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# Is Meth the New Crack for Women in the War on Drugs? Factors Affecting Sentencing Outcomes for Women and Parallels Between Meth and Crack

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## Abstract

Between 1996 and 2006, the federal laws that pertain to methamphetamine changed significantly. By 2006, methamphetamine offenses ranked number two among drugs for which women were convicted. There was a major increase in the number of women convicted of methamphetamine offenses. Using U.S. Sentencing Commission (USSC) data for 1996 and 2006, this research investigates the factors affecting sentencing outcomes among women convicted of methamphetamine in the federal system. A major finding is that mandatory minimum sentencing attached to the new thresholds for methamphetamine has a major affect on the likelihood of incarceration of women convicted of methamphetamine offenses in the federal system.

### Keywords

women; war on drugs; methamphetamine; prison; social construction

## Introduction

The rate of United States women's imprisonment has skyrocketed in the last decade and continues to rise at a rate higher than that of males (Glaze, 2010; Sabol, Couture, & Harrison, 2007). The significant increase in the number of women under the control of the criminal justice system has brought attention to the factors that lead to the incarceration of women. An analyses by Blumstein and Beck (1999) of the population growth in U.S. prisons revealed that drug offenses were the major contributor to the increase of women and minorities in federal and state prisons. Incarceration rates rose faster for women (364%) and minorities (184% for African American and 235% for Hispanics) than for men (195%) and non-Hispanic Whites (164%; Blumstein & Beck, 1999). To explain this phenomenon, scholars have focused on mandatory sentencing policies and punitive criminal justice



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responses that underlie the war on drugs (Allard, 2002; Blumstein & Beck, 1999; Bush-Baskette, 1998; Chesney-Lind, 1997, 1998; Sengupta & Peterson, 1999; Tinto, 2001).

Research findings indicate that the dramatic increase in women's imprisonment is due to the legislation and prosecution of drug offenses (Greenfeld & Snell, 2000; Mumola & Karberg, 2006) leading some to say that the war on drugs is a war on women (Bush-Baskette, 1998; Chesney-Lind, 1995). The drug policies contained in the Anti-Drug Abuse Acts of 1986 and 1988 caused more women to be imprisoned in federal prison. These policies also subjected more women to a greater probability and longer periods of incarceration for low-level drug offenses in the federal system (Bush-Baskette, 2010).

Although powdered cocaine and crack cocaine were the main drugs targeted in the Anti-Drug Abuse Acts of 1986 and 1988, a shift occurred by 2006. Federal legislation enacted in the 1990s began to focus on methamphetamine and as a result women incarcerated for drug offenses involving methamphetamine increased. Methamphetamine ranked last among the five types of drugs for which women were most often convicted and sentenced in the federal courts in 1996, as only 10.3% of the women were convicted for methamphetamine offenses. An exploratory review of the U.S. Sentencing Commission's (USSC) federal statistics revealed that this percentage had more than doubled (23%) by 2006.

In 2006, women convicted of drug offenses involving methamphetamine as the primary substance represented 23% of the women convicted of drug offenses in the federal courts, exceeded only by marijuana at 25.2%. The actual number of women convicted of methamphetamine offenses had more than tripled in 2006 as compared with 1996 (Bush-Baskette, 2010, table 6.1).

It is this inherent connection between the federal penalties and policies underlying the war on drugs and women's convictions for drug offenses that drives the current research. This study builds on prior research that examined women as targets of the war on drugs (Bush-Baskette, 1998; Chesney-Lind, 1995). The significant increase between 1996 and 2006 in both the percentage and number of women convicted in the federal system of drug offenses that involved methamphetamine (as the primary drug) is the principal reason for this study. The increase in women incarcerated for methamphetamine led us to question public perception (i.e., social construction of drug epidemic, moral panic discourse) and policy changes involving methamphetamine over the last two decades, a subject of few studies. While it was determined that mandatory minimum sentences attached to crack cocaine had a disproportionate impact on the incarceration of Black women in the federal system (Bush-Baskette, 2010), this study investigates whether there is an association between the legal factors (prior criminal history, responsibility, role, mandatory minimum sentence, drug amount, etc.) and the length of prison sentenced received among women convicted for methamphetamine offenses in the federal system.

## The Social Construction of a Drug "Epidemic"

"Social construction" denotes the ability of a society or culture to define concepts or have mental representations of people and/or their actions (Berger & Luckmann, 1966). Social

constructs derive their meaning by focusing on arbitrary characteristics deemed important by a particular society. They are based on cultural values but not always on scientific facts (Gallagher, 1997). Some social issues are socially constructed into social problems. The construction of these "issues" into "problems" can be derived from: a specific sociocultural circumstance, groups and categories, social structures and societies, historical eras, individuals, and/or classes (Goode & Ben-Yehuda, 1994). In the constructionist perspective, a social problem is the public's overall concern for a particular issue. This concern can be manifested through collective action, campaigns, and media images and need not be based on the relative harm of the issue (Goode & Ben-Yehuda, 1994). Thus, some social problems can be regarded as "moral panics."

