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GENDER AND JUSTICE IN SENTENCING DECISIONS:
AN ANALYSIS OF THE IMPACT OF TRADITIONAL GENDER EXPECTATIONS
ON SENTENCING OUTCOMES FOR FELONY FEMALE OFFENDERS
IN THE STATE OF MINNESOTA

By

Barbara Ann Koons

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School of Criminal Justice

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ABSTRACT

GENDER AND JUSTICE IN SENTENCING DECISIONS: AN ANALYSIS OF THE IMPACT OF TRADITIONAL GENDER EXPECTATIONS ON SENTENCING OUTCOMES FOR FELONY FEMALE OFFENDERS IN THE STATE OF MINNESOTA

By

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The research was designed to enhance understanding of the impact of sentencing reforms on women offenders. The key hypothesis is that prior to the implementation of sentencing guidelines in Minnesota, women who fulfill traditional gender roles are more likely than men are to receive alternatives to incarceration. After sentencing guidelines, no significant differences in the likelihood of receiving a prison sentence are expected between men and women. A related hypothesis is that sentencing reforms and the "war on drugs" are disproportionately related to women's higher odds of going to prison.

The analysis examines three time periods and compares the sentencing outcomes for men and women for drug and property offenses. The data come from the Minnesota Sentencing Guidelines Commission and Ramsey and Hennepin Counties pre-sentence investigation reports for 4,076

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convicted offenders. Several theories and explanations such as social construction feminist theory, multiracial feminist theory, and explanations based on chivalry suggested several independent variables including gender, race, dependent children, and offense type. These and legal independent variables were examined in relation to two dependent variables, incarceration and sentence length.

The results suggest mixed support for feminist explanations of sentencing disparity. For the first sentence decision, gender was influential in decisions made both before and after sentencing guidelines. Women were more likely than men to receive an alternative to incarceration. Additionally, tests of interactions between gender and race, dependent children, and offense type showed only one significant interaction. At Time 2, white women were more likely to be incarcerated than nonwhite women. For the sentence length decision, gender was influential only at Time 2 when women received significantly shorter prison sentences than men, controlling for other predictors of sentence length. Finally, the findings suggest that sentencing reforms and the "war on drugs" in the state have not disproportionately affected women in a negative way.

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BARBARA ANN KOONS
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Dedicated in loving memory of my grandmothers,

Anna Reichman Koons
&
Elizabeth Umstead Walton

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This remarkable accomplishment would not have been possible without the encouragement and support of my mentors, friends, and family.

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thank you to each of them. I am proud to be their friend, colleague, and fellow MSU alumnus. I would also like to thank my new friends and colleagues at the University of South Carolina, especially Angela Gover and John MacDonald, for helping me to see "the light at the end of the tunnel."

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CHAPTER 1: INTRODUCTION

Chapter one provides an introduction and discussion of the female offender population and reforms in the sentencing area over the last three decades. First, the statement of the problem highlights the need for and importance of studying the impact of gender on sentencing decisions. Second, the debate over equal versus different treatment for women offenders is considered. This section also discusses the criminal arrest, conviction, and sentencing patterns of women and a brief description of women drug offenders. Next, an overview of the sentencing area, including background information on recent changes from indeterminate sentencing systems to determinate sentencing systems is presented. In addition, Minnesota's sentencing guidelines system is described and a discussion of recent state drug legislation is provided. Finally, the research study is presented.

Statement of the Problem

The decision to examine gender and sentencing decisions was based in part on the belief that an important reciprocal relationship between gender and decision-making in the criminal justice system exists. Gender impacts the decisions of officials working in the system and the decisions made by officials shape perceptions of gender and

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construct its meaning within the legal arena.

Amid the calls for increasing penalties and neutrality in sentencing, women have been neglected in the process. Little attention to and understanding of women's offending patterns and the circumstances surrounding their crimes, or how they become involved in the criminal justice system in the first place, has characterized the sentencing reform movement.

Under current determinate-based sentencing systems (e.g., sentencing guidelines) there is no regard for the realities or experiences of the women, and for that matter, difference among women. After all, women and men do not start on equal footing in society, yet sentencing changes and reforms assume that they do. The philosophical underpinning of recent sentencing reforms presupposes that "like-situated offenders" exist and can be neatly categorized so that proportionality of punishment can be achieved (Tonry, 1995). Because women have received more leniency under indeterminate sentencing schemes, one could make the argument that women are disproportionately impacted by attempts to remove all consideration for non-legal factors and rely on narrowly defined legally prescribed one. Prior to the introduction of determinate sentencing, under an indeterminate system, the courts enjoyed a broad level of discretion in making sentencing decisions. Critics have maintained that discretion resulted in discrimination and disparate treatment.

Since the 1970s a significant amount of research has explored the issues of disparities in sentencing decisions due to gender, race, and class (Armstrong, 1977; Kruttschnitt, 1980; Mann, 1984; Spohn, Welch, & Gruhl, 1985; Steffensmeier, Kramer, & Streifel, 1993; Zingraff & Thomson, 1984). While findings have been mixed at the sentencing stage with regard to gender effects, early research generally found evidence that women were treated more leniently when compared to men. Many have attributed this to paternalistic or chivalrous views of judges and other actors working within the courts. Research conducted more recently suggests that the relationship between gender and sentencing decisions is more complex. More recent studies find that not all women are treated in a lenient manner, but that sentencing is influenced by other factors related to the defendant's gender.

Changes in sentencing policies around the United States over the last three decades also have raised questions about whether women continue to be treated more leniently than men. Toughened legislation in the form of "three strikes," mandatory minimums, sentencing guidelines and truth in sentencing have intensified the punitive response to crime. While proponents of these sentencing changes intended to address crimes of the predominantly male, violent criminals, critics contend that the changes in sentencing laws have unduly punished women offenders. For example, feminists such as Chesney-Lind (1997) have warned that the toughened

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response to drug violations in particular has impacted the lives of women offenders more significantly than the lives of men and as a result she and others (Feinman, 1994) have labeled the "war on drugs" a "war on women."

The "war on drugs" campaign has had a significant impact on the entire criminal justice system, but particularly the courts and corrections areas. Arrest rates over the last two decades suggest that the "war on drugs" strategy has been a successful one in identifying illicit drug users. Arrests for drug law violations between 1984 and 1998 increased 168% (580,900 to 1,559,100 total estimated arrests for drug law violations) (FBI, 1998). The courts have carried the burden of processing the greater number of drug offenders. In 1990, 33% of all felony convictions in state courts were for drug-related crimes. In an effort to handle the volume of drug cases more efficiently, Florida in 1989 established the first drug court. Today there are more than 200 drug courts around the country and many more in the planning stages (National Association of Drug Court Professionals, 1997).

These statistics suggest that a significant number of people entering the system, who end up being convicted and sentenced to some type of punitive sanction, have a drug dependency problem. Therefore it becomes important to understand the impact that the new sentencing legislation has had on women who are sentenced for drug-related offenses. Are women being sentenced any differently from

men as researchers have demonstrated in the past, or have changes in sentencing laws reduced this disparity based on gender? Few prior studies have considered this question.

Despite the limited research on gender and sentencing, many suggest that changes in drug enforcement and sentencing have been the catalyst behind the large numbers of women entering the corrections system (Chesney-Lind, 1995; Feinman, 1994). They argue that women who would have previously been sentenced to probation are now being sent to correctional institutions instead. Thus, any chivalrous or lenient treatment that women may have enjoyed at the sentencing phase of the criminal justice system, it is argued, no longer exists. The increasing numbers of women being imprisoned in this country, along with the belief that women offenders have different and unique needs and thus require special services, contributes to the debate over whether women should be handled in the justice system as equal to men or as different.

The Debate Over Equal vs. Different Treatment of Women Offenders

There is considerable debate about whether women benefit more from being treated as equal to men or with recognition of special gender-linked needs and circumstances than men. Over time, women involved in the criminal justice system have endured a mix of equal and differential

treatment¹ or handling.² Given the complex history, several opposing positions currently exist for explaining the handling of women who are processed within the criminal justice setting (Belknap, 1996). Three major explanations of how gender affects crime processing have been set forth and debated:

- Equal treatment - women and men are sanctioned equally and equivalently by the courts
- Chivalry - women are sanctioned more leniently compared to men by the courts
- Evil woman - Women are sanctioned more severely compared to men by the courts

According to the first position, the equal treatment perspective, men and women are treated similarly, and any occurrence of differential decision making is not related to their gender per se. For example, research has indicated that men receive harsher sentences than women, but this is due in large part to the fact that men have more extensive criminal histories and/or commit more serious offenses than women. Thus, the type of sentence received relates to the severity of the current offense, criminal history and other legally relevant factors.

Many feminist legal scholars have argued that the only

¹ Treatment in this dissertation refers to the handling or response to women by criminal justice officials, including judges, etc.

² See the work of Chesney-Lind and Pollock (1995) for a discussion about the use of both differential and equal strategies that have been used at different points in history to shape the response to women under correctional supervision.

way to rid the system of gender discrimination is to advocate for equality under the law and equal treatment by criminal justice officials. This is the only way to protect women from discrimination (Chesney-Lind & Pollock, 1995).

[T]he equalization proponents feel that given legal and social realities, differential treatment for women will always mean unequal treatment; by accepting different definitions and treatments, women run the risk of perpetuating the stereotype of women as "different from" and "less than" male (Chesney-Lind & Pollock, 1995: 156).

Those who are critical of this view argue that women are different from men and when assertions are made that they are equal to men, women will lose every time since the standard by which equal is measured is a male standard. Policies under the law are often developed and administered specifically to deal with the criminality of men involved in the legal system, without attention to their appropriateness for women.

The remaining two positions, the chivalry explanation and the "evil woman" explanation, both focus on differential treatment. On the one hand, the chivalry position maintains that women are treated more leniently by the criminal justice system (Belknap, 1996). Additionally, it argues that woman who come into contact with the criminal justice system

are treated in a protective manner, resulting in a selective application of the law (Armstrong, 1977; Bickle & Peterson, 1991). On the other hand, the "evil woman" position maintains that women are treated more severely than their male counterparts at the sentencing stage.

Chivalrous attitudes and behaviors toward women have a long history. Chivalry, the notion that women are in need of protection, first surfaced during the middle ages in Europe (Moulds, 1980).³ The worship of women was a key principle of the chivalry period, a time that emphasized duty of noble service, courage and obedience of rule (Cornish, 1980: 27-28). While this type of service disappeared over time, some remnants of this regard for women continue to be evident in our social world even today.

According to Moulds (1980) chivalry is revealed in contemporary society by the way in which appropriate behavior is defined along gender lines and the relationship between men and women. For example, women are expected to

³ Chivalry involved sentiment, practices, laws and customs that abounded among dominant classes in Europe between the 11th and 16th centuries. It can be defined as according to Cornish (1908: 13),

The moral and social law and custom of the noble and the gentle class in Western Europe during the Middle Ages, and the results of that law and custom in action. It applies, strictly speaking, to gentleman only. Its three principal factors are war, religion, and love of ladies: its merits and faults spring from those three heads, and all the side influences which attend its growth and decay may be summed up under these.

Thus the whole obligation of the man was connected to the notion of chivalry. Among other things, it involved special treatment that was extended to women by Knights who had sworn to protect women because of

act in feminine, docile, and subordinates ways. These expectations, it is believed, influence women's criminality and the system's response to the crimes committed by women offenders. The resulting tendency towards lenient treatment of women offenders may be changing under today's criminal justice system due to more punitive and determinate-based sentencing.

The contemporary literature on gender disparity and sentencing has at times created confusion over the meaning and consequences of chivalry. In the literature, the term *paternalism* is often used interchangeably with *chivalry* in order to explain the differential treatment of women offenders (Crew, 1991). The two are closely tied together; however, Moulds (1980) maintains it is important to make the distinction between the two. Because women are viewed as feeble or the weaker gender, the differential treatment resulting from chivalrous attitudes represents an "accompanying power relationship of male domination," also referred to as paternalism (Moulds, 1980: 280). Paternalism involves "a type of behavior by a superior toward an inferior resembling that of a male parent to his child" (Moulds, 1980: 280). Thus, paternalism by the courts results in lenient treatment for women because judges and

their perceived weaknesses (Moulds, 1980).

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other court officials take a fatherly approach in their treatment of women offenders as children, in need of guidance and protection (Parisi, 1982).

According to the "evil woman" explanation, women are treated more severely than men for selected similar offenses (Belknap, 1996: 70), and they receive harsher sentencing decisions because they violate gender roles and common stereotypes of women. As long as women who come into conflict with the law perform according to their socially accepted gender roles, for instance roles of mother or wife (i.e., family roles), then the criminal justice system has treated them in a lenient manner consistent with the chivalry explanation. This lenient treatment has preserved the family institution and maintained intact bonds between mother and child(ren). However, if women violate their gender roles by committing offenses that are traditionally committed by men (e.g., violent crimes, drug offenses), then the criminal justice system treats them more severely.⁴

Proponents of both the chivalry and "evil woman" explanations argue that differences in decision outcomes are due to the defendant's gender and are based on cultural images or stereotypes of women. It has been suggested that they are complementary rather than competing explanations

⁴ A full discussion will be provided in the next section.

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(Crew, 1991; Nagel & Hagan, 1982). In the case of chivalry the woman satisfies her gender role expectations, and in the case of the "evil woman" explanation, the woman violates her gender role expectations in some way or another. For example, several researchers addressed the issue of offense type in relation to gender expectations and found that in some cases sentencing outcome was related to whether or not the offense was a "traditional" feminine crime (Daly, 1987; Spohn & Spears, 1997; Steffensmeier, Kramer, & Streifel, 1993).

Feminists advocating for a differential approach to handling women under the law recommend a stance based on the notion "separate but equal." This means that women and men might receive different treatment or handling, but "women are not placed in a more negative position" (Chesney-Lind & Pollock, 1995: 156). Finally, there is concern that both the equal treatment and different but equal positions are problematic. Both approaches, critics argue, rely on male definitions to determine how women should be treated. In other words, equality translates into rights *equal to those of males* and differential needs translate into needs *different from those of males*.⁵ Males always represent the reference group (Chesney-Lind & Pollock, 1995: 156).

⁵ Italicized in the original source.

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Given significant reforms in sentencing and a "get tough" sentiment in the United States, scholars are left to explain the effects of these changes on the sentencing of women offenders. Have these reforms disproportionately resulted in severe sentences for women in the legal system or do some women continue to receive lenient treatment? This research was designed to examine these and related questions.

Some people have argued that the increased number of women in prison is due to changes in the seriousness of women's criminality. Specifically, they feel that women offenders are increasingly violent and that they therefore warrant a more punitive response. Before describing sentencing reforms in more detail, this chapter will consider the pattern and nature of women's criminality.

Crime, Arrest and Incarceration Patterns of Women Offenders

This section addresses whether or not the increasing female incarcerated population is the result of an increase in the severity of women offenders' crimes. Some scholars maintain we are not necessarily seeing a new, more violent female offender, and that offending patterns have not

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changed (Chesney-Lind, 1997; Chesney-Lind & Pollock, 1995; Nagel & Hagan, 1992; Simon & Landis, 1991; Steffensmeier, 1995). They further argue that the legal system's response to women has changed so women are more likely to be incarcerated than ever before. Several questions are considered: (1) Have the offending patterns of women changed significantly over the last three decades, and have the offenses committed by women become more serious? (2) Can the offending patterns of women over the last three decades explain the increases in offender populations in U.S. women's prisons?

The typical adult female offender is young (oftentimes under the age of 30), a single mother, poor and of color, and lacking education and job skills (Belknap, 1996). Compared to men, she tends to commit less serious offenses that are economic rather than violent in nature. Total arrests rose between 1989 and 1998 by 7 percent with arrests of males increasing 2 percent and arrests of females increasing 28 percent (FBI, 1998). During the 1990s we saw the impact of the war on drugs for women. Over this period, arrests for drug related offenses increased approximately 26% for females (18% for males) (FBI, 1998). Trends in felony convictions of women and men during the first half of the 1990s indicate that convictions for drug-related

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offenses increased at a higher rate for women when compared to men (37% vs. 25%) (Greenfeld & Snell, 1999). While the arrest of women for violent crimes increased over the decade by 53%, the share of arrests for violent crimes by women still remains quite low (almost 4% of all arrests for women in 1998). As Table 1 shows, women in 1998 continued to be arrested primarily for non-violent offenses such as larceny-theft (i.e., shoplifting) (14.7% of all arrests for women), forgery and counterfeiting, fraud, and embezzlement (total of 6.9%), driving while under the influence (6.5%), disorderly conduct (5%) and drug abuse violations (9%) (FBI, 1998).

As the data from the Uniform Crime Reports show, women continue to commit traditional "feminine" offenses. These crimes are those that are committed most often by women. This refers to crimes represented by prostitution, running away, larceny/theft, fraud, and forgery/ counterfeiting (Belknap, 1996). According to Belknap (1996) minor property offenses have been attributed to women more so than men.⁶ While men do commit the majority of larceny and thefts (e.g., forgery, fraud, and counterfeiting), the proportion of women's arrests and convictions for these offenses are

⁶Men commit and are convicted of property offenses more often than women, however these offenses represent a high proportion of arrests and convictions of all offenses for women.

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sizeable. Chesney-Lind's review of trends in women's crime indicates that a significant proportion of larceny thefts are shoplifting. Although men also shoplift it is argued by some that shoplifting is a "prototypical" female offense. Non-traditional feminine offenses include violent offenses such as homicides and assaults.

Consistent with the view that women offenders have not become markedly more violent, Steffensmeier (1995) found in his analysis of UCR data over a 30-year period (1960-1990) that while the arrest rate of women increased, female crime patterns (i.e., types of crimes) remained stable over time and women were not becoming more violent. Instead, recent arrest data show women continue to be arrested for minor property crimes (e.g., larceny, fraud, and forgery) and other petty offenses (Steffensmeier, 1995: 89; see also Simon & Landis, 1991). As for drug law violations, Steffensmeier's (1995: 91) analysis revealed that women were arrested at higher rates across the time period, from 8 of 100,000 in 1960 to 166 of 100,000 in 1990; however, the female share for drug law violations of all arrests remained for the most part stable.

Table 1: Total Arrests for Women, 1998

Offense	1998	Percent of Total Arrests, 1998
TOTAL ⁷	1,950,808	
Violent Crime	71,757	3.7%
Murder and nonneg. Manslaughter	1,259	b
Forcible rape	233	b
Robbery	7,874	.4%
Aggravated Assault	62,391	3.2%
Property Crime	329,132	16.9%
Burglary	25,525	1.3%
Larceny-theft	287,040	14.7%
Motor vehicle theft	14,992	1.0%
Arson	1,575	.1%
Other assaults	185,178	9.5%
Forgery and counterfeiting	27,626	1.4%
Fraud	101,194	5.2%
Embezzlement	5,122	.3%
Stolen property	13,194	.7%
Vandalism	28,059	1.4%
Weapons; carrying, possessing, etc.	9,443	.5%
Prostitution and commercialized vice	36,653	1.9%
Sex offenses ⁸	4,964	.3%
Drug abuse violations	173,267	8.9%
Gambling	652	b
Offenses against the family/children	16,465	.8%
Driving under the influence	126,781	6.5%
Liquor laws	81,762	4.2%
Drunkenness	58,067	3.0%
Disorderly conduct	98,092	5.0%
Vagrancy	4,173	.2%
All other offenses (except traffic)	484,874	24.9%
Suspicion	605	b
Curfew and loitering law violations	37,586	1.9%
Runaways	56,767	2.9%

** "b" denotes a percentage less than .1

Source: 1998 Uniform Crime Reports (FBI, 1998).

⁷ Does not include suspicion.

⁸ Except for forcible rape and prostitution.

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Since the 1980s, the number of women incarcerated in the United States has nearly tripled (Chesney-Lind, 1995) and many jurisdictions spent the last decade building facilities to accommodate the larger numbers. Chesney-Lind (1995) contends that much of the increase in the number of imprisoned women can be connected to a change in the system's response to them, particularly by the courts. While arrest rates for women increased 29% between 1986 and 1990, incarceration figures increased for women by 73% in jails and 77% in prisons during the same time period. Chesney-Lind argues that more women being arrested cannot account for the influx of women into this nation's jails and prisons. In other words, it is not the behavior of the women which has necessarily changed, but instead, the official response to the women and their activities that has led to the larger number of women entering correctional systems (Krohn, Curry, & Nelson-Kilger 1983; Pollock 1995).

Over the last decade Bureau of Justice Statistics (BJS) data show that the number of women incarcerated in this nation's prisons and jails is increasing at a faster rate than the rate for men (Women in Criminal Justice: A Twenty Year Update Special Report, 1998). From 1985-1995 the number of incarcerated men approximately doubled (691,800 to 1,437,600) and the number of incarcerated women approximately tripled (40,500 to 113,100) over that same time period (Women in Criminal Justice: A Twenty Year Update Special Report, 1998). Chesney-Lind (1997, 1992) attributes

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the system's response to drug law violations as a major catalyst behind more women going to prison than ever before. A comparison between incarcerated women in 1975 and 1995 found that women were primarily incarcerated for larceny, forgery, embezzlement, and prostitution in 1975 whereas they were incarcerated primarily for drug-related offenses and larceny in 1995 (Women in Criminal Justice: A Twenty Year Special Report, 1998).

The fact that increased violent criminality does not explain the influx of women into prisons underscores the importance of research to understand the decision-making process that results in the increased rate of incarceration. Also, information on the lives of women involved with the justice system is needed to understand the impact of the decision-making process that the research will examine. Despite the trend that women have not become more violent in their offending patterns, women have been affected by the drug problem in this country. The next section specifically addresses the female drug offender by discussing how women come to use drugs and their involvement in drug-related offenses.

The Female Drug Offender

The problem of drugs for women offenders has been well documented in the literature (Bush-Baskette, 1998; Inciardi,

Lockwood, & Pottieger, 1993; Mahan, 1996; Maher & Curtis, 1995; Pettitway, 1997; Richie, 1996; Sterk, 1999). Several authors examining the issue of gender, drugs, and violence describe the women in their research as being "trapped." The pathway to the legal system for the typical female drug offender is a sad and tragic one. In addition to her addiction problems, she has typically grown up in a family surrounded by chaos and conflict, experienced physical and sexual abuse, and even sought refuge on the streets turning to prostitution and drug use and other petty forms of crime.

To understand why women use drugs and become involved in the criminal justice system requires one to look at the wider social context. According to Maher and Curtis (1996):

...[P]revious research [for women] indicates that drug use and violence covary but are not related in a deterministic way. Rather, this relationship is mediated by the complexities of user's social and economic worlds. (p. 152)

Drug use, consequently, is a symptom of other underlying problems and concerns in their lives. Women often take drugs as a way of coping with experiences of prior abuse.

Mahan's (1996) work involving women and crack cocaine highlights the interconnections between prostitution for drugs, violence, relationships with men, and the environmental context. She found that women working as

prostitutes in crack houses lived a continuous cycle of performing sexual services in order to obtain and then use drugs, and then the cycle would repeat itself. While working in the crack houses, women were vulnerable to violence and abuse, as well as contracting HIV/AIDS and other sexually transmitted diseases (Mahan, 1996).

Additionally, their relationships with men were dysfunctional and characterized in Mahan's work as relationships based on dependency on and domination by men.

Women's roles in the illegal drug market mirror their position within wider society. Women rarely hold positions of status within the hierarchy and remain on the fringes as drug whores, drug mules, or lookouts. Maher and Curtis (1995) found that many of the women they interviewed gained entry into the drug culture through street-level sex work. Sterk's "Queens of the Scene" are notable exceptions to this general trend. Converting powder cocaine into crack cocaine is a complicated process (Sterk, 1999). Women who excelled at cooking the rocks of crack cocaine (i.e., the "Queens") were accorded a certain level of prestige within the drug culture not generally given to women.

For the most part, women's involvement in the drug culture has not been a liberating experience. Instead, their involvement has served to reinforce and remind them of

the oppression and suffering they have endured throughout their lives. Women are "trapped" within these realities, with little hope for gaining their own voice and control over their lives.

Contributing to this sad picture is the criminal justice's systems inability to understand and be sensitive to the experiences of women. In constructing sentencing policy, the system seeks to punish and make examples of them. In the end, this is little help to those who remain in the drug culture, trading sex for their habit and working on the fringes of the drug market because of no foreseeable way out.

Gender and Drug Conviction Statistics

Since the institution of the "war on drugs" policies of the last decade, the percent change in felony convictions for drug offenses were higher for women when compared to men (See Table 2). Overall, drug offenses increased by 27% between 1990 and 1996. However for women, the number of drug felony convictions increased by 37% as compared to 25% for men.

Table 2: Percent Change in Felony Convictions
of Women and Men, 1990-1996⁹

Felonies	Total	Females	Males
All	20%	42%	17%
Violent	14%	25%	12%
Property	6%	44%	-2%
Drug	27%	37%	25%
Other	46%	65%	44%

Table 3 provides more detailed information concerning felony drug convictions for women in the early 1990s after significant drug legislation occurred around the country in the late 1980s. Felony convictions for women involving drug trafficking increased 34% from 1990 (24,562 convictions) to 1996 (33,005 convictions). Felony convictions for drug possessions increased 41% between 1990 (18,438 convictions) and 1996 (26,022 convictions). Thus, felony drug convictions for women in state courts have steadily risen between 1992 and 1996.

⁹ Referenced from Women Offenders, BJS Publications, December 1999, pg. 6.

Table 3: Felony Convictions of Women in State Courts,
1990-1996¹⁰

	1990	1992	1994	1996
Drug Felonies	43,000	42,047	46,468	59,027
Trafficking	24,562	23,529	25,561	33,005
Possession	18,438	18,518	20,907	26,022

Critics of sentencing reforms claim that little if any consideration and therefore understanding has been given to women and the drug issue, and that sentencing reforms fail to recognize how women differ from men in terms of their experiences with drugs, abuse, and illegal activities. While several critics have highlighted the significance of gender in the sentencing and the war on drugs, few have addressed and explored any real impact of such policies for women. The next section reviews the history behind sentencing reforms, the background in Minnesota, and the impact of gender on the development of the new sentencing policies.

¹⁰ Referenced from Women Offenders, BJS Publications, December 1999, pg. 5.

Sentencing

Background

Indeterminate sentencing, the idea that defendants should be reviewed and adjudicated on a case-by-case basis, was the dominant sentencing scheme throughout much of the early twentieth century. During the first two decades of the century, the Progressives and the policies they initiated greatly influenced sentencing policy for decades to come. Progressive reformers (e.g., social workers, psychologists, and psychiatrists, etc.) during this period established indeterminate sentencing and the options of parole and probation as well, and thus introduced a new flexibility in sentencing (Rothman, 1980). Based on the rehabilitative principles, indeterminate sentencing gave broad discretionary power and oversight to judges at the sentencing phase (Miethe & Moore, 1989). Morris and Tonry describe the scope of the discretion enjoyed by court officials,

Prosecutors had complete control over charging and plea-bargaining. Judges had little-fettered discretion to "individualize punishment" in deciding who received probation and who was sentenced to jail or prison, and, for those to be confined, to set minimum and maximum terms, and sometimes both. Parole boards, subject only to statutory provisions on parole eligibility, generally when a third of the maximum term had been served, decided who was released from prison prior to the expiration of their terms, when, and under what conditions. (1990: 20)

Court officials enjoyed little supervision or review of their decisions under indeterminate sentencing. However, over the next decade this would all change.

Determinate Sentencing: Getting Tough on Crime

In 1975, Maine became the first state to abolish their parole system and establish the first determinate sentencing system in the United States (Morris & Tonry, 1990:24). Today 14 states have abolished their parole systems for all or most offenses (Ditton & Wilson, 1999).¹¹ Over the next two to three decades almost every state and the federal government revamped their sentencing systems. Morris and

¹¹ The fourteen states include: Maine (1975), Indiana (1977), Illinois (1978), Minnesota (1980), Florida (1983), Washington (1984), Oregon (1989), Delaware (1990), Kansas (1993), Arizona and North Carolina (1994), Mississippi (1995), Ohio (1996), and Wisconsin (1999). A few other states abolished parole release for specific violent or felony offenses or crimes against a person (Alaska, New York, Tennessee, Virginia and Louisiana).

Tonry (1990) believe several factors were instrumental in driving this philosophical and policy shift from indeterminate sentencing to determinate sentencing.

In addition to concerns over the perpetual crime problem, observers also criticized the amount of discretion officials held. Unlike other public officials, those in the criminal justice system were oftentimes not held accountable for their decisions. As a result, organizations like the American Friends Service Committee reported that the unfettered discretion of criminal justice officials had led to decisions that were seemingly inconsistent, unjust, and racially biased (Morris & Tonry, 1990). Additionally, empirically based studies also captured the presence of disparity in decision-making by judges and parole boards. Support for indeterminate sentences significantly diminished as a result of a growing dissatisfaction with the merits of rehabilitation as a punishment goal. Evaluations and reviews of treatment and programs for offenders resulted in little if any empirical evidence to suggest that we are effective in our treatment practices (Morris & Tonry, 1990).

There were additional reasons for the shift in sentencing philosophy. The courts also played a role in the downfall of indeterminate sentencing systems. Prior to the 1970s courts maintained a "hands-off" policy in relation to corrections. Courts began to take a more careful look at procedural issues, practices that were fair and just. Finally, attacks on the philosophy and principles of

indeterminate sentencing came from both liberals and conservatives, albeit for different reasons. For the liberals, unbridled discretion opened the door for discrimination based on race. In the case of conservatives, criticisms were based on the view that crime was out of control and judges were soft on offenders (Morris & Tonry, 1990). Rehabilitation and the principles associated with it (e.g., discretion, parole, etc.) failed to address the crime problem, and treatment programs did not work (Walker, 1993). With support collapsing from both liberals and conservatives, indeterminate sentencing in this country quickly lost favor. In sum, all of these factors played a part in the dramatic shift in sentencing policies:

Taken together, these critiques greatly undermined indeterminate sentencing and the practices and institutions that went with it. It is not easy to defend a major set of social institutions that are portrayed as based on unsound empirical, ethical, and psychological premises, as characterized by racial and class bias, by arbitrariness, by lawlessness, and by unfairness, and as conspicuously ineffective at achieving the larger social purposes of reducing crime and rehabilitating offenders - and few tried. (Morris & Tonry, 1990: 24)

What was to follow was a period characterized by comprehensive sentencing changes that limited discretion of decision-makers and disparity in sentencing outcomes. Discretion was at the heart of the indeterminate sentencing

philosophy. The specific intent of the changes in sentencing legislation was to limit the discretion of judges and courts and place the responsibility in the hands of legislatures (Byrne & Taxman, 1994; Krisberg, 1994; Mauer, 1994; Myers, 1989; Petersilia, 1994; Platt, 1994). Changes were instituted to restrict discretion and sentence defendants based on their offense and criminal history, not on any notions of utilitarian benefits. A shift occurred in the goals of the legal system from focusing on crime causation and rehabilitation goals to retributive and deterrent efforts which resulted in making sentences more swift, certain, and severe (Petersilia, 1994).

According to Walker, by the early 1980s reformers believed the best way to limit discretion was with the use of sentencing guidelines. The implementation of sentencing guidelines did not abolish discretion altogether; instead the guidelines suggested a presumptive sentence and allowed for a limited amount of discretion on the part of the judge (Walker, 1993). Discretion was limited through the use of written regulations and formalized procedures to structure decision-making.

Sentencing reforms in the 1980s and 1990s involved other important changes as well, for example, flat sentences, mandatory sentences, three strikes initiatives, and truth-in-sentencing laws (Ditton & Wilson, 1999). Individual states revamped their own systems and used either one or a combination of these sentencing strategies to

address their crime problem. Sentencing guidelines can be found in over 20 states and mandatory sentences for certain types of offenses can be found in 49 states (Byrne & Brewster, 1993). As of 1994, some form of "three strikes and you're out" initiatives were passed in at least 30 states (Platt, 1994). In 1994 the United States Congress passed the Violent Crime Control and Law Enforcement Act of 1994 which provided additional funds to states to build more prisons and jails so offenders could serve a large portion of their sentence. One year later, 11 states had passed truth-in-sentencing laws that required inmates to serve 85% of their sentence (Ditton & Wilson, 1999).

Recent sentencing strategies have attempted to limit the discretion of judges and courts and make offenders more accountable for their crimes. Minnesota's sentencing guidelines system represents one example of a sentencing strategy that has sought to limit the influence of non-legal factors such as gender into the sentencing decision. Next, the chapter reviews the role of gender in sentencing reforms and addresses concerns for the implications of gender neutral sentencing policies.

Gender and Sentencing Reforms

Far-reaching changes in sentencing focused on factors that were considered to be appropriate in the sentencing decision process. Relevant factors, which had previously

focused on individual offenders and their rehabilitative needs, now focused instead on aspects of the offense (e.g., severity, prior record, etc.). As a result, factors that were once relevant in the sentencing decisions of women were no longer supported by the changes in the sentencing laws. For example, judges and the courts were no longer supposed to consider whether a woman was pregnant, or if she was a mother and primary caregiver (Nagel & Johnson, 1994).

Many of the sentencing changes instituted in states around the country as well as the federal system emphasized the need to eliminate sentencing disparity based on race, gender and class. In turn many jurisdictions establishing new sentencing structures made it a point to restrict the ability of judges and other court officials to consider these factors when making sentencing decisions. For example, at the federal level, the Congress as part of the Sentencing Reform Act of 1994 particularly emphasized the need to eliminate "unwarranted" sentencing disparity. It instructed the Sentencing Commission to "de-emphasize" individual-based factors of the defendants and their case, which had been supported under a rehabilitation philosophy, and to establish sentencing guidelines that were neutral on race, gender, and class grounds (Nagel & Johnson, 1994; Raeder, 1993).

Raeder (1993: 908), a legal scholar, has argued that "...the [Federal Sentencing] Guidelines, which are designed to reduce race, class and other unwarranted disparities in sentencing males, ignores factors that are integral to the lives of female offenders." In an effort to not penalize impoverished minorities males, the elimination of factors involving family and community ties in the Federal and State Sentencing Guidelines have resulted in a disproportionate negative effect on women, according to critics (Raeder, 1993; Bryne & Taxman, 1994). Instead Raeder suggests that courts should take into account the unique circumstances of women by considering guidelines departures due to situations such as pregnancy, primary care for children, and single parenting. The aim of sentencing, according to Raeder, is for the sentence to be just and reflect gender differences in criminality and parenting responsibilities.

Critics (Chesney-Lind & Pollock, 1995) further contend that such practices place women who are for the most part low risk and non-violent offenders behind bars, costing larger sums of money to house and creating difficulties in keeping families together. Edwards (1989: 178) also emphasizes this concern:

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The basic problem is that men and women are not the same and, more importantly, they do not start as equals. ...Arguing for males and females to be given the same treatment, when their capacities, resources and situations are not the same, means adopting a formal rather than a substantive standard of equality. And what relationship such a concept of equality bears to the notion of justice is a question currently taxing legal philosophers and feminists...

