



# Evolving Dynamics of Federal Cocaine Sentencing Policies: Assessing the Impact of the Fair Sentencing Act 2010 on Sentencing Decisions in Crack and Powder Cocaine Cases

Makeela J. Wells

Assistant Professor, Department of Sociology, Anthropology, and Social Work, Auburn University,  
7022 Haley Center, Auburn, AL 36849, USA. E-mail: [mjw0087@auburn.edu](mailto:mjw0087@auburn.edu)

---

## To Cite this Article

Makeela J. Wells (2024). Evolving Dynamics of Federal Cocaine Sentencing Policies: Assessing the Impact of the Fair Sentencing Act 2010 on Sentencing Decisions in Crack and Powder Cocaine Cases. *Journal of Criminology and Criminal Justice Studies*, 2: 2, pp. 149-169. <https://doi.org/10.47509/JCCJS.2024.v02i02.02>

---

**Abstract:** This study investigates the impact of the Fair Sentencing Act 2010 (FSA) on federal cocaine sentencing outcomes, focusing on the racial and ethnic disparities in substantial assistance (SA) departures, sentence discounts, and sentence length. Drawing on the focal concerns perspective and Bushway and Forst (2013) discretion framework, hypotheses were formulated to Analysis of federal cocaine sentencing data revealed that although FSA did not significantly affect the likelihood of a SA departure, it led to increased sentence discounts and reduced average sentences for crack cases. Additionally, racial and ethnic disparities persisted, with Blacks and Hispanics receiving harsher treatment compared with their White counterparts. The study highlights the ongoing influence of focal concerns in sentencing decisions, suggesting the need for comprehensive reforms within the criminal justice system to address these persistent disparities.

**Keywords:** crack cocaine, Fair Sentencing Act 2010, federal sentencing, powder cocaine

## Introduction

Since the 1980s, public perception of cocaine use has depicted crack cocaine (crack, hereafter) differently from its counterpart, powder cocaine. Media reports and public hysteria portrayed crack as highly addictive and more dangerous than any other drug used at the time. Coupled with the emergence of “an unregulated street drug-market and media accounts of crack-related violence” (Belenko *et al.*, 1991, p. 55), Black communities and legislators alike pushed for harsher drug laws and greater law

enforcement control. The result was the passage and implementation of the Anti-Drug Abuse Acts 1986 and 1988, along with increased resource allocation to law enforcement drug initiatives (Belenko *et al.*, 1991; Bush-Baskette, 2010; USSC, 1997, 2015a).

These laws mandated severe sentences, including five- and 10-year sentences for crack-related offenses, marking the reintroduction of mandatory minimum penalties since their repeal in 1970. The 1986 act established a 100-to-1 federal sentencing disparity between crack and powder cocaine, whereby a person sentenced for five grams of crack received the same minimum five-year sentence as a person sentenced for 500 grams of powder cocaine (McDonald & Carlson, 1993; USSC, 1997, 2015a). Congress amended the act in 1988, increasing penalties for crack offenses, making simple possession of crack the only drug with a mandatory minimum five-year prison sentence for first-time convictions. These amendments also expanded mandatory minimums to include conspiracy charges and transferring discretion from judges to prosecutors (Hartley & Miller, 2010; King & Light, 2019; Lynch, 2016; Mauer, 2001; USSC, 1997, 2015a). Throughout the 1990s, legislative and judicial responses began to face scrutiny, which prompted the United States Sentencing Commission (USSC) to reassess federal cocaine sentencing policies. Subsequently, a “safety valve” was introduced, allowing leniency for certain low-level drug offenses and for those assisting prosecutors in convicting others (USSC, 2015a).

Despite recommendations from the USSC to reduce the crack-powder cocaine quantity disparity and reconsider mandatory minimums, Congress consistently rejected these proposals in the late 1990s and early 2000s. However, pivotal Supreme Court cases, including *United States v. Booker* (2005), *Kimbrough v. United States* (2007), and *Spears v. United States* (2009), gradually expanded judicial discretion in crack sentencing, laying the groundwork for legislative reform (King & Light, 2019; Lynch, 2016; Nowacki, 2015; USSC, 2015a). In 2010, the Fair Sentencing Act (FSA, hereafter) was signed into law by President Barack Obama, reducing the crack-powder cocaine sentencing disparity from 100-to-1 to 18-to-1 for mandatory minimum sentences established in the 1980s (USSC, 2015b).

The implementation of FSA encountered challenges as well, particularly in its initial exclusion of previous and ongoing crack cases. Nonetheless, subsequent measures, including retroactive application and court decisions such as those in *Hill v. United States* (2012) and *Dorsey v. United States* (2012), expanded the scope of FSA to include individuals already sentenced (USSC, 2015b). Despite these advancements, challenges persisted, prompting additional initiatives, including the First Step Act 2018, which sought to reduce sentences for those previously convicted of crack offenses (USSC, 2019). These developments underscored the continuous evolution and discussions surrounding federal cocaine sentencing policies in the United States.

These changes in federal cocaine policy highlight the need for research to explore such changes on federal cocaine sentencing decisions. However, few studies have explored the impact of changes made through FSA (Bjerk, 2017; Wells, 2022a, 2022b). The current study seeks to contribute to this growing body of research by exploring how both FSA and cocaine-type condition the effects of race and ethnicity on sentencing decisions, specifically the likelihood of a substantial assistance (SA) departure, the magnitude of sentence discount, and sentence length. This study contributes to federal sentencing research in three ways. First, it solely focuses on convictions involving federal crack and powder cocaine offenses for which the policy was introduced. Second, the current study examines factors influencing SA departures and the magnitude of the discounts associated with departures, an early decision-making process in federal cases. Departures are used as a tool by prosecutors and judges, allowing them to sentence individuals below or above prescribed federal guideline ranges, potentially decreasing or increasing the average sentences received (Kaiser & Spohn, 2018; Lynch, 2016; USSC, 2020). Finally, the study seeks to examine how cocaine-type condition the effects of policy, race, and ethnicity on sentencing decisions.

### **Review of Prior Research on Federal Sentencing**

Few studies have explored federal sentencing decisions related to cocaine offenses alone (Albonetti, 2017; Bjerk, 2017; McDonald & Carlson, 1993; Hartley *et al.*, 2007b; Hartley & Miller, 2010; Wells, 2022a, 2022b). These studies consistently demonstrate that individuals convicted of crack offenses tend to face more severe treatment compared to those convicted of powder cocaine offenses. The following discussion presents prior research outlining how cocaine type influences different stages of the federal adjudication process.