Cohen (1972) defines a moral panic as

> … when a condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests … the condition then disappears, submerges or deteriorates and becomes more visible. Sometimes the subject of the panic is quite novel and at other times it is something which has been in existence long enough, but suddenly appears in the limelight. (p. 9)

In line with Cohen's definition, Goode and Ben-Yehuda's (1994) grassroots model contends that the existence of a moral panic is the deeply felt attitudes and beliefs by the majority of a society that a specific incident and/or trend represents a real threat to their values, safety, or existence. For instance, Auerhahn (1999) identified several moral panics that emerged in the United States during the various antidrug campaigns. They included opium prohibition, which was constructed to be synonymous with the "Chinese way of life" (p. 421); cocaine prohibition, which was associated with Blacks in the south beginning in the early 1900s; alcohol prohibition, as it was coupled with anti-Irish immigrant slogans; and marijuana prohibition, which focused on Mexican immigrants. Specifically, Auerhahn (1999) proposed that a moral panic against the use of opium and Chinese immigrants was incited in the early 1850s by White miners and White railroad workers because of an economic crisis. This moral panic was used to enact prohibitions against opium use. Prior to the economic crisis, when the Chinese immigrants were needed to build the railroads, the use of opium was not challenged. The campaigns and legislation against the use of opium succeeded in the prohibition of the drug and continued the stereotyping of Chinese immigrants as opium users (Auerhahn, 1999). This example also demonstrates how an economically motivated moral panic led to a drug panic. Another path, as in the case of crack cocaine, is when a drug panic occurs: after a noticeable pattern of increased use, portrayal of the extreme addictiveness of the drug, and the assertion that one-time use can lead to severe physical addiction (Jenkins, 1994). It can be argued that the use of methamphetamine and crack cocaine, along with media representations of the drugs, and political attention paid to them, led to the construction of their respective drug panics.

## The Drug Panic Surrounding Crack Cocaine

The intense attention paid by the media to the use of crack cocaine preceded and coincided with the national election cycles in 1986 and 1988. This concurrent activity sparked the development of the drug policies contained within the Anti-Drug Abuse Acts of 1986 and

1988. Beginning in 1984, the media began reporting the presence of “rock” cocaine in Los Angeles (Belenko, 1993). In 1986, after the death of Len Bias, a former University of Maryland basketball player who allegedly died form an overdose of crack cocaine, the media focused its attention on crack cocaine and allocated several hundred hours to its coverage. Although, it was later determined that Bias died from a powder cocaine overdose and not crack, the media continued to broadcast stories about crack cocaine. By the elections of November 1986, at least 1,000 newspaper stories related to crack cocaine had appeared in the national print media alone (Reinarman & Levine, 1989). The major television networks created the images of “crack mothers” as mostly Black and Hispanic, economically underprivileged, urban women (Humphries, 1999). Television news teams broadcasted these women smoking crack and openly discussing their drug use in the inner cities. This led to the stereotype that “crack mothers” were mostly poor women of color who were indifferent to the health of their babies (Humphries, 1999). As a result of these media images, Congress expedited the enactment of the Anti-Drug Abuse Act of 1986. The penalty for having 5 g of crack cocaine carried with it a mandatory minimum sentence of 5 years while it required 100 times that quantity, or 500 g, of powdered cocaine to receive the same sentence. There were no committee hearings and a scarce congressional record to explain how the 100:1 ratio of powdered to crack cocaine was developed. Some of the reasons suggested for the differentiation between the two forms of cocaine were that Congress (a) viewed the drug problem as a national “epidemic” in 1986 and (b) considered crack cocaine to be a leading drug more dangerous than powder cocaine. The history of the federal legislation regarding crack cocaine is similar to that of methamphetamine.

## The Drug Panic Surrounding Methamphetamine

Initially, methamphetamine was both legal and administered to their citizens by various countries, including the United States. During World War II, methamphetamine was supplied by Japan, Germany, and the United States to their soldiers to increase the troops’ endurance (Anglin, Burke, Perrochet, Stamper, & Dawud-Noursi, 2000). The drug was also used in Japan to increase the productivity of civilian factory workers. Abuse of the drug was not reported until after World War II, when a surplus of the army’s drug stocks appeared in street markets. This led to what many consider to have been the “first meth epidemic” (1945–1957; Anglin et al., 2000). In 1951, Japan enacted the Stimulants Control Law, thus placing restrictions on methamphetamine (Anglin et al., 2000). In 1970, the United States passed the Controlled Substance Act, which also placed restrictions and penalties on the use, sale, and manufacturing of methamphetamine (U.S. Code, 2009). Methamphetamine was listed as a Schedule II drug under the 1970 Controlled Substances Act. To be designated a Scheduled II drug, methamphetamine was determined to have (a) a high potential for abuse; (b) legitimate benefits for medical use but with high level restriction; and (c) the potential to lead to severe psychological or physical dependence (U.S. Code, 2009).

Jenkins (1994) proffers that there was a drug panic surrounding the use of methamphetamine in America and that it has been socially constructed and driven by the media and politics. The panic surrounding methamphetamine began during 1989 and 1990 when it was claimed that its popularity was increasing significantly in certain regions of the country, particularly the west, and that it had the potential to “sweep the nation” in a few years or even months

(Jenkins, 1994). Sensationalized statistics were offered in support of the claim that methamphetamine was going to "take over the nation." According to Jenkins (1994), the news media played a critical role in the construction of a methamphetamine epidemic. By the end of 1989, most of the major print news outlets had released stories related to the illicit use of methamphetamine, including the *New York Times*, the *Chicago Tribune*, the *Boston Globe*, the *Christian Science Monitor*, and *Newsweek* (Jenkins, 1994). This media focus led to heightened political action and involvement, including Congressional hearings in 1990. Public concern about methamphetamine peaked during these Congressional hearings titled "The Re-Emergence of Methamphetamine" (Jenkins, 1994). Later in 1999, the *Economist* published a story that described methamphetamine as a poor man's cocaine and claimed that the affects in the body were very similar to those of cocaine ("High in the Heartland," 1999), a fact rejected by the National Institute of Drug Abuse (2006). This "epidemic" which was driven by the media and the policies resulting from the Congressional hearings followed a path similar to the 1986 federal legislation for crack cocaine (Jenkins, 1994).

