

# Sentencing Add-Ons and Implications for Disparities in a Guidelines State

Crime &amp; Delinquency

1–41

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DOI: 10.1177/00111287211047539

journals.sagepub.com/home/cad



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## Abstract

This study examined whether and how discretionary sentencing add-ons (i.e., secondary charges, victim injury points, firearms/weapons points, drug trafficking enhancements) contribute to disparities. We examined add-ons that increase sentencing points and so contribute to a defendant “scoring to prison.” We analyzed: (1) the degree to which add-ons explain racial and ethnic disparities in imprisonment (mediation); and (2) whether add-ons are more adverse for minority defendants (moderation). We did not find that add-ons “explain” racial differences in the use of prison sentences. We did find, however, that some add-ons, particularly those that signal “dangerousness,” are racially/ethnically disparate in their consequences. The findings raise questions about the role of court discretion in perpetuating racial and ethnic disparities.

## Keywords

incarceration, race/ethnicity, sentencing

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## Introduction

Disparities in sentencing outcomes are persistent (Mitchell, 2005; Wu, 2016), span various contexts (e.g., Fearn, 2005; Lowery et al., 2018; Wang et al., 2013), and consistently emerge across age, race, ethnicity, and gender (e.g., Hagan, 1974; Jordan & McNeal, 2016; Steffensmeier et al., 1998; Stringer & Holland, 2016). The toll on communities of color in particular is undeniable; in the United States, Black and Latinx males, are disproportionately represented within prison populations, and among those who receive life sentences (Hinton et al., 2018). These disparities have been so stark at times that scholars have estimated as many as one in three Black males and one in six Latinx males would serve time in prison at some point (compared to one in 17 White males) (Mauer, 2011).

In recognition of this and the collateral consequences for families and communities of color, states have employed a range of strategies to improve the consistency and fairness of sentencing practices. In particular, many states use some form of sentencing guidelines to reduce racial and ethnic disparities in criminal justice outcomes. They vary in structure and rigidity (e.g., some are voluntary, others are presumptive), but all of them by design seek to limit court actor discretion. However, guidelines have increased the weight of offense type and prior record (Austin et al., 1996). And, of particular importance for this paper, guidelines have generally increased the weight of discretionary charging decisions prior to final decisions about sanctions (Farrell, 2003; Stith & Cabranes, 1998; Ulmer et al., 2007).

Disparities remain even under sentencing guidelines (Engen et al., 2003; Johnson & Lee, 2013). There is a need, then, for research that identifies the processes that allow for racial and ethnic disparities in punishments to persist under guidelines. This includes a need to understand *indirect* pathways, which include points of discretion that precede sentencing, and through which race and ethnicity might have an impact (Pratt, 1998; Ulmer, 2012).

Sentencing add-ons and enhancements—that is, charging options aside from the primary charge that independently influence sentencing outcomes—constitute one such decision point. For example, defendant race or ethnicity may influence court actors' ability or decisions to convict on secondary charges, to pursue a sentencing enhancement, or to pursue a charge type that includes an automatic enhancement (Crawford, 2000; Crawford et al., 1998; Crow & Johnson, 2008). Alternatively, minority defendants might not be more likely to receive add-ons, but when they do receive them, they could elicit more severe sentences (Schlesinger, 2011). In Florida, the context of our analysis, judges decide the lowest permissible sentence using the total sentencing points from all charges and add-ons. When meting sentences, they

are free to consider sentencing points only, or they might also consider the *nature* of the charges, add-ons, and enhancements in their totality.

Against this backdrop, the goal of this paper is to respond directly to calls by scholars to examine potential mechanisms that lead to persistent disparities in court sentencing (Baumer, 2013; Spohn, 2015). Doing so also directly responds to recent calls by state legislatures, and Florida's specifically (Blankenship, 2021a, 2021b), for systematic investigation of whether add-ons create a discretionary decision point that has disparate impacts on people of color. Toward this goal, we examine how a range of discretionary sentencing add-ons (i.e., secondary charges, victim injury points, firearms/weapons points, and drug trafficking enhancements) impact sentencing, and might lead to or otherwise explain racial and ethnic disparities in a sentencing guidelines state (Florida). We explore two specific possibilities: (1) that add-ons may be more common for non-White defendants and, in turn, may *mediate* the relationship between race, ethnicity, and sentencing and (2) that add-ons have stronger, more adverse effects on sentencing outcomes for non-White defendants such that race and/or ethnicity *moderates* their impacts.

## Background

### *Gaps in Our Understanding of the Causes of Sentencing Disparities*

Given the persistence of inequalities in punishment, scholars have called for research that seeks to develop an understanding of the mechanisms that undergird racial and ethnic disparities in sentencing outcomes (Baumer, 2013; Spohn, 2015; Ulmer, 2012). While “disproportionality” refers to unanticipated racial and ethnic differences in sentencing given the size of each population, “disparities”—which are a subset of disproportionalities—involve an element of unfairness rooted in discrimination (Blank et al., 2004; Mears et al., 2016). Importantly, discrimination need not be overt nor intentional to produce disparities. We use the term “disparity” to imply that any disproportionality in the current context would constitute an unfairness.

There is a particular need for scholarship to better establish how early (i.e., pre-sentencing) points of discretion can explain how disparities arise (Johnson, 2018; Kurlychek & Johnson, 2019; Kutateladze et al., 2014; Spohn, 2015; Stolzenberg et al., 2013; Stringer & Holland, 2016; Wooldredge et al., 2015). This is especially critical in states that have sentencing guidelines, which attempt to remove unnecessary discretion that might contribute to disparities. Even in those states, though, disparities still exist (Crow & Gertz, 2008; Engen et al., 2003; Johnson & Lee, 2013; Kramer & Ulmer, 1996).

Extant studies provide only limited insights into how exactly disparities arise. The literature suggests, however, that there are two broad pathways. The first is indirectly through sentencing policies. Certain sentencing policies have a differential impact according to race/ethnicity, which then leads to disparities in sentencing. Sentencing guidelines may, for example, carry harsher punishments for crimes in which a given racial or ethnic group is more likely to be arrested. One of the first well-known examples of this at the federal level was the differential punishments for possession of crack versus powder cocaine, a distinction that decidedly harmed Black communities over any other (Tonry, 1995). Research since supports the differential impact perspective (Baumer, 2013; Clair & Winter, 2016; Pratt, 1998; Schlesinger, 2011).

The second pathway, and the one that informs our analysis, is via perceptual biases. Even in guidelines states, decision points remain that allow for differential treatment due, according to attributions and focal concerns theories (e.g., Albonetti, 1991; Steffensmeier et al., 1998), to the attribution of defendant culpability and dangerousness. Exacerbated by the large scale of the U.S. criminal legal system (Kaeble et al., 2015), court actors must process a large number of cases efficiently. Attributions theories maintain that court actors make decisions according to a set of cognitive “shorthands” (i.e., perceptions) that develop from repeated decision-making over time, information, and resource constraints (Hawkins, 1981). These “shorthands,” drawn from quick judgments about case and defendant characteristics, cue court actors into defendants’ dangerousness and culpability, and therefore, the appropriate punishment. Generally, we expect harsher outcomes for defendants as their level of attributed dangerousness or culpability increases (Steffensmeier et al., 1998).

Rooted in court actors’ personal judgments, cognitive shorthands are subject to problematic stereotypes, as the attribution of dangerousness or culpability may be tied to defendants’ demographic characteristics (e.g., race, ethnicity, gender, age), or case- or contextual-level legal variables that correlate with race or ethnicity (e.g., criminal history, defendant neighborhood, or local crime rate) (Albonetti, 1991; Fontaine & Emily, 1978; Wooldredge & Thistlethwaite, 2004). Cognitive shorthands, whether directly or through other variables such as crime type, age, or education level, tend to disfavor non-White defendants, who consistently receive harsher punishments (Feldmeyer & Ulmer, 2011; Feldmeyer et al., 2015; King & Light, 2019; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2006).

### *Sentencing Add-Ons and the Implications of Attributions*

The theoretical perspectives described above have typically been examined for judicial decisions occurring at the final stages of the sentencing process.

However, recent work extends to prosecutors, whose early charging decisions constitute an influential point of discretion (Caravelis et al., 2011; Johnson, 2014; Kutateladze, 2018; Schlesinger, 2011). Much like judges, prosecutors are influenced by defendant dangerousness and culpability, and are susceptible to potentially biased cognitive shorthands that develop as a result of repeated case processing under time and resource constraints. Unique from judges, prosecutors are concerned with convictability, with a high ratio of convictions to acquittals being one signature of prosecutorial success and key for professional advancement (Shermer & Johnson, 2010).

It is misguided to suggest that the separate influences of prosecutors and judges can be easily distinguished given what is known about the development of courtroom workgroup norms and their role in shaping charging and sentencing decisions (Dixon, 1995; Engen & Steen, 2000). Guilty pleas account for the vast majority of all felony convictions, and prosecutors play a larger role in plea agreements than judges, though judges must still sign off on the final deal. Because prosecutors are familiar with the judges in their districts, they logically make decisions that they believe a judge will be favorable to. The application of add-ons, therefore, is a product of shared discretion among court actors.