Hartley *et al.* (2007b) attempted to disentangle the influence of cocaine type on receiving a sentencing departure by using federal data to identify factors that affect the likelihood of receiving a substantial assistance (SA) departure in crack and powder cocaine offenses decided in U.S. district courts. Overall findings revealed that both legally relevant (e.g., criminal history) and legally irrelevant (e.g., race/ethnicity) characteristics impacted prosecutors' decisions regarding SA departures. Notably, individuals charged with crack offenses were less likely to receive an SA departure. Racial disparities were also evident, with Blacks and Hispanics less likely to receive an SA departure regardless of cocaine type.

In one of the earliest studies examining federal sentencing decisions for crack and powder cocaine offenses, McDonald and Carlson (1993) investigated sentences for federal cocaine offenses after the implementation of federal sentencing guidelines and mandatory minimum imprisonment, finding significant racial disparities. They

found that Blacks received sentences 41% longer than Whites, attributed largely to the prevalence of Blacks in crack trafficking cases and average sentences for federal crack offenses being two times longer than average sentences in powder cocaine offenses. Similarly, Hartley and Miller (2010) found that individuals sentenced for crack received longer sentences; however, race and ethnicity had no significant impact on sentence length for either crack or powder cocaine cases. However, more recent research by Albonetti (2017) assessed the direct and conditioning effects of race, ethnicity, and gender on sentencing decisions for federal cocaine trafficking cases, finding racial and ethnic disparities in sentencing and that individuals sentenced for trafficking crack received longer sentences.

Limited research has focused on the impact of FSA on federal sentencing decisions for cocaine cases. Bjerk (2017) investigated changes in sentencing after the passage of FSA and found a decrease in the average sentence length for crack cases. However, individual and case characteristics influencing sentences before and after FSA were not explored. Wells (2022a, 2022b) conducted two recent studies examining the effects of FSA on sentencing outcomes for federal cocaine cases. Wells (2022a) found that post-FSA, the probability of receiving a downward departure rose, especially for Whites. However, FSA did not significantly affect sentence length, with race, not ethnicity, playing a role, as Blacks continued to receive longer sentences than Whites. In a related study, FSA had no significant effects on presentence detention among females sentenced for federal cocaine offenses. However, Black females were less likely, and Hispanic females were more likely to be detained compared to White females. Additionally, post-FSA, receiving a downward departure was more common, yet Black females remained less likely to receive it compared to White females. Overall, females received shorter sentences, with race and ethnicity affecting sentence length before and after FSA (Wells, 2022b). Although these two studies shine a light on the impact of FSA on various sentencing decisions, they fail to explore how the impact of FSA, race, and ethnicity impact sentencing decisions for cocaine types separately or the role of race and ethnicity in influencing sentence discounts.

These studies discussed here collectively examine the impact of cocaine type on various stages of the criminal justice process, showing that individuals sentenced in crack cases tend to face more punitive treatment compared to those sentenced in powder cocaine cases. While FSA has led to changes such as shorter sentences and increased likelihood of sentencing departures, its impact varies across racial and ethnic lines. Overall, these studies shed light on the complex interplay between cocaine type, race, ethnicity, and sentencing outcomes within the criminal justice system.

A dominant theoretical model in examining sentencing decisions is the focal concerns perspective, whose underlying premise is that judges are not always afforded

sufficient time, resources, and access to all relevant information related to a particular case (Steffensmeier *et al.*, 1993, 1995, 1998; Hartley *et al.*, 2007a). As a result, judges rely on three primary concerns when rendering their decisions. Blameworthiness refers to an individual's culpability and the degree of injury the offense caused. According to this concern, those involved in serious offenses and have extensive criminal histories must be held more responsible for their actions, and increases in punishment are contingent upon the severity of the offense and the criminal history of those involved (Steffensmeier *et al.*, 1993, 1995, 1998; Hartley *et al.*, 2007a). Regarding cocaine offenses, the media's portrayal of crack as a more serious drug than powder cocaine led to crack being treated more severely. Additionally, media reports consistently depicted Blacks selling and distributing crack in their neighborhoods, thus increasing the blameworthiness of those involved in crack cases (Belenko *et al.*, 1991; Chiricos, 1996; Cobbina, 2008; Reinerman & Levine, 1997a, 1997b). Protection of the community, while drawing on concerns similar to blameworthiness, also focuses on the need for incapacitation to protect the community from harm and to deter crime (Steffensmeier *et al.*, 1993, 1995, 1998; Hartley *et al.*, 2007a). Individuals involved in serious offenses (e.g., crack cases) may be perceived as a danger and threat, warranting incarceration. Practical constraints and consequences refer to the organizational constraints placed on the court system when imposing sentences, including heavy caseloads and individual constraints of those convicted (e.g., familial obligations; Steffensmeier *et al.*, 1993, 1995, 1998; Hartley *et al.*, 2007a). It can be argued that cases where certain circumstances may place more constraints on an already overburdened system may receive a reduced sentence.

Although these three focal concerns may explain prosecutors' discretion and judges' sentencing decisions, they fail to explain why certain individual characteristics, such as race and ethnicity, have significant influence in predicting sentencing outcomes. Steffensmeier and colleagues (1993, 1995, 1998) argued that both prosecutors and judges may use what is known as perceptual shorthand to determine sentencing outcomes. Similar to Albonetti's (1991, 1997, 2017) avoidance-causal attribution perspective, perceptual shorthand refers to prosecutors and judges rarely having complete information for processing cases. Given this lack of information, prosecutors and judges may rely on past experiences, stereotypes, and, in some cases, prejudicial ideologies to make sentencing decisions and determine an individual's dangerousness and culpability. As a result, this form of decision-making opens the door for racial and ethnic disparity and discrimination in sentencing, whereby prosecutors and judges may perceive young Black and Hispanic men as more dangerous, blameworthy, and less amenable to rehabilitation, thus, requiring severe punishment (Albonetti, 1991, 1997; Hartley *et al.*, 2007a; Steffensmeier *et al.*, 1993, 1995, 1998).

