ABSTRACT

Title of Thesis: THE RISE IN WOMEN WHITE-COLLAR OFFENDERS: GENDER DISPARITIES AND IMPLICATIONS FOR WHITE-COLLAR SENTENCING

Arianna J. Mondelli, Bachelor of Arts, 2023

Thesis directed by: Associate Professor, Bianca Bersani, Department of Criminology and Criminal Justice

It is estimated that white-collar crime annual losses are upwards of $300 billion dollars. As prior literature mostly focuses on male offenders to study and prevent these crimes, females are often overlooked even as they have shown an increased participation in white-collar crimes in the last few decades. Female white-collar offenders are significantly less studied leaving a gap in completely understanding their role in this damaging and serious crime type. Since male offenders tend to receive more severe sentences for general crime, researchers question the role that gender plays in sentencing disparities to prevent them. This research seeks to identify the gender dynamics in the study and sentencing of white-collar offenders. The study examined 50 health care fraud cases obtained from public court records and performed a quantitative analysis to look at sentencing disparities and implications. Results will provide an indication of the differences in incarceration and restitution between men and women for health care fraud and give guidance for future research such as case studies to examine the underlying causes for white-collar sentencing disparities.

Keywords: white-collar crime, gender disparities, restitution, sentencing, health-care fraud

THE RISE IN WOMEN WHITE-COLLAR OFFENDERS: GENDER DISPARITIES AND IMPLICATIONS FOR WHITE-COLLAR SENTENCING

By

Arianna Mondelli

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LIST OF ABBREVIATIONS

- ACFE: Association of Certified Fraud Examiners
- BOP: Bureau of Prisons
- CJS: Criminal Justice System
- IDA: Interactive Data Analyzer
- PACER: Public Access to Electronic Court Records
- SRA: Sentencing Reform Act of 1984
- USSC: United States Sentencing Commission
- WCC: White-Collar Crime

CHAPTER 1: INTRODUCTION

White-collar crime cases have scattered news headlines more frequently in the last decade. More and more individuals are committing high-level white-collar crimes which has led to more recognition from the public as they notice names such as Bernie Madoff and Elizabeth Holmes (Anon n.d.-a). While researchers have been studying white-collar crime for over a century, it has more recently captured the attention of the government and those who underestimate the significance of these crimes. Researchers estimate that the annual loss of white-collar crimes could be between 300 to 800 billion dollars (Strader and Haugh 2022). The magnitude of these crimes stretch far beyond the monetary consequences as victims of white-collar crime have shown to have adverse outcomes post-victimization such as lower income, more unemployment, higher rates of divorce and more indebtedness (Strader and Haugh 2022). According to the United States Sentencing Commission, in 2022, fraud was the seventh most common crime for overall Bureau of Prisons (BOP) offenders and for female BOP offenders' fraud was the second most common offense (Anon 2023).

Most of the focus, in research on white-collar crime, has been on male offenders since they comprise the bulk of these offenses. However, Benson states that women have increased their participation in especially low level white-collar crimes since the 1970s (Benson 2021). Empirical assessments of gender disparities in white-collar crime and sentencing decisions for these offenses remains scarce and women remain significantly under-represented across the board for white-collar crimes. Research suggests a notable increase since the late 1900s of women's involvement in white-collar crimes; although estimates are limited and evidence often anecdotal, an increase in this involvement warrants further inquiry (Benson 2021; Dodge 2016).

This research study serves to fill a gap in information on gender dynamics in white-collar offending and sentencing. More complex and serious fraud cases are brought to the federal courts (Strader and Haugh 2022). Additionally, insurance fraud primarily targets health care providers and is one of the most expensive and common types of economic crime (Michel and Galperin 2022). Studies previously suggest that sentencing outcomes are influenced by offender characteristics such as gender, race, age, and occupational prestige (Schmidt and Kroska 2023). Using 50 higher level health care fraud cases from 2015 to 2019, this study examines the disparities in the sentencing between male and female offenders and what this means for future research on female white-collar offenders. While most data on sentencing disparities does not look at specific crime types, this research will add another layer by examining the influence of offender characteristics.

The results of this research will determine if gender disparities in sentencing are present in high level health care fraud cases. Additionally, results will help to explain how prior literature on gender and white-collar crime can be used to draw inferences of sentencing trends research and inform white-collar crime policy. This research study attempts to look at individual cases of a specific white-collar crime type to deepen the exploration into female white-collar offenders. This study calls for future research to perform a case study analysis of male and female cases to draw conclusions about disparities and gender patterns. The following review of literature will cover the past and present basics of white-collar crime, the causes behind the rise in female white-collar offenders, significant differences between male and female white-collar offenders, and overall sentencing literature.

CHAPTER 2: LITERATURE REVIEW

WHAT IS WHITE-COLLAR CRIME?

Edwin Sutherland first coined the term "white-collar crime" in the mid-1900s and defined it as "a crime committed by a person of respectability and high social status in the course of his occupation" (Benson 2021:3; Brooks 1949). Sutherland takes an offender-based approach to white-collar crime and focuses more on the perpetrator of the crime and less on the crime itself. This approach also conforms to the typical stereotype of a male offender as throughout history, men have been seen has having higher social status than women. In the late 1900s, however, Herbert Edelhertz (1970) took an offense-based approach to "white-collar crime" as "an illegal act or series of illegal acts committed by non-physical means and by concealment or guile to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage" (Benson 2021:3; Edelhertz and National Institute of Law Enforcement and Criminal Justice 1970). Edelhertz emphasizes the criminal act rather than the offender describing the specific details of a white-collar offense which allows the offender type to be more of an arbitrary idea rather than insinuating masculinity (Edelhertz and National Institute of Law Enforcement and Criminal Justice 1970). Considering research on white-collar crime, it is important to understand the broad definition as well as the niche approaches to the definition to obtain a holistic understanding of both white-collar offenders and offenses. Holfreter (2013) describes the significance of using different definitions of white-collar crime and how each one may lead to different findings and scope of sample. This research considers multiple definitions of white-collar crime to avoid typecasting offenders.