Regardless of how these decisions are made or who, in any given court, holds primary decision-making power in them, it is important to first conduct an analysis of how add-ons impact sentencing and who tends to receive them. This is because these earlier charging decisions likely influence sentencing outcomes, particularly in a points-based guidelines system such as Florida where each “add-on” carries a value that contributes to one’s likelihood of a recommended prison sentence and is used to calculate the minimum sentence length. These upstream decisions may be influenced by the same stereotypes as downstream sanctioning outcomes. For example, a prosecutor may pursue secondary charges or enhancements if characteristics of a defendant signal to a prosecutor that they are deserving of that particular add-on, or that they have a higher likelihood of conviction at trial (Bowen, 2009; Feeley, 1992; Ulmer et al., 2007). The add-on would then contribute to a harsher punishment from a judge. Alternatively, a prosecutor might seek a more severe sentence and utilize sentencing add-ons as needed to secure the desired, more punitive, sanction. In this case, add-ons would be influencing “downstream” decisions, either by way of their effects on sentencing scores or via their influence on judges’ decisions about plea bargaining agreements and final sentencing outcomes.

Either scenario can lead to potentially salient and disparate impacts for minority defendants. On one hand, there may be *differential application*. To the extent that prosecutors make race- or ethnicity-based attributions about

dangerousness and culpability early on in charging decisions (e.g., Ulmer et al., 2007; Wu, 2016), or believe those attributions are made by judges, sentencing add-ons constitute one mechanism through which disparities in those attributions manifest. In this case, biased attributions could lead to minority defendants receiving more add-ons.

On the other hand, there may be *differential effects*. To the extent that court actors, and especially judges, interpret sentencing add-ons differently when a defendant is Black or Latinx than when they are White, this too could lead to disparately severe punishments. As we describe further below, the first scenario suggests a mediation effect, and the second suggests moderation.

Prior theory and research anticipate both possibilities. First, prior research suggests differential application of sentencing add-ons occurs and may do so via the same mechanisms typically considered to influence sentencing outcomes. Studies have found, for example, that White and non-White defendants are not equally likely to receive add-ons. Crawford et al. (1998) were the first to examine the “Habitual Offender” designation in Florida. This was a highly discretionary enhancement applicable to those with two prior felonies, or one prior violent felony, and required that a defendant serve at least 75% of their sentence (as opposed to the average of 40% served by all other felony defendants at that time). Crawford et al. (1998) found that Black males were 63% more likely than non-Black males to be “Habitualized.” This effect varied, however, according to the crime type, with the largest “race effect” occurring in less serious drug or property crimes. Crawford (2000) studied this same enhancement in the female population and results were similar, but with a larger “race effect” in some contexts. More recently, scholars have revisited these earlier analyses using multilevel modeling techniques (Caravelis et al., 2011; Crow & Johnson, 2008). The more rigorous statistical designs found results similar to earlier studies, but also identified distinct patterns related to ethnicity—like Black defendants, Latinx defendants also have a higher likelihood to be “habitualized.”

In each of these prior studies, the disparate application of the “Habitual Offender” enhancement was attributed to court actors’ racialized stereotypes of dangerousness and culpability. Though prior studies did not examine sentence length as an outcome, the “Habitual Offender” designation greatly increased the average amount of time served by a defendant, as they must serve at least 75% of their sentence. Logically, this enhancement, which was disparately applied to minority defendants, would ensure that this group serves a longer average sentence than defendants who are not habitualized.

It remains to be seen, however, whether a similar pattern emerges in sentencing add-ons more generally, including those that are used more routinely

for defendants convicted of their first felony offense. Court actors have a diverse set of potential levers that can be used to respond to various types of crimes, defendants, and criminal circumstances, all of which entail considerable discretion. Looming questions exist about when and how these are used. Prior studies provide some limited guidance.

For example, courts may be more likely to apply secondary charges to minority defendants; that is, charges supplemental to the primary charge. Decisions around charging and secondary charges constitute a key point of discretion in sentencing (see, generally, Bowen, 2009). Having multiple charges is a significant and positive predictor of conviction, incarceration rates, and sentence length (Leipold & Abbasi, 2006; Nelson, 2014; Steffensmeier & Demuth, 2006), as these defendants may be seen by court actors as more dangerous (Greene & Loftus, 1985). In Florida, common additional charges include grand theft, resisting arrest, and drug possession. If non-White defendants are more likely to receive additional charges, this could explain at least some disparity in who goes to prison (i.e., mediation).

More generally, prior scholarship also suggests that minority defendants may be more likely to receive enhancements that increase their perceived dangerousness to community members (see, generally, Crow & Johnson, 2008; Starr & Rehavi, 2013). In many states, courts may choose to include a weapons enhancement. How and when they choose to do so is largely unknown, but demographic characteristics of defendants seem to play a role. Farrell (2003), for example, reported that only 37% of eligible cases in Maryland received the mandatory minimum firearm penalty and that defendant race and gender were significant predictors of application of the weapons add-on. Courts are also tasked with holding defendants accountable for victims and victims' injuries, but we have only a limited understanding of the consistency with which prosecutors assign victim injury penalties and whether race and ethnicity influence those assignments. Sentencing guidelines often formalize this process through point levers (Florida includes a victim injury points designation), though prior empirical investigations have not explored the direct impact of defendant race or ethnicity on decisions to apply victim injury penalties. Like weapons enhancements, however, victim injury designations are a plausible mechanism for signaling dangerousness and culpability.

Second, prior theory and research suggest that add-ons may have differential effects. For example, even though our understanding of when courts assign enhancements like victim injury designations are limited, considerably more is known about potentially differential—and disadvantageous—impacts of convictions for crimes involving victims for White versus non-White defendants. Sentencing decisions for crimes like sexual assault

and other forms of violence that involve direct impacts on victims are punished more harshly when defendants are Black and Latinx (Curry, 2010; LaFree, 1989; Spohn & Spears, 1996). In addition, defendant race interacts with other characteristics that, according to attributions perspectives (Albonetti, 1991; Steffensmeier et al., 1998), are likely to signify particular threats to community members. Such characteristics have included age (Jordan & McNeal, 2016; Wu & Spohn, 2009), gender (Crawford, 2000; Rodriguez et al., 2006), prior record (Franklin & Henry, 2020; Ulmer et al., 2011; Wooldredge, 1998), the number of charges (Nelson, 2014; Wynne & Hartnagel, 1975), and pretrial detention (Demuth & Steffensmeier, 2004; Donnelly & MacDonald, 2018; Schlesinger, 2005; Spohn, 2008).

Thus, a moderation effect, such that the adverse impacts of sentencing add-ons are amplified for minority defendants, would be consistent with these prior empirical findings. It would be consistent, too, with the theoretical argument, more broadly, that court actor decisions are more sensitive to signals of dangerousness when a defendant is a racial or ethnic minority (e.g., Spohn & Sample, 2013; Steen et al., 2005).

### *Mediation, Moderation, and Sentencing Add-Ons as a Pathway to Disparity*

Although sentencing guidelines seek to guide discretion and restrict disparity, a range of case and charging decisions typically remain that leave room for biases to operate. The goal of this study is to examine one particular set of decisions—those surrounding add-ons, which include drug trafficking enhancements, firearms/weapons points, secondary charges, and victim injury points—to determine whether and how they contribute to racial and ethnic disparities in the use of prison. This line of inquiry is based on the theoretical argument that the diverse range of add-ons at the disposal of court actors involve decisions that call on focal concerns regarding dangerousness and culpability (Kutateladze et al., 2016; Smith & Levinson, 2011) and cognitive shorthands about defendant race and ethnicity.

Our analysis will explore two specific possibilities. *First, we will examine mediation*—that is, we will examine whether minority defendants receive more add-ons (controlling for legal factors such as offense types and severity) and, in turn, whether disparity in the application of add-ons explains some or all of the association between race/ethnicity and sentences to state prison. Although not a direct test (see Lynch, 2019), evidence of mediation would be consistent with the idea that court actors perceive minority defendants as more dangerous or culpable and so are more inclined to include



add-ons in charging and sentencing packages, which then lead to harsher sentences. Evidence of mediation may also suggest court actors perceive minority defendants as more likely to be convicted (even with add-ons included), and therefore are more likely to apply them to their sentencing packages for the purpose of securing a harsher sentence. Conversely, evidence of mediation could also suggest that prosecutors are concerned that minorities will not be convicted, and so “add on” to secure, at the very least, a conviction.

*Second, we will examine moderation*—that is, we will examine whether add-ons operate differently for minority defendants. We anticipate that although add-ons will operate generally to increase the likelihood of a prison sentence, the effects may not be uniform and may be amplified for minority defendants. Evidence of moderation would suggest something different than that above. Regardless of whether disparities exist in the *application* of sentencing add-ons, evidence of moderation would suggest disparities exist in the *effect* or interpretation of them. That is, if add-ons exert stronger effects on the severity of non-White sentencing outcomes, it would suggest that add-ons signal something different to a judge when a defendant is Black or Latinx compared to when the defendant is White. In this case, moderation would simply suggest an alternative method of disparity, one not necessarily stemming from the increased use of a sentencing mechanism, but instead from an increased, adverse effect for certain defendants.