The public profiles of methamphetamine continued to be portrayed to the citizenry and policy makers by the media beyond the 1990's "epidemic." The methamphetamine scares of 1989–1990 and 1998–2004 were precipitated by reports from the Drug Enforcement Agency (DEA) of an increase in the number of seizures of meth labs (King, 2006). In 2005, the media again focused on the common theme that methamphetamine was (a) unique in its addictiveness and (b) the consequences were unlike any other drug (King, 2006). The *Christian Science Monitor*, once again, ran a story titled "Meth's Rising U.S. Impact" (Knickerbocker, 2005). It portrayed methamphetamine as the new "worst" drug. In King's (2006) analysis of the role of the media in the methamphetamine "epidemic," he found that the most common approach used to support the alleged dangers of methamphetamine was the use of anecdotal stories. These stories distorted the national trends regarding methamphetamine use, mischaracterized the consequences of its use, downplayed its receptivity to treatment, and overstated the imminent expansion of the drug across the nation. No empirical evidence was offered to support or counterbalance these claims. As a result, in 2006 in response to political pressure and the perceived danger of methamphetamine, there was a shift in federal funding (King, 2006). This shift in funding coincided with the passage and implementation of the Meth Initiative (also known as Meth/Drug Hot Spots Program), which appropriated US$385.6 million in federal dollars to state and local agencies for the detection and eradication of methamphetamine laboratories (U.S. Department of Justice, 2006). Although the media were purporting that methamphetamine use was on the rise and the resultant political action was premised on these allegations, the data indicated that, in fact, methamphetamine use was declining (King, 2006).

During the time leading up to the 2006 legislative changes, use of methamphetamine among noninstitutionalized civilians who were 12 and older reportedly declined between 2002 and 2005 (National Survey on Drug Use and Health, 2007). The prevalence in the use of the drug also varied geographically throughout the United States. Combined data from 2002 to 2005 indicated that people in the Western region of the United States (1.2%) were more likely to have used methamphetamine in the past year than those in the Midwest (0.5%), South (0.5%), and Northeast (0.1%; National Survey on Drug Use and Health, 2007). These findings were consistent among both females and males. Furthermore, the number of people

who used methamphetamine for the first time during the 12 months prior to the survey remained relatively stable between 2002 and 2004, but the number decreased between 2004 and 2005 (318,000 and 192,000 persons, respectively; National Survey on Drug Use and Health, 2007). Thus, these findings countered the allegations perpetuated by the media and others that use of methamphetamine in the United States continued to increase in 2005 and 2006 and would ruin the country (King, 2006).

## The Evolution of the Federal Drug Policies for Crack Cocaine and Methamphetamine, 1986–2006

The Anti-Drug Abuse Act of 1986 and the initial sentencing guidelines established the first sentencing guidelines for drug trafficking (§2D1.1 “Substantive Trafficking Offenses” and §2D1.4 “Attempts, Conspiracies”). The Act of 1986 mandated a 5-year prison sentence for 5 g of crack cocaine and 10 years for 50 g. However, the Act of 1986 did not require mandatory minimums for methamphetamine trafficking offenses. At that time, the USSC set forth guidelines for methamphetamine that were twice that of cocaine (1 g of methamphetamine = 2 g of cocaine), .4 g of heroin, and 400 g of marijuana (USSC, 1999, p. 7).

Subsequently, the Anti-Drug Abuse Act of 1988 and the Sentencing Guidelines of 1989 expanded and established mandatory minimum sentencing for methamphetamine. Congress addressed methamphetamine as it had addressed PCP years before and provided alternative mandatory minimums based on the quantities of pure methamphetamine as compared with quantities of mixtures of methamphetamine. At that point in time, the threshold amounts that triggered mandatory minimum sentences were as follows:

- 5-year mandatory minimum sentences for 10 g of methamphetamine or 100 g methamphetamine-mixture
- 10-year mandatory minimum sentences for 100 g of methamphetamine or 1 kg methamphetamine-mixture.

Thus, there was a 10:1 ratio established. In addition, the methamphetamine-pure penalty would apply whenever purity of methamphetamine mix exceeded 10% (USSC, 1999, p. 8).

Two years later, the 1990 Crime Control Act and 1991 Sentencing Guidelines focused on a particular form of methamphetamine called *Ice*. Ice is a very high purity (80%+) and crystalline-looking form of methamphetamine that is believed to have begun on the west coast. Congress responded to the concerns that this form of methamphetamine would spread throughout the nation at a rapid pace (USSC, 1999, p. 9). In an effort to avoid the requirement of another mandatory minimum, the USSC assigned the same guideline levels to Ice (80%–90% pure) as it had for pure methamphetamine (100% pure; USSC, 1999, p. 9).

Six years later, within the Comprehensive Methamphetamine Control Act of 1996 and the resulting Sentencing Guidelines of 1997, Congress considered legislation to cut in half the quantities that triggered the 5- and 10-year mandatory minimums. However, this legislation did not pass at that time. Instead, Congress ordered the USSC to increase the guideline level

by two if the drug trafficking charge involved the importation of methamphetamine or if the manufacture of the drug was from chemicals the defendant knew were imported illegally. Congress also required that there be a two-level increase if an environmental offense was part of the drug trafficking offense. In addition, the USSC reduced the amounts by one half of methamphetamine-mixture that were correlated with each offense level for methamphetamine, although the amounts for methamphetamine-pure and Ice were not changed. This change required harsher punishment of methamphetamine trafficking offenses that relied on the weight of the mixture to determine the level of the offense. This process was employed in most of the cases that involved methamphetamine (USSC, 1999, p. 11). This last action effectively changed the quantity ratio guideline between methamphet-amine-mixture and methamphetamine-pure from 10-to-1 to 5-to-1, which means that the weight of the actual methamphetamine in the mixture would yield a higher penalty than the weight of the mixture whenever the purity of the mixture exceeded 20% (instead of 10% under former guideline; USSC, 1999, p. 12).

