does change somewhat after negotiation.

All participants indicated that negotiation is the modal outcome after an initial offer, and that everyone expects to engage in at least some bargaining, which is indicated in Figure 2 by the heavy line between negotiation and new offer. More than one defense attorney described the situation after an "initial rec" as similar to buying a car, with one describing the initial rec as "a sticker price on a car, [which] doesn't mean a whole lot," and another stating "what they write down as the initial offer is made and built to be bargained against." So, then, almost all cases move to the negotiation phase.

Negotiation in this jurisdiction is "informal" and "haphazard" with no formal documentation requirements. Defense attorneys may approach the prosecutor with a counter-offer, or they sometimes approach a prosecutor and ask what they would be "willing to do" for a case and what the defendant can do in the meantime to receive a better offer. Several defense attorneys said that they put their clients to work during this

time by encouraging them to attend parenting classes, drug treatment, or community service. Each defense attorney also described their own formula for negotiating a plea recommendation down to something their client would approve. One mentioned "wearing down" prosecutors at times, many others reported success with letting a case linger on a prosecutor's docket for a time, and others noted the individual personalities of prosecutors and the necessity of gauging these temperaments. Meetings between prosecutors and defense attorneys tend to be very short (5-10 minutes), but due to high caseloads, it can take months for a case to be resolved in this method. All participants indicated that about 2-3 different offers are generally discussed and negotiated over prior to agreement.

One defense attorney was skeptical of prosecutors and stated that they didn't trust "any of them" and thus required all offers in writing, but not all participants mentioned documenting prior offers. After a negotiated plea is approved by the defendant, the defense attorney, and the prosecutor, all parties must appear before the judge and he or she must approve the plea. In very rare cases, a judge may "bust" a plea and require the parties to present a different offer. One other option for plea bargaining in this jurisdiction is a "slow plea" (also known an as open plea) where the defendant agrees to plead guilty but the judge sets the sentence; interviews indicated that this also occurs rarely. Despite these possibilities, almost all felony convictions in this jurisdiction are the result of a negotiated plea that is negotiated between parties and agreed upon by the presiding judge. The heaviest arrow between new offer and plea bargain in Figure 2 demonstrates that this is the most frequent method of disposing a convicted case in this jurisdiction.

It is also possible, however, that even after negotiating, no agreement can be made. In that situation, a case is set for trial. While almost everyone agrees that the state holds the most bargaining power in a negotiation, there is also general agreement that the defendant's main bargaining chip is the ability to set a case for trial. One defense attorney described this phenomenon:

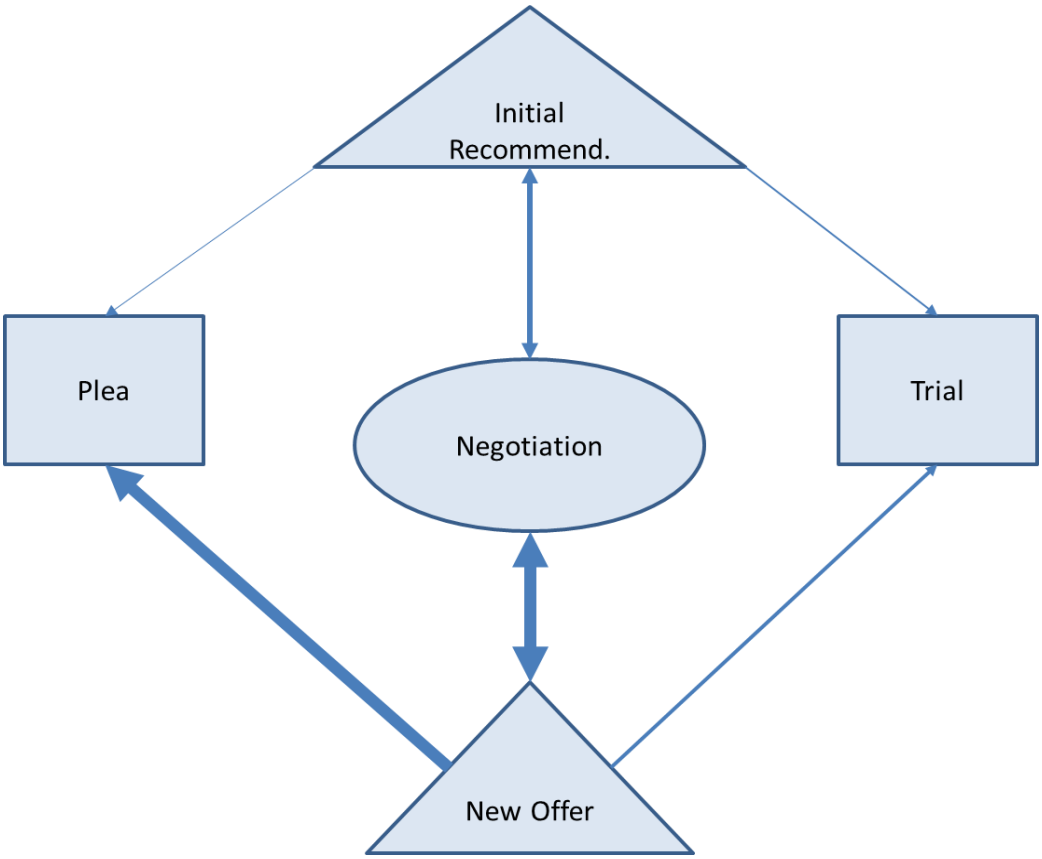
> My power is that I'll set it for trial. I'm going to make you earn it. Prosecutor resistance for setting up a case [for trial] is considerable. How hard can they hurt your client in reality? And how much of a living hell can you make it for them [by setting for trial]?

Prosecutors are aware of this strategy and one stated unambiguously that their offers would not be reduced after a case is officially set for trial. All actors are aware of the significant costs – both monetary and time – of going to trial and seemed keen to avoid them if possible. Many also acknowledged the momentous uncertainties inherent in trial. When probed about whether punishments are longer at trial than with a plea, one defense attorney stated that "there are other additional consequences to going to trial and losing," namely the uncertainty of punishment. This attorney also noted that diversion programs and deferred probation are also not available at trial, so the starting point for punishment is raised. As will be discussed in future detail below, however, the defendant must approve of the plea bargain as well and punishment or probation may not be appealing, especially for a defendant struggling with addiction.

Plea bargaining in this jurisdiction is a complex interaction of prosecutorial discretion, defendant choice, defense attorney skill and strategy, and judicial approval. While prosecutors take into account a number of factors in formulating an initial recommendation, the two main considerations are the facts of the case (as understood from the police report) and the defendant's criminal history. After an initial plea

recommendation, negotiation occurs in almost all cases and after several iterations of offers and counter-offers, the vast majority of cases in this jurisdiction are resolved via negotiated plea agreement. Only in exceptional circumstances would an initial offer be accepted or flat-out rejected and seldom does negotiation fail to resolve a case. In a state with no sentencing guidelines, broad sentencing ranges, and unsettled policy on drug offenses, negotiation could result in very different punishments across cases. The next sections of this chapter provide further insight into practitioner viewpoints on the "typical cocaine defendant" and the importance of evidence and substance quantity in plea bargaining, negotiation, and sentencing. The chapter concludes with other themes that emerged from interviews.

Figure 2: Plea Bargaining Process



Typical Cocaine Defendant

In order to gain a better sense of the defendants included in this sample, all interview respondents were asked to describe an "average" cocaine defendant. Several diverging themes emerged among actors and their views depend upon their position in the courtroom. All judges agreed that there is not an average person, prosecutors tended to state the same (though with some caveats), while some defense attorneys had clear descriptions of their clients who are arrested for cocaine possession.

Judges' answers were very consistent, with one stating that there are a "wide range" of defendants charged with cocaine, including "college kids" and "housewives." Another reported that defendants "run the gamut" and that they are "shocked" by some of the individuals who have come before them, including people in their 60s, teachers, nurses, students, though one judge did state that there are "a lot" of 17-30 year olds. Another judge again being "surprised" by who defendants are sometimes because they are such a wide range of individuals.

Prosecutors tended to respond that there is a typical defendant, but that it depends on the case type. One prosecutor indicated that the difference is crack and powder: crack defendants tend to be "street addicts" with a long criminal history, while powder defendants tend to be first-time social or recreational users. Another prosecutor stated that lines could be drawn across possession vs. distribution: possession defendants tend to be "addicts" with other cases brought against them like prostitution or theft, while distribution/delivery cases are brought against individuals involved with drugs as an enterprise who only "maybe" use drugs as well. The third prosecutor, however,

unequivocally stated that there is no typical defendant, though they did also believe that someone "selling kilos" is "different" than a mainstream user.

The main pattern emerging from defense attorneys is that their answers depended specifically on the *type* of defense attorney. For example, all of the retained attorneys stated that there is an average type, with one reporting that his cocaine clients tended to be men, middle class or "well-to-do," young people who are "partying." This individual did also acknowledge that the main client base would likely be different for a public defender. This attorney's assumption was correct. While one public defender denied the existence of a typical cocaine defendant, the two other PDs indicated that an average defendant existed who is not part of their client base. One stated that "drugs affect everyone," but that all of their clients are indigent. Another PD further described their clients as the "poor and forgotten people of society" who are indigent, African-American, using rock cocaine, and who are frequently also homeless and suffering with a substance abuse problem. Assigned counsel all reported representing a wide variety of individuals for cocaine offenses, though one did state that there is a "type" for distribution offenses: they are "deeper" into the drug world, possessed contacts within this drug world, and sometimes used distribution to support their use. Other assigned attorneys reported that there are many different types of people, and one said that they "don't assume anything about defendants."

Overall, there is little agreement among respondents for this question. About half of the respondents indicated that there is no average, while the other half can be categorized as stating that there is a typical sort of person (at least for their clients, if a defense attorney). The perception of "typical" does seem to depend heavily on one's

position in the courtroom; judges, who do likely see more defendants than the other court actors, all replied that there is no average type of person. Defense attorneys and prosecutors were not in agreement overall about this question, though there is some variation based upon position; retained attorneys reported that there is a typical defendant more frequently than other types, and public defenders were more likely to point out that their indigent client base altered their view. The next section of this chapter will discuss practitioner's descriptions of the importance of evidence and substance quantity for felony drug cases.

Importance of Evidence and Substance Quantity

Because a main aim of this project is to understand the significance of evidence and quantity, both from a quantitative and qualitative perspective, this section details practitioners' views on these issues. Both evidence and substance quantity play important roles in in plea bargaining and sentencing. Prosecutors reported that case facts and available evidence are chief considerations for making an initial offer. One stated that in a case with "weaker" evidentiary base, a more favorable offer might be made to the defendant. In addition, for drug cases specifically, many participants described the importance of evidence for determining whether a defendant should be charged with distribution or simply possession. A variety of evidentiary measures are described as indicative of an enterprise: empty baggies, different colored baggies, a scale, a ledger, and multiple cell phones. For instance, one defense attorney described a particular client as "clearly distributing" because they had drug packets and scales in their residence. Multiple prosecutors stated that drug cases are some of the hardest to prosecute, with one saying:

> Lines are hard to define. Don't think that all distributors don't use and don't think that all possession offenses can't also distribute. This is one of the hardest things about prosecution with drug crimes. [You] have to distinguish between addicts and non-addicts and dealers and non-dealers. There are addicts who are solely addicts and also distributors who will never touch the product and it's purely business. It's across the board.

So, for drug crimes, evidence seems be crucial for the distinction between possession and possession with intent to distribute. One prosecutor reported that there are different concerns in violent cases with witnesses and victim intimidation, indicating that the exact type of evidence that is available and probative depends heavily on the case type.

As far as substance quantity, almost all participants believed that the specific amount of a controlled substance (once within an offense category) would be an important determination of a plea offer and resulting sentence. There were a few exceptions, however. One prosecutor stated that it is important for the 4-200 gram category, but "not so much" for the others. Further, one defense attorney reported that the quantity is not enough and that prosecutors "do not care about quantity, they care that it is enough to sell." Another defense attorney responded to this question with this: "To an extent, yes, and no. A lot of times, they just look at the level of offense [. . .] I've never had a prosecutor say 'it was 5 grams' or it was '150 grams.'" Statements like these lend further import to the research question surrounding the importance of substance quantity within offense types and the disagreement between practitioners further highlights its relevance. Overall, there is agreement on the weight of evidence and substance quantity (with a few exceptions) among court practitioners, with court actors reporting that they are both very important. The remainder of this chapter will discuss other themes that emerged from the semi-structured interviews.

Other Emergent Themes

While the above sections provide a detailed description of the plea bargaining process, the typical cocaine defendant, and perceptions of the importance of evidence and substance quantity, interviews also revealed several underlying themes. Each of the themes below increases understanding of the views of practitioners in this jurisdiction and sheds further light on plea bargaining and sentencing in the jurisdiction. The themes to be discussed are: nuance in criminal history, hierarchy of the district attorney's office, the role of the defense attorney and defendant preferences, direct and indirect judicial discretion, and an overwhelming preference for the free exercise of discretion.

Nuance in Criminal History

Every single interview participant in this study mentioned criminal history. It plays a significant role in both initial plea recs and negotiation, but "criminal history" as described by practitioners may not be fully captured by the standard variables utilized by social science researchers. Several participants noted that prior failed probation is an exceedingly negative factor, with one defense attorney stating "even the judges who are really hardcore, they are only really harsh after someone has screwed up probation." There is also common view that violent offenders are different and worse than non-violent offenders. One prosecutor described a situation where a violent defendant may refuse a plea offer and as a prosecutor, even with potentially weak evidence, you choose to go to trial because that defendant is "too dangerous for probation." And the seriousness of criminal history matters beyond that – if someone has 20 prior arrests, is it mostly thefts and trespass or is it 20 aggravated assaults? Participants frequently indicated that

criminal history is very important, but the specifics of exactly what "criminal history" means can carry many meanings.

Hierarchy in District Attorney's Office

Individual prosecutors in this jurisdiction have a great deal of discretion to exercise, but the chain of command inherent in the District Attorney's Office affects prosecutorial discretion in two main ways. First, the elected DA each brings his or her own priorities and policy directives. One participant reported that the policies of the DA are the "first and foremost" consideration for prosecutors. The DA's power can be far-reaching; they decide how cases get referred to specialized units, what priority to put on rehabilitation, and are ultimately the last word on acceptable plea bargaining terms. Second, as mentioned above, the "chief" prosecutor of each court retains authority over the "2" and "3" that they supervise. Supervision by the chief is the main method by which new felony prosecutors learn how to make and accept offers because there are no official guidelines for felony prosecution. Some defense attorneys expressed frustration at the lack of discretion that lower-level prosecutors are able to exercise, with one stating: "There's a lot of checking with supervisors for prosecutors. It feels often like [. . .] talking to an intern who has to ask for permission to do something, even if they've been at the office for 5 years." So, while ADAs do technically have fairly unfettered discretion, there are several levels of influence in this jurisdiction that restrict the exercise of that discretion.

The Role of the Defense Attorney and Defendant Preferences

One significant theme that emerged from these interviews and that has received little attention prior to this is function of defense attorney and the defendant's choices.

As mentioned above in this chapter, a defense attorney who is new to the jurisdiction, or who has had prior negative interactions with prosecutors or judges, may not receive the same offer as a defense attorney who is known with a positive reputation. Moreover, negotiation skill and strategy is highly specific and prior literature has found that little negotiation training is provided to criminal defense attorneys, despite the field's understanding that most cases are resolved with pleas (Roberts & Wright, 2016). Negotiation strategies are very personal and each defense attorney has developed their own method. As described above in the section on typical plea negotiations, some defense attorneys prefer to make frequent contact with defense attorneys (one described this is "whittling the prosecutor down"), some require all offers in writing, and one reported that they will "kick the can down the road" to wait for a new prosecutor to be assigned to the courtroom if they do not like the offer currently being made. Negotiation skill is critical, considering one prosecutor's description of the defense attorney's job in sharing potentially mitigating circumstances: "If that information isn't in the police report, that comes from defense and that happens during negotiation process." A defense attorney's assessment of what information to share, and when and how to share it, can significantly impact the negotiation process.

When asked to describe how they would counsel a defendant regarding an offer, most expressed sentiments similar to this assigned attorney: "I see my job as giving them the information they need to make an informed decision." However, beyond this, client counseling strategies varied considerably. One stated that they write down a "pro and con" list with their client to explain what is good and bad about the case, while another said that they "talk to clients about expectations" and what would be a reasonably good

outcome of a case. Some defense attorneys share their opinions of quality of the offer upfront, while others said they only share if the defendant specifically asks.

The defense attorney can significantly impact negotiation, but the defendant's own choices are also crucial. While there has been some research focused on offender perception of punishment seriousness (Wood & May, 2003), much more research generally ignores the fact that the defendants do have some say in their punishment (cf. Johnson & DiPietro, 2012). A recurring theme through these interviews (particularly because the subject was drug offenders) was that even if treatment is offered, defendants might not want it. One judge reported that defendants sometimes say to them, "I'm not going to stop getting high." One PD noted that sometimes defendants are not interested in rehabilitation for quite some time, and by the time they "want help," their criminal history is so extensive that prosecutors will no longer offer treatment.

In addition to resistance to treatment, many individuals charged with drug crimes may not be interested in probation. Numerous participants reported that many defendants want the "easy way out," or just want to "take their time" [in jail or prison]. Furthermore, one judge believed that some people "understand how to survive institutionally." Many participants also noted the practical difficulties of probation for indigent clients in particular. More than one defense attorney stated that it is difficult for their clients to get to and from probation meetings, with one attorney stating:

> With probation, they have to do treatment and meetings, etc. A normal human being is going to fail and [individuals with drug addiction] have other issues that they're dealing with so probation is really hard for most people to do. [If they choose jail time], they know how much prison time they have. Sometimes I tell clients that if they really want to move on with their life, they should take jail time, get out on parole, register, and check in with PO, and you won't have to do all that other stuff [for probation].

One public defender said that probation is much easier for individuals with monetary resources. Indigent defendants who rely on public transportation may be late to a treatment meeting and can then be kicked out of the program; "it seems like it is a lot easier for rich people to complete probation, which is really sad." In sum, the defense attorney and the defendant both have an important role to play in plea bargaining and negotiation. A defense attorney's reputation, skill, and strategy for both negotiation and client counseling can significantly impact the offers made to and accepted by the defendant. Furthermore, a defendant's receptiveness to treatment, experience with the criminal justice system, and ability to comply with probation requirements are all considerations in the type of offer they will accept for their punishment.

Direct and Indirect Exercise of Judicial Discretion

Judicial discretion in this jurisdiction goes far beyond the traditional concepts of a judge overseeing a trial or sentencing a defendant to their punishment. After the defendant, defense attorney, and prosecutor have agreed to terms, the judge must approve the plea bargain. I refer to this as "direct" exercise of discretion; judges have the power to reject a plea bargain and tell the parties to go back to the drawing board. However, as mentioned previously, judges rarely choose to exercise the power to reject a plea bargain. All judges interviewed here all stated that they trusted the defense attorneys and prosecutors to do their jobs and would only step in under exceptional circumstances (one judge said they "figure that the lawyers know more about the case" than the judge); whether it would favor the defendant or prosecutor really depends upon the case.

Nevertheless, there is likely still an indirect impact of judicial preference because prosecutors are aware of what their judge will or will not accept and make offers

accordingly. All parties (judges, prosecutors, and defense attorneys) were cognizant of the preferences of each individual judge in the county and prosecutors noted that they sometimes crafted offers based upon their judge. One prosecutor described this phenomenon as such: "the judge sets the tone for what is acceptable in that courtroom." Further, some judges have reputations for being more likely to "bust" a plea and some are known for being tougher on some offenses than others. So, while judges are not exercising their discretion frequently to strike down plea bargains, the prosecutors and defense attorneys working in their courtrooms are aware of their preferences and try to come to plea bargain terms that they believe that particular judge will approve.

Preference for Free Exercise of Discretion

This jurisdiction was chosen in part because it lacks sentencing guidelines. While the federal guidelines have been harshly criticized for their impacts on judicial and prosecutorial discretion (see, e.g. Stith & Cabranes, 1998), there has been less work examining exercise of discretion in non-guideline jurisdictions. This state in particular is interesting because it considered guidelines in the early 1990s, heartily rejected them (Deitch, 1993) and has not addressed the issue since. Of all 16 interview participants, only one reported an unwaveringly positive view on guidelines (though this defense attorney did report "loving" them). The remainder of the responses about guidelines and discretion were less positive, with one defense attorney describing the federal guideline system as "handcuffing" attorneys and another defense attorney going so far as to say:

> Anyone who would advocate for sentencing guidelines is an absolute idiot, and you can quote me on that. They are built on moronic scales that have never, ever been right. From their existence on, sentencing guidelines are for morons who do not want to do their job. I'll tell federal judges that they aren't doing their due diligence if they are adhering to the guidelines.

All defense attorneys except for the one mentioned above reported preferring a non-guideline system. Another defense attorney who had prior experience as a prosecutor stated that "especially when dealing with experienced prosecutors, discretion can be good." Other participants expressed that some level of discretion is necessary in the criminal justice system and that if "everyone is doing their job" and "upholding their oath," guidelines are not necessary.

All three judges also preferred to have no constraints on their discretion, with one bluntly saying that they were "not in favor of them" because they "like having discretion." This judge further explained that they look at every case, the offense, the individual, and what type of background the defendant comes from because they are able to "match [the defendant] with the appropriate resources that will benefit [the defendant] and society." Another judge stated that each "each case requires a fresh look." Judges and prosecutors were more willing than defense attorneys, however, to acknowledge the purpose of guidelines and the potential drawbacks of having none: that similarly-situated defendants may be sentenced to very different terms. Disparities between judges were acknowledged, with one participant stating:

> You shouldn't get the benefit of a decent recommendation because you have fallen into a friendly court. There are a few courts who don't care if [a defendant] gets a felony conviction or not. It should not be the luck of the draw that you don't have your life ruined by a possession case.

Another judge mentioned that an individual being considered for probation may "clog the system" because of the 3-4 week period in which a presentence report is generated by probation services. Some may view this potential backlog of their docket as "the price of business for doing the right thing," while other judges may instead want to reduce their docket and "move them along." One prosecutor reported that they "got" the purpose of

the guidelines but still preferred being able to craft their own sentences. All in all, however, this jurisdiction seems highly satisfied with the lack of guidelines and the free exercise of discretion that is permitted.

Summary of Qualitative Results

These results indicate that there is much to be learned from qualitative work in criminal justice research. In this county, a mostly stable courtroom workgroup of the judge and several prosecutors assigned to their courtroom is present, with various defense attorneys completing the workgroup. Interview participants depict a plea bargaining process that is informal, usually results in a back-and-forth and multiple offers, and which almost always resolves a case through a negotiated plea agreement. Courtroom actors were generally in agreement upon the actual processes involved and all also reported that judges rarely step in to "bust" a plea that has been agreed upon by the defendant, defense counsel, and the prosecutor.

Overall, practitioners were not in agreement regarding the "typical" cocaine defendant, or whether one even exists. All judges said that they see a variety of individuals charged with cocaine; several even described being shocked or surprised by the characteristics of cocaine defendants. Prosecutors also generally agree that there is no specific type, but do believe that some lines can be drawn: possession vs. distribution or crack vs. cocaine. Defense attorneys were the most likely to describe a "type," though they also acknowledge that their client base (either entirely retained or entirely indigent) impacts the types of cocaine defendants they represent.

