

EXPLAINING THE GENDER GAP IN SENTENCING OUTCOMES:  
AN INVESTIGATION OF DIFFERENTIAL TREATMENT IN U.S. FEDERAL COURTS

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## ABSTRACT

Stephen Demuth, Advisor

Using data from the United States Sentencing Commission (USSC) from 2001 to 2003, I examine the role of gender in the sentencing of defendants in federal courts and investigate the multiple ways in which gender influences legal decision making and sentencing outcomes. Researchers have been slow to investigate female defendants and why women tend to be treated more leniently than men at the sentencing stage, with a majority of past studies focusing on male defendants and differences between racial and ethnic groups. To be sure, a small body of research has emerged that examines the gender gap in sentencing. However, many of these studies have not sought empirically to explain the gender gap or outline the different sources of gender-based sentencing disparity, relying instead on theoretical arguments and less than robust statistical analyses. Furthermore, prior investigations of the gender gap are dated; most existing studies rely on data from the 1970s and 1980s and use smaller state data sets or single city samples.

In the present study, I address three related questions concerning the gender gap in sentencing. First, is the existence of a gender gap uniform across all kinds of cases or does it only exist under certain circumstances? For example, is the gender gap larger in drug cases than in non-drug cases? And, does gender play a larger role in cases sentenced according to the prescribed guidelines or in cases that fall outside the sentencing guidelines? Second, can the gender gap be explained by legal (e.g., departures) and extralegal (e.g., number of dependents) differences between men and women that have yet to be examined by other researchers? Furthermore, do these legal and extralegal factors have the same impact for male and female

defendants – that is, are gendered explanations required? Third, do the effects of gender and race/ethnicity interact such that the meaning and impact of gender at sentencing depends in part on race and ethnicity? This research is grounded in three theoretical perspectives that speak to the potential importance of gender in legal decision-making: Steffensmeier's (1980) focal concerns perspective, Black's (1976) theory of social control, and the paternalism hypothesis/perspective.

Overall, I find that female defendants receive more lenient sentence outcomes than their male counterparts. However, the gender gap is not uniform across all kinds of cases. For instance, a smaller gender gap exists in fraud cases than in drug trafficking and firearms cases. And, the gender difference in the likelihood of receiving an incarceration sentence is smallest among those defendants sentenced within the guidelines vis-à-vis those receiving some form of sentencing departure. However, for sentence length decisions, the gender gap is smallest for defendants receiving substantial assistance departures. Also, female defendants are more likely to receive a sentencing departure than male defendants.

Analyses show that legal factors account for a large portion of the gender differences found between male and female defendants. But, even after controlling for these legal characteristics, a substantial gap in sentencing outcomes remains. Looking at the effects of extralegal factors, despite their influence on sentencing outcomes, these characteristics do not help to close the gender gap. However, when male and female defendants are examined separately, I find that although legal factors weigh equally for both groups, extralegal factors do not. More specifically, level of education plays a significant role in the decision to incarcerate males, while having dependents plays an important role in the sentence length terms given to females.

Finally, I find that female defendants in all racial/ethnic categories receive less severe sentences than male defendants in the same racial/ethnic groupings. But, the race gap is larger among males than among females. Hispanic males are more likely to be incarcerated than whites and black and Hispanic males receive longer sentences than do white male defendants. Interestingly, among women, white female defendants receive more severe sentence outcomes than black females. I also find significant gender x race/ethnicity interactions for different offense types, types of departures, and the likelihood of receiving a departure sentence.

The findings of the current study show that gender continues to influence the sentencing process in U.S. federal courts despite guidelines designed to avoid differential sentencing. For instance, judges and prosecutors circumvent the guidelines through the use of sentencing departures and ultimately treat female defendants more leniently than male defendants. Although many explanations may exist for this behavior, one possibility may be that judges treat women more leniently for practical reasons, such as their greater caretaking responsibility. Furthermore, theories of sentencing and social control suggest that the increasingly harsh punishments demanded by formal rational sentencing guidelines may be viewed as inappropriate for women and have been rejected in favor of a substantive rational approach.

This dissertation is dedication in loving memory to my dad, Larry R. Doerner. Thank you for always supporting and encouraging me to follow my dreams and to never quit. You remain in my thoughts each day and are a part of all I do. I love you and miss you very much.

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## CHAPTER ONE: INTRODUCTION

Over the last three decades, state and federal legislatures have enacted sentencing guidelines designed to reduce the discretion of legal agents in order to assure that persons with comparable criminal records convicted of the same criminal charges receive similar sentences under the law (Tonry 1996). Central to these guidelines is the notion that defendants' characteristics (e.g., race, gender, and age) are considered extralegal factors that should not be considered in forming decisions at the sentencing stage. Of particular importance, in light of America's sordid history of racial injustice, was the creation of a system that ensured the equal treatment of defendants from different racial and ethnic backgrounds. Reformers hoped that implementing a more rigid set of guidelines with explicit legal criteria for sentencing would make it difficult for judges to be unduly influenced by irrelevant race-based factors. A large body of empirical research has emerged that examines the successes and failures of the sentencing guidelines in reducing or eliminating unwarranted racial and ethnic disparities (Demuth 2002, with Steffensmeier 2004; Spohn 2000; Steffensmeier and Demuth 2006).

What has received considerably less attention from scholars is the role of gender in sentencing and whether women and men do (or should) receive the same or different treatment in the criminal justice system (Daly and Bordt 1995; Farrell 2004; Spohn 2002; Steffensmeier et al. 1993). Gender is considered to be a legally irrelevant factor in all guidelines systems, yet an emphasis on sameness potentially minimizes important differences between the lives of men and women by requiring equal treatment based on a gender-neutral implementation of the law. Indeed, there still remain legal ways for judges and prosecutors to take gender into account. For example, the federal guidelines allow for some discretion through the use of departures, which

enable judges to consider factors such as family ties and responsibilities which may be more applicable to female defendants than to male defendants. In the present study, I explore the gender gap in federal sentencing and examine the various ways in which gender continues to influence outcomes even within a system of formal rules designed to minimize the impact of extralegal factors.

### Gender in the Criminal Justice System

Male defendants continue to be the standard against which all defendants are treated. Equality requires that men and women be treated strictly the same, with any leniency towards women seen as a reflection of unwarranted paternalism. Overall, the result has been tremendous increases in the rates of incarceration and length of confinement of women than in the past, with less concern given to equality in the programs or health care available to male and female prison inmates (Belknap 1996; Richie 1996). However, differential treatment persists in many diverse forms despite these policy changes. This suggests that reformers may have had unrealistic expectations about the ability of the modifications to alter the sentencing process and/or that the changes themselves have not been implemented as intended (Spohn 2000).