Approximately 2 years later in 1998, the Methamphetamine Trafficking Penalty Enhancement Act required that the mandatory minimums for methamphetamine trafficking offenses be stiffened significantly. This was accomplished by cutting in half the quantities of methamphetamine-mixture and methamphetamine-pure that would trigger the 5-year and 10-year mandatory minimums. Effective October 21, 1998, the federal threshold amounts were as below:

- Methamphetamine-pure: 5 g = 5-year penalty; 50 g = 10-year penalty
- Methamphetamine-mix: 50 g = 5-year penalty; 500 g = 10-year penalty

The 1998 legislation made the penalties for methamphetamine offenses very similar to those for crack cocaine. In 1998, conviction of an offense involving 5 g of crack cocaine or methamphetamine-pure could to lead to a mandatory minimum sentence of 5 years; conviction of an offense involving 50 g of crack cocaine or methamphetamine-pure could trigger a 10-year prison sentence.[1]

Based on the literature above, it is evident that the history of methamphetamine and drug use in America are complex matters. Nonetheless, the highlight of these issues serve as a springboard to analyze the complexities shaping sentencing decisions. In addition to society's perception of the lethality of drugs and policies extending from it, there are additional factors significant during the sentencing process.

## Factors Important in Sentencing Decisions

Prior research that investigated contextual factors affecting sentencing decisions (prison/no prison or length of sentence) focused mostly on data from individual states (Ulmer &

[1]On August 3, 2010, President Obama signed the Fair Sentencing Act. This legislation limits the stiff mandatory minimum sentences for low-level crack cocaine offenses that bipartisan leaders agree were overly harsh and unjust. The new law reduces the cocaine sentencing quantity disparity from 100:1 to 18:1 by raising the quantity of crack cocaine necessary to trigger the 5- and 10-year mandatory minimum sentences from 5 g to 28 g and 50 g to 280 g, respectively, as set forth in the Anti-Drug Abuse Act of 1986. The legislation also eliminates the mandatory minimum for simple possession of crack cocaine as the Anti-Drug Abuse Act was amended in 1988. The bill passed unanimously through the Senate and by voice vote with little opposition in the House (Sentencing Project, 2010.

Johnson, 2004; Weidner, Frase, & Pardoe, 2004; Weidner, Frase, & Schultz, 2005). These studies called attention to the importance of the political climate, racial/ethnic composition, and urbanization within that jurisdiction as factors in the sentencing process (Weidner et al., 2004, 2005). Weidner et al. (2005) found that the use of sentencing guidelines, crime rate, and racial composition within a jurisdiction significantly affected the likelihood of a prison sentence. Moreover, Ulmer and Johnson (2004) determined that court caseload pressure, organizational culture, and ethnic and racial composition of jurisdictions directly or indirectly affected sentencing. To account for cross-jurisdictional statutory differences in sentencing, the current study uses a national sample of women convicted in the federal system of the United States—specifically, women federally convicted of methamphetamine drug offenses.

Previous studies have been useful in establishing that individual and extralegal factors such as race, gender, and mode of disposition (guilty plea vs. trial) are important to sentencing outcomes (Kramer & Steffensmeier, 1993; Kramer & Ulmer, 1996; Steffensmeier, Kramer, & Streifel, 1993). In regard to race and ethnicity at sentencing, the research is inconsistent. Steffensmeier and Demuth (2000) found that ethnicity had a small to moderate effect on sentencing decisions. Specifically, Hispanic drug defendants received harsher sentences than either White or Black defendants. Hispanics drug defendants were at also increased risk of receiving a severe sentence and were less likely to benefit from downward departures or substantial assistance (Steffensmeier & Demuth, 2000). However, Weidner et al. (2005) did not find that race/ethnicity, particularly being African American, had an effect on the likelihood of incarceration.

Prior research also found that the mode of disposition (trial vs. plea bargain) and prior criminal record increased the odds of receiving a prison sentence. Defendants who went to trial had a higher likelihood of receiving a prison sentence than defendants who entered into plea agreements (Weidner et al., 2004, 2005). Also, those defendants with a more extensive criminal record were less likely to benefit from prosecutorial discretion, such as downward departure or substantial assistance relief, and were also more likely to receive a prison sentence (Engen & Steen, 2000; Weidner et al., 2004, 2005; Wilmot & Spohn, 2004). Downward departures were created in 1986 when Congress mandated that the USSC provide statutory incentives for the cooperation of defendants who assist in the investigation and prosecution of other persons for other crimes. The USSC established a guideline commonly referred to as a 5K1.1 motion. The 5K1.1 motion allows a prosecutor to ask the court for a downward departure which can result in the defendant receiving a sentence that is below what is established for the offense by the sentencing guidelines or mandatory minimum sentencing requirements. The magnitude of the departure is within the discretion of the judge. Prosecutors were given the power to motion the court for upward or downward departures in 1996. As a result of various court decisions, new motions were added to this category in 2006. Thus, by 2006, downward and upward departures were available through various mechanisms including above range, within range or downward departures with Booker, 5k1.1/substantial assistance, early disposition, and government sponsored–below range and downward departure.

Furthermore, other studies have found gender to have a significant effect on sentencing outcomes. Some research suggests that women are more likely to obtain lighter, more lenient sentences in comparison with their male counterparts (Spohn & Beichner, 2000; Weidner et al., 2005; Wilmot & Spohn, 2004). However, Tinto (2001) found that when mandatory sentencing schemes were created, particularly for drug offenses, it eliminated the shorter sentences that women historically received. The removal of judicial discretion provided a more strict form of sentencing, where mandatory minimums were positioned to determine appropriate sentences for mostly drug offenders. Under this sentencing scheme, individuals charged with the same offense should receive the same sentence. However, research has found this is not always the case (Engen & Steen, 2000; Tinto, 2001; Wilmot & Spohn, 2004). Tinto discovered that under the Rockefeller drug laws (prior to the most recent modifications) women were less likely to benefit from departure sentencing options, which could decrease their charges. Tinto calls this “inverted sentencing,” where a woman in a relationship does not have enough information about her partner’s supplier and other significant information for the prosecutor; thus her partner receives a lower sentence than his female partner, a lower level offender.