The exploration of mediation and moderation effects is supported by prior research and theory on sentencing disparities (Baumer, 2013). It is unclear whether disparities arise through the differential application of add-ons and enhancements (i.e., mediation), or via differential impacts of add-ons across race and ethnicity (i.e., moderation), or both. Spohn et al. (2014), for example, considered (and found) both mediation and moderation pathways for the effects of defendant drug use on federal sentencing (Spohn et al., 2014). They found that defendant drug use had an indirect effect on sentence length through pretrial detention and substantial assistance departures (i.e., mediation), but also that sentence severity was moderated by crime type—drug use had a unique impact on sentence length for defendants with drug offenses (vs. non-drug offenses). We extend this general approach here. That is, we consider whether add-ons may mediate the effects of race/ethnicity on sentencing if non-White defendants are more likely to receive an add-on, and thus, sentenced to prison more often (much like drug users in Spohn et al., 2014, who were more likely to receive pretrial detention and, in turn, longer sentences). Add-ons may also moderate race/ethnicity effects on sentencing by invoking more severe sentences when applied to non-White defendants (much like drug use for drug defendants in Spohn et al., 2014).

Both mediation and moderation processes could operate at the same time. Alternatively, if add-ons do little to explain how racial and ethnic disparities emerge in sentencing, either via mediation or moderation, this would then help to rule out that pathway as a primary explanatory mechanism. It would suggest that other mechanisms, such as primary charging decisions and police decision making leading up to charging decisions, may be more critical areas of concern.

### *Florida Case Processing and Sentencing Guidelines System*

We explore the impact of add-ons as a pathway to disparity within the context of Florida sentencing. While Florida's system is somewhat unique among guidelines states (see Margulies et al., 2019), its structure provides an appropriate context for assessing extralegal disparities, which, in theory, should be minimal given the points-based sanctioning design (enumerated below). Similar to other states, however, Florida's guidelines system allows judges the discretion to sentence within a specified range, and justify departures from the presumptive sentence recommendation.

Florida revised substantially their 1983 sentencing guidelines as part of the 1994 Safe Streets Initiative. The 1994 version outlined a statewide "points system" whereby each crime carried a point value, and judges prepared scoresheets based on the full legal characteristics of each case and defendant. The point value for all counts of the primary and secondary charges were summed along with other potential indicators involving victim injury and prior record information. If judges applied an enhancement (based on the primary charge, eligibility criteria, or at the recommendation of a prosecutor), this would then multiply the point subtotal by 1.5, 2, or 2.5 depending on the specific enhancement. Cases with total sentence points surpassing 44 were proscribed a state prison sentence, and cases with 22 points or less were proscribed a non-state prison sentence (e.g., jail, community), with more discretion for cases falling between 23 and 44 points.<sup>1</sup>

### **Data and Methods**

The current study utilized data from the Florida sentencing guidelines database, which includes all felony convictions across Florida's 20 judicial circuits between 1994 and 2011. This broad range of years is advantageous as it allowed us to consider sentencing for a large group of defendants, throughout varying temporal contexts. Similar ranges of sentencing years have been used in recent research highlighting racial/ethnic disparities (see, e.g., King & Light, 2019).<sup>2</sup>

Our analyses focus on first-time felony convictions ( $N=1,014,646$ ). This focus was strategic because it limited the influence of unobserved confounders on sentencing and add-ons decisions that can be introduced by defendants who have lengthy prior records or regularly cycle through the local court system (see, generally, Cassidy & Rydberg, 2018; Crow, 2008). Excluding defendants with prior felony records arguably allows for more accurate estimates of race, ethnicity, and add-on effects.

We study four theoretically relevant add-ons that carry some degree of discretion in their application or in their impact on sentencing:

- (1) Drug trafficking enhancement—cases with a drug trafficking primary charge (under section 893.135 of the Florida statutes) of offense level 7 or higher can receive an enhancement that results in their subtotal sentencing points being multiplied by 1.5 (Criminal Punishment Code [CPC], 2019).<sup>3</sup>
- (2) Firearms/weapons points—these are added when there is “possession of a firearm, semiautomatic firearm, or a machine gun during the commission or attempt to commit a crime,” and permit one assessment of either 18 or 25 additional points (CPC, 2019, p. 12).
- (3) Secondary charges—while the points that accompany secondary charges are not discretionary, the decision to apply them is. Prosecutors and judges, respectively, may choose to apply and accept secondary charges (i.e., “any offense other than the primary offense for which a defendant is convicted and which is pending before the court for sentencing at the time of the primary offense,” CPC, 2019, p. 17).
- (4) Victim injury points—in the instance where the commission of a crime directly resulted in physical injury or death of another party, a range of victim injury points (4–240) may be assessed for each victim, for each offense (CPC, 2019).

These add-ons were selected because of their applicability to first-time felony defendants and also their comprehensive nature. By examining the above (including secondary charges, which may not be an “add-on” per se, but may operate similarly given their discretionary nature), we are considering all potential add-ons for first-time felony defendants outlined in the Florida guidelines.

We also created one additional, but more general add-on measure that appears in our analysis—a measure of “push” add-ons that is a dichotomous measure of whether a defendant received an add-on that specifically “pushed” their sentencing score beyond the 44-point threshold for a recommended prison sentence. These cases would not otherwise have “scored to prison”

absent one of the four aforementioned add-ons. The goal here was to evaluate add-on use that was likely to be more impactful—that is, circumstances in which add-ons could be viewed as “the thing” that led to a prison recommendation—and, in turn, whether minority defendants are more likely to have add-ons used in their cases in this way. This provides a distinct and perhaps more direct test of whether discretionary sentencing mechanisms like add-ons are used under sentencing guidelines to elicit a tougher sanction, moving beyond the potential effects (or lack thereof) of any particular add-on on sentencing to the general effects of such a mechanism and their role in perpetuating disparities. Individual add-ons that do not increase sentencing scores substantially, for example, may have minimal impacts on sentencing. Any add-on (no matter the type) used to “push” sentencing scores beyond the 44-point threshold, however, should have a measurable impact.

### *Analytic Strategy*

The analysis proceeded in four stages. First, we examined whether add-ons exerted adverse effects on the overall likelihood of a prison sentence (not race/ethnicity-specific).<sup>4</sup> This was an important initial analysis for evaluating whether add-ons do in fact contribute to increased punitiveness among defendants when applied. Second, we examined sentencing add-ons (described in detail below) as dependent variables with a focus on whether minority defendants were more likely to receive them. Third, if minority defendants were more likely to receive any add-ons, *and* if add-ons increased the likelihood of prison sentences, we identified the degree to which add-ons mediated effects of race/ethnicity on prison likelihood. Specifically, we tested the significance of the natural indirect effects (NIEs) of race/ethnicity on prison likelihood operating through add-ons. Fourth, we examined whether the effects of add-ons were moderated by racial or ethnic status. In this step, prison sentences served as the dependent variable.

For each analysis, we included theoretically relevant controls that accounted for potential group differences in outcomes between White, Black, and Latinx first-time felony defendants. These included primary offense points, a 33-group primary offense type (see Supplemental Appendix A), prior misdemeanor, judicial circuit, sentencing year, age (quadratic), gender (male=1), probation/legal status violations, and mode of conviction (trial=1).<sup>5,6</sup> Some of the charge-based controls (e.g., prior misdemeanors, probation/legal status violations) were also point “add-ons” in that they also carried point values that contributed additively to a defendant’s point subtotal, but they are arguably less discretionary than the four add-ons of interest in the current set of analyses.

The analyses used pooled binary logistic regression to examine all binary outcomes (e.g., prison sentence, the receipt of an add-on) (yes = 1).<sup>7</sup> Binary logistic regression is commonly used in sentencing research and is appropriate as it allows for the evaluation of the effects of multiple predictors on a dichotomous outcome variable, and provides ease of interpretation through odds ratios (Crawford, 2000). For simplicity, and due to the fact that race/ethnicity effects on prison (in/out) and sentence length decisions tend to operate differently (see Chiricos & Crawford, 1995; Spohn, 2000; Wang et al., 2013), we do not explore the impact of add-ons on sentence length in the main analyses.<sup>8</sup> Furthermore, it is suggested that sentence length models include corrections for sample bias that our data do not support (Berk & Ray, 1982).

### *Accounting for Eligibility Criteria for Specific Add-Ons and Enhancements*

The four add-ons of interest, as we have conceptualized them, vary in their eligibility requirements. For example, to receive firearms/weapons points one must have been in possession of a firearm during the commission or attempted commission of the crime (but points can only be assessed in instances where the firearm was not necessary for the underlying felony to exist). Courts will have greater discretion in applying secondary charges (which carry no eligibility criteria outside of whatever court actors determine to be sufficient evidence) than in decisions to apply, for example, drug trafficking enhancements (eligibility requirements detailed below). Although the Florida CPC outlines the eligibility requirements for each add-on, it is clear from the data that these can still be applied to what appear to be “ineligible” cases, and that the reality of case processing may not perfectly reflect that which is dictated by the CPC.

Given this variation and inconsistency, there are at least two ways to approach case eligibility in our statistical models. The *first* is to preclude from the analyses the cases that do not appear eligible according to the Florida CPC. This is appealing, on one hand, because we can model variation in the use of these enhancements according to the written policy. On the other hand, there is an argument to be made that such a strategy is overly restrictive and that it does not allow or necessarily reflect the realities of case processing (detailed below), since we find that sometimes defendants that would appear to be ineligible for some add-ons still receive them.