Female arrest rates have increased relative to their male counterparts over the past several decades. From 1997 to 2006, female arrests have increased by 4 percent, while male arrests have decreased by 7.1 percent. The same holds true for the five-year trends, with female arrests increasing by 7.7 percent, while male arrests increased by only 2.6 percent (U.S. Department of Justice 2006b). In 1997, there were about 75,000 women in state and federal prisons (Gilliard and Beck 1998); by year end 2005, there were 107,518 women in prison. At the end of 2005, females accounted for 7 percent of all prisoners, up from 6.1 percent in 1995 and 5.7 percent in

1990. Since 1995 the total number of male prisoners has grown 34 percent while the number of female prisoners has grown 57 percent. Since 1995 the annual rate of growth in female prisoners averaged 4.6 percent, which was higher than the 2 percent increase in male prisoners (U.S. Department of Justice 2006a).

Gender was largely ignored by criminologists until the late 1970s and 1980s. When attention was given, it spotlighted sex differences in crime commission and sanctioning rather than questioning the gendered nature of crimes or of the criminal justice system's gendered responses to women's crimes (Daly and Chesney-Lind 1988; Simpson 1989). Consequently, relative to the large number of studies examining racial differences, only a small body of scholarship exists that addresses the topic of gender differences in sentencing. Much of this research is dated, having been published in the 1970s and 1980s using smaller state data sets or single city samples. Importantly, past research tends to examine only whether sex differences exist at the sentencing stage and typically does not explore empirically how gender influences decision making (for a review see Chiricos and Crawford 1995; Daly and Bordt 1995). Indeed, there are many theories about how gender might influence sentencing, but few empirical tests. Researchers that examine gender and court processing tend to treat gender as a fixed attribute of individuals or as a patterned role; however work by Messerschmidt (1993, 1997) stresses how gender emerges through social interaction in a given social context. His approach emphasizes the need to look more carefully at how crime is gendered within a given social or historical context. This perspective could also be applied to the sentencing process in terms of the gendered nature of outcomes such as sentencing departures.

Despite the rising number of female offenders both those being arrested and those being incarcerated much of the criminology and criminal justice research has continued to focus on

issues dealing with men rather than women. In addition, sentencing research often focuses on problems between different racial groups or ethnicities (Spohn 2000; Steffensmeier and Demuth 2001; Steffensmeier et al. 1998). Due to these foci, what is left behind is a rather wide gap in research that studies the crimes of female offenders compared to their male counterparts, the official response to female offenders, and also the importance of gender on a more basic level. In addition, traditional theoretical explanations of criminal offending and the criminal justice process often focus on men, with little application to women and their crimes/outcomes. Therefore, while traditional theories are helpful in explaining overall patterns of female and male offending, these approaches are less enlightening about a variety of subtle and profound differences in the sentencing patterns of men and women.

Researchers, including Steffensmeier and Allan (1996), report that the social backgrounds of female offenders tend to be quite similar to those of male offenders (see also Chesney-Lind and Sheldon 1992; Denno 1994; Steffensmeier and Allan 1995). Both groups are typically of lower socioeconomic status (SES), poorly educated, under- or unemployed, or members of minority groups. The main difference in their social backgrounds tends to be the level of responsibility in caring for family, or more specifically for their dependent children. Most important to the study of the impact of gender at sentencing is the consideration of differences in the severity of offending and extent of prior criminal activity between men and women. That male defendants tend to commit more serious offenses and have more extensive criminal records than female defendants helps to explain why men tend to receive harsher sentences than women (Bickle and Peterson 1991; Daly 1989, 1994; Daly and Bordt 1995; Spohn 2000, 2002; Steffensmeier et al. 1993, 1995, 1998). But, legal factors alone do not fully

explain the gender gap and few studies have attempted to account for the remaining, often sizeable, differences in sentence outcomes between men and women.

In the present study, I address three related questions concerning the gender gap in sentencing. First, is the existence of a gender gap uniform across all kinds of cases or does it only exist under certain circumstances? For example, is the gender gap larger in drug cases than in nondrug cases? And, does gender play a bigger role in cases sentenced according to the prescribed guidelines or in cases that fall outside the guidelines? Second, can the gender gap be explained by legal (e.g., departures) and extralegal (e.g., number of dependents) differences between men and women that have yet to be examined by other researchers? Furthermore, do these legal and extralegal factors have the same impact for male and female defendants—that is, are gendered explanations required? Third, do the effects of gender and race/ethnicity interact such that the meaning and impact of gender at sentencing depends in part on race and ethnicity? This research is grounded in three theoretical perspectives that speak to the potential importance of gender in legal decision-making: Steffensmeier's (1980) focal concerns perspective, Black's (1976) theory of social control, and the paternalism hypothesis/perspective.

The present study has many important implications. First, it addresses an important gap in the sentencing literature by focusing on gender, a central characteristic that has often been under-explored or completely neglected as a main variable in previous research. Second, by using more current and richer data than previously explored, this study adds insight into the workings of the criminal justice system since the passing and implementation of more complex sentencing reforms that focus on a fixed sentencing system. Third, this study helps bridge research from the areas of criminology, criminal justice, and family sociology by examining the role of marriage, family life, and dependents on sentencing outcomes for both men and women.

More specifically, it examines whether the roles that men and women serve in the family setting (i.e., breadwinner vs. care-giver) are influencing decisions made by court personnel and the implications for families of incarcerated prisoners. Fourth, it adds to the literature on gender and race/ethnicity by both examining the interaction of these factors with one another and also exploring how sentencing outcomes are affected by race/ethnicity within each gender group. Finally, this study involves the analysis of a federally compiled data set that contains very rich and detailed information on both legal and extralegal characteristics of defendants, important background information, as well as a large sampling of women and Hispanics.

In the remainder of this chapter, I will briefly outline prior research on gender and sentencing, noting the gaps in the research literature and examining the importance of gender as a concept in itself. I will also discuss some of the relevant theoretical perspectives, as well as provide a brief synopsis of each. Next, I will discuss the data and analytic approach being used and outline the major questions that I seek to address. Finally, I will outline the organization of the remaining chapters in the present study.

### Prior Research

A fairly persistent finding in the sentencing literature is that female defendants are treated more leniently than male defendants (Bickle and Peterson 1991; Daly and Bordt 1995; Spohn 2002; Steffensmeier et al. 1993); however, there are some researchers who report no differences (Kruttschnitt and Green 1984). Much of the zero-order gender gap in the likelihood of incarceration and the length of prison and jail terms is explained by gender differences in legally relevant factors such as offense severity and prior record (see Spohn 2002; Steffensmeier and Motivans 2000; Steffensmeier et al. 1993). The remaining, unexplained gender gap is often

attributed to the perception by judges that women are less dangerous, less blameworthy, less likely to recidivate, and more likely to be deterred than male offenders. Female defendants receive more lenient sentences (Spohn 2002). However, these explanations are largely speculative and based on anecdotal, qualitative interview data detailing judges' general perceptions about the role of gender at sentencing.