## The Current Study

This study was also guided by the framework outlined by Bushway and Forst (2013), which addresses discretion within the criminal justice system. They identified two types of discretion exist: Type A, which involves decision-making processes whereby judges may use discretion to deviate from sentencing guidelines, and Type B, which explores how policies, such as FSA, may influence discretion in decision-making. Drawing both on the focal concerns perspective and the framework outlined by Bushway and Forst (2013) Type B discretion, the following hypotheses were formulated:

*Hypothesis 1a:* The passage of FSA is expected to increase the likelihood of receiving an SA departure for both crack and powder cocaine cases. Because the crack-powder cocaine drug quantity was reduced to 18-to-1, judges and prosecutors may use SA departures to alleviate the severity of the ratio.

*Hypothesis 1b:* It is expected that individuals sentenced in crack cases will be more likely to receive an SA departure compared to those sentenced in powder cocaine cases.

*Hypothesis 1c:* It is expected that racial and ethnic disparities will persist in the likelihood of receiving an SA departure, with Blacks and Hispanics being less likely to receive an SA departure compared to Whites, regardless of cocaine type.

*Hypothesis 2a:* It is expected that the passage of FSA will increase the magnitude of sentence discounts for SA departures to account for the 18-to-1 ratio.

*Hypothesis 2b:* It is expected that the magnitude of sentence discount will be greater for crack cases than powder cocaine cases, reflecting the differential treatment in sentencing outcomes between the two cocaine types.

*Hypothesis 2c:* It is expected that racial and ethnic disparities will influence the magnitude of sentence discounts, with Blacks and Hispanics receiving smaller discounts compared to Whites, regardless of cocaine type.

“It is expected that the passage of FSA will result in a decrease in average sentence length for crack cases than powder cocaine cases”

*Hypotheses 3b:* It is expected that individuals sentenced for crack cases will receive shorter average sentences compared to those sentenced for powder cocaine cases due to greater sentence discounts received in crack cases.

*Hypothesis 3c:* It is expected that racial and ethnic disparities will persist in sentence length, with Blacks and Hispanics receiving longer average sentences compared to Whites, regardless of cocaine type.

## Data

Data for the study were obtained from the USSC's Monitoring of Federal Crime Sentences (MFCS), which contains detailed information on offenses, including demographic (i.e., race/ethnicity) and case-specific (i.e., criminal history) information for those sentenced in federal courts. For the current study, data were restricted to individuals sentenced within the 90 federal judicial districts representing the 50 states and the District of Columbia during 2005–2009 and 2011–2015 whose cases involved cocaine offenses. Cases used in analyses were based on several criteria. First, data were separated by cocaine type, resulting in subsamples where the primary offense involved crack or powder cocaine. Since most individuals in the current study received a sentence of incarceration (over 95%), analyses focused on cases where a prison sentence was received. Third, trafficking offenses represented 98% of all cocaine offenses; therefore, analyses were restricted to trafficking cases. Finally, analyses excluded cases with missing data on any of the variables of interest. After these exclusion procedures, 29,263 cases remained for analysis, including 8,574 crack offenses and 20,689 powder cocaine offenses.

## Dependent Variables

Three dependent variables were analyzed to explore the effects of the variables of interest on sentencing outcomes for federal cocaine cases. The likelihood of receiving an SA departure was modeled as a dependent variable for the study. SA likelihood was a dichotomous variable representing if an individual sentenced for federal cocaine offenses was granted an SA departure ("0" = no departure; "1" = receipt of an SA departure). The second dependent variable was the magnitude of the discount for the SA departure. Following the equation of Spohn (2005), the magnitude of the discount was calculated by dividing the sentence discount by the presumptive sentence and measured in months (see Cano & Spohn, 2012; Kramer & Ulmer, 1996, p. 89; Spohn & Brennan, 2011; Stacey & Spohn, 2006). The third dependent variable, sentence length, was a continuous variable measuring the number of months an individual received in prison. Although prior sentencing research analyzes the natural logarithm of sentence length due to its positive skewed nature, the current study does not log sentence length to allow for a more standard interpretation (in months) of the beta coefficient (Hartley & Armendariz, 2011).

## Key Variables of Interest

The key variables of interest for the current study were cocaine type, FSA, race, and ethnicity. A dichotomous variable representing cocaine type was included in the full

regression models, with cases involving crack cocaine serving as the reference group. Analyses also include a dichotomous variable to represent cases decided prior to the passage of FSA (coded as “0”) and cases decided after FSA (coded as “1”). For race and ethnicity, dichotomous variables were created to represent three categories: Blacks, Hispanics, and Whites. The dichotomous variable representing Whites was left out of regression analyses to serve as the reference group.

### **Control Variables**

Additional variables that have been shown to impact sentencing outcomes in prior research were included. Regarding case characteristics, the final criminal history score, a continuous measure, was included. As Engen and Gainey (2000) and USSC (2004) recommended, a presumptive sentence was included. The presumptive sentence represented the minimum sentence that could be imposed without departing from federal guidelines. Presentence status represented whether an individual was detained before sentencing (“0” = released; “1” = detained). Case disposition was a dichotomous variable, with those pleading guilty serving as the reference group. The following individual characteristics were included: sex (“0” = female; “1” = male), age in years, and level of education (“0” = less than high school (HS); “1” = HS graduate or greater).

### **Analytic Strategy**

The analysis in the current study began with descriptive statistics for the study’s variables (Table 1), with particular attention given to differences in the variables across cocaine types. Second, the study used binary logistic regression for SA likelihood models (Table 2) followed by ordinary least squares (OLS) regression for the magnitude of sentence discount and sentence lengths models (Tables 3 and 4). For each of the dependent variable analyses, full models were analyzed. Next, to provide a meaningful interpretation of the results from the full models, analyses for SA likelihood, magnitude of discount, and sentence length were separated by cocaine type. The cluster command in Stata was used to account for similar sentencing patterns within a district (Helms & Jacobs, 2002).