Those advocating for equal treatment under the law fail to recognize the social realities of women and men. There is the false assumption that men and women are on equal footing with one another within society and therefore the law should and will impact them equally.

Advocates for women continue to struggle with the predicament of either arguing for equal treatment or for special treatment. Nagel and Johnson address the possible impact from incarceration of women on their dependent children. Several studies (Daly, 1987; Kaukinen, 1995; Steffensmeier et al., 1993) have shown that the courts do consider this issue when determining appropriate sentences for women offenders. However, advocating the inclusion of family ties and parental status into sentencing guidelines has the potential, Nagel and Johnson (1994) warn, to support gender stereotypes and expectations.

Proof that differential treatment existed in our sentencing systems was just one of several catalysts influencing the movement to change sentencing decisions, and

gender represented one of the subgroups. In an attempt to rid the process of discretion and differential treatment, systems essentially had at their disposal one of three options. As Daly (1994) suggests, we could first, treat men more "like women," second treat women more "like men," or third we could "split the difference." Proband (1997) argues that if a female standard had been used (i.e., using past sentencing patterns of women) to establish presumptive sentences there would have been a public outcry that the new sentencing policies were too lenient. Most policy makers relied on the latter two options, ignoring the possibility of using females as the standard by which to establish sentencing standards (Daly, 1994: 124). Consequently, research analyzing the impact of changes in sentencing philosophy and practices is necessary as well as important in order to understand the likely disproportionate effect of these changes on the sentencing of women offenders over time. To date there have been no studies that have looked specifically at this "disproportionate" question. The studies that have been completed have examined whether or not women received different sentences when compared to similarly situated men under a sentencing guidelines system. The existing studies will be reviewed in the next chapter in the review of the literature. Next, background information and a discussion of the Minnesota sentencing guidelines is presented.

Minnesota Sentencing Guidelines

History. For much of the 20th century, Minnesota followed many of the national sentencing trends. During the first half of the century, indeterminate sentencing was the predominant system used in handling defendants. In the late 1960s Minnesota instituted mandatory minimum sentences, as was the case in many other state legal systems (Parent, 1988). Beginning in the 1970s, however, Minnesota started to move to the forefront of sentencing reform in this country. Crime was a public concern in the state and Minnesota was about to do something about it. Crime in Minnesota mirrored trends occurring nationally for the most part. In state opinion polls, the crime issue was at the top of the public's concerns. The state prison population in Minnesota was also dramatically increased during the 1970s. In addition, a series of determinate sentencing bills were passed in the state legislature. All of these factors contributed to what was the backdrop of the climate in the state that led to the reforms (Parent, 1988).

First authorized in 1978 with the establishment of a Guidelines Commission, the state of Minnesota subsequently adopted sentencing guidelines on May 1, 1980 (1978 Minn. Laws 244). The implementation of such guidelines was the culmination of many years dissatisfaction in the state with the previous indeterminate sentencing system in place. Minnesota underwent its reforms by instituting a commission approach. The Sentencing Commission was initially appointed

by the governor and chief justice and consisted of people representing trial and appellate judiciary, prosecution, defense, corrections, parole, and the public (Parent, 1988).

The Commission originally was charged with creating a guidelines system that would regulate two sentencing decisions: (1) the decision to impose state imprisonment on defendants, and (2) the duration of such imprisonment (Frase, 1994: 11). The Commission also made the decision to eliminate parole, but institute a "good time" related policy with the intention to reduce sentences up to one-third off the specified sentence based on the offender's behavior while imprisoned, and made the participation in all treatment programs while in prison voluntary (Frase, 1994).

As outlined in the Minnesota Sentencing Guidelines Statement of Purpose and Principles,

The purpose of the sentencing guidelines is to establish rational and consistent sentencing standards which reduce sentencing disparity and ensure that sanctions following conviction of a felony are proportional to the severity of the offense of conviction and the extent of the offender's criminal history. Equity in sentencing requires (a) that convicted felons similar with respect to relevant sentencing criteria ought to receive similar sanctions, and (b) that convicted felons substantially different from a typical case with respect to relevant criteria ought to receive different sanctions. (MN Sentencing Guidelines Commission, 1997: 1)

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The Commission, thus, crafted a sentencing system based on a "modified just-desserts" (i.e., retribution) philosophy of criminal punishment. Under this type of system, the predominant factor influencing the appropriate sanction involved the severity of the current offense, followed by, to a lesser extent, the person's criminal history (Moore & Miethe, 1986). As a consequence, the criminal offense became the focus and the individual offender who had previously been the focus under the indeterminate sentencing system became overshadowed. The Commission believed sentencing decisions should be free from influences of the defendant's race, gender, social or economic status.

Guidelines. Minnesota's sentencing guidelines represent the model sentencing reform and is probably the most widely recognized of all the sentencing reforms implemented during the 1970s and 1980s. The guidelines were introduced to "establish rational and consistent sentencing standards which reduce sentencing disparity and ensure that sanctions following conviction of a felony are proportional to the severity of the offense of conviction and the extent of the offender's criminal history" (MN Sentencing Guidelines Commission, 1997).

According to Walker (1993), the Minnesota Sentencing Guidelines System comprised several "key" elements. First, the guidelines represent a series of "presumptive" sentences which judges are expected to use. They are referred to as "presumptive" according to the Sentencing Commission, since

"they are presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics " (MN Sentencing Guidelines Commission, 1997: 61). A limited amount of discretion is possible under the system; judges are permitted to depart from the presumptive sentence but must provide written reasons as for the departure decision (Walker, 1993). Second, the state legislature identified clear objectives in their sentencing reforms. The first goal involved reducing or eliminating sentencing disparity based on race, gender, social or economic status. Under the new guidelines system, none of these factors were to be considered during the sentencing phase. The second goal had to do with controlling the use of prison resources, namely prison space. The Commission recognized that prison space is a finite resource and should be reserved for incarcerating the most serious offenders. Finally, what was key about the sentencing reforms in Minnesota was the establishment of a commission to develop the guidelines system.

The sentencing guidelines are presented in a two dimensional matrix reflecting the seriousness of the current offense along with the defendant's criminal history.¹² Along the vertical axis, the Commission developed a scale representing the "Severity Level of Conviction Offense" comprising ten distinct levels. The offense severity level is based on the offense of conviction. When the defendant

¹² See Appendix A to view a copy of the guideline grid.

is convicted of multiple offenses, the severity level is determined using the more severe offense. Felony offenses are ordered along this scale ranging from low or Severity Level I to high or Severity Level X.¹³ First degree murder is not included in the severity scale due to the fact that it results in mandatory life in prison. Offenses included in each severity level are believed to be "generally equivalent" in severity (MN Sentencing Guidelines Commission, 1997: 2).

Along the other axis of the sentencing grid, the Commission used a "Criminal History Score" index ranging between "0 points" for no priors and "6 or more points" for a more serious criminal background. A defendant's criminal history index is based on the following measures: (1) prior felony record; (2) custody status at the time of the offense; (3) prior misdemeanor and gross misdemeanor record; and (4) prior juvenile record for young adult felons (MN Sentencing Guidelines Commission, 1997: 5). The guidelines provided a uniform standard in determining a person's criminal history. Information about the defendant's criminal background was weighted producing a specific score. By standardizing and attributing weights to a defendant's previous involvement in the criminal justice system, the Commission was able to increase fairness and equity in sentencing.¹⁴

¹³ See Appendix B for additional information on determining offense severity levels.

¹⁴ See Appendix C for a review of how to calculate criminal history

The presumptive sentence for a defendant is determined by calculating her or his criminal history index score and identifying the severity of the current offense and then locating the corresponding grid cell. The corresponding cell indicates two things about the defendant's presumed sentence: (1) whether the sentence involves imprisonment in a state penal facility or a community-based disposition (i.e., In/Out decision), and (2) the length of the sentence. According to the Commission, these sentences are "presumed to be appropriate for all typical cases sharing criminal history and offense characteristics" (MN Sentencing Guidelines Commission, 1997: 61). For cells involving a presumptive commitment to state prison (i.e., the region above the bold line) there exists both a single number that denotes the number of months to be served under the presumed sentence, and a italicized range of numbers within which the judge can sentence the defendant and it not be considered a departure. For cells involving a presumptive stayed sentence (i.e., the region below the bold line or In/Out line) there is single number present.¹⁵ This represents the maximum number of months the judge can sentence the defendant to if she or he violates community

index scores.

¹⁵ Certain offenses in this region of the grid always carry a presumptive commitment to a state prison. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault).

supervision and probation is revoked.

Viewed as a rational sentencing system, Minnesota Sentencing Guidelines attempted to maintain equality and proportionality, while emphasizing just desserts sentencing goals. While the guidelines matrix provides presumptive sentences for corresponding offenses and criminal histories, judges may depart from the recommended sentence if "the individual case involves substantial and compelling circumstances" (MN Sentencing Guidelines Commission, 1997: 22). The Commission requires written justification and that a high standard of departure be met so that the guidelines will be applied consistently and with a high level of regularity to reduce sentencing disparity. Upon deciding to depart from the presumptive sentence, the judge is required to provide written reasons or justifications for the departure, indicating why the sentence selected is more "appropriate, reasonable, or equitable" for the defendant.

The Commission developed the guidelines in order that sentencing is neutral with regard to offenders' race, gender, and income levels (MN Sentencing Guidelines Commission, 1997: 23). In addition to the offender's race, gender, and income level the Commission states that several employment factors (e.g., occupation, employment history, etc.) and social factors (e.g., educational attainment, marital status, etc.) should not be used as reasons for departure.¹⁶ Instead, factors related to the victim of the

¹⁶ See Appendix D for a complete listing of factors to be excluded in

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offense and the role of the defendant in the commission of the offense can act as mitigating or aggravating factors.¹⁷

Since 1980, when the sentencing guidelines system was introduced in Minnesota, the guidelines have been revised to address changes in legislation. During the late 1980s, the guidelines went through a significant modification in one particular area, crimes concerning illicit drugs. One of the objectives of this research was to examine the impact of this kind of sentencing reform on women offenders. The next section reviews changes to the guidelines as they relate to drug offenses.

Drug offenses. Over the last 15 years the Sentencing Guidelines Commission in the state of Minnesota, like most jurisdictions in this country, became concerned about the drug crime problem. Prior to August 1, 1986, the state law only differentiated between the maximum penalties for the sale and possession of controlled substances. No mention was made of amount or type of controlled substance. However, the Minnesota Sentencing Guidelines Commission, in their ranking of drug-related offenses, did distinguish between not only possession and sale, but also type (MN Sentencing Guidelines Commission, 1992).¹⁸ From 1986 through August 1989 the state legislature made several more

the departure decision.

¹⁷ See Appendix E for a list of factors to be included in making departure decisions.

¹⁸ See Appendix F for a list of drug-related offenses and their severity level prior to August, 1986.

changes to the drug laws in Minnesota.¹⁹

On August 1, 1989 the Minnesota State legislature modified the drug laws extensively, creating 5 degrees of drug crimes (MN Sentencing Guidelines Commission, 1992). The degree of drug crime was defined by either possession or sale offenses and by the type of controlled substance and amount. Each of these factors contributed to the degree of the drug offense and also the subsequent changes to the sentencing guidelines as a result.

Thus, after the passage of these state laws the commission preserved the degree structure outlined by the legislature, but for a few exceptions.²⁰ The exceptions were based on the belief by the commission that possession drug offenses at these levels were more serious due to the fact that they were likely to sell these larger amounts of

¹⁹ See Appendix F for a list of those additional changes to the state drug laws.

²⁰ The commission believed that because the legislature had specifically considered the seriousness of drug crimes as it created the new laws, it made sense to retain the degree structure within the severity level rankings of the guidelines. Thus, the commission ranked all drug crimes within each degree at the same severity level with one exception: 1st degree at severity level VIII, 2nd degree at severity level VII, most of 3rd degree at severity level VI, 4th degree at severity level IV, and 5th degree at severity level II.

The exception the commission made to its ranking decision to keep all drug crimes within a degree at the same severity level was with regard to third degree possession of 3 or more grams of crack or 10 or more grams of cocaine/narcotic. This possession offense was not ranked at severity level VI with all the other 3rd degree drug crimes but was ranked at severity level VII. The commission had been urged by prosecutors and others to rank this possession crime at a level where the guidelines would recommend prison for the first time offender.

These possession crimes were believed to be more serious because these individuals likely intended to sell these larger amounts of crack and powdered cocaine.

drugs (MN Sentencing Guidelines Commission, 1992: 5).

Assessments. The objectives of sentencing guidelines have not always been met in jurisdictions that have implemented them. In some cases there has been little or no effect on sentencing practices and for many states the result has been a tremendous increase in prison populations. Minnesota's Sentencing Guidelines has been an exception to this trend. According to research from the early implementation of the guidelines, "During the first 2 years of implementation, Minnesota's guidelines significantly reduced sentencing disparities without putting additional burdens on correctional resources" (Miethe & Moore, 1989: 1).

The initial success of the guidelines is believed to have occurred for several reasons. First, the guidelines in Minnesota are presumptive and supported by legal statute. In other states, guidelines are voluntary and in the end fail to reduce sentencing disparity because judges refuse to utilize them. Second, the Minnesota guidelines are "prescriptive" as opposed to "descriptive." Thus, instead of relying strictly on past practices to suggest appropriate sentences (i.e., "descriptive"), the Commission in Minnesota established their own sentencing standards using a "modified" retributive philosophy (Miethe & Moore, 1989). Third, the Minnesota guidelines structures two key sentencing decisions: (1) whether or not to incarcerate the defendant, and (2) the length of the sentence. Presumptive

prison sentences are intended for offenders convicted of serious offenses. This particular guidelines, unlike others, indicates an in/out decision as well as a presumptive range, leaving little room for discretion and potential disparity (Meithe & Moore, 1989). Finally, in developing the guidelines the Commission was concerned with possible increases in incarceration rates and took into consideration the limited resource of prison bed space in the state. All of these factors, it was believed, lead to the successful implementation of guidelines early on.

Miethe and Moore were funded in the mid-1980s to study the effects of implementing the guidelines on various aspects of the sentencing process. The questions they addressed included:

- How did the introduction of guidelines impact charging, plea negotiations, and other sentencing practices from the preguidelines era?
- Are sentences more uniform, neutral, and predictable?

Their research examined sentencing trends during the first four years after implementation of the guidelines. The findings of their study suggest that sentences were in fact more predictable and uniform, particularly for the disposition decision (in/out) (Miethe & Moore, 1989: 3). The rate of departure from the presumptive sentence outline in the guidelines for disposition increased steadily over

the four-year period from 6.2 percent in 1981 to 9.9 percent in 1984. On the other hand, the rate of departure for length of sentence decreased slightly over the four years from 8.4 percent in 1981 to 7.6% in 1984.

Under the guidelines system social factors are not supposed to play a part in the sentencing process, yet over the four year period these factors (e.g., race, employment) retained some impact on both the disposition and duration sentencing decisions, albeit the impact was minimal. Results from the initial two years of the guidelines system indicated the presence of uniformity, neutrality and proportionality in sentencing. However, the authors found a changing trend over the last two years of the study period, "there has been some movement back to preguidelines levels in both sentencing uniformity and proportionality" (Miethe & Moore, 1989: 4).

Additionally, Miethe and Moore used a survey to examine the attitudes of criminal justice officials on the subject of the new guidelines. The authors found that a high proportion of officials believed the guidelines were effective in gaining proportionality (90%), uniformity (92%), and neutrality (88%) in sentencing. Many believed the new sentencing system was an improvement over the older indeterminate one. Despite the fact that officials believed the new guidelines achieved their stated objectives, the survey also revealed the fact that officials "grudgingly" accepted the implementation of the guidelines and over the

study period found ways to circumvent the guidelines policies (Miethe & Moore, 1989: 5).

These same officials were asked what changes should be made to the guidelines. Both judges and prosecutors responded they would like to see more flexibility and discretion be added to the process. Further, 16 percent of prosecutors and 20 percent of judges called for the discontinuation of the guidelines system. In order to get around their displeasure with what they viewed to be "unreasonable" sentencing procedures, criminal justice officials admitted they were altering their charging and plea negotiating practices (Miethe & Moore, 1989: 5).

In comparison to preguideline trends, the study results suggest the Minnesota sentencing guidelines were successful in increasing uniformity, proportionality, and neutrality and consequently reducing disparity. In addition, violent offenders were more likely to be incarcerated than prior to the implementation of the guidelines. Both of these objectives were reached without increasing the overall rate of incarceration in the state. This study suggests that although the guidelines were initially implemented and carried out as intended, as time went on there was some erosion to the guidelines' effectiveness, and criminal justice officials grew dissatisfied with them and looked for ways to circumvent the policies. This erosion was in part influenced by subsequent changes in Minnesota's legislation that allowed judges to depart from the presumptive sentences

in certain sex offender cases. More importantly, in 1981, the state Supreme Court allowed departure based on a standard referred to as "amenability to probation" (Miethe & Moore, 1989). These changes, along with others, contributed to the degree of discretion allowable under the sentencing system:

Each of these changes expanded the discretionary authority of criminal justice officials in relation to the guidelines—precisely at the time when increases in sentencing departures and decreases in uniformity and proportionality became apparent. (Miethe & Moore, 1989: 6)

While evidence indicates that early guidelines use diminished the previous existence of disparity sentencing outcomes, modifications after its initial implementation suggest that the uniformity in sentencing and the neutrality, which was once evident, might change over time.

Griswold (1987) tested the notion that sentencing guidelines should diminish sentencing disparity for like-situated offenders. To that end, Griswold examined Florida's sentencing patterns from October 1983 to May 1984 to ascertain whether the newly implemented sentencing guidelines were meeting their goal. Consistent with other sentencing guidelines systems around the country, Florida implemented a system that is supposed to be neutral with

regard to a defendant's race and socio-economic status (Griswold, 1987). Florida's sentencing guidelines were developed to reflect to a certain extent past sentencing practices. Florida's guidelines also permit departure using aggravating and mitigating reasons. Griswold's (1987) findings indicate gender was important in the sentencing outcome for several types of offenses, including robbery, theft/forgery/fraud, and drug offenses. Sentences for women were more likely to be lower than the recommended sentence under the guidelines. Despite the implementation of a sentencing system aimed at reducing disparity, Griswold continued to find differential treatment.

Over the past two to three decades many states in this country, along with the federal government, have significantly changed their sentencing systems. In developing new sentencing policies, the specific experiences and circumstances of women were disregarded. Some scholars are concerned that to address the crime problem in this country and respond more punitively and with certainty to young male offenders, the new sentencing strategies will disproportionately impact women. Early research completed by Miethe and Moore (1989) indicates similar sentencing decisions for women and men with comparable cases. However, it appeared that as time went on, officials unhappy with the

new sentencing policies found ways to circumvent the guidelines. Griswold's findings also indicate that differential treatment based on gender can still occur after sentencing guidelines meant to limit discretion are implemented. Each of these studies examined the effect that gender along with race and class have had on the sentencing process after the implementation of sentencing guidelines. Neither of them, however, specifically considered the impact of sentencing changes over time and whether or not this has disproportionately affected women. The present research study fills the gap in research by examining sentencing practices over time before and after sentencing guidelines were implemented in Minnesota.

Research Study

The research was designed to examine the impact of implementing sentencing guidelines on the sentencing outcomes for men and women offenders convicted of drug offenses (i.e., nontraditional feminine offenses) as compared to property offenses (i.e., traditional feminine offenses). As indicated in this chapter and the chapter to follow, there is some evidence, particularly from research conducted in the 1970s and early 1980s, that suggests that

some women have been treated more leniently and others more harshly by the legal system. Due to comprehensive changes in sentencing systems around the country, it is very likely that any presence of leniency and chivalry or of bias has diminished greatly. Many of the changes have attempted to restrict the discretion of judges and other court officials in determining the appropriate sentence for defendants.

The traditional chivalrous treatment of women, in combination with recent changes in sentencing systems, suggests that this area needs to be revisited in order to understand the impact these policy changes have had, and to understand whether these changes have influenced women disproportionately. To this end, the sentencing outcomes for women and men were examined for three time periods: (1) a "pre-sentencing guidelines era," (2) a "early sentencing guidelines era," and (3) a "current sentencing guidelines era. The research addressed the issue of whether or not women are treated any differently from men by the courts for drug-related offenses.

Organization

Chapter one provided an overview of the research, including the statement of the problem and a brief orientation to explanations of why women have been incarcerated. Chapter one also described the influx of

women into prisons and jails and the life circumstances typical for these women, an overview of changes in sentencing with a movement toward determinate-based sentencing systems, including the state of Minnesota, and research questions. In the remaining chapters, the relevant literature and the research plan are outlined. Chapter Two provides a review of the literature on sentencing disparity and gender. Chapter Three provides an overview of the research, including a review of the data used and the analysis used to test the research hypotheses. Chapter four presents the findings and results of the data analysis and Chapter five discusses implications for policy and future research.

CHAPTER 2: REVIEW OF THE LITERATURE

Chapter two presents a review of the literature on the relationship between gender and sentencing decisions. First, this chapter considers the link between criminological theory and decision-making in court processing. Second, the literature review discusses gender and sentencing in general, including the work of Daly and Bordt (1995), who completed a comprehensive review of studies on the subject. Next, the literature review provides an overview of important variables (legal and extra-legal), that along with gender appear to impact the sentencing decision of convicted offenders. These variables include prior criminal history, pretrial detention, offense severity and/or type, race, socio-economic status, marital status, and number of dependent children. In addition, the review looks at the quality of this research and draws some conclusions as to what is known, and more importantly what remains unanswered about the link between gender and sentencing. Studies regarding each of these variables has played a role in moving the examination of gender and sentencing outcome beyond merely a bivariate level explanation and understanding.

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Gender and Sentencing

The sentencing and legal process has been the subject of much research over the last 50 years. In looking at the research on disparity in sentencing based on gender, scholars have relied on several theories to guide their work including: conflict, labeling and functional theories (Bickle & Peterson, 1992; Nagel & Hagan, 1992)²¹, as well as social construction feminist theory, sex role theory²² and multiracial feminist theory (Kaukinen, 1995; Lorber, 1998). Additional chivalry, paternalism, familial paternalism, 'evil woman' and practicality explanations (Belknap, 1996; Daly, 1989; Flavin, 1995; Spohn & Spears, 1997)²³ have influenced the literature in this area, and lastly jurisprudential or legal models (Crew, 1991; Curran, 1983; Flavin, 1995) have been considered. Much of the research on sentencing initially focused on the impact of race and economic standing on the decision-making process and sentence outcome. Conflict theorists maintained that discrimination based on race and economic standing allowed certain weaker segments of the population to be controlled

²¹ See also Chevalier-Barrow 1992; Daly and Bordt, 1995.

²² Also referred to as sex role traditionalism (Johnson & Sheuble, 1991).

²³ See also Nagel and Hagan, 1992; Bickle and Peterson, 1991; Edwards, 1989; Kaukinen, 1995.

through the criminal justice system.

The role of gender in sentencing did not become a topic of interest in the field until the 1970s. Crew (1991) suggests two reasons for the inattention to gender in the sentencing research. First, women were treated more leniently in sentencing decisions and this is inconsistent with conflict and labeling theories, which dominated the sentencing disparity research. Second, researchers have generally ignored women offenders because of their small numbers. Women represent such a small percentage of those people who come into contact with the criminal justice system that officials and scholars alike have not taken their offending very seriously. Not until recently, with the advent of the women's movement, have women offenders been the focus of criminological theory and research in the criminal justice system. During the 1970s, scholars and policymakers began to recognize that female offenders differed from their male counterparts in several ways. What explained crime causation and punishment for male offenders didn't accurately portray the experiences of women in the system.

The study of the relationship between gender and sentencing decisions is important for a number of reasons. First, sentencing represents the final outcome of several

decision points in the legal process. Ultimately, someone who stands for sentencing has been arrested, held over for trial, charged, and finally convicted of committing a criminal offense. The sentence is the culmination of this entire process in determining whether or not someone violated the criminal law and the type of punishment they should receive for doing so. Second, the courts as a part of the criminal justice system operate to socially control people. How the courts decide who to most completely control and who not to control as fully in turn is influenced by the discretionary use of this authority and power. Third, research that explores the presence of disparity in sentencing examines the possible misuse of discretion, authority, and power, but also examines the factors or reasons behind why discretion is used in a particular way. Finally, examining the influence of gender can shed light on the ways in which stereotypes and cultural images of women affect legal decisions about type and severity of punishment. When differential sentencing does occur, research can provide understanding of the reasons behind it and of how gender influences those reasons.

With some exceptions, research on gender disparity in sentencing generally finds that women have received preferentially lenient treatment at the sentencing stage,

particularly in the decision to either incarcerate or grant probation (Daly & Bordt, 1995; Nagel & Johnson, 1994; Steffensmeier, Kramer, & Streifel, 1993). Several authors, however, temper their general conclusions on the lenient treatment of women by drawing attention to what they believe to be flawed research and methodology (Daly & Bordt, 1995; Steffensmeier et al., 1993). This will be explained in more detail later in this chapter.

The literature on gender disparity at the sentencing stage has developed over the last 30 years. Factors relevant to the study of gender and sentence disparity can be categorized into one of two types: legal factors and extra-legal factors.²⁴ Early research concentrated on the idea that extra-legal variables led to differential treatment among those that came before the courts. For example, early research often found that the courts treated women more leniently than men. While this pattern was accurate to a certain degree, it certainly did not tell the

²⁴ Some factors are referred to as contextual, describing the context in which the court functions and processes criminal cases. These types of variables include measures such as the size of the court (i.e., workload), urban vs. rural, % Black, % Republican, etc. Although these measures are important in describing the court setting and possible influences on the sentencing process, in the current research there is no practical reason for their inclusion. This study involves only two counties in the state of Minnesota. The lack of variation within possible contextual measures would result in the inability to conclude anything meaningful from the findings.

See Kruttschnitt and Green (1984), Steffensmeier et al. (1993), and Daly and Bordt (1995) for a discussion on the importance of contextual effects.

complete story. Research conducted early on failed to control for factors like prior record and seriousness of the offense—both of which were legally relevant and also related to the defendant's gender.

Daly and Bordt (1995) reviewed and analyzed all published empirical studies (N = 50) looking at the link between gender and sentence outcome and published through the middle of 1990 and found mixed results overall. Their results indicated that approximately 50% of the cases reviewed had gender effects resulting in the lenient sentencing of women and another 25% each found either no gender effects or inconsistent effects (Daly & Bordt, 1995: 145).

In addition, Daly and Bordt (1995) considered the quality of the analysis for each study in relation to whether or not gender effects were found. Their findings imply that quality does in fact matter. As the authors expected, more rigorous studies (i.e., use of control variables, multivariate analyses, consideration of prior record) resulted in diminished evidence of gender effects. In addition, gender effects were more often found in the decision whether or not to incarcerate (i.e., In/Out decision) than in sentence length decisions (Daly & Bordt, 1995: 157). While it appears that gender has been an

important determinant of sentencing outcome, the literature indicates that sentencing decisions are more complex. Other variables, either alone or in conjunction with gender, seem to influence sentence outcomes as well.

Next, the literature review details the importance of considering other variables besides gender in the sentencing decision. Legal factors are discussed first, followed by extra-legal factors including socio-demographic measures such as race, marital status, employment, and family structure. Recall that according to the thesis that women and men are treated equally in decisions about sentencing, legal factors such as seriousness of offense and prior criminal record should be most important in explaining sentencing outcomes.

Legal Factors

Theories and explanations such as the equal treatment model (Belknap, 1996), the jurisprudential model (Flavin, 1995) and the legal model (Curran, 1983) maintain that male and female offenders are sentenced based on legal factors. Thus, any differences in sentence outcomes (e.g., type of sentence, sentence length) between convicted male and female offenders are not related to their gender, but instead to

differences in their criminal history and offense severity. According to theories and explanations consistent with this perspective, legal variables are the most appropriate predictors of sentence outcomes. This would also be consistent with determinant based sentencing systems such as the Minnesota sentencing guidelines, which seek to remove extra-legal factors and sentence convicted offenders based on their offense and criminal history.

A defendant's criminal history has long been a consistent predictor of sentence outcome (Daly & Tonry, 1997). Early studies on gender and sentencing ignored this measure, resulting in what appeared to be leniency in sentencing decisions for women offenders. More recent studies on the subject have included the measure in their analyses and have concluded that criminal history is important in determining the sentence outcome. Researchers have operationalized criminal history in several ways, including prior convictions (Bickle & Peterson, 1991; Chevalier-Barrow, 1992; Spohn & Spears, 1997; Steffensmeier & Kramer, 1998)²⁵, prior arrests (Kruttschnitt, 1985; Spohn & Spears, 1997)²⁶, prior drug convictions (Spohn & Spears, 1997), juvenile record (Kruttschnitt & Green, 1984) and most

²⁵ See also Flavin, 1995; Ghali and Chesney-Lind, 1986; Zingraff and Thomson, 1984; Kruttschnitt, 1982.

²⁶ See also Kruttschnitt and Green, 1984; Ghali and Chesney-Lind, 1986.

serious or type of prior conviction (Bickle & Peterson, 1991; Chevalier-Barrow, 1992; Steffensmeier, Ulmer, & Kramer, 1998).²⁷

Many studies confirm that legal variables are important in predicting the sentence outcome of convicted offenders (Bickle & Peterson, 1991; Chevalier-Barrow, 1992; Crew, 1991; Curran, 1983; Flavin, 1995; Kaukinen, 1995; Spohn & Spears, 1997; Steffensmeier et al., 1998;). For instance, Bickle and Peterson's (1991) study looked at the sentences of convicted federal forgery offenders in eight federal district courts over a period from 1973 to 1978. For both men and women, they found the sentencing decisions appeared to be influenced by legally relevant factors such as prior record and offense seriousness.

Spohn and Spears (1997) and Curran (1983) produced similar findings in their studies. In their analysis of gender and the sentencing of drug offenders, Spohn and Spears (1997) found that legally relevant factors significantly influenced sentence outcomes. Although gender was an important predictor of outcome, legally relevant variables such as crime seriousness (seriousness of the drug offense), being on probation, and prior criminal record (i.e., number of prior felony convictions, prior drug

²⁷ See also Kaukinen, 1995; Flavin, 1995.

convictions) were the most important indicators of sentence outcome (1997: 20). In the Curran (1983) study, the severity of the offense, along with number of prior arrests and number of total counts, all significantly impacted the sentencing decision.

In the sentencing literature prior record is oftentimes measured as a simple dichotomous variable-- whether or not the defendant has a prior record. Chevalier-Barrow (1992) utilized a more comprehensive set of indicators for prior record including total number of adult convictions, number of adult convictions against a person, and prior juvenile convictions. Chevalier-Barrow (1992) found support for the connection of legal-based variables including seriousness of offense and prior criminal convictions.

It is expected that legal variables play an important part in sentencing decisions, particularly because many states have moved from an indeterminate sentencing scheme, which allowed the use of discretion by the courts at sentencing, to a determinate sentencing system where discretion is highly discouraged. Consequently, legal variables should have a more profound effect on sentencing outcomes after the guidelines were introduced in 1980 in the state of Minnesota (i.e., time 2 and time 3). Since the guidelines in Minnesota are based upon current offense level

and a criminal history score, and are intended to remove extra-legal influences (e.g., race, income, gender) one would expect to find women and men with similar offenses and the same general criminal history be sentenced in the same manner. Given findings from prior research on the importance of extra-legal factors in the sentencing decision, even after the institution of sentencing guidelines, it is important that research also consider extra-legal variables.

Extra-Legal Factors

This section reviews the importance and relevance of extra-legal factors on sentencing outcomes. Theories and explanations such as conflict, functional, sex role, social construction feminism, multiracial feminism, practicality, 'evil woman,' chivalry, paternalism, and familial paternalism all have contributed to the existing knowledge of sentencing disparity and gender. Prior work in this area provides evidence that other extra-legal variables like race, dependent children, and employment act either alone or in combination with gender to significantly impact sentence outcomes. First, a review of the literature involving the relationship between race, gender, and sentence outcome is

discussed. Possible interaction effects are considered as well. Second, the literature review examines the significance of socio-economic factors, gender and sentence outcome. Third, the literature on gender, sentencing, and the relationship between family status variables, including the presence of dependent children and the nature of their care, along with marital status and living situation is reviewed. Finally, the review of the literature examines the link between gender and sentencing for drug offenses.

Early research looking at extra-legal factors primarily focused on the part race and class had on sentencing outcomes. Much of this research attempted to determine whether or not discrimination was occurring in the courts. According to both the chivalry and the 'evil woman' explanations, the important contribution of extra-legal factors are evidence that patterns of disparity occur at sentencing.

Age

Researchers do not always consistently include age in regression models in the sentencing literature. In studies where age is included it is often entered into the analysis as a control variable with little theoretical interest being attached to the variable. Few studies have directly

examined the role of age in the sentencing literature.

Steffensmeier, Ulmer, and Kramer (1998: 765) observe,

Research findings on the age-sentencing relationship are sparse, and recent research reveals that it is more complex than is usually recognized. On the one hand, most analyses of sentencing merely control for age as a continuous variable and assume a linear effect; these analyses typically report a small or negligible age effect. On the other hand, several studies find when the data are partitioned into "old" versus "young" subgroups-that elderly offenders (e.g., age 50 and over) are treated more leniently than younger offenders (e.g., offenders in their 20s).

Steffensmeier et al., (1995) found a slightly different outcome. The authors found a U-shaped distribution with the very young and those age 30 years and older receiving lenient sentences. The 1998 study also found a U-shaped distribution for age and sentencing, with offenders over 50 and under 21 receiving the least severe sentences (Steffensmeier, Ulmer, & Kramer, 1998: 8). Still other researchers have found no age effects in their sentencing research (Bickle & Peterson, 1991; Spohn & Spears, 1997).

Race

Several researchers have focused on the importance of the interaction between race and gender on sentencing

outcome (Bickle & Peterson, 1991; Curran, 1983; Gruhl, Welch, & Spohn, 1984; Spohn et al., 1985; Spohn & Spears, 1997; Steffensmeier, Kramer, & Streifel, 1993). Work looking at the importance of race in sentencing has been framed using a conflict perspective, which rests on the belief that justice is administered disparately in order to protect the power and interests of white males (Chevalier-Barrow, 1992). Other theoretical perspectives have been influential in the work examining race and sentencing, including labeling and functional theories as well as feminist theories supportive of an interactions perspective, or what Lorber (1998) refers to as 'multiracial feminism.' Both labeling and functional theories rely on typescripts or stereotypes of groups of people (race in this case) to support power relationships within society (Bickle & Peterson, 1991). An intersections feminist approach acknowledges the fact that there are overlapping layers of power and oppression based on gender, race, and class for example.