Work by Daly (1987a, 1989) is the most rigorous to date that attempts to understand the meaning of gender during the criminal case process. Daly (1989) finds that the role the defendant plays in the household, whether breadwinner or caregiver, matters to judges. Defendants with children, especially women, have lower odds of being detained pretrial, and are less likely to receive harsher types of non-jail sentences (Daly 1987a). Overall, having dependents, whether in a marital context or not, is generally the primary determining feature of whether defendants receive lenient treatment. In addition, court personnel are concerned about the removal of those defendants who have day-to-day responsibilities at home, and the negative consequences removal may cause for their children.

Mass incarceration of women is also a phenomenon of race. The Sentencing Project reported in 1990 that 1 in 37 young African-American women age 18 to 20 and 1 in 56 young Latinas in the same age group were under the control of the criminal justice system, compared with 1 in 100 young white women in the same age group (Mauer 1990). According to a Department of Justice report, Black non-Hispanic women have rates of incarceration roughly 4 times higher than white females, and 2.5 times higher than Hispanic females (Sternal and Sturr 2006). In addition, most incarcerated women are poor, three-fourths are mothers, one half have run away from home as youths, a fourth had attempted suicide, more than half were victims of

physical abuse, and more than a third were victims of sexual abuse (Donzinger 1996; Snell 1994).

Recent research examining the intersection of gender and race/ethnicity finds more favorable treatment of female offenders among white, black, and Hispanic defendant groups. However, the gender gaps are largest for black and Hispanic defendants. Looked at differently, partitioned by gender, black and Hispanic offenders are sentenced more harshly than white offenders among male but not female defendants. Indeed, it is black and Hispanic men who stand out as receiving particularly harsh punishments compared to all other race-gender groups (Steffensmeier and Demuth 2006). Other within-gender comparisons have shown that black males are sentenced more severely than white males and black females are sentenced slightly more severely than white females (Steffensmeier et al 1998).

### Theoretical Perspectives

The focal concerns perspective developed by Steffensmeier and colleagues (1980; 1993; 1998) provides a useful framework for understanding why extralegal factors such as gender, race/ethnicity, and age might continue to influence sentencing decisions despite the implementation of formal guideline systems. They outline three focal concerns that are important to judges and other criminal justice actors in reaching sentencing decisions: blameworthiness, protection of the community, and practical constraints and consequences, such as prison overcrowding and the defendant's ability to do time. Grounded in research on organizational decision making, inequality and stratification, and criminal stereotyping, Steffensmeier and colleagues argue that defendants' status characteristics may influence sentencing decisions

insofar as stereotypes and behavioral expectations linked to these characteristics relate to the focal concerns of legal agents.

Another theoretical orientation that might help to explain gender differences in sentencing is Black's theory of law and social control. Black states that "law varies inversely with other social control" (1976:6). Law itself is social control, but social control also appears in social life, in families, friendships, neighborhoods, organizations, and groups of all kinds. What followed was social control theory, which premises an inverse relationship between informal (family/kin ties) and formal (state) control. For example, the more tied one is to the normative social order, the greater the likelihood of law-abiding behavior and the less likely the need for formal social control through official intervention (Daly 1987a). Kruttschnitt (1984) argues that because women have more informal social control in their lives than do men, they will be subject to a lower degree of formal social control. In addition, Kruttschnitt and Green (1984) argue that informal social control is greater in women's than men's lives because women are more likely to be economically dependent on others (e.g., a spouse or the state). Furthermore, court officials typify familial defendants, mainly women, as having more responsibility for the care of others and find it impractical to impose jail sentences on women with children (Kruttschnitt and Green 1984; Simon 1975; Steffensmeier 1980).

Finally, a third theoretical orientation, which speaks to gender differences in sentencing, is the paternalism hypothesis. The paternalism argument posits that judges and other court officials try to protect women as the "weaker sex" from the stigma of a criminal record or the harshness of jail. Typically, researchers either interpret statistics indicating that women are favored as evidence of judicial paternalism (e.g., Curran 1983; Moulds 1980; Nagel and Weitzman 1971), or conclude that "widespread conviction" (Martin 1934: 58) and "popular

beliefs” (Baab and Furgeson 1967: 497) offer convincing proof (Daly 1987b). According to this view, judges (and, presumably, prosecutors and juries as well) treat women more leniently than men because they do not want to subject the supposedly physically weaker sex to the harsh conditions of prison; because they see women as less violent, and thus as less of a threat to society than men; or because they assume that many women are the sole caretakers of young children and that incarcerating them may leave children homeless or place a burden on the state for their care.

### Data

The data for the present study come from three years (2001-2003) of the Monitoring of Federal Criminal Sentences program compiled by the United States Sentencing Commission (USSC). These data are especially appropriate for this study, as they contain some of the richest and most detailed information on sentencing that are not available in previously used data sets (Steffensmeier et al., 1993; Steffensmeier et al., 1998). This collection contains information on federal criminal cases sentenced under the Sentencing Guidelines and Policy Statements of the Sentencing Reform Act of 1984. The data files include all cases received by the United States Sentencing Commission that had sentencing dates between October 1, 2000, and September 30, 2003, and were assessed as constitutional. Constitutionality compares each case's sentencing date, circuit, district, and judge to provide uniformity in reporting the cases. Defendant information in this data set includes characteristics such as age, citizenship status, education, gender, race/ethnicity, number of dependents, and marital status, as well as information on criminal history, fines and restitution, length of imprisonment, offense level, and the primary offense category. The combined data from the three years of the Monitoring of Federal Criminal

Sentences program contains information on over 180,000 cases sentenced under the Sentencing Reform Act, which includes over 30 offense types.

The federal sentencing data are ideally suited for this study because (1) they contain more detailed legal, extralegal, and contextual information than is often available in state court data sets. The richness of the USSC data enables a more robust test of the existence of extralegal disparities by allowing for possible alternative explanations (i.e., findings that are an artifact of model misspecification). And, (2) the large data set provides sufficient numbers of cases to perform a rigorous analysis of all defendant subgroups—in particular, the data include a large number of Hispanic and female defendants, who are often excluded because of small sample sizes. Also, (3) prior studies examining the joint effects of defendant characteristics or the effect of gender on sentencing outcomes (Nagel and Johnson 1994; Rodriguez et al. 2006; Steffensmeier et al. 1993) have focused on smaller data sets or on state courts. In many states, sentencing guidelines are more flexible than in federal courts and judges might not be as insulated from community and political forces as their federal counterparts (see discussion in Steffensmeier and Demuth 2001). Therefore, extralegal factors may play a larger role in state courts with their less rigid sentencing guidelines.