## **Results**

### ***Descriptive Statistics***

“Table 1 displays descriptive statistics for the entire sample and for each type of cocaine separately, focusing the discussion on the subsamples by cocaine type.” “For the dependent variables, the likelihood of an SA departure was higher in crack cases compared to powder cocaine cases.” SA likelihood increased slightly across both



cocaine types after the passage of FSA. The average magnitude of sentence discount was slightly greater for powder cocaine cases than crack cases. Across both cocaine types, the average sentence discount was slightly greater after the passage of FSA. The average sentence length for crack cases was greater than the average sentence length for powder cocaine cases. For crack cases, the average sentence was 72.79 months, with the average sentence decreasing after FSA by roughly 12%, from 75.46 months to 66.45 months. For the powder cocaine subsample, the average sentence was 58.84 months, increasing after FSA by 0.44%, from 58.64 to 59.10 months. Although the average sentence for crack cases decreased after FSA, it remained 12% greater than the average sentence for powder cocaine cases.

There were racial and ethnic differences across cocaine types. For instance, an overwhelming number of crack cocaine cases involved Blacks (78%), while most powder cocaine cases involved Hispanics (63%). Concerning control variables, the average final criminal history score and the average presumptive sentence were greater for crack cases compared to powder cocaine cases. Most cases involved males and those with an HS diploma or greater. As for age, those involved in powder cocaine cases were slightly older than those involved in crack cases (35.10 vs. 32.02). Additionally, most were held prior to sentencing and pled guilty to their offenses for both cocaine types.

### *SA Departure Likelihood*

Table 2 presents logistic regression analyses for SA likelihood for the full sample and each cocaine type individually. Analyses revealed that cocaine type, passage of FSA, race, and ethnicity had no significant impact on the likelihood of receiving an SA departure in the full model. Regarding control variables, increases in the final criminal history score increased SA likelihood, while increases in presumptive sentences decreased SA likelihood. Being detained prior to sentencing decreased SA likelihood, while pleading guilty increased SA likelihood. Sex had no significant influence on SA likelihood. Increases in age and being at least an HS graduate increased SA likelihood.

Regarding analyses for cocaine type individually, “there were significant differences in SA departure likelihood”. More specifically, the passage of FSA only had a significant influence on SA likelihood in crack cases. An SA departure was 21% greater in crack cases handled after FSA. Race and ethnicity only influenced an SA likelihood for crack cases. SA likelihood was 34% and 42% less likely in cases involving Blacks and Hispanics, respectively, when compared to Whites. Across cocaine types, several control variables had similar effects on SA likelihood: criminal history score, presumptive sentence, pleading guilty, and level of education. In terms of differences, results revealed that being detained prior to sentencing reduced SA likelihood for powder cocaine cases while being male reduced SA likelihood for crack cases.

Table 1: Descriptive statistics for variables

Variables	Full Model (N = 29,263)		Crack Cocaine Cases (n = 8,574)		Powder Cocaine Cases (n = 20,689)	
	Mean(SD)	N	Mean(SD)	n	Mean(SD)	n
Dependent Variables						
SA departure (% yes)	0.53(0.50)	15,480	0.69(0.46)	5,951	0.46(0.50)	9,529
pre-FSA	0.53(0.50)	9,595	0.68(0.47)	4,190	0.45(0.50)	5,405
post-FSA	0.54(0.50)	5,885	0.74(0.44)	1,761	0.48(0.50)	4,124
Magnitude of discount (months)	51.42(24.25)	15,480	50.42(25.51)	5,951	52.04(23.41)	9,529
pre-FSA	50.86(24.33)	9,595	49.93(25.62)	4,190	51.59(23.25)	5,405
post-FSA	52.32(24.10)	5,885	51.57(25.22)	1,761	52.64(23.60)	4,124
Sentence length (months)	64.20(46.28)	15,480	72.79(53.60)	5,951	58.84(40.13)	9,529
pre-FSA	65.99(47.89)	9,595	75.46(54.85)	4,190	58.64(40.20)	5,405
post-FSA	61.30(43.37)	5,885	66.45(49.95)	1,761	59.10(40.04)	4,124
Primary Variables of Interest						
Blacks	0.38(0.48)	11,069	0.78(0.41)	6,690	0.21(0.41)	4,379
Hispanics	0.48(0.50)	13,933	0.10(0.30)	885	0.63(0.48)	13,048
Whites (reference)	0.15(0.35)	4,261	0.12(0.32)	999	0.16(0.36)	3,262
Control Variables						
Criminal history score	1.82(1.46)	29,263	2.67(1.83)	8,574	1.47(1.09)	20,689
Presumptive sentence (months)	391.01(1637.69)	29,263	776.87(2461.06)	8,574	231.10(1093.80)	20,689
Detained prior to sentencing	0.77(0.42)	22,574	0.74(0.44)	6,343	0.78(0.41)	16,231
Pled guilty	0.98(0.12)	28,808	0.97(0.17)	8,327	0.99(0.10)	20,481
Male	0.86(0.34)	25,169	0.86(0.35)	7,345	0.86(0.35)	17,824
Age	34.20(9.75)	29,963	32.02(8.80)	8,574	35.10(9.98)	20,689
HS graduate or greater	0.54(0.50)	15,808	0.55(0.50)	4,686	0.54(0.50)	11,122

**Table 2: Logistic regression for substantial assistance (SA) departure likelihood**

	Full Model			Crack Cocaine Cases			Powder Cocaine Cases		
	b	SE	OR	b	SE	OR	b	SE	OR
Primary Variables of Interest									
Crack cocaine	.13	.12	1.07						
FSA variable	.07	.06	1.14	.19	.08	1.21*	.04	.07	1.04
Blacks	-.04	.29	.95	-.42	.12	.66***	.11	.36	1.12
Hispanics	-.33	.32	.72	-.54	.16	.58**	-.22	.35	.80
Control Variables									
Criminal history score	1.77	.13	5.88***	1.35	.09	3.85***	2.33	.21	10.30***
Presumptive sentence	-.00	.00	1.00***	-.00	.00	1.00***	.00	.00	1.00***
Detained prior to sentencing	-.39	.11	.68***	-.05	.09	.95	-.50	.13	0.61***
Pled guilty	6.38	.78	589.48***	5.58	.55	266.33***	8.23	1.79	3762.16***
Male	-.03	.05	.97	-.18	.08	.84*	.04	.06	1.05
Age	.01	.05	1.01*	.01	.03	1.01	.01	.00	1.01
HS graduate or greater	.21	.06	1.23**	.16	.05	1.17**	.21	.08	1.23**
Constant	-8.49	.95	.00***	-6.78	.67	.00***	-11.01	1.96	.00***
Pseudo R2		.27			.32			.22	
Chi-Square		532.35			303.88			423.06	
N/n		29,263			8,754			20,689	

\*p<0.05; \*\*p<0.01; \*\*\*p<0.001

### *Magnitude of Sentence Discount*

The results of OLS regression analyses of the magnitude of sentence discounts for SA departures for the full sample and cocaine subsamples are presented in Table 3. Results from the full model revealed that crack cases were associated with a greater sentence discount (+2.62%) compared to cases involving powder cocaine. sentenced after the passage of FSA received a sentence discount of approximately 2%. Race, but not ethnicity, influenced sentence discount for the full model, with Blacks receiving a sentence discount that was 3% less than the sentence discount received by Whites. All control variables except age significantly influenced the average sentence discount for the full model.