The second method is to include detailed primary offense controls that operate to account for eligibility, at least as it is defined in the statutes. A

virtue of this approach is that it does not exclude cases that are, in practice, eligible to receive any given enhancement. For example, according to the Florida CPC, drug trafficking enhancements are applicable to cases with drug-related primary charges (see s. 893.135 Florida Statutes) at an offense severity level of 7 or higher. Our data show, however, that 5.8% of cases receiving the drug trafficking enhancement did not have a drug trafficking primary charge. This may result from plea agreements that reduce the primary charge but retain the enhancement, or other, unidentified avenues for court actor discretion to influence final sentencing decisions. Thus, controlling for offense types (here, 33 unique groups) in addition to offense severity (via primary offense points) accounts for eligibility in a way that does not preclude cases that receive a given add-on.

Our main analyses proceed using the latter approach—that is, we retain the full sample and detailed crime-related controls to account for eligibility. However, we also provide the results in appendices from a parallel set of results that utilize “eligible” subsamples, as best they can be modeled given data limitations. While secondary charges and “push” add-ons do not have eligibility criteria (and so are not modeled in the robustness checks), drug trafficking enhancements, firearms/weapons points, and victim injury points do. The “eligible” subsample for drug trafficking includes defendants with drug-related charges at an offense level of 7 or higher. The “eligible” subsample for firearms/weapons points includes defendants charged with violent or property crimes. Last, the “eligible” sample for victim injury points includes defendants charged with violent or sex crimes. The results of these analyses appear in Supplemental Appendices B through D, and a detailed comparison with the main analyses appears under section 4.6 below (“Robustness Checks, Including an Alternative Approach to Modeling Eligibility”).

## Findings

### *Descriptive Statistics*

Table 1 presents sample characteristics of the full sample ( $N=1,014,646$ ) and then separated by race/ethnicity (White non-Latinx, Black non-Latinx, and Latinx, hereafter “White,” “Black,” and “Latinx,” respectively). While this is a simplistic characterization of race and ethnicity, it is the most precise our data and analyses allow, and is common within sentencing research (Baumer, 2013; Bontrager et al., 2005; Caravelis et al., 2011; Crow & Johnson, 2008). Most defendants in the sample were White (56%) and male (75%). Supplemental Appendix A shows that drug possession, drug sale, and grand

**Table 1.** Descriptive Statistics.

	Full sample		White		Black		Latinx	
	N= 1,014,646		N= 565,184		N= 325,346		N= 121,546	
	$\bar{x}$	SD	$\bar{x}$	SD	$\bar{x}$	SD	$\bar{x}$	SD
<b>Outcome</b>								
Prison sentence	0.127	0.333	0.117	0.321	0.137	0.344	0.146	0.353
<b>Sentencing add-on</b>								
Push add-on	0.048	0.213	0.047	0.211	0.049	0.215	0.051	0.220
Drug trafficking	0.003	0.057	0.003	0.052	0.002	0.049	0.008	0.087
Firearms/weapons	0.004	0.060	0.003	0.053	0.005	0.069	0.004	0.064
Secondary charge	0.521	0.500	0.531	0.499	0.498	0.500	0.531	0.499
Victim injury	0.075	0.263	0.072	0.258	0.073	0.261	0.092	0.290
<b>Demographics</b>								
Black	0.321	0.467	—	—	—	—	—	—
Latinx	0.120	0.325	—	—	—	—	—	—
White	0.557	0.497	—	—	—	—	—	—
Male	0.751	0.432	0.735	0.441	0.737	0.440	0.858	0.349
Age (years)	30.410	10.616	31.664	10.834	28.452	10.054	29.831	10.217
<b>Criminal history</b>								
Misdemeanor	0.488	0.500	0.517	0.500	0.490	0.500	0.346	0.476
Probation violation	0.253	0.435	0.265	0.442	0.255	0.436	0.191	0.393
Legal status violation	0.070	0.254	0.073	0.259	0.073	0.260	0.048	0.213
<b>Case characteristics</b>								
Primary offense points	24.652	19.079	23.375	17.380	25.381	20.205	28.627	22.507
Trial	0.012	0.109	0.011	0.105	0.013	0.115	0.013	0.113

Note. All variables are dichotomous (1 = yes) with the exception of age and primary offense points. Due to the quantity of circuit, sentencing year, and crime type measures, these descriptive statistics are provided in Supplemental Appendix A. SD = standard deviation.

theft were the most common convictions (20%, 11%, and 10%, respectively). These distributions closely mirrored national trends, where White males are the largest defendant group, and drug and property offenses are the most common offenses seen in state circuit courts (Reaves, 2013).

Racial and ethnic differences in sentencing were consistent with prior assessments, as Latinx and Black defendants were sent to prison more often than White defendants (15%, 14%, and 12%, respectively). Over half the full sample received at least one of the four unique sentencing add-ons, driven

primarily by the application of secondary charges (52%), then victim injury (7.5%), followed by firearms/weapons points (0.4%) and drug trafficking (0.3%). Given the high caseloads in Florida courts, even the smaller frequencies represent a relatively sizable sample. For example, ~4,000 individuals received firearms/weapons points and ~3,000 received a drug trafficking enhancement. Thus, disparities in the use or impacts of these enhancements would have substantively meaningful impacts.

While some add-ons were rare within the sample, add-ons were, for some cases, the “reason” one received a prison sentence over jail or community sanctions. Approximately 5% of cases received a “push” add-on (i.e., one that pushed a defendant’s score beyond the 44-point threshold), leading to a prison sentence recommendation that would not apply absent the add-on.

The bivariate analyses suggest that there may not always be an increased likelihood that minority defendants receive add-ons compared to White defendants. The multivariate analyses below evaluate the likelihood of receiving add-ons across racial and ethnic groups and the possibility that a disparity emerges once group differences are accounted for.

### *What are the Impacts of Add-Ons on Prison Likelihood?*

Table 2 estimated the impacts of add-ons on the likelihood of a prison sentence.<sup>9</sup> The table proceeds in a stepwise fashion, beginning with a baseline model (i.e., no add-ons), then considering the impact of “push” add-ons, and then each unique add-on (i.e., drug trafficking enhancement, firearms/weapons points, secondary charges, and victim injury points).

In model 2, receiving a “push” add-on had a very strong effect on prison likelihood, as by definition these are add-ons that pushed sentencing scores beyond the threshold for a recommended prison sentence ( $OR=4.629$ ,  $p<.001$ ). Table 2 also shows that each individual add-on had a unique and significant effect on prison likelihood. Of these, firearms/weapons points exerted the strongest effect, increasing one’s likelihood of a prison sentence by about 230% ( $OR=3.315$ ,  $p<.001$ ). Secondary charges followed, increasing one’s likelihood of a prison sentence by about 86% ( $OR=1.863$ ,  $p<.001$ ). To a lesser degree, victim injury points ( $OR=1.517$ ,  $p<.001$ ), and drug trafficking enhancements ( $OR=1.309$ ,  $p<.001$ ) also increased the likelihood of a prison sentence, by about 52% and 31%, respectively.

Throughout Table 2 we observed a consistent effect of race and ethnicity on sentencing. That is, despite accounting for the impact of any given add-on, Black and Latinx defendants were still significantly more likely than White defendants to be sentenced to prison, which mirrored the baseline analyses. Although their baseline (model 1) odds of imprisonment were similar, Latinx



**Table 2.** Logistic Regression of Prison Sentence on Add-Ons, Demographics, and Case Characteristics (N= 1,014,646).

	(1)			(2)			(3)		
	b	SE	OR	b	SE	OR	b	SE	OR
Sentencing add-on									
Push add-on	—	—	—	1.532***	0.012	4.629	—	—	—
Drug trafficking	—	—	—	—	—	—	0.269***	0.046	1.309
Demographics									
Black	0.164***	0.009	1.178	0.167***	0.009	1.182	0.164***	0.009	1.178
Latinx	0.155***	0.012	1.167	0.161***	0.012	1.175	0.154***	0.012	1.167
Male	0.399***	0.010	1.490	0.403***	0.010	1.496	0.399***	0.010	1.490
Age	0.052***	0.002	1.053	0.054***	0.002	1.056	0.052***	0.002	1.053
Age <sup>2</sup>	-0.001***	0.000	0.999	-0.001***	0.000	0.999	-0.001***	0.000	0.999
Criminal history									
Misdemeanor	0.271***	0.008	1.312	0.297***	0.008	1.346	0.271***	0.008	1.312
Probation violation	1.444***	0.008	4.237	1.406***	0.008	4.079	1.444***	0.008	4.239
Legal status violation	0.789***	0.012	2.202	0.758***	0.012	2.134	0.789***	0.012	2.202
Case characteristics									
Primary offense points	0.054***	0.000	1.056	0.058***	0.000	1.060	0.054***	0.000	1.056
Trial	1.801***	0.026	6.057	1.787***	0.027	5.972	1.801***	0.026	6.054
Constant	-6.430***	0.044	0.002	-6.594***	0.045	0.001	-6.430***	0.044	0.002
Log likelihood		-262,390.97			-254,840.83			-262,373.39	

(continued)

Table 2. (continued)

	(4)			(5)			(6)		
	b	SE	OR	b	SE	OR	b	SE	OR
Sentencing add-on									
Firearms/weapons	1.198***	0.049	3.315	—	—	—	—	—	—
Secondary charge	—	—	—	0.622***	0.008	1.863	—	—	—
Victim injury	—	—	—	—	—	—	0.417***	0.014	1.517
Demographics									
Black	0.164***	0.009	1.178	0.178***	0.009	1.194	0.161***	0.009	1.175
Latinx	0.155***	0.012	1.167	0.167***	0.012	1.182	0.151***	0.012	1.162
Male	0.398***	0.010	1.489	0.395***	0.010	1.485	0.400***	0.010	1.491
Age	0.052***	0.002	1.053	0.054***	0.002	1.055	0.051***	0.002	1.052
Age <sup>2</sup>	-0.001***	0.000	0.999	-0.001***	0.000	0.999	-0.001***	0.000	0.999
Criminal history									
Misdemeanor	0.272***	0.008	1.313	0.262***	0.008	1.300	0.274***	0.008	1.315
Probation violation	1.446***	0.008	4.246	1.437***	0.008	4.209	1.450***	0.008	4.264
Legal status violation	0.789***	0.012	2.202	0.685***	0.012	1.985	0.789***	0.012	2.201
Case characteristics									
Primary offense points	0.054***	0.000	1.056	0.053***	0.000	1.055	0.053***	0.000	1.054
Trial	1.794***	0.026	6.012	1.814***	0.027	6.137	1.784***	0.026	5.954
Constant	-6.434***	0.044	0.002	-6.885***	0.045	0.001	-6.401***	0.044	0.002
Log likelihood		-262,111.20			-259,431.63			-261,953.38	

Note. White, circuit 6, drug possession, and sentencing year 2011 serve as reference categories. Circuit, sentencing year, and the 33 unique crime type variables are not displayed in table due to space constraints. SE = standard error; OR = odds ratio.