Finally, there are few studies that place women at the center of the research and investigate how the micro-level factors discussed above affect their sentencing outcomes. Presumptively, the methamphetamine drug panic, which noticeably changed sentencing policies, has increased their conviction rates. Therefore, this study focuses on how the application of mandatory sentencing for drug offenses involving methamphetamine (i.e., the war on drugs) and other individual and extralegal factors affect the length of sentence received for women convicted of methamphetamine in the federal system.

## Defining the War on Drugs

This study defines the war on drugs as the mandatory minimum sentencing schemes within the Methamphetamine Trafficking Penalty Enhancement Act of 1998. This statute prescribes mandatory minimum sentences that require the incarceration of persons convicted of the possession of at least 5 g of methamphetamine-pure or 50 g of methamphetamine-mix, thereby significantly reducing the threshold quantities that were in effect prior to the enactment of this legislation. To date, these laws have not been repealed nor substantially modified.

## Current Study

The literature review and exploratory analyses of the USSC federal sentencing data informed the development of our investigation. This research focuses specifically on women because there was a significant increase in both the number and percentage of women who were sentenced for methamphetamine offenses in the federal system between 1996 and 2006. Furthermore, most drug policy research (a) focuses on men or (b) does not disaggregate by gender. By using either of these methods, testing the impact of policies on women is not possible or is greatly diminished. By placing women at the center of this study, we are better able to determine the association between the mandatory minimum policies for

drug convictions involving methamphetamine and the incarceration of women in the federal system.

Because the threshold amounts that triggered mandatory minimum sentencing were significantly reduced between 1996 and 2006, it is expected that mandatory minimum sentencing had a greater impact on the length of prison sentence in 2006 as compared with 1996.

The specific research questions for this study are "Among women convicted of methamphetamine as the primary drug,

1. who were the women convicted the most for methamphetamine offenses in the federal system in 1996 and 2006?
2. what factors were statistically significant in explaining the length of prison sentence they received in 1996 and 2006?
3. was there a change in the affects of the variables between 1996 and 2006 on the length of prison sentence?"

## Method

### Data

Data from the USSC (1996 and 2006 were used to examine the cases of women convicted in federal court in 1996 and 2006 and whose primary offenses were drug offenses that involved methamphetamine. These data sets contain records of criminal defendants who were sentenced pursuant to provisions of the Sentencing Reform Act (SRA) of 1984 and reported to the USSC during fiscal years 1996 and 2006. The data sets include information for all federal cases sentenced and for which information was submitted to the USSC, from October 1, 1995 to September 30, 1996 for the 1996 data and October 1, 2005 to September 30, 2006 for the 2006 data. The data were extracted from the Inter-University Consortium for Political and Social Research (ICPSR-Study Nos. 9317 and 20120). These files originated from the USSC's Office of Policy Analysis' (OPA) Standardized Research Data File. The Standardized Research Data File consists of variables from the Monitoring Department's database, which is limited to those defendants whose records have been furnished to the USSC by U.S. district courts and U.S. magistrates, as well as variables created by the OPA specifically for research purposes. These data are cross-sectional and information on more than 800 variables was collected, including detailed demographic information as well as variables such as criminal history, departure status, type of drug offense, disposition, prior record, acceptance of guilt, and much more.

### Sample

The initial samples of the 1996 and 2006 USSC data files were filtered based on gender and drug crimes constituting the primary offense (1996, $N = 2{,}189$; 2006, $N = 3{,}050$). The samples were further sorted to include only women whose primary drug offense involved methamphetamine. These restrictions resulted in final samples of 228 women for the 1996 USSC data set and 704 women for the 2006 USSC data set.

## Measures

The dependent variable for this study was the *length* of prison sentence.[2] The primary independent variables included in the study were criminal history points, acceptance of responsibility, role adjustment, application of mandatory minimum drug amount in grams, type of drug offense, type of methamphetamine for which convicted (Meth mix, Meth pure/actual), and downward departure. Other variables that are considered to be of substantive significance in the sentencing of females were also included in the models. These variables included ethnicity, age of defendant at sentencing, and level of education.

Criminal history points/prior record is included in this model because of its importance in sentencing. The criminal history variable in this study is operationalized as an ordinal-level variable that represents the final criminal history category points as determined by the judge and provided by the USSC. The higher the points, the more extensive the criminal history.

*Disposition:* This variable measured whether the defendant pleaded guilty or nolo contendere or whether the defendant went to trial (0 = *guilty or nolo contendere*, 1 = *trial*).

*Acceptance of responsibility:* This variable represents whether the sentence was reduced based on the defendant's acknowledgement of her part in the offense (0 = *no*, 1 = *yes*).

*Role adjustment:* This variable measures the function the defendant played in the offense. The variable was coded whether a role adjustment was applied (0 = *no*, 1 = *yes*).

*Drug mandatory minimum sentence:* This variable reflects if a mandatory minimum sentence for drugs was applied to the case. There are two categories for this variable: 0 = *no statutory drug mandatory minimum was applied* and 1 = *a statutory drug mandatory minimum was applied*.

*Drug amount:* This variable is used to test the influence of the amount of drugs involved in the offense on the length of prison sentence imposed. This is an interval-level variable that reflects the actual amount of the drug.

*Type of drug offense:* This variable includes the primary categories for which the women were convicted. These categories are simple possession, trafficking, and communication facilities.[3]

*Type of methamphetamine:* This variable includes two types of methamphetamine offenses for which offenders can be convicted (0 = *methamphetamine-pure* and 1 = *methamphetamine-mixture*).

[2]Likelihood of prison sentence was initially included as a dependent variable; however, the analyses showed that this variable did not have enough variability and a majority of the women received a prison sentence.