In terms of analyses for each cocaine type, FSA had a significant influence on the sentence discount for both crack and powder cocaine cases, with cases handled after FSA receiving a two-percent sentence discount. Race only had a significant influence on sentence discounts in powder cocaine cases, with Blacks receiving sentence discounts that were roughly 3% lower than sentence discounts received by Whites. The following control variables significantly impacted sentence discounts for both crack and powder cocaine cases: criminal history score, presumptive sentence, presentence status, and sex. Level of education significantly influenced sentence discounts for powder cocaine cases only, with having an HS diploma or greater increasing sentence discounts.

### *Sentence Length*

Table 4 displays the OLS regression analyses examining sentence length for the full sample and for each cocaine type individually. For these analyses, data was restricted to those cases in which the magnitude of sentence discount was greater than zero months. Results from the full sample revealed that cocaine type significantly influenced sentence length. The average sentence for crack cases was approximately four months shorter compared to powder cocaine cases. Being sentenced after the passage of FSA decreased average sentences by roughly four months. Only race had a significant effect, with Blacks receiving average sentences approximately ten months longer than their White counterparts. Individuals with greater criminal history scores and presumptive sentences, those detained prior to sentencing, and males received longer average sentences. Pleading guilty reduced average sentences by roughly 26 months.

Analyzing cocaine types individually revealed differences between crack and powder cocaine cases. While the passage of FSA significantly impacted sentence length for crack cases, it did not impact powder cocaine cases. Specifically, the average sentence in crack cases decreased by approximately eight months following FSA. Race had a significant influence on sentence length across cocaine types; however, ethnicity only

Table 3: OLS regression for the magnitude of sentence discount

	Full Model		Crack Cocaine Cases		Powder Cocaine Cases	
	b	SE	b	SE	b	SE
Primary Variables of Interest						
Crack cocaine	2.62	1.32*				
FSA variable	1.83	.58**	2.26	1.14*	1.58	.62*
Blacks	-3.02	1.09**	-2.09	1.71	-2.68	1.03*
Hispanics	.08	2.15	7.21	3.72	-1.33	1.84
Control Variables						
Criminal history score	-3.49	.30***	-3.03	.26***	-4.09	.46***
Presumptive sentence	.01	.00***	.01	.00***	.01	.00***
Detained prior to sentencing	-12.54	1.26***	-12.32	2.05***	-12.42	1.12***
Pled guilty	9.81	1.26*	6.59	5.37	11.18	7.34
Male	-8.98	1.10***	-8.80	1.20***	-9.16	1.38***
Age	.04	.04	.19	.06***	-.03	.04
HS graduate or greater	1.47	.59*	.69	.58	1.73	.85*
Constant	62.38	5.28***	60.75	6.30***	65.33	7.68***
R <sup>2</sup>		.25		.33		.21
F		466.94***		228.84***		392.41***
N/n		15,480		5,951		9,529

\*p&lt;0.05; \*\*p&lt;0.01; \*\*\*p&lt;0.001

Table 4: OLS regression for sentence length

	Full Model		Crack Cocaine Cases		Powder Cocaine Cases	
	<i>b</i>	SE	<i>b</i>	SE	<i>b</i>	SE
Primary Variables of Interest						
Crack cocaine	-3.66	1.73*				
FSA 2010 variable	-3.55	.93***	-8.24	1.86***	-9.99	.83
Blacks	9.80	1.78***	9.46	2.86**	8.86	1.83***
Hispanics	4.04	2.42	-3.71	4.19	5.25	2.11*
Control Variables						
Criminal history score	8.59	.58*	8.58	.69***	8.77	.68***
Presumptive sentence	.01	.00*	.01	.00***	.01	.00***
Detained prior to sentencing	21.01	1.51***	21.10	2.56***	20.61	1.37***
Pled guilty	-25.48	11.25*	-40.05	14.08**	-6.03	8.20
Male	13.13	1.23***	12.90	1.56***	13.07	1.52***
Age	.04	.06	-.25	.09**	.18	.05**
HS graduate or greater	1.59	.87	-1.22	.99	-1.31	1.32
Constant	34.08	11.65***	56.50	14.47***	7.90	8.24
R <sup>2</sup>		.40		.43		.35
F		88.14***		66.36***		90.63
N/n		15,480		5,951		9,529

\*p&lt;0.05; \*\*p&lt;0.01; \*\*\*p&lt;0.001

influenced average sentence length for powder cocaine cases. Blacks received longer sentences than Whites across cocaine types (nine months). In comparison, Hispanics received longer average sentences than Whites in powder cocaine cases (five months). Several control variables had a similar impact on average sentences for both cocaine types: criminal history score, presumptive sentence, presentence status, and sex. However, pleading guilty and age significantly influenced average sentences for crack cases, with pleading guilty (40 months) and being older (less than one month) reducing sentences.

## Discussion

The current study focused on empirically testing hypotheses drawn from prior studies on cocaine sentencing, the focal concerns perspective, and Type B discretion. Analyses utilized federal sentencing data for crack and powder cocaine cases handled before and after FSA. This study contributes to the existing literature by examining the influence of cocaine type, FSA, race, and ethnicity on SA likelihood, magnitude of sentence discount, and sentence length. Descriptive statistics indicated that federal cocaine cases decreased after FSA, with crack cases experiencing the greatest decrease (a 62% decrease). Cases involving crack were more likely to receive an SA departure. Although the magnitude of sentence discount was similar across cocaine types, the average sentences for crack cases were greater than those for powder cocaine cases. This can be explained by the continued drug quantity disparity (an 18-to-1 ratio). Additionally, the average presumptive sentence in crack cases was 70% greater than the average presumptive sentence in powder cocaine cases, influencing greater sentence length for crack cases.