### The Present Study

The present study addresses three main issues in the area of gender and sentencing. The first issue involves examining whether the existence of a gender gap is uniform across all kinds of cases or if it only exists under certain circumstances. This section of the analysis will involve examining the effects of individual defendant characteristics including, but not limited to, offense type, plea agreement, and prior criminal history. Much of this process will build on the

work of previous researchers and the factors that have been found to influence sentencing decisions. For example, Steffensmeier and Motivans (2000) report that the punishment of female defendants differs according to the type of offense they commit. Female defendants that violate traditional sex role expectations (i.e., committing “male crimes”) have been found to receive harsher sentences than do other female defendants, who commit more traditional female crimes such as shoplifting (Daly 1994; Spohn 2002).

The second issue focuses on whether or not the gender gap in sentencing can be explained by certain legal and extralegal factors not often accounted for in past research and whether these factors weigh equally in the sentencing of men and women. Prior research has indicated that there is in fact a gender gap in the sentencing of defendants (Curran 1983; Daly 1987a, 1989, 1994; Spohn 2002; Steffensmeier and Motivans 2000; Steffensmeier et al. 1993). Only a few of these research studies examine different factors, both legal and extralegal, which may account for the gender gap in sentencing outcomes. For example, few studies examine whether the number of dependents an individual has, as well as his/her responsibilities for care, influences a judge’s decision of whether to incarcerate a defendant. In addition, it is important to include robust measures of prior record, severity of offense, educational attainment, marital status, sentencing district (circuit) and departure status (i.e., whether or not a defendant received a sentencing departure).

More importantly, it will be imperative to determine whether or not there is a gendered nature to the type of sentencing departure given. All of these factors may interact with one another to produce a final sentencing outcome. The federal sentencing statutes include provisions that permit judges to depart either above or below the sentence prescribed by the guidelines. Judges may award these sentencing departures based on a legitimate reason if they feel the

defendant does not deserve the sentence stated under the prescribed guidelines. The dilemma for agents of social control concerns the balance between the principle of equity, which demands that offenders committing similar crimes receive similar sentences (i.e., formal rational law), and individualized justice, which tailors sanctions to the particular characteristics and circumstances of individual offenders (i.e., substantive rational law) (Savelsberg 1992, Weber 1968).

The third topic of interest focuses on whether there is an interaction between gender and race/ethnicity. The interaction of race/ethnicity with measures of defendant's gender has not been extensively explored. According to Gruhl, Welch, and Spohn (1984) the more lenient treatment of women may also be influenced by race. They report that if blacks are treated more severely and if a higher proportion of male than female defendants are black, then apparent gender differences may, in fact, be racial differences. In addition, Chilton and Datesman (1987) suggest that black women may be treated more leniently than black men because of their gender, but they add, black women may receive less lenient treatment than white women because of their race. Daly (1987a, 1987b, 1989), examining the gender division of labor and racial variation in family status factors, hypothesized that the mitigating effects of family status would hold for all women, but that among men, such mitigating effects would be less evident for blacks than for Hispanics and whites. She found that among women, only black females received the benefits of greater leniency due to their family status. However, her hypothesis regarding racial variation in family status was only supported for males.

### Organization of the Present Study

This chapter has given a general overview of the topics that will be examined in the present study. Now, I will outline the organization and content of the remaining chapters. In Chapter 2, I

will present a review of the previous literature that examines the impact of gender on sentencing outcomes. In addition, I will explain in further detail each of the theoretical perspectives and how they relate to the sentencing process or gender more generally. In Chapter 3, I will talk about the data, methods, and analytical approaches used in the present study. I will also describe the variables used in the study, as well as any limitations. In Chapters 4, 5, and 6 I will present the results of the statistical analyses examining the differences in sentencing outcomes by gender, paying particular attention to the conditions and factors that may explain the gender gap in sentencing, the interaction of these factors (i.e., legal and extralegal characteristics) with gender, along with the use of sentencing departures, and finally, the interaction of gender with race/ethnicity and the differences present within gender categories by race/ethnicity. Lastly, In Chapter 7, I will summarize the findings of the present study, as well as discuss how these findings apply more generally to sentencing research and theory. I will also discuss the implications and limitations of the study, as well as possibilities for future research.

## CHAPTER TWO: PRIOR RESEARCH AND THEORY

A concern for gender discrimination in the law and its application has been especially slow to develop in comparison to issues surrounding race and ethnicity. Whereas race was identified early as an inappropriate consideration, an acknowledgement of gender as similarly inappropriate has not yet been fully resolved. Furthermore, unlike claims of racism in the application of laws and sanctions, there is no general presumption that women have historically been subjected to a consistent pattern of discrimination resulting in unwarranted harsher punishments (Nagel and Hagan 1983). Although the connection between sexism and the law continues to receive attention from researchers, policy-makers, and agents of the criminal justice system, attention to the relationship between gender and patterns of offending and official sanctioning are still especially lacking, even after several decades of research. In the following chapter I will discuss the prior research that has been conducted on gender and sentencing. I will also touch upon research that has explored the effects of familial responsibility on sentencing outcomes as well as the interaction between gender and race and its implications for the sentencing process.

### Gender and Sentencing

#### *Early Research*

The meaning of and attention to gender in research on sentencing and the law has changed over time (see Pollock-Byrne 1990). Much of the early gender research simply looked at whether or not gender differences existed, but did not strive to explain why they were present. One early sentencing study by Martin (1934) concluded that females were no more likely than males to be sentenced to prison terms. However, females were more likely to receive suspended sentences.

Green (1961) reported that women were more likely to receive probation, fines, and suspended sentences than men; and they were sentenced more often to indeterminate terms of imprisonment, whereas males were more often given fixed terms. However, males were more likely than females to be sentenced to imprisonment. Nagel (1969) and Nagel and Weitzman (1971) reported that male offenders were more likely to be sentenced to incarceration, whereas female offenders were more likely to be given probation. In addition, those sentenced to imprisonment for less than one year were more likely to be females than males (45 percent to 33 percent).