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

defendants had slightly lower odds than Black defendants ( $OR=1.178$  and  $1.167$ , respectively), relative to White defendants. The substantive difference is small however, with a 1.1% spread in the odds of imprisonment between Black and Latinx defendants, compared to White defendants. Throughout Table 2, Black defendants are roughly 18% to 19% more likely to be sentenced to prison, and Latinx defendants are roughly 15% to 18% more likely sentenced to prison, compared to White defendants. Generally, Table 2 shows that, given significant race and ethnicity effects on sentencing outcomes remain in each model, add-ons do not fully account for the effects of minority status on the likelihood of prison.

Comparisons of logit coefficients across same-sample step-wise models is potentially problematic, unlike for linear models, because variance in the dependent variable is not identified by nature of the procedure and necessarily changes as predictors are added to the model (see Karlson et al. (2012) for their discussion of this problem). According to Karlson et al. (2012), this problem of “rescaling” across models will underestimate the true reduction in the magnitude of an estimated effect due to confounding. For example, a race effect might be statistically significant in the first step-wise model and remain significant in the second model, even after covariates have been added and the magnitude of the race effect has weakened, due to this issue. Therefore, readers must be aware that the use of step-wise logistic regression could potentially inflate the importance of race and ethnicity in the full model with all predictors included, relative to what the effect should be when controlling for possible confounders. We examine mediation more directly below.

### *What are the Impacts of Race and Ethnicity on the Likelihood of Receiving Add-Ons?*

Given the baseline differences in sentencing by race/ethnicity (Table 1) and the evidence that add-ons significantly impact prison likelihood (Table 2), the next step is to determine whether add-ons mediate the race/ethnicity effect on sentencing. Table 3 explores the likelihood of receiving “push” add-ons, and each of the four unique types of add-ons. If one racial/ethnic subgroup is more likely to receive an add-on that is associated with harsher sentencing, and this subgroup tends to receive harsher outcomes, then there is reason to suspect mediation.

Defendants differed in their likelihood of receiving certain types of add-ons. Specifically, Table 3 reveals that, despite non-White defendants receiving harsher sentencing outcomes, they are not consistently more likely to receive add-ons. In fact, Black and Latinx defendants were significantly less

**Table 3.** Logistic Regression of Add-Ons on Defendant and Case Characteristics (N= 1,014,646).

	(1) Push add-on			(2) Drug trafficking <sup>a</sup>			(3) Firearms/weapons <sup>b</sup>			(4) Secondary charge			(5) Victim injury		
	b	SE	OR	b	SE	OR	b	SE	OR	b	SE	OR	b	SE	OR
<b>Demograph</b>															
Black	0.016	0.011	1.016	-0.015	0.054	0.985	0.141***	0.040	1.151	-0.108***	0.005	0.898	0.139***	0.012	1.145
Latinx	0.029	0.016	1.029	0.007	0.053	1.007	0.112*	0.057	1.119	-0.046***	0.007	0.955	0.155***	0.017	1.168
Male	0.038**	0.013	1.039	0.192***	0.052	1.212	0.491***	0.062	1.635	0.021***	0.005	1.021	0.016	0.014	1.027
Age	-0.019***	0.002	0.981	-0.020	0.011	0.980	-0.046***	0.008	0.955	-0.010***	0.001	0.990	0.020***	0.002	1.019
Age <sup>2</sup>	0.000***	0.000	1.000	0.000	0.000	1.000	0.001***	0.000	1.001	0.000	0.000	1.000	-0.000***	0.000	1.000
<b>Crim. hist</b>															
Misdem.	-0.098***	0.011	0.907	0.060	0.046	1.062	-0.063	0.038	0.939	0.104***	0.005	1.110	-0.031**	0.011	0.969
Prob. viol.	0.797***	0.011	2.218	-0.459***	0.067	0.632	-0.303***	0.052	0.739	0.158***	0.005	1.171	-0.074***	0.013	0.935
Legal stat. viol.	0.512***	0.017	1.668	0.234*	0.097	1.263	0.113	0.075	1.120	0.803***	0.009	2.232	0.188***	0.021	1.209
<b>Case character</b>															
Primary off. pts.	-0.010***	0.000	0.990	0.007***	0.001	1.008	0.015***	0.001	1.015	0.018***	0.000	1.018	0.043***	0.000	1.042
Trial	0.325***	0.037	1.384	0.661***	0.110	1.937	0.557***	0.079	1.745	0.033	0.020	1.033	0.555***	0.033	1.741
Constant	-5.136***	0.064	0.006	-8.306***	0.280	0.000	-9.203***	0.301	0.000	0.318***	0.025	1.375	-8.087***	0.082	0.001
Log likelihood	-162,555.54			-8,616.39			-15,953.69			-628,085.12			-126,362.05		

Note. White, circuit 6, drug possession, and sentencing year 2011 serve as reference categories. Circuit, sentencing year, and the 33 unique crime type variables are not displayed in table due to space constraints. SE=standard error; OR=odds ratio.

<sup>a</sup>Several crime type categories had no cases receiving a drug trafficking enhancement. Therefore, the sample for model 2 was reduced (N=835,217).

<sup>b</sup>No cases in two of the crime categories (i.e., theft, leaving an accident with injury, or death) received firearms/weapons points. The sample for model 3 was therefore reduced (N=999,110).

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

likely than White defendants to receive secondary charges ( $ORs=0.898$  and  $0.955$ , respectively,  $p < .001$ ). This was not the case, however, for all add-ons. Even when controlling for the 33 offense types (listed in Supplemental Appendix A), Black and Latinx defendants were 15% and 17% more likely than White defendants, respectively, to receive victim injury points (Black  $OR=1.145$ ,  $p < .001$ , and Latinx  $OR=1.168$ ,  $p < .001$ ). They were also 15% and 12% more likely than White defendants, respectively, to receive firearms/weapons points (Black  $OR=1.151$ ,  $p < .001$ , and Latinx  $OR=1.119$ ,  $p < .05$ ). Thus, White defendants may have been more likely to receive secondary charges (by far the most common add-on), non-White defendants were significantly more likely to receive the add-ons that signified heightened dangerousness (e.g., Crow & Johnson, 2008; Starr & Rehavi, 2013).

Notably, race and ethnicity do not appear to play a role in the likelihood of receiving a “push” add-on or a drug trafficking enhancement, once case and defendant characteristics were accounted for. There are two possibilities for why this may be the case: (1) race and ethnicity do not, in fact, influence the application of add-ons that “push” defendants to prison or apply drug trafficking enhancements; or, (2) these effects are “explained away” by earlier decisions by the police and the courts (e.g., arrest, evidence collection, initial charging, pretrial detention, plea negotiation), which are shown to disadvantage non-White defendants (see Kurlychek & Johnson, 2019), and impact sentencing outcomes down the line. Our data do not allow us to account for those possibilities. We expand upon the need to incorporate that kind of information, including data from police reports and charging records, in the conclusions.

### *Does the Application of Add-Ons Mediate any Impact of Race and Ethnicity on the Likelihood of a Prison Sentence?*

To this point, we have found race and ethnicity to be positively associated with some add-ons, but not all of them. Next we tested whether group differences in the application of add-ons, despite being inconsistent, explained any proportion of the relationship between race, ethnicity, and the severity of sanctioning outcomes. Table 2 provided baseline estimates of the association between race and ethnicity and incarceration, followed by a stepwise progression of add-on-specific models. Differences in the Black and Latinx coefficients between the baseline (model 1) and subsequent add-ons models (models 2 through 6) suggested, as mentioned previously, that certain add-ons account for at least some of the effect of race/ethnicity on sentencing. Using the *paramed* procedure (Liu et al., 2014) in Stata v15.0 we estimated the natural indirect effect (NIE) of each add-on that: (1) significantly increased prison likelihood (see Table 2); and (2) was significantly more

**Table 4.** Natural Indirect Effects of Add-Ons on Prison Likelihood for Black and Latinx Defendants ( $N = 1,014,646$ ).