Multivariate analyses revealed that the passage of FSA had mixed effects on sentencing outcomes for federal cocaine cases. More specifically, FSA did not have a significant effect on the likelihood of an SA departure, lending no support to Hypothesis 1a. The lack of FSA's impact on SA departures may be the result of judges using the 18-to-1 drug ratio in an advisory manner following the *Booker* decision, negating the need for SA departures in federal crack cases. FSA, however, did influence the magnitude of sentence discount (Hypothesis 2a) and sentence length (Hypothesis 3a), leading to increases in sentence discounts and reductions in average sentence length for crack cases. These findings seem to suggest that, in addition to the *Booker* decision, the 18-to-1 disparity may continue to be perceived as unfair by judges, particularly given that crack offenses have been associated with socioeconomic factors, such as poverty and negative health outcomes (e.g., addiction; Bush-Baskette, 2010; Butler *et al.*, 2017; Palamar *et al.*, 2015). Thus, the passage of FSA may have addressed judges' concerns about the blameworthiness of those involved in crack cases, leading to increased

sentence discounts and reduced sentences for crack cases. Additionally, by reducing the sentencing disparity between crack and powder cocaine, FSA may have allowed judges to impose more proportionate sentences that still protect the community while avoiding harsher penalties for crack cases. With FSA further increasing judicial discretion in crack cases, judges may consider individual circumstances and those practical constraints of the legal system (e.g., heavy caseloads and prison overcrowding), leading to greater sentence discounts and reductions in average sentences for crack cases.

Consistent with prior research, the current study found disparities in sentencing based on cocaine type. Individuals involved in crack cases tended to receive more lenient treatment compared to those involved in powder cocaine cases across the various stages of the adjudication process. Crack cases were associated with a greater likelihood of SA departure; however, regression analyses revealed that cocaine type had no significant influence on SA likelihood, lending partial support for Hypothesis 1b. This seems to suggest that judges and prosecutors may use SA departures to circumvent the drug quantity ratio and provide those involved in federal crack cases with the opportunity for a lighter sentence. Furthermore, departing from sentencing guidelines in crack cases may serve as a way for prosecutors to exercise their discretion to navigate the constraints of the court system, such as heavy caseloads. Crack cases received greater sentence discounts, even after controlling for relevant factors, supporting Hypothesis 2b. Again, the practical constraints of the court system may influence sentencing decisions. By providing greater sentence discounts in cocaine cases, judges and prosecutors may address these practical constraints while still achieving the goals of sentencing.

Regarding sentence length, crack cases were associated with shorter sentences compared to powder cocaine cases, refuting Hypothesis 3b. This finding contradicts prior research supporting focal concerns whereby those sentenced in crack cases received longer sentences (see Hartley *et al.*, 2007a). Again, this finding seems to suggest advisory use of the drug quantity ratio and the effects of previous legislation passed to reduce sentencing disparities based on cocaine type, as well as judges taking into consideration the practical constraints of the legal system, including caseloads and prison overcrowding. This finding may also be explained by the effects of receiving an SA departure mitigating the effects of cocaine type. Furthermore, those involved in crack cases may be more willing to trade information for lighter sentences. Research by Nutting (2014) supports the idea that individuals expecting longer sentences may be willing to provide information on others to reduce the length of their sentences in an attempt to reduce their blameworthiness in the case.

Racial and ethnic disparities persisted in sentencing outcomes for federal cocaine cases for this study. Blacks consistently faced more punitive treatment compared to Whites, regardless of cocaine type or the passage of FSA. Hispanics also experienced



disparities, particularly in powder cocaine cases. Although the likelihood of receiving an SA departure did not significantly differ by cocaine type in the full model, racial and ethnic disparities were evident in the models partitioned by cocaine type. More specifically, Blacks and Hispanics were less likely to receive an SA departure compared to their White counterparts in crack cases, lending partial support for Hypothesis 1c. Regarding sentence discounts, racial disparities persisted in the full model, with Blacks receiving smaller sentence discounts compared to Whites (partial support for Hypothesis 2c). However, when models were partitioned by cocaine type, racial disparity was present in the powder cocaine model, with Blacks receiving smaller sentence discounts than Whites. Finally, regarding sentence length, Blacks consistently received longer sentences than Whites across cocaine types. Additionally, Blacks received longer sentences than Whites across cocaine types, while Hispanics received longer sentences than Whites in powder cocaine cases, supporting Hypothesis 3c.

“These findings, demonstrating persistent racial and ethnic disparities in sentencing outcomes, suggest that individuals perceived as more blameworthy may receive harsher sentences.” In the context of racial and ethnic disparities, stereotypes and biases may lead prosecutors and judges to perceive Blacks and Hispanics as more blameworthy, regardless of the specific circumstances of their cases. Regarding considerations for protecting the community, in cases involving drugs, especially cocaine offenses, judges and prosecutors may be influenced by perceptions of the impact of drug-related crimes on community safety. Stereotypes about the dangers of drugs and drug-related crime may disproportionately affect Blacks and Hispanics, leading judges and prosecutors to view them as posing a greater threat to community safety compared to Whites (Doerner & Demuth, 2010; Lynch, 2016; Pasko, 2002; Spohn & Holleran, 2000; Steen *et al.*, 2005). As a result, Blacks may be more likely to receive harsher treatment, regardless of cocaine type, while Hispanics may experience disparities, particularly in cases involving powder cocaine. While the passage of FSA aimed to reduce sentencing disparities between crack and powder cocaine cases, practical constraints may limit its effectiveness in addressing racial and ethnic disparities more broadly. Legal precedents (e.g., immigration law), institutional practices, and resource constraints (e.g., lack of access to drug courts) may perpetuate existing disparities, even after legislative changes.

Despite its contributions, the current study has several limitations that warrant consideration. While the study considers the effects of race, ethnicity, and cocaine type, the interactions between these variables and others, such as gender and age, are not fully explored. The intersectionality of these factors could reveal more nuanced disparities and outcomes in sentencing. Second, the current study discusses FSA and its immediate aftermath but does not explore how subsequent legislative changes or broader policy shifts may have further influenced sentencing practices. For instance,

the First Step Act 2018 made further reforms to federal sentencing policies and could have implications for the dynamics explored in this study.