Practitioners were also asked to explain the impact of evidence and substance quantity. Evidence is a chief consideration for prosecutors; they generally reported that

the two most important factors for an initial plea recommendation are facts and criminal history. There were also indications in the interviews that cases with weaker evidence may generate less harsh plea offers in hopes of obtaining a conviction. Almost all respondents believe that substance quantity is an important factor for plea offers and sentences. However, two defense attorneys reported that it did not matter and one prosecutor stated that the amount was only important in the 4-200 gram category.

Finally, a number of other themes arose from these interviews. First, criminal history is a crucial considerations for prosecutors and judges in determining acceptable plea offers and sentences, but the meaning of criminal history is rather nuanced. Prosecutors and judges both reported taking a detailed look at national criminal history and considering factors such as prior failed probation, proportion of prior violent arrests, and victimization of children. Second, the hierarchy of the district attorney's office is vital for understanding the plea negotiation process. Both the elected DA and the chief prosecutor of the courtroom hold considerable power over their subordinates; for lower-level prosecutors, they learn on the job how to make plea offers, in part from the approval or disapproval of their chief.

A third theme that emerged is the role of the defense attorney and defendant preferences. When asked to describe an average negotiation and their method of counseling clients with plea offers, a variety of strategies were portrayed. Furthermore, all types of actors interviewed said that there are some defendants, particularly those who are charged with drug offenses, who are simply not interested in treatment or probation. The time and travel constraints, as well as monetary costs, can be burdensome and unappealing to defendants; many prefer to serve their time and "get it over with."

A fourth important theme of these interviews is the different ways that judicial discretion is exercised. Judges can exert their discretion directly, by presiding over a trial, "busting" a negotiated plea agreement, or sentencing a defendant either in an open plea or after trial. More frequently in this jurisdiction, however, their discretion exerts an indirect effect on the plea bargain process. Because prosecutors are situated within courtrooms, they get to know the preferences of their judge very well and draft plea agreements based upon what they believe that judge will approve. "Courtroom regular" defense attorneys also learn these preferences and negotiate accordingly. Judicial influence on plea processes may be more subtle than currently understood.

Lastly, practitioners in this jurisdiction reported an overwhelming preference for their indeterminate sentencing structure. Only one practitioner (a defense attorney) reported a preference for guidelines. Judges and prosecutors were more likely to acknowledge the potential benefits (in the form of reduced disparity) of a more structured system, but overall, feelings towards any constraints on discretion in the criminal justice system were very negative. These interviews provided information that would not have been recovered in any other fashion; practitioners are a valuable resource for criminal justice researchers. The next chapter adds to an understanding of plea bargaining and sentencing in this jurisdiction with descriptive results and findings from multivariate regressions.

Chapter 9: Quantitative Results

While the previous chapter serves to describe the plea bargaining process and practitioner views on several case processing issues, this chapter presents descriptive statistics as well as regression results for all three outcomes: initial charge type (possession vs. possession with intent to distribute), charge reduction, and sentence length. These descriptive statistics and three outcomes are examined with the goal of generating a holistic view of case processing, prosecutorial discretion, and sentencing.

Descriptive Results

The descriptive statistics for this project can be found in Tables 3-6 which provide information on the defendant and the defendant's criminal history as well as evidentiary and situational arrest variables. The descriptive section concludes with additional information on final case disposition and how charges change over time.

Descriptive Statistics: Dependent Variables

There are three dependent variables in this paper and their descriptive statistics can be found in Table 3. The first dependent variable is the initial decision to charge a case as either possession or possession with intent to distribute (WID). In this jurisdiction, one can be charged with possession or WID for any amount of controlled substance (see Table 2). At the initial charge type at indictment, approximately half of cases (48%) were charged with WID and half (52%) were charged with a simple possession case. As these are felony convictions, it is not surprising that such a large number are WID charges.[34]

[34] A more detailed description of the implications of using a felony conviction sample are discussed in Chapter 10 in the limitations section.

The second outcome is a binary indicator of whether charges were reduced, beginning from arrest and ending with the final conviction. Charge reduction is a dummy variable that captures either that the offense was reduced in degree or that a sentencing enhancement was removed.[35] Almost half of all cases (43%) received a charge reduction of some kind, indicating that charge bargaining occurs very frequently in this county. This finding also lines up with interviews, which indicated that charge reductions are very frequent and this is likely a conservative estimate of charge reductions, due to the sample being made up entirely of convicted felony offenders.

Finally, sentence length is the third outcome examined. These are all convicted felony defendants who were sentenced to an incarceration term either in state jail or state prison.[36] Six months is the minimum term for a state jail felony and the maximum term for a 1st degree felony is life, though no cases in this sample were sentenced to such a long term. The average sentence length is 40.72 months with a minimum of 6 months and a maximum of 720 months (60 years). Sentence length is very highly skewed, with a standard deviation of 60.29 months. As has been performed in other studies (see, e.g., Johnson et al., 2008), the log transformation normalizes the distribution.

[35] These were grouped together in order to assess *any* reduction in punishment severity. Future research could examine more specific measures, but the purpose of this variable is to capture overall reductions. Of the cases that received a charge reduction, 38% had a degree reduced, 76% had at least one enhancement removed, and 14% of defendants received both types of reduction.

[36] A "12.44(a) motion" can result in a defendant being convicted of a felony, but serve their term in county jail. This information is not included in the current sampling frame because those individuals would not have entered into TDCJ custody and this is where the initial sample began. Implications of the sampling strategy are discussed in the final chapter limitations section.

Table 3: Descriptive Statistics: Dependent Variables

VARIABLES	Mean	SD	Min	Max
Dependent Variables				
Initial Distribution Charge	.48	.50	0	1
Charge Reduction	.43	.50	0	1
Sentence Length (months)	40.72	60.29	6	720

Descriptive Statistics: Demographics, Evidence, Arrest, and Disposition

Table 4 shows descriptive statistics for a variety of variables; some of these are included solely to respond to the first research question about the typical felony cocaine defendant/arrest and most are also included in regression analyses. Variables that serve as covariates in regression models are denoted with an asterisk (*). Beginning with demographics, the average age of this sample is 38 years old, with a range of 19-68. Most individuals were male (91%) and black (65%). Hispanic offenders account for 26% of the sample and white 9%. This is in contrast to the racial and ethnic makeup of the county as a whole, where a larger proportion identifies as white (U.S. Census, 2016). This group of offenders also has an extensive criminal history, with an average of 8 prior arrests; the maximum number of prior arrests in this sample is a staggering 37. The average number of felony convictions is 2.19 and over half (62%) of the sample has been previously convicted of a drug offense (possession or distribution, any degree, any substance). Only 8% of these offenders had no criminal history and 40% had an active criminal justice status (on probation, parole, or with an active arrest warrant) at the time of their arrest.[37] While practitioners were generally not in agreement about whether there

[37] The extensive criminal history of this sample is reflective of the fact that it is a sample entirely of convicted felony offenders.

is a "typical" cocaine defendant, this indicates that at least for felony offenders, there are some typical traits: these offenders are older, mostly indigent, largely minority, and have extensive criminal histories.

Moving to attorney type, the vast majority of this sample is indigent, as only 21% retained private counsel. While there is a public defender office in this county (there is no statewide public defender system), it cannot accommodate all of the indigent cases. Public defenders represent only 20% of the sample and assigned counsel represent 50% of all defendants. In a small number of cases (9%), attorney type could not be ascertained from available documents. A defendant either hired or was appointed a new attorney in about one third of cases, though an attorney officially withdrew in only 5% of all cases.

Several measures for pretrial detention were collected. First, bond amounts were on average quite high: the mean bond amount in this sample was over $47,000 (see Table 4). No defendants in this sample were denied bail on the current charge, though approximately 6% were denied bail on another charge.[38] All defendants were granted some form of monetary bail on the current charge, and none were given the option of release-on-recognizance. The second measure of pretrial detention is an indicator of whether the defendant was detained two weeks after their initial arraignment. If someone was released within the first two weeks, they were coded as a zero for this variable. This accounts for the fact that defendants may have required time to generate sufficient funds to meet financial bond terms. A vast majority of defendants (77%) were detained at this

[38] In arraignment documents, different bail terms are listed for each offense. If an individual is charged with multiple offenses, it is possible to be granted a monetary bail amount on one offense and denied bail on another. The effect is to deny bail for the defendant entirely, but data were collected on this measure in order to be as complete as possible.

two-week mark and almost all of them (95%) were detained by conviction. Many of the defendants who were released after paying monetary bail were re-arrested on another charge while on bond and were then either denied bail or unable to meet subsequent bail terms. Further, 70% of defendants were never released for the duration of their case. Because of this, many defendants served a great deal of time in jail while awaiting their sentence; the average number of days granted for time served is approximately 164, with a minimum of 0 and a maximum of 2178 days.[39] In a very small number of cases (4%), bond forfeiture proceedings were initiated against the defendant, indicating that they either did not show up for a hearing or were otherwise engaged in prohibited conduct.

[39] This individual was granted extensive time served because they were incarcerated in another state between their arrest and conviction for the current charge. However, there were several defendants who served very lengthy terms of pretrial detention. Ten percent of the sample served over a year.

Table 4: Descriptive Statistics: Demographics, Criminal History, Attorney Type, and Detention Status

VARIABLES	Mean	SD	Min	Max
Demographics				
Age in Years*	38.0	11.6	19	68
Male*	.91	.28	0	1
Black*	.65	.48	0	1
Hispanic*	.26	.44	0	1
White*	.09	.29	0	1
Non-citizen*	.14	.35	0	1
Criminal History				
Prior Arrests*	8.13	6.63	0	37
Prior Felony Convictions*	2.19	2.41	0	14
Any Prior Drug Conv.*	.62	.49	0	1
No Criminal History	.08	27	0	1
Active CJ Status*	.40	.49	0	1
Attorney Type				
Private Attorney*	.21	.40	0	1
Public Defender*	.20	.40	0	1
Assigned Counsel*	.50	.50	0	1
Attorney Info. Missing*	.09	.28	0	1
New Attorney	.33	.47	0	1
Attorney Withdrawal	.05	.24	0	1
Detention Status				
Denied Bail on Diff. Chg.	.06	.23	0	1
Bond Amount (dollars)	47,269	39,200	500	250,000
Detained at 2 Weeks	.77	.43	0	1
Detained at Conviction*	.96	.19	0	1
Never Released	.70	.45	0	1
Time Served (days)	163.75	179.75	0	2178
Bond Forfeiture Initiated	.04	.19	0	1

* Covariate in regression analyses

Moving to Table 5, the next set of variables provides a more comprehensive picture of arrest circumstances and evidence. First, exactly half of this sample was arrested for a distribution offense (as compared to 48% being *charged* with distribution) and the average number of arrest charges is 1.59, with a range of 1 to 7. Over half of this sample (61%) was arrested for only one offense. The next section of Table 5 describes

the reasons for and circumstances of arrest initiation.[40] Most stops were initiated by officers on foot (65%) as compared to by car (35%). About one quarter of total arrests were initiated due to a traffic stop. Traffic stops include moving traffic violations: an individual being pulled over for speeding, not stopping at a stop sign, a burned out tail light, etc. Citizen calls prompted police response and arrest in 22% of these cases and almost half (40%) began because of an investigation or execution of a warrant. A search of some kind occurred in most cases and it was rarely consented to.[41] Searches are also disaggregated into three different types of searches: body, car, and home. Body searches occurred in 42% of these arrests, and defendants consented to only 10% of those. A car search occurred in about one-third of cases and consent was granted for a car search in 17%. Lastly, police searched a defendant's home in one-quarter of these cases and defendants consented 17% of the time.

The next section of Table 5 displays specific drug information. First, the main independent variable of substance quantity: the average amount of cocaine at arrest is 26.6 grams. This variable is very highly skewed, with a standard deviation of 238.92, and a minimum of .01 and a maximum of 4442.7. Because of this variable's distribution, it is logged in all regression analyses. A field test was performed at arrest in almost all cases and over half of arrests (56%) were for crack cocaine. Twenty-eight percent of arrested individuals were in possession only of powder cocaine and 9% were found with both crack and powder. The specific cocaine type could not be ascertained from arrest documents in 7% of cases.

[40] These variables are not mutually exclusive.
[41] If a search was not consented to, the assumption is that the police either had a warrant or an exception to the Constitution's warrant requirement.

One principal goal of this dissertation is to collect detailed evidentiary information and thus a variety of variables were collected regarding the availability and type of evidence collected. In a little over half of cases (55%), evidence of some kind was in plain view to officers at some point in the arrest (see Table 5). Regarding the specific evidentiary measures, drug paraphernalia (pipe, razor, scales, ledger, etc.) was collected in 33% of cases. A cell phone was recovered in 11%, a gun in 17%, and cash/currency was recovered in one-quarter of cases. As described previously, these measures were also combined into an index in separate model specifications with a count of 0-4. The average for this index was .85, with a standard deviation of 1.09.

The remainder of variables collected from the arrest report pertain to the specific circumstances of the arrest. These variables were collected in an effort to provide context for what occurs during a drug arrest and to determine their impact on later case processing and sentencing outcomes. An arrest involved the defendant selling to the police rarely; only 7% of these cases involved such circumstances. Almost all arrests involved more than one officer (91%) and the average number of other individuals at the arrest was .7, with a range of zero to 6 other people present. Another individual was arrested at the same time in 27% of cases and the defendant fled or attempted to flee in 16% of arrests.

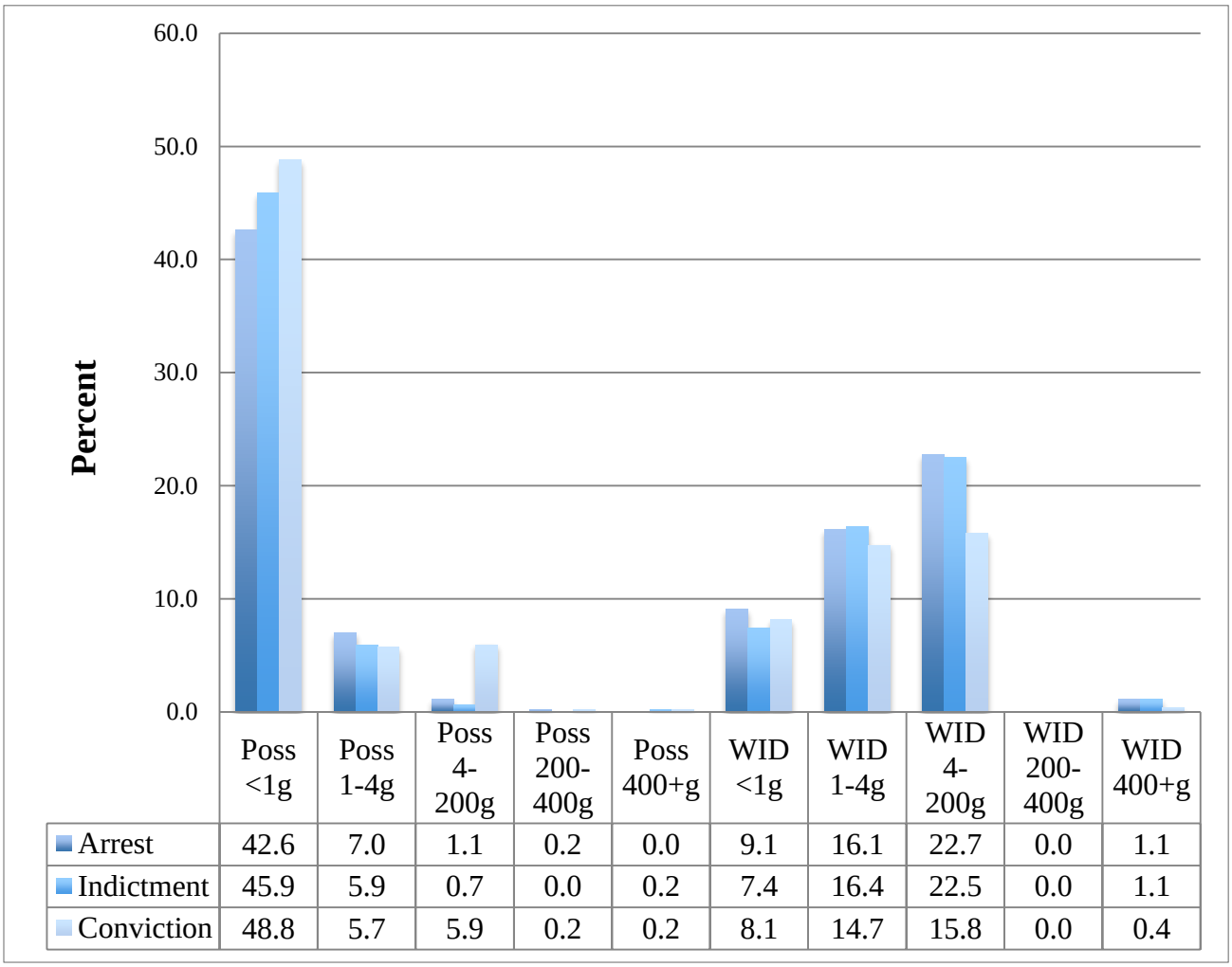
Table 5: Descriptive Statistics: Information from Police Reports

VARIABLES	Mean	SD	Min	Max
Basic Information				
Arrested for Distribution	.50	.5	0	1
Number of Arrest Charges*	1.59	.93	1	7
Only One Arrest Charge	.61	.49	0	1
Stop Initiation				
Car Stop	.35	.48	0	1
Foot Stop	.65	.48	0	1
Traffic Stop	.26	.43	0	1
Citizen Call*	.22	.41	0	1
Investigation/Warrant*	.40	.49	0	1
Search and Consent				
Any Search Occurred*	.82	.39	0	1
Any Consent Given*	.13	.33	0	1
Body Search	.42	.49	0	1
Proportion Consented to	.10	-	-	-
Car Search	.34	.48	0	1
Proportion Consented to	.17	-	-	-
Home Search	.27	.46	0	1
Proportion Consented to	.17	-	-	-
Drug Information				
Substance Quantity*	26.6	238.92	.01	4442.7
Field Test	.95	.22	0	1
Crack Only*	.56	.49	0	1
Powder Only*	.28	.45	0	1
Crack and Powder*	.09	.27	0	1
Drug Type Missing*	.07	.26	0	1
Evidence				
Evidence in Plain View*	.55	.50	0	1
Paraphernalia*	.33	.47	0	1
Cell phone*	.11	.31	0	1
Gun*	.17	.38	0	1
Cash/Currency*	.25	.43	0	1
Evidence Index*	.85	1.0	0	4
Other Situational Arrest Info.				
Selling to Police*	.08	.27	0	1
Multiple Officers Present	.92	.29	0	1
Number Other People Present	.70	1.0	0	6
Anyone Else Arrested*	.27	.45	0	1
D Fled/Attempted to Flee*	.16	.37	0	1

* Covariate in regression analyses

The last section of descriptive statistics shows more specific details on charges, enhancements, and how charges change over a case's progression. First, Figure 3 displays the distribution of charges at three time points: arrest, indictment, and conviction.

Figure 3: Comparison of Initial Arrest, Indictment, and Final Conviction Offense



	Poss <1g	Poss 1-4g	Poss 4-200g	Poss 200-400g	Poss 400+g	WID <1g	WID 1-4g	WID 4-200g	WID 200-400g	WID 400+g
Arrest	42.6	7.0	1.1	0.2	0.0	9.1	16.1	22.7	0.0	1.1
Indictment	45.9	5.9	0.7	0.0	0.2	7.4	16.4	22.5	0.0	1.1
Conviction	48.8	5.7	5.9	0.2	0.2	8.1	14.7	15.8	0.0	0.4

There is evidence of charge changes and reductions across these time points. These results support practitioner reports that charge reductions occur frequently. At arrest, 42.6% of charges were for the least severe charge: possession of less than 1 gram; by conviction, this number increased to 48.8%. Similarly, 22.7% of charges were for

possession with intent to distribute 4-200 grams and this decreased to 15.8% by conviction.

Lastly, Table 6 provides further information regarding enhancements and method of case disposition. There is again evidence of charge reductions; the average number of enhancements at indictment is .80 and it is only .36 at final conviction. Finally, the last section of Table 6 shows that the modal method of case disposition in this jurisdiction is a negotiated plea (91%). The remaining cases are resolved via trial (4%) and open plea (5%), where a defendant agrees to plead guilty but instead chooses for the judge to sentence them directly.

Table 6: Descriptive Statistics: Detailed Charging and Disposition Information

VARIABLES	Mean	SD	Min	Max
Enhancements				
At Indictment*	.80	.90	0	4
At Conviction*	.36	.70	0	4
Mode of Disposition				
Trial*	.04	.19	0	1
Negotiated Plea	.91	.29	0	1
Open Plea[42]	.05	.22	0	1

*Covariate in regression analyses

Summary of Descriptive Statistics

This section will provide a brief summary of the descriptive statistics presented above. There are a total of three dependent variables in this project: initial charge type, charge reduction, and sentence length. For the initial charge type, 48% of this sample was charge with distribution and the remaining 52% were indicted on a possession

[42] On average, open pleas are 15 months longer than negotiated pleas (p=.09, t=-1.66). This was not included in a covariate in regression analyses for several reasons in addition to this marginal significance. It is not central to any research aims and there are only 23 open pleas in the entire dataset, which would make it difficult to discern any statistically significant effects. Differences between open and negotiated pleas are an area for future research.

charge. Charge reductions are common in this jurisdiction, with 36% of the sample receiving some type of charge reduction (lowering of offense degree or removal of statutory enhancements). Finally, sentence length is highly skewed. The average is 40.72 months with a standard deviation of 60.29 months. Because these are all felony offenses, the minimum incarceration term is 6 months in state jail. The maximum term in this sample is 720 months.

A variety of variables were collected from online court case files and criminal history information to illuminate characteristics of the defendant, arrest circumstance and case disposition. Regarding demographics, this sample is on the older side, with an average age of 38; it is overwhelming male (91%) and African-American (65%). About a quarter of the sample is Hispanic and the remaining 9% are white. Fourteen percent of the sample is comprised of non-US Citizens. Again reflecting the nature of the sampling frame, each individual has an average of 8 arrests; the maximum in the sample is 37. The average number of felony convictions is about 2 and approximately two-thirds of the sample has any prior drug conviction. Only 8% of this sample has no criminal history at all. In addition, almost half of these individuals had an active criminal justice status (probation, parole, or active warrant) at the time of the instant arrest.

This sample is largely indigent, with only 21% being represented by a private attorney. Another 20% are represented by public defenders and a half of the sample is represented by an assigned attorney. Moving to pretrial detention measures, no individuals in this sample were granted release-on-recognizance terms and none were denied bail on the current charge. Detention rates were quite high, with 77% of defendants were detained 2 weeks post-arraignment and 96% detained at conviction.

The average number of charges at arrest is 1.59, with a maximum of 7. Over half of the sample (61%) were arrested for only one charge. Most of the stops were on foot (65%) as opposed to by car (35%). Citizen calls were the reason for arrest initiation in about a quarter of cases and a warrant/investigation precipitated arrest in approximately 40% of cases. Searches (car, home, person) were frequent – at least one occurred in 82% of cases – and were rarely consented to. The average quantity at arrest was 26.6 grams, but this is highly skewed; the minimum is .01 and the maximum is over 4000 grams. A field test was almost always performed at arrest. A little over half of these arrests (56%) included only crack cocaine and 29% involved only powder.

Evidence is another main concern of this paper. Evidence was in plain view in a little over half of cases. Drug paraphernalia was seized in 44% of cases and a cell phone was seized in 11% of cases. Police seized a gun in 17% of cases and cash in one-quarter. When combined into an index from 0-4, the average score is .84. A few other situational arrest measures were also collected. Multiple officers were present at almost all arrests (95%) and the number of other people present at arrest ranged from 0-6. Another person was arrested in about a quarter of cases and the defendant fled or attempted to flee in 16% of cases.