	OR	SE
Victim injury (Black)	1.000***	0.000
Victim injury (Latinx)	1.001***	0.000
Firearms/weapons (Black) <sup>a</sup>	1.001***	0.000
Firearms/weapons (Latinx)	1.000	0.000

Note. SE=standard error; OR=odds ratio.

<sup>a</sup>No cases in two of the crime categories (i.e., theft, leaving an accident with injury, or death) received any firearms/weapons points. The sample for these two models was therefore reduced ( $N = 999,110$ ).

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

likely applied to Black or Latinx defendants (see Table 3). The NIE represents the portion of the effect of the exposure (i.e., being Latinx or Black) on sentencing that is mediated through a given add-on. With race or ethnicity fixed, the NIE is the average change in prison likelihood when an add-on moves from absent (add-on=0) to present (add-on=1).

Given our criteria, we tested the following as potential mediators of Black/Latinx effects on prison likelihood: (1) firearms/weapons points; and (2) victim injury. The results are displayed in Table 4. While the NIE for most tested relationships was significant, the size of the effects indicated that this was more a function of sample size and not meaningful mediation. The largest NIEs resulted from the analyses testing whether victim injury points mediated the “Latinx effect” on prison likelihood ( $OR = 1.001$ ,  $p < .001$ ), and whether firearms/weapons points mediated the “Black effect” on prison likelihood ( $OR = 1.001$ ,  $p < .001$ ). With an even smaller (yet significant) NIE of victim injury on prison likelihood for Black defendants ( $OR = 1.000$ ,  $p < .001$ ), and a non-significant NIE of firearms/weapons points on prison likelihood for Latinx defendants, we do not suspect that add-ons mediate the relationship between race, ethnicity, and sentencing. One potential explanation for this is the relative infrequency of the add-ons tested (see Table 1).

### *Does Race/Ethnicity Moderate the Impacts of Add-Ons?*

Racial/ethnic disparities in sentencing might also emerge through moderation effects if sentencing add-ons (when applied) carry different weight for non-white defendants. Here we assessed that possibility, which is one that appears especially plausible given the results above that suggest that White

defendants were both more likely to receive some add-ons, yet consistently received more lenient sentencing outcomes compared to their non-White counterparts.

Table 5 provides estimates from separate White, Black, and Latinx models where prison sentences were regressed on add-on measures and control variables. The Table 5 estimates suggest that add-ons are differentially impactful according to race and ethnicity. While “push” add-ons, secondary charges, firearms/weapons points, and victim injury points significantly increased the likelihood of a prison sentence in the White, Black, and Latinx models ( $p < .001$ ), the drug trafficking enhancement had an inconsistent effect between groups, highly significant for Black defendants ( $OR = 1.440$ ,  $p < .001$ ), less so for White defendants ( $OR = 1.170$ ,  $p < .05$ ), and non-significant for Latinx defendants.

Using the  $z$  test proposed by Clogg et al. (1995; see also Paternoster et al., 1998), we tested the significance of differences between the coefficients in Table 5 between White and Black defendants, and separately between White and Latinx defendants.<sup>10</sup> Some potentially unexpected differences between coefficients in Table 5 emerged. White defendants were significantly more likely than Black defendants to be sentenced to prison upon receipt of a “push” add-on ( $z = 4.640$ ), and significantly more likely than Latinx defendants to be sentenced to prison upon the receipt of secondary charges ( $z = 4.174$ ). Conversely, Black and Latinx defendants were significantly more likely than White defendants to be sentenced to prison upon receipt of victim injury points ( $z = -2.780$  and  $-3.115$ , respectively).

In general, the results in Table 5 add to the nuanced understanding of add-ons’ impacts on sentencing. Their effects do not always follow the typical pattern of more disadvantage to Black and Latinx defendants and less for White defendants. It is noteworthy, though, that victim injury points (an add-on that signals danger to the community perhaps more than any other) impact sentences for Black and Latinx defendants in a way that they do not for White defendants. This may be a manifestation of judges’ desire to intervene harshly with “dangerous” defendants, a characteristic that may more often be attributed to Black and Latinx defendants.

Figure 1 plots the average marginal effects (AMEs) for each add-on with significant effects in Table 5, illustrating how the odds of prison *change* for each race/ethnicity when an add-on is present versus not present. We see that AMEs are consistently larger for Black and Latinx defendants than White defendants when firearms/weapons or victim injury points are applied. Importantly, AMEs are never largest for White defendants, regardless of the type of add-on. By contrast, Black and/or Latinx defendants are consistently experiencing greater increases to their odds of incarceration as a result of an

**Table 5.** Logistic Regression of Prison Sentence on Add-Ons, Demographics, and Case Characteristics by Race/Ethnicity.

	(1)			(2)			(3)		
	White (N = 565,184)			Black (N = 325,346)			Latinx (N = 121,546)		
	b	SE	OR	b	SE	OR	b	SE	OR
Sentencing add-on									
Push add-on <sup>a</sup>	1.394***	0.017	4.031	1.265***	0.022	3.542	1.435***	0.037	4.199
Drug trafficking	0.157*	0.065	1.170	0.365***	0.098	1.440	-0.009	0.086	0.991
Firearms/weapons	0.479***	0.071	1.614	0.588***	0.073	1.800	0.676***	0.126	1.965
Secondary charge <sup>b</sup>	0.491***	0.012	1.634	0.527***	0.015	1.693	0.379***	0.024	1.460
Victim injury <sup>a,b</sup>	0.164***	0.020	1.178	0.253***	0.025	1.288	0.295***	0.037	1.343
Demographics									
Male	0.320***	0.013	1.376	0.473***	0.018	1.605	0.671***	0.039	1.956
Age	0.067***	0.003	1.070	0.037***	0.004	1.037	0.070***	0.005	1.072
Age <sup>2</sup>	-0.001***	0.000	0.999	-0.000***	0.000	1.000	-0.001***	0.000	0.999
Criminal history									
Misdemeanor	0.309***	0.011	1.363	0.266***	0.014	1.305	0.278***	0.025	1.320
Probation violation	1.434***	0.011	4.196	1.360***	0.015	3.896	1.440***	0.025	4.220
Legal status viol.	0.656***	0.016	1.927	0.706***	0.021	2.026	0.692***	0.041	1.998
Case characteristics									
Primary offense pts.	0.056***	0.000	1.058	0.056***	0.001	1.058	0.057***	0.001	1.058
Trial	1.706***	0.038	5.507	1.887***	0.046	6.601	1.871***	0.078	6.493
Constant	-7.064***	0.060	0.001	-6.562***	0.085	0.001	-7.087***	0.138	0.001
Log likelihood			-1,376,972.84			-83,253.12			-31,061.75

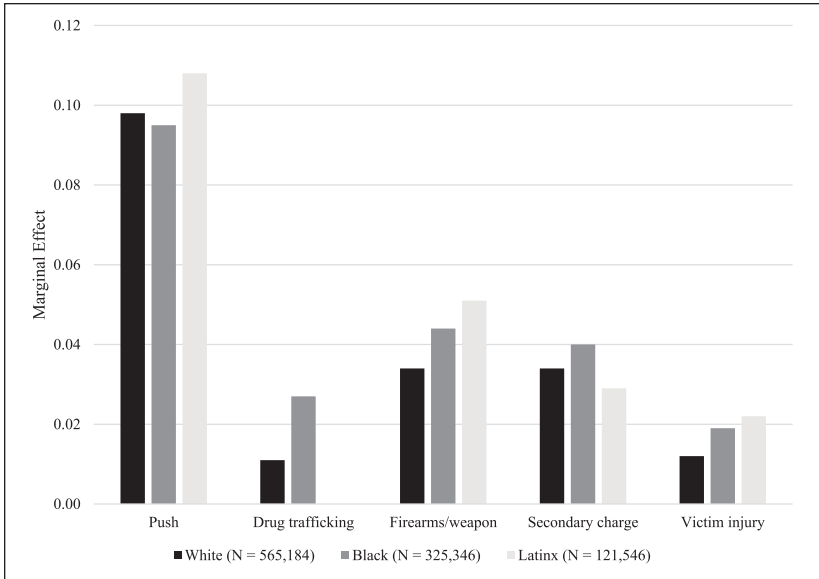
Note. White, circuit 6, drug possession, and sentencing year 2011 serve as reference categories. Circuit, sentencing year, and the 33 unique crime type variables are not displayed in table due to space constraints. SE = standard error; OR = odds ratio.

<sup>a</sup>Statistically significant difference between White and Black defendants.

<sup>b</sup>Statistically significant difference between White and Latinx defendants.

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





**Figure 1.** Average marginal effects of add-ons on the likelihood of prison, by race/ethnicity.

Note. AMEs from add-ons that significantly increase prison likelihood (see Table 5) are displayed in Figure 1.

add-on or enhancement. Racial differences are most substantial—that is, Black defendants are most disadvantaged—when drug trafficking decisions are applied. Ethnic differences are most dramatic in instances of weapons enhancement applications, in which case Latinx defendants experience greater disadvantage than both White and Black defendants.

Taken together, although we find limited evidence that the disproportionate application of add-ons can explain disparities, there are clear racial and ethnic differences in the impacts of add-ons. Importantly, add-ons that signify defendants who represent greater threats to community safety tend to disparately impact Black and Latinx defendants.