Gender differences have not been static in the United States (Farrell 2004). Historically, female offenders were less likely to be arrested and often sentenced more leniently than similarly situated male offenders. However, such judicial discretion has often been a double-edged sword for women. Gendered sentencing laws at the turn of the 20<sup>th</sup> century still allowed judges to send women to prison for minor public order offenses (e.g., alcohol-related offenses, DUI, and prostitution) for which men were rarely even arrested (Rafter 1990; Temin 1980). Indeed, until the 1970s, state sentencing laws allowed judges to sentence women differently than men because female offenders were perceived to be more amenable to rehabilitation and would benefit from longer indeterminate sentences (Pollock-Byrne 1990).

#### *Gender Differences in Sentencing Outcomes*

Rafter and Stanko (1982) and Rafter (1990) documented a dual system of punishment for female offenders during the middle of the 19<sup>th</sup> century. Women deemed “feminine” or “trainable” by the court were most often sent to reformatories, while women viewed as “bad” or “masculine” were subject to incarceration in penal institutions, often alongside male prisoners (Butler 1997).

Because relatively few women committed serious crimes during this period of history, there was little demand for separate female prisons. In addition, fewer gender differences were found among offenders committing “male” crimes, such as murder or robbery, versus “female” crimes like shoplifting or prostitution.

In terms of gender, women are thought to be less dangerous, less blameworthy, less likely to recidivate, and more likely to be deterred than men (Spohn, 2002). Therefore, the more lenient sentences that are imposed on them might reflect the fact that judges believe them to possess these qualities more than men. According to Belknap (2001), studies consistently show not only that females generally commit fewer crimes than do males but also that their offenses tend to be less serious and violent in nature. Furthermore, if the sentencing system is indeed just, the decision-making must be related to legal variables about the case and not extralegal variables such as the defendant’s sex, race, or age. However, net of case severity, charge severity, the type of offense charged, prior record, and other defendant characteristics, male and female defendants are still treated differently on the basis of their ties to and responsibilities for others.

Thus, prosecutors may be more inclined to dismiss the charges against women than against men, juries or judges less apt to convict women than men, and judges less liable to incarcerate women than men. According to this view, then, differences in the treatment of male and female defendants are due to the influence of these legal factors and will disappear once these factors are taken into consideration. However, most of the studies showing male-female differences failed to control, or used inadequate controls, for these legal factors (Baab and Furgeson 1967; Katzenelson 1976; Nagel and Weitzman 1971; Simon 1975; Steffensmeier and Kramer 1982). Studies that did control adequately for these factors found fewer differences in the treatment of male and female defendants (Green 1961; Spohn et al. 1982).

Sentencing seems to be the most conspicuous phase in which gender-based disparities result (Chesney-Lind 1978). More recently, a fairly persistent finding in the sentencing literature is that female defendants are treated more leniently than male defendants (Bickle and Peterson 1991; Daly and Bordt 1995; Spohn 2002; Steffensmeier et al. 1993); however, there are some researchers who report no differences (Kruttschnitt and Green 1984). Spohn (2002) shows that the odds of receiving a prison sentence are 2.5 times greater for male offenders than for female offenders after controlling for legally relevant factors. Similarly, previous research by Steffensmeier et al. (1993) indicates that gender, net of other factors, has a small effect on the likelihood of imprisonment, with female defendants less likely to receive an incarcerative sentence than male defendants. But, they find that gender has a negligible effect on sentence length outcomes.

Steffensmeier and Motivans (2000) find that female defendants are sentenced less harshly than male defendants – on average they are about 14% less likely to be incarcerated and receive prison sentences about 7 months shorter. However, punishment of female defendants also differs according to offense type. Female defendants who violate traditional sex role expectations (i.e., committing “male crimes”), have been found to receive harsher sentences than other female defendants who commit more traditional female crimes such as shoplifting (Daly 1994; Spohn 2002).

In a review of prior research conducted by Daly and Bordt (1995), they found that, out of 15 studies that focused on the magnitude of sex effects, only one study found no sex effects (Lindquist et al. 1989); 10 found sex effects, and four had mixed findings. Overall, the gender gap in proportions incarcerated (where men were more likely to be sentenced), net of controls for prior record, type of offense, and other variables, varied greatly over the block of studies ranging

from 8 percentage points (Spohn et al. 1985) to 26 points (Miethe and Moore 1985). For length of sentence, also net of controls, there was great variation depending on the type of offense committed. Peterson and Hagan (1984) found sentence lengths to be 24 to 50 months longer for men than for women convicted of drugs; Zingraff and Thomson (1984) noted that men's sentences for felonies were 6 to 24 months longer than women's, except for homicide, where the difference was 12 years.

According to Curran (1983), findings indicate that sex is not significantly related to negotiations, prosecution, or conviction when other variables are held constant. As the legal model would have it, women are just as likely as men to be offered a plea, to be prosecuted once arrested, and to be convicted. At the sentencing level, however, sex does have a significant independent effect on the outcome. Female defendants receive more lenient dispositions than their male counterparts, even when offense seriousness, total counts and criminal history were controlled. The results indicated an interaction only between sex and age, in which age has a significant effect on severity of disposition for males but not for females. What this suggests is that females are indeed treated more leniently than some males (younger ones) but not all males. Or stated conversely, younger males receive more harsh treatment than older males and all females.

In addition, gender differences appear to be stronger in imprisonment decisions than sentence length decisions (Daly and Bordt 1995; Spohn 2002; Steffensmeier et al. 1993). Existing studies have been criticized for weak controls for legally relevant variables like prior record and offense type, relying on a small number of cases, and an absence of contextual analysis to assess the possible interaction effects of gender and race/ethnicity on sentencing

practices. Parisi (1982) maintains, however, that despite problems with research design, the data consistently show some degree of differential treatment of females at aggregate levels.

According to Gruhl, Welch, and Spohn (1984) female defendants were treated more leniently than male defendants, based on a simple breakdown with no controls. Even though they plead guilty and were convicted at about the same rates as males, females were more likely to have their cases dismissed and were less likely to be incarcerated. When the authors controlled for legal and extra-legal factors, significant gender differences remained on the dismissal and incarceration variables, even though the degree of difference between males and females was reduced somewhat. The authors make the argument that female defendants commit less serious crimes and have less serious prior criminal records than do men.

Kruttschnitt (1984) found that controlling for gender-related statuses (i.e., being a wife or mother) mediated the length of probation sentences. In addition, she found that women are more likely than men to remain free, both prior to adjudication and after conviction, and that the determinants of these two decisions vary significantly with the offender's gender. Therefore, her analysis provides support for the assumption that females receive preferential treatment by criminal courtroom personnel.