Lastly, detailed measures of case progression and disposition were collected. There is evidence of charges changing over time. The percent of cases arrested for the least severe charge of possession of less than one gram of cocaine is 42.6 percent; at indictment, this figure is 45.9% and by conviction, it increased further to 48.8 percent. Conversely, one of the more severe charges of possession with intent to distribute of 4-200 grams begins at 22.7% at arrest and decreases to 15.8% at conviction. Enhancements

(prior felony convictions, drug-free zone, and weapons) were also reduced over time; the average number of enhancements at indictment is .80 and it is only .36 at conviction. The vast majority of these convictions were obtained through a negotiated plea (91%). Trials occurred in only 4% of cases and open pleas in only 5% of cases.

Now that descriptive statistics provided a more thorough landscape of the typical felony defendant, arrest circumstances, and charge distribution, the next section of this chapter shows findings from multivariate regression analyses. Results are presented in the temporal ordering of an actual case: initial charge type, charge reduction, and final sentence length.

Regression Results

In this section of this chapter, results are presented for each dependent variable in temporal order of case progression: initial charge type, charge reduction, and sentence length. Results for explanatory variables are discussed across different model specifications and results are presented as odds ratios for charge type and charge reduction.

Initial Charge Type Results: Possession vs. Distribution

Evidence is the chief consideration for prosecutors (Jacoby & Ratledge, 2016) and the primary concerns of prosecutors framework also predicts that its importance is especially salient for charging. While this is a sample of entirely convicted offenders and they are all charged with a cocaine offense, there are still a number of charges for prosecutors to choose from at the initial charging phase and the statutory punishments vary significantly depending on the specific offense category (see Tables 1 & 2). This analysis assesses the impact of substance quantity, evidence, and situational arrest

variables on the initial charge type: possession or possession with intent to distribute (WID). This outcome was analyzed in 4 different model specifications: first, with the four physical evidence measures (cell phone, gun, cash/currency, paraphernalia) individually and next with these four measures included as an index. The last two models are replications of these first two, but with arrest circumstances included. Performing analyses in this way allows for comparison across models with both evidence as individual measures and as an index; it also assesses whether the impact of arrest variables is dependent upon the operationalization of evidence measures. This analysis is not clustered because there is no information available on prosecutors or grand jury courtroom at this phase.

Table 7: Logistic Regression Predicting Initial Charge Type (Distribution=1, Possession=0)

VARIABLES	(1) Individual Evidence	(2) Evidence Index	(3) Indiv. Ev. + Arrest	(4) Ev. Index + Arrest
Substance Quantity				
Logged Substance Qty.	3.36***	3.32***	4.02***	4.05***
	(0.14)	(0.14)	(0.18)	(0.18)
Evidentiary Measures				
Cell Phone	8.59**		8.12**	
	(0.89)		(0.89)	
Gun	1.17		1.74	
	(0.51)		(0.60)	
Cash/Currency	4.78***		3.63**	
	(0.43)		(0.53)	
Drug Paraphernalia	0.94		1.17	
	(0.38)		(0.47)	
Evidence Index		1.99***		2.28***
		(0.18)		(0.24)
Situational Arrest Measures				
D Sold to Police			9.57**	11.45***
			(0.90)	(0.88)
Other People Arrested			0.99	0.95
			(0.48)	(0.47)
Citizen Call			1.50	1.43
			(0.48)	(0.48)
Investigation/Warrant			4.17***	4.41***
			(0.44)	(0.44)
Any Search Performed			0.17***	0.18***
			(0.58)	(0.57)
Any Consent to Search			2.11	2.06
			(0.63)	(0.62)
Plain View			1.11	0.99
			(0.44)	(0.42)
D Fled/Tried to Flee			0.75	0.75
			(0.54)	(0.52)
Drug Type				
Only Crack	1.76	1.56	2.14	2.06
	(0.65)	(0.62)	(0.80)	(0.77)
Crack + Powder	2.31	2.20	3.51	3.44
	(0.76)	(0.72)	(0.84)	(0.81)
Drug Type Missing	0.56	0.61	0.69	0.67
	(0.74)	(0.71)	(0.85)	(0.84)
Race/Ethnicity				
Black	5.37**	3.95*	4.41	3.70
	(0.82)	(0.75)	(0.92)	(0.87)

Table 7, cont'd: Logistic Regression Predicting Initial Charge Type

VARIABLES	(1) Individual Evidence	(2) Evidence Index	(3) Indiv. Ev. + Arrest	(4) Ev. Index + Arrest
Black*Crack	0.61	0.73	0.76	0.79
	(0.76)	(0.72)	(0.91)	(0.88)
Hispanic	1.15	0.77	0.89	0.66
	(0.76)	(0.71)	(0.87)	(0.84)
Noncitizen	9.39***	10.19***	9.09***	10.05***
	(0.63)	(0.62)	(0.79)	(0.76)
Extralegal Controls				
Male	0.85	0.94	0.78	0.92
	(0.56)	(0.54)	(0.70)	(0.69)
Age	1.15	1.13	1.08	1.08
	(0.10)	(0.10)	(0.13)	(0.12)
Age Squared	1.00	1.00	1.00	1.00
	(0.00)	(0.00)	(0.00)	(0.00)
Private Attorney	0.85	0.94	0.78	0.92
	(0.43)	(0.42)	(0.52)	(0.51)
Legal Controls				
Multiple Charges	0.99	0.93	1.09	1.06
	(0.34)	(0.32)	(0.43)	(0.40)
Active Criminal Justice Status	0.88	0.95	1.36	1.47
	(0.34)	(0.33)	(0.42)	(0.40)
Prior Drug Conviction	0.69	0.77	0.60	0.65
	(0.38)	(0.36)	(0.45)	(0.45)
Criminal History Index	1.13	1.12	1.10	1.10
	(0.12)	(0.11)	(0.15)	(0.14)
Constant	0.01*	0.02*	0.05	0.05
	(2.34)	(2.21)	(2.90)	(2.84)
Observations	445	445	445	445
Pseudo R-Squared	0.55	0.53	0.67	0.66

Odds ratios presented
Standard errors in parentheses
*** p<0.01 ** p<0.05 * p<0.1

Substance Quantity

The first evidentiary variable considered is the influence of substance quantity, in grams. As mentioned above, due to the skewedness of this variable, it is logged for analyses. Looking to Table 7, in all specifications, larger substance quantity at arrest is predictive of a charge for distribution. So, while it is technically possible to be charged

with distribution of less than one gram (and some individuals were convicted of that offense), on the whole, larger quantities are associated with distribution as opposed to possession. From a theoretical perspective, substance quantity on its own seems to be a key case-level primary concern for prosecutors at this phase in that larger quantities of a substance seem to be highly indicative of distribution for initial charging decisions.

Evidentiary Measures and Evidence Index

This is perhaps the most important prosecutorial time point for the physical evidentiary measures collected here (cell phone, gun, cash/currency, paraphernalia), as they are the most related to a drug-selling business as opposed to simple possession of a substance. The primary concerns framework predicts that evidence is a major determinant of prosecutorial decision making and interviews also indicate that it is a difficult decision for prosecutors to make, so evidence's impact could be great. Model 1 and Model 3 in Table 7 include these measures as individual variables and not all of these variables carry the same weight. In both models with individual evidence measures, a cell phone and a cash/currency are significantly and positively related to the decision to charge a distribution offense. A cell phone increases the odds of a distribution charge by about 8 times and cash increases the odds by approximately 4-5 times. This result is consistent with Kutateladze and colleagues' (2015) finding that currency recovery predicts harsher plea offers. This seems to be an important evidentiary consideration for prosecutors in multiple jurisdictions. However, neither a gun being recovered nor drug paraphernalia are predictive of this initial charge type decision.

It seems that, at least for this decision, evidentiary measures carry different probative weight for prosecutors. As predicted, some evidentiary measures are highly

predictive of a distribution charge. If police officers decide to seize an individual's cell phone or cash found in the home or on their person, this seems to be an indicator to a prosecutor that the defendant was distributing. The insignificance of a gun could be because prosecutors have chosen to prosecute it as a separate charge and unfortunately that information is not available in this dataset. Drug paraphernalia was coded in this dataset as *any* paraphernalia – in part because it was frequently difficult to distinguish – so the finding on paraphernalia could be because a single pipe does not indicate an enterprise. Lastly, when included as an index in Models 2 and 4, evidence is also predictive of a distribution charge, with each additional piece of evidence increasing the odds of a distribution charge by about 2 times. These results also line up with some of the qualitative findings, particularly one prosecutor stating that drug cases are difficult to prosecute because of the challenges in determining whether to charge a case as possession or distribution; from these results, it seems that certain evidentiary measures do aid in this decision. All in all, these findings support the primary concerns of prosecutors framework that evidence is highly relevant at initial stages of criminal prosecution for drug cases.

Situational Arrest Variables

A variety of situational arrest variables were included to determine their relationship with prosecutor decision making. There are a total of eight new variables introduced in Models 3 and 4. Some arrest circumstances seem to affect charging decisions while others do not. For both Model 3 and Model 4, the defendant selling to the police significantly increases the odds of a charge for distribution by approximately 10-11 times. This is not surprising given that this is fairly definitive evidence of

distribution. Another consideration for this finding is that prosecutors may want to maintain positive relationships with police, particularly those in specialized drug units. Police who see that their "buy and bust" cases are not being prosecuted as distribution may be unhappy with prosecutors and this could create a negative working relationship which prosecutors are likely keen to avoid. Other significant predictors are whether an investigation/warrant initiated the contact or whether a search was performed; an investigation increases the odds of a distribution charge by about 4 times and cases involving a search have about an 87% lower odds[43] of being charged as distribution. However, the additional arrest variables do not help explain the initial charge type.

Substance Type and Race/Ethnicity

In Texas (as in most states), there is not a statutory difference for sentences based upon the specific type of cocaine (crack or powder). However, due to the historical relevance of crack cocaine in the War on Drugs (Tonry & Melewski, 2008; Provine, 2011) and its implications in mass incarceration (Alexander, 2010), the relationship between race and crack is important to examine. There are no significant main effects for substance type; crack and crack in addition to powder are not treated any differently than powder cocaine for the initial charge type decision. Looking to main effects, some racial effects emerge in Models 1 and 2, which do not include situational arrest variables. In those models, black offenders have 4-5 times higher odds of being charged with distribution than white offenders, though this relationship is marginally significant in Model 2. These associations are no longer statistically significant in subsequent models

[43] Because the odds ratio is .17, one can interpret this as the search reducing the odds by (1-.17), which is .83, or 83%.

with arrest covariates, indicating that black offenders may be more likely than white offenders to engage in behaviors that lead prosecutors to believe a drug-selling enterprise is involved.[44] The interaction term between black and crack is not statistically significant in any model specification, indicating that a distribution charge is not more likely for black defendants who possess crack cocaine. This finding is not particularly surprising, given some recent work (see Kautt & Spohn, 2002) finding that the relationship between race, drug type, and sentencing severity is not a simple one. While there is no significant impact of Hispanic ethnicity, significant effects emerge for citizenship; non-citizens[45] have approximately 8-9 times higher odds of being charged with distribution than U.S. citizens and unlike the prior effects for black defendants, this relationship does not change based on the inclusion of arrest covariates.[46]

Additional Extralegal and Legal Controls

For this outcome, few additional extralegal effects emerged. Private attorney representation (included here only as a proxy for SES) is not predictive of a distribution charge. Further, no statistically significant relationships are present for gender or age. The finding for age is not overly surprising, given that prior literature on age is mixed (see LaFrentz & Spohn, 2006; Bushway & Piehl, 2001; Bushway & Piehl, 2007).The more surprising lack of gender effects may have more to do with the distribution of the data because very few women (21 in the entire sample) are charged with WID. The

[44] In bivariate logit models, black defendants are more likely to have an arrest initiated due to a warrant/investigation and were also more likely to sell to the police.
[45] Fifty-five of 66 non-citizens are citizens of Mexico.
[46] Separate models were also run without the Hispanic covariate; non-citizen continued to be significant. Further, removing the non-citizen variable does increase the odds ratio for Hispanic, but it does not reach statistical significance. This indicates that it is not necessarily ethnicity that predicts charge type; there is something specifically about citizenship that is associated with distribution charges.

remaining variables in this model are legal and serve to control for the seriousness of the current arrest and the defendant's criminal history. Information was included for multiple charges, an active criminal justice status, prior drug conviction, and the criminal history index that takes into account both prior felonies and prior arrests. However, none of these legal covariates predict the initial charge type decision. This is an unexpected finding, given that one might assume that more serious offenders would be more likely to distribute rather than simply use controlled substances. This could potentially be due to the operationalization of criminal history; a criminal history variable documenting prior distribution charges specifically (as opposed to felonies and arrests generally) could potentially offer further insight into this relationship in the future.

Summary of Initial Charge Type Results

The initial charge type decision is affected by both substance quantity and evidence. Individuals caught with larger quantities of cocaine are more likely to be charged with distribution and the individual evidentiary measures of a cell phone or cash/currency being recovered are also related to a distribution charge. Furthermore, when evidence is considered in an index, the index is predictive of the initial charge type decision. In models that also include situational arrest measures, a few emerged as significant and positive: the defendant selling to the police and the arrest being prompted by an investigation or a warrant. At this early stage then, police efforts to seek warrants and engage in undercover operations seem to be resulting in many successful prosecutions for drug distribution. Surprisingly, a search being performed lowers the odds of a distribution charge. This could potentially be a reflection of the distribution of the sample; while searches occurred at higher *rates* in more serious offenses, they

occurred in higher *numbers* for less serious offenses, simply because many more people are charged with a state-jail felony as opposed to a 1st degree offense.

Few extralegal variables predict this decision, though African Americans have marginally higher odds of being charged in distribution cases only in models that do not include situational arrest variables and non-citizens have approximately 8 times higher odds of being charged with distribution than citizens. This is not an unsurprising finding given that Texas is a border state with Mexico and an important pathway for illegal drugs into the United States. Legal variables taking into account multiple charges and the defendant's criminal history, however, did not affect the odds of a distribution charge. This result is somewhat unexpected but could simply indicate that more serious offenders are not more likely to distribute than use, particularly given that it is possible to be charged of distribution very small amounts in this jurisdiction. Criminal history information on specific prior distribution convictions might also be helpful to analyze this in the future, particularly in light of the results from interviews indicating that criminal history is more complicated than the covariates typically captured in social science research.

Charge Reduction Results

The next outcome examined is charge reduction, which is operationalized as a binary indicator of whether the degree of the offense was reduced from arrest or indictment to conviction or whether any enhancement was removed from indictment to conviction.[47] As described in the interviews and confirmed by descriptive findings,

[47] Enhancements were occasionally listed on arrest reports (most frequently for drug-free zone), but they were more consistently included at indictment, so that is why the reduction is measured from indictment.

charge reductions are common in this jurisdiction (see Table 3). This section describes the relationship between evidence, arrest, and other legal and extralegal variables and the prosecutor's decision to grant a charge reduction. Four model specifications are again presented, though the included legal and extralegal variables differ here as compared to analysis of the initial charge (see Table 8). For example, controls for indictment charges (including the prior dependent variable of indicted for distribution) are included and full attorney type information is introduced. Attorney type information is included here because this is the first decision for which a defendant has an attorney assigned; the defendant is not involved in the indictment/initial charge type process.[48]

[48] Private attorney is included in the previous model for initial charge type only as a proxy for socioeconomic status.

Table 8: Logistic Regression Predicting Charge Reduction

VARIABLES	(1) Individual Evidence	(2) Evidence Index	(3) Indiv. Ev. + Arrest	(4) Ev. Index + Arrest
Substance Quantity				
Logged Substance Qty.	1.02	1.04	1.07	1.10
	(0.12)	(0.13)	(0.13)	(0.13)
Evidentiary Measures				
Cell Phone	0.54		0.53	
	(0.48)		(0.47)	
Gun	0.70		0.69	
	(0.35)		(0.36)	
Cash/Currency	1.19		1.28	
	(0.43)		(0.44)	
Drug Paraphernalia	0.92		0.81	
	(0.34)		(0.34)	
Evidence Index		0.84		0.82
		(0.12)		(0.14)
Situational Arrest Measures				
D Sold to Police			0.26***	0.28***
			(0.33)	(0.37)
Other People Arrested			1.29	1.32
			(0.24)	(0.23)
Citizen Call			1.20	1.20
			(0.30)	(0.31)
Investigation/Warrant			0.88	0.86
			(0.21)	(0.21)
Any Search Performed			0.49**	0.50**
			(0.33)	(0.35)
Any Consent to Search			1.33	1.30
			(0.35)	(0.36)
Plain View			0.96	0.94
			(0.19)	(0.21)
D Fled/Tried to Flee			1.30	1.30
			(0.25)	(0.26)
Drug Type				
Only Crack	0.86	0.89	0.82	0.84
	(0.25)	(0.25)	(0.29)	(0.27)
Crack + Powder	1.09	1.14	1.04	1.10
	(0.38)	(0.38)	(0.45)	(0.46)
Drug Type Missing	0.69	0.67	0.63	0.62
	(0.37)	(0.38)	(0.35)	(0.36)
Race/Ethnicity				
Black	1.51	1.66	1.58	1.55
	(0.54)	(0.53)	(0.52)	(0.51)
Black * crack	1.56	1.62	1.63	1.58
	(0.48)	(0.50)	(0.42)	(0.42)

Table 8, cont'd: Logistic Regression Predicting Charge Reduction

VARIABLES	(1) Individual Evidence	(2) Evidence Index	(3) Indiv. Ev. + Arrest	(4) Ev. Index + Arrest
Hispanic	1.70	1.65	2.07	1.99
	(0.53)	(0.54)	(0.53)	(0.53)
Noncitizen	1.13	1.16	0.98	1.02
	(0.35)	(0.34)	(0.38)	(0.37)
Extralegal Controls				
Male	0.82	0.77	0.83	0.80
	(0.37)	(0.34)	(0.39)	(0.36)
Age	0.85**	0.84**	0.86**	0.85**
	(0.07)	(0.07)	(0.08)	(0.08)
Age Squared	1.00**	1.00***	1.00**	1.00**
	(0.00)	(0.00)	(0.00)	(0.00)
Assigned Attorney	0.67	0.65	0.71	0.68
	(0.46)	(0.44)	(0.43)	(0.43)
Public Defender	0.60	0.61	0.59	0.59
	(0.43)	(0.44)	(0.43)	(0.44)
Atty. Info Missing	0.77	0.78	0.66	0.68
	(0.41)	(0.43)	(0.41)	(0.44)
Legal Controls				
Indicted 3rd degree	1.38	1.31	1.36	1.30
	(0.51)	(0.52)	(0.54)	(0.54)
Indicted 2nd degree	1.66	1.43	1.25	1.06
	(0.88)	(0.83)	(0.89)	(0.86)
Indicted 1st degree	5.56*	4.77*	3.97	3.28
	(0.88)	(0.81)	(0.92)	(0.84)
Indicted for Distribution	0.82	0.91	1.16	1.30
	(0.80)	(0.73)	(0.84)	(0.79)
Enhancements at Indict.	6.74***	6.49***	6.81***	6.55***
	(0.18)	(0.17)	(0.17)	(0.16)
Multiple Charges	0.68	0.67	0.70	0.68
	(0.28)	(0.30)	(0.28)	(0.31)
Trial	0.39	0.42	0.37	0.39
	(0.71)	(0.70)	(0.75)	(0.75)
Pretrial Detention	1.77	1.67	2.09	1.86
	(0.51)	(0.65)	(0.55)	(0.69)
Active CJ Status	0.82	0.85	0.79	0.82
	(0.43)	(0.42)	(0.40)	(0.40)
Prior Drug Conviction	1.34	1.32	1.33	1.31
	(0.27)	(0.27)	(0.28)	(0.28)
Criminal History Index	0.72***	0.72***	0.72***	0.72***
	(0.11)	(0.11)	(0.10)	(0.11)
Constant	0.16	0.17	0.08	0.07
	(1.88)	(1.83)	(1.97)	(1.92)
Observations	445	445	445	445
Pseudo R-Squared	0.31	0.30	0.32	0.32

Odds ratios presented
Robust standard errors (clustered around judge) in parentheses
*** p<0.01 ** p<0.05 * p<0.1

Substance Quantity

The first variable examined here is substance quantity. Across all four model specifications, substance quantity is not a significant predictor of charge reductions. The coefficient is fairly similar across models (1.02-1.10), but it does not approach significance in any instance. This indicates that quantity does not play an important role when prosecutors are deciding whether to grant a charge reduction. While this finding is unanticipated and contrary to theoretical expectations that quantity may represent dangerousness or community concerns, the remainder of the results for this outcome show that other concerns such as criminal history take precedent at this stage.

Evidentiary Measures and Evidence Index

Moving to the evidentiary measures, these variables are unrelated to charge reductions. None of the individual evidentiary measures of cell phone, gun, cash/currency, or drug paraphernalia significantly predict the odds of a defendant receiving a charge reduction. The evidence index is also not significant in either Model 3 or Model 4. One potential explanation explored here was that the inclusion of the prior dependent variable (distribution charge) could be accounting for evidence's impact. However, models were run without the distribution covariate and the pattern of non-significance continued. An alternate explanation is that these factors simply do not carry much weight for prosecutors at this stage. As discussed further in this section, other offender and case-level concerns within the primary concerns framework such as legal variables prove to be highly predictive of charge reductions; perhaps prosecutors are thinking more of the instant offense's seriousness and the defendant's criminal history when deciding whether to offer a charge reduction. Theoretically, this lends support to

the idea that the salience of evidence depends upon the specific stage being considered by the prosecutor, though it is inconsistent with one prosecutor stating that a case with a weaker evidentiary base may receive a better offer. It is possible, however, that "evidence" for that prosecutor may include some other considerations which are not included in the definition of physical evidence for this project. For example, results below indicate that a few situational arrest measures are implicated in the charge reduction decision.

Situational Arrest Variables

Unlike the evidentiary measures, a few situational arrest variables predict the likelihood of a charge reduction. It seems that there may be a few factors here that are particularly salient for prosecutors and carry more weight. First, looking to Models 3 and 4 in Table 8, a case in which a defendant sold to the police has approximately a 75% lower odds of receiving a charge reduction. This factor seems to be very incriminating for defendants. Theoretically, there are several reasons that this might be so important. For one, as a case-level concern for prosecutors under the primary concerns of prosecutors framework, police are ideal witnesses. They are compelled to be present at trial and are seen as trustworthy. Further, if police are performing an undercover buying investigation, this could indicate to prosecutors that the public interest, a factor predicted by theory to impact case processing, would best be served by punishing the offender more harshly. And as mentioned previously, prosecutors likely want to foster positive working relationships with the police who invest their time and resources into undercover investigations and obtaining warrants.

One other variable (any search being performed) significantly decreases the odds of a reduction. Cases in which a search was performed have about half the odds of a reduction as compared to cases in which a search was not performed. This could be because a search by police increases the legitimacy of the arrest, or that other evidence was collected which was not captured in this dataset. Supplemental analyses also indicate that the search covariate may also capture some impact of evidence at this stage.[49] When the evidentiary measures are removed from Models 3 and 4, the effect of any search is largely the same; the odds ratio changes from .49 to .44. When the search covariate is removed from Model 3, the individual evidence measures continue to be insignificant. However, when the search covariate is removed from Model 4, the evidence index becomes significant, with an odds ratio of .77, indicating that higher scores on the evidence index are associated with lower odds of charge reduction. The divergent finding between the individual evidence measures and the evidence index is curious and indicates that there may be additive effects of evidence at the charge reduction phase.