[3]§2D1.6. Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy—A person commits a communication facility felony if she or he causes or facilitates the commission or the attempt thereof of any crime which constitutes a felony under The Controlled Substance, Drug, Device and Cosmetic Act. A communication facility includes any public or private instrument used in the transmission of writing, signs, signals, pictures, and sound; for example, telephone, wire, radio. Historical Note: Effective November 1, 1987. Amended effective November 1, 1990 (see Appendix C, amendment 320); November 1, 1992 (see Appendix C, amendment 447); November 1, 1994 (see Appendix C, amendment 505); November 1, 2009 (see Appendix C, amendment 737). Statutory Provision: 21 U.S.C. § 843(b) (USSC, 2010, pp. 166–167).

*Downward departure:* This variable included in the analyses is a dichotomous dummy variable for which 0 means *no downward departure was applied* and 1 indicates *a downward departure was applied*. In some instances, the reason for the departure is not provided by the judge; however, these cases are coded as downward departures in this study.

## Analytical Strategy

The primary goals of the research were to investigate the factors influencing the length of prison sentences for women convicted of drug offenses that involve methamphetamine in the federal system in 1996 and 2006. The secondary goals were to determine if the affects of the variables remained the same in 1996 and 2006 and, if not, how they varied. PASW Statistics 18.0 (SPSS 18.0) was used to analyze the data. The analyses began with the examination of the bivariate relationships between the independent variables and the outcome variables. This analysis was followed by an ordinary least square regression models for 1996 and 2006.

## Results

Table 1 depicts the findings of the descriptive analyses. The number of women who were convicted of and sentenced for drug offenses for which methamphetamine was the primary drug increased almost 300% between 1996 ($N = 228$) and 2006 ($N = 704$). The findings indicate that the women most involved in convictions in the federal system for methamphetamine offenses were White in both 1996 and 2006. In 1996, 99.5% ($n = 214$) of the women convicted of drug offenses that involved methamphetamine were White. By 2006, White women continued to be the most represented group among women convicted of federal drug offenses that involved methamphetamine (73.0%, $n = 512$). Thus, race was not introduced into the multivariate analyses due to lack of sample variability. Also, 13.6% of the women in 1996 were Hispanic compared with 26.0% in 2006. Across both years, the majority of women had above a high school diploma, had a less extensive criminal history, and more than 90% of the women pleaded guilty instead of going to trial (see Table 1). There was also a change in the percentage of the women's sentences that were affected by their acceptance of responsibility or a role adjustment.

A large portion of the women received an application of acceptance of responsibility (the defendant acknowledged her part in the offense) in both 1996 and 2006 (85.7% and 93.5%, respectively). About a third of the women in 1996 and 2006 had a role adjustment (sentence was reduced or increased based on the part they played in the offense) applied to their sentences. Concurrent with the lowering of the threshold amounts for methamphetamine offenses that triggered mandatory minimum sentencing between 1996 and 2006, there was an increase in the percentage of the women's cases in which mandatory minimums were applied. In 1996, mandatory minimums were applied in 60.9% ($n = 137$) of the cases and, by 2006, mandatory minimum sentencing was applicable to 75.6% ($n = 532$) of the cases, which constituted an increase of almost 15%.

The data also indicated that, although drug trafficking was the type of offense for which most of the women were convicted and sentenced in both years, the percentage increased

from 85.5% ($n$ = 195) to 95.3% ($n$ = 671) between 1996 and 2006 (see Table 1). It is also important to note that there was an increase in the percentage of cases in which women were convicted that involved methamphetamine-pure between 1996 and 2006 (23.7% and 41.1%, respectively; Table 1). Downward departures were applied to an additional 5% of the cases in 2006 as compared with 1996 (57.6% vs. 52.7%). Last, the average prison time (in months) served for those sentenced for methamphetamine offenses increased from 68.7 in 1996 to 79.8 in 2006 (Table 1).

Table 2 displays the results of the application of the ordinary least square regression model predicting the length of sentence for 1996 and 2006. The findings indicate that acceptance of responsibility in 1996 and 2006 was negative and statistically significant ($B$ = −.189, $p$ < .05; $B$ = −.192, $p$ < .001). That is, defendants who accepted or confessed to their responsibility in the offense were sentenced and received less months in prison across both years.

Moreover, the application of a mandatory minimum sentence to a woman's case in 1996 increased her length of imprisonment ($B$ = .218, $p$ < .05); however, this variable was not statistically significant in 2006. Finally, ethnicity proved to be a positive and statistically significant predictor of length of prison sentence in 2006 ($B$ = .134, $p$ < .010) but not in 1996. Women of Hispanic descent were sentenced to prison for a significantly greater number of months than non-Hispanic women.

## Discussion and Conclusion

The number of women convicted of methamphetamine offenses ranked 5th among the top five types of drugs for which women were sentenced in the federal system in 1996 (Table 3). At that time, the greatest number of women was convicted of drug offenses that involved powdered cocaine; however, the most affected group was Black women convicted of drug offenses that involved crack cocaine, as they were more often subjected to prison sentences than their White counterparts. The relatively small amount of crack cocaine established in the Anti-Drug Abuse Acts of 1986 and 1988 that triggered the mandatory minimum sentences was statistically significant in explaining the incarceration of Black women convicted of crack cocaine offenses (Bush-Baskette, 2010). It has been argued that the war on drugs, with its focus on low-level amounts of crack cocaine, was actually a war against Black women (Bush-Baskette, 1998).