Young (1986) argues that black women are treated differently by the criminal justice system based on contrary gender expectations. Based on the notions of Lombroso and Pollak's work, "good" women were viewed as idealizing traditional feminine qualities (e.g., passive, gentle, emotional) and "bad" women were believed to violate this

image (e.g., aggressive, deceitful, lacking maternal qualities, masculine, etc.) (Young, 1986). Black females typically were portrayed as bad women and the gender role expectations for black females were different than those for white women:

There was little concern with race and class differences in the determination of the good woman, of the woman deserving of "protection." The gender role expectations of black females not only differed from those for good white females; in the case of black females, even the most positive characterization, that of the mammy, had negative implications. (Young, 1986: 311)

In sum, there are clear indications that women of color and white women have been treated differently by both the courts and corrections systems.²⁸ Research involving gender and decision-making stages in the criminal justice system must also consider the real possibility that there exists an interaction between gender and race in affecting decision outcomes. Differential treatment or chivalry may be selective based on the woman's race, which in turn impacts gender role expectations applied to her.

²⁸ In the early part of the 20th century, Rafter (1990) points out, there are two competing ideologies about women offenders; both are dominated by race images. First, there is the image of the 'fallen woman' who is likened to a child who is fragile and vulnerable. These offenders who were typically white were sent to reformatories where they would be trained to be better women and to know their place in society. The other image involved a 'darker side' of women. These offenders, who were for the most part black, were perceived to be more masculine, independent, assertive, and potentially violent and were treated as such. Their treatment was more severe and more in line with how males were punished by the corrections system. See also Klein, 1995.

Empirical research concerning the independent effects and the interaction effect of race and gender provide mixed results. Spohn and Spears (1997), and Curran (1983) failed to find race effects, while Spohn et al., (1985), Bickle and Peterson (1991) and Steffensmeier et al. (1993) discovered varying degrees of some support for race as an important predictor. Using data from felony cases heard in a northeastern city between 1968 and 1979, Spohn et al. (1985) looked at the interaction effect between gender and race in conviction and sentencing decisions. Their findings suggest that while women were treated more leniently than men were, the difference disappeared when race and gender were considered together. According to Spohn et. al. (1985:178), "the analysis reveals an interaction between race and gender that has heretofore gone unnoticed. While black women are less likely than black men to be incarcerated or sentenced harshly, their sentences are comparable to those of white men." The complexity of the relationship between the gender and race of the defendant and sentencing outcomes in this study supports the intersection perspective that power and oppression are linked to social structures that are interwoven. It appears that black women are treated more harshly than white women which may indicate the occurrence of racial discrimination, and more leniently than black men which may indicate the presence of paternalism (or chivalry) (Spohn, et. al., 1985: 184).

Bickle and Peterson (1991) examined whether or not the

impact of gender-based family roles varies depending on the race of the defendant. They looked at the interaction between race and the following variables: marital status, source of economic support, emotional support, and living arrangement. The findings from these interactions indicate that family roles usually benefited black women over white women (Bickle & Peterson, 1991). More specifically, being married and providing emotional support for dependent children resulted in a more favorable sentence outcome for black women as compared to white women. The authors suggest that it not enough to just be a mother for black women, they also must perform the role of mother "well" (Bickle & Peterson, 1991: 388).

Another common group of measures in the gender and sentencing literature involves that of socio-economic status. This includes information about income, economic dependency and employment. The next section addresses the literature involving these measures.

Socio-economic status

Drawing upon such theories as the conflict perspective, the social construction of gender, and sex role traditionalism, socio-economic status measures are considered in several sentencing studies. Defendant's socio-economic status is measured in several ways in the literature, including income (Kruttschnitt, 1980), sources of economic support or economic dependency (Bickle &

Peterson, 1991; Kruttschnitt & Green, 1984), and employment (Bickle & Peterson, 1991; Kruttschnitt, 1980). A woman's economic status is important because whether or not she is employed and therefore independent or economically dependent (for example on her husband) is an indicator of the level of informal social control she experiences within the family setting (Kruttschnitt, 1984). Kruttschnitt (1984) contends that women who are economically dependent on men will be treated more leniently by the courts because of the informal social controls associated with the traditional female roles (e.g., wife, mother) they fulfill. Once again we see traditional gender role expectations impacting the sentencing decision for women, albeit this time in the form of economic dependency. Crew's (1991) results also indicate an interactive relationship between gender and other factors. For example, consistent with Kruttschnitt's work involving a dependency measure (i.e., being dependent financially), the combination of being a woman and also being unemployed resulted in more lenient sentences.

Kruttschnitt (1980) looked at the significance of a woman's social status on sentencing outcomes. More specifically, she included measures such as economic rank and employment status, along with age and prior criminal record. Race and the income of the defendant were used as indicators for stratification and economic rank. Employment status was measured using temporarily unemployed, retired/health problems, welfare/not looking, housewife,

student, and employed, all measured using dummy variables. Kruttschnitt found that the social status of women was influential in the sentencing process. She concluded:

...there does in fact appear to be a significant relationship between the types of sentences accorded women offenders and their degree of social integration. A woman may not be engaged in full-time employment, but if she is perceived as either working toward that goal or fulfilling that goal in the home, she will probably be treated at least as well as, if not better than, she would be if she were employed. (Kruttschnitt, 1980: 259)

Therefore, women who were poor and who were not seen as being part of the mainstream social arena, and who had been involved previously with the criminal justice system were treated more harshly by the system. We find in the literature, particularly from the work of Kruttschnitt, that gender role expectations are similarly linked to a woman's economic dependency within the family setting related to what she refers to as a type of informal social control. From Kruttschnitt's work it appears as if a woman's employment status and family status are intimately linked with one another. Being unemployed and not contributing to the economic status of the family in no way hurts women as long as they are fulfilling another expected role in society, that of mother, one of the variables discussed in the next section.

Family status

Over the last decade sex role theory (i.e., gender role expectations) and social construction of gender, in addition to practicality, paternalism and familial paternalism explanations, have informed provocative research on the contribution of family indicators in the relationship between gender and sentencing. Family status is indicated by measures of marital status (Bickle & Peterson, 1991; Chevalier- Barrow, 1992; Crew, 1991; Kruttschnitt, 1980), the presence and number of dependent children (Bickle & Peterson, 1991; Chevalier-Barrow, 1992; Daly, 1987; Kaukinen, 1995; Kruttschnitt, 1980), as well as level or quality of care for dependent children (Bickle & Peterson, 1991; Kaukinen, 1995) and practicality issues stemming from the removal of a mother from her children (Steffensmeier, Kramer, & Streifel, 1993).

Statistics indicate that a large percentage of women who are involved in the criminal justice system have children and are the primary care-givers for those children at the time of their arrest. As indicated in the previous section, Kruttschnitt found that the employment status (i.e., employed full time or working towards full time employment) of women along with their role as a full time mother in the home were connected with one another. Her research indicated that the courts believed being a full time mother in the home was as socially acceptable as being employed full time outside of the home. Therefore, women

who were unemployed were not penalized if it was shown they were full time mothers and stayed home with their children. They were in a sense being rewarded with lenient treatment by the courts for maintaining a traditional household, fulfilling their role in the family as mother and wife, as opposed to contributing to the economic area of the family.

Daly (1987) explored the importance of having dependent children for female offenders and whether or not having children was influential on the type of sentences received in one northeastern jurisdiction. She examined the decision-making process of court officials by interviewing prosecutors, defense attorneys, probation officers, and judges.

Many have attributed lenient treatment to the paternalistic views of the courts and judges. Daly developed this idea further by examining the role children play in the differential treatment. Her research indicated that paternalistic views of women were not as simple as previous research had reported. Instead the paternalism or the "protective" concerns toward women were in fact directed at their children or family. Court decisions protected the family in one of three ways (Daly, 1987: 282):

- (1) keeping families together;
- (2) maintaining familied defendants' labor for families, and especially women's caretaking labor; and
- (3) protecting those dependent on a defendant's economic support or care.

Daly's interviews with judges suggest that they use familial paternalism to rationalize differential sentencing. The emphasis on families interacts with the gender of the defendant to impact sentencing decisions.

Thus, there is a difference between defendants with or without families and differences between male and female defendants with families (Daly, 1987). Court officials, according to Daly (1987: 284), "think of this differential treatment not as discrimination but rather as legitimate and pragmatic justice." The significance of Daly's work is its focus on the reasons behind the decision-making process of court officials concerning the gender differences and sentencing. Others account for this type of treatment on practicality grounds. "The practicality thesis contends that women are treated more leniently because of concerns about the welfare of children if women are incarcerated" (Bickle & Peterson, 1991:373).

Kaukinen (1995), like Daly, examined the reasons behind differential sentencing based on gender. From interviews conducted with judges in Ontario Canada, Kaukinen (1995) generated typologies of judges based on their construction

of and use of motherhood in the sentencing process. She addressed the following questions in her study, "How is motherhood socially constructed by various judges and how were expectations formed and carried out in the decision to sentence a woman?" Kaukinen found that many of the judges she interviewed held expectations of women that were primarily based on traditional stereotypes of womanhood and limited gender roles. Further, she found that the defense lawyers used motherhood in order to explain women's criminal actions. By doing this, defense lawyers believed their clients would receive favorable treatment by the courts. Thus court officials other than judges reinforced this particular view of women by also portraying women using traditional images.

Kaukinen's work not only acknowledges the relationships between a woman's familial role and her sentencing outcome, but moves further beyond this general observation, as Daly did, by using qualitative methods in an attempt to understand how and why judges use the issue of motherhood during the sentencing process. The presence of dependent children was the single most important determinant of the sentencing decision for Kaukinen's sample of judges. In addition, judges also looked at how the mothers carried out their duties. As a result, Kaukinen found that judges used one of four strategies in sentencing women offenders.

First, some judges utilized traditional definitions of womanhood as well as motherhood in their sentencing

decisions. Women are assumed to have these family responsibilities and thus receive leniency based on these assumptions (Kaukinen, 1995: 8). The goal of this strategy is to keep families intact and therefore the mother at home with her dependent(s). Within this perspective is the assumption that women are mothers first, and provide the primary care for their children. "Motherhood is assumed to be a normal process within the life of all women" (Kaukinen, 1995: 68).

The second strategy used by judges is to determine if the women who come before them and their courts are "good" or "bad" mothers. Just because you have dependent children and are the primary caregiver of those children does not necessarily translate into automatic leniency from this group of judges. Motherhood can actually work against some women if the judge believes the woman is a "bad" mother. As Kaukinen suggests, "...these judgements often act to marginalize the conditions and experiences of some many women....[those] women who are lesbians, single, working outside the home or deviating in other ways" (1995: 68). Therefore, it appears that women are treated leniently only when they are deemed "good" mothers.

A third group of judges tried to follow a gender-neutral strategy, and ignore the differential responsibility women typically have in the raising and care of their children. Finally, a group of judges tried to not presume things about the women in their courts, but instead

attempted to "sensitize" themselves to the unique and specific circumstances for each woman. Judges in this group attempted to gain an understanding of how different dispositions would affect the lives of these women. Therefore, judges in this group tried to understand the reasons why women were in the legal system and the circumstances around their involvement (Kaukinen, 1995). As a result of these various approaches, Kaukinen suggests:

Sentencing strategies utilized by sentencing judges may thereby be seen as the result of the way in which judges identify and construct motherhood for women offenders. The sentencing of women lawbreakers consequently depends on the way in which women's criminal behaviour and motherhood are socially constructed by the judiciary. (1995: 9)

The reinforcement of traditional gender role expectations acts as a method of social control over women. Women are expected to be mothers and have primary responsibilities involving their role as mother. Judges using traditional definitions of womanhood reject the significance of women's economic responsibilities. As a result judges do not recognize that many women who are involved in the criminal justice system are economically responsible for themselves and their family. In a sense, women are being punished for not meeting traditional expectations of womanhood. Women who do not fit these gender constructions are viewed as "true" deviants and

punished as such. Reinforcing these images of womanhood within the legal system legitimizes this particular view of women and maintains women in these prescribed roles and positions within our society.

In addition, Kaukinen found that judges also used motherhood to construct and explain women's criminality, especially in the case of property offenses. For example, a traditional feminine offense such as shoplifting is often explained away by the woman's need to provide for her children. Thus, as Kaukinen puts it, "criminal behaviour is often defined as something arising out of the woman's role as mother" (1995: 77). Constructing female criminality in this way supports the argument that leniency is also offense specific. In other words, women who commit traditional female crimes such as property offenses receive leniency because the criminal behavior falls within the scope of what is expected from them as women or as mothers.²⁹ Judges in Kaukinen's (1995) study believed women committed different

²⁹ According to Kaukinen (1995) judges in her study of traditional images of women and sentencing often tried to explain why a woman might steal or shoplift. She states,

Rather than attempting to find explanations grounded in the social and economic conditions experienced by many women, some of the judges in the present research viewed female criminality in terms of the pressures of child care responsibilities. Women offenders are assumed to be parents and their theft offenses are constructed in terms of their role as mothers providing care for their families. Women's property offenses are identified as arising out of the pressures of motherhood. This judge had identified only one type of female offender, the mother struggling to feed her children. This construction does not describe the majority of women who are involved with the criminal justice system. Motherhood is identified and rationalized as the cause of women committing crime. (Kaukinen, 1995: 78-79)

crimes than men and for different reasons. "There appears to be a construction of the types of crimes all women commit and consequently the type of sentencing approach which is appropriate for all women" (Kaukinen, 1995: 42).

This would explain other research evidence that finds that judges treat women in a punitive and severe way when they commit offenses that fall outside this rationality. Women who commit nontraditional female offenses such as crimes against persons or drug offenses are likely to find themselves dealt with in a more punitive manner. In committing these types of offenses, women have moved outside of what is expected of them in their roles as women and mothers. Consequently, they become labeled as "bad" mothers and the court feels no obligation to keep these women with their children and families.

Other researchers also found positive support for the gender/motherhood and sentencing relationship (Chevalier-Barrow, 1992; Steffensmeier, Kramer, & Streifel, 1993). Chevalier-Barrow (1992) explores the significance of legal variables, socio-demographic characteristics, and family responsibilities in the sentencing decisions for both felonies and misdemeanors in the state of Pennsylvania in 1977. As for the family status indicators, Chevalier-Barrow found women received preferential treatment even after controlling for family status variables. In addition, family status significantly affected the likelihood of receiving a prison sentence. Those offenders who were not married and

those offenders who had fewer dependent children were more likely to be incarcerated (1992: 54). Additionally, there were no gender interactions with either of the family status measures in relation to any of the sentencing outcomes. Overall, Chevalier-Barrow (1992) discovered that legal factors were most important in explaining sentence differences between men and women offenders. Still, there was some support for the idea that courts do consider the potential impact of removing mothers from their children. Judges appeared to be unwilling to remove women from their family setting. This was an opinion shared by the judges in Steffensmeier's (et. al., 1993) study as well. Judges rationalized this differential treatment based on their belief that the conditions of prisons were bad and no place for women with dependent children.

How judges and other court officials rationalize disparate sentences should provide insight into the presence of paternalism or chivalry, and other reasons for differences in sentencing. This rationalization process, however, can also work to the detriment of women offenders. As we have seen, when women tend to live their lives outside of what is expected from them based on traditional gender role expectations they may in turn be penalized for their behavior with harsher sentences from the courts. The type of offense committed by women is also intricately tied to gender role expectations.

In their analysis of convicted federal forgery

offenders, Bickle and Peterson's (1991) examined similar variables as did Kaukinen. Bickle and Peterson (1991) examined the importance of gender-based family roles on sentencing decisions over a period from 1973 to 1978. The study utilized several measures of family status/ role factors, including marital status, the presence of dependents, support for dependents, defendants' source of economic support, and the defendants' living arrangement. By determining the level or degree of support to children, the authors were able to consider two possible factors: (1) the nature of the family role the defendant served, and (2) how well they performed their family role (Bickle & Peterson, 1991: 379).

The authors found that family roles do play a part in determining sentence outcome and are related to the defendant's gender. Women offenders were less likely to receive a prison sentence than were men offenders (34.7% vs. 50.2 %). Additionally, the factors important in the sentencing decision were different for men and women. Unlike Kaukinen and Daly's results, Bickle and Peterson (1991) found that family role measures had little to do with the sentencing outcomes for women. Instead, important factors involved legally relevant variables (i.e., prior record, seriousness of the offense, and pretrial custody). For men, legal variables were also significant (i.e., number of counts, offense seriousness, prior criminal convictions) as well as employment. Two family status variables, marital

status and emotional support for dependents, significantly influenced the sentence outcomes of men. Men who were married³⁰ were more likely to receive a prison sentence, whereas men who did not give significant emotional support to their dependent children were less likely to be incarcerated for their crime (Bickle & Peterson, 1991).

Based on the research to date, gender role expectations tied to the family (i.e., wife and mother) are oftentimes influential in the sentencing outcomes for women. Whether this is due to concern for keeping families intact because women tend to be the primary caregivers for their children, or because of practical concerns of where the children would live and who would care for them needs to be studied further. How, if any, would the response from the courts (i.e., lenient sentencing practices) change if the crimes committed by women involved non-traditional feminine offenses such as drug-related crimes? Women fulfilling a gender role expectation of motherhood on one hand, may be viewed as violating another gender role expectation in the type of crime they commit, thus negating any possible leniency they ordinarily experience. In the next section, this question is addressed in the available research on the sentencing of women for drug-related offenses.

³⁰ According to Bickle and Peterson this relationships resulted in an unexpected direction. The authors explain, "Perhaps more severe punishment accrues to male offenders who are married because officials perceive them as doubly deviant: they violate the law and, in so doing, jeopardize the well-being of others (i.e., their wives and perhaps children).

Drug Offenses

Despite the increased numbers of women convicted for drug offenses, little research has considered directly the impact of gender on the sentencing of drug offenders. What research has been completed on gender and the sentencing of drug offenders indicates mixed results, with some studies indicating evidence of preferential sentencing decisions for women (Albonetti, 1997; Chevalier-Barrow, 1992; Spohn & Spears, 1997) and other studies evidence of non-preferential sentencing decisions (Daly, 1987; Steffensmeier et al., 1993).

A prior drug offense is potentially important as a predictor of sentence outcome for women offenders. Both Steffensmeier's and Daly's work provides a hint of evidence that judges oftentimes view women drug offenders as being as culpable and as likely to recidivate as men drug offenders, which is not the case for most offense categories. Daly's (1987) work suggests that while women with children often receive leniency in their sentencing outcomes, this is not true when the case involves a drug offense.

Steffensmeier, Kramer, and Streifel (1993) found a similar outcome using 1985-87 sentencing guidelines data from Pennsylvania. Regarding sentencing for drug offenses, the authors found that gender had a negative effect for drug violations with women receiving sentences which were "slightly longer" than those given to male defendants (p.

430). Several judges during the course of follow-up interviews commented that "female drug offenders were unlikely to get a 'break' because they are 'every bit as likely to get into trouble as are male druggies' " (Steffensmeier et al., 1993: 434-35).

Bush-Baskette (1996) explored Chesney-Lind and Fienman's contention that the "war on drugs" has been a "war on women," and that the dramatic increase in the incarceration of women offenders has been the result of the increased punitive focus on drug offenses. Felony incarceration rates for the federal system and the state systems of New York, New Jersey and Florida were studied for the years 1945-1987 (federal level) and 1960-1987 (state level). A longitudinal analysis was completed looking at the effect of the "war on drugs" in changes to federal and state policies had on incarceration rates. Bush-Baskette (1996) concluded that the impact of the "war on drugs" in the federal system and in New York, New Jersey, and Florida did not have significant influence on incarceration rates of women offenders.

Spohn and Spears (1997), like Bush-Baskette, recently examined Chesney-Lind's position involving the "war on drugs" and its effect on women offenders. To that end, Spohn and Spears (1997) indirectly tested³¹ Chesney-Lind's contention that the increasing number of women flooding the

³¹ Spohn and Spears acknowledge that they indirectly test Chesney-Lind's argument since they are using cross-sectional data and not looking at treatment of women drug offenders over time.

prison systems around the country is due to the "increased willingness of contemporary judges to sentence female drug offenders to prison" (1997: 2). In addition, the researchers explored the importance, if any, of "familied" defendants and the presence of prior drug offenses. As indicated previously, there is some evidence that shows that chivalry or preferential treatment of women by courts is dependent upon whether or not they have children and are caring for them, or in some cases serving another highly valued gender role (e.g., wife).

Using data for convicted felony drug offenses from Cook County, Illinois, Spohn and Spears (1997) built on the works of Chesney-Lind (1995), Daly (1987), and Steffensmeier et al., (1993) and tested two propositions. First, the growth in the female prison population is the result of contemporary judges' willingness to imprison women convicted of drug offenses, and second, there is an interaction between gender, other offender characteristics, and sentence outcome. In the case of the former proposition, the researchers hypothesized that there would be no gender differences in either the sentencing to prison or sentence length decisions. For the latter, Spohn and Spears made the argument that gender may be influential for "certain types" of offenders, but not others, thus the necessity to explore the specified interaction effects.

Spohn and Spears (1997) found that males were more likely than females to be sentenced to prison, even after

controlling for legally relevant facts such as prior record and crime seriousness. Thus, it appears that even female drug offenders experience significant levels of preferential treatment. With regard to the possible interaction effects of gender with other influential factors, particularly dependent children and prior drug offenses,³² the results indicated that gender did not influence the sentencing decision for offenders who had dependent children. The same pattern held for the interaction between gender and a previous drug offense. There were no gender differences in whether or not the offender was sentenced to prison. However, for those offenders who had no prior drug offenses, the analysis revealed that men were significantly more likely than women to be incarcerated (Spohn & Spears, 1997). Although limited in its generalizability in testing Chesney-Lind's position, the results do provide minimal evidence in support of the argument.

Spohn and Spears' work indicates that women still experience a significant amount of preferential treatment by the courts, even for drug offenses. However, as indicated by Daly's work, women who had dependent children and who were convicted of drug offenses were not given this same leniency. This finding was supported in Spohn and Spears' work as well. This is consistent with the proposition that women who are perceived to be "bad mothers" might not receive the same treatment as women who are perceived to be

³² The authors did not consider the interaction between gender and race.

"good mothers." Based on interviews with judges, Spohn and Spears concluded that "women convicted of drug offenses, like women convicted of child abuse or prostitution, may be perceived as inadequate mothers whose children would be better off living with relatives or in foster homes" (1997: 28).

Two additional studies also produced results that indicate lenient sentencing for women who committed drug-related offenses. Chevalier-Barrow (1992) found evidence of leniency in her study of gender and sentencing in the state of Pennsylvania. Using data collected prior to the introduction of sentencing guidelines in that state, Chevalier-Barrow found the presence of an interaction between gender and current offense. In the case of drug offenses, women were sentenced more leniently than similarly situated men. Significant differences between sentencing practices involving women and men disappeared when sentence length was considered as the dependent variable (Chevalier-Barrow, 1992: 51). Albonetti (1997) examined sentencing disparity for drug defendants sentenced under the federal sentencing guidelines system. Her research also found that gender, along with other defendant characteristics (e.g., ethnicity, education), significantly influenced sentencing outcomes for federal drug offenses.

Exploring the relationship between gender and sentencing for drug-related offenses is worthwhile. Significant sentencing reforms over the last one to two

decades in response to "war on drugs" declarations of the 1980s allows for an important examination of the policy implications of such reforms. As was argued earlier, policies in the criminal justice system are oftentimes developed and implemented neglecting women and their involvement with crime. Sentencing reforms, and particularly sentencing reforms in the area of major drug legislation presents us with an opportunity to explore this concern and to address the question of whether or not sentencing reforms, including those in the area of drug offenses, have disproportionately affected women in comparison to men. The next section reviews the literature on existing studies of gender and systems with sentencing guidelines.

Studies on Gender and Sentencing Guidelines Decisions

Research examining the occurrence of gender disparity in sentencing outcomes in jurisdictions having implemented sentencing guidelines is limited to studies conducted in states such as Florida, Pennsylvania, and Minnesota, as well as at the Federal level. Many of the evaluations of guidelines systems to date have focused on disparity in a general sense, looking at a myriad of offender characteristics (e.g., class, race, age, and gender). The research findings indicate that even after the

implementation of determinate-based sentencing policies in jurisdictions around this country, the defendant's gender still appears to be influential in sentencing, whether it involves sentencing to prison (Steffensmeier et al., 1993), reasons for departures from the recommended sentence (Kramer & Ulmer, 1996; Steffensmeier et al., 1993)³³, or length of sentence (Albonetti, 1997).

Federal Sentencing Guidelines

Albonetti (1997) analyzed sentencing outcomes in connection with defendant characteristics, guilty pleas, and guideline departures for drug offenses under the federal sentencing guidelines for data from 1991-92. She found that gender, along with race, significantly impacted sentence length with females receiving shorter sentences. In addition, there was evidence of an interaction between gender and race. Black women tended to receive shorter

³³ Steffensmeier et al., (1993: 433) found five justifications for departure from sentence guidelines that favored women defendants and they included:

- (1) defendant has a nonviolent prior record (e.g., a high prior record score that consists solely of property offending),
- (2) defendant has mental or health problems (e.g., jailing would overburden the jail staff and would harm rather than help the defendant),
- (3) defendant is caring for dependents or is pregnant (e.g., jailing would not protect the community in the long term and would be inhumane, risky, and possibly costly),
- (4) defendant played a minor role in the crime or was only an accomplice, and
- (5) defendant showed remorse (e.g., "felt bad about what she/he had done").

sentences in comparison with similarly situated white women.

Pennsylvania Sentencing Guidelines

Studies by Steffensmeier et al. (1993) and Kramer and Ulmer (1996) examined disparity under the Pennsylvania sentencing guidelines. Steffensmeier et al.'s (1993) data from 1985-1987 indicate "modest support" for the gender disparity model. However, as the authors point out, the effect of gender was influenced by how the dependent variable was defined in the analysis. For instance, when "In/Out" was defined by incarceration in either jail or state prison women were less likely to be incarcerated when compared with men. When "In/Out" was defined by incarceration in state prison only, women and men were equally as likely to be incarcerated (Steffensmeier et al., 1993: 424). Finally, the authors found that gender had no impact on the sentence length decision.

In additional analyses of the Pennsylvania sentencing guidelines system, Kramer and Ulmer (1996) considered possible disparity tied to sentencing departures. According to the authors, departures represent a "window of discretion" for judges working within a guidelines system (1996: 81). Departures represent a way for judges to sentence defendants outside of the prescribed ranges and

therefore introduce possible disparity related to individual defendant characteristics. As in Minnesota, the Pennsylvania system requires judges who depart from the sentencing guidelines to explain the reasons for the departure in writing. Legal factors, particularly criminal history and offense severity, is most influential in dispositional departures. As for gender, women are two times as likely to receive dispositional departures in comparison to men (Kramer & Ulmer, 1996). Kramer and Ulmer (1996) found that gender had little if any impact on durational departures and legal factors contributed the most in explaining departure decisions. Its not enough to simply conclude that gender is influential in departures based on the finding that women are more likely than men to receive a sentence departure. More important are the reasons behind the departures. Kramer and Ulmer concluded that departure reasons could in fact be attributed to a defendant's race and gender. The most common downward departure reasons based on race and gender involve:

- 1) Defendant is remorseful/good candidate for rehabilitation;
- 2) Guilty plea/plea bargain;
- 3) Defendant is caring for dependents, court is unwilling to disrupt family ties;
- 4) Defendant is employed, court is unwilling to disrupt job ties;
- 5) Offense or prior record is qualitatively less serious than the guideline scores indicate. (Kramer & Ulmer, 1996: 98-99)

The authors report in their findings that the above reasons for departure are often given in the cases of women and white people. Further, interviews conducted with judges indicate that under sentencing guidelines, gender and race stereotypes seem to assist judges in determining who should get a "second chance" or who is likely to not recidivate, and consequently receive a sentence departure (Kramer & Ulmer, 1996: 99).

In an attempt to hold on to some level of decision-making and discretion, judges may be finding ways to circumvent sentencing guidelines when they do not agree with the prescribed sentence. For example, several of the departure reasons identified above in Kramer and Ulmer's study are similar to several extra-legal factors that are related to gender and to lenient sentences for women (i.e., the presence of dependent children, amenability to rehabilitation). Judges use what discretion "windows" they have available to them to sentence in ways they feel are

appropriate given case specific situations.

Steffensmeier, Kramer, and Streifel's (1993) work involved sentencing guidelines data from Pennsylvania as well. Using 1985-87 data the authors analyzed the extent to which gender influenced judges' decision to incarcerate defendants. The authors found that gender influenced the likelihood of the defendant being imprisoned (women being imprisoned less often than men), but no difference was found in the length of the sentence. Steffensmeier et al.'s (1993) result suggests that gender has a slight impact on the in/out decision when compared to the effect from the defendant's criminal history. Thus it appears from Steffensmeier's work that gender may not impact both sentencing decisions (In/Out and sentence length) equally.

Florida Sentencing Guidelines

Florida's guidelines system is based upon four factors: (1) the primary offense and additional offenses, (2) prior convictions, (3) legal status at the time of the offense, and (4) the amount of victim injury (Griswold, 1987). In a prior analysis of experimental guidelines in Florida it was determined that women were sentenced more leniently when compared with men.³⁴ Griswold (1987) evaluated Florida's

³⁴ In the state of Florida, sentencing guidelines were developed and

sentencing guidelines in order to determine if new sentencing reforms had abolished unwarranted sentencing disparity. The author examined the influence of gender and several other specified independent variables on the dependant variable, sentencing deviation.³⁵ Using this type of dependent variable permitted the author to use a measure that was sensitive to size of deviation from the recommended sentence as opposed to simply whether or not the sentence deviated from the recommended sentence (Griswold, 1987: 322).

Griswold's (1987) results showed that gender was related to deviations for three offense categories: robbery, theft/forgery/fraud, and drugs as well as for all offenses.³⁶ Further the direction of deviation was positive, which meant women were sentenced below (i.e., more leniently) the recommended sentences for these offenses. These findings add evidence to the position that even after implementing determinate sentencing reforms aimed at reducing disparity, disparity is still present in sentencing. Griswold's study also makes the point that continued disparity may be offense

implemented in four of twenty circuits. An initial study of the guidelines was conducted eight months after their implementation. After the apparent success of the guidelines in the four circuits, the sentencing guidelines were implemented state-wide.

³⁵ Sentence deviation was computed by first subtracting the Actual Sentence from the Recommended Sentence and then dividing that figure by the Recommended Sentence.

³⁶ Gender was not significant for the following offense categories:

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specific or as the author contends, related to the seriousness of the offense.

Minnesota Sentencing Guidelines

Moore and Miethe (1986) evaluated the Minnesota sentencing guidelines one year after its implementation in order to determine whether or not system objectives were being met (i.e., sentencing based on legally relevant variables). According to their findings, sentencing outcomes substantially complied with the prescribed guidelines. As would be expected under the guidelines system, the seriousness of the convicted offense and criminal history were the "primary determinants" of the presumptive disposition and duration (Moore & Miethe, 1986: 266). As to whether or not departures were used in Minnesota as they were in Pennsylvania, Moore and Miethe found that for the most part exceptions to the guidelines were "situationally specific" and did not appear to be used in a significant way to circumvent use of the guidelines.³⁷

Murder/manslaughter, sexual, violent, burglary, weapons, and other.

³⁷ Moore and Miethe (1986) did however qualify their conclusion based on two issues. First, they state, "we cannot with absolute certainty rule out model misspecification as an alternative explanation for the generally low predictive power of our equations" (268). Further, the authors contend that the generally low predictive power of the equations "reflects a generally high degree of compliance with the Commission's policies on the use of sentencing departures and consecutive sentences. Second, and of more concern is the possibility that departures from the presumptive sentence are used to "adjust" sentences in accordance with

Dispositional departures were used in fewer than only 15 percent of all felony sentences (Moore & Miethe, 1986: 269).

Knapp (1984) also reviewed the Minnesota Sentencing Guidelines system in her three-year evaluation after the initial implementation of the guidelines. In Knapp's analysis of relative severity of sanctions across gender subgroups, she found that in 1981 (the first year after the implementation of the guidelines) women offenders received shorter sentences (7.6 months less) than their male counterparts (Knapp, 1984: 67).³⁸ In the following year, women still received shorter sentences; however, the difference decreased somewhat (6 months less in 1982). In 1983 this trend changed, with women receiving slightly longer (3 months) sentences than a comparison group of men (Knapp, 1984: 68). Over a two year period after the guidelines had been implemented, there appears to have been a significant shift in sentencing men and women offenders, at least in regard to sentence duration.

what officials feel are appropriate in the specific type of case.

³⁸ The severity of sanctions for gender was determined by comparing the severity of sanctions given to women with those given to men. This controls for severity level and criminal history score so that differences can be examined for similarly situated offenders. In the case of gender, male dispositional patterns were applied to women offenders and then compared with what the women actually received. See Knapp (1984) for a further explanation regarding this analysis.

Conclusion

A review of the literature concerning gender and sentence outcomes in systems having undergone reforms shows mixed results. Despite the introduction of sentencing reforms around the United States that sought to eliminate differential or biased sentencing practices, the research offers evidence that gender in some cases is still influential in sentencing decisions. Given the number of studies conducted in this area, it is a bit premature to draw any firm conclusions; much more research needs to explore this issue. The lack of research on the role of gender in determinate sentencing systems is one of several criticisms of the literature to date. Criticisms surrounding the literature on gender and sentencing practices suggest some fruitful ground for future research endeavors as well as ways in which research can be improved. These criticisms are outlined in the next section.

Criticism of the Gender and Sentencing Research

Over the last two decades researchers have examined whether or not a defendant's gender has any impact on the type of sentence received (Armstrong, 1977; Daly, 1987; Kruttschnitt, 1980; Mann, 1984; Spohn, Welch, & Gruhl, 1985;

Steffensmeier, Kramer & Streifel, 1993; Steffensmeier, 1980; Zingraff & Thomson, 1977). While findings have been mixed, it is generally believed that women have experienced a noted amount of preferential treatment from judges and the courts. Findings from early studies on gender and sentencing indicate women were treated more leniently than men were. However, these same studies were later criticized for their weak methodology, including neglect of important control variables (Steffensmeier, 1980; Zingraff & Thomson, 1977).

Researchers have identified several common problems with the literature on gender and sentencing. In addition to methodological weaknesses, other criticisms include the use of old datasets, and conceptual limitations tied to explanations of lenient sentencing for women.

Several methodological problems, particularly in early studies on gender and sentencing, have clouded our understanding of the relationship between gender and sentencing outcomes (Curran, 1983; Flavin, 1995; Kramer & Ulmer, 1996; Sphon & Spears, 1997; Steffensmeier, 1980; Steffensmeier et al., 1993). First, early studies on sentencing disparity failed to control for relevant legal variables such as prior record and the seriousness of the offense (Steffensmeier, 1980; Steffensmeier et. al., 1993; Zingraff & Thomson, 1977). Studies not controlling for prior record and seriousness of the offense may have inappropriately concluded that women were treated more leniently than men, when in fact the leniency was the result

of women committing less serious offenses and having a less extensive criminal record than men had.

Also, recent studies examining the relationship between gender and sentencing decisions have included other non-legal variables believed to be influential such as race (Mann, 1984; Spohn, Welch, & Gruhl, 1985), social status (Kruttschnitt, 1980), and familial factors (Daly, 1987; Steffensmeier, 1980). Last, Steffensmeier (1980) points out that many of the early studies used weak analytic designs (i.e., bivariate analyses). In more recent studies the use of multivariate techniques have enabled researchers to control for other possible influential factors such as those of age, employment status, and race (Steffensmeier, 1980).