Substance Type and Race/Ethnicity

There are again no differences found for possession of crack or powder cocaine. While the odds ratio for only crack does not reach statistical significance, it is below one in every instance, so if anything, crack offenders would be more likely to be reduced. Moving to race and ethnicity, none of the main effects are significant, though they are all in a positive direction (see Table 8). The interaction testing any different effects for

[49] Any search being performed is significantly and positively correlated both with the evidence index and with each individual evidence measure. The highest correlation is with the evidence index at $r=.24$, $p<.001$.

black offenders with crack cocaine is also not statistically significant. Overall, the type of cocaine, race/ethnicity, and citizenship do not significantly impact the odds of receiving a charge reduction. Though one would not have predicted interviews to yield racial animus by practitioners, the results do line up with qualitative findings neither race/ethnicity nor cocaine type were mentioned as determinants of punishment outcomes.

Additional Extralegal and Legal Controls

Similar to the results for substance type and race/ethnicity, few other extralegal controls affect the likelihood of a charge reduction. Males are granted charge reductions at no different rate than women and age has no relationship, which is slightly surprising given that much prior sentencing research finds males to be sentenced more harshly than women (Daly & Bordt, 1995; Bontrager et al, 2013). The odds ratio indicates that men are less likely to receive a charge reduction but it does not reach statistical significance; this relationship could be due to the fact that men are seen as more dangerous and the lack of significance could be due to the small number of females in the sample (only about 40 total).

There are significant effects for age across all specifications, with the main effect being negative (OR=.85) and the squared term as positive. This indicates that age lowers one's odds of a charge reduction, but that this effect is lessened as age continues to increase. While age is highly correlated with criminal history, supplemental analyses without age covariates and without the criminal history index resulted in largely similar covariates, so it seems that they likely have independent effects here.[50] If a 60-year old

[50] The correlation between age and criminal history is something that must always be considered in sentencing research. In this sample, age is highly correlated ($r=.45$, $p<.001$) with the criminal history index score. When the index is removed from the model, however, the odds ratio for age stays relatively the

continues to offend at the felony level, a prosecutor might think that they are beyond redemption and be less likely to offer a charge reduction. This is an offender-level factor within the primary concerns of prosecutors framework which seems to have a non-linear relationship with the outcomes examined here.

There are also several legal controls that are related to the charge reduction decision, though the relationship between offense severity and charge reductions is more complicated than it may seem. The reference category for this analysis is being indicted on a state jail felony (it is the least severe offense degree in the sample[51]) and there are no significant differences for state jail felonies as compared to either second degree or first degree offenses. Interestingly, in Models 1 and 2 that do not include the arrest covariates, first degree offenses have approximately 4-5 times higher odds of being reduced as compared to state jail felonies. In Models 3 and 4, however, the odds ratio is both lessened and no longer statistically significant. The relationship between offense seriousness and charge reductions thus seems to be less about the degree of the offense and more about the circumstances of the offense. From a theoretical perspective, this indicates that prosecutors are looking to specific case-level factors within their overall primary concerns beyond offense severity when assessing whether to offer a reduction in charge.

Felony enhancements (drug free zone, weapons, and prior felony convictions) are also highly predictive of a charge reduction. Depending on the model specification, each

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same at .84. When the age and age-squared variables are removed, the index's magnitude is actually lessened, with an odds ratio of .75 compared to .72 when age variables are included.

[51] It *is* possible for a state jail felony to be reduced, however. Of the almost 250 cases indicted as state jail felonies, over 100 included an enhancement of some kind (drug-free zone, weapon, or prior felony conviction).

additional enhancement increases the odds of a charge reduction by about 6-7 times. The finding on enhancements is likely because there is more room to bargain and more to barter over (see Wright & Engen, 2006).[52] Case resolution via trial as opposed to plea is not associated with any different odds of receiving a charge reduction. This is surprising given prior research on organizational efficiency and "rewards" given to defendants who "go with the flow" and plead guilty; however, it could be that in this jurisdiction, judge and juries are sympathetic to defendants and also favor charge reductions.

One criminal history covariate – the criminal history index – is significantly associated with lower odds of a reduction. This indicates that prosecutors may be less willing to reduce charges for offenders who have more arrests and convictions; they may see experienced offenders as less deserving of a "break" or a higher risk of recidivism. This lines up with qualitative results that criminal history plays a significant role in case processing and supports the primary concerns of prosecutor framework prediction that some offender-level factors such as criminal history will impact decisionmaking. The remainder of the criminal history covariates (pretrial detention, active criminal justice status, and prior drug conviction) are not statistically significant in any model specification. Pretrial detention may not be significant because so few defendants were *not* detained throughout the process; while it is correlated with the criminal history index

[52] Because having an enhancement removed is one way a defendant can have their charge severity lowered, it is not surprising that the enhancement variable is strongly related to the charge reduction outcome. Additional supplemental models were also examined without the enhancement covariate, and the results were similar with the following exceptions: first, one evidentiary measure (gun) becomes statistically significant, and second, other people being arrested and an investigation/warrant occurring also become significant in the alternative model specification.

at r=.45 (p<.001), models were run without the index and active criminal justice status continued to be non-significant.

Summary of Charge Reduction Results

A different pattern of results is present for charge reductions than for the initial charge type. First, substance quantity is not related to the likelihood of a charge reduction and neither the evidence index nor the individual evidentiary variables reached significance. This could be because the evidence simply is not an important consideration for prosecutors at this stage. As predicted, evidence's salience depends upon the stage being considered. Other considerations within the primary concerns framework such as the defendant's criminal history may be more relevant for charge reductions. Some situational arrest variables were predictive, however. The defendant selling to the police continues to carry weight: it predicts about a 75% lower odds of a charge reduction. In addition to fostering a positive relationship with police who engage in undercover operations, prosecutors may be assessing the likelihood of success at trial; selling to the police is very strong evidence of distribution and police are reliable witnesses. A search being performed at arrest also decreases the odds of a charge reduction; this could also be indicative of assessment of case strength. There may be other evidentiary measures not captured in this dataset or the fact of a search itself could lend legitimacy to the arrest and prosecution process.

There were no differences for drug type or race/ethnicity and citizenship. Again, black offenders with crack cocaine are not disadvantaged in these outcomes. Male offenders do not have any different odds of being reduced as compared to female offenders – this result is surprising and may be due to the low numbers of females in this

dataset. Significant and consistent effects did emerge for age, however. Older offenders are less likely to be granted a charge reduction, though this impact is lessened as age increases. While age is highly correlated with the criminal history index, both variables continue to be significant when models are run without the other. This indicates that each has a separate independent effect on the odds of a charge reduction. So, then, several offender-level characteristics within the primary concerns of prosecutors framework do impact prosecutor decisionmaking.

As far as legal controls, more serious offenses are predicted to be reduced at higher odds only until situational arrest covariates were included. In model specifications with arrest circumstance covariates, there are no differences across offense degree in predicting charge reductions, indicating that prosecutors may be assessing actual offense characteristics as opposed to simply offense seriousness. Cases with more enhancements are more likely to be reduced; this result makes sense given that enhanced cases present more opportunity for movement and bargaining. Thus, both offender-level and case-level primary concerns influence the charge reduction decision. Higher scores on the criminal history index also predict a lower odds of receiving a charge reduction; individuals with more significant criminal history may be seen as more blameworthy and dangerous to the community and thus less deserving of a charge reduction.

Logged Sentence Length Results

Lastly, this section shows the results for the dependent variable of sentence length (see Table 9). As discussed in the previous chapter, this outcome is highly skewed and is therefore logged. As a result of the log transformation, coefficients are interpreted as a change in X associated with a percent change in Y. This analysis is again performed in four different model specifications: individual evidence, evidence index, individual evidence with situational covariates, and evidence index with situational covariates. This analysis will allow for further exploration of whether the role of evidence varies based upon the stage being considered, as predicted under the primary concerns of prosecutors framework. Previous results from this project indicate that evidence is of heightened importance for the initial charging decision as compared to the charge reduction decision.

Further, to address the research question regarding the consistency of substance quantity's impact across individual offense types, analysis was performed on the full model as well as 5 disaggregated sub-samples (all possession, all with intent to distribute (WID), all less than 1 gram, all 1-4 grams, all 4-200 grams) (see Table 10). This analysis is performed on disaggregated samples only for this dependent variable because it is the only one with which a direct relationship between quantity and the outcome is assumed. Texas's drug statutes are delineated solely based upon substance quantity and both the quantity and punishment ranges are quite large. Furthermore, interviews revealed divergent views on the importance of substance quantity, with most reporting that it was an important factor and one prosecutor reporting that it would only impact their decisions

in the 4-200 gram category. Results on disaggregated samples are discussed at the end of this section.

Table 9: OLS Regression Predicting Logged Sentence Length

VARIABLES	(1) Individual Evidence	(2) Evidence Index	(3) Indiv. Ev. + Arrest	(4) Ev. Index + Arrest
Substance Quantity				
Logged Substance Qty.	0.10***	0.10***	0.10***	0.10***
	(0.02)	(0.02)	(0.02)	(0.02)
Evidentiary Measures				
Cell Phone	-0.09		-0.10	
	(0.06)		(0.06)	
Gun	0.07		0.06	
	(0.07)		(0.06)	
Cash/Currency	0.06		0.06	
	(0.05)		(0.05)	
Drug Paraphernalia	-0.11**		-0.12**	
	(0.04)		(0.05)	
Evidence Index		-0.02		-0.02
		(0.03)		(0.03)
Situational Arrest Measures				
D Sold to Police			0.01	0.05
			(0.08)	(0.08)
Other People Arrested			0.05	0.04
			(0.04)	(0.04)
Citizen Call			0.12**	0.12**
			(0.05)	(0.05)
Investigation/Warrant			0.03	0.02
			(0.08)	(0.08)
Any Search Performed			0.09**	0.09*
			(0.04)	(0.04)
Any Consent to Search			0.00	-0.01
			(0.06)	(0.07)
Plain View			-0.01	-0.02
			(0.04)	(0.04)
D Fled/Tried to Flee			-0.01	-0.01
			(0.05)	(0.05)
Drug Type				
Only Crack	0.08	0.07	0.10	0.08
	(0.07)	(0.07)	(0.07)	(0.07)
Crack + Powder	-0.03	-0.04	-0.02	-0.03
	(0.08)	(0.08)	(0.08)	(0.08)
Drug Type Missing	0.02	0.01	0.01	0.01
	(0.17)	(0.17)	(0.17)	(0.17)
Race/Ethnicity				
Black	0.04	0.06	0.04	0.05
	(0.09)	(0.09)	(0.08)	(0.08)
Black*Crack	-0.08	-0.08	-0.09	-0.09
	(0.09)	(0.09)	(0.09)	(0.09)
Hispanic	0.09	0.09	0.10	0.11
	(0.09)	(0.09)	(0.09)	(0.09)

Table 9, cont'd: OLS Regression Predicting Sentence Length

VARIABLES	(1) Individual Evidence	(2) Evidence Index	(3) Indiv. Ev. + Arrest	(4) Ev. Index + Arrest
Noncitizen	-0.10	-0.10	-0.09	-0.09
	(0.09)	(0.08)	(0.08)	(0.08)
Extralegal Controls				
Male	0.12*	0.14*	0.12*	0.14*
	(0.06)	(0.07)	(0.06)	(0.07)
Age	0.03***	0.03***	0.03***	0.03***
	(0.01)	(0.01)	(0.01)	(0.01)
Age Squared	-0.00***	-0.00***	-0.00***	-0.00***
	(0.00)	(0.00)	(0.00)	(0.00)
Assigned Attorney	-0.03	-0.04	-0.03	-0.03
	(0.06)	(0.06)	(0.06)	(0.06)
Public Defender	0.01	0.00	0.02	0.01
	(0.07)	(0.07)	(0.07)	(0.07)
Atty. Info Missing	0.09	0.11*	0.09	0.11*
	(0.06)	(0.06)	(0.06)	(0.06)
Legal Controls				
Convicted 3rd degree	0.99***	0.98***	0.99***	0.98***
	(0.11)	(0.11)	(0.10)	(0.10)
Convicted 2nd degree	1.09***	1.09***	1.08***	1.07***
	(0.06)	(0.06)	(0.07)	(0.07)
Convicted 1st degree	1.51***	1.47***	1.48***	1.45***
	(0.11)	(0.11)	(0.10)	(0.10)
Convicted for Distribution	0.25***	0.26***	0.28***	0.28***
	(0.09)	(0.09)	(0.07)	(0.07)
Total Enhan. at Conv.	0.51***	0.52***	0.51***	0.52***
	(0.07)	(0.07)	(0.07)	(0.07)
Multiple Charges	0.06	0.07	0.05	0.06
	(0.05)	(0.05)	(0.05)	(0.05)
Trial	0.40***	0.38***	0.38***	0.36***
	(0.09)	(0.10)	(0.08)	(0.09)
Detained at Conviction	0.25***	0.21**	0.25***	0.21**
	(0.09)	(0.09)	(0.08)	(0.08)
Active CJ Status	0.13**	0.13**	0.12**	0.13**
	(0.06)	(0.06)	(0.06)	(0.06)
Prior Drug Conviction	0.06	0.05	0.06	0.06
	(0.04)	(0.04)	(0.04)	(0.04)
Criminal History Index	0.03*	0.03*	0.03*	0.03
	(0.01)	(0.01)	(0.02)	(0.02)
Charge Reduction	0.06*	0.07*	0.06*	0.07*
	(0.03)	(0.04)	(0.03)	(0.04)
Constant	1.19***	1.23***	0.99***	1.04***
	(0.28)	(0.27)	(0.27)	(0.27)
Observations	445	445	445	445
R-squared	0.84	0.83	0.84	0.84

Robust standard errors (clustered around judge) in parentheses
*** p<0.01 ** p<0.05 * p<0.1

Substance Quantity

In the aggregate, substance quantity does predict longer sentences. In each model specification, the coefficient is largely the same. Each additional percent increase of cocaine increases sentence months by 10%. This is not a surprising finding given that higher amounts of cocaine place one into higher offense degrees. Consistent with theoretical expectations, larger quantities seem to represent a case-level factor that warrants harsher punishments. Further discussion of the relationship between quantity and punishment in individual offense categories is discussed below.

Evidentiary Measures and Evidence Index

In line with previous outcomes, the next step is to examine the results for evidentiary measures. Under the primary concerns framework, it was predicted that evidence may have a lessened impact by the time a case is at its final stages. Looking to Table 9, it seems that evidence overall has little direct impact on sentence length. This finding is consistent across all 4 model specifications; drug paraphernalia possession is associated with a 12% lower sentence and is the only significant individual evidentiary covariate. This could be due to the operationalization of paraphernalia as any paraphernalia; it is possible that prosecutors view paraphernalia as more likely to be present only for personal use, or it could be indicative of addiction and deserving of a lower punishment. The evidence index is also not predictive of sentence length. While inconsistent with some prior work on evidence and sentencing (see Nir & Griffiths, 2017), it is likely that the impact of evidence is truly at the earlier stages of case

processing and that by final plea bargaining and sentencing, its impact on the case has already been captured by prior outcomes and decision points.

Situational Arrest Variables

Overall, situational arrest variables are also not highly predictive of final sentence length, though two of these measures do predict longer sentences: citizen call and whether a search was performed. These implicate different concerns under the primary concerns of prosecutors framework. First, cases initiated due to a citizen call could signal important public interest concerns for prosecutors; if a citizen is so concerned with drug selling on their street that they call police, prosecutors may also be more concerned with that defendant. The finding on searches could be similar to that for charge reductions; a search by police could increase legitimacy and could also have resulted in collection of evidence beyond what is captured in this dataset.[53] This would be consistent with the theoretical expectation that cases with stronger evidence are likely to receive harsher punishments due to prosecutorial assessment of case "convictability." These findings, coupled with the findings from the charge reduction models that the evidence index is significant only when the search variable is not included,[54] indicate that the relationship between searches and evidence is complex and could require further investigation.

Substance Type and Race/Ethnicity

Echoing the majority of prior findings on this measure, there are no main effects for different types of cocaine. There are also no significant main effects for any of the

[53] Unlike the charge reduction results, removing the search covariate does not impact significance of either the evidence index or individual evidence measures. This finding is again curious and could indicate that a search's effects on sentence length may be conditional on it resulting in the collection of evidence.
[54] Similar analyses were run with and without evidence and the search variable for the first dependent variable of initial charge type; results were unchanged across specifications.

race and ethnicity covariates and the black*crack interaction continues to be non-significant in all model specifications. After analyzing all 3 outcomes, this interaction did not reach statistical significance in any instance. This indicates that, at least for this jurisdiction, black offenders with crack cocaine are not being punished more harshly than other race-substance type combinations. Race and cocaine type do not appear to be case-level concerns within the primary concerns framework that carry weight for prosecutors in this jurisdiction. This is not a surprising finding, given that the statute itself does not mete out punishments based upon substance type and some recent work has found that, even in the federal system (which does delineate between crack and powder), the relationship between crack and race is complex (Kautt & Spohn, 2002).

Additional Extralegal and Legal Controls

Moving to the remainder of the extralegal controls, some findings consistent with prior research emerge. Males are overall sentenced more harshly than women, though this relationship is marginally significant; their sentences are predicted to be approximately 12-13% longer. This is in line with prior literature finding that men are punished more harshly than women (see Daly & Bordt, 1995; Bontrager et al, 2013. Males may be seen as more dangerous and a higher threat to the public interest and community. Age is significant and positive and across all model specifications and the squared term is negative and significant, indicating that older offenders are sentenced more harshly than younger offenders, but that this impact is lessened with increasing age. The attorney type missing reached statistical significance in only one specification but generally, there were not significant differences across attorney type.

A substantial number of legal controls are predictive of final sentence length. Not surprisingly, with conviction of a state jail felony being the least serious offense as the reference category, being convicted of a third degree, second degree, or first degree offense results in longer sentences. Furthermore, distribution offenses are punished more harshly than possession offenses, which is likely an indication of prosecutor assessment of the primary concerns of offender dangerousness and public interest. An individual involved in a distribution enterprise is likely viewed as more of a threat to community safety than an individual who is simply using cocaine. Sentencing enhancements are highly predictive of final sentence length; each increases sentence length by approximately 50 percent. This finding is consistent with the statutory scheme, whereby these enhancements are intended to increase punishments significantly. As is found in most sentencing studies (King, 2005; Ulmer & Bradley, 2006), trial dispositions resulted in longer sentences than plea dispositions. Defendants who plead guilty may be "rewarded" with less severe punishments, or defendants who choose to go to trial may be penalized for doing so.

The offender-level concerns of pretrial detention and active criminal justice status are predictive of longer sentences and receiving a charge reduction is also marginally significant and associated with final a sentence length that is approximately 6-7% longer. The finding on charge reductions is inconsistent with some prior literature (see Shermer & Johnson, 2010), but it may be a result of prosecutors punishing offenders based upon what they saw as the original charge. A corollary is real offense sentencing in the federal guidelines whereby offenders are sentenced based upon their "relevant conduct" around the time of the offense and not only the convicted offense (see United States Sentencing

Commission, 2015b). The criminal history index is also marginally significant in Models 1-3 and having any prior drug conviction is not predictive of final sentence length. As has been mentioned previously, the prior drug conviction variable may be coded too broadly to capture criminal history seriousness. Overall, however, legal variables are very important for determining final sentence length.

Disaggregated Substance Quantity

One additional research question for this dependent variable centers on the role of the case-level factor of substance quantity in sentence length for each individual offense type. Offenses are delineated only by the one case-level factor of substance quantity and the ranges vary significantly: less than one gram, 1-4, and 4-200 grams. The accompanying punishment ranges are also quite broad; possession with intent to distribute of 4-200 grams is a first-degree offense that carries a potential incarceration term of 5-99 years, or life (see Table 2). One would assume that an offender with 4 grams would be closer to 5 years than an offender with 200 grams, and most interview participants reported that quantity within individual categories would be related to final punishment. As this is the only factor in the statute that guides prosecutors and judges in assessing plea bargain offers and punishment, it is interesting to examine whether this relationship in fact exists. To examine this issue, 5 different model specifications are estimated for 6 different samples (full sample, all possession, all with intent to distribute (WID), all less than 1 gram, all 1-4 grams, and all 4-200 grams).

Table 10: Coefficient on Substance Quantity for Disaggregated Models

VARIABLES	(1) Bivariate	(2) Indiv. Evidence	(3) Evidence Index	(4) Indiv. Ev + Arrest	(5) Ev. Index + Arrest
Logged Substance Quantity					
Aggregated Models					
Full Sample (N=445)	0.37***	0.10***	0.10***	0.10***	0.10***
	(0.02)	(0.02)	(0.02)	(0.02)	(0.02)
All. Poss. (N=270)	0.27***	0.06**	0.07**	0.07**	0.08**
	(0.02)	(0.03)	(0.03)	(0.03)	(0.03)
All WID (N=175)	0.29***	0.12***	0.11***	0.10***	0.11***
	(0.04)	(0.03)	(0.02)	(0.03)	(0.03)
Disaggregated Models					
All Less than 1 g (N=251)	0.12**	0.04	0.05	0.05	0.05
	(0.05)	(0.04)	(0.03)	(0.03)	(0.03)
All 1-4g (N=91)	0.07	-0.01	0.03	0.05	0.08
	(0.10)	(0.13)	(0.09)	(0.13)	(0.10)
All 4-200g (N=99)	-0.01	0.06	0.06*	0.05	0.04
	(0.03)	(0.03)	(0.03)	(0.04)	(0.03)

Robust standard errors (clustered around judge) in parentheses
*** p<0.01 ** p<0.05 * p<0.1

Generally, results indicate that substance quantity is a strong and significant predictor of substance quantity in the aggregate, but it is not consistently predictive in individual offense categories. Table 10 displays only the coefficients on substance quantity across the different model specifications and results of the full models can be found in Appendix C. Consistent with theoretical expectations under the primary concerns framework that quantity will be related to sentence length in the aggregate, the coefficient is significant and positive for all models in the three aggregated samples (full sample, all possession, and all WID cases). While statistical significance remains throughout, the magnitude of the coefficient decreases by a large margin when additional covariates are included in the models. In the bivariate specification (Model 1), for the full sample, each additional percent increase of grams of cocaine is associated with a 37% increase in sentence length. When additional covariates are added, the coefficient is

reduced in magnitude but it continues to be statistically significant. Further, Models 2-5 show that the coefficient is consistent for the full sample in models that include evidence and situational arrest variables, regardless of exact specification: each additional percent increase in grams of cocaine predicts a sentence that is approximately 10-11% longer. This pattern continues for both the samples of all possession and all with intent to distribute cases.

However, this consistency does not continue when the offense types are broken down further into individual substance quantity/offense type categories, a finding which is inconsistent with most practitioners' reports that quantity would be related to sentences for specific offenses. Looking to the less than 1 gram offenses, the coefficient for substance quantity is significant and positive only in the bivariate specification. In that specification (Model 1), each additional increase in percent of grams of cocaine increases sentence length by 12%. The addition of the evidence and situational arrest covariates again reduces the magnitude of substance quantity; in the remainder of the specifications, the coefficient is closer to .04-.05 and is not statistically significant. The next category analyzed is 1-4 grams and in that sample, none of the coefficients are significantly predictive of final sentence length. This coefficient also changes magnitude much more than in the prior specifications; it ranges from .03 in Model 2 to .13 in Model 5.