Third, the study primarily employs quantitative methods to assess the impact of FSA. This approach does not fully capture the qualitative aspects of sentencing decisions, such as the rationale behind judges' discretion or the negotiation processes between defense and prosecution. Qualitative interviews with both judges and attorneys could provide deeper insights into the impact of FSA on these dimensions. While the study relies on focal concerns to explain sentencing decisions, it may not fully account for the complexity of human judgment or the evolution of societal attitudes toward drugs over time. Other theoretical frameworks, such as critical race theory, could offer additional insights into how systemic racism and historical contexts influence sentencing disparities.

In conclusion, the current study highlights the persistent influence of cocaine type, race, and ethnicity on sentencing outcomes for federal cocaine cases. Despite legislative reforms and ongoing efforts to address disparities in federal drug sentencing, racial and ethnic groups continue to face disproportionate and punitive treatment in the criminal justice system. Comprehensive reforms that prioritize equity, fairness, and social justice are required to address these disparities effectively.

### References

- Albonetti, C. A. (1991). An integration of theories to explain judicial discretion. *Social Problems*, 38(2), 247–266. <https://doi.org/10.2307/800532>
- Albonetti, C. A. (1997). Sentencing under the Federal Sentencing Guidelines: Effects of Defendant Characteristics, Guilty Pleas, and Departures on Sentence Outcomes for Drug Offenses, 1991–1992. *Law & Society Review*, 31(4), 789–822. doi:10.2307/3053987
- Albonetti, C. A. (2017). Sentencing of Federal Cocaine Trafficking/Manufacturing Defendants: Assessing Direct and Conditioning Effects of Defendant's Race/Ethnicity and Gender on Length of Imprisonment. *Journal of Gender, Race & Justice*, 21, 1–35.
- Belenko, S., Fagan, J., & Chin, K. L. (1991). Criminal justice responses to crack. *Journal of Research in Crime and Delinquency*, 28(1), 55–74. <https://doi.org/10.1177/0022427891028001004>
- Bjerk, D. (2017). Mandatory minimum policy reform and the sentencing of crack cocaine defendants: An analysis of the Fair Sentencing Act. *Journal of Empirical Legal Studies*, 14(2), 370 – 396. doi: <https://doi.org/10.1111/jels.12150>
- Bush-Baskette, S. R. (2010). *Misguided justice: The war on drugs and the incarceration of Blacks women*. Universe.
- Bushway, S. D., & Forst, B. (2013). Studying discretion in the processes that generate criminal justice sanctions. *Justice Quarterly*, 30(2), 199–222. <https://doi.org/10.1080/07418825.2012.682604>

- Butler, A. J., Rehm, J., & Fischer, B. (2017). Health outcomes associated with crack-cocaine use: Systematic review and meta-analyses. *Drug and Alcohol Dependence*, 180, 401-416. <https://doi.org/10.1016/j.drugalcdep.2017.08.036>
- Cano, M. V., & Spohn, C. (2012). Circumventing the penalty for offenders facing mandatory minimums: Revisiting the dynamics of “sympathetic” and “salvageable” offenders. *Criminal Justice and Behavior*, 39(3), 308-332. <https://doi.org/10.1177/0093854811431419>
- Chiricos, T.G. (1996). Moral panic as ideology: Race, drugs, violence and punishment in America. In M. Lynch & E.B. Patterson (Eds.), *Justice with prejudice: Race and criminal justice in America* (pp. 19-48). New York, NY: Harrow and Heston
- Cobbina, J. E. (2008). Race and class differences in print media portrayals of crack cocaine and methamphetamine. *Journal of Criminal Justice and Popular Culture*, 15(2), 145-167.
- Doerner, J. K., & Demuth, S. (2010). The independent and joint effects of race/ethnicity, gender, and age on sentencing outcomes in U.S. federal courts. *Justice Quarterly*, 27(1), 1-27. <https://doi.org/10.1080/07418820902926197>
- Engen, R. L., & Gainey, R. R. (2000). Modeling the effects of legally relevant and extralegal factors under sentencing guidelines: The rules have changed. *Criminology*, 38(4), 1207-1230. <https://doi.org/10.1111/j.1745-9125.2000.tb01419.x>
- Hartley, R. D., & Armendariz, L. F. (2011). Border justice? Sentencing federal narcotics offenders in southwest border districts: A focus on citizenship status. *Journal of Contemporary Criminal Justice*, 27(1), 43-62. <https://doi.org/10.1177/1043986211402208>
- Hartley, R. D., Maddan, S., & Spohn, C. (2007a). Concerning conceptualization and operationalization: Sentencing data and the focal concerns perspective—A research note. *The Southwest Journal of Criminal Justice*, 4(1), 58-78.
- Hartley, R. D., Maddan, S., & Spohn, C. C. (2007b). Prosecutorial discretion: An examination of substantial assistance departures in federal crack-cocaine and powder-cocaine cases. *Justice Quarterly*, 24(3), 382-407. doi:10.1080/07418820701485379
- Hartley, R. D., & Miller, J. M. (2010). Crack-ing the media myth: Reconsidering sentencing severity of cocaine offenders by drug type. *Criminal Justice Review*, 35(1), 67 - 89. Doi: <https://doi.org/10.1177/0734016809348359>.
- Helms, R. & Jacob, D. (2002). The political context of sentencing: An analysis of community and individual determinants. *Social Forces*, 81(2), 577-604. <https://doi.org/10.1353/sof.2003.0012>
- Kautt, P. M. (2002). Location, location, location: Interdistrict and intercircuit variation in sentencing outcomes for federal drug-trafficking offenses. *Justice Quarterly*, 19(4), 633-671. doi:10.1080/07418820200095381
- King, R. D., & Light, M. T. (2019). Have racial and ethnic disparities in sentencing declined? *Crime and Justice*, 48(1), 365-437. <https://doi.org/10.1086/701505>
- Kaiser, K., & Spohn, C. (2018). Why do judges depart? A review of reasons for judicial departures in federal sentencing. *Criminology, Criminal Justice, Law & Society*, 19(2), 44-62.