The United States Sentencing Commission (USSC) refers to white-collar crime as economic crime (Anon 2023). These include crimes such as antitrust, fraud, embezzlement,

money laundering, bribery, identity theft, etc. (Anon 2023). As this research focuses on a specific type of fraud, health care fraud, it is important to note the specific definition. Health care fraud offenders include those that "knowingly and willfully execute, or attempt to execute, a scheme or artifice to either to defraud any health care benefit program or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program" (Anon 2023). After establishing a solid understanding of the definition of white-collar crime we now look to literature on the offenders themselves and how they are framed in research.

Rise in Female White-Collar Offending

The primary explanation for this crime wave has revolved around the idea that women have taken on a new role in society aside from the traditional norm of being a caretaker and performing household duties (Benson 2021; Benson and Harbinson 2020; Gottschalk and Smith 2015). They now have moved up in the workplace, especially in the corporate world, and taken on new positions as office managers, secretaries, and even sometimes CEOs. Despite trends in official statistics, there are many upper-class women who appear in the headlines for their large-scale financial crimes, including Martha Stewart, Rita Crundwell, and Elizabeth Holmes. Liu and Miller (2019) provide insight into Martha Stewart's adaptation to her criminality as a white businesswoman, where she portrayed herself as a vulnerable feminist to salvage her reputation. Stewart is just one example that exemplifies the need to examine the evolutionary pathway of women from labels of the nurturing mother and caretaker to their rising participation in low-level white-collar crimes and now to their development into substantial white-collar offenders that often goes unnoticed (Liu and Miller 2019).

There is substantial evidence to indicate that for specific types of white-collar offenses, women have managed to break through the glass ceiling and comprise most of the offending. White-collar crime researchers assert that when embezzlement is isolated as a specific offense type for white-collar crime, women consistently comprise a greater proportion of the conviction rates (Dodge 2016; Ruhland and Selzer 2020). Similarly, for asset misappropriation, numerous studies find that females outnumber males; Hilliard and Neidermeyer (2018) argue that females can be three times as likely as males to commit asset misappropriation. In Dodge's analysis of the Association of Certified Fraud Examiners (ACFE) survey, she finds that 84% of cases being asset misappropriation, and the gender differences demonstrate that females are more likely than males to commit asset misappropriation (Dodge 2016). According to research, 87 percent of all frauds internationally are asset misappropriation offenses making it one the leading white-collar crimes (Holmes, D'Amato, and Holmes 2022).

MOTIVATIONS

Research suggests broad motivations of convenience, opportunity, and personal willingness, which provide insight into female offenders (Gottschalk 2022). Benson (2021) discusses the opportunity perspective in depth to theorize that as women have gradually shifted to middle-class positions, these jobs will allow them the opportunity to commit more white-collar offenses. From this established new opportunity for women, researchers have developed subsidiary motives to explain why women choose to offend and how they are able to.

Einat and Ben-Moshe (2022) find the five primary motives of women to be "(1) Pressure by another (usually a male partner); (2) Greed; (3) Gambling debts; (4) Personal and business financial stress; and (5) Attempt to save a struggling business" (Einat and Ben-Moshe 2022:3). Also, the corroboration of the motivation of pressure is apparent through the idea that romantic

partners can influence the involvement of women in offending (Daly 1994). This is validated with the idea that "the lack of a partner may also push women (especially those with dependent children) into acquisitive crimes" (Galvin 2020:64). Another potential explanation of female offending is from Gottschalk (2022), who approaches this from the strain perspective, which can be defined as "the frustration of not succeeding with a task, such as an inability to avoid the threat of personal or corporate bankruptcy"(Gottschalk 2022:217). Applications of this theory include ideas mentioned by researchers that as mothers, women especially have the responsibility of providing for their children, and may turn to criminality to maintain financial stability for their family (Galvin 2020). Additionally, some women in elite positions, such as CEOs, may feel the need to "compensate for the exclusion from male-dominated networks, which represents a kind of gender barrier" (Gottschalk 2022:217). Despite this, women are in the minority in offending and arrest rates for most types of white-collar crimes.

Difficulty in Breaking the Glass Ceiling

According to Gottschalk and Smith (2015), "as long as workplace power inequality exists, women have less opportunity to commit white-collar crime because they may never reach the positions of power and autonomy associated with the commission of major white-collar criminality" (Gottschalk and Smith 2015:316). While women still face a glass ceiling in the labor force, they correspondingly face a similar barrier from achieving the same level of criminal offending as their male counterparts. Demonstrated in Ruhland and Selzer's (2020) research, the gender gap in the labor force continues to narrow, however, "female arrest rates for white-collar crimes remain markedly below the level of men" (Ruhland and Selzer 2020). Galvin (2020) also conforms to this theory that because there are constraints on women achieving high status in the corporate hierarchy, they are unable to attain the most serious white-collar offense status. Thus,

we ask the question of why female offenders have not achieved the same level of white-collar offending as men even with a significant reduction in the gender gap in the workplace since the late 1900s.

MALE VS FEMALE WHITE-COLLAR OFFENDERS

KEY COMPARISONS

When discussing why women commit white-collar crimes, researchers have examined the similarities and differences between males and females to comprehend better the role women continue to play as white-collar offenders (Benson and Simpson 2018; Simpson, Yahner, and Dugan 2008). Researchers also state that men and women experience some of the same pathways into crime and encounters with the criminal justice system, but it is also clear that some routes into crime are directly related to gender (Benson and Simpson 2018). One theory looks at the disparity in the opportunity of men and women to commit white-collar crimes. There is also the explanation that "female avoidance of goal-oriented organizations leads to a reduced organizational opportunity to commit and conceal economic crime as compared to men" (Gottschalk 2022:222). This suggests that men and women differ in their focus on goals which contributes to why women have lower levels of white-collar offending (Benson 2021; Benson and Simpson 2018; Gottschalk 2022).