Finally moving to the category with the highest quantity range (4-200 grams) and also highest punishment range (for distribution offenses – 5-99 years, or life), substance quantity is marginally significant in only one specification and is insignificant in all others, including the bivariate. In the bivariate specification, the coefficient is actually negative at -.01 (though it is not statistically significant). In the remainder of the models,

the coefficient is fairly consistent at .04 to .06; a percent increase in grams of cocaine leads to a 5-6% increase in sentence length. However, it is not significant in any specification except for Model 3, which included the evidentiary measures as an index. One potential explanation for the finding that quantity is not predictive in disaggregated categories could be that other factors take precedent. One in particular could be the case-level factor of the offender's role in the offense. For example, there are more distribution than possession offenses in the 4-200 gram category and whether the offender is a middleman or street-level dealer could be more important than quantity.

While there are smaller sample sizes for the disaggregated categories, it is unlikely that this is the only reason for the lack of significance. First, sample sizes are not unreasonably small. For example, the less than one gram category sample includes 251 cases and with that sample size, the coefficient reaches statistical significance in only one of five specifications. Moreover, even in a bivariate regression, substance quantity is not significantly predictive of sentence length for the 1-4 gram offenses and 4-200 gram offenses.

Summary of Sentence Length Results

In sum, results for sentence length indicate that substance quantity is predictive of sentence length in the full sample and that evidentiary considerations overall do not play a significant role at this stage. The only significant evidentiary covariate is drug paraphernalia, which actually predicts a lower sentence. Consistent with theoretical expectations under the primary concerns framework, it is likely that by this stage, the effects of evidentiary variables have already been captured. The majority of situational arrest variables are also not predictive of final sentence length, with two exceptions:

citizen call initiation and a search occurring at arrest, which increase the sentence length by 9-12%. The citizen call finding could be indicative of prosecutor assessment of the case-level concern of public interest; a concerned citizen calling the police for drug dealing on their street may increase a case's prominence. The relationship between searches and sentence length could be due to the fact that cases with searches are more likely to result in physical evidentiary measures and these would contribute to overall case strength.

Extralegal controls such as drug type and race/ethnicity/citizenship are not predictive of sentence length. Overall, race/ethnicity and drug type offender-level concerns under the primary concerns of prosecutors framework are not overly predictive of final sentences. This is an interesting finding and indicates that powder and cocaine are not treated any differently; furthermore, black offenders with crack cocaine are also not singled out for harsher punishments. However, some demographic offender-level concerns were predictive of sentence length. Males are sentenced to longer terms than women (though this relationship is marginally significant) and age is positive with a negative squared term, indicating that older offenders are sentenced more harshly but that this effect becomes less pronounced the older an offender is. Attorney type missing was marginally significant and positive in two specifications, but generally, there were few differences in sentence length across attorney type.

The main determinants of sentence length thus seem to be the legal controls. More serious offenses are punished more harshly and enhancements are highly predictive of longer sentence lengths. This is not surprising given that these are two statutory factors that dictate punishment; offense degree provides sentencing ranges and

enhancements are also meant to increase punishments. Trials are associated with longer sentences as compared to plea cases and several criminal history variables are also predictive of a longer incarceration term. Several offender-level characteristics such as pretrial detention, active criminal justice status, and the criminal history index are all predictive of longer sentences, though any prior drug conviction is not related to sentence length. So, overall, more serious offenders are punished more harshly than those with less criminal history. This is consistent with the interview reports that criminal history is a chief consideration for negotiation, though the prior drug conviction variable might be too broad to capture seriousness and the finding on criminal history index could be because statutory enhancements are related to the index and at this stage, those may take precedent over general criminal history. Lastly, contrary to some prior literature (see Shermer & Johnson, 2010), individuals who were given a charge reduction are sentenced to terms approximately 6-7% longer than those who did not receive a charge reduction. While this finding is marginally significant, it is consistent across all model specifications. This finding is somewhat surprising and could reflect a different type of real offense sentencing where prosecutors are looking beyond the offense at hand and are instead examining the defendant's actions as a whole.

Further analyses examining the impact of substance quantity in specific offense types indicate that its relationship with sentence length is complicated. In the aggregate, the case-level factor of substance quantity is highly predictive of sentence length. This relationship is positive and statistically significant for the full sample, the all possession sample, and the all with intent to distribute sample. However, when disaggregated into individual offense categories (less than 1 gram, 1-4 grams, 4-200 grams), substance

quantity's association with final sentence length wanes. The coefficients become much smaller in magnitude and statistical significance also decreases or disappears. It appears that the main role of substance quantity in these cases is not to determine sentence severity but instead to place offenders into their statutory categories. Once there, substance quantity is not overly predictive of incarceration terms.

Chapter 10: Discussion and Conclusion

For the last several decades, the proportion of cases disposed by a guilty plea has continued to rise. While some scholars were not initially in favor of guilty pleas and believed that the U.S. Constitution could only be supported with a criminal trial (see Alschuler, 1968; Friedman, 1979), guilty plea rates for convicted cases now hover around 95% (Pastore & Maguire, 2003). As pleas have continued to be the modal method of case disposition, sentencing researchers have been working to better understand the process of pleading guilty, but there is still much work to be done. First, much research has been focused on guideline jurisdictions (see, e.g. Griffin & Wooldredge, 2006; Koons-Witt, 2002; Ulmer & Bradley, 2006; Mustard, 2001) and far more information is necessary on plea bargaining and sentencing in the half of states governed by indeterminate sentencing structures (Frase, 1999; Kauder & Ostrom, 2008). Second, while it is important to understand final sentencing outcomes such as sentence length, both interim outcomes and the process by which cases are disposed of deserve more attention (Ulmer, 2012). Third, prosecutorial discretion needs to be understood in present-day courtrooms where plea bargains dominate. Judicial discretion is certainly important, but the power wielded by prosecutors is at least as great as judges (Davis, 2007; Jacoby & Ratledge, 2016). Lastly, another area for development is comprehension of specific factors that motivate prosecutors' decisions. Specifically, scholars have pointed to the importance of evidence (Spohn, 2000; Jacoby & Ratledge, 2016) but few datasets include such information. This dissertation aimed to improve upon these areas.

The current project focuses on felony cocaine offenses post-Drug War in a state with undecided policies regarding drugs. All over the United States, crack cocaine was

targeted as a "demon drug" during the War on Drugs in the 1980s and 1990s (Musto, 1999; Reinarman & Levine, 1997). While the overt "war" is over and there has been some work indicating that the War on Drugs contributed to mass incarceration (Musto, 1999; Tonry & Melewski, 2008; Alexander 2010; Provine, 2011), less research has focused on the aftermath of its demise with regards to criminal sentencing. In Texas specifically, the current state of drug policy is complex.

There are indications that Texas seeks to reduce correctional populations and increase funding for rehabilitation programs and also that Texas aims to maintain its "tough on crime" reputation. The state initiated a Justice Reinvestment Initiative in 2007 (Council of State Governments, 2009) but its penalty ranges for cocaine have not been altered since their implementation in the early 1990s at the height of the drug war (Texas Health and Safety Code, 481.001 et seq.). Drug crimes in Texas are defined only by the quantity of substance, and some of these offenses encompass a range of 200 grams. There are no sentencing guidelines in Texas and the penalty for possession with intent to distribute of 4-200 grams is vast: 5-99 years, or life. All of these factors, coupled with Texas's unwavering adherence to wide discretion in sentencing, create an environment rife with opportunities for the exercise of discretion by courtroom actors.

This project rests at the intersection of these above issues. It is an in-depth and multi-method study of evidence, prosecutorial discretion, and sentencing for one drug in a jurisdiction that operates under an indeterminate sentencing structure. This chapter will continue with a discussion of research findings for each of the three main research aims and concludes with a discussion of limitations, future research, and policy implications.

Discussion of Findings

This section will discuss the main findings from both the qualitative and quantitative results. Contributions from each of the research aims will be presented and relevant comparisons between qualitative and quantitative results will also be mentioned.

Research Aim 1: Qualitative Findings

Because qualitative research is rarely incorporated into empirical criminal justice studies, the first aim of this project was to "describe the plea bargaining process through qualitative semi-structured interviews and obtain additional information on practitioner viewpoints regarding evidence, substance quantity, defendants, and other aspects of case processing." Specific research questions centered on a description of typical plea negotiation, generation of sentence recommendations by prosecutors, and practitioner viewpoints on the "typical" cocaine defendant.

In this county, the courtroom workgroup handling felony cases is comprised of a district court judge, several prosecutors who are assigned to that particular courtroom, and a defense attorney. While the judge and prosecutor are fairly stable members, the defense attorney is more variable (though public defenders are more stable than other attorney types). Interviews indicated that plea bargaining in this jurisdiction is informal and generally includes 2-3 different rounds of negotiation and haggling before a final agreement. Several actors went so far as to describe the process as being akin to buying a car because no prosecutor expects for their initial offer to be accepted and no defense attorney plans to take the first offer. While judges have the power to "bust" a negotiated plea agreement, all actors noted that this is a very rare occurrence. In line with theoretical expectations under the primary concerns of prosecutors framework, both case-

level and offender-level concerns were highly relevant in the plea bargain process. The facts of the case and criminal history were mentioned by most parties as being the most important for determining an initial recommendation. "Facts" encompassed evidence such as witnesses, physical evidence, and circumstances of the arrest. Participants indicated that drug cases specifically can be very difficult to prosecute in part because it is difficult to draw the line between possession and distribution; evidentiary factors such as ledgers, scales, and other paraphernalia can help with this decision. Particularly "bad facts" such as spitting on cops can earn a defendant a harsher offer, while a strong desire for treatment could increase the likelihood of a probation term.

Furthermore, there were indications that a case with weaker evidentiary strength may garner a less severe offer in order to increase the odds of a successful plea bargain. This is consistent with the primary concerns framework prediction that prosecutors frequently assess case "convictability" when making decisions. The odds of winning at trial seemed to be at the forefront of prosecutor decision making when they are making sentence offers; what a jury would "do" with a case was mentioned on multiple occasions. Also consistent with expectations that offender-level factors would be important, criminal history was cited as a particularly salient factor and operates in a more nuanced fashion than the standard operationalization currently used by social scientists. Numerous considerations beyond "prior arrests" or "prior felonies" were described, including whether the defendant had previously failed probation, had a string of misdemeanors, or was particularly violent. It seems that criminal history may be important under the primary concerns of prosecutors framework both at the offender level and for public interest considerations; an offender who is violent seemed to be viewed as

more blameworthy and also a greater danger to society. As expected, no one said that offenders of a certain gender or racial/ethnic background should be punished any differently.

As predicted, relationships between specific individuals and priorities of elected district attorneys were cited as considerations during the process. This is consistent with predictions of the primary concerns of prosecutor framework that public interest will shape prosecutor decisions. These findings also line up with prior research on courtroom communities and the view that plea bargaining is impacted by the broader context of the courtroom (see Eisenstein & Jacob, 1977; Nardulli et al, 1988).One defense attorney mentioned that a prosecutor may offer a better deal because they are acquainted well the defense lawyer, not necessarily because that case warranted it. Political pressures in the form of elected district attorney priorities and public interests such as treatment of drug offenders, community safety, and avoidance of collateral consequences were mentioned as considerations for appropriate plea recommendations. As discussed above, current drug policy in Texas is complicated and this could result in significant impacts of localized institutional or individual policies. Participants indicated that judges vary in their approach to treatment; some are more sympathetic to drug users while others take a stronger enforcement approach. The elected district attorney also makes a number of choices that can impact how a drug case is handled, including whether probation can be offered to someone with criminal history, whether it should be transferred to a specialized division, and how far "down" a case can be pled from its initial severity. Furthermore, some prosecutors in this sample reported that they preferred probation or rehabilitation for first-time drug offenders and defense attorneys indicated that not all prosecutors view

that as the appropriate sentence. Findings like these emphasize the prominence of context in studying criminal sentencing.

Contrary to theoretical predictions under the primary concerns framework, resource-related concerns such as jail or treatment capacity were not volunteered by any participant as a consideration for evaluating a sentence recommendation. This could be due to social desirability bias; practitioners may not view such practical constraints as being central to a sentence guided by the principles of "justice." Moreover, court actors could view these issues as being outside the scope of their positions. In their study of prosecutorial discretion and case rejection, Spohn and colleagues (2001) argued that the most important practical concern for prosecutors is not prison beds, but rather whether they can convict a case. Prosecutors in particular may not even be aware of prison capacity or treatment availability because they do not sentence individuals to specific facilities. In support of these ideas, one prosecutor in this sample stated that it was "somebody else's problem" whether a prison had enough beds or a treatment facility had enough capacity, indicating that they are more concerned with the terms of the sentence than where the defendant serves it.

When directly asked about the importance of cocaine quantity for sentence offers, almost all court actors reported that quantity would be a significant consideration once offenders are placed into statutory categories, though a few participants disagreed. This finding was overall consistent with predictions that quantity is an important case-level factor for drug cases under the primary concerns framework. One defense attorney stated that the true issue was whether the amount was a sufficient quantity to sell and another participant mentioned that it would only matter for the 4-200 gram category. These

responses gave further import to the quantitative research questions surrounding the relationship between substance quantity and sentence length, both in the aggregate and in specific offense categories.

For the description of an "average" felony cocaine defendant, it became clear that perceptions of "average" depend upon one's position in the courtroom. Each judge reported that an "average" does not exist and all expressed some surprise at the individuals that have come before them. Prosecutors also tended to state the same, though they did draw some lines: possession vs. distribution, or crack vs. powder. Privately retained attorneys were most likely to report a particular "type" (for example: young kids who like to "party"), though they did acknowledge that their client base likely affected this. Further, one public defender said that many different types of people use cocaine, but also reported that their clients were the "forgotten" people in society. Overall, this question yielded some of the most divergent responses in the entire study and it indicates that perceptions of defendants vary greatly. These findings also highlight the importance of qualitative research and obtaining perspectives from multiple court actors in interviews.

During the course of the interviews, a number of other consistent and key themes emerged. First, as mentioned previously, criminal history is complex and central to bargaining and sentencing. While social science generally operationalizes criminal history in terms of prior arrests, prior convictions, or a criminal history "score" (see Spohn, 2009, Johnson & Betsinger, 2009; Sacks & Ackerman, 2014) practitioners seem to view it differently. Another theme that emerged was the multiple levels of hierarchy above line-level prosecutors: the elected DA and the chief prosecutor of the courtroom.

Both of these individuals are able to exert significant control over plea bargain terms, albeit in different ways. The elected DA makes policy and the chief prosecutor must approve the plea bargains coming from their court. While the primary concerns framework would predict that the elected district attorney is an important part of plea bargaining because their policy choices are intended reflect public interest (see Jacoby & Ratledge, 2016), the finding regarding chief prosecutors is more unexpected and likely specific to this jurisdiction. When assessing the role of prosecutors in court outcomes, it might also be important to acknowledge the advisory role of more senior prosecutors in their courtroom.

An additional major finding from these interviews is that the defendant and his or her defense attorney can both play a major role in the outcome of a case, an aspect of case processing which has been overlooked in much sentencing research (for exceptions, see Wood & May, 2003; Shinall, 2010; Cornwell, 2015). The defense attorney must bargain with the prosecutor and their reputation, skill, and strategy can all impact the terms a defendant is offered. Furthermore, a defendant must also approve of the terms; in drug cases in particular, treatment or probation may be less appealing than a certain jail or prison term (see Wood & May, 2003). As will be discussed in further detail below, future research should attempt to improve understanding of defense attorney actions and defendant choice.

Discretion is key to all criminal justice decisions, beginning with the police and ending with judges and later potentially correctional officials. In this jurisdiction, judicial discretion is not limited to presiding over trials or "busting" plea agreements. There is also a clear sense that prosecutors and defense attorneys craft plea bargains they expect to

be approved by the particular judge assigned to the case, a finding which supports the idea that courtroom actors work within the "shadow of the judge" assigned to the case (see Bibas, 2004; Bushway et al., 2014; Lacasse & Payne, 1999; Yang, 2014). So, while most pleas are negotiated plea agreements and the terms are "hammered out" between prosecutors and defense attorneys, the judge's subtle influence continues. Along those lines, the last clear theme emerging from the interviews is an overwhelmingly clear preference for an indeterminate sentencing structure. Of the 16 participants, only one (a defense attorney) said they really liked the idea of sentencing guidelines and the remainder preferred to operate without them. Judges and prosecutors were the most likely to acknowledge that the guidelines' intended purpose of reducing disparity is a worthy one, but both groups also expressed that they preferred to be able to look at each case individually and determine the appropriate punishment based upon circumstances of that case and that individual.

Overall, these interviews provided invaluable information on the complex process of negotiated plea bargains and the divergent views of whether there are "typical" cocaine defendants. Practitioners generally agreed that the facts of the case and criminal history are the major concerns for determining the appropriate punishment and criminal history as currently conceived of in many sentencing studies (including this one) may not accurately reflect practitioner assessments of criminal background. The vital role played by the defense attorney and the defendants themselves also became quite clear. Lastly, while discretion is unfettered in some senses because there are no sentencing guidelines, line-level prosecutors must work within the confines of their elected DA, chief prosecutor, and the judge presiding in their courtroom. With these interviews setting the

backdrop for this jurisdiction, the quantitative results allow for an additional look at case processing, plea bargaining, and sentencing.

Research Aim 2: Quantitative Descriptive Findings

The second main aim of this dissertation was to "provide a detailed portrait of felony cocaine defendants, their arrests, and case dispositions." Thorough measures were coded from police reports, a variety of court documents, and criminal history records. This section, while descriptive, is important because of the detailed data collection procedures for this project. Rarely are researchers privy to arrest information, evidence, or charging particulars.

First, despite practitioner reports that there is not a "typical" cocaine defendant, descriptive statistics showed consistent traits. This divergent finding could be due to the phrasing of the question and the sampling frame for this study because convicted *felony* cocaine offenders may be a more homogenous category than other cocaine defendants. Overall, this is a sample of older, serious offenders and very few (less than 10%) had no criminal history. This result also lines up with practitioner reports that collateral consequences are serious and should be avoided if possible; almost all offenders here had some previous contact with the criminal justice system. Furthermore, the sample is largely minority and overwhelmingly indigent, with almost three-quarters being represented by either a public defender or assigned counsel. No defendants were granted the option of release-on-recognizance and while three-quarters were released two weeks post-arraignment, almost all defendants were detained by conviction.

Looking to arrest circumstances and evidence, most of these drug stops began on foot and about a quarter of all arrests were due to a traffic stop such as a burned-out tail

light. Citizen calls were the reason for arrest initiation in about a quarter of cases and a warrant or police investigation precipitated about half of these contacts. Over the course of an arrest, searches of defendants' person, home, and car were frequent, though they were rarely consented to by defendants. Police are then either operating under a warrant or one of the many exceptions to the warrant requirement. When looking at specific evidence measures, the average substance quantity was about 27 grams, but most offenders had nowhere near this amount; about 75% of all arrests were for less than 4 grams. As far as cocaine type, about half of these offenders were arrested for possession or distribution with only crack cocaine. The remainder were for powder cocaine and a number of defendants also possessed both crack and powder. Further physical evidence beyond the actual substance was also frequently collected. About one third of cases involved paraphernalia, a cell phone was seized in about one-tenth of cases, a gun was recovered in 17%, and cash was retrieved in a quarter of cases.

When looking to charging and disposition, there is ample evidence that charge reductions occur often in these cases. When comparing the distribution of the sample at different time points, it is apparent that many offenses are reduced to lower-level offenses and enhancements are frequently removed as cases move through the system the average number of enhancements on each case is also lower at conviction than at indictment. Lastly, this sample of convictions is comprised almost entirely of negotiated plea bargains. Only 4% of cases were resolved via trial and another 5% were the result of an open plea, while the remaining 91% of cases were disposed of with a negotiated plea agreement.

Descriptive results here indicate that this sample of felony offenders is largely indigent and minority and generally caught with a small to moderate amount of cocaine. This was very rarely the first offense for these individuals and they tended to be older. Most cocaine arrests in this county begin on foot and they are initiated for a variety of reasons, including citizen calls or an outstanding arrest warrant. Physical evidence such as drug paraphernalia or cash is often seized by police during the course of their investigation. Lastly, almost all cases are resolved with a negotiated plea and charge reductions are commonplace. These descriptive results, coupled with the interview results, provide a useful backdrop for the general workings of case processing in this jurisdiction. The last research aim for this project focuses on a further understanding of the importance of evidence and arrest in a variety of court outcomes.

Research Aim 3: Regression Findings

The last research aim for this project was to "perform quantitative in-depth analysis of the role of evidence and arrest circumstances on charging, bargaining, and sentencing." This aim served to further examine whether the primary concerns of prosecutors were relevant for the case processing and sentencing outcomes examined here. There were a total of 5 research questions for this research aim, all of which utilized multivariate regression and aimed to capitalize on the rich data source. The first three questions focused on the role of evidentiary matters and situational arrest circumstances on the initial charge type decision, charge reductions, and sentence length. The fourth question narrowed to one particular piece of evidence – the actual substance quantity at arrest – and assessed what its impacts are on these outcomes and for sentence length specifically, whether this relationship is the same for individual offense categories.

Lastly, because of historical implications of race and cocaine type in the Drug War (see Musto, 1999; Reinarman & Levine, 1997), this project also examined whether black cocaine offenders with crack were punished more harshly than other types of cocaine offenders.

Regression analyses generated some interesting findings; some of these were consistent with prior literature, while others were more unexpected. To summarize findings on the three outcomes, substance quantity predicts a distribution charge and longer sentence only in the aggregate, the importance of evidence depends greatly upon the decision point, a few situational arrest variables such as selling to the police are related to interim and final sentencing outcomes, there is generally minimal impact of extralegal variables such as race (with the exception of age), and legal considerations generally dictate the final sentencing decision. A summary of findings for Research Aim 3 can be found below in Table 11.

Table 11: Summary of Research Findings from Regression Analyses

	Distribution Charge	**Charge Reduction**	**Sentence Length**
Evidence Measures			
Cell Phone	+		
Gun			
Cash/Currency	+		
Drug Paraphernalia			-
Evidence Scale	+		
Situational Arrest Measures			
D Sold to Police	+	-	
Other People Arrested			
Citizen Call			+
Investigation/Warrant	+		
Any Search	-	-	+
Any Consent			
Plain View			
D Fled/Tried to Flee			
Substance Quantity			
Logged Quantity	+		+ **
Race and Drug Type			
Black*crack			
+ = significant and positive			
- = significant and negative			
** = result only applies to aggregated models			

As predicted under the primary concerns of prosecutors framework, direct impacts of evidence appear mostly at the early stage where prosecutors determined the initial charge type. This finding is further reinforced by comments in the interviews that prosecuting drug cases is difficult and that evidence is crucial in determining whether an offense should be charged as possession or distribution. In these models, police seizure of cash/currency and a cell phone both increased the odds of being charged with

distribution. The finding on currency is similar to Kutatledze and colleagues' (2015) finding that while few evidentiary measures were related to plea offers, currency recovery consistently increased the odds of more punitive plea offers. As described by Kutateladze and others (2015), currency is a case-level factor that is tangible and highly indicative of an illegal enterprise when seized in combination with illegal substances. While it is true that some individuals may keep cash in their homes, most legal income sources likely do not generate large quantities of cash.