Another area of criticism involves the use of out of date datasets in examining the relationship between gender and sentencing outcomes (Flavin, 1995; Kramer & Ulmer, 1996; Nagel & Johnson, 1994; Spohn & Spears, 1997; Steffensmeier et al., 1993). A significant number of studies looking at gender and sentencing outcomes have been criticized for using old datasets and consequently not being representative of today's sentencing systems. Nagel and Johnson (1994: 182) suggest:

Much of this research contained in these works is based on data collected in the 1960s and 1970s. In the 1980s, however, significant efforts were made to reform sentencing systems at both the state and federal levels. These reforms were designed to substantially reduce judicial sentencing discretion, to reduce unwarranted sentencing disparities, and to reduce race, gender, and class discrimination. Moreover, these reforms, at least at the federal level, shifted the focus of sentencing from "offender" characteristics, such as family and community ties, education, and employment, to "offense" characteristics and the offender's criminal history. If successful, these reforms will reduce the favorable treatment previously afforded female offenders, by increasing both their incarceration rate and the length of their sentences.

As reported previously in this proposal, scholars writing in the area of gender and crime have discussed the arguable impact that sentencing reforms have had on women offenders. A larger body of literature using more recent data (1980s and 1990s) reflecting sentencing policy changes would help shed light on how these reforms have impacted women since their implementation. The research outlined here will look at the sentencing patterns for women before and after the implementation of sentencing reforms in order to gain an understanding of how, if any, sentencing has changed for women in relation to men.

A final concern with the available literature relates to the conceptual problems with differential treatment

(i.e., leniency for women). Spohn and Spears (1997: 4) indicate,

[J]udges who sentence female offenders more leniently than similarly-situated male offenders may be motivated more by beliefs of blameworthiness and by concerns about the social costs of incarcerating women than by paternalism or stereotypes of sex-appropriate behavior.

In other words, leniency may not be associated necessarily with one's gender per se but instead associated with what Daly and Tonry (1997: 232) refer to as "gender-linked criteria" such as care for dependent children and amenability to treatment and rehabilitation.

Summary

The results of the literature review on gender and sentencing outcomes provides evidence that both legal and extra-legal variables have been influential in sentencing decisions. This suggests that in some cases the equal treatment position or the legal model (or jurisprudential) is supported. In other cases the differential treatment position or conflict theory, sex role theory, and chivalry as well as familial paternalism explanations are supported. Just how and when this occurs is in need of further

clarification.

This study seeks to address several issues that remain unresolved. First, it is evident from the review of the available literature that the role of gender in sentencing is unclear. In the current study, gender was examined at three different time periods: (1) pre-guidelines, (2) early guidelines, and (3) current guidelines. This research ascertained how gender influenced sentencing over a span of almost twenty years, encompassing significant sentencing changes. Very few studies of this nature have been completed to date and those that have been conducted have involved shorter time periods and have included gender as just another variable.

Second, a review of the literature shows that leniency as advocated by the chivalry perspective is not universal for all women, but instead is explained by other factors related to gender, race, and type of offense such as femininity, motherhood and marriage. The selective application of the law to women in many cases has been tied to traditional gender expectations, for example traditional 'feminine' crimes and care for dependent children. The current research examined the discretionary sentencing of women offenders based upon other gender-linked factors such as caring for dependent children and marital status (i.e., traditional gender roles). Again, unlike other studies, the research explored how the influence of these social characteristics have changed (if at all) when moving from an

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indeterminate sentencing philosophy to a determinate one.

Third, the small number of studies specifically looking at the impact of gender differences in the sentencing of drug offenders indicates that this research was greatly needed. Two aspects were important and were pursued within the current research. As the literature suggests, leniency is sometimes denied to women who commit drug offenses. Evidently judges perceive the level of blameworthiness for women drug offenders to be on level or above that for men drug offenders. Therefore the current research used sentencing data for drug-related offenses and property offenses to look at possible interactions between gender and offense type. The study compared gender disparity across two categories of offenses, one representing traditional "feminine" offenses (i.e., property offenses) and the other representing non-traditional "feminine" offenses (i.e., drug offenses). Additionally research on sentencing drug offenses was needed in order to look at the effect of the "war on drugs" on women offenders.

Fourth, very few empirical investigations of Chesney-Lind's notion that the "war on drugs" has been a "war on women" exist. The one identifiable investigation utilized a cross-sectional analytic strategy. This study intended to build upon the previous study by looking at the "war on drugs" and gender using data from a time period before major drug legislation was enacted in the state of Minnesota and using data from a period of time after the implementation of

major drug legislation.

Research Questions

The following research questions guided the research plan:

- (1) *Are convicted women less likely than convicted men to be sentenced to prison in general, and for each of the three time periods, controlling for type of offense?*

Of those offenders sentenced to prison, are women likely to have shorter sentences than men?

Research suggests that women have commonly been sentenced in a lenient manner. However, research has shown that leniency may be crime specific. For example, women who commit traditional "feminine" crimes may continue to enjoy a certain amount of preferential treatment, whereas, women who commit nontraditional offenses (e.g., drug offenses, homicide), may face severe sentencing or at the very least, sentencing that is equivalent to that given to men committing similar offenses. Women who commit nontraditional "feminine" crimes violate their gender roles and in a manner not socially acceptable based on their role in society. It appears that these women receive more severe responses by the courts.

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Will leniency be evident across all time periods? Sweeping changes in sentencing systems and a shift to determinant sentencing philosophies and practices have tried to reduce and even eliminate sentencing disparity that is based on individual-level factors including gender. Thus, we might find leniency under the "pre-guidelines" era (i.e., 1978) when judges had a tremendous amount of discretion in handling cases, but not under the "early guidelines" era (i.e., early 1980s) or the "current guidelines" era (i.e., 1994) due to the introduction of determinate-based sentencing structures.

- (2) *Are different factors predictive of the sentence outcomes of men and women for drug and property offenses, in general and for each of the three time periods?*

Have these predictive factors changed over time for men and women?

Leniency may be also situation specific, whether or not a woman is "familied" as Daly suggests. For women who fulfill their socially acceptable roles such as mother and caregiver in the family, research has indicated, also experience more preferential treatment, in comparison to women who don't fulfill these roles. Consequently, women who either do not have children or are not the primary caregivers of them (e.g., do not reside with them) may find themselves treated

more harshly by the courts.

Again, prior to the sentencing guidelines being created in Minnesota, the judges had expanded discretion and were more at liberty to use different factors in sentencing men and women defendants. After the implementation of the sentencing guidelines, it is conceivable that the judges could no longer use different factors in deciding appropriate sentences, thus the same factors would be used in the decision.

- (3) *Has the "war on drugs" been a "war on women?" In other words has major drug legislation disproportionately affected women in terms of sentencing in comparison with men?*

Chesney-Lind suggests that the women are the unintended targets of our recent "get tough on drugs" strategies, yet have felt the majority of the punishment for drug-related offenses. She contends the "war on drugs" has translated into a "war on women" and that recently instituted drug laws intended to address young, violent, male drug dealers have instead disproportionately affected women offenders. The sentencing of men and women drug offenders was examined and compared across time periods in order to look at treatment separately for men and women before and after changes in drug legislation during the late 1980s.

In conclusion, this chapter provided an overview of the

theories and explanations in the literature concerning the relationship between gender and sentencing. The chapter began by discussing several general reviews of the literature such as the one completed by Daly and Bordt (1995). The chapter continued with a discussion of the relevance of legal and extra-legal factors to sentencing outcomes stemming from conflict, labeling, and functional theories, along with chivalry, familial paternalism, and sex role explanations. In addition to gender, this included a review of studies on sentencing decisions examining variables such as prior record, offense type, race, socio-economic status, marital status, and motherhood. The chapter next discussed the influence of considering gender in the development of recent sentencing reforms throughout the United States. Prior research studies were reviewed, demonstrating problems with weak methodology and out-of-date datasets. The next chapter outlines the methodology that was used to test the stated hypotheses.

CHAPTER 3: METHODOLOGY

Hypotheses

A review of the literature on gender and sentencing disparity and differential treatment suggests several hypotheses:

- H₁: Under the pre-guidelines sentencing period (1978) women offenders who fulfill traditional gender role expectations (e.g., mother, commit traditional feminine offenses) are significantly more likely to receive lenient decisions at the In/Out sentencing stage, when compared to men in similar situations.
- H₂: Under the pre-guidelines sentencing period (1978), no significant differences will be found between men and women offenders at the sentence length decision stage.
- H₃: Under the early guidelines sentencing period (1981,82 and 84), no significant differences will be found between women and men offenders in either of the two sentencing outcomes (i.e., imprisonment, length of sentence) they receive, even after taking into account measures related to gender role expectations.

- H₄: Under the current guidelines sentencing period (1994), no significant differences will be found between women and men offenders in either of the two sentencing outcomes (i.e., imprisonment, length of sentence) they receive, even after taking into account gender role expectations.
- H₅: As a result of introducing sentencing guidelines and changes in drug legislation in the state of Minnesota, women will have been disproportionately affected in a negative manner (i.e., reflecting a larger gap between sentencing practices before and after the sentencing changes) when comparing sentencing practices over time.
- H₆: As a result of the "war on drugs" era, one would expect that the probability of incarceration would increase more dramatically for women when compared to men.

The Study Site

Minnesota was selected for the study site for several reasons. First, the state has been a leader in developing and implementing sentencing reforms over the last twenty years. The study offers the chance to examine a model determinate sentencing system that underwent extensive planning and development prior to its implementation. Unlike other sentencing guidelines systems, Minnesota

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utilizes a presumptive approach that is legally binding. Many other sentencing guidelines systems are voluntary and have been easily thwarted by court officials who do not agree with philosophical changes and/or eliminating their discretion at sentencing. Consequently, Minnesota's system is a good site to examine the impact of "real" sentencing reforms on women.

Second, the Minnesota Sentencing Guidelines Commission (MSGC) which was created with the specific purpose of developing and implementing guidelines is likewise responsible for collecting sentencing information for all convicted felons on an annual basis and makes that data available to researchers around the country. In addition, the researcher was involved in prior research with the study site (Hennepin and Ramsey Counties) and therefore had access to other necessary data (i.e., PreSentence Investigation Reports from 1994).

Finally, data were available for offenders sentenced prior to the implementation of guidelines through the commission. Minnesota Sentencing Guidelines Commission collected data on convicted felons prior to implementation for use in their own internal comparison and evaluation study. The existing data enabled the researcher to look at factors of interest pre- and post-guidelines implementation.

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The Data

The data used in the current analysis was obtained from two sources: (1) the Minnesota Sentencing Guidelines Commission, and (2) Ramsey and Hennepin County PreSentence Investigation Reports³⁹ (for 1994 dataset only). Datasets for three specific time periods were used in order to compare the sentencing process and outcomes for men and women for drug-related offenses and property offenses within and across these time periods. The datasets used in the analysis include the following:

- (1) 1978; also referred to as "Pre-guidelines Data"
- (2) 1981-82,84; also referred to as "Early-guidelines Data"
- (3) 1994; also referred to as "Current-guidelines Data"

The three time periods were selected in order to achieve a number of objectives. First, data from 1978 represents information on sentencing practices in the state before the establishment and implementation of sentencing guidelines in 1980. Thus, it captures sentencing decisions under an indeterminate sentencing system; hence, there might be more

³⁹ Supplemental data for socio-demographic measures were collected for those defendants sentenced in 1994 for drug and property offenses in the counties of Ramsey and Hennepin in order to make comparisons with the other time periods.

disparity found in the sentencing decisions between male and female defendants during this time period. Second, sentencing patterns from the 1978 dataset were compared with sentencing patterns from two time periods after the implementation of sentencing guidelines policies (i.e., "early guidelines" or 1981-82, 84 and "current guidelines" or 1994).

The 1981-82, 84 dataset documents sentencing decisions immediately after the implementation of the guidelines system. The Sentencing Commission collected in-depth information on the sentencing process as part of a statewide evaluation of the guidelines.⁴⁰ The information contained in the dataset is comparable to the information collected as part of the 1978 dataset. The 1994 dataset is essential to the analysis since it represents sentencing that reflects policies put in place after the advent of the "war on drugs" era which resulted in major drug legislation in the late 1980s in the state of Minnesota. Therefore, use of these datasets permits an analysis that examines the impact of this "war on drugs" on the sentencing predictors and outcomes for offenders prior to the introduction of major drug legislation in the state and afterwards to gauge the influence of the legislation on sentencing decisions.

The Guidelines Commission has collected and continues

⁴⁰ The MN Sentencing Commission for 1983 did not collect in-depth information about the convicted offenders. Per a phone conversation with Anne Wall of the Sentencing Commission no reason was given for the absence of this type of information.

to collect sentencing data on convicted offenders for monitoring purposes. The Commission has collected data on the sentencing of convicted felons on an annual basis since the guidelines were implemented in 1980. The information collected by the Commission is generally consistent from year to year; however, specific types of information have been collected reflecting the needs of the Commission and the State. Consequently, it was necessary to match measures in order to make the necessary comparisons for the research plan. For comparison purposes, the Commission prior to the implementation of the sentencing guidelines collected baseline data from 1978.

Information contained in the baseline dataset (year, 1978) included the following types of measures: court processing (e.g., case number, county, date of conviction) disposition and plea information, alleged offense information and victimization, offender characteristics, criminal history, and evaluation from the Pre-Sentence Investigation Report. The dataset for years 1981-82 and 1984 was initially collected by the Commission to study the impact of the sentencing guidelines on sentencing patterns. Thus the information collected in this time period is comparable to the information collected in the baseline dataset from 1978. It provides information on offender characteristics, as well as other important crime processing measures. In addition, this dataset documents information on appropriate sanctions and departures under the new

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determinate-based system. The third comparison time period consists of a dataset for the year 1994. The information available for this specific dataset is much more limited in comparison to the previous time periods. The Commission did not collect socio-demographic information on the defendants sentenced that year. However, this information was available in the PSI Reports in Ramsey and Hennepin Counties, the two most populated counties in Minnesota.

Sample

The sample consisted of convicted drug and property offenders sentenced during three time periods: (1) 1978⁴¹, (2) 1981-82,84 and (3) 1994 in Hennepin (Minneapolis) and Ramsey (St. Paul) counties. The 1978 dataset included convicted felony offenders who were sentenced for either drug or property offenses between July 1, 1977 and June 30, 1978 in both counties of interest.⁴² The second dataset (i.e., 1981, 1982, and 1984) consisted of a sample of all convicted felony drug and property offenders sentenced between May 1, 1980 and September 30, 1981, from October 1, 1981 to September 30, 1982, and from October 1, 1983 to

⁴¹ Fiscal year 1978 (July 1, 1977 to June 30, 1978).

⁴² The entire data set from which the sub-sample of drug and property offenders were drawn consisted of all female offenders and a 42 percent random sample of male offenders who were sentenced for a felony offense during the 1978 fiscal year. The sample contained approximately half of all offenders convicted of a felony in that year. The data were weighted by sex (Wall, 1999).

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September 30, 1984 from Hennepin and Ramsey counties.⁴³ The final dataset included all females convicted of drug-related or property felony offenses during the calendar year 1994 and a 40% random sample of all males convicted of these same offenses from Hennepin and Ramsey counties. A sample of all convicted male drug and property offenders in these two counties was necessary since supplemental information needed to be collected and merged with the existing data. Because of their small numbers, all women were selected for the study from the 1994 data. Limitations of time and money for the research study made it necessary to draw a sample of males.

Two factors were important to consider when selecting an appropriate sample size. *Level of confidence* refers to the amount of error the researcher is willing to accept.

⁴³ The 1981, 1982, and 1984 data sets were supplemented with in-depth data collected on samples of cases. The 1981 in-depth data set contained the population of cases committed to the Commissioner of Corrections and samples of cases given stayed sentences from eight of the more populous counties (Anoka, Crow Wing, Dakota, Hennepin, Olmstead, Ramsey, St. Louis, and Washington). The samples of cases with stayed sentences were stratified by gender and race with female and minority offenders sampled at a higher rate than white males to increase the representation of the smaller sub-populations. Data were weighted to indicate the population of cases the samples are designed to represent (Wall, 1999).

The 1982 and 1984 in-depth data sets contained the population of offenders committed to the Commissioner from the eight county area mentioned above, as well as samples of stayed cases from each of the eight counties. The samples of stayed cases were stratified by gender and race. Again, data were weighted to indicate the population of cases the samples were designed to represent (Wall, 1999).

Extensive data were collected for study purposes from corrections and court files and included information such as offense behavior, victimization, initial charges, plea negotiation, and offender characteristics. The samples of cases were stratified by disposition, county, race, and sex. See Knapp, 1984 for more details.

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Researchers typically select either a 95 percent level of confidence (5 percent chance of error) or a 99 percent level of confidence (1 percent chance of error) (Rae & Parker, 1992). The second factor, *confidence interval*, relates to sampling accuracy. In other words, "sample size is directly related to the accuracy of the sample mean as an estimate of the true population mean" (Rae & Parker, 1992: 126).

In order to determine the appropriate sample size for variables expressed in proportions (i.e., In/Out sentence outcome) the relationship between confidence interval, level of confidence, and the standard error of the sample were necessary:

$$C_p = \pm Z_\alpha(\sigma_p) \quad (3.1)$$

Where C_p = confidence interval in terms of proportions, Z_α = Z score for various levels of confidence (α), and σ_p = standard error for a distribution of sample proportions (Rae and Parker, 1992: 129).

The standard error for the true population mean proportion is:

$$\sigma_p = \sqrt{\frac{\rho(1-\rho)}{n}} \quad , \text{ therefore} \quad (3.2)$$

$$C_p = \pm Z_\alpha \sqrt{\frac{\rho(1-\rho)}{n}} \quad (3.3)$$

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The sample size therefore yields:

$$\eta = Z_{\alpha} \sqrt{\frac{\rho(1-\rho)}{C_{\rho}}} \quad (3.4)$$

Next, calculating specific sample sizes requires the values of Z_{α} , C_{ρ} , and ρ be known. The most commonly used value for Z_{α} is 1.96 for the 95 percent confidence level followed by a value of 2.575 for the 99 percent confidence level (Rae & Parker, 1992: 129). According to Rae and Parker C_{ρ} is "typically set not to exceed 10 percent and is more frequently set in the 3-5 percent range depending on the specific degree of accuracy to which the findings must conform" (p. 129). Thus it is recommended that the sample proportion fall within a range of ± 3 , ± 4 , or ± 5 percent of the true proportion. Since the true proportion (ρ) is not known, some scholars recommend that a conservative value be applied to handle this uncertainty. The most conservative value would require the largest sample size be drawn. This occurs when ρ is a value of .5 (Rae & Parker, 1992: 129).

Since the population was relatively small with males convicted of drug and property offenses in Hennepin and Ramsey counties (numbering 1,912) an adjustment needed to be made to the standard error to include the finite population correction (a variation from equation 3.4). The equation for calculating the appropriate sample size when the population is small is the following (Rae & Parker, 1992:

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$$\eta = \left[Z_{\alpha} \sqrt{\frac{\rho(1-\rho)}{C_{\rho}}} \cdot \sqrt{\frac{N-\eta}{N-1}} \right]^2 \quad (3.5)$$

Equation 3.5 yields the following:

$$\eta = \frac{Z_{\alpha}^2 [\rho(1-\rho)]N}{Z_{\alpha}^2 [\rho(1-\rho)] + (N-1)C_{\rho}} \quad (3.6)$$

Recall that in the above discussion $\rho = .5$. The appropriate sample size was therefore calculated as follows:

$$\eta = \frac{(1.96)^2 (.25)(1,912)}{(1.96)^2 (.25) + (1,911)(.03)^2} \quad (3.7)$$

The above equation (3.7) yielded the following result:

$$\eta = 685$$

Using a 95 percent confidence level and a ± 3 percent confidence interval (i.e., a conservative range) in terms of proportion, resulted in a sample size of 685 convicted male offenders necessary to obtain accurate sample estimations.

A forty percent stratified random sample (stratified based on county and offenses) of male offenders was drawn, taking into account possible missing cases. A 40 percent sampling strategy resulted in a total sample of 825

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convicted males in 1994. This was well above the prescribed sample size calculated in the equations above.

Supplemental information from Pre-sentence Investigations Reports was collected for the 1994 sub-sample in order that information on key socio-demographic indicators could be merged with the existing Minnesota Sentencing Guidelines dataset and comparisons could be made across time periods.⁴⁴ The supplemental data included: living status, marital status, number of dependent children, involvement with the children (economic, living), education background, and employment status.

Specification of Variables of Interest

The Dependent Variables

The study examined whether gender alone or in interaction with other factors resulted in a more lenient sentence outcome for women offenders. A list of the variables and their definitions are provided in Table 4. For the purposes of this study, sentence outcome was operationalized using two distinct measures: the decision of whether or not to incarcerate the offender (IN/OUT) and sentence length. While an In/Out distinction may blur variation surrounding sentence outcome (i.e., providing a

⁴⁴ The Minnesota Sentencing Guidelines Commission did not collect this

dichotomous outcome versus a more detailed categorization of outcome), Minnesota's sentencing system was designed specifically with this In/Out dichotomy in mind.⁴⁵ Recall the sample consists of only convicted offenders, therefore data existed on all sample members for each measure of the dependent variable sentence outcome. The first measure of sentence outcome, the type of sentence (incarcerate vs. community sanction) was coded into a binary variable reflecting an In or Out decision outcome (i.e., 0=out or not incarcerated, and 1=in or incarcerated in prison). The second measure of sentence outcome was defined as sentence length. The data on sentence length were measured in terms of months.

The Independent Variables

Previous research on gender and sentence outcomes suggested several important variables of interest. The independent variables specified in the analysis were grouped as either control variables or variables of interest. Table 5 identifies each of the independent variables and the expected relationship (i.e., direction) between them and the In/Out sentence outcome. The control variables included

information for convicted persons sentenced in 1994.

⁴⁵ Minnesota's sentencing guidelines were designed using an In/Out sentence decision outcome. The Sentencing Guidelines Grid uses an

several legal factors such as seriousness of the current offense, prior misdemeanors, prior felonies, and custody status. Each of these factors was believed to have a positive relationship with sentence outcomes across all three-time periods (i.e., lead to a higher likelihood of incarceration). For example, having a prior felony results in a higher likelihood of receiving a sentence of incarceration than the defendants not having this sort of background characteristic. It was expected that each of these measures would affect the sentence outcome and must be controlled for.

Control variables also included the county in which sentencing occurred (Hennepin or Ramsey) in order to account for possible differences in the adjudication process. Finally, age and level of education were also included in the study as control variables. A negative relationship between both age and education and sentence outcomes (i.e., older defendants sentenced more leniently) was anticipated for the first time period, while no significant relationship was anticipated for the subsequent time periods.

Table 4: Independent and Dependent Variables

Variables:	Codes:	Variable Definition:
<i>Independent Variables Extra-Legal</i>		
Female	0= No 1= Yes	Defendant's gender
Nonwhite	0= No 1= Yes	Defendant's race
Age	Years	Defendant's age at time of conviction
Single	0= No 1= Yes	Defendant's marital status
Dependent children	0= No 1= Yes	Defendant's dependent children (under 18 yrs)
Education level	1= 8 th and below 2= 9 th to 12th 3= College	The highest education grade completed by the defendant
Employment	0= No 1= Yes	Defendant's employment status at the time of the offense
Hennepin County	0= No 1= Yes	County in which sentencing occurred
<i>Independent Variables Legal</i>		
Drug Offense	0= No 1= Yes	Drug or property offense
Prior Felony	0= No 1= Yes	Prior record for any felony offense
Prior Misdemeanor	0= No 1= Yes	Prior record for any misdemeanor offense
Custody Status	0= No 1= Yes	Defendant's custody status at the time of the offense (e.g., probation, parole)
Severity Level	1 to 10	Severity level based on Guidelines ranking.
<i>Dependent Variables</i>		
Sentence (Prison)	0= No 1= Yes	Defendant's sentence includes incarceration?
Sentence length	Months	Defendant's length of sentence in months • Maximum length used for 1978 data

Table 5: Expected Relationships between Independent Variables and the In/Out Sentence Outcome, by Time Period

Variable:	Time 1	Time 2	Time 3
<i>Variables of Interest</i>			
Female	-	None	None
Nonwhite	+	None	None
Single	+	None	None
Dependent Children	-	None	None
Employment	-	None	None
Drug Offense	None	None	+
<i>Control Variables</i>			
Age	-	None	None
Education	-	None	None
Severity Level	+	+	+
Prior Misdemeanors	+	+	+
Prior Felony	+	+	+
Custody	+	+	+
Hennepin County	None	None	None

Dependent Variables:

- (1) Incarceration Sentence (In/Out); 1= Prison
- (2) Sentence Length (months)

The literature suggests that in addition to gender, extra-legal variables such as race, marital status, living arrangements, dependent children and employment status are also important predictors. These variables of interest were all expected to have varying amounts of impact on sentencing decisions. More specifically it was anticipated that each of these factors would be influential during the first time period when higher levels of discretion by judges and the courts were condoned. Recall that under a determinate sentencing system such as the one implemented in Minnesota

none of these factors were supposed to influence sentencing decisions. Therefore, it was expected that during Time periods 2 and 3, none of these factors would have a relationship with sentence outcome. Offense type (i.e., drug offense or property offense) was also a variable of interest due to the idea that leniency is sometimes connected to the type of offense and whether or not it is a traditional female crime or a non-traditional one. It was believed that an offender with a drug offense would receive more severe sentence outcome based on Daly (1989) and Steffensmeier et. al.,'s (1993) research.

Data Analysis

Several types of analytic statistical techniques were used in order to test the hypotheses including descriptive statistics, bivariate associations, Logistic regression analysis, Ordinary Least Squares (OLS) regression analysis, and equivalence of regression coefficients analysis.

Descriptive Statistics and Bivariate Relationships

First, descriptive statistics were used to summarize and describe general information from the data about the entire sample of property and drug offenders. Second, the analysis looked at the relationship between the specified

variables, examining the degree, direction, form and significance, and statistical independence between each variable with the other (Cuzzort & Vrettos, 1996).

Depending on the level of measurement for each variable, a t-test, Chi-square or gamma were used to ascertain the nature of the bivariate relationship between variables (Agresti & Finlay, 1986).

Logistic Regression Analysis

In order to understand the role gender plays in determining sentence outcome for convicted drug offenders two types of regression analyses were used, logistic regression and ordinary least squares regression. Logistic regression analysis was used to determine the significance of gender and other relevant independent variables, such as the presence of dependent children, on the dichotomous dependent variable "sentence outcome (In vs. Out)". Under Minnesota's sentencing system, "In" refers to incarceration in a state run correctional facility while "Out" refers to a lesser sentence such as incarceration in a locally run facility and/or probation.

$$Y = \alpha + \beta_1\chi_1 + \beta_2\chi_2 + \beta_3\chi_3 + \dots \beta_i\chi_i + \varepsilon \quad (3.8)$$

Logistic regression is a form of Ordinary Least Squares regression (3.8), but is intended for analyses using dichotomous dependent variables such as the In/Out

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sentencing decision here (Bachman & Paternoster, 1997; Kennedy, 1997; Long, 1997). In this instance, the dependent variable is binary, meaning there are only two possible values for the variable (e.g., yes or no). Logistic regression allows one to analyze the effect of one or more independent variables on a dichotomous dependent variable. The relationship between the variables is nonlinear (Bachman & Paternoster, 1997).

The logistic regression model differs from the OLS model because it does not require the same assumptions. For example, the logistic model does not require constant variance. However, there are similarities between both models: both state that the dependent variable is a function of one or more independent variables, data are randomly selected and observations are independent (Bachman & Paternoster, 1997). The logistic model assumes that all predicted probabilities relate to the area under the normal curve. The logistic regression model is estimated using the maximum-likelihood estimation method (MLE). Essentially, "the coefficients are estimated so as to maximize the probability or likelihood of obtaining the observed data" (Bachman & Paternoster, 1997: 572). Estimating coefficients using MLE provides the "greatest probability of obtaining the observed data" (Kennedy, 1997: 21).

The logistic model estimates provide information relating to the odds of an event occurring (i.e., probability of an event occurring over the probability of an

event not occurring). The estimated equation gives the natural log of the odds that an event will occur. Thus, the regression coefficients can be interpreted as the change in the natural log of the odds of the dependent variable associated with a one-unit change in the independent variable (Bachman & Paternoster, 1997: 574). This does not hold too much intuitive meaning. Consequently, one would want to convert these natural log odds into antilogs, which indicates the type of relationship (positive or negative) and amount of change based on a one-unit change in the independent variable.⁴⁶

As in the case of OLS regression models, one can examine the significance of the estimated coefficients for logistic models as well. This enables the researcher to consider the individual effects of each predictor on the dependent variable (i.e., sentence outcome) controlling for all other variables in the model. The specified logistic model can also be examined in terms of its "goodness of fit" to the data. It answers the question of how well the model accounts for variation and predicts the dependent variable.

Several logistic regression equations were estimated in order to study possible gender effects on sentencing

⁴⁶With a continuous independent variable, the logistic regression coefficient cannot be directly interpreted in probability terms. In addition, because the relationship between the independent variable is nonlinear, so that the effect of x on the probability of y depends on the value of x , the logistic regression coefficient cannot be interpreted in the same manner as an OLS regression coefficient. When the relationship between the variables is nonlinear, there is no constant effect of x on y . (Bachman & Paternoster, 1997: 579).

decisions for drug offenders. First, an overall logistic regression equation was estimated on the entire sample, including all three-time periods. Dummy variables were created and introduced into this overall regression equation to reflect different time periods. Overall, was gender significantly related to sentence outcome for data on decisions made during almost two decades? Next, logistic regression equations were estimated for each time period. In other words, three separate equations were specified using the same predictors and outcome measures. This permits one to look at possible gender effects and interaction effects with gender on sentence outcomes for drug (i.e., non-traditional female offenses) and property (i.e., traditional female offenses) offenders *within* each of the three time periods. For each time period, were women and men sentenced in a similar manner? Also, *within* the three time periods, logistic regression equations were estimated separately for men and for women offenders.

Several studies in the literature suggest that while gender may not be a significant predictor overall of sentence outcome, when we look at what contributes to the sentencing decision for men and women separately, we find the factors differ. Thus, by separating men and women and estimating models for each, it could be determined if there are important differences, and further, what those differences entail.

Ordinary Least Squares Regression Analysis

In order to examine the dependent variable, "sentence length" (which is specified in months), ordinary least squares (OLS) regression was utilized (see 3.8).⁴⁷ By using OLS it was possible to find out whether two variables (an independent variable and a dependent variable) are linearly related to one another and to calculate the strength of the relationship (Menard, 1995). OLS is appropriate due to the fact that the dependent variable is continuous (i.e., sentence length in months) and an equation is being estimated using multiple independent variables (Bachman & Paternoster, 1997). Linear regression models are evaluated on several grounds: (Menard, 1995: 17)

⁴⁷ In order to use Ordinary Least Squares (OLS) regression several assumptions must be met (Menard, 1995:4-5):

- (1) *Measurement*: All independent variables are interval, ratio, or dichotomous, and the dependent variable is continuous, unbounded, and measured on an interval or ratio scale. All variables are measured without error.
- (2) *Specification*: (a) All relevant predictors of the dependent variable are included in the analysis, (b) no irrelevant predictors of the dependent variable are included in the analysis, and (c) the form of the relationship (allowing for transformations of dependent or independent variables) is linear.
- (3) *Expected value of error*: The expected value of the error is zero.
- (4) *Homoscedasticity*: The variance of the error term, is the same, or constant, for all values of the independent variables.
- (5) *Normality of errors*: The errors are normally distributed for each set of values of the independent variables.
- (6) *No autocorrelation*: There is no correlation among the error terms produced by different values of the independent variables.
- (7) *No correlation between error terms and independent variables*: The error terms are uncorrelated with the independent variables.
- (8) *Absence of perfect multicollinearity*: For multiple regression, none of the independent variables is a perfect linear combination of the other independent variables; mathematically.

- (1)
 - a. How well does the overall model work?
 - b. Can we be confident that there is a relationship between all of the independent variables, taken together, and the dependent variable, above and beyond what we might expect as a coincidence, attributable to random variation in the sample we analyze?
 - c. If there is a relationship, how strong is it?
- (2)
 - a. If the overall model works well, how important is each of the independent variables?
 - b. Is the relationship between any of the variables attributable to random sample variation?
 - c. If not, how much does each independent variable contribute to our ability to predict the dependent variable?
 - d. Which variables are stronger or weaker, better or worse, predictors of the dependent variable?
- (3)
 - a. Does the form of the model appear correct?
 - b. Do the assumptions of the model appear to be satisfied?

Each of these various issues and questions can be appropriately answered in the analysis of sentence length.

Recall that the analysis for the sentence length decision included only those offenders sentenced to prison. Sentence Length in months initially could be compared using mean number of months for men and women offenders who are

sentenced to state incarceration. Separate OLS equations were specified for each of the time periods to examine possible gender effects, as well as other important predictors of the sentence length.⁴⁸

Equivalence of Regression Coefficients Analysis

Finally, in order to answer the question about whether the "war on drugs" campaign in this country has been a "war on women," an analysis which included testing for the equality of regression coefficients between two independent equations was used (Brame, Paternoster, Mazerolle, & Piquero, 1998). This type of analysis allows one to look at the magnitude of coefficients between the independent and dependent variables across specific reference groups (e.g., women and men), as well as whether the relationship between two variables remains the same for different time periods.

Brame et al. (1998) reviewed criminological studies testing for the significance of coefficient differences and found two statistical testing formulas were used most often. The authors, however, suggest that one of the equations (specifically the denominator portion) that is often used in the criminological literature produces a biased outcome. Specifically, the formula used by some criminologists produces an inaccurate standard deviation of the sampling distribution. According to Brame and his colleagues (1998),

⁴⁸ Due to the small numbers of women sentenced to prison, separate gender OLS models are not estimated.

the correct formula for this statistical test is the following:⁴⁹

$$Z = \frac{b_1 - b_2}{\sqrt{SEb_1^2 + SEb_2^2}} \quad (3.9)$$

The comparison of regression coefficients involves two steps (Brame et al, 1998: 247). First, one must estimate the difference between the two coefficients in the independent, randomly selected populations (i.e., $b_1 - b_2$). Second, one has to estimate the standard deviation of the distribution of differences from repeated samples (i.e., $\sqrt{SEb_1^2 + SEb_2^2}$).

Using this statistical technique, the regression coefficients for both women and men were tested for equivalence across time periods. In other words, coefficients were tested for convicted women between time 1, time 2, and time 3. The same procedure was used for convicted men as well. Therefore, it was determined if the magnitude of regression coefficients had changed significantly over time for women and/or men convicted of drug offenses (Brame et al., 1998).