Additionally, in relation to corporate schemes, studies discuss that women may not have the same opportunities as men to offend because they are oftentimes excluded from larger conspiracies or are on the low end of the totem pole and collect lower illicit earnings (Galvin 2020; Holtfreter 2013; Steffensmeier, Schwartz, and Roche 2013). There are evidently barriers in place that prevent many women from achieving the same status in white-collar offending as men. On the other hand, other researchers suggest that when they do have comparable opportunities,

the patterns of offending between males and females may be particularly due to societal pressures and expectations that are put on them (Hilliard and Neidermeyer 2018). For example, additional research did find that for women, the most common motive was interpersonal relations, whereas, for men, the dominant motive was trying to save a struggling business (Einat and Ben-Moshe 2022).

Additionally, research notes that male offenders have traditionally elicited higher losses than female offenders in fraud offenses, however because females have shown to have smaller but more frequent offense rates, they could reach the same damaging effect to an individual, company or organization as men (Holmes et al. 2022). Women do tend to benefit less from their fraud offenses which can be the result of women holding lower mid-level positions in the workplace (Holmes et al. 2022). They are also more likely to be facilitators of fraud offenses whereas men are more likely to be conspirators (Holmes et al. 2022). Future research needs to look at men and women in specific corporate crimes through a comparative analysis to deepen the understanding of the role of gender in offending (Einat and Ben-Moshe 2022).

FAULTS IN OFFICIAL STATISTICS

More recent literature suggests that the grave difference between males and females for general white-collar offending may not accurately reflect the true number of women committing these offenses. Gottschalk raises an important idea that because in Norway, "men commit ten times more white-collar crime than Norwegian women" and Norway is a country where there is a minuscule gender gap, there is potential that these statistics lack merit (Gottschalk and Glasø 2013:22). There are two main factors literature discusses that affect the underrepresentation of women as white-collar offenders: lack of detection and prosecutorial omission (Gottschalk 2022; Gottschalk and Smith 2015; Hammond 2018; Hilliard and Neidermeyer 2018).

Gottschalk (2022) argues that female offenders have an advantage over men in terms of detection because they face different extents of suspicion. Since crime in general, especially white-collar crime, was traditionally dominated by males, it is feasible that females are often overlooked as perpetrators of white-collar crimes (Gottschalk 2022). This research also uses expert elicitation, which is "a systematic approach to synthesize subjective judgments of experts on a topic where there is uncertainty due to a lack of data," to stake his claim: Male white-collar offenders are more likely to be detected than female white-collar offenders (Gottschalk 2022:214). Dodge (2016) also corroborates this and discusses how the secretive nature of white-collar crimes makes it even more difficult to detect and, in turn, uncovers faults in official statistics.

Additionally, even if the crimes committed by women are detected, it does not necessarily mean they are prosecuted and thus reported. As previously discussed, women are oftentimes involved in white-collar crime schemes but play small roles in the schemes. Gottschalk discusses that the prosecution tends to focus on the main individuals involved in crime, which can benefit women who played minor roles in the crime" (Gottschalk 2022:218). Even in the media, women are portrayed as taking subsidiary roles in crime, which only emphasizes prosecutorial discounts (Gottschalk and Smith 2015). This study also claims that "what is recognizable and prosecutable as a criminal activity" can correspond with universal news values resulting in a biased focus on predominantly male white-collar criminals (Gottschalk and Smith 2015:320). LaBrie (2022) also recognizes that the sentencing guidelines may not account for individuals that are accomplices in the crime (which women are more likely to be) and this is possible evidence to explain women's' lower rate of incarceration. Expectedly,

this research could provide insight into why women may be more likely to be shown leniency at the sentencing stage of the CJS.

Ultimately, official statistics seem to be lacking in their representation of women in their prevalence of white-collar offending. Some researches also argue that because about "89.9% of occupational fraud offenders have never been charged or convicted," criminal records cannot determine the propensity of an individual or group committing occupational fraud (Hilliard and Neidermeyer 2018:834). According to U.S. law, in order to be reported, crimes must be of public nature, have the victim cooperate with the law, and be highly damaging to society (Hammond 2018). Crimes committed by women lack these criteria, further supporting the unreliability of official statistics (Hammond 2018). Because of the numerous criticisms of official statistics in representing the proportion of women that are white-collar offenders, it raises the need for contemporary research to deeply approach this topic of literature.

SENTENCING OF WHITE-COLLAR OFFENDERS

SENTENCING STATISTICS

The USSC contains a collection of data from federal crimes and sentencing practices (Anon 2023). The §2B1.1 federal sentencing guideline covers over 90 percent of all economic offenses including embezzlement, fraud, forgery, theft, etc. (Anon n.d.-e). An individual's sentence is highly dependent on the offense level calculated as well as the loss amount which directly affects the offense level (Anon 2023).

TABLE 1: LOSS TO SENTENCE LEVEL CONVERSION

Loss (apply the greatest)	Increase in Level
(A) $6,500 or less	no increase
(B) More than $6,500	add 2
(C) More than $15,000	add 4
(D) More than $40,000	add 6
(E) More than $95,000	add 8
(F) More than $150,000	add 10
(G) More than $250,000	add 12
(H) More than $550,000	add 14
(I) More than $1,500,000	add 16
(J) More than $3,500,000	add 18
(K) More than $9,500,000	add 20
(L) More than $25,000,000	add 22
(M) More than $65,000,000	add 24
(N) More than $150,000,000	add 26
(O) More than $250,000,000	add 28
(P) More than $550,000,000	add 30.