In the remaining outcomes, direct impacts of evidence were weaker. First, evidentiary considerations did not affect the odds of a defendant receiving a charge reduction in any specification. From a theoretical perspective, this indicates that other considerations (namely, case-level and offender-level concerns under the framework such as legal variables such as offense severity and criminal history) carry more weight for prosecutors at this stage. The findings on criminal history are consistent with practitioner reports that prior contact with the criminal justice system is a key determinant of plea offers and sentences. Second, when examining sentence length, the only significant finding was that drug paraphernalia predicted a shorter incarceration term. This could be the result of the coding of the paraphernalia variable as including all paraphernalia; an area for future work would be to learn from practitioners exactly what paraphernalia is indicative of selling and which is indicative of use.

The conclusion on physical evidence is that its impact greatly depends on the exact type of evidence and the case processing stage being studied. Much research on evidence focuses on early charging stages and the literature is somewhat mixed, with some studies finding that evidence is an important predictor of charges being filed and

others finding the opposite (Albonetti, 1987; Spears & Spohn, 1997; Baskin & Sommers, 2011; Baskin & Sommers, 2012). The current results indicate that the direct influence of evidence comes most strongly at the initial charge type decision. One study looking at final sentencing outcomes for violent cases found more significant direct effects of evidence on final sentences than this project (Nir & Griffiths, 2017) and future replication of this type of analysis is necessary to determine the cause of these divergent results. One potential explanation is that different types of cases rely on different types of objective evidence (Cooney, 1994); this was also raised in interviews, with one prosecutor reporting that evidentiary concerns are different for violent cases. In those situations, witnesses and injury evidence may be crucial for proving that the defendant is the perpetrator and that a crime was committed; in drug offenses, possession is generally enough. For the current project involving a sample of drug offenders, by the time the final sentencing decision is being made, evidence has little direct impact.

A different pattern of results emerges for the situational arrest measures; their influence is not confined to the initial charge type decision. To begin, a few of these measures do not emerge as significant for any outcome: other people being arrested, consenting to a search, evidence in plain view, and the defendant fleeing or attempting to flee. These are slightly surprising given their potential mitigating or aggravating implications. For example, the defendant fleeing from police could be seen as an adverse factor that increases blameworthiness as an offender-level concern under the primary concerns framework and paints the defendant in a negative light. However, this is also a very specific factor that requires a close reading of the offense report and it is possible that at these later stages, prosecutors are not consulting the police report and are instead

directing their attention to the specific terms of the indictment or plea bargain. It is also possible that other considerations take precedent over these factors or that they simply are not important to prosecutors.

Also as expected, a number of other situational arrest variables (case-level concerns under the primary concerns framework) were predictive of the outcomes in this project. First, at the initial charge type stage, selling to the police and the arrest being initiated due to an investigation/warrant were both predictive of a distribution charge, while a search being performed lowered the odds. Consistent with theoretical expectations, selling to the police is a case-level factor that increases the evidentiary strength of a case and thus the odds of winning at trial; a police officer is compelled to testify based upon their job and is also a highly credible witness. Also as mentioned previously, prosecutors who work closely with drug enforcement police may be interested in maintaining positive working relationships with those police; if they see that their cases are not being prosecuted to the fullest extent, the working relationship may become more negative. Similarly, Kutateladze and colleagues (2015) found that an "undercover buy and bust" significantly increased the odds of harsher plea offers. That finding, coupled with the current study's finding on selling to the police, indicate that this factor is especially salient for prosecutors in more than one jurisdiction. Situations with a warrant and selling to the police also compromise a very unique set of cases. In those instances, police who are trained to work in investigation or undercover drug operations are directly involved in the defendant's arrest. These types of cases have a very different starting point for both charging and negotiation. At charging, police testimony that they received illegal drugs is highly probative. As negotiation proceeds, both the defendant

and the prosecutor are also aware of the reliability police witnesses and the defense attorney may counsel their client to take a less favorable offer as a result. Further support for the idea that police testimony and trustworthiness are a central feature of bargaining in drug cases comes from anecdotal interview evidence. One defense attorney recounted a situation in which they recognized the name of an arresting officer in a police report who they knew had been previously accused of being unscrupulous. Armed with this information, the defense attorney said they took that information to the prosecutor and used it as a bargaining tool to get a better outcome for their client.

A few situational arrest variables also predicted the odds of a charge reduction. Unsurprisingly, selling to the police and a search being performed both lower the odds of a charge reduction. Selling to the police thus seems to carry weight at several stages here; this could indicate a continued confidence in the ability of a police witness to bolster the prosecution's case at trial. The finding on searches is likely a reflection that searches frequently result in the collection of evidence which also adds to case strength. In sum, these results support predictions under the primary considerations of prosecutors framework and indicate that prosecutors are constantly assessing the strength of their case ; theymay be less willing to reduce a case believed to be more "winnable" at trial (see Jacoby & Ratledge, 2016).

Moving to sentence length, two of the situational arrest covariates predict longer sentences: citizen-call initiated arrest and a search being performed. Under the primary concerns framework, citizen calls may implicate public interest/community protection and defendant-level dangerousness concerns, both of which have been discussed in courtroom decision maker literature (Steffensmeier et al., 1998; Jacoby & Ratledge,

2016). A citizen who is so worried about drug using or dealing that they call the police may increase prosecutorial concerns about safety. The search finding again could be related to the potential for finding evidence and thus increasing a case's strength. Overall, the most direct impacts of evidence and situational arrest measures occur at the initial charge type stage, though some factors do continue to carry weight throughout the prosecution process.

Moving to substance quantity, consistent with theoretical expectations, higher substance quantity was a case-level concern under the primary concerns framework that predicted higher odds of being charged with distribution as opposed to possession. This is also consistent with Sevigny and Caulkins' (2004) and Sevigny's (2009) studies of drug offenders which found quantity to be one of the most important predictors of sentence length. So, while it is technically possible to be charged with possession with intent to distribute of rather small quantities, most distribution offenses involve larger amounts of cocaine. Interestingly, there is no significant relationship between quantity and charge reductions; it seems that other considerations beyond substance quantity take precedent at that stage. When analyzing sentence length, however, the relationship between quantity and incarceration term becomes more complicated.

When all offenses are included, quantity is highly predictive of sentence length. However, when samples are disaggregated into individual offenses that are delineated solely by quantity, quantity's impact on sentence length is lessened and its statistical significance is either lower or disappears altogether. This is an interesting result to compare to Sevigny's (2009) finding that in the federal system, there is an overreliance on quantity to determine punishment severity that does not allow for consideration of the

offender's role in the distribution chain. Unfortunately, that type of information is not available in this dataset, but one potential explanation for the lack of significance for substance quantity is that prosecutors in this jurisdiction *are* actually assessing the offender's role in the drug enterprise. With such a wide range of punishments and no guidelines, there may be more room for assessment of offender role in drug distribution and once parsed into individual offenses, quantity may not be viewed as a good measure either of offender blameworthiness or dangerousness.

The last research question for this aim assessed any potential differences in punishment across race/ethnicity and substance type. Under Texas law, powder and crack are not treated any differently for offense degree or punishment seriousness. However, because of the historical relationship between crack and race (Reinarman & Levine, 1997; Musto, 1999), this association is examined in this paper. In this overwhelmingly minority sample, few direct race or ethnicity effects emerged. First, the interaction of black and crack cocaine was insignificant in all instances, indicating that black offenders with crack cocaine are not singled out for more severe punishments for the outcomes examined here. This finding is not overly surprising given that the statutes do not differentiate between cocaine types and prior literature has found that the relationship between cocaine type and race is not simple (Kautt & Spohn, 2002).

For initial charge type decision, black offenders had marginally higher odds of a distribution charge only until the situational arrest variables were introduced. Another interesting finding is that non-citizens are more likely to be charged with distribution than citizens and this result persists when situational arrest covariates are included, a finding that is not confounded with Hispanic ethnicity. This finding is likely reflective of

Texas's geographic proximity to Mexico, as it is a border state and a known area for drug trafficking. In the analysis of charge reductions, no significant associations were found for any of the drug type, race/ethnicity, or citizenship variables and this pattern continued for sentence length. There are, however, some caveats to the findings on race and ethnicity in this sample. While black and Hispanic defendants do not appear to be disadvantaged in this sample in terms of charge reductions or sentence length, it appears that Provine's (2011) cautions about the pervasive links between race and drug enforcement may be important in this jurisdiction. This sample is 65% African-American, a much higher percentage than the county as a whole. While there are no overt racial implications from the regression results in this study, differential enforcement and policing strategies may be relevant to the racial makeup of this sample of convicted felony offenders (see Provine, 2011, Tonry & Melewski, 2008). Furthermore, information on dismissals and charge reductions to misdemeanors is also not included and that could lend more insight into the relationship between race and drug prosecution in this county.

One interesting finding that emerged which was not related to any specific research question was that charge reductions actually increased sentences (though this relationship is marginally significant), a finding inconsistent with some prior work on charge reductions (see Shermer & Johnson, 2010). There is, however, a plausible explanation for this finding. It is possible that when making a plea bargain offer, prosecutors assess a case from start to finish. If they see that a case began as a 1st degree and was pled down to a 2nd degree, they may (consciously or subconsciously) be making an offer based upon the initial indictment charge. They may also read the offense report

and view the facts of the case; if these facts are indicative of a more serious charge, a more punitive offer may be made.

In sum, this study yields some interesting results. In line with findings from the interviews, evidentiary matters were most important at the initial stage where prosecutors are determining the initial charge type; cash and a cell phone being recovered both increased the odds of a distribution charge. Evidence did not impact the odds of a charge reduction and furthermore had few direct effects on the final outcome of sentence length in these models. Strong support, however, was found for the idea that prosecutors are constantly assessing their odds of winning at trial because selling to the police both increases the odds of a distribution charge and decreases the odds of a charge reduction. Arrests involving police in an undercover situation are probably very different than those initiated by a traffic stop; police have invested significant resources and this is very strong evidence of distribution. In those instances, prosecutors likely want to maintain a successful working relationship with the police and are aware that a police officer would be a highly credible witness if the case were to go to trial. If a search was conducted at arrest, both the odds of a distribution charge and charge reduction are lowered and sentence length is predicted to be longer; searches likely yield evidence to bolster the prosecution's case. Lastly, in this sample of felony cocaine offenders, substance quantity predicts a distribution charge, is not predictive of a charge reduction, and is related to final sentences only in aggregate samples. Quantity's main role thus seems to be to place offenders into statutory categories; once there, its influence is greatly lessened.

As for extralegal variables, black offenders with crack cocaine were not disadvantaged in any outcome studied here and the most striking finding for

race/ethnicity/citizenship is that non-citizens are much more likely to be charged with distribution, even after situational arrest measures are included. Lastly, charge reductions actually marginally increase final sentence length; this finding could reflect a comprehensive case assessment by prosecutors at the sentence bargain phase. These results provide much more context into criminal case processing in this jurisdiction and support prior work that evidentiary matters are at the forefront of prosecutor decision making, particularly at early stages.

Limitations

As with any empirical research, there are limitations to this study. First, statistical power may be an issue because of the sample size. There are less than 450 cases in this dataset. It was, however, a significant investment of time to collect such detailed measures and when collecting original data, some trade-offs must be made. As will be discussed in further detail in the future directions section, data collection efforts such as this should be replicated with other jurisdictions and with larger samples.

Second, external validity is a concern for several reasons. First, this sample was based upon the dependent variable of being convicted of a felony controlled substance (cocaine) offense and being sentenced to an incarceration term in a state jail or state prison, so findings are only applicable to those individuals. For one, this sample includes only offenders of one type of substance. It is possible that offenders who are arrested for methamphetamines or opiates may be treated differently and marijuana offenders are certainly in a different class. Second, and more importantly, there are also a number of individuals who were charged with a felony cocaine offense but whose cases were resolved differently. First, in 2003, the legislature mandated community supervision for

first-time state-jail possession felonies (Texas Code of Criminal Procedure Article 42.12, Sec. 15(a)).[55] There are several other ways for a case to be resolved, including dismissal and thus no conviction, a guilty plea to a misdemeanor, or a guilty plea with a 12.44(a) motion that allows a felony conviction with a term to be served in county jail. Interviews with practitioners, particularly prosecutors, indicated that some offenders may be charged with a felony but if they have little to no criminal record, they will be pled down to a non-incarcerative punishment. An area for future research would be to begin a sampling frame with an arrest cohort, so that individuals who are not initially charged or whose charges are dropped at some point would also be included. This would also increase the validity of the charge reduction measure; as currently operationalized in this study, it is limited because it does not include any of the individuals whose charges were reduced to misdemeanors. In sum, there is likely case attrition that limits the applicability of these findings beyond the current sample.

There are a number of implications that arise from the sample limitations. This sample likely over represents older offenders with more criminal history; those with less criminal history are much more likely to receive a non-incarcerative sentence and thus not be included in this sample. Substance quantity is likely higher here than in a more representative sample; lower quantities are likely to occur in possession cases, which probably receive more charge reductions for treatment or probation. There are also probably more cases with physical evidence in this sample than in the general drug arrest population; those lacking in probative physical evidence are probably less likely to be

[55] Statutory authority and implementation of this rule are unclear. Mandated probation was not mentioned in any of the interviews.

charged in the first place. The regression findings are also likely impacted by the sampling strategy. Because of the fact that evidence is probably related to being included in the sample, the effects found here are probably underestimates of the true impact of evidence. It would be helpful in the future to have arrest report and evidence information for a sample of all arrests as opposed to only convicted offenders; beginning with an arrest cohort would yield more accurate results for the importance of evidence.

Thus, this sample is not necessarily representative of all cocaine offenders in the county. It is likely representative, however, of serious cocaine offenders, because almost all interviews indicated that someone with a criminal past who is charged with a felony cocaine offense would not be offered any of the above-described punishment options that do not involve state jail or state prison. Furthermore, quantitative results indicate that overall, this sample is very unlikely to have no prior criminal justice contact. It would be helpful for future research to examine these cases, but there are several difficulties in obtaining that information in this particular jurisdiction. For one, the data would have to come from other sources and they may less forthcoming with information than TDCJ. Second, police reports are not public record in Texas unless an individual is convicted, so it would be more difficult to obtain detailed arrest information.

Another limit to external validity is the fact that only one county and only felony courtrooms within that county were examined. These results are thus specific only to those courtrooms. While these results may be applicable to other large urban courtrooms in this state, they may not apply to smaller counties in the state or any courtroom in a different state. The format of the prosecutors being attached to the courtroom likely plays a significant role in the function of the courtroom workgroup and courtrooms with

less stable workgroups may function very differently (see Eisenstein & Jacob, 1977; Nardulli et al, 1988). With regards to evidence specifically, it is possible that it could have an even bigger impact in jurisdictions with less familiarity and trust between courtroom actors; instead of relying on the reputation and relationship between actors, facts and evidence from police may become more relevant.

Drug cases may be atypical, particularly with regards to the importance of evidence for prosecution and conviction. For a controlled substance case, the evidence for proving the charged offense is generally not complicated for possession; the individual was in possession of the substance, or not. Charging decisions can become murkier with larger quantities of a substance when prosecutors determine whether to charge with simple possession or with distribution. However, evidence may be of more concern for violent offenses or an offense like burglary where the offender is arrested at a later time point and identification is a point of contention for the case (see Baskin & Sommers, 2012). While all of this is true, drug offenses (and cocaine in this jurisdiction) are still a major contributor to prison populations and it is a question of interest to determine what role evidence plays in charging, bargaining, and sentencing. In addition, internal validity is increased when using a sample of one case type in one jurisdiction.

Omitted variable bias is also a potential concern in any study. Some variables that would have been helpful include the defendant's specific role in potential manufacture and delivery of the controlled substance (middleman, street-level dealer, etc.), whether other substances were recovered, gang membership, whether the defendant was known to the police, marital status, community ties, employment, and previous plea offers. And, as discussed previously, more refined measures of drug paraphernalia and

criminal history might yield different results. When prompted, many court actors reported that practical considerations should be taken into account when determining punishment, so information on minor children and other family obligations might impact plea bargaining and sentencing decisions. Documented information on previous plea offers was not consistently available across cases and is thus not included in this study, though this type of information would be helpful for determining how plea bargaining works and how offers change over time. It would also aid in assessment of charge reductions; since interviews indicated that defendants may reject an offer of treatment or probation, the final sentence may not reflect all presented offers. However, all efforts were made to collect information that was reliably available in this dataset and it is an improvement from other currently-available sentencing datasets in terms of the richness of the data.

This dissertation is also lacking information on courtroom actor characteristics and police-prosecutor relationships. While this analysis does cluster around judges, it does not take into account any of the demographic (race, gender, age, etc.) characteristics or the political affiliations of the judges. Judicial politics may be particularly relevant in this jurisdiction, given that district judges run on a party platform, and given prior research indicating that judges may become more punitive as their terms end and they get closer to reelection (see Huber & Gordon, 2004). The importance of the police in prosecution is also not addressed with this data. Recently, Spohn and Tellis (2013) analyzed this issue with regards to prosecution of sexual assault cases and the role of the police was highly relevant. For drug cases, police have special significance. As mentioned above (see Provine, 2011), drug enforcement often involves more proactive

policing than for other types of crimes. Police may have different relationships with drug offenders and may use them as resources in investigations for higher-level offenders. Along those lines, there may be some bargaining that occurs between police and offenders even before (and sometimes in lieu of) the writing and filing of a police report. An offender who is willing to serve as an informant may not even be arrested. Prosecutors may also need to maintain positive relationships with the police who handle drug cases. Specifically with the "bust and buy" arrests, police may become frustrated if district attorneys frequently decline to prosecute the cases that police have invested their time and effort in.

One aspect of the jurisdiction that is not accounted for in this study is the flow of cases and the remainder of the docket besides drug cases. As mentioned in Chapter 8, felony district judges and felony prosecutors in this jurisdiction generally deal with all types of felonies. While there are some specialized units within the district attorney's office, the majority of felony prosecutors work with felonies that range from controlled substances to violent crimes to burglary. Emerson (1983) has argued that the case flow and case dockets of courtrooms can have significant impact on the decisions made in individual cases. It is possible that in this jurisdiction, drug crimes are seen as less important or are seen as a lower priority than other crimes, such as personal crimes and homicides. This would likely depend upon how many drug cases are seen as compared to other case types. It would be helpful to know how many other cases courtroom actors are dealing with, what priorities are placed on case types, and how pressing drug cases are to the jurisdiction.

There are a few concerns with qualitative methodology and sampling. While much qualitative research is inductive, these results were generated using a more deductive approach; a set of questions was created prior to interviews and the same questions were posed to all participants. This method was chosen because the questions were meant to be more exploratory and not necessarily to develop theory. However, this could result in some bias from the interviews because questions were not developed based on feedback and were not allowed to evolve as the interviews progressed. It is possible that certain questions were confusing or not useful for practitioners and without feedback from participants, I am unaware of those issues. Future qualitative research in this arena, particularly which could move theory forward, would benefit from an inductive approach that allowed more input from the content of interviews in developing subsequent interview techniques and questions.

Further, it would have been ideal to interview only attorneys and judges who had experience with cases in this sample, but unfortunately, participant response rates were low and the project was best served by speaking with those attorneys and judges who were ready, willing, and able to participate. Some of the interview participants were included in the original sampling frame and responses were consistent across participants regarding the plea process, so while there is a possibility that the results would have differed if the interviews only included those who were listed in the cases in the sample, it seems slight. The number of interview participants certainly could have been larger, particularly for judges and prosecutors. Sixteen interviews were performed and 10 of those were defense attorneys. While it was helpful to hear from the perspective of several different *types* of defense attorneys, they are only one member of the workgroup

and they do form the majority of the sample. It was quite difficult to obtain participation from the judges and prosecutors, however, and I made every effort to include more prosecutors and judges in the sample. The makeup of the sample may bias the results in some ways. For example, when assessing overall themes such as charge reductions and the importance of criminal history, defense attorney responses are clearly the majority; it is possible that judges and prosecutors view charge reductions or criminal past differently. Future work should work to improve recruitment of other types of courtroom actors besides defense attorneys.

Another potential limitation for qualitative sampling is that all interviews were performed voluntarily. Courtroom actors who make less thoughtful decisions regarding cases and who harbor potential biases may be less likely to agree to participate. However, that is a limitation with all voluntary interview research and a wide net was cast with interview requests in order to present the opportunity to as many individuals as possible. Social desirability bias is also a concern with interviews. The finding that participants were hesitant to describe a "typical" defendant as contrasted to the quantitative findings that almost all defendants at the felony level were indigent and minority indicates that responses from practitioners may have been motivated by their desire to appear unbiased and fair. In the future, it would be ideal to witness plea negotiations, use experimental methods, or to question participants about specific cases, but for this project, the semi-structured interviews serve as a helpful tool to complement and better explain quantitative findings. In sum, there are some limitations to this study, including the sampling procedures, the inclusion of one case type, and potential omitted

variable bias. Despite these limitations, this study improves on prior work and a number of future directions and policy implications can be derived from the results of this project.

Future Directions and Policy Implications

While this study adds to existing knowledge of plea bargaining and discretion, it also points to a number of areas for future research. First, future work could examine whether the importance of evidence varies by certain defendant characteristics susch as gender or race. There is some existing evidence that gender differences in sentencing decisions may vary by crime type (Mustard, 2001; Koons-Witt, 2002; Koons-Witt et al, 2014). While Mustard (2001) found the largest sentencing disparities between men and women convicted of non-violent crimes such as drug trafficking and bank robbery, Koons-Witt and colleagues (2014) found that for sentence length, women were sentenced to significantly shorter terms for assault, burglary, and drug trafficking, but not homicide, robbery, or DUIs. In that same vein, it is possible that women who in possession of a handgun or a much larger amount of cocaine may be viewed in a more negative light than men in similar situations. There were unfortunately not enough women in this sample to analyze the impacts of evidence separately for men and women, but it is an interesting area for future research. Similarly, evidence may have differential impacts across race. Recently, Caravelis and colleagues (2011) found that race and ethnicity effects in the habitual offender designation decision were highest for drug crimes and very low for violent crimes. This may indicate that black drug offenders are seen as more dangerous than white drug offenders; with regards to evidence, particular types of evidence such as a weapon, drug-selling paraphernalia, or very high amounts of the substance, may have differential effects for minority and non-minority defendants.

Another area for exploration is the role of "perceptual shorthand" (see Steffensmeier et al, 1998) in prosecutorial decisionmaking. While no prosecutors or judges in this sample indicated that prosecutors relied on stereotypes or split-second judgments to make their decisions, a handful of defense attorneys did indicate that they believed prosecutors were making snap decisions about their clients. It would be difficult to address this through the interview style used here, however; it is highly unlikely for anyone (especially those who volunteer to participate in interviews) to state that they make biased and overly quick decisions based upon race, gender, or age. However, it could be possible to study this issue using vignettes, experiments, or other methodologies. It is interesting that different actors have varying opinions on the role of perceptions and stereotypes and this could be a compelling area for future research.

Third, this study underlines the need for more mixed methods work and partnerships with practitioners. The knowledge gained from interviews that could not have been obtained through other avenues is substantial. Practitioners were able to describe the plea bargaining process and provided insight into what type of information and evidence is most important for prosecutors. Further, research clearly indicates that courtroom norms and relationships are a vital piece of the plea bargaining puzzle (Eisenstein & Jacob, 1977; Nardulli et al., 1988), but this type of information is often not included in studies of criminal courtrooms. While it is an investment in time and requires interviewing preparation, the payoff is substantial. Moreover, sentencing research would benefit in general from working closely with practitioners in different jurisdictions. Obtaining qualitative data would be facilitated by prior pre-existing relationships with court leadership and preliminary discussions with practitioners could also guide research.