⁴⁹ For a more detailed discussion of this statistical formula and its appropriateness in using it to test for the equality of regression coefficients see the works of Brame, Paternoster, Mazerolle and Piquero (1998) and Paternoster, Brame, Mazerolle, and Piquero (1998). Brame et al. (1998) illustrates the problems behind using the statistical formula found in many criminological studies. Type I error occurs 5% of the time when using the appropriate formula, whereas Type I error for the inaccurate formula occurs 20% to 30% of the time.

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Predicted Probability of Receiving a Prison Sentence

In order to understand the impact that certain factors have on the likelihood of receiving a prison sentence, a series of predicted probabilities were computed and compared for specific sub-groups (e.g., gender, offense type, race). The analysis permits one to compare the probability of difference reference groups receiving a prison sentence within time periods as well as changes across time. Thus, one can look at the "war on drugs" issue using predicted probabilities to examine the impact of significant drug legislation had on the likelihood of offenders being sentenced to prison.

Sample Selection Bias

Sample selection bias was a concern for this study, as it is a concern with most sentencing studies. Recall that two dependent variables were examined across the three time periods: an In/Out decision and sentence length. Sample selection bias occurs because data for the sentence length variable is contingent upon whether they were incarcerated at the first decision stage. In other words, those offenders not incarcerated for their offenses have missing data for the sentence length outcome. According to Winship and Mare (1992:328), "Sample selection is a generic problem in social research that arises when an investigator does not observe a random sample of a population of interest."

Specifically, when observations are selected so that they are not independent of the outcome variables in the study, this sample selection leads to biased inferences about social processes." Thus, selection bias occurs when there is correlation between the error and the independent variables.⁵⁰

The criminal justice system represents a series of stages where people are filtered out of the system at various decision points (i.e., arrest, charge, conviction, etc.). A problem occurs when cases that are processed out at earlier stages (e.g., case dismissal, etc.) have certain characteristics that remaining cases do not that reach the sentencing stage (D'Alessio & Stolzenberg, 1993).⁵¹ Several problems arise as a result of sample selection bias (Berk, 1983). Sample selection bias in the study might disguise the "true" relationship between gender and sentence outcome. First, if gender discrimination actually occurs at the sentencing stage, sample selection bias may hide the real nature or direction of this relationship (Klepper, Nagin &

⁵⁰ In the Heckman model the correlation occurs between the observed and unobserved factors influencing crime processing in the sampled population (Klepper et al., 1983: 68).

⁵¹ Klepper et al., (1983: 64) offers the following example for illustrative purposes,

prosecutors and judges may possess a great deal of qualitative evidence about a case that the investigator cannot observe from court records. In other instances, the investigator may not observe other, less qualitative types of evidence, such as whether the criminal used a weapon. The combination of screening and incomplete measurement implies that criminals reaching the later processing stages are not representative of the unobservable features of the population of cases entering the system. This introduces the possibility of sample selection bias.

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Tierney, 1983). Second, it could be more difficult to find gender effects in the analysis of sentence length because the women who remain are the most serious offenders in this group. Regardless of the potential problem, it is necessary to attempt to account for the sample selection bias so that researchers can confidently make reliable inferences from research conducted on criminal justice processing.

Research from sociology and economics has developed ways to handle bias connected to sample selection. Klepper et al., (1983: 78) identify three strategies to respond to selection bias:

- (1) Measure the relevant factors well enough to eliminate the nonzero covariance between the disturbances in the selection and the regression equations. This will eliminate sample selection bias entirely.
- (2) The investigator can consider the imposition of an exclusion restriction on the model.
- (3) If none of the above approaches can be implemented satisfactorily, then the investigator can always resort to the bounding approach. While this approach does not yield a consistent estimate of the regression coefficient vector, it will indicate the potential magnitude of the selection bias.

Further, regardless of whether the researcher uses the exclusion or the bounding approach, he or she will only be able to take account of bias at processing stages in which data are available. One will not be able to address sample

selection bias that has occurred at prior stages where data are not available on cases (e.g., arrest, conviction stages in this study), that have dropped out.

Several correction measures are available to researchers⁵², including Heckman's correction for sample selection bias. Heckman's correction is widely cited and used throughout the literature.⁵³ Heckman's two step process will be used to analyze the sentence length model. The length of sentence is a function of two factors: (1) a linear combination of regressors and (2) a hazard rate reflecting the influence of the selection equation" (Berk & Ray, 1982: 369). The correction process involved the following steps. First, logistic regression was used to estimate the likelihood of an offender receiving a sentence of incarceration. For each case in the logistic model the predicted probability of exclusion from the sentence length sample was computed (i.e., Hazard rate).⁵⁴ Second, the hazard rate was entered as an independent variable into the OLS model for sentence length. This procedure controls for the probability of each case not receiving incarceration (Sphon & Spears, 1997).

⁵² See Winship and Mare (1992; Klepper, Nagin, and Tierney (1983); Berk and Ray (1982) for discussions of other available corrections methods.

⁵³ Heckman's work is also the subject of several critical reviews, including that by Stolzenberg and Relles (1990).

⁵⁴ See Heckman (1979: 157) for a detailed explanation of the steps involved in calculating a Hazard rate.

Conclusion

The study examined the role gender plays in the sentencing of drug offenders convicted in the state of Minnesota. In addition, the research explored the question of whether or not sentencing reforms such as the ones implemented in Minnesota disproportionately impacted women. This chapter presented a detailed research plan to study these issues. Finally, several limitations of the design were identified and addressed including how the study handled sample selection bias. The analysis of the data is described in the next chapter.

CHAPTER 4: ANALYSIS OF DATA

As was indicated in Chapter 1, the purpose of the research was to increase our understanding of the impact of sentencing reforms on female offenders. The analysis of data examined these sentencing reforms in several ways. The analyses included (1) descriptive statistics of the overall sample and sub-samples for both sentence outcomes, (2) logistic and ordinary least squares regression models to determine the relevance of gender and other significant factors have on sentencing practices, and (3) a test for equivalence of coefficients to explore the "war on women" argument and look at the effects of sentencing reforms have on women more generally. First, a descriptive analysis of the sample and respective time periods is presented.

Sample Characteristics

Full Sample

A total of 4,076 offenders spanning the three specified time periods comprised the entire sample. Table 6 details characteristics of the overall sample as well as for the individual time periods. Fifty-eight percent (N=2368) of

the offenders were sentenced in Hennepin County, whereas 42% (N=1708) of the offenders were sentenced in Ramsey County. Recall that the research plan involved examining sentencing practices for convicted drug offenders and property offenders (the latter used for control purposes). Just over three-quarters of the sample (77% or N=3159) were involved in property offenses, while the remaining 23% (N=917) were involved in drug offenses. The seriousness of the offense varied from a severity level of one to a severity level of eight. The average severity level for the overall sample was 3.08 (s.d.=1.49).

The overall sample was predominantly male (72% or N=2919), almost evenly distributed along the specified racial groups, white (52% or N=2117) and nonwhite (48% or N=1959), and were likely to be unemployed (55% or N=2239 vs. 32% or N=1259 for employed) at the time of their offense. The average age of offenders in the sample at the time of their conviction was 28 years. The education level of the overall sample varies with some offenders having only a grade school or middle school education (10% or N=426), and many more having some amount of high school education (61% or N=2486).⁵⁵ Just over half of the total sample (53% or N=2156) were single, while another 36% were married,

⁵⁵ Includes those who received a GED.

cohabiting, divorced, separated, or widowed (N=1465), and the rest had missing information for this measure (11% or N=455). As for the presence of dependent children, 46% (N=1874) of offenders in the sample had at least one dependent child, whereas 42% (N=1710) did not, and 12% (N=492) were unknown.

Several legal factors for those in the sample are also detailed in Table 6. Fifty-five percent of the sample had some sort of prior conviction, whereas the remaining 45% did not. The distribution is markedly different depending upon the type of prior conviction, felony or misdemeanor. Only 12% (N=490) of the offenders in the overall sample had a prior misdemeanor conviction (88% or N=3586 had none), while 47% (N=1916) had a prior felony conviction (53% or N=2160 had none). Thirty-three percent (N=1330) of the defendants were under the custody of the criminal justice system at the time of their offense. Finally, 25% (N=1006) of the convicted offenders were sentenced to a state prison facility. And of those offenders sentenced to state prison, they received an average sentence of 23 months.

**Table 6: Descriptive Information for
the Overall Sample and Each Time Period**

Variable	Overall (N = 4076)		Time 1 (N= 747)		Time 2 (N= 1958)		Time 3 (N= 1371)	
	#	%	#	%	#	%	#	%
Female								
No	2919	72	508	68	1590	81	821	60**
Yes	1157	28	239	32	368	19	550	40
Nonwhite								
No	2117	52	577	77	997	51	543	40**
Yes	1959	48	170	23	961	49	828	60
Age								
mean	28		26		27		30**	
s.d.	8.27		7.94		7.85		8.53	
range	16-71		16-70		16-71		16-71	
Education Level								
1-9 grades	426	10	95	13	237	12	94	7**
10-12 grades	2486	61	492	66	1350	69	644	47
college	604	15	124	17	224	11	256	19
Missing	560	14	36	5	??	8	377	27
Single								
No	1465	36	311	42	752	38	402	29
Yes	2156	53	402	54	1167	60	587	43
Missing	455	11	34	5	39	2	382	28
Dependents								
No	1710	42	383	51	1054	54	273	20**
Yes	1874	46	324	43	860	44	690	50
Missing	492	12	40	5	44	2	408	30
Employment Status								
No	2239	55	415	56	1256	64	568	41**
Yes part/full	1259	32	271	36	622	32	402	29
Missing	542	13	61	8	80	4	401	29
Hennepin County								
No	1708	42	280	38	764	39	664	48**
Yes	2368	58	467	62	1194	61	707	52
Drug Offense								
No	3159	77	577	77	1710	87	872	64**
Yes	917	23	170	23	248	13	499	36
Severity Level								
mean	3.08		2.73		3.01		3.38**	
s.d.	1.49		1.25		1.37		1.70	
range	1-8		1-7		1-7		1-8	
Prior Misd.								
No	3586	88	666	89	1668	85	1252	91**
Yes	490	12	81	11	290	15	119	9
Prior Felony								
No	2160	53	529	71	887	45	744	54**
Yes	1916	47	218	29	1071	55	627	46
Custody								
No	2746	67	629	82	1214	62	917	67**
Yes	1330	33	139	18	744	38	454	33
Sentence								
OUT	3070	75	118	15	627	32	264	19**
IN	1006	25	650	85	1331	68	1107	81
Sentence Length								
X	---		50.57 ^a		23.86 ^b		30.56 ^c	
s.d.	---		36.40		10.33		23.29	
range	---		13.00-240.00		12.10-84.00		12.10-146.00	

* Value is in number of months (N=115).

^b Value is in number of months (N=627).

^c Value is in number of months (N=264).

* Significant at $p \leq .05$

** Significant at $p \leq .001$

Full Sample by Gender

Data for all three-time periods were then separated by gender and descriptive information along with significant findings are provided in Table 7. There were significant relationships between gender and several other variables. For instance, there was a significant association between gender and race. The majority of men in the overall sample were white (54% vs. 46%), while the majority of women were nonwhite (53% vs. 47%). In addition women were significantly older than men by an average of three years (27 years of age vs. 30 years of age). As for the relationship between gender and several family related variables, men were significantly more likely to be single (57% vs. 42%) than women and significantly less likely to have dependent children (37% vs. 69%).

Overall, there was a significant association between gender and education level, but none with employment status. Also, men were more likely to be convicted and sentenced in Hennepin County (61% vs. 39%) than in Ramsey County. Women, on the other hand, were equally likely to be convicted and sentenced in both counties (50% vs. 50%).

Table 7: Descriptive Information for Men and Women,
Overall Sample

Variable	Overall (N = 4076)			
	MEN (N= 2919)		WOMEN (N= 1157)	
	#	%	#	%
Nonwhite				
No	1570	54	547	47**
Yes	1349	46	610	53
Age				
mean	27		30**	
s.d.	8.30		7.91	
range	16-71		17-71	
Education Level				
Grade 9 & below	321	11	105	9**
High School	1835	63	651	56
College	369	13	235	20
Missing	394	13	166	14
Single				
No	950	33	515	45**
Yes	1664	57	492	42
Missing	305	10	150	13
Dependents				
No	1490	51	220	19**
Yes	1082	37	792	69
Missing	347	12	145	12
Employment Status				
No	1589	54	650	56
Yes (part/full)	933	32	362	31
Missing	397	14	145	13
Hennepin County				
No	1132	39	581	50**
Yes	1787	61	576	50
Drug Offense				
No	2253	77	906	78
Yes	666	23	251	22
Severity Level				
mean	3.23		2.72**	
s.d.	1.52		1.33	
range	1-8		1-8	
Prior Misd.				
No	2533	87	1053	91**
Yes	386	13	104	9
Prior Felony				
No	1353	46	807	70**
Yes	1566	54	350	30
Custody				
No	1848	63	898	78**
Yes	1071	37	259	22
Sentence				
OUT	2047	70	1023	88**
IN	872	30	134	12

* p ≤ .05

** p ≤ .01

There was no significant difference between gender subgroups and the type of offense committed. However, several legal measures were related to gender. For instance, men on average committed more serious offenses than did women (3.23 vs. 2.72) and had a more extensive criminal history. Overall, 54% of men had at least one prior felony compared to 30% of women, and 13% of men had at least one prior misdemeanor compared to 9% of women. In addition, 37% of men and 22% of women were under some type of custody status with the criminal justice system (i.e., probation, parole, escapee). Finally, there was a significant difference between men and women and the initial sentencing decision. Overall, men were significantly more likely to receive a prison sentence compared to women (30% vs. 12%).

Time Periods

Since the analysis involved examining sentencing practices during each of the time periods, descriptive information is provided for each period presented in Table 6 along with significant associations. First, the percentage of women in the sample changes over time from 32% in Time 1 to 19% in Time 2 and 40% in Time 3, resulting in a

significant relationship between gender and time period. Changes in the numbers and percentages of women are due in part from offense patterns and criminal justice system responses, but also to the differing sampling strategies used by the Minnesota Sentencing Guidelines Commission for various time periods.

The racial make up of the sample significantly changed over time as well. The percentage of nonwhites in the sample continued to increase from 23% in Time 1 to 49% in Time 2 finally to 60% in Time 3. The age of offenders in the three time periods averaged 26 years in Time 1, 27 years in Time 2 and 30 years in Time 3. As indicated in Table 6, there was a statistically significant difference in average age per time period with Time 3 being significantly different than both Time 1 and Time 2.

Offenders' educational level remained relatively constant across time periods, with the exception of a higher amount of missing data in Time 3.⁵⁶ Offenders were often single (54% in Time 1; 60% in Time 2; 43% in Time 3) and had at least one dependent child. The distributions for both

⁵⁶ Missing information was an issue for four measures. Two strategies were incorporated to handle missing information. If data were missing for 10% or fewer of the cases, missing values were replaced by the mean (e.g., grand sample mean or sub-sample mean). However, if data were missing in more than 10% of the cases for a variable, missing values were recoded and replaced with a zero value. Additionally, a newly created variable reflecting the presence of missing data was introduced into the model in order to control for missing information.

Time 1 and Time 2 were similar to one another (43% and 44%), however, the figure increased in Time 3 with 60% of the offenders having had at least one dependent child.

The type of offense, property or drug-related differed by time period. Drug offenses were committed by 23% (N=170) of the sample in Time 1, decreased to 13% (N=248) of the sample in Time 2, and then increased to 36% (N=499) of the sample in Time 3 after the proclaimed "war on drugs." As for the seriousness of the offense, Table 6 provides information on the severity levels for each time period. Average severity levels increased from 2.73 at Time 1 to 3.01 at Time 2 to a high of 3.38 at Time 3. Therefore, the average severity level increased over subsequent time periods. A significant difference in severity levels was found when comparing average scores for each time period. This could be due to changes in sentencing legislation increasing the severity of certain offenses over time, especially drug-related offenses as a result of the "war on drugs" campaign.

The distribution for prior convictions of offenders reveals some noteworthy differences. A significant relationship was found between time period and offenders having at least one prior misdemeanor (11% in Time 1; 15% in Time 2; 9% in Time 3). A large percentage of offenders had

at least one prior felony conviction and a significant relationship was found between time of sentencing and prior felony convictions. Twenty-nine percent of the sample had a prior felony conviction in Time 1, meanwhile that figure almost doubled (55%) in Time 2, and then decreased somewhat in Time 3 with 46% of the offenders reportedly having a prior felony conviction.

Finally, Table 6 details descriptive information for both sentence outcome variables. The decision about whether to incarcerate the offender varied over time (15% in Time 1, 32% in Time 2, and 19% in Time 3) and was significantly related to the time in which the offender was sentenced. Figures for average sentence length were divided according to time of sentencing. Using the maximum sentence length value for Time 1 (i.e., indeterminate sentencing system), the average sentence length was almost 51 months (s.d.= 36.40 and range=13.00 to 240 months).⁵⁷ The average sentence length for offenders sentenced during Time 2 and Time 3 was approximately 24 months and 31 months respectively.⁵⁸

⁵⁷ The current study followed the convention of using the maximum sentenced length under the indeterminate sentencing system, as was done by Stolzenberg and D'Alessio (1994) as well as Moore and Miethe (1986) in their own studies of the Minnesota Sentencing Guidelines.

⁵⁸ Sentence length for the overall sample was not computed due to problems with comparing sentence length in Time 1 with Times 2 and 3. Sentence length in Time 1 (indeterminate sentencing) is defined as the maximum sentence length, while the sentence length for Times 2 and 3 are

In conclusion, sample characteristics differ according to sentencing in one time period as opposed to another. A significant relationship was found between time of sentencing and each of the variables, with the exception of marital status. Differences in descriptive information across time may indicate the possibility that influential factors might vary and influence sentencing decisions as a result of different practices being used at different times.

Gender Differences within Time Periods

Descriptive information for each time period was compared for women and men and is presented in Table 8. Significant relationships between gender and other variables are noted. Several patterns of differences between men and women hold for each of the time periods. For example, women offenders on average, were 2 to 3 years older than men were in each time period. Women also were significantly less likely than men to have been single (never married) in each time period (Time 1 - 38% vs. 61%; Time 2 - 47% vs. 63%; Time 3 - 42% vs. 44%). Additionally, women were significantly more likely to have had at least one dependent child at the time of their offense in comparison to men

presumptive sentences (no minimum and maximum values). Different standards of measurement at Time 1 and Times 2 and 3 make it inappropriate to compare figures across time.

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(Time 1 - 69% vs. 31%; Time 2 - 73% vs. 37%; Time 3 - 65% vs. 40%).

Significant differences were found also for employment status and gender for each time period. Men were significantly more likely to be employed either part-time or full-time for Time 1 (38% vs. 32%) and Time 3 (31% vs. 27%). Women, however, were significantly more likely to be employed either part-time or full-time for Time 2 (37% vs. 31%).

Descriptive statistics for legal factors, for the most part, indicated a more extensive criminal history for men than for women. Men were significantly more likely to have at least one prior misdemeanor when compared to women in Time 1 (13% vs. 7%) and Time 2 (16% vs. 10%), however no significant differences were found in Time 3 (8% vs. 9%). Likewise, significant differences were found between men and women and the occurrence of at least one prior felony conviction for each time period (34% vs. 19% in Time 1; 60% vs. 33% in Time 2; 54% vs. 33% in Time 3). As Table 7 illustrates, men were almost twice as likely as women during Time 1 and Time 2 to have at least one prior felony conviction. Again, men were significantly more likely than women to have custody status at the time of their offense for all time periods (20% vs. 13% in Time 1; 42% vs. 22% in

Time 2; 37% vs. 27% in Time 3). Clearly, men and women have considerably different criminal backgrounds.

Table 8: Descriptive Information for each Time Period by Gender

Variables	TIME 1 (N= 747)		TIME 2 (N= 1958)		TIME 3 (N= 1371)	
	Men #	Women #	Men #	Women #	Men #	Women #
Nonwhite						
No	404	173	861	136	305	238
Yes	104	66	729	232	516	312
Age						
Mean (s.d.)	25 (7.84)	28 (7.80)**	26 (7.85)	28 (7.76)**	29 (8.94)	32 (7.71)**
range	16-70	18-59	16-69	17-71	16-71	18-70
Education level						
Grades 1-9	63	32	194	43	64	30
Grades 10-12	331	161	1110	240	394	250
College	83	41	170	54	116	140
Missing	31	5	116	31	247	130
Single						
No	168	143	566	186	216	186
Yes	312	90	995	172	357	230
Missing	28	6	29	10	248	134
Depend. children						
No	316	67	964	90	210	63
Yes	159	165	591	269	332	358
Missing	33	7	35	9	279	129
Employment						
No	263	152	1038	218	288	280
Yes	194	77	486	136	253	149
Missing	51	10	66	14	280	121
		4	4	4	34	22
		64*	65	59*	35	51**
		32	31	37	31	27
		4	4	4	34	22

Table 8: Descriptive Information for each Time Period by Gender, cont'd.

Variables	TIME 1 (N= 747)		TIME 2 (N= 1958)		TIME 3 (N= 1371)	
	Men #	Women # %	Men #	Women # %	Men #	Women # %
Hennepin County						
No	185	36 95	595	37 169	352	43 312
Yes	323	64 144	995	63 199	469	57 238
Drug Offense						
No	391	77 186	1378	87 332	484	59 388
Yes	117	23 53	212	13 36	337	41 162
Severity Level						
Mean (s.d.)	2.89 (1.33)	2.37 (.97)**	3.14 (1.40)	2.49 (1.11)**	3.61 (1.77)	3.03 (1.53)**
Range	1-7	1-6	1-7	1-7	1-8	1-8
Prior Misd.						
No	444	87 222	1338	84 330	751	92 501
Yes	64	13 17	252	16 38	70	8 49
Prior Felony						
No	336	66 193	646	40 245	375	46 369
Yes	172	34 46	948	60 123	446	54 181
Custody						
No	406	80 209	925	58 289	517	63 400
Yes	102	20 30	665	42 79	304	37 150
Sentence						
OUT	415	82 217	1014	64 317	618	75 489
IN	93	18 22	576	36 51	203	25 61
Sentence length ^a (in months)						
Mean (s.d.)	53.08 (36.1)	39.95 (36.8)	24.29 (10.5)	19.04 (6.6)**	31.38(23.9)	27.83(21.1)**
Range	13.00-240.00	13.00-120.00	12.10-84.00	12.10-36.00	12.10-146.00	12.10-105.00
	(N= 93)	(N= 22)	(N= 576)	(N= 51)	(N= 203)	(N= 61)

* Significant at p < .05

**Significant at p < .001

* Denotes length for only those sentenced to prison (i.e., "IN" decision)

Offense Type

In order to look at possible relationships of importance within offense categories, the sample was divided into property offenders and drug offenders and descriptive and significant findings are presented in Tables 9 and 10. Interestingly, men and women were equally distributed across offense categories. Men comprised 71% (N=2253) of the property offenders and 73% (N= 666) of the drug offenders in the full sample; and women comprised 29% (N=906) of the property offenders and 27% of the drug offenders (N=251) in the full sample. Additionally, no significant differences were found between drug and property offenders in race or marital status.

On the other hand, significant age differences were found, with drug offenders being slightly older than property offenders (29 yrs. vs. 28 yrs.). Education level, employment status, and the presence of at least one dependent child were all significantly related to the type of offense. For instance, drug offenders as compared to property offenders (49% vs. 45%) were significantly more likely to have had at least one dependent child and also be employed (33% vs. 31%) at the time of their offense.

Table 9: Descriptive Information by Offense Type

Variables	PROPERTY OFFENSES (n = 3159)		DRUG OFFENSES (n=917)	
	#	%	#	%
Female				
No	2253	71	666	73
Yes	906	29	251	27
Nonwhite				
No	1638	52	479	52
Yes	1521	48	438	48
Age				
mean	28		29**	
s.d.	8.14		8.56	
range	16-71		16-69	
Education Level				
Grades 1-9	349	11	77	8**
Grades 10-12	1969	62	517	56
College	436	14	168	18
Missing	405	13	155	17
Single				
No	1130	36	335	36
Yes	1711	54	445	49
Missing	318	10	137	15
Dependents				
No	1386	44	324	35**
Yes	1428	45	446	49
Missing	345	11	147	16
Employment Status				
No	1800	57	439	48*
Yes part/full	992	31	303	33
Missing	367	12	175	19
Hennepin County				
No	1253	40	455	50**
Yes	1906	60	462	50
Severity Level				
Mean	3.08		3.08	
s.d.	1.20		2.21	
range	1-7		1-8	
Prior Misdemeanor				
No	2735	87	851	93**
Yes	424	13	66	7
Prior Felony				
No	1595	50	565	62**
Yes	1564	50	352	38
Custody				
No	2067	65	679	74**
Yes	1092	35	238	26
Sentence				
OUT	2311	73	759	83**
IN	848	27	158	17

* Significant at $p \leq .05$

** Significant at $p \leq .001$

Although no significant differences were found between the severity levels of property offenders and drug offenders, important associations were found with other legal variables. For example, drug offenders were significantly less likely to have criminal histories, both in terms of prior misdemeanors (7% vs. 13%) and prior felonies (38% vs. 50%), and were less likely to have custody status (e.g., on probation or parole, escapee) at the time of their offense (35% vs. 26%). Finally, those sentenced for drug offenses were significantly less likely than property offenders to receive a prison sentence (17% vs. 27%).

Next, the data were split a second time based on gender. Descriptive information, as well as significant findings, is presented in Table 10. Recall that no significant differences were reported in Table 9 for race and offense type; however, when the sample was separated by gender, particular significant relationships were discovered. For property offenses, women were significantly more likely to be nonwhite as opposed to white (56% vs. 44%), whereas men were significantly more likely to be white as opposed to nonwhite (55% vs. 45%). In the case of drug offenses, men were equally likely to be white or nonwhite,

while women were significantly more likely to be white (58% vs. 42%).

Another noteworthy difference relates to the severity levels for each offense type. For property offenses, men had significantly higher severity levels compared to women (3.28 vs. 2.60). Yet, for drug offenses there were no significant differences in severity levels.

The results involving legal factors were similar across offense type for both men and women. For prior misdemeanors and prior felonies, men were significantly more likely than women were to have prior convictions. Fifteen percent of male property offenders (10% of female property offenders) had at least one prior misdemeanor and 9% of male drug offenders (4% of female drug offenders) had a prior misdemeanor. The figures for prior felonies for both property and drug offenders increased for both men and women. Fifty-seven percent of male property offenders (32% of female property offenders) had at least one prior felony conviction. Additionally, 43% of male drug offenders had a prior felony conviction as compared to 25% of female drug offenders. The likelihood of receiving a prison sentence was also related to gender despite differences in type of offense, and this difference was more sizeable for property offenses. Men were three times as likely as women to

receive a prison sentence for property offenses (33% vs. 11%).

Conclusion

In order to obtain summary information for the offenders in the study, descriptive information was obtained for all offenders, as well as a comparison of men and women on all variables of interest. Significant associations between time period and variables of interest, along with significant associations between gender and variables of interest, were analyzed and provided. In order to look at summary information within time periods, descriptive statistics were used and information was presented. Again, comparisons were made between women and men on all variables of interest and significant associations were noted. This provided a descriptive analysis of the data used in the study, and next the analysis involves examining bivariate relationships between measures of interest.

Table 10: Descriptive Information by Offense Type
and Gender

Variables	PROPERTY OFFENSES (n = 3159)				DRUG OFFENSES (n=923)			
	Males (n= 2253)		Females (n= 906)		MEN (n= 666)		FEMALE (n= 251)	
	#	%	#	%	#	%	#	%
Nonwhite								
No	1237	55	401	44**	333	50	146	58*
Yes	1016	45	505	56	333	50	105	42
Age								
mean	26.78		29.52**		28.87		30.87**	
s.d.	8.15		7.78		8.60		8.28	
range	16-71		17-71		16-69		18-57	
Education Level								
Grades 1-9	268	12	81	9**	53	8	24	10
Grades 10-12	1461	65	508	56	374	56	143	57
College	254	11	182	20	115	17	53	21
Missing	270	12	135	15	124	19	31	12
Single								
No	722	59	408	45**	228	34	107	42
Yes	1334	32	377	42	330	50	115	46
Missing	197	9	121	13	108	16	29	12
Dependents								
No	1216	54	170	19**	274	41	50	20**
Yes	810	36	618	68	272	41	174	69
Missing	227	10	118	13	120	18	27	11
Employment Status								
No	1310	58	490	54	279	42	160	64**
Yes part/full	696	31	296	33	237	36	66	26
Missing	247	11	120	13	150	22	25	10
Hennepin County								
No	814	36	467	51**	348	52	114	55
Yes	1439	64	439	49	318	48	137	45
Severity Level								
mean	3.28		2.60**		3.06		3.13	
s.d.	1.24		.93		2.21		2.22	
range	1-7		1-7		1-8		1-8	
Prior Misdemeanor								
No	1924	85	811	90**	609	91	242	96*
Yes	329	15	95	10	57	9	9	4
Prior Felony								
No	975	43	620	68**	378	57	187	75**
Yes	1278	57	286	32	288	43	64	25
Custody								
No	1362	60	705	78**	486	73	193	77
Yes	891	40	201	22	180	27	58	23
Sentence								
OUT	1507	67	804	89**	540	81	219	87*
IN	746	33	102	11	126	19	32	13

* Significant at $p \leq .05$

** Significant at $p \leq .001$

Bivariate Correlations between Variables of Interest

In order to examine the strengths and directions of relationships between each of the variables, bivariate correlations were computed. Table 11 reports correlations between variables in the overall logistic model and the Time 3 logistic model. With few exceptions, most correlations between variables in Table 11 were weak. The incarceration outcome variable was moderately correlated with custody status ($r=.435$; $p \leq .001$) in the expected direction. Having custody status at the time of the offense (e.g., under some type of supervision with the criminal justice system such as probation status, parole, escapee) was significantly associated with the likelihood of receiving a prison sentence. The incarceration outcome variable was also moderately correlated with prior felonies, again in the expected direction ($r=.472$; $p \leq .001$). Offenders with a prior felony record were likely to receive a sentence of incarceration as opposed to an alternative sanction (e.g., probation).

Two additional associations are worth noting in Table 11. First, custody status had a positive and moderately strong correlation with prior felonies ($r=.583$; $p \leq .001$). Those offenders on custody status at the time of their

offense were more likely to be sentenced to prison than those who did not have custody status. Finally, age at time of conviction was significantly correlated with marital status ($r = -.445$; $p \leq .001$). Single offenders were likely to be younger at the time of their conviction.

Table 12 displays the correlations between each of the variables in the models for Time 1 and Time 2. Note the changes in correlations for the variables, marital status, dependent children, educational level, and employment status. In addition to the noteworthy correlations identified previously, several others appear to be of importance as well. Age at the time of conviction was moderately associated with both newly created marital status measures ($r = -.503$ and $r = -.496$; $p \leq .001$). Younger offenders were likely to single at both time periods (Marital_M1 and Marital_M2). Finally, marital status was moderately correlated with the dependent children measure ($r = -.533$ and $r = -.425$; $p \leq .001$). Consequently, single offenders were less likely to have dependent children.

Conclusion

The results from the bivariate correlation analysis highlight several significant relationships between the

variables of interest themselves, and with the outcome variables. This provides only part of the picture however. What is the relationship between variables of interest and the outcome variables once controls are introduced? Next, the analysis uses two types of multivariate statistics, logistic regression analysis and ordinary least squares regression analysis in order to address this issue.

Table 11: Bivariate Correlations for Variables
in Overall Model and Time 3 Model

	X1	X2	X3	X4	X5	X6	X7
Female (X1)							
Nonwhite (X2)	.059**						
Age (X3)	.139**	.024					
Single-Z (X4)	-.131**	.028	-.445**				
Dependts-Z(X5)	.284**	.139**	.229**	-.243**			
Educ-Z (X6)	.041**	-.090**	.012	.185**	.184**		
Employ-Z (X7)	-.007	-.127**	.084 ^b	-.030	.074**	.232**	
Custody (X8)	-.136**	.022	-.008	.002	-.050**	-.066**	-.116**
Prior-M (X9)	-.060**	.054**	.117**	-.053**	.042**	-.015	-.074**
Prior-F (X10)	-.213**	.037*	.147**	-.073**	-.021	-.068**	-.105**
Drug (X11)	-.012	-.003	.093**	-.047**	.029	-.005	.015
Severity (X12)	-.155**	.044**	-.009	-.033*	-.042**	-.042**	-.025
Hennepin (X13)	-.101**	.026	.011	-.030	-.076**	-.037*	-.042**
Time-1 (X14)	.038*	-.240**	-.100**	.009	-.025	.095**	.046**
Time-2 (X15)	.185**	.176 ^b	.176 ^b	-.144**	.062 ^b	-.165**	-.037*
Prison (Y1)	-.191**	-.037*	.035*	-.029	-.036*	-.029	-.127**

* $p \leq .05$

** $p \leq .001$

Table 11: Bivariate Correlations for Variables in
Overall Model and Time 3 Model, cont'd.

	X8	X9	X10	X11	X12	X13	X14	X15
Female (X1)								
Nonwhite (X2)								
Age (X3)								
Single-Z (X4)								
Dependts-Z (X5)								
Educ-Z (X6)								
Employ-Z (X7)								
Custody (X8)								
Prior-M (X9)	.155**							
Prior-F (X10)	.583**	.213**						
Drug (X11)	-.077**	-.080**	-.093*					
Severity (X12)	.025	-.026	.056**	.000				
Hennepin (X13)	.074**	.023	.117**	-.084**	.116**			
Time-1 (X14)	-.151**	-.017	-.169*	.003	-.114**	.042**		
Time-2 (X15)	.007	-.073**	-.018	.237**	.141**	-.094**	-.337**	
Prison (Y1)	.435**	.170**	.472**	-.093**	.197**	.084**	-.102**	-.090**

* $p \leq .05$ ** $p \leq .001$

Table 12: Bivariate Correlations for Variables
in Time 1 and Time 2 Models

	X1	X2	X3	X4	X5	X6	X7
Female (X1)							
Nonwhite (X2)	.059**						
Age (X3)	.139**	.024					
Single-M1	-.245**	-.245**	-.503**				
Single-M2 (X4)	-.124**	-.124**	-.496**				
Dependts-M1	.347**	.155**	.337**	-.533**			
Dependts-M2 (X5)	.286**	.154**	.240**	-.425**			
Educ-M1	-.003	-.086*	.084*	-.045	-.038		
Educ-M2 (X6)	.036	-.016	.102**	-.067**	.004		
Employ-M1	-.082*	-.037	.162**	-.060	.016	.132**	
Employ-M2 (X7)	.053*	-.116**	.097**	-.143**	.046*	.157**	
Custody (X8)	-.136**	.022	-.008	.079*	-.055	-.065	-.054
				.004	-.031	-.009	-.119**
Prior-M (X9)	-.060**	.054**	.117**	-.080**	.086*	-.065	-.024
				-.071**	.054*	-.050*	-.097**
Prior-F (X10)	-.213**	.037*	.147**	-.126**	.049	-.045	-.042
				-.081**	-.001	.013	-.115**
Drug (X11)	-.012	-.003	.093**	.024	-.081*	.102**	.103**
				-.080**	.015	.075**	.066**
Severity (X12)	-.154**	.044**	-.009	.111**	-.046**	-.006	-.018
				.085**	-.094**	-.070**	-.048*
County (X13)	-.101**	.026	.011	-.059	-.034	-.087*	-.059**
				.012	-.036	.006	-.030
Prison (Y1)	-.191**	-.037*	.035*	.013	.063	-.090*	-.088*
				-.052*	-.007	-.008	-.137**

* $p \leq .05$

** $p \leq .001$

Table 12: Bivariate Correlations for Variables
in Time 1 and Time 2 Models, cont'd.