### *Robustness Checks, Including an Alternative Approach to Modeling Eligibility*

The first set of robustness checks involved measuring each add-on as a count measure (given the range of potential points applied from each add-on), and

conducting a series of analyses parallel to Tables 2, 3, and 5. In the analyses parallel to Table 2 (assessing the impact of the number of points from each add-on on the likelihood of a prison sentence), all significant effects were weaker but remained significant in the robustness check, and in the same direction. In the analyses parallel to Table 3 (predicting the number of points received from each add-on), the effects of race and ethnicity did differ from the main analyses to some degree. The “Latinx effect” became significant when predicting the number of points received from drug trafficking enhancements, though it was a substantively small effect ( $b=0.024$ ,  $p < .001$ ) (i.e., being Latinx [compared to White] meant an average increase of 0.024 in the number of points from drug trafficking). In addition, the Latinx coefficient was no longer significant when predicting points from secondary charges, and the Black coefficient was no longer significant when predicting the number of points from firearms/weapons add-ons. Black and Latinx were no longer significant when predicting the number of points from victim injury. It is logical, though, from a measurement standpoint that the impact of a count variable will be weaker (or non-significant) compared to a binary version.

Given the lack of evidence in our main analyses of sentencing disparities due to the differential application of add-ons, the more important robustness check in this series is that which runs parallel to Table 5 (moderation). Using count versions of the add-ons variables in the race/ethnicity-specific models predicting prison, two key differences emerged from the main analyses. First, the effect of drug trafficking enhancement points on prison likelihood for White defendants lost significance. Second, the effect of drug trafficking enhancement points for Latinx defendants became significant (but remained negative and substantively small) ( $b=-0.007$ ,  $p < .01$ ), indicating that Latinx defendants receive 0.007 fewer points (on average) from drug trafficking enhancements than Whites. All other add-on effects across the three models maintained their significance and direction in the robustness check, though as expected, they were far weaker than when using the binary predictors (The full results of these ancillary analyses are available upon request).

Recall that the main analyses sought to account for eligibility for various sentencing enhancements by using detailed measurement of offense type. Another approach would be to restrict analyses to a small subset of cases eligible for enhancements, according to sentencing policies. As we noted earlier, this approach may be too restrictive, though, because sentencing enhancements are sometimes applied even when a defendant would otherwise appear ineligible. Even still, to assess the robustness of our approach above to accounting for eligibility, we repeated all relevant main analyses using restricted subsamples. These results are displayed in Supplemental Appendices B to D. Drug trafficking, firearms/weapons, and victim injury

points all have differing degrees of eligibility criteria, whereas “push” add-ons and secondary charges do not. The drug trafficking enhancement requires the most stringent restrictions, including only drug offenders of level 7 or higher ( $N=17,775$ ). For firearms/weapons points, we used the sample of offenders with any violent or property charges ( $N=594,684$ ) as these are where a weapon is most likely used. For victim injury points, we used the sample of offenders with violent or sex charges by the same logic ( $N=248,834$ ).

Supplemental Appendix B contains the results of the analyses that run parallel to Table 2 (stepwise models predicting prison sentences). As in Table 2, the race/ethnicity effects in Supplemental Appendix B show that Black and Latinx defendants in the “eligible” samples were more likely sentenced to prison in the baseline models, and as each add-on was added to the model. It is noteworthy that within the drug trafficking sample, the Black and Latinx effects were stronger than when using the full sample with detailed crime controls ( $OR=1.910$  and  $1.769$ , respectively, compared to  $1.309$  and  $1.178$ , respectively). The strength and direction of effects for each add-on on prison likelihood remained comparable throughout, and did not appear to “explain” the race/ethnicity effects (similar to the main analyses).

Supplemental Appendix C contains the relevant results from the analyses that parallel Table 3 (predicting the likelihood of add-on receipt). Among the “eligible” sample, Black defendants were significantly less likely to receive the drug trafficking enhancement. This represents a shift from the main analyses, where being Black did not have a significant impact on the likelihood of receiving a drug trafficking enhancement. This simply suggests that among this very specific group of drug offenders, Black defendants were less likely to receive the enhancement. Similarly, among violent offenders, Black defendants were less likely to receive victim injury points. Race/ethnicity effects in the firearms/weapons model were stronger, but substantively similar to those in Table 3. In all, there were some differences between the full and “eligible” sample models, and to some degree these may be explained by the fact that these are substantially different samples, both in size and characteristics. As with the main analyses, it is possible the counterintuitive effects of race/ethnicity may also result from earlier court decisions that influence outcomes such as the application of add-ons.

Supplemental Appendix D contains the relevant results from the analyses that parallel Table 5. All significant race/ethnicity effects in Table 5 remained significant and positive predictors of prison likelihood in Supplemental Appendix D. Generally, we found consistent results in these moderation analyses compared to those discussed above—add-ons and enhancements were consistently worse for Black and Latinx defendants. In fact, ancillary

results suggested these differences may be stronger. In Table 5, for example, there were no significant differences between the coefficients across the three models for drug trafficking enhancements or firearms/weapons points. Using the “eligible” samples (Supplemental Appendix D), however, the drug trafficking enhancement effect on prison likelihood for White defendants was significantly weaker than for Black defendants ( $z = -4.673$ ), but significantly stronger than for Latinx defendants ( $z = 1.973$ ). Despite some differences, the central findings are largely consistent between the main and ancillary analyses.

## Discussion and Conclusions

Scholars have called for research that seeks to understand more clearly the mechanisms and processes that lead to racial and ethnic disparities in punishment. The goal of this paper was to address these calls directly by evaluating the contribution of sentencing add-ons—which include points from secondary charges, firearms/weapons, victim injury, and drug trafficking enhancements—to inequalities in court sentencing outcomes. In doing so, the paper made significant contributions in understanding the mechanisms that do, and do not, seem to shape racial/ethnic disparities in sentencing. Two key findings emerged that deserve reiteration here.

First, sentencing add-ons did not mediate the association between race and ethnicity and sentencing. While we found evidence that some sentencing add-ons were more commonly applied to minority defendants (e.g., victim injury and firearms/weapons points), others were more likely applied to White defendants. Taken together, it does not appear that racial/ethnic differences in prison can be explained by greater use of add-ons for non-White defendants. It is important to note, however, that most add-ons were relatively rare within our sample. This is, in and of itself, an important finding that should inform future theory and research on sentencing disparities. At least in Florida courts, the *application* of add-ons, broadly defined, does not constitute a primary avenue through which disparities emerge prior to actual sentencing decisions. Yet, racial and ethnic disadvantages still emerge despite accounting for these decision points. Systematic analyses of other potential mediators is needed, perhaps with a focus on those that are more common, such as defense counsel type and pretrial detention, which are known contributors to harsh court outcomes (Donnelly & MacDonald, 2018; Johnson, 2018). A focus is also needed on earlier decision points that likely influence court actor decisions, including charging reports and other records from police that reflect how defendants and their behaviors are communicated to the court.

Second, and in contrast to above, the *impact* of certain add-on effects on sentencing outcomes varied significantly between minority and White defendants and indeed may constitute a potential, albeit limited, avenue for disparities. Those that disproportionately disadvantaged Black and Latinx defendants were also those add-ons that signaled dangerousness (e.g., victim injury, firearms/weapons points). These moderating effects were consistent with the argument developed in prior research (e.g., Spohn & Sample, 2013; Steen et al., 2005) that case and defendant characteristics signifying greater threat to community safety are interpreted differently, and in an amplified way, when the defendant is a racial or ethnic minority. This is a significant contribution to the literature that seeks to understand whether (and how—in this case via moderation effects) discretionary charging decisions tied to focal concerns such as dangerousness or culpability shape racial and ethnic disparities in sentencing outcomes.

More generally, these findings—both the limited evidence for mediation and strong evidence for moderation—have important implications for theories about sentencing outcomes. They underscore the need to more systematically examine the factors that influence earlier decision points in charging and sentencing processes. Our results are consistent with predictions from attributions perspectives and focal concerns in particular (e.g., Albonetti, 1991; Steffensmeier et al., 1993, 1998). They provide some evidence that racial and ethnic biases in sentencing may be fed by earlier decisions, such as whether to assign add-ons, given that the add-ons can then carry differential weight on minority defendants' sentencing decisions. The strongest effects we identified centered on not whether to apply an add-on, but in the differential *effects* of add-ons for minority defendants once they were applied. Even though this effect influences sentencing, it is the result of a decision that occurs further upstream in the sentencing process. More work is needed to understand the forces that inform prosecutors and other court actors at that earlier stage.

It is important to reiterate that the current study, like much past sentencing research, is not a direct test of attributions or focal concerns theories. The current findings are consistent with what focal concerns theorists have suggested contributes to racial/ethnic sentencing disparities, but does not measure those underlying mechanisms directly. Recently, Lynch (2019) outlined avenues to more directly identify the mechanisms that contribute to disparity and called for work that does so. We echo that call here. For example, research that examines more directly court actors' perceptions about when and how to use add-ons and enhancements would be invaluable for understanding why we do not find that add-ons explain disparities in incarceration, but why they appear to take on different meaning for Black and Latinx defendants compared to

Whites. We suspect that race/ethnicity play a role in this by way of perceptual biases, such that designating a Black defendant as a drug trafficker signals something different about the danger and risk of a person, than when doing so for a White defendant. But future research that can tap into those potential perceptions of court actors is sorely needed.