Between 1996 and 2006, the federal laws that pertained to drug offenses involving methamphetamine changed significantly, making some of the penalties for methamphetamine offenses similar to those for crack cocaine. During that time, the threshold amounts that triggered mandatory minimum sentencing for methamphetamine were reduced to 5 g for methamphetamine-pure and 50 g for methamphetamine-mix for a 5-year sentence and 50 g for methamphetamine-pure and 500 g of methamphetamine-mix to prompt a 10-year prison sentence. The 5- and 50-g thresholds for methamphetamine-pure mirrored those which had previously been reserved solely for crack cocaine.[4] By 2006, methamphetamine rose to the number-two position among the top five drugs for which women were convicted in the federal system, only surpassed by marijuana (Table 3). During

that same period, crack cocaine slid from its number-two position in 1996 to fourth position in 2006 (Table 3). With the reduction in the mandatory minimum sentencing threshold amounts for methamphetamine and the major increase in the number of women convicted in the federal system of drug offenses that involved methamphetamine, the question became “Is meth the new crack in the war on drugs as it relates to the incarceration of women?” Prior literature on social construction and drug panics showed that there were similarities in the way these two drugs were portrayed to the public by the media. More importantly, the new threshold amount set by the USSC suggested that the public and policy makers were impressed by images and sometimes exaggerated national statistics on methamphetamine. It can be said that the new enacted mandatory sentencing schemes was a direct consequence of society’s panic to prevent another “crack-like” epidemic. Moreover, this research sought to primarily answer which factors were important in determining the length of sentence among women convicted for methamphetamine offenses in 1996 and 2006.

Our research discovered that there was an increase of 300% in the number of women who were convicted and sentenced for methamphetamine offenses in the federal system between 1996 and 2006. The vast majority of these women were White in both 1996 (99.5%) and 2006 (73%). Although the percentage of White women decreased between these 2 years, their numbers more than doubled ($n$ = 214 to $n$ = 512). The majority of women who were sentenced for methamphetamine offenses had little or no prior criminal record (69.6 % in 1996 and 61.0% in 2006). In both years, the majority of these women were sentenced for drug trafficking (85.5% for 1996 and 95.3% in 2006). The composition of meth for which they were sentenced changed between 1996 and 2006. In 1996, 76.3% ($n$ = 174) were convicted for offenses involving methamphetamine-mix and 23.7% ($n$ = 54) for methamphetamine-pure; by 2006, the percentage for methamphetamine-mix decreased to 58.9% ($n$ = 414) and methamphetamine-pure increased to 41.1% ($n$ = 289). Furthermore, downward departures were applied in more than half of the cases in 1996 (52.7%) as well as in 2006 (57.6%). The average length of prison sentence increased between 1996 and 2006 increased by approximately 10 months (68.7 months and 78.9 months, respectively). Our descriptive analyses of the data also indicated that there was an increase in the application of mandatory minimum sentencing in 2006 (75.6%, $n$ = 532) as compared with 1996 (60.9%, $n$ = 137). This also constituted an increase of greater than 300% in the number of cases that involved women convicted of methamphetamine in which mandatory minimum sentencing was applied.

Our multivariate analyses enabled us to determine which variables were statistically significant in predicting length of prison sentence received by women convicted of methamphetamine offenses. The factors that influenced the length of prison sentences for women convicted of methamphetamine offenses varied between 1996 and 2006. The acceptance of responsibility for the offense increases the possibility that women would obtain a reduced number of months as part of their prison sentence in both 1996 and 2006. However, the application of a mandatory minimum sentence meant a significant increase in the number of months sentenced in 1996 but not in 2006. This was surprising based on

[4]The 5-g threshold for crack cocaine was applicable from 1986 until 2010, when the Fair Sentencing Act of 2010 was passed thereby raising the threshold amount to 28 g for crack.

policy changes between 1996 and 2006, where the threshold amount for methamphetamine decreased significantly leading to tougher sentencing. Therefore, it was previously suspected that mandatory minimum sentencing would have a greater impact on the length of prison sentence in 2006 as compared with 1996. In addition, different from previous research, we did not find that downward departures were significant in predicting the length of sentence (Engen & Steen, 2000; Weidner et al., 2004, 2005; Wilmot & Spohn, 2004). Finally, in 2006, being Hispanic (as opposed to non-Hispanic) increased the number of prison sentence months; however, this was not significant in 1996. Although, this research cannot make claims regarding the effect of race on the length of sentencing for women convicted of methamphetamine, sentences varied based on ethnicity (Hispanic defendants received harsher sentences than their non-Hispanic counterparts). This is consistent with previous research that found that Hispanic drug defendants were at most risk of receiving severe sentences (Steffensmeier & Demuth, 2000).

Some argue that the social construction of methamphetamine as an epidemic has actually threatened the national drug abuse response because it has led to a misallocation of resources, from treatment to law enforcement and corrections (King, 2006). It is also proposed that the alleged mischaracterization of the impact of methamphetamine has also led to changes in federal policies, which have the potential of growing the prison populations as dramatically as did the drug policies for crack cocaine (King, 2006). The current study did not specifically examine the effects of the social construction of methamphetamine on the incarceration of women. However, by including the application of a mandatory minimum sentence across years, it tested whether elements of the changes in the federal drug laws for methamphetamine affected the length of incarceration of the women. The results of this study indicate that the mandatory minimum sentence schemes applied to methamphetamine offenses had an impact on the *length* of sentence in 1996 but not in 2006.

We proffer that the findings indicate that policies constituting the war on drugs (e.g., the establishment of low threshold amounts triggering mandatory minimum sentences) are greatly affected by the public's perception of the danger of a drug. Several changes in the laws regarding methamphetamine, including the reduction of the threshold amount that mandates imprisonment, suggests a change in the perception of the public of methamphetamine's impact on the human body and mind, and society. Thus, how women are involved in the methamphetamine market, as well as the nature of their offenses, should also be investigated using qualitative and quantitative methods. The findings from this proposed research should further inform the discussion of whether the women who are being incarcerated under the current low thresholds are the intended targets of the drug laws. More importantly, this research also launches a discussion regarding the ethnicity of the women who are more harshly punished in the federal system and how drug laws and harsher sentencing can possibly be due to moral panics extending from previous drug eras in the United States.

Between 1996 and 2006, with the reduction of the threshold amounts for methamphetamine, there was a significant increase in the number of women who were sentenced, convicted, and incarcerated for drug offenses in which methamphetamine was the primary drug. The findings in this study indicate that White women constitute the largest percentage and

number of women who are sentenced for methamphetamine offenses in the federal system. In addition, the results show that being Hispanic is statistically significant in predicting the length of prison sentence. Future research should disaggregate the women by race/ethnicity (e.g., White/non-Hispanic, Black/non-Hispanic, Hispanic/White and Hispanic/Black) to more fully investigate the relationship against the incarceration of women for methamphetamine offenses in the federal system.