	X8	X9	X10	X11	X12	X13
Female (X1)						
Nonwhite (X2)						
Age (X3)						
Single-M1						
Single-M2 (X4)						
Dependts-M1						
Dependts-M2 (X5)						
Educ-M1						
Educ-M2 (X6)						
Employ-M1						
Employ-M2 (X7)						
Custody (X8)						
Prior-M (X9)	.155**					
Prior-F (X10)	.583**	.213**				
Drug (X11)	-.077**	-.080**	-.093**			
Severity (X12)	.025	-.026	.056**	.000		
County (X13)	.074**	.023	.117**	-.084**	.116**	
Prison (Y1)	.435**	.170**	.472**	-.093**	.197**	.084**

* $p \leq .05$

** $p \leq .001$

Analysis of Sentence Outcome: In vs. Out

Full Model

The decision whether or not to incarcerate convicted offenders was examined using a series of logistic regression analyses. First, logistic regression was used to estimate a model for the In/Out sentencing outcome decision for the entire sample (i.e., all three-time periods). The results are provided in Table 13, along with estimates for separate gender models. The full model had a significant chi-square value of 1467.54 ($p \leq .001$; $df=19$) and an R^2 value of .302⁴⁹ for the overall sample ($N=4076$).

Missing information was a concern for several variables included in the analysis. Two strategies were used in handling missing information. First, if data were missing for 10% or fewer of the cases, missing values were replaced by the mean for that unit of analysis (e.g., overall sample mean or sub-sample mean). Second, if data were missing in more than 10% of the cases for a variable, missing values were recoded to a value of zero. In addition, a new variable was created to reflect whether or not the case contained missing information in the original measure, and

⁴⁹ Cox and Snell R^2 value.

was then introduced into the model to control for missing information (see for example, DeJong and Jackson, 1998; DeJong, 1997).

In the full model, gender was a significant predictor of the In/Out sentencing decision. Controlling for all other factors in the model, women were more likely to receive an "Out" sentencing decision ($b = -.540$; $p \leq .001$). Other significant predictors in the full model included education ($b = .063$; $p \leq .05$), employment status ($b = -.562$; $p \leq .001$), and race ($b = -.389$; $p \leq .001$), although race was not related in the expected direction. Therefore, nonwhites were more likely to receive a sentence other than imprisonment (i.e., "Out") as compared to white offenders. Note that, as was found in previous research, having a dependent child was not a significant factor in the overall model for the imprisonment decision.

Table 13: Logistic Regression Results for
Full Model and Gender Models

	<u>Full Model</u>			<u>Male Model</u>			<u>Female Model</u>		
Variables	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO
Female	-.540	.125	.582**	--	--	--	--	--	--
Nonwhite	-.389	.096	.678**	-.326	.107	.722*	-.651	.240	.522*
Age	.006	.006	1.01	.006	.007	1.01	.002	.016	1.00
Educ (Z)	.063	.095	1.07*	.086	.107	1.09	.012	.219	1.01
Employ (Z)	-.562	.111	.570**	-.546	.122	.580**	-.537	.278	.585*
Single (Z)	-.118	.119	.889	-.079	.134	.924	-.147	.276	.863
Dependents (Z)	.192	.112	1.21	.248	.124	1.28*	-.081	.286	.922
Hennepin County	.028	.096	1.03	-.005	.107	.995	.135	.229	1.15
Time Period									
(1) 1978	-.234	.140	.791	-.262	.146	.490**	-.130	.325	.878
(2) 1994	-.752	.128	.472**	-.713	.375	.018**	-.793	.285	.453*
Drug Offense	-.183	.124	.833	-.259	.140	.771	.117	.292	1.12
Custody	1.20	.103	3.33**	1.22	.113	3.39**	1.03	.256	2.81**
Prior Misd.	.495	.122	1.64**	.477	.136	1.61**	.695	.296	2.00*
Prior Felony	1.96	.125	7.07**	2.01	.144	7.49**	1.80	.267	6.02**
Severity Level	.408	.032	1.51**	.395	.035	1.49**	.440	.077	1.55**
Constant	-3.92	.355	.020**	-4.00	.375	.018**	-4.01	.800	.018**
Educ_DM	-.403	.269	.668	-.347	.296	.707	-.806	.692	.447
Employ_DM	.134	.194	1.14	-.024	.212	.976	1.08	.497	2.95*
Marital_DM	.215	.279	1.24	.366	.322	1.44	-.172	.618	.842
Dependents_DM	.512	.256	1.67*	-.024	.212	.976	.399	.639	1.49

-2 LOG LIKELIHOOD:	3087.84	2474.52	598.36
CHI SQUARE MODEL	1467.54**	1085.41**	231.23**
R ² (Cox & Snell)	.302	.311	.181
DF:	19	18	18
N:	4076	2919	1157

* $p \leq .05$
 ** $p \leq .001$

Z denotes the use of the value zero for missing cases.
 DM denotes the use of a dummy variable to reflect the presence of missing data.

The findings in Table 13 also indicate that each of the legal factors significantly predicted the sentence decision, as expected, in a positive direction. For instance, having custody status with the criminal justice system at the time of the offense ($b=1.20$; $p \leq .001$), as well as a prior misdemeanor ($b=.495$; $p \leq .001$), or a prior felony ($b=1.96$; $p \leq .001$) increased the likelihood of being sentenced to prison. Additionally, a higher severity level ($b=.408$; $p \leq .001$) led to a higher likelihood of receiving a prison sentence when holding all other factors in the model constant.

The county in which the sentencing occurred and offense type were not key factors in the sentence outcome. Time period indicated mixed results. No significant effect was found for Time 1; however Time 3 ($b=-.752$; $p \leq .001$) was a significant predictor of the In/Out decision. Specifically, those sentenced during Time 2 were more likely to receive a prison sentence than those sentenced at Time 3 in the full model.

The entire sample was next divided based on gender, and separate logistic regression models were specified for each group (see Table 13 for results). This step permits one to explore whether different factors were influential in the sentencing decisions for men and women. Both gender models

were statistically significant; however, they differed with regard to their explained variance, with the model for men doing a more efficient job ($R^2=.311$ for men and $R^2=.181$ for women). There might be other gender-related factors not considered in the model that would explain the lower explained variance for women (e.g., role in the crime, use of weapon). Many of the same factors significant in the full model were significant in the separate gender models. For instance, both race ($b=-.326$; $p \leq .05$ for men and $b=-.651$; $p \leq .05$ for women) and employment status ($b=-.546$; $p \leq .001$ for men and $b=-.537$; $p \leq .05$ for women) were significant predictors of sentence outcome in both gender models.

As was the case with the full model, legal factors such as custody status, prior misdemeanors, prior convictions, and severity level all significantly influenced, in the expected direction, the decision whether or not to incarcerate the convicted offender. Prior felony was highly influential in the full model for incarceration decisions, and the same holds for both men and women when examined using separate models.

There were few differences between the separate gender logistic models. For example, having at least one dependent child for men was significantly related to a decision of incarceration ($b=.248$; $p \leq .05$), whereas having at least one

dependent child for women was related to a sentence decision of something other than incarceration, albeit this was not statistically significant. Finally, there were slight differences in the effects of time period on the In/Out decision. In the case of both men and women, being sentenced during Time 3 compared to being sentenced in Time 2 resulted in a greater likelihood of receiving an alternative to prison ($b = -.713$; $p \leq .001$ for men and $b = -.793$; $p \leq .05$ for women). In other words, controlling for all other factors in the model, men and women were more likely to be incarcerated if sentenced during Time 2, immediately after the implementation of the sentencing guidelines as opposed to Time 3 under more recent guidelines. Time 1 had a significant effect only for men. Men sentenced during Time 1 as compared to Time 2, again were more likely to receive an "Out" sentencing decision ($b = -.262$; $p \leq .001$). Therefore, controlling for other factors in the model, men were more likely to be incarcerated at Time 2 in comparison with either Time 1 or Time 3 and women were more likely to be incarcerated at Time 2 compared to Time 3, but not Time 1. The findings suggest that sentencing at Time 2 was more punitive in terms of the likelihood of incarceration when compared to sentencing at Time 1 or Time 3.

Time 1 Analysis

The overall sample was next divided by time period and also by gender. Results for Time 1 are presented in Table 14, first for the overall Time 1 model followed by separate models for men and women. The Time 1 model had a -2 Log Likelihood value of 505.12 and was statistically significant (chi-square model= 136.55; $p \leq .001$), with an R^2 value of .167. The goodness of fit measures for the gender models were significant as well (see Table 14 for details). As expected, under the pre-guidelines sentencing system in Time 1, gender had a significant effect on the incarceration decision. Women ($b = -.689$; $p \leq .05$) were significantly more likely, as compared to men, to be sentenced to a sanction other than prison (i.e., "Out"), thereby lending some support to Hypothesis-1.

Race ($b = -.603$; $p \leq .05$) and the presence of at least one dependent child ($b = 1.05$; $p \leq .001$), likewise, were significant predictors for the initial sentencing decision. However, for race the effects were in the opposite direction than was expected. The results suggest that controlling for all other factors in the model, nonwhite offenders, as compared to white offenders, were more likely to receive an alternative to incarceration. Thus, white offenders were

sentenced more punitively than their nonwhite counterparts. The same results were not supported in the gender models. In both cases race did not have a significant impact on the sentence outcome.

Additionally, offenders with at least one dependent child tended to be incarcerated for their crime. When this factor was examined for each gender model, it was found to have a significant effect on the In/Out decision for men ($b = 1.19$; $p \leq .001$), but not for women. Therefore, having dependent children does not appear to produce leniency for women under the indeterminate sentencing system in Minnesota (Time 1), and as such does not provide support for Hypothesis-1. The remaining extra-legal variables did not have a significant impact on the outcome variable.

Table 14: Logistic Regression Results for
Time 1 Model and Gender Models

	<u>Time 1</u>			<u>Male Model</u>			<u>Female Model</u>		
Variables	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO
Female	-.689	.301	.502*	--	--	--	--	--	--
Nonwhite	-.603	.294	.547*	-.503	.342	.605	-.901	.639	.406
Age	-.011	.019	.989	-.018	.021	.983	.023	.044	1.02
Educ (M)	-.332	.214	.718	-.312	.247	.732	-.457	.468	.633
Employ (M)	-.466	.266	.627	-.345	.296	.709	-.938	.695	.391
Single (M)	.547	.318	1.73	.612	.391	1.84	.723	.658	2.06
Dependents (M)	1.05	.308	2.86**	1.19	.366	3.28**	.597	.634	1.82
Hennepin Co.	-.029	.241	.972	-.118	.274	.889	.291	.532	1.34
Drug offense	-.548	.335	.578	-.705	.395	.494	-.290	.647	.749
Custody	1.00	.261	2.73**	.924	.299	2.52*	1.22	.577	3.39*
Prior Misd.	.040	.331	1.04	-.043	.383	.958	.366	.731	1.44
Prior Felony	1.66	.267	5.27**	1.74	.314	5.71**	1.54	.550	4.68*
Severity Level	.011	.096	1.01	.025	.103	1.03	-.109	.278	.897
Constant	-2.02	.777	.133*	-2.02	.884	.133	-2.96	1.92	.052

-2 LOG LIKELIHOOD:	505.12	380.73	120.71
CHI SQUARE MODEL:	136.55**	102.90**	26.16*
R ² (Cox & Snell):	.167	.183	.104
DF:	13	12	12
N:	747	508	239

* p ≤ .05
** p ≤ .001

M denotes mean replacement for missing values.

Two legal factors were found to have significant effects on the incarceration decision. Specifically, one's custody status at the time of the offense was significantly related to the likelihood of incarceration ($b=1.01$; $p \leq .001$). Prior felonies were also an influential predictor of sentence outcomes ($b=1.66$; $p \leq .001$). Having at least one prior felony resulted in a higher probability of being incarcerated for the offense. The results remain the same in the separate models for men ($b=1.74$; $p \leq .001$) and women ($b=1.54$; $p \leq .05$).

In order to examine possible differences for women and/or men, several interactions were introduced into the model at Time 1. The findings for these interactions are provided in Table 15 and as shown there, none of the hypothesized interactions had significant effects on the incarceration decision at Time 1. The final model for the analysis at Time 1 is presented in Table 20.

Table 15: Logistic Regression Results for
Time 1 Model with Interactions Effects

Variables	B	S.E.	ODDS RATIO
Female	-.376	.586	.687
Nonwhite	-.514	.340	.598
Age	-.012	.019	.988
Education (M)	-.342	.215	.711
Employ (M)	-.447	.268	.640
Single (M)	.603	.325	1.83
Dependents (M)	1.16	.340	3.19
Hennepin County	-.026	.242	.974
Drug Offense	-.688	.393	.502
Custody	1.01	.262	2.75**
Prior Misd.	.060	.333	1.06
Prior Felony	1.66	.270	5.26**
Severity Level	.010	.096	1.01
Constant	-2.06	.782	.127*
Race * Sex	-.301	.670	.740
Dependents * Sex	-.437	.658	.646
Drug * Sex	.476	.736	1.61

-2 LOG LIKELIHOOD: 503.82
 CHI SQUARE MODEL 137.85**
 R² (Cox & Snell) .169
 DF: 16
 N: 747

* p ≤ .05
 ** p ≤ .001

M denotes mean replacement for missing cases.

Results from the analyses performed for Time 1 suggest limited support for the first hypothesis. Gender did have a significant effect on the initial sentencing decision; however, other factors related to traditional gender roles did not. For example, both marital status and offense type did not have a significant impact on the In/Out decision. In addition, the significant effect of dependent children was in the opposite direction than expected. There was also no support for suspected interactions between gender and key measures such as race, dependent children, and offense type. All of those interactions were tested and failed to reach significant levels at Time 1. In conclusion, Hypothesis-1 had limited support from the analyses performed for Time 1.

Time 2 Analysis

The next stage of analysis involved estimating logistic regression equations for the In/Out sentencing decision at Time 2. The results are presented in Table 16. The Time 2 model had a -2 Log Likelihood value of 1569.35 and was significant (chi-square model= 886.14; $p \leq .001$) with an R^2 of .364. The male and female Time 2 models were significant as well (See Table 16).

Recall that Time 2 represents sentencing practices

under the new determinate-based sentencing guidelines system. As a result, extra-legal factors such as gender, race, and age should have been excluded from the sentencing decision and therefore should not have been significant predictors of sentencing outcomes. The results presented in Table 15 indicate otherwise. Several extra-legal factors had significant effects on the In/Out decision in the Time 2 model. For instance, both gender ($b = -.667$; $p \leq .001$) and race ($b = -.594$; $p \leq .001$) significantly influenced the outcome. Race again was in the opposite direction of what was expected. Race had a significant effect on the initial sentencing outcome in each of the gender models, once more suggesting that nonwhite offenders were more likely to receive a sanction other than incarceration ($b = -.510$; $p \leq .001$ for men and $b = -1.28$; $p \leq .05$ for women).

Age ($b = .022$; $p \leq .05$) also had a significant impact on whether or not to incarcerate convicted offenders. Older offenders, controlling for the other factors in the model resulted in a higher likelihood of being incarcerated. When separate gender models were examined, age and education were significant predictors in the case of the male model, but not the female model. Employment was beneficial at this sentencing stage. Those offenders employed either part-time or full-time typically received more leniency than those who

were not employed ($b = -.601$; $p \leq .001$). The remaining extra-legal variables, marital status and dependent children had no significant effects on the outcome variable in either the Time 2 model or the respective gender models.

As expected, legal factors were consistently significant predictors of the imprisonment decision. Under a determinate-based sentencing system legal factors are weighed heavily in the sentencing decision. Minnesota's sentencing guidelines, in particular, emphasize the severity of the current offense and the criminal history. Therefore, one would expect to find that these two measures in particular would have a strong impact on the In/Out decision during Time 2. The results in Table 16 reflect that this is indeed the case. Controlling for all other factors in the Time 2 model, each legal variable had a significant effect on the sentence outcome.

Table 16: Logistic Regression Results for
Time 2 Model and Gender Models

	<u>Time 2</u>			<u>Male Model</u>			<u>Female Model</u>		
Variables	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO
Female	-.667	.203	.513**	--	--	--	--	--	--
Nonwhite	-.594	.132	.552**	-.510	.139	.600**	-1.28	.473	.278*
Age	.022	.009	1.02*	.024	.010	1.02*	.019	.030	1.02
Educ (M)	.118	.134	1.13	.147	.143	1.16	-.104	.415	.901
Employ (M)	-.601	.149	.548**	-.597	.158	.550**	-.526	.475	.591
Single (M)	-.157	.163	.855	-.059	.176	.943	-.497	.509	.608
Dependents (M)	.130	.146	1.14	.194	.156	1.21	-.192	.454	.826
Hennepin Co.	-.157	.135	1.36	-.144	.143	.866	-.240	.437	.787
Drug offense	-.557	.226	.573*	-.578	.237	.561*	-.364	.755	.695
Custody	1.41	.146	4.10**	1.40	.155	4.06**	1.45	.461	4.26*
Prior Misd.	.547	.163	1.73**	.517	.173	1.68*	1.03	.513	2.81*
Prior Felony	2.17	.202	8.75**	2.16	.218	8.64**	2.29	.562	9.86**
Severity Level	.299	.048	1.35**	.301	.051	1.35**	.206	.156	1.23
Constant	-4.12	.485	.016**	-4.33	.517	.013**	-3.46	1.42	.032*

-2 LOG LIKELIHOOD:	1569.35	1383.10	178.80
CHI SQUARE MODEL	886.14**	698.88**	117.36**
R ² (Cox & Snell)	.364	.356	.273
DF:	13	12	12
N:	1958	1590	368

* $p \leq .05$

** $p \leq .001$

M denotes mean replacement for missing cases.

Those offenders who were under the custody of the criminal justice system at the time of their offense ($b=1.41$; $p \leq .001$), along with those offenders who had a higher severity level ($b=.299$; $p \leq .001$) were significantly more likely to have been sentenced to prison. Additionally, those offenders at Time 2 who had at least one prior misdemeanor ($b=.547$; $p \leq .001$), or at least one prior felony ($b=2.17$; $p \leq .001$) had a significant effect on the In/Out sentencing decision. These effects remain significant in both gender models, except for the effect of severity level on the sentence outcome for women.

After the initial logistic model was specified for Time 2, possible interactions were explored, including interactions between gender and race, gender and offense type, and gender and dependent children. The results are displayed in Table 17, with significant effects noted. The effects all remained the same as in the initial model with the exception of gender. As noted in the table, the interaction between gender and race was a significant predictor of the initial sentencing decision ($b= .855$; $p \leq .05$). White women were more likely to receive leniency compared to white men, but not nonwhite men. The final model for the analysis at Time 2 is presented in Table 20.

To determine the impact of this interaction on the

likelihood of receiving a prison sentence predicted probabilities were calculated.⁵⁹ Predicted probabilities were calculated using an OLS equation, inserting coefficient values into the equation and setting all other independent variables first at a "low" value, next at the mean value, and finally at a "high" value, except the variables of interest (i.e., race and gender). Log odds were obtained and estimated probabilities were calculated.⁶⁰ Predicted probabilities were calculated for four groups to reflect the significant interaction at Time 2 and included: (1) white women, (2) nonwhite women, (3) white men, and (4) nonwhite men. The results are reported in Table 18.

⁵⁹ See Bachman and Paternoster, 1997 for a discussion on the computation of predicted probabilities for Logistic models.

⁶⁰ Estimated probabilities were calculated using the equation: $P = 1 / 1 + e^{-(b_0 + b_1X_1)}$

Table 17: Logistic Regression Results for
Time 2 Model with Interactions Effects

	<u>Model 1</u>			<u>Model 2</u>		
Variables	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO
Female	-.099	.401	.906	-.216	.289	.806
Nonwhite	-.509	.139	.601**	-.505	.139	.603**
Age	.022	.009	1.02*	.022	.009	1.02*
Education (M)	.125	.135	1.13	.125	.134	1.13
Employ (M)	-.593	.149	.553**	-.594	.149	.552**
Single (M)	-.110	.165	.896	-.117	.164	.889
Dependents (M)	.173	.154	1.19	.148	.146	1.16
Hennepin	-.160	.136	.852	-.157	.135	.855
Drug offense	-.691	.237	.554*	-.576	.226	.562*
Custody	1.42	.147	4.13**	1.42	.146	4.12**
Prior Misd.	.571	.164	1.77**	.568	.164	1.77**
Prior Felony	2.17	.203	8.75**	2.17	.202	8.79**
Severity Level	.294	.049	1.34**	.294	.048	1.34**
Constant	-4.21	.488	.015**	-4.20	.487	.015**
Race * Sex	-.791	.422	.454	-.855	.404	.425*
Dependents * Sex	-.250	.453	.779			
Offense * Sex	.241	.774	1.27			

-2 LOG LIKELIHOOD:	1564.47	1564.82
CHI SQUARE MODEL	891.02**	890.67**
R ² (Cox & Snell)	.366	.365
DF:	16	14
N:	1958	1958

* $p \leq .05$
 ** $p \leq .001$

M denotes mean replacement for missing cases.

The predicted probabilities reported in Table 18 indicate that white men had the highest probability of receiving a prison sentence (5.6% for low values; 27.1% for medium values; 73.4% for high values) compared to the other groups. The next highest probabilities belonged to nonwhite men (3.2% for low values; 17.1% for medium values; 60.4% for high values), closely followed by the probabilities for white women (3.0% for low values; 16.0% for medium values; 58.6% for high values). Finally, nonwhite women had the lowest predicted probabilities for going to prison (1.7% for low values; 9.5% for medium values; 43.8% for high values).

Table 18: Predicted Probability of Incarceration
for Gender and Race Interactions, Time 2

Offender Type	Low Value ⁶¹	Medium Value ⁶²	High Value ⁶³
Nonwhite Women	.017	.095	.438
White Women	.030	.160	.586
Nonwhite Men	.032	.171	.604
White Men	.056	.271	.734

N=1958

⁶¹ Values at the 25th percentile were used for ratio and interval level measures to indicate "low" values, while zero was used for nominal level variables in order to compute predicted probabilities.

⁶² The mean value was used to represent "medium" values in order to compute predicted probabilities.

⁶³ Values at the 75th percentile were used for ratio and interval level measures to indicate "high" values, while one was used for nominal level variables in order to compute predicted probabilities.

Nonwhite men and white women shared similar estimated probabilities for the likelihood of being incarcerated for their offense. It appears that the significant interaction between gender and race found at Time 2 stemmed from the race and gender effects for white women and nonwhite men.

Results from the analyses performed for Time 2 for the most part support Hypothesis-2. Gender initially had a significant effect on the imprisonment decision, and when the interaction between race and gender was introduced into the logistic regression model, the interaction was a significant predictor of the sentence decision. As hypothesized, two other interactions involving gender and gender role expectations (i.e., dependent children and offense type) were not significant. As a result, Hypothesis-2 for the most part was supported.

Time 3 Analysis

Next, a logistic regression model was specified for those offenders sentenced during Time 3. Estimates for the overall model and each gender model are reported in Table 19, along with information on significant effects. The full model for Time 3 was significant ($\chi^2 = 412.22$; $p \leq .001$) with an R^2 value of .260. When controlling for all

other factors in the model, gender had a significant effect on the prison decision ($b = -.392$; $p \leq .05$), with women being more likely than men to receive a sanction other than prison. Race, dependent children, and offense type did not significantly influence the initial sentencing decision in the overall model.

Education level ($b = .372$; $p \leq .05$) and employment status ($b = -.511$; $p \leq .001$) were significant factors as well. Defendants with a higher education level were more likely to receive a prison sentence and those offenders employed at the time of their offense were more likely to receive a sanction other than prison. However, when both factors were considered in each gender model, neither of the factors had a significant impact on the sentencing decision.⁶⁴

As expected, the legal factors were consistent and significant predictors of the In/Out sentencing decision at Time 3 under sentencing guidelines. Custody status ($b = .874$; $p \leq .001$), prior misdemeanors ($b = .627$; $p \leq .05$), prior felonies ($b = 2.10$; $p \leq .001$), and severity ($b = .584$; $p \leq .001$) each had a positive effect on the outcome. The same results for custody status ($b = .917$; $p \leq .001$), prior misdemeanors ($b = .752$; $p \leq .05$), prior felonies ($b = 2.25$; $p \leq .001$), and severity ($b = .597$; $p \leq .001$) were found for the male model at Time 3.

⁶⁴ Both the male and female models were significant with R^2 values equal

As for the model for women at Time 3, only prior felonies ($b=1.96$; $p \leq .001$) and severity ($b=.557$; $p \leq .001$) had significant effects on the decision to incarcerate.

to .283 for the male model and .181 for the female model.

Table 19: Logistic Regression Results for
Time 3 Model and Gender Models

	<u>Time 3</u>			<u>Male Model</u>			<u>Female Model</u>		
	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO
Female	-.392	.196	.676*	--	--	--	--	--	--
Nonwhite	-.023	.182	.977	.074	.222	1.08	-.141	.346	.868
Age	-.011	.011	.989	-.016	.013	.984	.001	.023	1.00
Educ (Z)	.372	.188	1.45*	.380	.231	1.46	.324	.356	1.38
Employ (Z)	-.511	.228	.600*	-.458	.272	.633	-.629	.459	.533
Single (Z)	-.021	.231	.979	-.124	.459	.883	.230	.436	1.26
Dependents (Z)	.010	.244	1.01	.118	.284	1.13	-.505	.529	.603
Hennepin	.326	.180	1.39	.314	.217	1.37	.375	.336	1.46
Drug offense	-.262	.200	.770	-.323	.233	.724	-.059	.440	.943
Custody	.874	.191	2.40**	.917	.223	2.50**	.706	.405	2.02
Prior Misd.	.627	.249	1.87*	.752	.311	2.12*	.452	.455	1.57
Prior Felony	2.10	.226	8.14**	2.25	.280	9.46**	1.96	.416	7.11**
Severity Level	.584	.056	1.79**	.597	.067	1.82**	.557	.115	1.75**
Constant	-5.81	.693	.003**	-5.93	.843	.003**	-5.99	1.40	.003**
Educ_DM	1.14	.538	3.12*	.976	.635	2.65	1.48	1.14	4.37
Employ_DM	-.243	.324	.784	-.518	.375	.595	1.03	.723	2.81
Marital_DM	-.405	.395	.667	-.124	.459	.883	-1.37	.931	.255
Dependents_DM	.637	.360	1.89	.750	.409	2.12	-.062	.898	.940

-2 LOG LIKELIHOOD:	931.12	645.19	273.43
CHI SQUARE MODEL:	412.22**	273.19**	109.82**
R ² (Cox & Snell):	.260	.283	.181
DF:	17	16	16
N:	1371	821	550

* $p \leq .05$
 ** $p \leq .001$

Z denotes the use of the value zero for missing cases.
 DM denotes the use of new variables to reflect the presence of missing data.

Next, interactions between gender and other measures (i.e., race, dependent children, and offense type) were introduced into the logistic regression model for Time 3. None of the interactions were significant in the re-specified model and therefore they were dropped from the final Time 3 model, which is presented in Table 20.

Table 20: Logistic Regression Results for Incarceration Decision, Final Models

	<u>FULL MODEL</u>			<u>TIME 1</u>			<u>TIME 2</u>			<u>TIME 3</u>		
	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO
Female	-.540	.125	.582**	-.689	.301	.502*	-.216	.289	.806	-.392	.196	.676*
Nonwhite	-.389	.096	.678**	-.603	.294	.547*	-.505	.139	.603**	-.023	.182	.977
Age	.006	.006	1.01	-.011	.019	.989	.022	.009	1.02*	-.011	.011	.989
Educ (Z)	.063	.095	1.07*	--	--	--	--	--	--	.372	.188	1.45*
Educ (M)	--	--	--	-.332	.214	.718	.125	.134	1.13	--	--	--
Employ (Z)	-.562	.111	.570**	--	--	--	--	--	--	-.511	.228	.600*
Employ (M)	--	--	--	-.466	.266	.627	-.594	.149	.552**	--	--	--
Single (Z)	-.118	.119	.889	--	--	--	--	--	--	-.021	.231	.979
Single (M)	--	--	--	.547	.318	1.73	-.117	.164	.889	--	--	--
Dependents (Z)	.192	.112	1.21	--	--	--	--	--	--	.010	.244	1.01
Dependents (M)	--	--	--	1.05	.308	2.86**	.148	.146	1.16	--	--	--
Hennepin County	.028	.096	1.03	-.029	.241	.972	-.157	.135	.855	.326	.180	1.39
Time Period												
(1) 1978	-.234	.140	.791	--	--	--	--	--	--	--	--	--
(2) 1994	-.752	.128	.472**	--	--	--	--	--	--	--	--	--
Drug Offense	-.183	.124	.833	-.548	.335	.578	-.576	.226	.562*	-.262	.200	.770
Custody	1.20	.103	3.33**	1.00	.261	2.73**	1.42	.146	4.12**	.874	.191	2.40*
Prior Misd.	.495	.122	1.64**	.040	.331	1.04	.568	.164	1.77**	.627	.249	1.87*
Prior Felony	1.96	.125	7.07**	1.66	.267	5.27**	2.17	.202	8.79**	2.10	.226	8.14**
Severity Level	.408	.032	1.51**	.011	.096	1.01	.294	.048	1.34**	.584	.056	1.79**

Table 20: Logistic Regression Results for Incarceration Decision,
Final Models - cont'd.

FULL MODEL				TIME 1			TIME 2			TIME 3		
B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO	B	S.E.	ODDS RATIO	
Constant	-3.92	.355	.020**	-2.02	.777	.133*	-4.20	.487	.015**	-5.81	.693	.003**
Educ_DM	-.403	.269	.668	--	--	--	--	--	--	1.14	.538	3.12*
Employ_DM	.134	.194	1.14	--	--	--	--	--	--	-.243	.324	.784
Marital_DM	.215	.279	1.24	--	--	--	--	--	--	-.405	.395	.667
Dependents_DM	.512	.256	1.67*	--	--	--	--	--	--	.637	.360	1.89
Interactions												
Race x Sex	--	--	--	--	--	--	-.855	.404	.425*	--	--	--
-2 LOG LIKELIHOOD:	3087.84			505.32				1561.38		931.12		
CHI SQUARE MODEL:	1467.54**			136.36**				894.10**		412.22**		
R ² (Cox & Snell):	.302			.167				.367		.260		
DF:	19			13				14		17		
N:	4076			747				1958		1371		

* $p \leq .05$

** $p \leq .001$

M denotes mean replacement for missing cases.

Z denotes the use of the value zero for missing cases.

DM denotes the use of new variables to reflect the presence of missing data.

Analysis of Sentence Length Decisions

The analysis next examines the sentence length decision using Ordinary Least Squares regression (OLS) separately for each time period. This analysis for the second sentence outcome (i.e., sentence length) followed a three-step process. First, sample characteristics for those convicted offenders sentenced to prison were calculated for each sentencing period. Only those offenders who received a prison sentence (i.e., "In") were considered for the analysis of sentence length. Second, OLS diagnostics were performed in order to examine possible collinearity problems between predictors. Where problems existed, necessary steps were taken to resolve the problems. Finally, separate OLS regression models were estimated for the sentence length outcome for each time period.

Sentence Length Decision at Time 1

Descriptive Information, Time 1

Descriptive information for those offenders sentenced to prison at Time 1 are presented in Table 21. Those sentenced to prison at Time 1 were predominantly male (81%, N=93 vs. 19% or N=22 for females), and white (80%; N=92 vs.

20% or N=23 for females). The average age of those sentenced to prison was 27 years (s.d.= 7.29). About 60% (N=69) of the sample at Time 1 had a 10th, 11th, or 12th grade level education, and another 18% (N=21) had either a 9th grade or lower education. An additional 10% (N=12) had some level of college education and the remaining 11% (N=13) had missing information on this measure.

In terms of family information, almost half of the sample were single (49%; N=57), and another 36% (N=41) were not. For the rest of the sample (15%; N=17), there were no available information on their marital status. Again, almost half of the sample (47%; N=54) reported having at least one dependent child, while 40% (N=46) indicated that they did not have any dependent children. Information was missing for the remaining 13% of the sample on this measure.

Many offenders at Time 1 were unemployed at the time of their offense (59%; N=68), and others worked either part- or full-time jobs (23%; N=26). For the rest (18%; N=21), there was no available information on their employment status.

Table 21: Descriptive Information for Time 1,
Sentence Length Decision

Variable	Time 1 (N= 115)	
	#	%
Female		
No	93	81
Yes	22	19
Nonwhite		
No	92	80
Yes	23	20
Age		
mean	27	
s.d.	7.29	
range	16-53	
Education Level		
1-9 grades	21	18
10-12 grades	69	60
college	12	10
missing	13	11
Single		
No	41	36
Yes	57	49
Missing	17	15
Dependents		
No	46	40
Yes	54	47
Missing	15	13
Employment Status		
No	68	59
Yes (part/full)	26	23
Missing	21	18
Hennepin County		
No	43	37
Yes	72	63
Drug Offense		
No	101	88
Yes	14	12
Severity Level		
mean	2.85	
s.d.	1.24	
range	1-7	
Prior Misdemeanor		
No	95	83
Yes	20	17
Prior Felony		
No	37	32
Yes	78	68
Custody Status		
No	63	55
Yes	52	45
Sentence Length		
mean	50.57	
s.d.	36.40	
range	13.00 - 240.00	

Descriptive information for several legal measures is also provided in Table 21. A sizable portion of those sentenced to prison involved property offenses (88% vs. 12% drug offense), and the average severity level of the offense was 2.85 (scale of 1 to 10). In addition, almost one-half of the offenders (45%; N=52) had some sort of custody status with the criminal justice system (e.g., probation, parole, etc.), approximately two-thirds of the sample had a prior felony (68%; N=78), and 17% (N=20) had a prior misdemeanor.

Finally, the average sentence length for those offenders sentenced to prison before the implementation of sentencing guidelines was almost 51 months (s.d.= 36.40). As can be seen in Table 21, the sentence length varied greatly between 13 and 240 months under the indeterminate sentencing system in Minnesota.

OLS Regression Diagnostics, Time 1

Next, offenders sentenced to prison were separated by time period and OLS regression models were estimated for each. But first, diagnostics (Fox, 1991) were used to determine whether any problems existed that might violate the assumptions underlying Ordinary Least Squares regression analysis. One possible problem is collinearity between two predictors (or multicollinearity in the case of multiple

predictors). This occurs when one predictor is highly correlated with other predictors and in a sense overlaps with them. Thus, the predictor has very little unique effect on the dependent variable, and its inclusion in the regression model is not beneficial (Agresti & Finlay, 1997).