This analysis has several other important implications for future research. Our findings underscore the importance of understanding how pre-sentencing decisions can accumulate and contribute to sentencing disparities. Studies are needed that more closely consider how defendant and case characteristics operate in conjunction. For example, some research suggests examining defendant “packages” such as someone who is a violent-drug defendant or a Black-violent-drug defendant (e.g., Spohn & Sample, 2013; Steen et al., 1999, 2005). Our analyses suggest that enhancements added on to defendant packages may operate differently depending on the other constellation of factors presented to the court. A closer examination of these packages, especially those that occur earlier in case processing, might lead to better explanations of how racial disparities still exist even after accounting for differences in sentencing scores and prior records (see, e.g., Crow, 2008; Everett & Wojtkiewicz, 2002; Rehavi & Starr, 2014).

The lack of mediation identified here specifically has important implications for policy. If add-ons are not more commonly applied to minority defendants, this highlights the importance of exploring at least three other avenues or decision points that may reveal more critical points of differential application in charging and sentencing levers across race/ethnicity that might better explain downstream disparities in sentencing outcomes. First, disparities may be primarily caused by other avenues of discretion aside from sentencing add-ons. For example, the primary charges brought forth by the prosecutor also have direct implications for the recommended sentence, as well as the dynamics of a plea negotiation (Wright & Engen, 2007). Prosecutors have the power to “situate” a defendant in such a way that, barring a judicial departure, defendants are all but guaranteed to serve a prison sentence if convicted. Depending on the number of counts and aggravating/mitigating factors, the primary charge package alone may be enough to “score to prison.” If minority defendants tend to receive such primary charge packages more often than White defendants, then this should at least partially mediate the disproportionate prison sentence rate of this group. Given this possibility, prosecutors’ primary charging practices remain a critical avenue of exploration for its potential contributions to sentencing disparities.

Second, sentencing disparities may be partially mediated by even earlier decisions such as those made at or before the time of arrest. Past research suggests that race and ethnicity play a role in police decision-making,

including (but not limited to) the level of police presence dispatched to an area, the decision to make a traffic stop, the decision to arrest, and the offense charged at arrest (Beckett et al., 2006; Lundman & Kaufman, 2003). Racial and ethnic differences in these factors have implications for “downstream” sentencing outcomes because they are the “door” through which individuals enter the criminal justice system. Provided racial and ethnic minorities are disadvantaged at these earlier decision points, it follows that they would also be disadvantaged at the downstream decision points by way of disproportionate system involvement (i.e., mediation).

Third, it is well-documented that disadvantageous outcomes across multiple stages of the criminal justice process accumulate to produce the harshest outcomes for non-White defendants (see, e.g., Kurlychek & Johnson, 2019; Wooldredge et al., 2015). This “cumulative disadvantage” across arrest, pre-trial, fact-finding, charging, plea negotiation, and sentencing decisions is yet another potential mediator of the “race/ethnicity” effect. Whereas null findings at any given decision point may lead scholars to conclude that race and ethnicity are not in fact impactful, the cumulative disadvantage perspective offers a birds-eye view of the justice process by considering total race/ethnicity effects from arrest to sentencing. In the same vein, it is possible that interactions between defendants and police and between police and prosecutors may include discretion that contributes to disparities down the line, such as the application of add-ons or their differential impacts on sentencing. Add-ons are applied after a host of such interactions have proceeded and so may not be an essential step for identifying the sources of disparities, especially in guidelines states. What’s more, sentencing guidelines themselves may play a role in displacing points of disparity to earlier decisions and criminal justice process points, such as from judges at sentencing to prosecutors during plea agreements.

Two important limitations warrant discussion, especially because they represent important avenues for future research. First, even the most recent data are roughly a decade old and range from 1994 to 2011. We do not foresee this impacting the generalizability of the results to modern day case processing, however, as Florida’s Criminal Punishment Code (CPC) remains relatively unaltered (including the availability of add-ons) since its last major revision in 1998. The Florida Legislature has publicly acknowledged the need to revise the code and its CPC Task Force released recommendations<sup>11</sup> in June 2020, including the removal of certain multiplicative add-ons (e.g., drug trafficking enhancement), “which can be inconsistently applied resulting in disparate sentences” (Blankenship, 2021a). At best, the imposition of any of the Task Force’s recommendations is still years away, but the installment of such changes would constitute a valuable opportunity to further our

understanding of whether and how enhancements influence sentencing inequalities in this context.

Second, our analyses did not include measures of pretrial detention or legal representation (i.e., use of public defense counsel) that might be associated with both race/ethnicity, receipt of add-ons, and sentencing outcomes. If we were able to account for these factors, it is important to note that they would not be used as control variables. Instead, theory suggests that these factors, especially given their linkage to socioeconomic status, might constitute important explanatory factors. That is, if courts apply add-ons to defendants of color disproportionately, the extent to which such defendants have access to private legal defense and/or bail money may partially explain this disproportionality. That is all to say that our estimates are not biased as a result of the omission of these variables, but instead we are missing an opportunity to test for an alternative explanation of any differences in the receipt of add-ons or in their effects. Recent work by Omori and Petersen (2020) does just that, finding that such “legal” characteristics serve as explanatory mechanisms for disparate outcomes throughout the punishment process. Our analysis here took on a similar pursuit, but with a focus on a different decision point. It is critical that studies continue to extend this line of questioning across other process points of the justice system.

### **Author's Note**

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### **Acknowledgments**

We thank Ryan Shields, Ph.D., of the University of Massachusetts Lowell, for providing the data and assistance with the data used for the analyses in this paper, and Katie Leigh, MS, for editorial contributions.

### **Declaration of Conflicting Interests**

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

### **Funding**

The author(s) received no financial support for the research, authorship, and/or publication of this article.

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## Supplemental Material

Supplemental material for this article is available online.

## Notes

1. In 1998 the guidelines were revised once again through the implementation of the Criminal Punishment Code (CPC). The CPC maintained the point structure of the 1994 guidelines but increased potential punitiveness by eliminating calculations for an upward bound on sentence length. Life sentences were permitted for those cases with greater than or equal to 363 points. For more details on the CPC, see [http://www.dc.state.fl.us/pub/sen\\_cpcm/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf).
2. While more recent sentencing data are available, the current data came directly from a request made from the State of Florida through the FLDOC in 2011. As a result, these data are much more comprehensive and detailed (including, e.g., sentencing score components such as secondary charge and enhancement/“add-on” data) than that which is publicly available via court websites. This level of detail is a particular strength of the paper and enabled the analyses therein. Furthermore, there have not been any major policy changes to the FL guidelines since 1998 that would impact the generalizability of the results to more recent years.
3. There are several other “multiplicative” enhancements outlined in the Florida CPC (e.g., Law Enforcement Protection Act, criminal gang offense, domestic violence in the presence of related child). Because they are so rarely applied (0.15% of cases in total), they are not considered here as potential key mechanisms for sentencing disparities (A parallel set of results from our main analyses that include “other” enhancements are available upon request.).
4. The examination of prison versus non-prison sanctions without differentiating between jail and non-custodial sanctions (among the non-prison sanctions) was appropriate because the focus of the paper is on disparities in sanctioning severity and the causes of those disparities. This required a dependent variable scheme that clearly differentiates more severe sentencing outcomes from less severe sentencing outcomes. The literature on punitiveness and perceived severity is clear that prison is perceived by individuals who have experienced these sanctions and by court actors that apply them to be more severe than jail and probation sentences. Severity becomes more difficult to delineate when the focus turns to jail versus probation sentences (e.g., 2 weeks in jail vs. 2 years on probation). Work by Peter Wood and David May, for example, underscores this quite clearly (e.g., May & Wood, 2010; Wood & May, 2003) and in doing so suggests the hierarchy of severity of prison alternatives, including jail and probation, can be ambiguous and reliant on a range of factors and characteristics. Moreover, the clearest implication of “add-ons” is for a convicted defendant’s eligibility for a prison sentence due to the cut-off score of  $> 44$  (while those with 44 or fewer points may receive any other sanction, including jail or a community-based sentence).
5. All binary controls are coded as yes = 1 unless otherwise indicated.

6. According to the Florida Criminal Punishment Code (CPC) Scoresheet Preparation Manual (2019), “Legal status points are assessed when an offender: Escapes from incarceration; flees to avoid prosecution; fails to appear for a criminal proceeding; violates any condition of a supersedeas bond; is incarcerated; is under any form of a pretrial intervention or diversion program; or is under any form of court-imposed or post-prison release community supervision and commits an offense that results in conviction” (p. 11).
7. We used pooled instead of multilevel regression (controlling for judicial circuit) as tests of mediation and moderation are not easily achieved using multilevel models. In addition, because our analyses do not require estimating impacts of macrolevel factors such as circuit-level characteristics, there is less of an impetus to use multilevel modeling. Even still, we reestimated our main models using robust standard errors and found no substantive differences in the results.
8. Results from a parallel set of analyses that were conducted with sentence length as the outcome are located in Supplemental Appendices E and F. These were omitted from the main analyses for the aforementioned theoretical and methodological reasons, but also due to the fact that the findings were markedly similar. Generally, add-on effects on sentence length (in both the full- and race/ethnicity-specific models) were similar to, albeit weaker than, the add-on effects on prison likelihood. This difference in the strength of effects is to be expected given the difference in levels of measurement between these two outcomes.
9. The average variance inflation factor (VIF) ranged from 2.42 to 2.45 for all models in all main analyses.
10. Significant values are described in the text rather than displayed in Table 5.
11. Report link: Final+Criminal+Punishment+Code+Task+Force+report+June+30,+2020.pdf

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