Finally, a classic study by Nagel and Weitzman (1971) analyzed the impact of sex on sentencing. Their data was based on a 1962 nationwide survey of indigent defendants. The authors used the data to assess the directions of differential treatment of females in felonious assault and grand larceny cases. However, neither prior record nor offense characteristics were controlled. On both type of sentence given and length of sentence, females seemed to have received preferential treatment in comparison to men. The authors concluded that more lenient treatment was given to females in grand larceny cases, but that females convicted of more

masculine crimes (i.e. assaults) were more likely to receive sentences equal to those of similarly situated male defendants.

### Familial Responsibilities

It has long been observed that female defendants who are married or who have children receive greater leniency from the courts than their male or unmarried and childless female counterparts (Bickle and Peterson 1991; Daly 1987a, 1987b, 1989; Eaton 1987; Farrington and Morris 1983; Kruttschnitt and Green 1984; Kruttschnitt and McCarthy 1985; Simon 1975). Early explanations of how and why gender-based family roles are important in judicial decision-making focused on the impracticality of harsh sanctions for female offenders compared to their male counterparts (Bernstein et al. 1979; Simon 1975). More specifically, Simon reported that officials' accounts of gender differentials in sentencing in both New York (1963-1971) and California (1945-1972) emphasized that women have families to care for; both husbands and children, and sending them to prison would seriously disrupt the family unit.

Kruttschnitt, along with her colleagues (Kruttschnitt 1982a, 1984; Kruttschnitt and Green 1984; Kruttschnitt and McCarthy 1985) examined gender differentials in sanctioning, specifically pretrial release and sentencing outcomes, using data from Minnesota. In addition to gender, these analyses included either a composite measure of informal social control, or one or more sex-based family-role factors including family/household composition, number of children, employment status, and sources of support. Overall, the findings from this research indicated that gender-based disparities were affected but not eliminated by including family role factors, and that when composite measures of informal control were utilized, there was little support for the claim that familial social control was a sex-specific determinant of criminal sanctioning.

In her 1989 study, Daly found that a defendant's work-family relations affected the sentencing of both men and women. Furthermore, she found that what defendants did for families, in terms of providing economic support or care for dependents, mattered to judges. Familied men and women (those with dependent children) are less likely to be detained pretrial, and they are less likely to receive the harsher types of non-jail sentences than the childless men and women. In addition, the mitigating effect of being familied is stronger for women than men (Daly 1987a). Furthermore, having dependents, whether in a marital context or not, is generally the more determining feature of whether defendants receive lenient treatment. For men, being married without dependent children confers no advantage at the pretrial release or the two sentencing decisions; but having dependent children does. Married women, and especially those with dependent children, are accorded greater leniency at the pretrial release decision. In addition, at the sentencing stage, women with dependents receive the most lenient sentences.

What appears to matter most for court personnel is whether defendants have day-to-day responsibilities for the welfare of others; such care or economic support can occur with or without a marital tie, and the specific form of care and economic support can vary by gender. In addition, the greater leniency accorded familied women than familied men stems from contemporary gender divisions in work and family life, specifically that women are more likely to care for others. The mitigating effects of family were found in both the pretrial release and non-jail sentencing decisions. Thus, familied defendants may be accorded leniency even when decisions do not center on a defendant's loss of liberty (Daly 1987a).

Daly (1987b) found that court officials consistently drew on the categories of work and family in explaining why some defendants deserved leniency. One theme is that defendants who provide economic support or care for others deserve more lenient treatment than those without

such responsibilities. Leniency toward the familial defendants is thus justified on the grounds that these defendants are more stable and have more to lose by getting into trouble again. Court personnel assume gender divisions in the work and family responsibilities of familial men and women. Differences in the expected responsibilities of familial men and women, combined with the family profiles of defendants, foster discrepancies in the treatment of familial men and familial women.

In addition, officials often justify treating familial defendants more leniently because of the social costs of removing them and jeopardizing the family unit. Sex differentials in outcomes stem from the perceived differential responsibilities of females versus males. Officials view it as more costly or impractical to jail women with families than men with families because breadwinning support, usually provided by males, is more readily replaced than caretaking labor (Daly 1987b).

### Gender and Race

Steffensmeier et al. (1998) found in their Pennsylvania research that the main effects of defendant characteristics, like race and gender, are relatively modest compared to their interaction effects. Despite these important findings, there are few prior studies that focus on the interaction between gender and race/ethnicity. One study, focusing on the sentencing stage, is by Spohn and colleagues (1985) and finds that black women are sentenced less harshly than black men, but receive sentences that are comparable to those of white men. However, there were an insufficient number of white females in the analysis, and the authors were unable to compare white males and white females. Despite the findings of Spohn's study in the mid-1980s, the majority of the research on this topic is dated, and very little has been done recently.

Research has also suggested that the more complex interaction of race and gender may disrupt the patterns of leniency toward women that were found in previous studies. Historically, women of color have not benefited from judicial chivalry to the same degree as white women (Feinman 1986; Rafter 1990). Courts often sentenced white women to reformatories and black women to traditional penal institutions. Racial bias in court processing also resulted in more women of color being sentenced to prison for longer terms (Farrell 2004). Other research has shown that black women are overrepresented in the prison population and are serving longer prison terms than white women (Chilton and Datesman 1987; Kruttschnitt 1982b). However, these studies are limited because they did not control for many important variables such as prior history or type of crime. More systematic studies have found that race alone fails to explain sentencing disparities between white and black female offenders (Daly 1989; Gruhl, Welch, and Spohn 1984).

Gruhl, Welch, and Spohn (1984) found that case dismissal rates were higher for white and black women, though not for Hispanics. Incarceration rates were lower for white, black, and Hispanic women. On both dismissal and incarceration, the absolute differences were greatest for blacks (7 percent on dismissal, 11 percent on incarceration). The authors have also argued that an explanation for the more lenient treatment of women is the confounding influence of race. If blacks are treated more severely and if a higher proportion of male than female defendants are black, then apparent gender differences may, in fact, be racial differences. Spohn et al. (1982) found that when both race and sex were examined, male-female differences in severity were present only among blacks. Black women were treated more leniently than black men. However, this study had several weaknesses. First, the number of white women in the sample was too small to allow a comparison of white men and women or white women and black women with a full

set of control variables. Second, the study was conducted in one northeastern city, which did not allow for a representative sample of the population.

In a 1989 study, Daly examined the role of gender division of labor on judicial sentences and racial variation in the role of family status factors in Seattle, Washington. The Seattle analysis distinguished defendants on the basis of marital status and family ties rather than by the presence of dependents, as she had done in previous studies (1987a, 1987b). Daly hypothesized that the mitigating effects of family status would hold for all women, but that among men, such mitigating effects would be less evident for blacks than for Hispanics or whites. She found that defendants with families were treated more leniently than other defendants, and that women with families were treated more leniently than men with families. Her hypothesis regarding racial variation in family status was only supported for males, however. Among women, she found that only black females received the benefits of greater leniency due to their family status.