Two steps were used in order to identify problems involving multicollinearity. First, bivariate correlations were computed and examined for strength of association between predictors. At Time 1, many of the predictors had a very weak correlation with the outcome variable, sentence length. Severity level had the strongest relationship with length of sentence ($r=.300$; $p \leq .001$) and in the expected direction.

Other notable correlations involved the hazard rate variable (i.e., predicted probability of receiving a prison sentence at the first sentencing stage) and several other variables. The hazard rate (i.e., Pre_1) was strongly correlated with two important legal variables, custody status ($r=.631$; $p \leq .001$) and prior felony ($r=.732$; $p \leq .001$). The correlation between hazard rate and sex ($r=-.303$; $p \leq .001$) and hazard rate and offense type ($r=-.235$; $p \leq .05$) were both weak.

There was a moderate correlation between marital status and age ($r=-.595$; $p \leq .001$), and weak correlations between age

and prior misdemeanors ($r=.334$; $p\leq.001$), and age and having dependent children ($r=.386$; $p\leq.001$). Finally, a moderate correlation was found between marital status and the presence of dependent children ($r=-.481$; $p\leq.001$).

From examining the correlations, it does not appear as if collinearity represents a problem. However, looking at bivariate correlations alone does not represent enough of a test. The second step in testing for collinearity among predictors was to compute variance-inflation factors (VIF). VIF allows one to inspect the influence of collinearity on the precision of the estimates (Fox, 1991: 11). Table 22 displays the VIF values for each of the independent variables in the initial OLS model for Time 1.

In the results from the initial OLS regression model at Time 1, there appears to be a few highly inflated factors, particularly the hazard rate. This is not surprising given the fact that the likelihood of both sentencing decisions having similar influential predictors is high. Thus, the hazard rate is correlated with predictors in the sentence length model. Several of the legal variables have high VIF values. The custody measure was eliminated and a second OLS regression model was specified for Time 1. The VIF values for the second model are presented in Table 22. Removing custody from the model reduces the high VIF values to

acceptable levels (Fox, 1991), and appears to have addressed the collinearity issue.

Table 22: Test for Multicollinearity,
Initial and Corrected Models at Time 1

Variables:	VIF ₁	VIF ₂
Female	2.77	1.40
Nonwhite	2.05	1.26
Age	2.08	2.08
Education (M)	1.88	1.27
Employ (M)	2.10	1.27
Single (M)	3.11	2.23
Dependents (M)	5.22	2.03
Hennepin County	1.07	1.07
Drug offense	1.56	1.19
Custody	6.76	--
Prior Misdemeanor	1.27	1.27
Prior Felony	9.71	3.92
Severity Level	1.22	1.22
Hazard Rate	24.47	4.54

OLS Regression Model for Sentence Length, Time 1

Table 23 displays the results for the final estimated OLS regression model for those sentenced under the indeterminate sentencing system at Time 1, including partial slope coefficients, standardized coefficients, t values and significance test results. In addition to the specified variables of interest, the sample selection bias correction (i.e., Hazard rate) was included. The correction reflects the probability of being sentenced to prison at the previous

decision stage (i.e., In/Out decision). Including the correction in the sentence length decision models is a way in which to control for the likelihood of cases reaching the second sentencing decision stage.

The overall OLS regression model at Time 1 was significant and had an R^2 of .211 ($df= 13$; $N=114$). Age at the time of conviction had a positive relationship with the sentence length ($b=1.55$; $p \leq .05$), meaning that as the age for defendants increased one year, the average sentence length increased one and a half months, controlling for all other independent variables in the model. The severity of the offense also had a positive and statistically significant effect on the sentence length decision ($b=7.57$; $p \leq .05$). For every increase in one severity level of those sentenced to prison at Time 1, the average number of months the defendant was sentenced to prison increased by almost 8 months.

Gender and race had negative partial coefficient values, but were not significantly related to the sentence length decision. Additionally, the presence of dependent children apparently did not significantly influence the sentence length decision. These findings for gender and sentence length are consistent with some prior sentencing research (Daly & Bordt, 1995). In addition, many of the legal variables were insignificant as well.

Table 23: Linear Regression Results for
Sentence Length Decision, Time 1 Model

Variables	B	S.E.	Beta	t-value
Female	-9.66	9.62	-.105	-1.00
Nonwhite	-10.01	8.98	-.110	-1.12
Age	1.55	.64	.310	2.43*
Education (M)	11.49	6.80	.168	1.69
Employ (M)	-5.01	8.88	-.056	-.564
Single (M)	7.05	10.51	.089	.671
Dependents (M)	5.90	9.79	.076	.602
Hennepin County	5.24	6.84	.070	.767
Drug offense	-8.74	10.70	-.079	-.817
Prior Misdemeanor	-11.61	9.54	-.121	-1.22
Prior Felony	-19.68	13.58	-.254	-1.45
Severity Level	7.57	2.87	.257	2.64*
Hazard Rate	33.45	33.29	.189	.101
Constant	-33.95	26.18		-1.30

R² .211
DF: 13
N: 114

* $p \leq .05$
** $p \leq .001$

M denotes mean replacement for missing cases.

Partial slope coefficients in OLS regression models reflect the units of measurement of the independent variables (Bachman & Paternoster, 1997). Therefore, in order to determine the strength of predictors, standardized partial slope coefficients (i.e., beta weights) were examined and compared.⁶⁵ Age was the strongest predictor of the sentence length decision (beta=.310; $p \leq .05$), followed by severity level (beta=.257; $p \leq .05$).

The findings for sentence length at Time 1 provide support for Hypothesis-2. No significant gender effects were found as a result of the analyses completed.

Sentence Length Decision at Time 2

Descriptive Information, Time 2

Descriptive information for those convicted offenders sentenced to prison at Time 2 under the newly implemented sentencing guidelines are presented in Table 24. The sample at Time 2 was comprised of 627 offenders. As indicated in Table 24, the sample was largely comprised of men (92%; N=576) as opposed to women (8%; N=51). Fifty-nine percent of the sample (N=370) were white, and the remaining 41%

⁶⁵ Beta weights are defined using a common scale of unit. All scores are standardized by converting original values for variables to Z scores, thus providing a common unit for comparison purposes.

(N=257) of the sample were nonwhite. Almost three-quarters of those sentenced to prison at Time 2 had some level of high school education (72%; N=451), and another 13% (N=79) had some education level lower than that. The average age of offenders in the sample at Time 2 was 28 years (s.d.= 7.76). The majority of offenders at Time 2 were single (57%; N= 354) and had no dependent children (54%; N=340). Additionally, a sizable percentage of the sample (73%; N=455) also was unemployed at the time of the offense.

Descriptive information for several legal variables, including offense type, prior misdemeanors and felonies, and custody status is also presented in Table 24. Offenders were overwhelmingly sentenced to prison for property offenses. Ninety-three percent (N=583) of those receiving a prison sentence at Time 2 committed a property offense. This distribution is not necessarily surprising given the fact that the "war on drugs" in sentencing legislation and enforcement had not occurred until after Time 2 in the mid to late 1980s in Minnesota. A significant percentage of those sentenced to prison had a prior felony (94%; N=587), and to a lesser extent a prior misdemeanor (25%; N=155). The seriousness of the offenses committed by those sentenced at Time 2 increased from Time 1 to an average severity level of 3.41 (s.d.= 1.38). Further, a large portion of the

sample (76%; N=474) was under some form of custody status with the criminal justice system (e.g., escapees, probation, parole) at the time of their offense. Finally, the average sentence length of those offenders receiving prison sentences at Time 2 was almost 24 months (s.d.= 10.33; range= 12.10 to 84.00 months). The next analysis examined possible collinearity problems between the independent variables.

Table 24: Descriptive Information for Time 2,
Sentence Length Decision

Variable	Time 2 (N= 627)	
	#	%
Female		
No	576	92
Yes	51	8
Nonwhite		
No	370	59
Yes	257	41
Age		
mean	28	
s.d.	7.76	
range	16-61	
Education Level		
1-9 grades	79	13
10-12 grades	451	72
college	71	11
missing	26	4
Single		
No	266	42
Yes	354	57
Missing	7	1
Dependents		
No	340	54
Yes	272	43
Missing	15	2
Employment Status		
No	455	73
Yes (part/full)	139	22
Missing	33	5
Hennepin County		
No	220	35
Yes	407	65
Drug Offense		
No	583	93
Yes	44	7
Severity Level		
mean	3.41	
s.d.	1.38	
range	1-7	
Prior Misdemeanor		
No	472	75
Yes	155	25
Prior Felony		
No	40	6
Yes	587	94
Custody Status		
No	153	24
Yes	474	76
Sentence Length		
mean	23.86	
s.d.	10.33	
range	12.10 - 84.00	

OLS Regression Diagnostics, Time 2

Diagnostics were performed for the array of independent measures at Time 2, examining correlations and variance inflation factors for each. Bivariate correlations for each of the independent variables with the sentence length outcome, for the most part, exhibited weak associations. Severity was moderately correlated with sentence length ($r=.452$; $p \leq .001$) in the expected direction. As severity levels increased in value, so did sentence length and therefore more serious drug and property offenses warranted longer prison sentences. This would be consistent with what would be expected under the Minnesota sentencing guidelines.

The hazard rate variable for Time 2 was strongly correlated with two legal variables, prior felony ($r=.610$; $p \leq .001$) and custody status ($r=.692$; $p \leq .001$). The hazard rate had a somewhat weak, but significant correlation with the dependent variable ($r=.354$; $p \leq .001$). Other noteworthy correlations were found between marital status and age ($r=-.561$; $p \leq .001$) and marital status and dependent children ($r=-.382$; $p \leq .001$), as well as custody status and felony history ($r=.399$; $p \leq .001$) in the expected direction.

Again, simply examining bivariate correlations do not provide one with clear evidence that multicollinearity is present. Consequently, Variance Inflation Factors (VIF)

were calculated in order to determine if multicollinearity could be ruled out. Custody, along with the hazard rate measure had high VIF values. Consequently, custody was removed and VIF values were re-calculated. The results are displayed in Table 25. As shown, VIF values in the re-specified model diminish to acceptable levels.

Table 25: Test for Multicollinearity,
Initial and Corrected Models at Time 2

Variables:	VIF ₁	VIF ₂
Female	1.83	1.12
Nonwhite	3.37	1.32
Age	2.33	1.55
Education (M)	1.21	1.08
Employ (M)	2.86	1.23
Single (M)	1.90	1.72
Dependents (M)	1.40	1.25
Hennepin County	1.28	1.08
Drug Offense	1.63	1.17
Custody	14.06	--
Prior Misdemeanor	2.64	1.20
Prior Felony	6.36	2.29
Severity Level	6.15	1.41
Hazard Rate	34.75	3.14

OLS Regression Model, Time 2

After diagnostics were performed, an OLS regression model was estimated for those sentenced to prison at Time 2 (N= 626) for the sentence length decision, and findings are reported in Table 26. The model for Time 2 has an R² value

of .341 (df= 13).⁶⁶ Several independent variables had a significant effect on sentence length in Time 2.

Gender had a significant negative effect on sentence length ($b=-3.48$; $p \leq .05$). Women compared to men were likely to receive a significantly shorter prison sentence. For women, the sentence length decreased by approximately three and a half months, controlling for the other independent variables in the model.

Additionally, age and marital status were significant predictors of sentence length. Age ($b=.192$; $p \leq .001$) had a positive effect on sentencing length. Older offenders were significantly more likely to receive longer prison sentences, controlling for all other factors in the model at Time 2. Single offenders were significantly more likely to have received a shorter prison sentence ($b=-2.56$; $p \leq .001$). Being single decreases one's sentence length by approximately two and a half months.

The sentencing county also had a significant impact on sentence length. Offenders sentenced in Hennepin County as opposed to Ramsey County were significantly more likely to be sentenced to prison for a shorter length of time ($b=-2.21$; $p \leq .05$). This may be the result of other court or contextual measures that were not part of this study (e.g.,

⁶⁶ OLS regression model at Time 2 was significant at $p \leq .001$.

caseload, plea-bargaining, and charges), and therefore not included in the specified model.

As expected, several legal variables were important in determining sentence length. Both prior felonies and severity levels were positively related to the outcome variable. Offenders who had at least one prior felony ($b=4.70$; $p \leq .05$) were significantly more likely to receive a longer prison sentence than those offenders who do not have a felony background. Thus, for every one-unit increase in the prior felony measure, sentence length increased by almost 5 months. Furthermore, offenders convicted of more serious offenses were, again, significantly more likely to receive longer sentences for their crimes ($b=3.38$; $p \leq .001$). Both of these findings were in the expected direction.

Standardized coefficients were examined to gauge the relative importance of each estimate. The severity level of the offense was the most influential predictor of sentence length ($\beta=.452$). The hazard rate (i.e., the probability of receiving a prison sentence for the initial sentencing decision) was the next most important predictor of sentence length ($\beta=.150$), followed closely by age ($\beta=.144$) and marital status ($\beta=-.122$). While several extra-legal variables (e.g., gender, age, and marital status) were significant predictors, the most important predictor of

sentence length at Time 2 under a sentencing guidelines system was a legal variable.

Table 26: Linear Regression Results for Sentence Length Decision, Time 2 Model

Variables	B	S.E.	Beta	t
Female	-3.48	1.31	-.092	-2.65*
Nonwhite	1.02	.789	.049	1.29
Age	.192	.054	.144	3.53**
Education (M)	-.578	.718	-.027	-.805
Employ (M)	.419	.910	.017	.460
Single (M)	-2.56	.902	-.122	-2.83*
Dependents (M)	.355	.772	.017	.460
Hennepin County	-2.21	.736	-.102	-3.00*
Drug Offense	.223	1.43	.006	.156
Prior Misdemeanor	-1.31	.859	-.055	-1.52
Prior Felony	4.70	2.10	.111	2.24*
Severity Level	3.38	.291	.452	11.6**
Hazard Rate	7.20	2.78	.150	2.59
Constant	2.19	2.89		.759

R² .341

DF: 13

N: 626

* $p \leq .05$

** $p \leq .001$

M denotes mean replacement for missing cases.

Sentence Length Decision at Time 3

Descriptive Information, Time 3

Next, descriptive information for the offenders sentenced to prison at Time 3 are presented and discussed. As noted in Table 27, the sample at Time 3 was comprised of 264 offenders, of which 77% (N=203) were men and 65% (N=171) were nonwhite. Whereas nonwhites represented the minority of those offenders receiving prison sentences at Time 1 and Time 2, they now represented a clear majority of prison bound offenders. The average age of those in the sample at Time 3 was 30 years. Education level was distributed among the categories with 7% (N=19) having a grade school or middle school level education and an additional 38% (N=99) having some level of high school education. Another 16% (N=43) had some type of college education and the remaining 39% (N=103) of the offenders had no information available about their educational background. As for descriptive information about the family, 25% (N=67) of the offenders at Time 3 were single, and 35% (N=96) were married, divorced, or widowed. The remaining 38% (N=101) had missing information for this measure. Forty percent (N=105) of the offenders at Time 3 had at least one dependent child, whereas 18% (N=47) did not. The rest of the sample (42%;

N=112) did not have any information available concerning the presence of dependent children.

Descriptive information for several legal measures is presented in Table 27. Almost two-thirds (62%; N=164) of those sentenced to prison at Time 3 had committed a property offense. Although property offenses were committed by the majority of offenders incarcerated at Time 3, the percentage increased for drug offenses. This may be due to the policies (i.e., legislation, enforcement practices) enacted during the "war on drugs" era beginning in the late 1980s. The average seriousness of offenses continued to increase from earlier sentencing periods. The average severity level for the offenses committed by those offenders sentenced to prison was 4.36 (s.d.= 2.01). Incarcerated offenders continued to have significant criminal histories. Eighty-four percent (N=222) of the offenders at Time 3 had at least one prior felony, and 16% (N=43) had at least one prior misdemeanor. Additionally, 61% (N= 161) were under some type of custody with the criminal justice system at the time of their offense. Finally, the average sentence length of those offenders receiving a prison sentence during this time period was almost 31 months (s.d.= 23.29; range= 12.10 to 146.00 months), an increase on average of 7 months from the Time

2 data.

Table 27: Descriptive Information for Time 3,
Sentence Length Decision

Variable	Time 3 (N= 264)	
	#	%
Female		
No	203	77
Yes	61	23
Nonwhite		
No	93	35
Yes	171	65
Age		
mean	30	
s.d.	7.82	
range	17-58	
Education Level		
1-9 grades	19	7
10-12 grades	99	38
college	43	16
missing	103	39
Single		
No	67	25
Yes	96	36
Missing	101	38
Dependents		
No	47	18
Yes	105	40
Missing	112	42
Employment Status		
No	108	41
Yes (part/full)	51	19
Missing	105	40
Hennepin County		
No	86	33
Yes	178	67
Drug Offense		
No	164	62
Yes	100	38
Severity Level		
mean	4.36	
s.d.	2.01	
range	1-8	
Prior Misdemeanor		
No	221	84
Yes	43	16
Prior Felony		
No	42	16
Yes	222	84
Custody Status		
No	103	39
Yes	161	61
Sentence Length		
mean	30.56	
s.d.	23.29	
range	12.10 - 146.00	

OLS Regression Diagnostics, Time 3

Finally, an OLS regression model was estimated for those sentenced to prison at Time 3 (N=263). Diagnostics were completed for the initial OLS regression model at Time 3. First, bivariate correlations were examined for any unusually high values. The outcome variable, sentence length, was moderately correlated with offense type ($r=.461$; $p \leq .001$) and the hazard rate variable ($r=.412$; $p \leq .001$). Sentence length had a strong correlation with severity level ($r=.732$; $p \leq .001$) and was in the expected direction.

Other correlations of interest include those between hazard rate variable and other independent variables, particularly legal ones. In addition to the moderate correlation with the dependent variable, the hazard rate measure was moderately correlated with prior felony ($r=.437$; $p \leq .001$) and severity level ($r=.471$; $p \leq .001$). As expected, the predicted probability of an offender receiving a prison sentence was associated with the sentence length decision, thus indicating that influential predictors at the previous decision stage appear to be influential at this stage as well.

Several other correlations warrant noting. Both education measures, highest educational level obtained and a binary variable created in order to identify cases with

missing information on this measure were highly correlated ($r = -.912$; $p \leq .001$). In fact, highest education level obtained was strongly correlated with several predictors, which might suggest possible collinearity problems.

Since education level was highly correlated with several of the predictors, it was removed from the model in Time 3, as was marital status. The VIF statistics for the remaining independent variables are reported in Table 28. Several VIF values were considerably high, especially the VIF values for severity level ($VIF = 16.84$) and the hazard rate (16.94). Recall that the correlation between severity level and the hazard rate was strong, thus it appears that collinearity was present. Consequently, the hazard rate measure was removed from the OLS regression model during subsequent specifications. Several other predictors had inflated variances, including prior felony ($VIF = 7.40$) and both education level measures ($VIF = 14.54$ for Education_Z; $VIF = 8.24$ for Education_MS). Since both education measures were highly correlated with each other ($r = -.912$; $p < .001$), they were removed during subsequent OLS regression models performed at Time 3. Both marital status variables were removed from further Time 3 OLS regression models as well. As a result of removing several measures, it appears from the findings in Table 28 that VIF values decreased to

acceptable levels (i.e., $VIF < 4.00$).

Table 28: Test for Multicollinearity,
Initial and Corrected Models, Time 3

Variables:	VIF_1	VIF_2
Female	1.20	1.11
Nonwhite	1.26	1.24
Age	1.50	1.20
Education (Z)	8.24	--
Employ (Z)	1.94	1.32
Single (Z)	1.99	--
Dependents (Z)	2.31	2.15
Hennepin County	1.46	1.17
Drug Offense	2.00	1.74
Custody	3.27	1.43
Prior Misdemeanor	1.83	1.16
Prior Felony	7.40	1.47
Severity Level	16.84	1.85
Hazard Rate	16.94	--
Education_MS	14.54	--
Employ_MS	4.60	3.10
Marital_MS	7.08	--
Dependents_MS	6.20	3.84

OLS Regression Model, Time 3

The OLS model was re-specified and the results are presented in Table 29, along with significant partial slope coefficients. The model at Time 3 was significant and had an R^2 value of .599 ($N= 263$; $df= 13$).⁶⁷ Several independent variables at Time 3 were significant predictors of the sentence length decision.

For Time 3, the county in which sentencing occurred was

meaningful in determining sentence length. Those offenders sentenced in Hennepin County, as compared to Ramsey County, were significantly more likely to receive shorter prison sentences. Under a sentencing guidelines system, sentencing practices should not vary according to the county in which the adjudication takes place. These results from Time 2 and Time 3 appear to provide evidence that sentencing guidelines were not being applied equally across counties in the state. This may reflect important distinctions between the counties in terms of the impact from court officials as well as other possible court processing variables not considered here.

Both prior felony ($b=11.64$; $p<.001$) and the severity of the offense ($b=8.92$; $p<.001$) were significant predictors of the outcome variable. Having a prior felony record increased a person's sentence length by approximately 12 months, holding all other variables in the model constant. For every increase in severity score, there was an increase in sentence length of approximately 9 months. In order to determine the strength of each predictor, beta weights were examined and the findings here clearly suggest that the severity of the offense was an extremely influential predictor of sentence length in the model ($\beta=.770$). Thus, it appears that legal factors were most powerful

⁶⁷ The OLS regression model specified for Time 3 was significant at

predictors at the sentence length stage.

Table 29: Linear Regression Results for
Sentence Length Decision, Time 3 Model

Variables	B	S.E.	Beta	t-value
Female	-.139	2.33	-.003	-.060
Nonwhite	.120	2.17	.002	.055
Age	.162	.131	.054	1.24
Employ (Z)	-1.63	2.71	-.028	-.602
Dependents (Z)	1.94	2.79	.041	.694
Hennepin County	-7.17	2.15	-.145	-3.33**
Drug Offense	3.97	2.53	.083	1.57
Custody	.459	2.28	.010	.201
Prior Misdemeanor	-.501	2.72	-.008	-.185
Prior Felony	11.6	3.09	.183	3.77**
Severity Level	8.92	.631	.770	14.2**
Constant	-4.12	11.36		-.363
Employ_MS	6.82	3.35	.144	2.04*
Dependents_MS	-5.84	3.69	-.124	-1.58

R² .599
DF: 13
N: 263

* $p \leq .05$
** $p \leq .001$

M denotes mean replacement for missing cases.

$p \leq .001$.

The analyses executed for Time 3 and the resulting findings suggest support for Hypothesis-4. There were no significant differences between men and women for the sentence length decision, controlling for the other independent variables in the model.

Analysis of Predicted Probabilities of Receiving a Prison Sentence

Next, predicted probabilities were calculated for groups of offenders based on race, gender, and offense type and the results are provided in Table 30. Predicted probabilities are presented for eight separate groups of offenders in order to ascertain the likelihood of receiving a prison sentence depending on one's race, gender, and offense type.

Time 1 Analysis

At Time 1, the results suggest that the white male property offender has the highest probability (.155) of receiving a prison sentenced, followed by a white male drug offender (.096), nonwhite male property offender (.091) and a white female property offender (.084). A nonwhite female

drug offender has the lowest probability of receiving a prison sentence (.028). At Time 2, the same sequence of probabilities as in Time 1, from highest to lowest holds here.

Time 2 Analysis

As shown in Table 30, the predicted probabilities for the reference groups increased, doubling in some cases, over those at Time 1. This is interesting considering the fact that data at Time 2 represent sentencing practices immediately following the implementation of sentencing guidelines in the state. Again, the white male property offender experienced the greatest probability of receiving a prison sentence (.286), followed by the white male drug offender (.186), the nonwhite male property offender (.181) and the white female property offender (.170). Again at Time 2, the nonwhite female drug offender experienced the lowest probability of being incarcerated for their offense (.061).

Table 30: Predicted Probabilities for Receiving a Prison Sentence
by Time Period

Reference Group:	Time 1	Time 2	Time 3
White, Male, Property Offender	.155	.286	.124
White, Male, Drug Offender	.096	.186	.098
Nonwhite, Male, Property Offender	.091	.181	.121
Nonwhite, Male, Drug Offender	.055	.112	.096
White, Female, Property Offender	.084	.170	.087
White, Female, Drug Offender	.050	.105	.069
Nonwhite, Female, Property Offender	.048	.102	.085
Nonwhite, Female, Drug Offender	.028	.061	.067

Time 3 Analysis

At Time 3, the results indicate that predicted probabilities of receiving a prison sentence decreased but not as low as the levels at Time 1, with the exception of white male property offenders (Time 1 - .155 vs. Time 3 - .124). The white male property offender had the highest predicted probability of receiving a prison sentence (.124), followed closely by the nonwhite male property offender (.121), the white male drug offender (.098), and the nonwhite male drug offender (.096). The next highest predicted probability involved the white female property offender (.087), closely followed by the nonwhite female property offender (.085), the white female drug offender (.069), and finally the nonwhite female drug offender (.067).

Conclusion

The information presented in Table 30 reveals several noteworthy findings. First, the predicted probabilities for being sentenced to prison increases dramatically for all reference groups between Time 1 and Time 2. The implementation of a determinate-based sentencing system

between Time 1 and Time 2 appears to have increased the likelihood of incarceration for each of the references groups.

Second, all reference groups' predicted probabilities for prison decreased between Time 2 and Time 3, except for nonwhite female drug offenders. This general decrease in the predicted probability of receiving a prison sentence could be the result of any number of factors, including changes in probabilities of arrests and restricted prison resources such as available bed space, or returning to "business as usual" after the initial effect of new sentencing policies. The consistent increase in the predicted probability for nonwhite female drug offenders lends some support to Bush-Baskette's contention that the "war on drugs" has been specifically a "war on Black women." The trend across three time periods appears to be different for nonwhite drug offenders.

Further research should address this issue particularly in light of the fact that nonwhite offenders were sentenced more leniently at each of the three time periods, yet the probability of going to prison for specific nonwhite subgroups increased over time. Additionally, future research should examine why the predicted probability for nonwhite female drug offenders continued to increase over

the three time periods.

Finally, the predicted probabilities at Time 3 are closer in range for the reference groups (.124 to .067) as compared to those at the other two time periods (Time 1 - .155 to .028 and Time 2 - .286 to .061). Thus there is less variation in the likelihood of going to prison between the reference groups at Time 3. Note that the predicted probability for white male property offenders was the only figure to decrease at Time 3 below the value at Time 1, while the value for nonwhite female drug offenders increased. The smaller variation between subgroups may result from further attempts by the state to restrict the influences of various extra-legal factors through additional sentencing changes between Time 2 and Time 3. Next, the analysis considers the issues of whether the "war on drugs" has been a "war on women."

Analysis of Equivalence of Regression Coefficients

In order to explore the argument that the "war on drugs" has been a "war on women," a test for comparing two regression coefficients was employed. Borrowing from the work of Brame et al.(1998) a two step procedure was used. Recall equation 3.9:

$$Z = \frac{b_1 - b_2}{\sqrt{SEb_1^2 + SEb_2^2}}$$

Table 31 provides the results for the testing of equivalence of coefficients of drug offenses for men and women within each time period.

Table 31: Equivalence of Regression Coefficients for Men and Women Drug Offenders within Time Periods

Coefficients: Men vs. Women	Z value
Full Model	-1.16
Time One	-.548
Time Two	-.270
Time Three	-.530

As indicated in Table 31, no significant differences of magnitude were found between the coefficients for male and female drug offenders for each time period. These findings suggest that the magnitude of coefficients between drug offenses and the decision whether to incarcerate is not significantly different for male and female drug offenders.

Next, coefficients were compared for each gender across time periods and changes in sentencing systems (determinate

vs. indeterminate; pre and post "war on drugs"). Table 32 provides the results of each test for both genders.

Table 32: Equivalence of Regression Coefficients for Men and Women Drug Offenders Across Time Periods

Coefficients: Men	Z value		Coefficients: Women	Z value
Time 1 v. Time 2	-.276		Time 1 v. Time 2	.074
Time 1 v. Time 3	-.833		Time 1 v. Time 3	-.295
Time 2 v. Time 3	-.767		Time 2 v. Time 3	-.349

Coefficients were compared separately for men and women between the various time periods. Using Chesney-Lind's argument that the "war on drugs" has been a "war on women," there should have been a significant difference in the magnitude of coefficients for women when comparing Time 1 with Time 3, and to a lesser extent when comparing Time 2 and Time 3. Again, the findings suggested no significant differences in magnitude of coefficients between comparison groups for drug offenses over time. Thus, the magnitude of the coefficient reflecting the relationship between drug offenses and likelihood of incarceration has not significantly changed over time, moving from an indeterminate system to a determinate one or before and after significant sentencing changes for drug offenses.

Chesney-Lind's argument that the "war on drugs" has

been a "war on women" is not supported with these findings. The magnitude of coefficients for drug offense and sentence outcome did not change significantly over time. These results suggest that women have not been disproportionately influenced by sentencing reforms in general, and the "war on drugs" more specifically, in the state of Minnesota. Thus, Hypothesis-5 was not supported from the findings testing the equivalence of coefficients.

Conclusion

The purpose of this study was to ascertain the impact of gender on sentencing outcomes for drug offenders in the state of Minnesota before and after the implementation of sentencing guidelines in May 1980. A series of hypotheses were tested in order to explore the relationship between gender, sentencing reforms, and sentencing decisions. The findings indicated mixed support for the hypotheses.

Legal factors were consistently strong predictors of sentencing decisions over the span of the study. With the exception of Time 1, prior felonies and the severity of the current offense were significant in each of the models. As expected, controlling for all other variables in the analysis, gender was a significant predictor of the initial

sentencing outcome at Time 1 before sentencing reforms. However, even after the implementation of sentencing guidelines in the state, gender remained influential in sentencing decisions at Time 3 and in combination with race at Time 2. Three sets of interactions were tested in the overall model and at each time period: sex*race, sex*drug offense, and sex*dependent children. Only one interaction was found to be significant, that being between sex and race at Time 2. Nonwhite women were significantly more likely than white women to be sentenced to an alternative to prison. Women in general received leniency from the courts, and this did not result from certain statuses linked to race or gender roles.

Findings for the second sentencing decision, sentence length, provided mixed support for hypotheses. As expected at Time 1 and Time 3, gender was not an important predictor in determining the sentence length of those offenders sentenced to prison. However, at Time 2 gender was a significant predictor of the sentence outcome, with women receiving a shorter sentence length.

The last chapter provides a brief summary of important findings, along with a discussion of implications for theory, policy and future direction of research on sentencing disparity.

CHAPTER FIVE: DISCUSSION AND CONCLUSIONS

The final chapter has several objectives. First, a brief overview of the research study and results are discussed for each of the tested hypotheses. Second, limitations of the research study and findings will be discussed in detail. Finally, implications for theory in this area of scholarship will be addressed, and implications for policy reviewed.

Summary and Discussion

Decision to Incarcerate

The first part of the analysis plan examined the initial sentencing decision, whether to incarcerate the convicted offender. Sentencing decisions across the three periods of time were analyzed together and for each gender group. Many of the same predictors were influential in the full model as well as the respective gender models. When sentencing decisions from the three time periods were considered together, female offenders were significantly more likely to receive an alternative to incarceration when compared to male offenders, controlling for all other

predictors in the analysis. Additionally, nonwhite offenders were significantly more likely to receive an alternative to incarceration as well. Time period was also an important factor in determining sentencing outcomes. No significant differences were found in the likelihood of receiving prison sentences during Time 1 compared to Time 2 controlling for all other factors in the model, however significant differences were found between Time 2 and Time 3. Offenders at Time 3 were significantly more likely to receive an alternative to prison when compared to similar offenders who were sentenced at Time 2. Finally, each of the legal variables were significant predictors of the initial sentencing decision in the full model as well as the male and female models, all in the expected direction. For example, having a prior felony or committing a more serious offense resulted in a significantly higher likelihood of receiving a prison sentence.

The analysis next considered sentencing decisions for each of the time periods. First, it was hypothesized that gender differences would be found during Time 1 for the In/Out sentencing decision, when sentencing officials had broad levels of discretion, but not during Time 2 or Time 3 after Minnesota developed and implemented sentencing reforms. As expected, gender significantly affected who

received a prison sentence during the first time period. At Times 2 and 3 gender should not have had a significant impact on which offenders received prison sentences, however gender did remain a significant predictor of sentencing decisions at Time 3, and contributed to a significant interaction effect at Time 2 with race. Despite reform measures to limit the influence of extra-legal factors such as gender or race on sentencing decisions, they remained influential predictors of the initial sentencing decision even after controlling for key legal variables (e.g., prior felony, custody, severity).

Also, it was believed that results would reflect differences among women, for instance due to whether or not they had dependent children. Based on the review of the literature, three particular interactions were of interest: gender and race, gender and dependents, and gender and type of offense. The findings show limited support for this perspective. One could presume that it would be more likely to discover significant interactions at Time 1. However, no significant interaction effects were found for the decisions at Time 1. The one significant interaction that was present involved that between gender and race at Time 2, albeit in the opposite direction of what was expected. White women were significantly more likely to be incarcerated than

nonwhite women. The analysis next considered the sentence length decision.

Sentence Length Decision

The sentence length decision was analyzed for those offenders sentenced to prison. It was hypothesized that gender would not be a significant factor in the sentence length decision at each of the time periods. As expected, gender was not an important predictor at either Time 1 or Time 3. Unexpectedly, there was a significant finding at Time 2. Women who were sentenced to prison were significantly more likely to receive a shorter sentence length (by about 3 ½ months) than men who were sentenced to prison at Time 2.

The sentencing county was also a significant predictor in the sentence length decision. For sentence length decisions at both Time 2 and Time 3, the findings suggest that offenders sentenced to prison in Hennepin county as compared to Ramsey county were significantly more likely to receive shorter sentences, by about 2 months at Time 2 and 7 months at Time 3. This result is important considering the fact that this difference in sentence length occurred under a determinate sentencing system that had been implemented

state-wide. One would not expect to find such county differences. Further research might consider certain contextual differences among counties in Minnesota and how they may have, in turn, influenced the implementation or application of such reforms.

Predicted Probabilities of Receiving a Prison Sentence

Next, predicted probabilities were calculated for the decision outcome of incarceration in order to determine the likelihood of certain types of offenders receiving a prison sentence. It was hypothesized that the introduction of sentencing reforms and significant drug legislation would have had a disproportionate impact on women over time.

The results for this part of the analysis suggest some notable trends. For each time period, white males had the highest probability of receiving a prison sentence followed by white male drug offenders in Time 1 and Time 2, and nonwhite male property offenders in Time 3. White women property offenders had the highest probability of being incarcerated for each of the time periods, followed by white female drug offenders in Time 1 and Time 2, and nonwhite female property offenders in Time 3. Although nonwhite

female drug offenders had the lowest predicted probability for receiving a prison sentence for each of the time periods, it is the only predicted probability that continued to increase over the three time periods. These findings suggest that the reforms may be disproportionately impacting certain subgroups of offenders and further research should try to identify and understand this impact.