Criminal court decisions are the result of a number of different individuals making decisions based upon their own priorities and supervisors, experiences with other actors, and personal beliefs; this information cannot be gleaned solely through examination of administrative court records.

Fourth, the role of the defendant deserves future exploration. Each type of court actor mentioned that defendants' preferences are key in final punishment outcome. For drug cases in particular, drug treatment may be offered but an individual may prefer instead to take an incarcerative sentence. The difficulties of probation, especially for indigent defendants, also came up several times in interviews. Individuals with experience on probation or parole or who have had a community punishment revoked may have an even stronger preference for "taking their time" in jail or prison. There is some research on perceptions of alternative sanction severity (see Wood & May, 2003; May et al., 2008) and this project further supports the idea that intermediate sanctions such as probation or treatment may not be preferred over an incarcerative punishment such as prison. While some research has theorized that defendant choice may play a role in the assignment of intermediate punishments (see e.g., Johnson & DiPietro, 2012), the current study provides empirical support for this idea. In jurisdictions such as this where a number of plea offers are bargained over prior to reaching a final "deal," it is possible that a defendant was offered a punishment that did not involve incarceration but they rejected the offer. Unfortunately, data limitations do not allow for examination of this issue, but this is important to investigate in the future.

Fifth, future research needs to expand to other jurisdictions and data collection procedures need to include more information. Replication of this type of data collection

in dissimilar jurisdictions may yield different results. Each jurisdiction operates differently and even in the same state, neighboring counties may have very different operating procedures. For example, many defense attorneys indicated that they would prefer to defend a DUI in one county as opposed to another because the elected DAs have such different policies regarding the lowest possible punishment for a DUI. Furthermore, specific policies on plea bargains can also influence final outcomes. An excellent example is that the District Attorney in New York has a clear written policy for plea offers: the first offer given to a defendant will always be the most favorable (Kutateladze et al., 2016). However, in the current research site, the opposite seems to be true. When asked about how offers change over time, almost every respondent suggested that "aging" a case would benefit the defendant. Divergent policies like these are sure to have a major impact on plea bargaining and negotiation in a particular jurisdiction and sentencing research should both acknowledge this and work to understand inter-jurisdictional differences. The results of this study also showed that evidence and situational arrest variables were important for some prosecutor decisions and yet this type of information is rarely available in sentencing datasets. While collection of this type of data is time-consuming, it does provide a more accurate representation of information prosecutors use to make decisions on a daily basis as compared to much previously collected data. Detailed case-level data may not be necessary for each case, but jurisdictions and researchers may want to consider how to generate more comprehensive datasets.

Moreover, several policy implications can also be derived from the current project. First, the quantity ranges delineated in current Texas sentencing statutes may

warrant examination. While guidelines were intended to reduce disparity (see Stith & Cabranes, 1998), there was not an overwhelming amount of racial, ethnic, or gender disparity found in this sample. Guidelines may not be necessary in this jurisdiction, especially given the state's history with guidelines (see Deitch, 1993) and this study's finding that practitioners generally abhor the concept of guidelines. There are, however, some issues which could possibly be addressed with a sentencing scheme somewhere between the current system and a strict guideline system. Overall, defense attorneys, prosecutors and judges were correct in the factors that they believed were most salient for plea recommendations. For example, in interviews, the most commonly mentioned factors were facts and criminal history; for the initial decision to charge, evidence indicative of a selling operation was highly predictive of a distribution charge. Criminal history and punishment enhancements were also often closely related to final sentence length. Conversely, interviews also indicated that most practitioners believed that substance quantity was an important consideration for sentence length once offenses are separated into individual categories and regression results indicate the opposite. While quantity predicted sentence length in the aggregate, its relationship to final sentence length is much less pronounced in individual offense categories. Texas may want to consider whether they are comfortable with the finding that quantity is not overly predictive for discrete offense categories and further, whether the existing quantity ranges are helpful in demarcating different classes of offenders. A range of 4-200 grams may serve to group offenders who are very different and place them all into the same punishment category. It is certainly possible that other factors not captured in the current dataset took precedent over substance quantity when prosecutors were determining what

punishments to offer, but it is slightly concerning that practitioner viewpoints on that particular issue were so divergent from quantitative results.

Second, interviews also revealed the significant variation in defense attorney training and strategy and suggest that attorney training might be worth investigating. Roberts and Wright's (2016) research found that despite the knowledge that almost all convicted cases are disposed of via a guilty plea, very little training is provided to public defenders on how to negotiate. The current study did not focus on training nor did the interviews include questions on training, but each defense attorney described their own set of procedures for getting their client the best "deal." Undoubtedly some strategies must be more effective than others. In addition, interviews also indicated that relationships between actors can play a significant role; if a defense attorney is a poor negotiator and irritates a prosecutor with his or her strategy, does the client deserve a worse outcome? There were no significant differences found here for different groups of defense attorneys (public defender, assigned counsel, private attorney), but I suspect that there might be more variation for the particular attorney or skill. This is clearly very difficult to measure, however, and would be a significant undertaking to study. It does highlight a potential area to improve indigent defense, however. Assigned counsel in this jurisdiction are required to have more experience to represent more serious cases, but it could also be important to provide training (to all defense attorneys) on negotiation skills as well.

In sum, this project lends credence to calls for further study on plea bargaining, improved data collection, and more qualitative work. A number of evidentiary and situational arrest variables captured from police reports are significantly related to

charging, bargaining, and sentencing decisions and studies which lack these variables may not accurately describe these processes. Furthermore, interviews indicate that plea bargaining is a complex human process that involves a number of court actors and is influenced by a variety of individual and organizational constraints and the defendant's role in plea bargaining also cannot be ignored. Future research should replicate this type of data collection and analysis in further jurisdictions and should work to better understand the intricacies of case processing and bargaining. In a system so dominated by plea bargains, research must be directed more on the processes by which courtroom actors exercise their discretion and defendants agree to plea terms.

Appendices

Appendix A: Coding Scheme

Police Report			
Variable name	**Variable Description**	**Type**	**Coding**
NUMAROFF	number of arrest charges	numeric	continuous
NARSOFF2	arrest offense, in my coding scheme	category	1=<1 g poss 2=between 1 and 4 poss; 3=4-200 poss. 4=200-400 poss. 5=400+ poss. 6=<1 poss. WID 7=1-4 poss. WID 8=4-200 poss. WID 9=200-400 poss. WID 10=400+ poss. WID
CARSTOP	Officers pulled over defendant in car	binary	0=no; 1=yes
FTSTOP	Officers made a stop on foot	binary	0=no; 1=yes
TRFCSTOP	Stop was for a traffic violation	binary	0=no; 1=yes [yes if fail to signal, run red light, expired registration, windows tinted too dark, etc]
CITCALL	Officers were responding to a citizen call	binary	0=no; 1=yes
INVEST	officers had done an investigation/were executing a search warrant	binary	0=no; 1=yes [yes if have warrant, following defendant to car from a drug house, etc]
BODYSEAR	Was a search of the person's body done?	binary	0=no; 1 = yes [SITA, frisk, pat down = yes]
BODYCONS	If there was a person search, was it consented to *by the defendant*?	binary	0=no; 1=yes; [telling police there are drugs in pocket, etc=yes] 99=not applicable (no person search)
CARSEAR	Was a search of the person's car done?	binary	0=no; 1 = yes; (inventory is counted as a search; plain view is not)
CARCONSEN	If there was a car search, was it consented to *by the defendant*?	binary	0=no; 1=yes; 99=not applicable (no car search)

HOMESEAR	Was search of person's home done?	binary	0=no; 1 = yes ("protective sweep" is counted as a search)
HOMECONS	If there was a home search, was it consented to *by the defendant*?	binary	0=no; 1=yes; 99=not applicable (no home search)
PLAINVIEW	Was there evidence of a crime in plain view? Or evidence in plain view that either led to discovery of evidence for this case, or directly related to this case?	binary	0=no; 1=yes [seeing D engage in transactions, smell of MJ, seeing paraph, baggie on the ground]
FIELDTEST	Did officers do a field test for drugs?	binary	0=no; 1=yes, positive; 2=yes, inconclusive
POWDER	What substance were they arrested for?	category	1=powder cocaine; 2=crack cocaine; 3=both
SUBQNTY	quantity of substance at arrest	numeric	continuous (in grams)
PARAPH	Any drug paraphernalia found?	binary	0=no; 1 = yes (pipe, more baggies, scale, razor, straw, needle *note: this can apply to paraphernalia for either possession or distribution)
CELL	indicates that a cell phone was seized with drug evidence	binary	0=no; 1=yes
GUN	indicates that a gun was seized with drug evidence	binary	0=no; 1=yes
CASH	indicates that cash was seized with drug evidence	binary	0=no; 1=yes
EVSCALE	Sum of (cell + gun + cash+ paraph)	Index	0-4
MULTOFF	indicates that there were multiple officers present at arrest	binary	0=no; 1=yes
NUMOTHARST	Other people arrested	binary	0=no; 1=yes
CJSTATUS	Does defendant have an active CJ Status?	binary	0=no; 1=Yes, probation; 2=yes, parole; 3=yes, active warrant or charges pending
FLEE	Did defendant flee/attempt to flee from arrest?	binary	0=no; 1=Yes
SELLPOLICE	Did defendant sell to police?	binary	0=no; 1=Yes

Indictment

Variable name	Variable Description	Type	Coding
NINDICTOFF	Offense listed in the indictment	category	1=<1 g poss 2=between 1 and 4 poss; 3=4-200 poss. 4=200-400 poss. 5=400+ poss. 6=<1 poss. WID 7=1-4 poss. WID 8=4-200 poss. WID 9=200-400 poss. WID 10=400+ poss. WID
INDICTENHAN	Number of enhancements on indictment	Index	0-4

Arraignment

Variable name	Variable Description	Type	Coding
USCITIZEN	Person stated they are a US citizen	binary	1=yes; 0=no
CTZNCOUNTRY	If not US, what country were they citizen of?	category	1=Mexico 2= Honduras 3= Cuba 4= refused
NUMCHRG	Number of charges on arraignment sheet	numeric	continuous
PREDET1	Released vs. Detained after initial arrest	binary	1=released (within a 2 week time period from arrest - this is to account for people who may have taken some time to gather $$); 0=detained in the 2 weeks after initial arrest
PREDET2	General Release Category	category	1=financial release; 2=nonfinancial release; 3=emergency release; 4=held on bail; 5=denied bail on this charge; 6=denied bail on *another* charge
TOTBOND	Total bond amount for all offenses listed	Numeric	Continuous (dollars)

Election of Counsel

Variable name	Variable Description	Type	Coding
REQAPPTATTY	Requested an appointed lawyer?	binary	0=no; 1=yes
INCOME	Reported Income	numeric	continuous (in dollars)
ASSETS	Reported Assets	numeric	continuous(in dollars)

Magistrate Referral			
Variable name	**Variable Description**	**Type**	**Coding**
MAGREF	indicates that case was referred to a magistrate	binary	0=no; 1=yes
Plea/ Conviction			
Variable name	**Variable Description**	**Type**	**Coding**
OPENPLEA	Evidence of an open plea on plea agreement or conviction?	binary	0=no; 1=yes
NEGPLEA	Evidence of negotiated plea?	binary	0=no; 1=yes
TYPEATTYFIN	attorney type at conviction	category	1=Private; 2=PD; 3=Assigned
CONVOFF	final conviction offense	category	1=<1 g poss 2=between 1 and 4 poss; 3=4-200 poss. 4=200-400 poss. 5=400+ poss. 6=<1 poss. WID 7=1-4 poss. WID 8=4-200 poss. WID 9=200-400 poss. WID 10=400+ poss. WID
TOTENHAN	Total number of enhancements at conviction	Index	0-4
CONVDGOFF	Degree of offense	category	1=1st degree felony; 2=2nd dg; 3=3rd deg; 4=SJF
CONVCONF	Confinement to a facility	category	1=penitentiary; 2=state jail; 3=county jail
CONVTERM	How many months of confinement?	continuous	months
Other Variables			
Variable name	**Variable Description**	**Type**	**Coding**
NVRREL	Was defendant never released from custody?	binary	0=no; 1=yes
TIMESERVED	Number of days for time served	numeric	Calculate based on dates
DETAIN3	Was D detained at time of final case disposition?	binary	0=no; 1=yes

BLACK	TDCJ docs identify as black	binary	0=no; 1=yes
HISPANIC	TDCJ docs identify as Hispanic	binary	0=no; 1=yes
WHITE	TDCJ docs identify as white	binary	0=no; 1=yes
AGE	Age at time of offense	Numeric	continuous
PRIORARR	Number of prior arrests	Numeric	continuous
PRIORFEL	Number of prior felonies	Numeric	continuous
PRIDRUGCONV	Any prior drug conviction	binary	0=no; 1=yes
CRIMHXINDX	Index that takes into account z-score for PRIORFEL and PRIORARR within distribution of this sample	Numeric	Continuous
TRIAL	indicates that case went to trial	binary	0=no; 1=yes
ORGCRIME	Organized crime referral	binary	0=no; 1=yes
FORFEIT	Were bond forfeiture proceedings ever initiated?	binary	0=no; 1=yes
WITHDRAW	indicates attorney withdrawal at some point	binary	0=no; 1=yes
NEWDATTY1	Did D get a new attorney during this case?	binary	0=no; 1=yes

Appendix B: Interview Questions

Intro for Everyone:

Thank you so much for agreeing to speak with me. As I said in my email, I am conducting these interviews as part of my dissertation research project and I am studying plea bargaining in drug cases. I have a series of questions regarding your background and negotiation and sentencing processes. Before we begin, do you have any questions for me?

Prosecutor Questions

Background

I would like to begin by asking you a few background questions

1. How/why did you decide to be prosecutor?
2. How would you describe your legal experience prior to serving as a prosecutor?
3. How long have you been prosecuting cases?
4. Do you have experience prosecuting cocaine cases?

Average cocaine defendant/sentence

I have a few questions regarding cocaine cases

5. How would you describe the "average cocaine defendant?"
6. Are there "typical" sentences for any offenders?
7. Can you describe a "typical" sentence for a low-level cocaine offender? Let's say possession of <1 gram?

Offers

I am curious as to how plea offers begin…

8. How do you determine initial plea offers?
    a. What factors do you consider?
    b. For drug crimes, does actual quantity matter?
    c. Do you have set sentence offers for any offenses?
    d. Any offender characteristics that would make you deviate from standard plea offer?
9. How do plea offers change over time? (more or less favorable to defendant over time)
10. Who makes decisions about charging prior enhanceable felonies? When?
11. How much variation is there between prosecutors in plea offers?
12. Do judges ever reject plea bargains? Why?

Negotiation

I have a few questions for you regarding the negotiation process

13. Can you describe an average plea negotiation?
14. Who has most bargaining power in plea negotiations?
15. How much discretion would you say you have in making plea offers? (a lot, a little, not much)
16. How much discretion do you think it is appropriate to give to prosecutors and judges in negotiation and sentencing?

Sentencing

Now I'd like to ask you some questions about sentencing and individualized sentencing

17. What do you think about sentencing guidelines?
18. How tailored should sentences be for individual defendants?
19. Do you think defendants with similar offenses and similar criminal histories frequently receive very different sentences?
20. How important should community safety be in determining the proper sentence?

21. How important should culpability be in determining the proper sentence?
22. How important should practical considerations – such as whether the defendant is employed or has minor children – be in determining the proper sentence?

Rehab

Lastly, I have a few questions regarding rehabilitation for drug offenders

23. Do you know how many drug offenders receive treatment in prison?
24. Would you say that your office has a rehabilitative view on drug offenders?
25. Would you say that all judges/prosecutors treat drug offenders the same? Or do some have more rehabilitative views?

We are at the end of our interview. Before we conclude, is there any other information that you would like to share?

Do you know anyone else who might be willing to speak with me? If so, would you share their contact info with me?
Thank you so much for your time.

Defense Attorney Questions

Background

I would like to begin by asking you a few background questions

1. How/why did you decide to be defense attorney?
2. How would you describe your legal experience prior to serving as a defense attorney?
3. Have you ever served as counsel for indigent defendants?
4. Do you have experience defending cocaine cases?
5. Would you say you have enough time to support clients as you'd like to?

Average cocaine defendant/sentence

I have a few questions regarding cocaine cases

6. How would you describe the "average cocaine defendant?"
7. Can you describe a "typical" sentence for a low-level cocaine offender? Let's say possession of <1 gram?

Offers

I am curious as to how plea offers begin…

8. How do you think prosecutors determine plea offers?
    a. What factors do they consider?
    b. For drug offenses, does actual quantity matter?
9. How much variation would you say there is between prosecutors in plea offers?
10. Do you receive more or less favorable offers as time passes?
11. How do you counsel your clients about taking plea offers?
12. Do judges ever reject plea bargains? Why?
13. Who makes decisions about charging prior enhanceable felonies?

Negotiation

I have a few questions for you regarding the negotiation process

14. Can you describe an average plea negotiation?
15. Who has most bargaining power in plea bargaining?
16. How much discretion do you think it is appropriate to give to prosecutors and judges in negotiation and sentencing?

Sentencing

Now I'd like to ask you some questions about sentencing and individualized sentencing

17. What do you think about sentencing guidelines?
18. How tailored should sentences be for individual defendants?
19. Do you think defendants with similar offenses and similar criminal histories frequently receive very different sentences?
20. How important should community safety be in determining the proper sentence?
21. How important should culpability be in determining the proper sentence?
22. How important should practical considerations – such as whether the defendant is employed or has minor children – be in determining the proper sentence?

Rehab

Lastly, I have a few questions regarding rehabilitation for drug offenders.

23. Do you know how many drug offenders receive treatment in prison?
24. Are drug offenders of different substances treated any differently?
25. Would you say that all judges/prosecutors treat drug offenders the same? Or do some have more rehabilitative views?

We are at the end of our interview. Before we conclude, is there any other information that you would like to share?

Do you know anyone else who might be willing to speak with me? If so, would you share their contact info with me?
Thank you so much for your time.

Judge Questions

Background

I would like to begin by asking you a few background questions

1. How/why did you decide to become a judge?
2. How long have you been on the bench?
3. How would you describe your prior legal experience?
4. Do you have experience judging cocaine cases?

Average cocaine defendant/sentence

I have a few questions regarding cocaine cases

5. How would you describe the "average cocaine defendant?"
6. Can you describe a "typical" sentence for a low-level cocaine offender? Let's say possession of <1 gram?

Offers

I am curious as to how plea offers begin…

7. How do you think that prosecutors determine plea offer terms? What factors do they consider?
    a. [If they have experience as a prosecutor, ask them what they considered when it was their job to make plea offers]
    b. For drug offenses, does actual quantity matter?
2. Do you think prosecutors have "going" rates for any offenses?
8. How much variation is there between prosecutors in plea offers?
9. Do you think defendants receive more or less favorable offers as time passes?
10. Who makes decisions about charging prior enhanceable felonies? When does this occur?

Negotiation

I have a few questions for you regarding the negotiation process

11. Can you describe an average plea negotiation?
12. Who has most bargaining power in plea bargaining?
13. How much discretion do you think it is appropriate to give to prosecutors and judges in negotiation and sentencing?
14. What circumstances would lead you to reject a plea bargain?

Sentencing

Now I'd like to ask you some questions about sentencing and individualized sentencing

15. What do you think about sentencing guidelines?
16. How tailored should sentences be for individual defendants?
17. Do you think defendants with similar offenses and similar criminal histories frequently receive very different sentences?
18. How important should community safety be in determining the proper sentence?
19. How important should culpability be in determining the proper sentence?

20. How important should practical considerations – such as whether the defendant is employed or has minor children – be in determining the proper sentence?

Rehab

Lastly, I have a few questions regarding rehabilitation for drug offenders.

21. Do you know how many drug offenders receive treatment in prison?
22. Are drug offenders of different substances treated any differently?
23. Would you say that all judges/prosecutors treat drug offenders the same? Or do some have more rehabilitative views?

We are at the end of our interview. Before we conclude, is there any other information that you would like to share?

Do you know anyone else who might be willing to speak with me? If so, would you share their contact info with me?
Thank you so much for your time.