TABLE 2: SENTENCING TABLE (IN MONTHS OF IMPRISONMENT)

	Offense Level	Criminal History Category (Criminal History Points) I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
	1	0–6	0–6	0–6	0–6	0–6	0–6
	2	0–6	0–6	0–6	0–6	0–6	1–7
	3	0–6	0–6	0–6	0–6	2–8	3–9
	4	0–6	0–6	0–6	2–8	4–10	6–12
Zone A	5	0–6	0–6	1–7	4–10	6–12	9–15
	6	0–6	1–7	2–8	6–12	9–15	12–18
	7	0–6	2–8	4–10	8–14	12–18	15–21
	8	0–6	4–10	6–12	10–16	15–21	18–24
	9	4–10	6–12	8–14	12–18	18–24	21–27
Zone B	10	6–12	8–14	10–16	15–21	21–27	24–30
	11	8–14	10–16	12–18	18–24	24–30	27–33
Zone C	12	10–16	12–18	15–21	21–27	27–33	30–37
	13	12–18	15–21	18–24	24–30	30–37	33–41
	14	15–21	18–24	21–27	27–33	33–41	37–46
	15	18–24	21–27	24–30	30–37	37–46	41–51
	16	21–27	24–30	27–33	33–41	41–51	46–57
	17	24–30	27–33	30–37	37–46	46–57	51–63
	18	27–33	30–37	33–41	41–51	51–63	57–71
	19	30–37	33–41	37–46	46–57	57–71	63–78
	20	33–41	37–46	41–51	51–63	63–78	70–87
	21	37–46	41–51	46–57	57–71	70–87	77–96
	22	41–51	46–57	51–63	63–78	77–96	84–105
	23	46–57	51–63	57–71	70–87	84–105	92–115
	24	51–63	57–71	63–78	77–96	92–115	100–125
	25	57–71	63–78	70–87	84–105	100–125	110–137
	26	63–78	70–87	78–97	92–115	110–137	120–150
	27	70–87	78–97	87–108	100–125	120–150	130–162
Zone D	28	78–97	87–108	97–121	110–137	130–162	140–175
	29	87–108	97–121	108–135	121–151	140–175	151–188
	30	97–121	108–135	121–151	135–168	151–188	168–210
	31	108–135	121–151	135–168	151–188	168–210	188–235
	32	121–151	135–168	151–188	168–210	188–235	210–262
	33	135–168	151–188	168–210	188–235	210–262	235–293
	34	151–188	168–210	188–235	210–262	235–293	262–327
	35	168–210	188–235	210–262	235–293	262–327	292–365
	36	188–235	210–262	235–293	262–327	292–365	324–405
	37	210–262	235–293	262–327	292–365	324–405	360–life
	38	235–293	262–327	292–365	324–405	360–life	360–life
	39	262–327	292–365	324–405	360–life	360–life	360–life
	40	292–365	324–405	360–life	360–life	360–life	360–life
	41	324–405	360–life	360–life	360–life	360–life	360–life
	42	360–life	360–life	360–life	360–life	360–life	360–life
	43	life	life	life	life	life	life

The above tables provide a structure to sentencing guidelines for judges to determine for the offender (See Table 1 & 2). Table 1 shows the loss amount and corresponding offense level addition. As shown, an increased loss amount increases the offense level by two for each letter (See Table 1). Thus, having a high loss amount in a crime can greatly increase the overall offense level you are given by the judge and therefore result in a harsher sentence (See Table 1). Table 2 shows how to calculate the guidelines sentencing range based on the total offense level and criminal history category. In this table, we see that having a higher offense level along with a serious criminal history can result in an extremely lengthy sentence (See Table 2). The judge does not necessarily have to abide by these guidelines exactly and can deviate from the suggested range. Additionally, there are different adjustments that are aggravating or mitigating factors which raise or lower the offense level also known as adding an upward or downward departure (Anon 2021). Some mitigating adjustments include acceptance of responsibility and having a minor role in the crime (Anon 2021). Aggravating adjustments include leader in the scheme and abusing a position of trust (Anon 2021). In 2022, the USSC distributed "Quick Facts" on health care fraud stating 65.8% of offenders were men and 34.29% were women (Anon 2022). Of these health care fraud offenses, sentences were mostly increased for conviction of a federal health care offense involving a government health care program, having a leadership role in the offense, and abusing a position of trust (Anon 2022). Sentences were mostly decreased for having a minor role or participation in the offense (Anon 2022).

The USSC also provides general statistics on specific offense types annually as well as an interactive data analyzer (IDA) that can be filtered for sentencing data on specific guidelines such as §2B1.1 or economic crimes (Anon n.d.-e). However, the IDA does not have fraud listed as its own offense but groups it with theft and embezzlement (Anon n.d.-e).

FIGURE 1: FEMALE FRAUD/THEFT/EMBEZZLEMENT

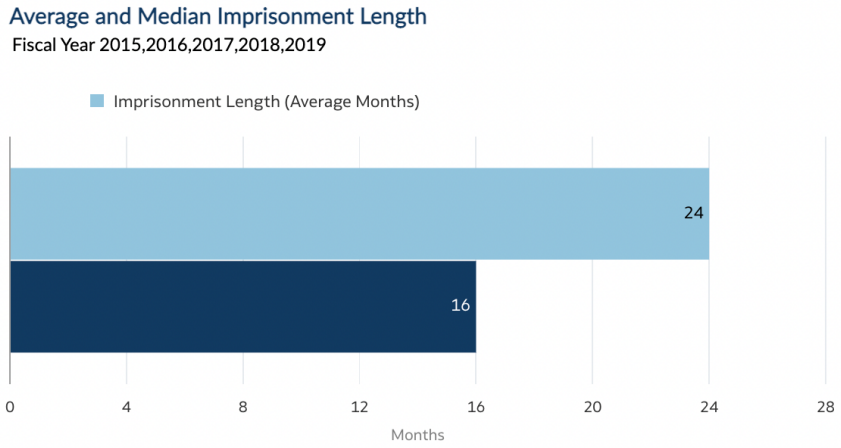
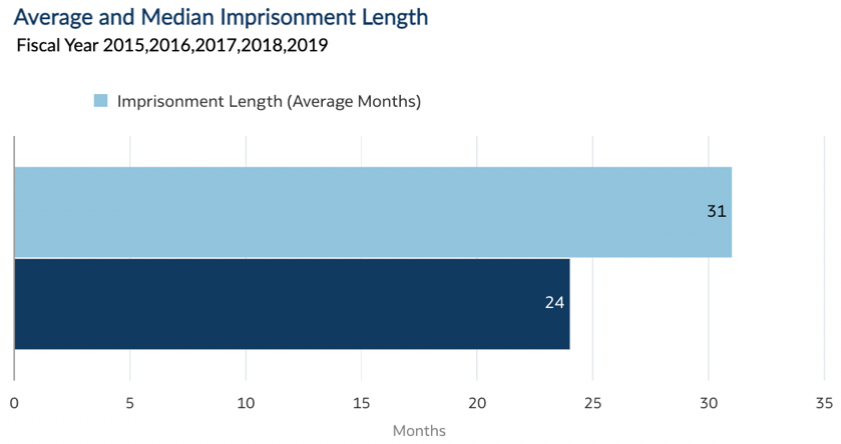