Sentencing Reforms and the "War on Women"

Finally, it was hypothesized that recent sentencing reforms implemented in the state of Minnesota disproportionately impacted women in comparison to men. Some scholars have maintained that in a rush to respond to the drug problems of this country, policymakers implemented sentencing reforms, which have been excessively punitive toward women drug offenders.

Instead of looking at possible alternatives to incarceration, community-based programs that are family friendly or other treatment options that recognize the specific circumstances of women drug offenders, officials have adopted determinate measures. Mandatory minimums or sentencing guidelines developed in many jurisdictions around this country have chosen to incarcerate women, and many of

them are non-violent. These policies have placed additional burdens on communities and governments to either find care for dependent children, or assist maternal grandparents with public monies. Although one could argue that these sentencing reforms have incarcerated many male and female non-violent offenders alike, the effect on women and children and society, more generally, is substantial and worthy of examination.

An analysis of equivalence of coefficients was used to address this question. As shown, results from comparing the effects of gender on sentencing practices for each time period, along with comparing the effects within each gender group across time periods resulted in no significant differences. Furthermore, in all time periods, women were less likely to be sentenced to prison for drug offenses than men. The exception is at Time 2, when this was true for nonwhite women only. Thus, the argument that sentencing reforms and the "war on drugs" have had a disproportionate impact on women was not substantiated by this research.

Sentencing reforms have impacted various states and the federal system in specific ways, thus additional research should examine other sentencing systems to ascertain whether the results documented here are replicated or different findings are found.

Limitations of the Present Research

Several limitations of the present study need to be addressed. First, the data are limited to the extent that only two relevant decision points were examined; the decision to imprison a convicted offender or use a community alternative (In vs. Out). Consequently, this research did not deal with earlier decision points. Differential treatment based on gender or gender-related factors may occur at earlier stages in the legal process. For instance, certain women may be filtered out of the criminal justice system by the police or by the prosecutor, thereby influencing the resulting female offender population. There is varying evidence to suggest that women do experience leniency from criminal justice decision-makers at other stages in the system such as decision to arrest, bring charges, plea-bargain, during the Presentence investigation, and parole (Erez, 1992; Figueira-McDonough, 1985; Frazier, Bock & Henretta, 1983; Wilbanks, 1986). Research continues to examine stages in the criminal justice system where discretion can result in possible differential treatment based on gender.

A second limitation involves problems related to the use of existing data. Despite the fact that the same

agency, the Minnesota Sentencing Guidelines Commission, collected information about convicted and sentenced offenders on a yearly basis since its inception, there remained several problems with consistency of data over time.

First, the same measures were not collected in all three time periods. When information was unavailable for a specific construct in one of the time periods it had to be dropped from the model(s) in order to allow for a true comparison of the results across time. This involved measures such as the type of care for dependent children, the role of the offender in the commission of the crime, whether or not a weapon was used during the commission of the crime, and distinctions between drug offenses and property offenses. Prior research suggests that these measures have been influential in sentencing decisions, but because of their unavailability in the various data periods, they could not be included in the analysis. Nevertheless, many key and important independent measures remained and were included in the logistic and OLS models.

Second, the same construct, in some instances, was operationalized using a different level of measurement. In the event that this occurred, information for the variable was collapsed to the lowest level of measurement, for

example from ratio level to nominal level (e.g., prior felonies). Consequently, precision was lost for some measures in exchange for their inclusion in the analysis.

It is evident that women did receive more lenient sentences at the initial sentencing stage, but why? The inability to answer this question with the current dataset is a third limitation of this study. The available data from Minnesota do not include the information to answer this question. Data on sentencing departures were available, however they were only collected and recorded when judges sentenced outside the presumptive sentence under the guidelines. The answer as to why differential sentencing exists based on gender was outside the scope of this study and remains a fruitful area of exploration in subsequent studies on sentencing decisions. This question is best answered with research using a combination of existing court records and official statistics, along with qualitative research examining the court context and observations or interviews with key court actors such as judges, prosecutors, and defense attorneys.

Finally, the generalizability of the results from this study are questionable. First, Minnesota has a unique sentencing guidelines system, thereby reflecting sentencing practices in this state only. One cannot necessarily

generalize these findings to other states that do not have guidelines and as much structure in their sentencing systems. Even in states that have established sentencing guidelines, such as Pennsylvania and Washington, there are important distinctions between even these systems and the one in Minnesota.

Second, policies and how they impact on women in the Minnesota criminal justice system do not necessarily reflect how women are handled in other states. For example, Minnesota in 1994 had a lower incarceration rate (10 per 100,000 women) than all but two states (North Dakota, 5 per 100,000; Maine, 9 per 100,000), and was below the national average (40 per 100,000). Even after the introduction of sentencing guidelines, Minnesota still maintained one of the lowest incarceration rates in the country (BJS, 1994). As a result, it is recommended that future research examine these same issues in other states, particularly where reforms significantly transformed sentencing practices and systems are dealing with a different offender population, for example larger female corrections systems, and one with a more diverse racial composition.

Implications for Theory

This section discusses research results and their implications for theories such as multiracial feminism and social construction feminism. Specifically, the implications of findings for explanations based on chivalry and gender role expectations (e.g., concerning motherhood) are discussed. A review of the literature highlights the fact that the relationship between gender and sentence outcome is a complex one.

Chivalry

As already noted, prior research examining the effect of gender on sentencing practices often discovered lenient treatment of women (sometimes under certain conditions) by the courts. The present research explored the chivalry thesis, which maintains that women are treated more leniently than men are by the criminal justice system. Further, women who come into contact with the legal system are protected, resulting in the differential treatment of women by officials. It is this protection through leniency that is the focus of this study. Controlling for certain legal and other extra-legal factors, women drug and property

offenders received more lenient sentences than their male counterparts in the state of Minnesota. Gender was a significant predictor of the In/Out sentencing decision in the overall model and at both Time 1 and Time 3, but not at Time 2 once the interaction between race and gender was introduced in the model. Therefore, gender was important in sentencing decisions under both an indeterminate sentencing system (i.e., Time 1), and the sentencing guidelines system during 1994. Prior work, however, suggests that the impact of chivalry on sentencing decisions occur under certain circumstances, and is not extended to all women.

Putting Chivalry into Context

According to Moulds (1980), chivalry oftentimes reveals itself in today's society through what is deemed appropriate behavior on the part of men and women and in the relationship between both. As a result, women are supposed to carry themselves in feminine, meek and subordinate ways in relation to their male counterparts. Further, appropriate behavior is many times connected to the role women serve as mothers and/or wives.

In social construction feminist theory, Lorber (1998) makes the point that gender inequality results when gender is socially constructed in order to continually re-create

boundaries between gender categories. Further, gender is a society-wide institution where gender influences the distribution of power, privileges, and monetary resources (Lorber, 1998: 160). While social construction feminism appropriately points out that gender expectations are learned early on in family and school settings, this research examined whether certain gender expectations are reinforced in the justice system at the time of sentencing. Because of sentencing changes discussed previously, the impact of chivalry and gender expectations may not have the same influence on court decisions as they once had.

Prior studies discovered leniency results from influential factors often associated with traditional gender role expectations. Consequently, being a woman is simply not enough, but being a woman under a certain set of circumstances warrants leniency on the part of judges and/or courts. For example, prior research indicated that having dependent children is important. The courts in some settings have tried to protect the family unit by not removing the mother, thereby making it less likely to receive a prison sentence. The results from the interaction models, including gender and dependent children, indicate there were no significant effects. Thus, women were sentenced for the offenses regardless of whether or not they

had dependent children. It appears that courts were not necessarily worried about protecting the family unit, as much as they were in protecting women more generally.

Prior research also suggests that aspects of the conviction offense (e.g., severity, type, role, etc.) are significant predictors of sentencing decisions. For example, the commission of traditional female offenses, as compared to non-traditional female offenses, often results in lenient sentences for women offenders. The level of blame is lower for women who commit offenses that are more consistent with their perceived nature. Results from the analysis of the In/Out sentencing decision do not support such a position. Whether women were convicted of drug related offenses (i.e., non-traditional) or property offenses (i.e., traditional), they received similar prison sentences. Thus, it appears that judges and courts appear to place an equal degree of blameworthiness on property and drug offenses, controlling for seriousness of the offense and other legal measures.

Previous research, although not consistent, asserts that chivalry and gender role expectations are shaped by race. Several criminologists have suggested that women of color have not enjoyed the same history of leniency as Caucasian women. Instead, women of color have been treated

in a similar manner to men by the criminal justice system. The current research considered the importance of the interaction between race and gender with regard to the likelihood of receiving a prison sentence. With the exception of Time 2, the race and gender interaction was not a significant predictor of the In/Out decision. For Time 2, white women were sentenced more punitively than nonwhite women, and were likely to receive similar sentences to those of nonwhite men.

Findings from the current research, for the most part, did not support each of the expected significant interactions. Women regardless of their status as mothers, traditional female offenders, or racial identification were treated leniently compared to male offenders. It appears that either the general status of being a woman or other characteristics or circumstances common to women warrant leniency by the courts in the state of Minnesota, even after the implementation of sentencing guidelines.

It is important to understand that although the courts sentenced women more leniently, one cannot necessarily conclude that the lenient treatment found in this research resulted from chivalry on the part of the courts. Continued research into the reasons why women were sentenced differently, particularly under a determinate sentencing

scheme would need further investigation. In order to make serious advances in the theories involving the court processing area, it is my belief that future work needs address several issues.

First, research must consider the issue of why female offenders are sentenced more leniently than are male offenders. Most sentencing research relies on official data collected by criminal justice agencies. Additionally, most sentencing disparity research focuses on the opinions and decisions of judges. Further research on gender and sentence disparity needs to utilize a qualitative analysis approach such as conducting a case study of a court system, and more importantly the key court officials working within the system. Further research should focus on the opinions and decision-making of defense attorneys, prosecutors, and probation officers in addition to judges. This type of grounded approach would permit more of an exploratory analysis of not only sentencing decisions but decisions of court officials affecting the adjudication process.

Second, further research on the use of departures might assist researchers in understanding the relationship between gender and sentencing outcomes under guidelines systems. Prior research from the state of Pennsylvania suggests that departures may be connected to gender. Therefore reasons

for differential decisions might be discovered in subsequent research examining departures, or more importantly, in qualitative contributions. Given the research conducted by Moore and Miethe (1986) and Kramer and Ulmer (1996), further research should be completed in order to understand the significance of using departures as a way to circumvent recent sentencing reforms. Research involving less structured determinate sentencing systems such as the one in Pennsylvania suggests that judges might be resorting to the limited discretion that is available to them in order to sentence defendants according to their sense of justice when it differs from that recommended by the guidelines.

Implications for Policy

Minnesota Sentencing Guidelines

Next, implications from the findings of this research for policy are considered. The findings suggest that the effects of gender have not disappeared from sentencing decisions in Minnesota. Controlling for several important legal measures, gender remained influential in who received prison sentences. This occurred under the indeterminate sentencing system in the late 1970s, for nonwhites under the

sentencing guidelines systems in the early 1980s, and for all women in 1994. Thus, with the partial exception of white women, sentencing reforms did not affect the relationship between gender and the likelihood of receiving a prison sentence over the span of 15 years in the state of Minnesota.

Further, the use of sentencing guidelines in the state did not meet its goal of reducing sentencing disparity due to extra-legal variables such as gender and race for property and drug offenses. While legal factors were consistently significant predictors of the initial sentencing outcome measure, gender, race, and several other extra-legal factors remained significant. The results here are consistent with the findings from Miethe and Moore (1989), who found that criminal justice officials wanted more flexibility and discretion added to the guidelines, and officials had found ways to circumvent the guidelines system.

Additional exploration into these findings is necessary in order to surmise the reasons behind such sentencing patterns. Do judges in Minnesota disagree with the guidelines and presumptive sentences for women and not men, or are there other important measures not included in the study that could explain the results? The recommendations

outlined in the previous section concerning future theory development may help explain why women continue to be sentenced more leniently in spite of sentencing changes.

Justice for Women

The concern for what is *justice* for women was addressed in Chapter 1, in the discussion about the debate over equal versus different treatment of women offenders. Both 'equality under the law' and 'separate but equal' positions were identified within the scope of the debate. Chesney-Lind and Pollock (1995) appropriately point out that the equalization position has benefited women to a certain degree, specifically in terms of correctional programming, however, for sentencing, the equal treatment of women has translated into an increased reliance on incarceration as a sanction. This study examined the possible implications of implementing an 'equal' policy approach for sentencing. It appears that in Minnesota some degree of justice has been preserved through judicial decision-making, which seems to take into account gender or factors related to gender.

What is justice for women? This question seems simple from the outset, but in actuality it is complicated and grounded in a more fundamental question of what is justice

for all people involved in the criminal justice system. The arguments concerning a *just* legal system can be made for other marginalized groups of people, nonetheless I have chosen to focus in this study specifically on women and the issue of justice.

A *just* legal system for women is one that is reactive to womens' experiences and realities. Although our legal system assumes that it can neatly categorize 'like situated' offenders together in order to sentence them to equal and proportionate sanctions, the truth is that women are not on an equal footing with men in society (or with each other for that matter). Race, age, economics, education, family violence, abuse, sexual exploitation, dependent children, and drugs shape the reality for the women involved in the criminal justice system. In an effort to promote what is perceived to be a fair and a *just* legal system, our sentencing policies ignore the circumstances, experiences, and realities of women. In this study I have tried to describe the unique experiences and realities of women offenders in order to show why recent sentencing reforms make little sense and have unfortunate consequences for them.

Despite the evidence that protection or leniency is still present in sentencing practices, there should be

continued concern about the impact of sentencing reforms and policies on women. In fact, other state systems should be examined in order to gain a broader perspective on the issue. Very few studies have explored the policy concerns, thus additional research is needed to inform those that make sentencing policy, about the impact and possible unintended consequences of such policies in order to determine what is justice for women.

APPENDIX A

MINNESOTA SENTENCING GUIDELINES GRID

APPENDIX A - MINNESOTA SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with non-imprisonment felony sentences are subject to jail time according to law.

SECURITY LEVEL OF OFFENSE (Common offenses in Italics)		0	1	2	3	4	5	6 +
Murder, 2 nd Degree (intentional murder; drive-by-shootings)	X	306 299-313	326 319-333	346 339-353	366 359-373	386 379-393	406 399-413	426 419-433
Murder, 3 rd Degree/ 2 nd Degree (unintentional murder)	IX	150 144-156	165 159-171	180 174-186	195 189-201	210 204-216	225 219-231	240 234-246
Criminal Sexual Conduct, 1 st Degree, Assault, 1 st Degree	VIII	86 81-91	98 93-103	110 105-115	122 117-127	134 129-139	146 141-151	158 153-163
Aggravated Robbery 1 st Degree	VII	48 44-52	58 54-62	68 64-72	78 74-82	88 84-92	98 94-102	108 104-112
Criminal Sexual Conduct, 2 nd Degree (a) & (b)	VI	21 18	27 23	33 28	39 37-41	45 43-47	51 49-53	57 55-59
Residential Burglary Simple Robbery	V	12*	15	18	21	24	27	30
Nonresidential Burglary	IV	12*	13	15	17	19	21	23
Theft Crimes (Over \$2,500)	III	12*	12*	13	15	17	19	21
Theft Crimes (\$2,500 or less) Check Forgery (\$200-\$2,500)	II	12*	12*	13	15	17	19	21
Sale of Simulated Controlled Substance	I	12*	12*	12*	13	15	17	19

* One year and one day

Presumptives commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section II.E. Mandatory Sentences for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.

Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to a state prison. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault). See sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.

Effective August 1, 1997

APPENDIX B

OFFENSE SEVERITY LEVEL

APPENDIX B - OFFENSE SEVERITY LEVEL

Relevant Factors in Determining Offense Severity Level:

- A. Offense severity is determined by the offense of conviction. The Commission thought that serious legal and ethical questions would be raised if punishment were to be determined on the basis of alleged, but unproven, behavior, and prosecutors and defenders would be less accountable in plea negotiation. It follows that if the offense of conviction is the standard form which to determine severity, departures from the guidelines should not be permitted for elements of offender behavior not within the statutory definition of the offense of conviction. Thus, if an offender is convicted of simple robbery, a departure from the guidelines to increase the severity of the sentence should not be permitted because the offender possessed a firearm or used another dangerous weapon.
- B. The date of the offense is important because the offender's age at the time of the offense will determine whether or not the juvenile record is considered, the date of the offense might determine whether a custody status point should be given, and the date of the offense determines the order of sentencing with multiple convictions. For those convicted of a single offense, there is generally no problem in determining the date of the offense. For those convicted of multiple offenses when theft and damage to property aggregation procedures are used for sentencing purposes or when multiple offenses are an element of the conviction offense, the following rules apply:
- If offenses have been aggregated under Minn. Stat. § 609.52, subd. 3(5), or § 609.595, the date of the earliest offense should be used as the date of the conviction offense.
 - If multiple offenses are an element of the conviction offense, such as in Subd. 1(h) (iii) of first degree criminal sexual conduct, the date of the earliest offense should be used as the date of the conviction offense.

APPENDIX C

CALCULATION OF CRIMINAL HISTORY INDEX SCORE

APPENDIX C - CALCULATION OF CRIMINAL HISTORY INDEX SCORE

The offender's criminal history index score is computed in the following manner:

1. Subject to the conditions listed below, the offender is assigned a particular weight for every extended jurisdiction juvenile conviction and for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. For the purposes of this section, prior extended jurisdiction juvenile convictions are treated the same as prior felony sentences.

- a. The weight assigned to each prior felony sentence is determined according to its severity level, as follows:

Severity Level I - II = $\frac{1}{2}$ point;
Severity Level III - V = 1 point;
Severity Level VI - VII = 1 $\frac{1}{2}$ point;
Severity Level VIII - X = 2 points; and
Murder 1st Degree = 2 points.

The severity level to be used in assigning weights to prior offenses shall be based on the severity level ranking of the prior offense of conviction that is in effect at the time the offender commits the current offense.

- b. When multiple sentences for a single course of conduct were imposed pursuant to Minn. Stats. §§ 609.585 or 609.251, only the offense at the highest severity level is considered;
 - c. Only the two offenses at the highest severity levels are considered for prior multiple sentences arising out of a single course of conduct in which there were multiple victims;
 - d. When a prior felony conviction resulted in a misdemeanor or gross misdemeanor sentence, that conviction shall be counted as a misdemeanor or gross misdemeanor conviction for purposes of computing the criminal history score, and shall be governed by item 3 below;

- e. Prior felony sentences or stays of imposition following felony convictions will not be used in computing the criminal history score if a period of fifteen years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current offense.

Calculation of Score: The basic rule for computing the number of prior felony points in the criminal history score is that the offender is assigned a particular weight for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. Prior felony convictions for an attempt or conspiracy for which a felony sentence was stayed or imposed before the current sentencing are weighted the same as completed offenses. The felony point total is the sum of these weights. No partial points are given - thus, a person with less than a full point is not given that point. For example, an offender with a total weight of $2 \frac{1}{2}$ would have 2 felony points.

APPENDIX D

FACTORS TO BE EXCLUDED IN MAKING DEPARTURE DECISIONS

APPENDIX D - FACTORS TO BE EXCLUDED
IN MAKING DEPARTURE DECISIONS

Factors that should not be used as reasons for departure:
The following factors should not be used as reasons for departing from the presumptive sentences provided in the Sentencing Guidelines Grid:

- A. Race
- B. Sex
- C. Employment factors, including:
 - 1. occupation or impact of sentence on profession or occupation;
 - 2. employment history;
 - 3. employment at the time of offense;
 - 4. employment at time of sentencing.
- D. Social Factors, including:
 - 1. educational attainment;
 - 2. living arrangements at time of offense or sentencing;
 - 3. length of residence;
 - 4. marital status.
- E. The exercise of constitutional rights by the defendant during the adjudication process.

APPENDIX E

FACTORS TO BE INCLUDED IN MAKING DEPARTURE DECISIONS

APPENDIX E - FACTORS TO BE INCLUDED
IN MAKING DEPARTURE DECISIONS

Factors that may be used as reasons for departure: The following is a nonexclusive list of factors, which may be used as reasons for departure:

Mitigating Factors

1. The victim was an aggressor in the incident.
2. The offender played a minor or passive role in the crime or participated under circumstances of coercion or duress.
3. The offender, because of physical or mental impairment, lacked substantial capacity for judgement when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this factor.
4. The offender's presumptive sentence is a commitment to the commissioner but not a mandatory minimum sentence, and either of the following exist:
 - a. The current conviction offense is at severity level I or II and the offender received all of his or her prior felony sentences during less than three separate court appearances; or
 - b. The current conviction offense is at severity level III or IV and the offender received all of his or her prior felony sentences during one court appearance.
5. Other substantial grounds exist which tend to excuse or mitigate the offender's culpability, although not amounting to a defense.

Aggravating Factors

1. The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity, which was known or should have been known to the offender.
2. The victim was treated with particular cruelty for which the individual offender should be held responsible.

3. The current conviction is for a Criminal Sexual Conduct offense or an offense in which the victim was otherwise injured and there is a prior felony conviction for a Criminal Sexual Conduct offense or an offense in which the victim was otherwise injured.
4. The offense was a major economic offense, identified as an illegal act or series of illegal acts committed by other than physical means and by concealment of guile to obtain money or property, to avoid payment or loss of money or property, or to obtain business or profession advantage. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:
 - a. the offense involved multiple victims or multiple incidents per victim;
 - b. the offense involved an attempted or actual monetary loss substantially greater than the usual offense or substantially greater than the minimum loss specified in the statutes;
 - c. the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;
 - d. the defendant used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships, or
 - e. the defendant has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions.
5. The offense was a major controlled substance offense, identified as an offense or series of offenses related to trafficking in controlled substances under circumstances more onerous than the usual offense. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:
 - a. the offense involved at least three separate transactions wherein controlled substances were sold, transferred, or possessed with intent to do so; or

- b. the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or
 - c. the offense involved the manufacture of controlled substances for use by other parties; or
 - d. the offender knowingly possessed a firearm during the commission of the offense; or
 - e. the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or
 - f. the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or
 - g. the offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary relationships (e.g., pharmacist, physician or other medical professional).
6. The offender committed, for hire, a crime against the person.
7. Offender is a "patterned sex offender" (See Min. Stat. § 609.1352).
8. The offender committed the crime as part of a group of three or more persons who all actively participated in the crime.

NOTE: The Commission provided a non-exclusive list of reasons, which may be used as reasons for departure. The factors are intended to describe specific situations involving a small number of cases. The Commission rejected factors which were general in nature, and which could apply to large numbers of cases, such as intoxication at the time of the offense. The factors cited are illustrative and are not intended to be an exclusive or exhaustive list of factors, which may be used as reasons for departure. Some of these factors may be considered in establishing conditions of stayed sentences, even though they may not be used as reasons for departure. For example, whether or not a person is employed at time of sentencing may be an important factor in deciding whether restitution should be used as a condition of probation, or in deciding on the

terms of restitution payment.

APPENDIX F

HISTORY OF MINNESOTA'S CONTROLLED SUBSTANCES LAW

APPENDIX F - HISTORY OF MINNESOTA'S
CONTROLLED SUBSTANCES LAW

Initial Sentencing Guidelines Handling of Drug Offenses

Table 1: DRUG-RELATED OFFENSES AND SEVERITY LEVELS
(Sentencing Guidelines Prior to August 1, 1986)

<u>Severity Level</u>	<u>Offense</u>
VI	Sale of Hallucinogens, PCP, Heroin, and Remaining Schedule I & II Narcotics
IV	Sale of Cocaine (<u>This offense was ranked at severity level III prior to 1982</u>)
III	Sale of Remaining Schedule I, II, & III Non-narcotics Possession of Hallucinogens, PCP, Heroin, and Remaining Schedule I & II Narcotics
II	Sale of Marijuana/ Hashish/ Tetrahydrocannabinols, and Schedule IV substances
I	Sale of Simulated Controlled Substance Possession of Cocaine, Marijuana/ Hashish/ Tetrahydrocannabinols, Remaining Schedule I, II, & III Non-narcotics, and Schedule IV Substances

Changes to the guidelines for drug related offenses between the startup of the guideline policy up through August 1, 1986:

** Effective August 1, 1981, the commission added the factor of "major controlled substance offense" to the nonexclusive list of aggravating factors for departure.

** Effective August 1, 1985, the commission added guideline language to II.C. to presume a prison sentence for persons convicted of sale of cocaine or sale of a controlled substance that was ranked at severity level VI if there had been a previous adjudication of guilt for sale of cocaine or sale of a severity level VI drug.

(Source: MN Sentencing Guidelines Commission Report, 1992: 3)

Aggravated Departure Category - "Major Controlled Substance Offense"

Because the amount of the controlled substance which was sold did not influence the severity level nor the offense, the Sentencing Commission established an aggravated (or upward) sentencing departure category for what they referred to as a "major controlled substance offense." Under Minnesota Sentencing Guidelines § II.D.2.b.(5), a court was allowed an aggravated departure from the presumptive guidelines sentence when:

- (1) the offense involved at least three separate transactions wherein controlled substances were sold, transferred, or possessed with intent to do so;
- (2) the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or
- (3) the offense involved the manufacture of controlled substances for use by other parties; or
- (4) the offender knowingly possessed a firearm during the commission of the offense; or
- (5) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or
- (6) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or

- (7) the offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary relationships (e.g., pharmacist, physician, or other medical professional).

(Source: Memorandum to Members of the MN Sentencing Guidelines Commission, July 14, 1999: 2-3.)

1986 Legislative and Sentencing Guidelines Changes

The 1986 Minnesota Legislature modified the drug laws to provide greater statutory maximum penalties for offenders convicted of the sale of 7 or more grams or 10 or more dosage units of any narcotic classified in schedule I or II, or PCP, or hallucinogens (other than marijuana).

- (1) The commission ranked these new controlled substance offenses at severity level VII. At that time, a severity level VII carried a sentence of 24 months—but this sentence was presumed to be executed; for the first time, the guidelines presumed imprisonment for a drug offense.
- (2) The sale of smaller amounts of most drugs remained at severity level VI—21 months stayed. The severity level of sale of a small amount of cocaine was increased. It had been a severity level IV offense since 1982, but was increased to a severity level VI offense (21 months - stayed).
- (3) The Sentencing Guidelines Commission increased the severity level for cocaine possession from I to III.

(Source: MN Sentencing Guidelines Commission Report, 1992; Memorandum to Members of the MN Sentencing Guidelines Commission, July 14, 1999: 3-4.)

1987 Legislative and Sentencing Guidelines Changes

During 1987, the Minnesota Legislature implemented different threshold levels for harsher penalties for powder and crack cocaine sales. The threshold for the higher penalty was set at 3 grams for crack and 10 grams (sold on one or more occasions within a 90 day period) for powder.

(Source: Memorandum to Members of the MN Sentencing Guidelines Commission, July 14, 1999: 4).

1989 Legislative and Sentencing Guidelines Changes

There were significant changes made to the drug laws by the Minnesota Legislature in 1989. The Legislature created several levels of controlled substance offenses - first, second, third, fourth, and fifth degree offenses - in decreasing order of severity. See 1989 Minn. Laws Ch. 290, art. 3, §§8-12, codified at Minn. Stat. §§ 152.01-.028.

Two critically important changes occurred with new statutes. First, all people who either possessed or sold drugs at the levels indicated for first, second, or third degree offenses were presumed to be drug dealers. Second, because of this, the definition of "sale" of drugs no longer included "possession with intent to sell;" because of the presumption that a person was a drug dealer if he or she possessed a certain amount of drugs, defining "sale" to include "possession with intent to sell" would have been redundant (and would have improperly increased the punishment of certain offenders).

The Commission increased penalties for new offenses:

- (1) First degree offenses. Ranked at severity level VIII - these were, in the words of the legislative history, the true drug kingpins, the drug wholesalers. These people -who possessed 500 grams of powder cocaine (roughly one pound), or were selling 50 grams of powder cocaine (roughly two ounces) at a time - were viewed to be similar to a person who raped someone using a threat of serious bodily injury. Severity level VIII offense punishments were increased during this same period, so this offense carried a presumptive sentence of 86 months in prison.

- (2) Second degree offenses. People who possessed 50 grams (roughly two ounces), or who sold 10 grams, were guilty of a second degree offense. This offense was ranked at severity level VII - which carried a newly increased sentence of 48 months in prison.
- (3) Third degree offenses. People who possessed 10 grams of cocaine, and who sold any amount of cocaine, were guilty of a third degree offense. The presumed sentence was 21 months (stayed).

The 1989 statutory changes to the drug laws in Minnesota mirrored those sanctions established at the federal level in regards to differentiating between crack cocaine and powder cocaine offenses. The thresholds established by the Legislature for First, Second and Third degree cocaine offenses include:

Degree	Sale		Possession	
	Crack	Powder	Crack	Powder
First	10 grams	50 grams	25 grams	500 grams
Second	3 grams	10 grams	6 grams	25 grams
Third	Any amount	Any Amount	3 grams	10 grams

(Source: Memorandum to Members of the MN Sentencing Guidelines Commission, July 14, 1999: 6.)

The result of these changes was disparate impact on minority (primarily African American) offenders. The bulk of people prosecuted for crack cocaine were African Americans received prison sentences and the bulk of people prosecuted for powder cocaine offenses were white did not.

The Minnesota Supreme Court in *State v. Russell* (477 N.W.2d 886, Minn. 1991) declared the disparate treatment of powder cocaine and crack cocaine offense were unconstitutional under the Minnesota Constitution. The court decreased penalties for crack cocaine offenders to be equal to those of powder cocaine offenses.

The legislature moved quickly in response to the MN Supreme Court decision and increased penalties for powder cocaine to those formerly set for crack cocaine. To deal with the question of disparate handling of cocaine offenses, the legislature simply set up a new system which punished both cocaine offenses the same - reverting back to the system which was originally set up to sanction crack cocaine.

(Source: Memorandum to Members of the MN Sentencing Guidelines Commission, July 14, 1999: 6-7).

Drug-related Offenses and Severity Levels
(Effective August 1, 1993)

Sev.
Level Weight

8 2 Controlled Substance Crime in the First Degree: M.S. §
152.021)

Sale/Possession with Intent:Aggregated Over 90 day
Period(subd. 1)

- (1) 10 or more grams Cocaine
- (2) 50 or more grams Narcotic other than Cocaine
- (3) 50 grams or 200 or more dosage units PCP/
Hallucinogens/ Methamphetamine
- (4) 50 kilograms or more Marijuana or 25 kilograms
or more Marijuana in a School, Park, or Public
Housing Zone

Possession (subd. 2)

- (1) 25 or more grams Cocaine
- (2) 500 or more grams Narcotic other than Cocaine
- (3) 500 grams or 500 or more dosage units PCP/
Hallucinogen/ Methamphetamine
- (4) 100 kilograms or more Marijuana

7 1.5 Controlled Substance Crime in the Second Degree: (M.S. §
152.022)

Sale/Possession with Intent:Aggregated Over 90 Day
Period(subd. 1)

- (1) 3 or more grams Cocaine
- (2) 10 or more grams Narcotic other than Cocaine
- (3) 10 grams or 50 or more dosage units PCP/
Hallucinogen/ Methamphetamine
- (4) 25 kilograms or more Marijuana
- (5) Cocaine/ Narcotic to minor or employs minor
- (6) Any of the Following in a School, Park, or
Public Housing Zone:
 - (i) Schedule I & II Narcotics or LSD
 - (ii) Methamphetamine/ Amphetamine
 - (iii) 5 kilograms or more Marijuana

Possession (subd. 2)

- (1) 6 or more grams Cocaine
- (2) 50 or more grams Narcotic other than Cocaine
- (3) 50 grams or 100 or more dosage units PCP/
Hallucinogen/ Methamphetamine
- (4) 25 kilograms or more Marijuana

6 1.5 Controlled Substance Crime in the Third Degree: (M.S. §
152.023)

Sev.
Level Weight

Sale/Possession with Intent (subd. 1)

- (1) Cocaine/ Narcotic
- (2) 10 or more dosage units of Hallucinogen/ PCP
- (3) Schedule I, II, III to minor - Not Narcotics
- (4) Schedule I, II, III employs minor - Not Narcotics
- (5) 5 kilograms Marijuana

Possession (subd. 2)

- (1) 3 or more grams Cocaine
- (2) 10 or more grams Narcotic other than Cocaine
- (3) 50 or more dosage units of Narcotics
- (4) Sch. I & II Narc./ 5 or more d.u. LSD in a School, Park, or Public Housing Zone
- (5) 10 kilograms Marijuana
- (6) Methamphetamine/ Amphetamine in a School, Park, or Public Housing Zone

4 1 Controlled Substance Crime in the Fourth Degree: (M.S. § 152.024):

Sale/Possession with Intent (subd. 1)

- (1) Schedule I, II, III (except for Marijuana)
- (2) Schedule IV, or V to minor
- (3) Employs minor to sell schedule IV or V
- (4) Marijuana in a School, Park, or Public Housing Zone

Possession (subd. 2)

- (1) 10 or more dosage units of Hallucinogen/ PCP
- (2) Schedule I, II, III (except Marij.) w/ intent to sell

2 .5 Controlled Substance Crime in the Fifth Degree: (M.S. § 152.025):

Sale/Possession with Intent (subd. 1)

- (1) Marijuana
- (2) Schedule IV

Possession (subd. 2)

- (1) Possession of Schedule I,II,III,IV - Includes Marijuana. Also includes: Crack/Cocaine/ Narcotics/ PCP/ Hallucinogen
- (2) Marijuana with intent to sell
- (3) Procurement by fraud

APPENDIX G

OFFENSE SEVERITY REFERENCE TABLE

APPENDIX G- OFFENSE SEVERITY REFERENCE TABLE

Severity Level:	Offense:	State Statute:
	<i>Drug Offenses:</i>	
VIII	Controlled Substance Crime in the First Degree	152.021
VIII	Importing Controlled Substances Across State Borders	152.0261
VII	Controlled Substance Crime in the Second Degree	152.022
VI	Controlled Substance Crime in the Third Degree (non-aggregated offenses)	152.023
IV	Controlled Substance Crime in the Fourth Degree	152.024
II	Controlled Substance Crime in the Fifth Degree	152.025
I	Sale of Simulated Controlled Substance	152.097
	<i>Property Offenses:</i>	
VII	Arson I	609.561
VII	Burglary I	609.582, 1(b) / (c)
VI	Bringing Stolen Goods into State (over \$2,500)	609.525
VI	Burglary I	609.582, subd. 1(a)
VI	Precious Metal Dealers, Receiving Stolen Goods (over \$2,500)	609.526, (1)
VI	Precious Metal Dealers, Receiving Stolen Goods (over \$300)	609.526, 2 nd or subs. Viol.
VI	Theft over \$35,000	609.52, subd. 3 (1)
V	Arson 2	609.562

V	Bringing Stolen Goods into State (\$1,000-\$2,500)	609.525
V	Burglary	609.582, subd. 2(a) / (b)
IV	Bringing Stolen Goods into State (\$301-\$999)	609.525

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