- Kramer, J., & Steffensmeier, D. (1993). Race and imprisonment decisions. *Sociological Quarterly* *The Sociological Quarterly*, 34(2), 357–376. doi:10.1111/j.1533-8525.1993.tb00395.x
- Kramer, J. H., & Ulmer, J. T. (1996). Sentencing disparity and departures from guidelines. *Justice Quarterly*, 13(1), 81–106. <https://doi.org/10.1080/07418829600092831>
- Lynch, M. (2016). *Hard bargains: The coercive power of drug laws in federal court*. Sage Russell Foundation.
- Mauer, M. (2001). The causes and consequences of prison growth in the United States. *Punishment & Society*, 3(1), 9–20. <https://doi.org/10.1177/14624740122228212>
- McDonald, D. G., & Carlson, K. E. (1993). *Sentencing in the federal courts: Does race matter?* Washington, DC: US Department of Justice.
- Nowacki, J. S. (2015). Federal sentencing guidelines and *United States v. Booker*: Social context and sentencing disparity. *Criminal Justice Policy Review*, 29(1), 45–66. <https://doi.org/10.1177/0887403415619987>
- Nutting, A. W. (2014). Squealer dealers: The market for information in federal drug trafficking prosecutions. *Economic Inquiry*, 53(1), 486–507. doi: 10.1111/ecin.12123
- Pasko, L. (2002). Villian or victim: Regional variation and ethnic diversity in federal drug offense sentencing. *Criminal Justice Policy Review*, 13(4), 307–328. doi: 10.1177/088740302237801.
- Palamar, J. J., Davies, S., Ompad, D. C., Cleland, C. M., & Weitzman, M. (2015). Powder cocaine and crack use in the United States: An examination of risk for arrest and socioeconomic disparities in use. *Drug and Alcohol Dependence*, 149, 108–116. <https://doi.org/10.1016/j.drugalcdep.2015.01.029>
- Reinarman, C., & Levine, H.G. (1997a). Crack in context: America's latest demon drug. In C. Reinarman and H.G. Levine (Eds.), *Crack in America: Demon Drugs and Social Justice* (pp 1-7). Berkeley, CA: University of California Press.
- Reinarman, C., & Levine, H.G. (1997b). The crack attack: Politics and media in the crack scare. In C. Reinarman and H.G. Levine (Eds.), *Crack in America: Demon Drugs and Social Justice* (pp. 8-47). Berkeley, CA: University of California Press.
- Spohn, C. (2005). Sentencing decisions in three U.S. district courts: Testing the assumption of uniformity in the federal sentencing process. *Justice Research and Policy*, 7(2), 1–27.
- Spohn, C., & Brennan, P. K. (2011). The joint effects of offender race/ethnicity and gender on substantial assistance departures in federal courts. *Race and Justice*, 1(1), 49–78.
- Spohn, C., & Holleran, D. (2000). The imprisonment penalty paid by young, unemployed Blacks and Hispanics male offenders. *Criminology*, 38(1), 281–306. doi:10.1111/j.1745-9125.2000.tb00891.x
- Stacey, A. M., & Spohn, C. (2006). Gender and the social costs of sentencing: An analysis of sentences imposed on male and female offenders in three US district courts. *Berkeley Journal of Criminal Law*, 11, 43–76.

- Steffensmeier, D., & Demuth, S. (2006). Does gender modify the effects of race-ethnicity on criminal sanctioning? Sentences for male and female Whites, Blacks, and Hispanics Defendants. *Journal of Quantitative Criminology*, 22(3), 241–261. doi:10.1007/s10940-006-9010-2
- Steffensmeier, D., Kramer, J., & Streifel, C. (1993). Gender and imprisonment decisions. *Criminology*, 31(3), 411–446. doi:10.1111/j.1745-9125.1993.tb01136.x
- Steffensmeier, D., Kramer, J., & Ulmer, J. (1995). Age differences in sentencing. *Justice Quarterly*, 12(3), 583–602. doi:10.1080/07418829500096151
- Steffensmeier, D., Ulmer, J., & Kramer, J. (1998). The interaction of race, gender, and age in criminal sentencing: The punishment cost of being young, Blacks, and male. *Criminology*, 36(4), 763–798. doi:10.1111/j.1745-9125.1998.tb01265.x
- Steen, S., Engen, R. L., & Gainey, R. R. (2005). Images of danger and culpability: Racial stereotyping, case processing, and criminal sentencing. *Criminology*, 43(2), 435–468. doi:10.1111/j.0011-1348.2005.00013.x
- Ulmer, J. T., & Bradley, M. S. (2006). Variation in trial penalties among serious violent offenses. *Criminology*, 44(3), 631–668. <https://doi.org/10.1111/j.1745-9125.2006.00059.x>
- U.S. Sentencing Commission. (1997). *Cocaine and Federal Sentencing Policy*. Washington, DC: Author.
- U.S. Sentencing Commission. (2004). *Fifteen years of guidelines sentencing: An assessment of how well the federal criminal justice system is achieving the goals of sentencing reform*. Available at: [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/15-year-study/15\\_year\\_study\\_full.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/15-year-study/15_year_study_full.pdf).
- U.S. Sentencing Commission. (2015a). *Federal sentencing: The basics*. Retrieved from <https://www.ussc.gov/guidelines/primers/federal-sentencing-basics>.
- U.S. Sentencing Commission. (2015b). *Report to congress: Impact of the Fair Sentencing Act of 2010*. <https://www.ussc.gov/research/congressional-reports/2015-report-congress-impact-fair-sentencing-act-2010>.
- U.S. Sentencing Commission. (2019). *Special edition: First Step Act*. Retrieved from [https://www.ussc.gov/sites/default/files/pdf/training/newsletters/2019-special\\_FIRST-STEP-Act.pdf](https://www.ussc.gov/sites/default/files/pdf/training/newsletters/2019-special_FIRST-STEP-Act.pdf).
- U.S. Sentencing Commission. (2020). *Departures and variances*. Retrieved from [https://www.ussc.gov/sites/default/files/pdf/training/primers/2020\\_Primer\\_Departure\\_Variance.pdf](https://www.ussc.gov/sites/default/files/pdf/training/primers/2020_Primer_Departure_Variance.pdf).
- Wells, M. J. (2022a). Federal cocaine sentences before and after the Fair Sentencing Act of 2010. *American Journal of Criminal Justice*, 47(4), 770–794. <https://doi.org/10.1007/s12103-022-09697-2>.
- Wells, M. J. (2022b). The effects of the Fair Sentencing Act 2010 on sentencing decisions for female cocaine offenses. *Feminist Criminology*, 17(4), 514–540. <https://doi.org/10.1177/15570851221098034>.