FIGURE 2: MALE FRAUD/THEFT/EMBEZZLEMENT



The IDA allows the manipulation of different variables to show the average and median sentence lengths of fraud, theft, and embezzlement offenses of both men and women in federal district courts from 2015 to 2019 (Anon n.d.-e). The average sentence length for females was 24 months while the average sentence length for males was 31 months (See Figures 1 &2). Literature has attempted to explain this contrast with studies on the influence offender characteristics have on sentencing decisions for crime in general and white-collar crime.

Explaining Sentencing Disparities

Recent changes to the guidelines for white-collar offenses have shown an overall trend of decreased sentence severity through downward departures from the guidelines range (Holtfreter 2013). The Sentencing Reform Act of 1984 (SRA) as well as Federal Sentencing Guidelines attempted to eliminate baseless disparities in sentencing from judges (LaBrie 2022). The guidelines barred sentencing decisions to be based off of race, sex, gender, and ethnicity (LaBrie 2022). However, research suggests that these disparities persist, especially in white-collar crimes (Holtfreter 2013; LaBrie 2022; Schmidt and Kroska 2023; Van Slyke and Bales 2013).

Research claims that white-collar offenders are treated differently by the justice system as public perception shifts and policy regulations judicial discretion is implemented (Holtfreter 2013). Factors that may influence general sentencing disparities concern the offender's ability to pay the fines which can in turn become a racial prejudice or wealth discrimination in terms of socioeconomic status (Holtfreter 2013). In relation to wealth, the occupational prestige of an offender has shown to correlate with increased sentence length in some studies on general crime (Schmidt and Kroska 2023). Offenders with high occupational prestige also tend to commit white-collar crimes at a higher rate which makes it difficult to draw conclusions about the direct effect of this prestige on sentencing outcomes (Schmidt and Kroska 2023).

Sentencing decisions for general crime have also shown to be affected by the impression of an offender on the judge with negative impressions increasing the sentence (Schmidt and Kroska 2023). This could include the stereotyping of offenders in their connection to levels of criminality and dangerousness or blameworthiness (Schmidt and Kroska 2023). Schmidt and Kroska (2023) found the following groups to be perceived as more dangerous or blameworthy: males, African Americans, non-citizens, and younger adults. Their counterparts (women, whites,

citizens, and older adults) were seen as less dangerous or blameworthy (Schmidt and Kroska 2023). Other studies corroborate these claims and provide evidence that females benefit from leniency while male offenders are punished more harshly during the sentencing stage (Van Slyke and Bales 2013). The 2015 Corston report found that for serious offenses, women were more likely to avoid prison than men (Anon n.d.-d; Hammond 2018). These women were seen to plead for certain mitigating factors such as being the sole primary caregiver of a child or mental illness (Anon n.d.-d; Hammond 2018). However, a study also proposed a contrasting theory of double deviance which purports that women are punished more harshly than men: "once for the crime and the second time for departing from the standards women are expected to set, or perhaps departure from the normative women" (Hammond 2018). Yet, most statistical evidence does not support this (Hammond 2018). These trends are seen for general crime, but we do not know if this holds true for white-collar sentencing trends.

Holtfretter (2013) stressed the need for research to examine if sentencing outcomes vary based off gender, race, and socioeconomic status. This research will see if the trend of leniency, an average lower sentence, and lower restitution amount for female offenders holds true for specifically high-level health care fraud.

THE CURRENT STUDY

The present study investigates sentencing disparities between men and women for higher level health care fraud offenses in the federal district courts across a five-year span. This inquiry is significant because there is a lack of sentencing data for specific crime types that controls for gender. The IDA from the USSC does provide some insight on this difference however it does not provide insight into specific cases to examine both the gender and sentence of an individual. Additionally, moist studies have looked at economic crimes in general but as we know females

tend to outperform men in specific white-collar crimes, it is necessary to make a distinction within white-collar offenses.

Research Question 1: To what extent do the sentence length and restitution amount differ between males and females for federal health care fraud offenses?

Hypothesis 1: Females will have both a lower sentence length and restitution amount than males for federal health care fraud offenses.

Research Question 2: If disparities do exist at the sentencing stage, how can prior literature explain the cause of these and what future studies can add to this topic of literature?

Hypothesis 2: I predict that gender identity characteristics can be used to explain sentencing disparities and that case studies can be used in the future to provide more decisive evidence as to why they occur.

CHAPTER 3: DATA AND METHOD

DATA/SAMPLE

This research utilizes data from the Public Assess to Court Electronic Records (PACER) database. PACER is a secondary data source that gives the public access to electronic court records filed in all federal courts. Roughly 55,000 criminal cases are filed annually, with white-collar crimes accounting for about 10,000 of those criminal cases (Anon n.d.-b). Another secondary data source is the Department of Justice (DOJ) which allows a search of federal district court cases to be filtered by type of crime (Anon n.d.-a).