Appendix C: Full Disaggregated Models for Sentence Length

This appendix includes the following models which pertain to Table 10:

1. Bivariate OLS Regression Predicting Sentence Length, on Disaggregated Samples
2. OLS Regression Predicting Sentence Length with Individual Evidence Measures, on Disaggregated Samples
3. OLS Regression Predicting Sentence Length with Evidence Index, on Disaggregated Samples
4. OLS Regression Predicting Sentence Length with Individual Evidence Measures + Arrest Circumstances, on Disaggregated Samples
5. OLS Regression Predicting Sentence Length with Evidence Index + Arrest Circumstances, on Disaggregated Samples

Appendix C1: Bivariate OLS Regression Predicting Sentence Length, on Disaggregated Samples

VARIABLES	(1) Full Model	(2) All poss.	(3) All WID	(4) All <1g	(5) All 1-4g	(6) All 4-200g
Logged Substance Qty.	0.37***	0.27***	0.29***	0.12**	0.07	-0.01
	(0.02)	(0.02)	(0.04)	(0.05)	(0.10)	(0.03)
Constant	3.07***	2.80***	3.48***	2.52***	3.79***	4.24***
	(0.05)	(0.05)	(0.08)	(0.08)	(0.12)	(0.11)
Observations	445	270	175	251	91	99
R-squared	0.50	0.35	0.32	0.03	0.007	0.000

Robust standard errors (clustered around judge) in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Appendix C2: OLS Regression Predicting Sentence Length with Individual Evidence Measures, on Disaggregated Samples

VARIABLES	(1) Full Model	(2) All poss.	(3) All WID	(4) All <1g	(5) All 1-4g	(6) All 4-200g
Substance Quantity						
Logged Sub.Qty.	0.10***	0.06*	0.12***	0.04	-0.01	0.06
	(0.02)	(0.03)	(0.03)	(0.04)	(0.13)	(0.03)
Evidentiary Measures						
Cell Phone	-0.09	-0.08	-0.06	0.02	-0.21*	-0.00
	(0.06)	(0.29)	(0.06)	(0.24)	(0.12)	(0.10)
Gun	0.07	0.14	0.02	0.13	-0.10	-0.16*
	(0.07)	(0.11)	(0.08)	(0.15)	(0.11)	(0.08)
Cash/Currency	0.06	0.17	0.01	0.06	0.21	0.13**
	(0.05)	(0.12)	(0.06)	(0.12)	(0.26)	(0.05)
Drug Paraphernalia	-0.11**	-0.15**	-0.05	-0.03	-0.08	-0.07
	(0.04)	(0.06)	(0.05)	(0.04)	(0.18)	(0.05)
Drug Type						
Only Crack	0.08	0.03	0.28*	-0.04	0.36*	0.21
	(0.07)	(0.08)	(0.16)	(0.08)	(0.18)	(0.18)
Crack + Powder	-0.03	-0.05	-0.03	0.14	0.12	0.04
	(0.08)	(0.14)	(0.13)	(0.24)	(0.17)	(0.06)
Drug Type Missing	0.02	0.11	-0.14	0.07	0.03	0.25*
	(0.17)	(0.15)	(0.13)	(0.23)	(0.16)	(0.13)
Race/Ethnicity						
Black	0.04	-0.18**	0.27	0.06	0.03	0.43**
	(0.09)	(0.09)	(0.17)	(0.09)	(0.37)	(0.18)
Black*Crack	-0.08	0.23*	-0.46***	0.09	-0.43	-0.21
	(0.09)	(0.13)	(0.14)	(0.12)	(0.25)	(0.19)
Hispanic	0.09	0.06	0.05	0.14	0.09	0.37**
	(0.09)	(0.10)	(0.21)	(0.10)	(0.42)	(0.16)
Noncitizen	-0.10	-0.04	-0.07	0.02	-0.33*	-0.18
	(0.09)	(0.09)	(0.14)	(0.13)	(0.19)	(0.15)
Extralegal Controls						
Male	0.12*	0.20**	-0.05	0.19*	0.51***	-0.10
	(0.06)	(0.08)	(0.17)	(0.11)	(0.17)	(0.09)
Age	0.03***	0.03*	0.01	0.02	0.06*	0.02
	(0.01)	(0.01)	(0.02)	(0.02)	(0.03)	(0.02)
Age Squared	-0.00***	-0.00**	-0.00	-0.00*	-0.00*	-0.00
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Assigned Attorney	-0.03	-0.02	-0.03	-0.26**	0.21	0.09
	(0.06)	(0.09)	(0.07)	(0.10)	(0.21)	(0.10)

Appendix C2, cont'd: OLS Regression Predicting Sentence Length with Individual Evidence Measures, on Disaggregated Samples

VARIABLES	(1) Full Model	(2) All poss.	(3) All WID	(4) All <1g	(5) All 1-4g	(6) All 4-200g
Public Defender	0.01	0.01	-0.11	-0.23**	-0.01	0.19
	(0.07)	(0.10)	(0.14)	(0.11)	(0.36)	(0.19)
Atty. Info Missing	0.09	-0.02	0.24**	-0.12	0.29	0.21
	(0.06)	(0.14)	(0.10)	(0.12)	(0.32)	(0.14)
Legal Controls						
Convicted 3rd degree	0.99***	1.00***	0.54***			
	(0.11)	(0.12)	(0.16)			
Convicted 2nd degree	1.09***	1.09***	1.15***			
	(0.06)	(0.13)	(0.12)			
Convicted 1st degree	1.51***	1.91***	1.42***			
	(0.11)	(0.35)	(0.14)			
Convicted for Dist.	0.25***			0.10	0.33*	0.65***
	(0.09)			(0.14)	(0.17)	(0.04)
Total Enhan. at Conv.	0.51***	0.61***	0.44***	0.69***	0.26**	0.58***
	(0.07)	(0.04)	(0.11)	(0.05)	(0.09)	(0.04)
Multiple Charges	0.06	0.03	0.09	0.05	0.35**	0.02
	(0.05)	(0.04)	(0.08)	(0.05)	(0.17)	(0.08)
Trial	0.40***	0.52***	0.34**	0.16	0.12	0.27
	(0.09)	(0.11)	(0.15)	(0.18)	(0.28)	(0.25)
Detained at conv.	0.25***	0.51**	0.16	-0.04	0.36	0.13
	(0.09)	(0.20)	(0.13)	(0.14)	(0.30)	(0.21)
Active CJ Status	0.13**	0.09	0.08	0.04	0.02	0.09
	(0.06)	(0.06)	(0.07)	(0.05)	(0.24)	(0.06)
Prior Drug Conviction	0.06	0.01	0.04	0.01	0.03	0.11
	(0.04)	(0.05)	(0.07)	(0.06)	(0.11)	(0.10)
Criminal History Index	0.03*	0.01	0.07	0.01	0.06	0.02
	(0.01)	(0.02)	(0.05)	(0.02)	(0.05)	(0.02)
Charge Reduction	0.06*	0.02	0.15**	0.04	0.27*	0.01
	(0.03)	(0.05)	(0.06)	(0.06)	(0.13)	(0.06)
Constant	1.19***	1.00**	1.93***	1.70***	1.11*	2.34***
	(0.28)	(0.46)	(0.54)	(0.44)	(0.56)	(0.74)
Observations	445	270	175	251	91	99
R-squared	0.836	0.807	0.732	0.643	0.441	0.753

Robust standard errors (clustered around judge) in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Appendix C3: OLS Regression Predicting Sentence Length with Evidence Index, on Disaggregated Samples

VARIABLES	(1) Full Model	(2) All poss.	(3) All WID	(4) All <1g	(5) All 1-4g	(6) All 4-200g
Substance Quantity						
Logged Substance Qty.	0.10***	0.07**	0.12***	0.05	0.03	0.06*
	(0.02)	(0.03)	(0.03)	(0.03)	(0.09)	(0.03)
Evidentiary Measures						
Evidence Index	-0.02	-0.01	-0.02	0.03	-0.03	-0.02
	(0.03)	(0.03)	(0.03)	(0.05)	(0.04)	(0.02)
Drug Type						
Only Crack	0.07	0.01	0.28*	-0.04	0.31	0.23
	(0.07)	(0.09)	(0.16)	(0.09)	(0.21)	(0.18)
Crack + Powder	-0.04	-0.00	-0.04	0.13	0.10	0.05
	(0.08)	(0.09)	(0.13)	(0.23)	(0.13)	(0.06)
Drug Type Missing	0.01	0.11	-0.15	0.06	0.11	0.18
	(0.17)	(0.16)	(0.13)	(0.24)	(0.12)	(0.12)
Race/Ethnicity						
Black	0.06	-0.16*	0.28	0.07	-0.14	0.44**
	(0.09)	(0.09)	(0.17)	(0.09)	(0.24)	(0.18)
Black*Crack	-0.08	0.22	-0.46***	0.10	-0.33	-0.26
	(0.09)	(0.13)	(0.14)	(0.12)	(0.31)	(0.20)
Hispanic	0.09	0.06	0.06	0.15	-0.03	0.35*
	(0.09)	(0.11)	(0.21)	(0.11)	(0.32)	(0.17)
Noncitizen	-0.10	-0.08	-0.07	0.01	-0.28*	-0.10
	(0.08)	(0.09)	(0.13)	(0.13)	(0.14)	(0.14)
Extralegal Controls						
Male	0.14*	0.22***	-0.05	0.20*	0.47***	-0.12
	(0.07)	(0.07)	(0.18)	(0.10)	(0.13)	(0.07)
Age	0.03***	0.03*	0.01	0.02	0.06*	0.01
	(0.01)	(0.01)	(0.02)	(0.02)	(0.03)	(0.02)
Age Squared	-0.00***	-0.00**	-0.00	-0.00*	-0.00	-0.00
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Assigned Attorney	-0.04	-0.04	-0.03	-0.26**	0.16	0.08
	(0.06)	(0.08)	(0.07)	(0.10)	(0.21)	(0.10)
Public Defender	0.00	-0.03	-0.09	-0.24**	0.06	0.16
	(0.07)	(0.09)	(0.13)	(0.11)	(0.30)	(0.22)
Atty. Info Missing	0.11*	-0.02	0.26**	-0.12	0.36	0.23*
	(0.06)	(0.13)	(0.10)	(0.12)	(0.24)	(0.13)
Legal Controls						
Convicted 3rd degree	0.98***	0.99***	0.55***			
	(0.11)	(0.12)	(0.16)			
Convicted 2nd degree	1.09***	1.10***	1.15***			
	(0.06)	(0.14)	(0.11)			
Convicted 1st degree	1.47***	1.93***	1.40***			
	(0.11)	(0.36)	(0.14)			
Convicted for Dist.	0.26***			0.11	0.34*	0.64***
	(0.09)			(0.11)	(0.17)	(0.04)
Total Enhan. at Conv.	0.52***	0.62***	0.45***	0.70***	0.25**	0.58***
	(0.07)	(0.04)	(0.11)	(0.05)	(0.09)	(0.05)

Appendix C3, cont'd: OLS Regression Predicting Sentence Length with Evidence Index, on Disaggregated Samples

VARIABLES	(1) Full Model	(2) All poss.	(3) All WID	(4) All <1g	(5) All 1-4g	(6) All 4-200g
Multiple Charges	0.07	0.04	0.10	0.06	0.28**	0.05
	(0.05)	(0.04)	(0.08)	(0.05)	(0.13)	(0.08)
Trial	0.38***	0.44***	0.34**	0.14	0.17	0.24
	(0.10)	(0.11)	(0.16)	(0.18)	(0.26)	(0.27)
Detained at Conviction	0.21**	0.47**	0.13	-0.04	0.39	0.09
	(0.09)	(0.20)	(0.11)	(0.13)	(0.26)	(0.22)
Active CJ Status	0.13**	0.11	0.08	0.03	0.07	0.09
	(0.06)	(0.06)	(0.06)	(0.06)	(0.20)	(0.09)
Prior Drug Conviction	0.05	0.02	0.03	0.01	0.07	0.11
	(0.04)	(0.06)	(0.06)	(0.05)	(0.10)	(0.09)
Criminal History Index	0.03*	0.01	0.07	0.01	0.04	0.04
	(0.01)	(0.02)	(0.05)	(0.02)	(0.05)	(0.03)
Charge Reduction	0.07*	0.03	0.15**	0.04	0.28**	-0.02
	(0.04)	(0.05)	(0.07)	(0.06)	(0.11)	(0.06)
Constant	1.23***	1.04**	1.94***	1.72***	1.30**	2.69***
	(0.27)	(0.45)	(0.51)	(0.41)	(0.56)	(0.73)
Observations	445	270	175	251	91	99
R-squared	0.834	0.798	0.731	0.641	0.418	0.740

Robust standard errors (clustered around judge) in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Appendix C4: OLS Regression Predicting Sentence Length with Individual Evidence + Arrest Circumstances on Disaggregated Samples

VARIABLES	(1) Full Model	(2) All poss.	(3) All WID	(4) All <1g	(5) All 1-4g	(6) All 4-200g
Substance Quantity						
Logged Substance Qty.	0.10***	0.07**	0.10***	0.05	0.05	0.05
	(0.02)	(0.03)	(0.03)	(0.03)	(0.13)	(0.04)
Evidentiary Measures						
Cell Phone	-0.10	-0.04	-0.11*	0.00	-0.29*	0.06
	(0.06)	(0.30)	(0.06)	(0.27)	(0.14)	(0.10)
Gun	0.06	0.16	0.01	0.12	-0.09	-0.12***
	(0.06)	(0.10)	(0.08)	(0.15)	(0.11)	(0.04)
Cash/Currency	0.06	0.24**	-0.01	0.09	0.09	0.18**
	(0.05)	(0.11)	(0.06)	(0.12)	(0.29)	(0.08)
Drug Paraphernalia	-0.12**	-0.12*	-0.12	-0.03	-0.10	0.02
	(0.05)	(0.07)	(0.08)	(0.05)	(0.23)	(0.09)
Situational Arrest Measures						
D Sold to Police	0.01	0.57***	0.01	0.04	0.26	0.07
	(0.08)	(0.16)	(0.12)	(0.15)	(0.17)	(0.10)
Other People Arrested	0.05	-0.02	0.07	0.04	0.16	0.03
	(0.04)	(0.08)	(0.07)	(0.09)	(0.17)	(0.16)
Citizen Call	0.12**	0.14*	0.08	0.10	-0.14	0.02
	(0.05)	(0.07)	(0.09)	(0.07)	(0.16)	(0.06)
Investigation/Warrant	0.03	-0.06	0.16	-0.02	0.11	-0.12*
	(0.08)	(0.08)	(0.10)	(0.09)	(0.12)	(0.06)
Any Search Performed	0.09**	-0.07	0.19*	-0.01	0.25*	-0.17
	(0.04)	(0.07)	(0.10)	(0.07)	(0.12)	(0.16)
Any Consent to Search	0.00	0.03	-0.02	0.10	-0.11	0.22
	(0.06)	(0.08)	(0.12)	(0.11)	(0.17)	(0.14)
Plain View	-0.01	-0.04	-0.01	-0.01	0.08	-0.12**
	(0.04)	(0.05)	(0.07)	(0.07)	(0.13)	(0.05)
D Fled/Tried to Flee	-0.01	-0.12*	0.02	0.03	0.14	-0.07
	(0.05)	(0.07)	(0.09)	(0.07)	(0.26)	(0.10)
Drug Type						
Only Crack	0.10	0.03	0.30*	0.00	0.47*	0.21
	(0.07)	(0.08)	(0.16)	(0.08)	(0.24)	(0.12)
Crack + Powder	-0.02	-0.10	-0.04	0.20	0.18	0.02
	(0.08)	(0.11)	(0.13)	(0.24)	(0.26)	(0.06)
Drug Type Missing	0.01	0.12	-0.16	0.07	0.02	0.29**
	(0.17)	(0.14)	(0.13)	(0.23)	(0.20)	(0.11)
Race/Ethnicity						
Black	0.04	-0.21**	0.25	0.08	0.16	0.53**
	(0.08)	(0.09)	(0.19)	(0.09)	(0.43)	(0.22)
Black*Crack	-0.09	0.26*	-0.45***	0.07	-0.51**	-0.26
	(0.09)	(0.13)	(0.15)	(0.11)	(0.23)	(0.15)
Hispanic	0.10	0.07	0.11	0.18	0.19	0.36**
	(0.09)	(0.10)	(0.22)	(0.11)	(0.46)	(0.16)
Noncitizen	-0.09	-0.02	-0.11	0.05	-0.26	-0.16
	(0.08)	(0.10)	(0.14)	(0.13)	(0.20)	(0.13)

Appendix C4, cont'd: OLS Regression Predicting Sentence Length with Individual Evidence + Arrest Circumstances on Disaggregated Samples

VARIABLES	(1) Full Model	(2) All poss.	(3) All WID	(4) All <1g	(5) All 1-4g	(6) All 4-200g
Extralegal Controls						
Male	0.12*	0.20***	-0.08	0.21**	0.63**	-0.10
	(0.06)	(0.07)	(0.17)	(0.09)	(0.25)	(0.14)
Age	0.03***	0.03**	0.02	0.03	0.07*	0.03
	(0.01)	(0.01)	(0.03)	(0.02)	(0.04)	(0.03)
Age Squared	-0.00***	-0.00***	-0.00	-0.00*	-0.00*	-0.00
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Assigned Attorney	-0.03	0.01	-0.04	-0.25**	0.19	0.10
	(0.06)	(0.09)	(0.09)	(0.09)	(0.25)	(0.07)
Public Defender	0.02	0.04	-0.15	-0.22**	-0.12	0.27
	(0.07)	(0.09)	(0.13)	(0.10)	(0.46)	(0.19)
Atty. Info Missing	0.09	0.01	0.21*	-0.11	0.26	0.28
	(0.06)	(0.14)	(0.10)	(0.11)	(0.43)	(0.17)
Legal Controls						
Convicted 3rd degree	0.99***	1.02***	0.55**			
	(0.10)	(0.11)	(0.19)			
Convicted 2nd degree	1.08***	1.08***	1.13***			
	(0.07)	(0.13)	(0.14)			
Convicted 1st degree	1.48***	1.79***	1.42***			
	(0.10)	(0.39)	(0.16)			
Convicted for Dist.	0.28***			0.11	0.26*	0.67***
	(0.07)			(0.13)	(0.14)	(0.05)
Total Enhan. at Conv.	0.51***	0.62***	0.43***	0.69***	0.24**	0.58***
	(0.07)	(0.05)	(0.10)	(0.05)	(0.10)	(0.08)
Multiple Charges	0.05	0.05	0.07	0.05	0.30	0.08
	(0.05)	(0.04)	(0.08)	(0.05)	(0.21)	(0.08)
Trial	0.38***	0.57***	0.35**	0.15	0.15	0.20
	(0.08)	(0.13)	(0.17)	(0.20)	(0.35)	(0.18)
Detained at Conviction	0.25***	0.46**	0.16	-0.05	0.41	0.07
	(0.08)	(0.19)	(0.13)	(0.13)	(0.26)	(0.20)
Active CJ Status	0.12**	0.10	0.06	0.05	0.04	0.09
	(0.06)	(0.06)	(0.07)	(0.06)	(0.24)	(0.10)
Prior Drug Conviction	0.06	0.03	0.05	0.01	-0.01	0.09
	(0.04)	(0.05)	(0.07)	(0.06)	(0.13)	(0.12)
Criminal History Index	0.03*	0.01	0.07	0.02	0.08	0.02
	(0.02)	(0.02)	(0.05)	(0.02)	(0.06)	(0.05)
Charge Reduction	0.06*	0.00	0.13**	0.02	0.25	-0.02
	(0.03)	(0.05)	(0.06)	(0.06)	(0.15)	(0.07)
Constant	0.99***	0.94**	1.68**	1.55***	0.52	2.45***
	(0.27)	(0.45)	(0.60)	(0.47)	(0.82)	(0.70)
Observations	445	270	175	251	91	99
R-squared	0.839	0.816	0.741	0.650	0.493	0.776

Robust standard errors (clustered around judge) in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Appendix C5: OLS Regression Predicting Sentence Length with Evidence Index + Arrest Circumstances, on Disaggregated Samples

VARIABLES	(1) Full Model	(2) All poss.	(3) All WID	(4) All <1g	(5) All 1-4g	(6) All 4-200g
Substance Quantity						
Logged Substance Qty.	0.10***	0.08**	0.11***	0.05	0.08	0.04
	(0.02)	(0.03)	(0.03)	(0.03)	(0.10)	(0.03)
Evidentiary Measures						
Evidence Index	-0.02	0.03	-0.05	0.04	-0.07	0.04
	(0.03)	(0.04)	(0.03)	(0.05)	(0.07)	(0.05)
Situational Arrest Measures						
D Sold to Police	0.05	0.51*	0.04	0.05	0.34*	0.16
	(0.08)	(0.26)	(0.10)	(0.13)	(0.18)	(0.10)
Other People Arrested	0.04	-0.01	0.06	0.03	0.17	0.04
	(0.04)	(0.08)	(0.07)	(0.09)	(0.14)	(0.13)
Citizen Call	0.12**	0.13*	0.07	0.10	-0.13	0.01
	(0.05)	(0.07)	(0.08)	(0.07)	(0.16)	(0.05)
Investigation/Warrant	0.02	-0.07	0.13	-0.03	0.07	-0.16***
	(0.08)	(0.07)	(0.09)	(0.09)	(0.10)	(0.05)
Any Search Performed	0.09*	-0.05	0.19*	-0.02	0.26	-0.13
	(0.04)	(0.07)	(0.10)	(0.08)	(0.19)	(0.15)
Any Consent to Search	-0.01	-0.01	-0.02	0.09	-0.15	0.25*
	(0.07)	(0.08)	(0.13)	(0.11)	(0.16)	(0.14)
Plain View	-0.02	-0.05	-0.02	-0.02	0.07	-0.08
	(0.04)	(0.05)	(0.07)	(0.07)	(0.13)	(0.05)
D Fled/Tried to Flee	-0.01	-0.11	0.01	0.02	0.12	-0.04
	(0.05)	(0.08)	(0.09)	(0.08)	(0.28)	(0.09)
Drug Type						
Only Crack	0.08	0.01	0.30*	-0.01	0.47*	0.25*
	(0.07)	(0.09)	(0.17)	(0.09)	(0.24)	(0.13)
Crack + Powder	-0.03	-0.05	-0.04	0.19	0.17	0.05
	(0.08)	(0.06)	(0.14)	(0.23)	(0.21)	(0.05)
Drug Type Missing	0.01	0.12	-0.16	0.06	0.07	0.26**
	(0.17)	(0.16)	(0.14)	(0.24)	(0.13)	(0.10)
Race/Ethnicity						
Black	0.05	-0.18*	0.27	0.09	0.05	0.49**
	(0.08)	(0.09)	(0.20)	(0.09)	(0.24)	(0.20)
Black*Crack	-0.09	0.24*	-0.45***	0.07	-0.47*	-0.30*
	(0.09)	(0.13)	(0.15)	(0.12)	(0.26)	(0.16)
Hispanic	0.11	0.07	0.11	0.18	0.11	0.29*
	(0.09)	(0.11)	(0.22)	(0.11)	(0.30)	(0.16)
Noncitizen	-0.09	-0.06	-0.10	0.03	-0.21	-0.07
	(0.08)	(0.10)	(0.12)	(0.13)	(0.16)	(0.11)
Extralegal Controls						
Male	0.14*	0.22***	-0.07	0.21**	0.58**	-0.13
	(0.07)	(0.07)	(0.18)	(0.09)	(0.24)	(0.12)
Age	0.03***	0.03**	0.01	0.03	0.06	0.01
	(0.01)	(0.01)	(0.02)	(0.02)	(0.04)	(0.03)

Appendix C5, cont'd: OLS Regression Predicting Sentence Length with Evidence Index + Arrest Circumstances, on Disaggregated Samples

VARIABLES	(1) Full Model	(2) All poss.	(3) All WID	(4) All <1g	(5) All 1-4g	(6) All 4-200g
Age Squared	-0.00***	-0.00***	-0.00	-0.00**	-0.00	-0.00
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Assigned Attorney	-0.03	-0.02	-0.03	-0.25**	0.16	0.09
	(0.06)	(0.08)	(0.09)	(0.10)	(0.28)	(0.07)
Public Defender	0.01	-0.01	-0.12	-0.23**	-0.07	0.23
	(0.07)	(0.08)	(0.13)	(0.10)	(0.36)	(0.18)
Atty. Info Missing	0.11*	-0.00	0.25**	-0.11	0.31	0.29
	(0.06)	(0.14)	(0.10)	(0.11)	(0.35)	(0.17)
Legal Controls						
Convicted 3rd degree	0.98***	1.00***	0.54**			
	(0.10)	(0.11)	(0.19)			
Convicted 2nd degree	1.07***	1.11***	1.14***			
	(0.07)	(0.14)	(0.14)			
Convicted 1st degree	1.45***	1.83***	1.40***			
	(0.10)	(0.39)	(0.16)			
Convicted for Dist.	0.28***			0.11	0.26	0.67***
	(0.07)			(0.10)	(0.17)	(0.04)
Total Enhan. at Conv.	0.52***	0.63***	0.45***	0.70***	0.24**	0.59***
	(0.07)	(0.04)	(0.09)	(0.05)	(0.10)	(0.08)
Multiple Charges	0.06	0.06	0.08	0.06	0.26	0.11
	(0.05)	(0.05)	(0.08)	(0.05)	(0.18)	(0.08)
Trial	0.36***	0.48***	0.34*	0.13	0.18	0.19
	(0.09)	(0.11)	(0.18)	(0.20)	(0.34)	(0.18)
Detained at Conviction	0.21**	0.43**	0.12	-0.06	0.46*	0.06
	(0.08)	(0.19)	(0.12)	(0.12)	(0.25)	(0.23)
Active CJ Status	0.13**	0.11*	0.06	0.04	0.07	0.09
	(0.06)	(0.06)	(0.07)	(0.06)	(0.21)	(0.12)
Prior Drug Conviction	0.06	0.04	0.04	0.02	0.01	0.08
	(0.04)	(0.06)	(0.07)	(0.06)	(0.12)	(0.10)
Criminal History Index	0.03	0.00	0.07	0.02	0.07	0.04
	(0.02)	(0.02)	(0.05)	(0.02)	(0.06)	(0.05)
Charge Reduction	0.07*	0.02	0.14**	0.02	0.27**	-0.03
	(0.04)	(0.05)	(0.07)	(0.06)	(0.10)	(0.06)
Constant	1.04***	1.00**	1.71***	1.60***	0.63	2.77***
	(0.27)	(0.45)	(0.57)	(0.45)	(0.78)	(0.72)
Observations	445	270	175	251	91	99
R-squared	0.837	0.807	0.739	0.647	0.476	0.765

Robust standard errors (clustered around judge) in parentheses
*** p<0.01, ** p<0.05, * p<0.1

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