More recently, Steffensmeier and colleagues (1998) discussed several conclusions from their examination of the main and interactive effects of race, gender, and age on sentencing outcomes in Pennsylvania courts. Most pertinent to the study of gender and race, female defendants received more lenient treatment in court decisions than similarly situated male defendants. Second, the authors found that black defendants were sentenced more severely than similarly situated white defendants and that within-sex comparisons showed that black males were sentenced more severely than white males and black females were sentenced slightly more severely than white females (the race effect was weaker for female defendants). Third, a consistent gender effect was found of more lenient treatment of female offenders at the sentencing stage that persists not only across racial groups, but also across race x age groups.

In addition, a study by Crawford (2000) found that among offenders eligible for habitual sentencing in Florida, the odds of habitualization were nearly twice as large for black female offenders as for white female offenders. A similar race effect was also found among male offenders in a previous study conducted by Crawford and colleagues (1998). In this study, the authors concluded that “black status” similarly disadvantaged both male and female defendants. In contrast to the studies by Crawford, Spohn and Beichner (2000) found that blacks were sentenced more harshly than whites among male defendants convicted of felonies in Chicago, Kansas City, and Miami, but this was not found among female defendants. Spohn and Beichner also found that women are treated more leniently than men regardless of their racial status.

Steffensmeier and Demuth (2006) found that female defendants received more favorable sentencing outcomes than males across all racial-ethnic groups. They also found that the gender gap in both the decision to incarcerate and the sentence length decision was smallest among white defendants. For both sentencing outcome decisions, there were no statistically significant racial-ethnic differences among female defendants, but differences did exist for male defendants. The authors also ran z-tests of the differences between race-ethnicity coefficients across gendered models and found that the effects of race-ethnicity on the decision to incarcerate were greater among male defendants than females. For sentence length decisions, only the black effect was statistically different for male and female defendants. Overall, the main effect of race-ethnicity masked the conditioning effect of gender in that black and Hispanic offenders were sentenced more harshly than white offenders among male but not female defendants.

## Conclusions

To summarize, a persistent finding in the sentencing literature is that female defendants are treated more leniently than male defendants (Bickle and Peterson 1991; Daly and Bordt 1995; Spohn 2002; Steffensmeier et al. 1993). More specifically, gender seems to play a more important role during the decision to incarcerate rather than the sentencing length decision (Steffensmeier et al. 1993). In addition, those defendants who have family responsibilities, especially women, are less likely to receive harsh treatment during the sentencing process (Daly 1987a; 1989). Race/ethnicity has also been shown to affect the sentencing of defendants in both gender groups. Research has found that black defendants are sentenced more severely than their similarly situated white counterparts, and this holds true across both male and female defendant groups. However, research on race and gender continues to produce mixed findings, especially when important control variables are not included (i.e., prior criminal history and type of offense) and sufficient samples of both males and females, blacks and whites, are not examined.

With respect to the criminal justice system, attention to the relationship between gender and patterns of offense, and gender and patterns of defendant sentencing are greatly lacking, even after several decades of research on this topic. Despite the large quantity of research focusing on sentencing in general, studies that specifically examine gender gaps in the sentencing process are dated; most using data from the 1970s and 1980s which rely on small state samples or single city data sets. Furthermore, research comparing the interaction of gender and different racial/ethnic groups has neglected to use sufficient numbers of female defendants and appropriate control variables, leading to cautious interpretation of the research findings.

This study will extend prior research in the area of gender and sentencing by controlling more rigorously for all appropriate variables thought to influence defendants during the

sentencing process. In particular, attention will be given to legal variables such as prior record, offense type, and severity of crime. In addition, this study will explore how gender differences come about through the use of discretion and more specifically through the use of sentencing departures. This study will also employ a federally compiled data set made up of three years of combined defendant information. This will allow for larger samples of female defendants as well as sufficient numbers of defendants in each of the racial/ethnic and offense categories. Finally, three important theoretical perspectives will guide this research, each speaking to the importance of gender in legal decision-making. This will make it possible for the results of this study to influence more general family sociology research as well as criminology, criminal justice, and sentencing research.

## THEORY

Gender differences in court outcomes have been explained by paternalism (Curran 1983; Moulds 1980; Nagel and Weitzman 1971); gender-based variation in informal social control (Black 1976; Kruttschnitt 1984; Kruttschnitt and Green 1984); gender “type-scripts” that allow men to exercise power by maintaining women’s familial labor (Harris 1977); and multifactor explanations that combine court chivalry, attributions of men’s and women’s criminality, and the practical problems of jailing women with children (Simon 1975; Steffensmeier 1980). This analysis is framed by three theories, all supporting different aspects of the present study. While all three of these theoretical perspectives have been supported through research, it is not my intention to provide empirical tests using the data in the current study. Therefore, prior research is being presented to allow for a better understanding of each theory, while using the theoretical

principles to guide the present research. First, I will discuss focal concerns theory, next, social control theory and third, the paternalism hypothesis/perspective.

### Focal Concerns Theory

The focal concerns perspective developed by Steffensmeier (1980, 1993, 1998) provides a useful framework for understanding why extralegal factors such as gender, race/ethnicity, and age might influence sentencing decisions, despite the implementation of formal guideline systems. Other researchers have expanded on this theory in the course of their studies (Spohn and Holleran 2000; Steffensmeier et al. 1993, 1998; Steffensmeier and Demuth 2001; Ulmer 1997; Ulmer and Johnson 2004). The theory outlines three focal concerns that are important to judges and other criminal justice actors in reaching sentencing decisions: blameworthiness, protection of the community, and practical constraints and consequences, such as prison overcrowding and the defendant's ability to do time. Grounded in research on organizational decision making, inequality and stratification, and criminal stereotyping, Steffensmeier and colleagues argue that defendant status characteristics may influence sentencing decisions insofar as stereotypes and behavioral expectations linked to these characteristics relate to the focal concerns of legal agents.

Blameworthiness follows the principle that sentences should depend on the offender's culpability and the degree of injury caused. This focal concern is usually associated with the retributive philosophy of punishment, including the view that any punishment should fit the crime. Hence, the primary factors influencing perceptions of blameworthiness are legal factors such as the seriousness of the offense, the defendant's criminal history or prior victimization at the hands of others, and the defendant's role in the offense (Steffensmeier et al. 1998). However, Albonetti (1997) suggests that court officials attempt to achieve rational outcomes in the face of

incomplete knowledge by relying on stereotypes that differentially link defendant groups to recidivism. Research by Daly (1994) indicates that judges, at least to some extent, share common beliefs portrayed by the media and are influenced by them in their sentencing decisions. For instance, women are thought to be less dangerous, less blameworthy, less likely to recidivate, and more likely to be deterred (Spohn 2002). Therefore, the more lenient sentences that are imposed on them might reflect the fact that judges believe them to possess these qualities more than men. Research by Albonetti (1997) argues that defendants who are male, of minority status, and less well educated will receive harsher sentences compared with their counterparts.