For this study I will collect data on 50 health care fraud cases from January 2015 to December 2019. The five-year span will provide a large enough sample to pull cases from while also isolating potential effects that the Covid-19 pandemic has had on court cases. For research goals on higher white-collar offenses, these cases will also be confined to those which had a money loss amount of over $550,000. Prior research has focused on low- and high-level white-collar offenses, however this research is interested on sentencing outcomes for more serious fraud offenses. The $550,000 loss amount corresponds with the §2B1.1 loss amount to offense level table to provide a threshold of severity for the sample (See Table 1). The sample will also consist of national federal cases that have been sentenced. For this study, 25 of the cases will be male defendants while 25 will be female defendants to compare similar cases and investigate implications of gender. For both male and females every third case will be chosen from a search to randomize the data and keep the sample as reliable as possible.

First, case files from the Department of Justice are used to filter for health care fraud cases and to code cases by gender of the defendant. Second, after cases are selected, detailed

cased information is culled from PACER. Specific information on each case will be located using the case docket to find certain filings. Most of the data will be found in the sentencing memorandums and orders from the judge. To summarize, inclusion criteria for the cases include sentenced between January 2015 to December 2019, federal health care fraud offense brought to a U.S. district court, and a money loss amount of more than $550,000 dollars.

MEASURES

Dependent Variables

The study uses two primary dependent variables which are sentence length and restitution amount.

Sentence Length. Sentence length is measured in months of incarceration in this study as a continuous variable. Months of incarceration is imposed by the judge and is the main indicator of sentence severity. This variable is significant because in comparing the average lengths of both males and females, it can indicate divergences between genders.

Restitution. Restitution is measured in U.S. dollars as a continuous variable. The amount of restitution is also imposed by the judge with the sentence and is the amount the offender must pay back to the victim. For WCC the "victim" can be an individual or group of individuals, company or organization, or the government. Restitution is also usually dependent on the loss amount of the case so in this sample almost all the imposed restitution amounts are over $550,000.

Independent Variables

The study uses one primary independent variable which is gender.

Gender. Gender in this study is broken up into male and female groups as a nominal variable. This variable is significant in this study because the main goal is to determine if gender

has an effect during the sentencing stage of the criminal justice process. There will be two groups for each gender, one for overall cases and one for unsealed cases. For the full sample there is an equal amount of each gender, and for the subsample of unsealed cases there are 17 males and 11 females.

Descriptive Variables

The study uses four descriptive variables which are percentage of unsealed cases, percentage of guilty pleas for unsealed cases, entire range of sentence, and unsealed cases range of sentence. All these variables are measured separately for both males and females.

% of Unsealed Cases. The percentage of unsealed cases are cases which had accessible sentencing memorandums and other court documents on pacer, while those that were sealed had inaccessible memorandums or transcripts.

% Guilty Pleas Unsealed. The percentage of guilty pleas for unsealed cases are taken from the percentage of unsealed cases and include those that pled guilty to their charges and or negotiated a plea agreement with the government. This variable is important because in many cases, a plea deal results in a reduction of sentence and pleading guilty to a charge in a timely manner can be seen as an acceptance of responsibility which is a mitigating adjustment for a reduced offense level.

Entire Range of Sentence. The range of sentence length for all 50 cases is measured in months and gives insight into any high or low outliers in the data that would severely affect the average sentence length.

Range of Sentence Unsealed. The range of sentence is measured in months and is also calculated for specifically unsealed cases since there are average sentence lengths measured for both unsealed and sealed cases.

ANALYTIC STRATEGY

The data is collected from PACER and input into excel to perform tests on the variables. Certain descriptive statistics such as percentages and means will be calculated through excel such as percentage of unsealed cases, guilty pleas, and sentence range. The percentage of guilty pleas was only calculated for the group of unsealed cases for males and females because some cases within the overall group did not have information on plea agreements. The study determines a mean sentence length and restitution for all the groups: All Males, Males Unsealed, All Females, and Female Unsealed.

As discussed, this study looks at both unsealed and sealed cases. Cases can become sealed for various reasons such as protection for the defendant including those in a federal witness protection program, charges dropped for a private reason, or the case may involve a juvenile. Because unsealed and sealed cases could comprise a select group of cases, these are used as sub-samples to assess if disparities are present in these specific cases.

This research is using a two-sample T-test to compare the means of female sentence length and restitution to male sentence length and restitution. There will be four different two-sample T-tests conducted: Average sentence length for males and females overall, average sentence length for unsealed cases males and females, average restitution for males and females overall, and average restitution for unsealed cases males and females. The two-sample T-test will determine if the difference in the means between males and females for the sentencing variables are statistically significant. The T-test will calculate a p-value and if the result is less than 0.05 it is statistically significant (Anon n.d.-c) . If the p-value is greater then 0.05 the result is insignificant (Anon n.d.-c). The results will then be examined to assess the significance of any present sentencing disparities.

CHAPTER 4: RESULTS

The research is looking at average sentence length and average restitution between males and females for high-level federal health care fraud offenses from 2015 to 2019. The research asks if there are any disparities present at the sentencing stage for these offenses that are influenced by the gender of the offender.

DESCRIPTIVE RESULTS

This study examined several descriptive statistics with the sample to compare males and females (See Table 3). Females were found to have only 44 percent of cases unsealed, meaning less than half of the cases had accessible sentencing information. Males were found to have 72 percent of cases unsealed, meaning they were more likely to have accessible sentencing information than females. This difference in percentage of unsealed cases is considerably large and noteworthy. The entire range of sentence for females was 12-900 the higher end of the range being 600 months longer than males whose high end was 300.

When looking at the unsealed range of sentence however males and females range seems to be closer to one another (See Table 3). However, it is important to note that the lowest sentence imposed for males was only 40 months while for females it was 12 months. Aside from the one outlier of 900, the Males have an overall higher range of sentence imposed than females.