An inherent limitation of this study is the lack of the race variable in the multivariate analyses. The sample size was small and thus variables such as race and disposition lacked variability. Although the majority of women in the sample were White, this research cannot make claims suggesting that they are more likely to receive harsher sentences. It is important that the sample criterion is not as selective so that race can be included in future analyses, and these claims can be ascertained or refuted. Future research should consider adding men to the analyses not only to increase sample size but also to determine if differences extending from the war on drugs exist across gender and possibly across other drugs. Furthermore, by using federal statistics, we limit the generalizability of these results to women convicted in the federal system as opposed to those convicted in the state judicial system.

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## Table 1

Characteristics of the Samples of Women Convicted of Methamphetamine in the Federal System 1996, 2006

| | 1996 (*N* = 228) | 2006 (*N* = 704) |
|---|---|---|
| **Variables** | **Percentage (*N*)** | **Percentage (*N*)** |
| Race | | |
| White | 99.5 (214) | 72.7 (512) |
| Black | 0.5 (1) | 1.3 (9) |
| Hispanic ethnicity | 13.6 (31)[a] | 26.0 (183)[a] |
| Education | | |
| Less than high school | 32.9 (75) | 36.0 (247) |
| High school graduate/GED/or more | 67.1 (153) | 64.0 (440) |
| Prior record | | |
| 0–1 criminal points | 69.6 (156) | 61.0 (429) |
| 2–3 criminal points | 14.7 (33) | 13.2 (93) |
| 4–6 criminal points | 8.0 (18) | 14.4 (101) |
| 7–9 criminal points | 1.8 (4) | 5.0 (35) |
| 10–12 criminal points | 3.6 (8) | 3.0 (21) |
| 13+ criminal points | 2.2 (5) | 3.4 (24) |
| Disposition[b] | | |
| Guilty or nolo contendere | 94.7 (216) | 97.4 (686) |
| Trial | 5.3 (12) | 2.6 (18) |
| Acceptance | 85.7 (192) | 93.5 (658) |
| Role adjustment | 30.8 (69) | 27.6 (194) |
| Drug mandatory minimum sentence | 60.9 (137) | 75.6 (532) |
| Type of drug offense | | |
| Trafficking | 85.5 (195) | 95.3 (671) |
| Communication facilities | 7.9 (18) | 3.1 (22) |
| Simple possession | 6.6 (15) | 1.6 (11) |
| Type of meth | | |
| Meth mix | 76.3 (174) | 58.9 (415) |
| Meth pure | 23.7 (54) | 41.1 (289) |
| Departure | | |
| None | 47.3 (106) | 42.4 (294) |
| Downward | 52.7 (118) | 57.6 (399) |
| | *M* (*SD*) | *M* (*SD*) |
| Drug amount (grams) | 533.3 (1124.6) | 13284.5 (2.5e5) |
| Age | 34.1 (8.0) | 33.7 (9.3) |
| Length of prison sentence (months) | 68.7 (137.1) | 78.9 (378.8) |

[a]Percentages are based on the ethnicity category, Hispanic/non-Hispanic.

[b]The disposition variable was not included in the multivariate analyses due to lack of variability.

## Table 2

Ordinary Least Square Regression Models Predicting Length of Imprisonment for Females Convicted for Methamphetamine in the Federal System, 1996 ($N$ = 228) and 2006 ($N$ = 704)

| | 1996 | | 2006 | |
|---|---|---|---|---|
| | ***B*** | ***SE*** | ***B*** | ***SE*** |
| Prior history points | .085 | 7.16 | .093 | 20.73 |
| Acceptance (1 = *applied*) | −.189* | 25.58 | −.192*** | 97.53 |
| Role adjust (1 = *applied*) | .017 | 19.36 | −.050 | 58.54 |
| Mandatory minimum (1 = *yes*) | .218* | 21.92 | .068 | 64.01 |
| Drug amount | .015 | 0.009 | −.009 | 0.024 |
| Drug trafficking | .050 | 30.49 | .027 | 133.65 |
| Type meth (0 = *mix*, 1 = *pure*) | −.039 | 19.43 | −.066 | 53.56 |
| Downward departure (1 = *yes*) | −.141 | 17.75 | −.054 | 54.01 |
| Hispanic (1 = *yes*) | .024 | 23.67 | .134* | 58.85 |
| High school graduate | −.043 | 18.71 | .068 | 55.57 |
| Age | −.035 | 1.12 | .061 | 2.67 |
| Intercept | 93.5 | | 115.59 | |
| Model ANOVA (*df*) | 2.00 (11)* | | 2.89 (11)*** | |
| Adjusted $R^2$ | .063 | | .051 | |

Note: Unstandarized coefficients are available on request to the authors.

* $p < .05$.

** $p < .01$.

*** $p < .001$.

**Table 3**

Changes in Drug Convictions for Women in 1996 and 2006

| | Number of women | | Percentage of women | | % change |
|---|---|---|---|---|---|
| **Drug type** | **1996** | **2006** | **1996** | **2006** | **1996–2006** |
| Powdered cocaine | 564 | 608 | 26.5 | 18.7 | −7.8 |
| Crack cocaine | 488 | 518 | 22.9 | 15.9 | −7.0 |
| Marijuana | 483 | 818 | 22.7 | 25.2 | 2.5 |
| Heroin | 290 | 252 | 13.6 | 7.8 | −5.8 |
| Methamphetamine | 219 | 748 | 10.3 | 23.0 | 12.7 |
| Other drugs | 85 | 306 | 4.0 | 9.4 | 5.4 |
| Total | 2,129 | 3,250 | 100 | 100 | |

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