TABLE 3: DESCRIPTIVE STATISTICS OF FULL SAMPLE

	Males	Females
% of Cases Unsealed	72%	44%
% of Guilty Plea Unsealed	52.9%	72.72%
Full Sample Sentence Range	40 – 300	12 – 900
Unsealed Cases Sentence Range	40 – 240	15 – 160

FULL SAMPLE RESULTS

In the next stage of analyses, the study gets to the key variables to determine if sentencing disparities exist and if the results show to be significant from the T-test. In looking at the entire 50 case sample, we see that the average sentence length for females is approximately 9 months higher than males (See Table 4). The males had an average of 100.72 months of imprisonment while females had an average of 109.44 months of imprisonment. However, the p-value is 0.8134 which is greater than 0.05 meaning this difference in the means are said to not be statistically significant. For this test there is a potential reason for the females' mean to be higher than the males since the female sample had an outlier of 900 months of imprisonment while the males' highest months of imprisonment was only 300 months (See Appendix A). As shown in Appendix C, the means for the average sentence length without the outlier of 900 months significantly changes the results (See Appendix C). Females had only a 76.5 average sentence length which is about 24 months lower than the male average of 100.72 (See Appendix C).

Looking at average restitution amounts we see that males had a restitution amount of approximately $2 million higher than females (See Table 4). Males had an average restitution amount of about $10.2 million while females had an average restitution amount of about $8.4

million (See Table 4). Again, the p-value is calculated as 0.6823 which is greater than 0.05 so the difference in the restitution means is said not to be statistically significant (See Table 4). The study shows that for the overall sample both means tests were not shown to be statistically significant in the difference between males and females' months of imprisonment and restitution.

TABLE 4: FULL SAMPLE AVERAGE SENTENCE AND RESTITUTION

	Males	Females	T-Test Value
Average Sentence (months of imprisonment)	100.72	109.44	0.8134
Average Restitution ($)	10,167,854	8,436,679	0.6823

UNSEALED SAMPLE RESULTS

Here, the study looks at the unsealed sample which is 72% of the male total sample and 44% of the female total sample, so the sample sizes are unequal (See Table 3). The female sample size for this test is 11 cases while the male sample size is 17 cases (See Table 5). The average sentence length here for males is approximately 41 months higher than females (See Table 5). The male average sentence length is 102.72 months of imprisonment while the female average sentence length is only 61.91 average months of imprisonment (See Table 5). This significant change from the previous test may be due to the outlier of 900 months not being included as it was not an unsealed case (See Tables 4 and 5). The p-value for this test is 0.0571 which is slightly greater than 0.05 meaning the means difference is said not to be statistically significant (See Table 5). However, it is much closer to 0.05 than the previous means test for the entire sample which is important to note. Also, given that the sample size is very small, this is suggestive of a difference.

The average restitution for males is approximately $5 million higher than the average restitution for females (See Table 5). The average restitution here for the male sample is about $7.5 million while the average restitution for the female sample is about $2.5 million (See Table 5). After conducting the T-test for average restitution unsealed the p-value is calculated as 0.0846 which is greater than 0.05 meaning the results are not statistically significant (See Table 5). However, this p-value is also much closer to 0.05 than the previous means test for the entire sample. This difference in average restitutions is also much greater than the previous sample which is noteworthy. Also, when the sample size is small the 0.10 significance level is sometimes used, thus these results are suggestive of an important difference.

TABLE 5: UNSEALED SAMPLE AVERAGE SENTENCE AND RESTITUTION

	Males	Females	T-Test Value
Average Sentence (months of imprisonment)	102.72	61.91	0.0571
Average Restitution ($)	7,506,652	2,542,854	0.0846

From these results for both samples, key findings include females having a lower average restitution or sentence length in all the tests except for the entire sample average sentence length where the outlier is present. This means that overall females were found to have a less severe sentence imposition than men for this sample of major health care fraud cases. Additionally, the results show that when using the unsealed sample means, the p-value results are much closer to the 0.05 significance threshold than when using the entire sample means.

CHAPTER 5: DISCUSSION

DISCUSSION

The research sought to find if sentencing disparities among men and women for high level federal health care fraud offenses brought to the US district courts from 2015 to 2019. The first key finding of this research discovered that within the sample women received overall less severe sentences than men. In all categories, not considering the outlier, women had a lower average sentence length and restitution amount. Evidently, the 900-month sentence for one of the females was the cause of the full sample average being higher than the men's because when recalculated without it, the female average was much lower. This suggests that there is a disparity that exists, and women may be more likely to get a reduced sentence compared to a man who commits a similar crime. Although none of the results of the T-tests implied that these findings were statistically significant, it is important to recognize what they showed and perhaps perform future studies with a larger sample.

The study also found that women were more likely than men to have their case sealed in some way although we do not know the cause behind this. Given prior research and the fact that women have shown to be more likely to play a smaller role in white-collar offenses, it is possible that they were given an opportunity by the judge or prosecutor to receive a reduced sentence. The females may have taken a deal to expose other offenders in a fraud scheme and that could be why they had so many of their cases sealed out of worry for their safety and anonymity.

Thinking about the literature on sentencing female white-collar offenders, many different factors can explain why they would on average receive less punitive than men. Women were more likely to be the primary caregiver of a dependent child and judges have been seen to take

that into consideration at sentencing. Also, judges may go easier on women since most of the time they are not the ringleader of the fraud scheme and may have been caught up in a bad situation inadvertently.

LIMITATIONS

Time constraints significantly limited the sample size for the current research which the researcher would have preferred to be larger. Though a sample size of 50 cases was enough to conduct tests, the conclusions drawn from this study are limited. Additionally, while there was not enough time to conduct a case study analysis on cases from the sample, one is warranted. It is difficult to speculate on the reasons behind the differences between the sentences for males and females without looking into the cases themselves. There is an opportunity of this study to go further and examine similar cases of females/males and determine why they got a higher or lower sentence than their counterpart.

Additionally, there was an issue with accessibility of the sample due to sealed case records on pacer. Out of the 50 cases found there were 22 cases that had inaccessible sentencing memorandums, transcripts, plea deals, or other court records on PACER. This created difficulty in the study as the researcher could not determine why the cases were sealed. A potential cause would be if the offender chose to assist the government in finding other perpetrators which in turn could cause the court to seal records out of safety and anonymity for the offender. This instance, as well as other factors behind sealed cases, would have an influence on the sentencing of the offender, but without knowledge of this a bias cannot be determined.

Another limitation was the presence of outliers within the data sample. As previously discussed the outlier of 900 months of imprisonment for one of the female offenders markedly skewed the average sentence for females which showed a different trend than to be expected.

Outliers could have also affected the data on the low end with some of the female offenders having very low average sentences while none of the male offenders' sentences dropped below 40 months. Therefore, there is a potential for the data to contain results that are not as reliable as they would be without the outliers. A potential solution for future studies could be to control for the range of sentences to keep it the same for both males and females and prevent outliers from having a negative affect on the results.

IMPLICATIONS AND FUTURE DIRECTIONS

This research has important implications in the field of study of gender and white-collar crime that informs how future research can take a deeper dive into this topic. Key findings suggested that women did receive less severe sentences than men, were more likely to have their cases sealed, and were more likely to have pled guilty for this sample of major health care fraud offenses.

Aside from the case study research discussed in the limitations section, there are other ideas that future research should take into consideration. Many previous studies have focused on all white-collar offenders and not just high-level offenders with a higher socio-economic status. As this study helps to narrow the gap in studying high level fraud, future studies call for case studies of upper-class offenders that have diversified social identities (Liu and Miller 2019; Reed and Rorie 2023). For example, although women are more likely to be the primary caregivers of a dependent child, men may also take on this role which can influence how they are criminally sentenced. Additionally, for future research to not view gender and white-collar crime as black and white, it is important to not stereotype offenders into a particular behavior just because of their gender (Dodge 2016). This research also uncovered ideas supported by Reed and Rorie that gender identity plays more of a role in sentencing disparities and differences in offending rather

than the sex assigned at birth (Reed and Rorie 2023). It is also supported by previous literature that future studies may prosper with focusing on gender identity rather than just male and female typology (Dodge 2016). As society and gender roles have greatly evolved over time, there is a need for research to modernize the way they look at gender and crime without categorizing it as just male or female.

CHAPTER 6: CONCLUSION

Conducting this research was meaningful in adding to literature on gender and white-collar crime, especially considering the lack of discussion of this topic in the sentencing stage. As white-collar crimes continue to do significant damage to individuals, companies, and organizations, it is essential that research pursues new breakthroughs within this discussion of gender and white-collar crime. It is crucial that we look to different stages of the criminal justice process, such as sentencing, to explore reasonings behind disparities and narrow the gap between decisions made in the criminal justice system. Gender is not always black and white, which is why literature must approach the topic of gender as an identity rather than insinuating that everyone must fit into a specific category of male or female. It would be interesting to investigate how the intersectionality of race and gender can also lead to white-collar sentencing disparities which calls for future research. However, this research suggested that gender disparities do exist in the sentencing stage of criminally processing major health care fraud offenses. In working to decrease the number of white-collar crimes and prevent economic victimization that damages lives, businesses, and organizations, it is necessary to understand the significant role that gender plays in these offenses.

APPENDICES

APPENDIX A

Restitution and Incarceration Combined Table Males

Incarceration (months)	Restitution ($)
51	1,901,779.00
60	1,009,205.00
46	2,507,942.00
42	3,374,409.00
120	54,504,778.00
120	6,277,575.00
42	30,278,542.00
300	26,729,041.00
240	5,487,663.00
60	1,266,860.00
80	12,590,761.00
87	3,818,724.00
120	4,543,659.00
240	40,488,106.00
64	9,807,915.00
156	7,266,008.00
87	8,415,824.00
120	9,674,575.00
82	6,524,888.00
82	1,500,000.00
78	4,980,679.00
40	1,415,011.00
96	4,676,265.00
60	2,366,746.00
45	2,789,409.00

APPENDIX A CONTINUED

Restitution and Incarceration Combined Table Females

Incarceration (months)	Restitution ($)
30	2,181,378.00
15	704,516.00
36	928,224.00
78	4,658,241.00
160	6,350,332.00
84	1,593,804.00
60	1,492,631.00
73	2,500,000.00
48	1,537,710.00
51	4,658,241.00
46	1,366,317.00
80	9,484,939.00
900	13,203,676.00
80	2,004,391.00
120	80,620,929.00
12	230,713.00
84	7,313,379.00
108	3,444,791.00
188	12,900,000.00
30	20,462,607.00
120	20,928,000.00
144	6,363,528.00
42	1,583,976.00
105	2,969,045.00
42	1,435,608.00

APPENDIX B

Unsealed Sample Male Incarceration/Restitution/Guilty Plea

Incarceration (months)	Restitution ($)	Guilty Plea (yes=1)
240	5,487,663.00	0
60	1,266,860.00	0
80	12,590,761.00	1
87	3,818,724.00	1
120	4,543,659.00	1
240	40,488,106.00	0
64	9,807,915.00	1
156	7,266,008.00	0
87	8,415,824.00	1
120	9,674,575.00	0
82	6,524,888.00	1
82	1,500,000.00	1
78	4,980,679.00	0
40	1,415,011.00	1
96	4,676,265.00	0
60	2,366,746.00	0
45	2,789,409.00	1

Unsealed Sample Female Incarceration/Restitution/Guilty Plea

Incarceration (months)	Restitution ($)	Guilty Plea (yes=1)
30	2,181,378.00	1
15	704,516.00	1
36	928,224.00	1
78	4,658,241.00	1
160	6,350,332.00	1
84	1,593,804.00	0
60	1,492,631.00	0
73	2,500,000.00	1
48	1,537,710.00	0
51	4,658,241.00	1
46	1,366,317.00	1

APPENDIX C

Average Incarceration Comparison without outlier

	Males	Females
Average Incarceration (months)	100.72	76.5

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