Protection of the community typically focuses on the need to incapacitate the offender or to deter future crime. Albonetti (1991) argues that sentencing is an arena of bounded rationality, in which court actors, particularly judges, confront the goal of protecting the public and preventing recidivism in the context of high uncertainty about offenders' future behavior. Judges' assessments of offenders' future behavior is based on attributions predicated primarily on the nature of the offense and the offender's criminal history, but may also be influenced by extralegal characteristics of the offender such as gender, race/ethnicity, age, and socioeconomic status (SES).

Practical constraints and consequences relate to how sentencing decisions impact the functioning of the criminal justice system as well as the circumstances of individual defendants and their families and communities. Organizational concerns include maintaining working relationships among courtroom actors, ensuring the stable flow of cases, and being sensitive to local and state correctional crowding and resources (Dixon 1995; Flemming et al. 1992; Steffensmeier et al. 1993; Steffensmeier et al. 1998; Ulmer 1995; Ulmer and Kramer 1996). Individual concerns include the offender's ability to do time, health conditions, special needs, the

cost to the correctional system, and disruption to children and family (Daly 1987a; Hogarth 1971; Steffensmeier 1980; Steffensmeier et al. 1995). The court's concern with breaking up families and protecting the innocent may more often apply to familial women (those with dependent children) than familial men (Daly, 1987a). Women with dependents, whether single or married, are more likely than non-familial women to receive the most lenient sentences. In this case, familial status strongly differentiates treatment among women than among men. What matters most for court personnel is whether defendants have day-to-day responsibilities for the welfare of others. Care-taking labor, provided by women, is privileged over economic support, most frequently provided by men.

To summarize, one might expect that judges may share in the general stereotyping predominant in the community, and that gender, racial/ethnic, and/or age attributions will combine with the focal concerns outlined above to influence judges in deciding whether to incarcerate an offender and subsequently, the length of incarceration they will receive. The use of stereotypes in decision-making is, to a certain extent, probable, as judges often have limited time and information when rendering sentencing outcomes. Specifically, judges' outlooks about defendants' ability to do time plays a major role in the decisions they make.

### Social Control Theory

Another theoretical orientation that might help to explain gender differences in sentencing is Black's theory of law and social control. Black stated "law varies inversely with other social control" (1976: 6). Law itself is social control, but social control also appears in social life, in families, friendships, neighborhoods, organizations, and groups of all kinds. Further, the quantity of law increases as the quantity of social control of these other kinds decreases. This pattern also

works in the opposite direction. Social control theory premises an inverse relationship between informal (family/kin ties) and formal (state) control. For example, the more tied one is to the normative social order, the greater the likelihood of law-abiding behavior, and the less the need for formal social control (Daly 1987a). Social control is found wherever and whenever people hold each other to standards, explicitly or implicitly, consciously or not.

According to one conflict theorist (Turk 1969), it is important to build a theory that explains sex, race, and age differences in crime rates. Turk's work seeks to explain why females, who have less power to resist law enforcement, have a lower crime rate than males. He offers two explanations, the first of which is that females are more likely than males to agree with legal norms. Second, he believes that females' patterns of activity, scheduled around familial responsibilities, are more restricted than males'. The implication of these statements is that sex-based differences in socialization and informal familial controls have more to do with the sanctioning process than gender per se (Kruttschnitt 1984).

Black (1976) argued that law was inversely related to social control, and his theory predicted that those persons who were subject to greater quantities of informal/nonlegal social control, regardless of their gender, would also be the individuals who experienced the least legal control in their lives. He concluded that females, having traditionally been economically dependent upon others, have been circumscribed by the day-to-day control of those who provide for them. Assuming that this daily social control precludes additional legal control, it can be seen why females, bound by economic dependency and familial responsibilities, generally incur less severe criminal sanctions (Hagan et al., 1979; Kruttschnitt 1982a).

Kruttschnitt first outlined the impact of gender-based variation in social control for the criminal court's response to women (1981, 1982a) and the differential treatment of men and

women in the criminal courts (1984; with Green 1984). She argued that because women have more informal social control in their lives than do men, they will be subject to a lower degree of formal social control. In addition, Kruttschnitt and Green (1984) argue that informal social control is greater in women's than men's lives because women are more likely to be economically dependent on others (e.g., a spouse or the state). Furthermore, court officials typify familial defendants, mainly women, as having more responsibility for the care of others and find it impractical to impose jail sentences on women with children (Kruttschnitt and Green 1984; Simon 1975; Steffensmeier 1980).

Kruttschnitt (1982a) proposes an explanation of the sex-sanctioning relationship that builds upon Black's (1976) theory of law, which purports that, the amount of informal social control is related inversely to the amount of formal control. She argues that compared to men, women experience a higher degree of informal social control in the family. The source of informal control of women is found primarily in their economic dependency, especially support from the male breadwinning spouse. An additional informal control factor is the higher levels of supervisory activity associated with women's residing with others (i.e., a spouse, other relative, or children) (Bickle and Peterson 1991). Kruttschnitt also concluded "the legal system prefers to exert little control over women whose lives presently contain an indicator of daily social control such as that entailed in economic dependency" (1982a: 510).

Eaton (1983, 1986, 1987) attempted to shed light on the impact of informal social control on the sanctioning of defendants in a court in London, England. She utilized interviews, documentation analysis, and observations of 210 males and 111 females and examined the social order of discussions between magistrates, lawyers, and probation officers. Eaton found that females received more lenient outcomes than males, that officials attached importance to familial

social control, and that those without family ties received less support from lawyers and others. She concluded that the social order found in court discussions is a model that acknowledges that “such a family structure may offer a form of control of women comparable to that offered by the prison system” (1987: 107).

In addition, interview and observational studies reveal that the familial defendants are thought to be more deserving of the court’s leniency than the non-familial defendants (Daly 1986, 1987b; Eaton 1983; Gaylin 1974; Mann, Wheeler and Sarat 1980; Maynard 1982). A mainstay of the research literature is that court officials find it impractical to impose jail sentences on women with children (Kruttschnitt and Green 1984; Simon 1975; Steffensmeier 1980). Interviews with court officials show that a different set of assumptions operates for men and women: they attach higher social costs to removing familial women than familial men from families (Daly 1986, 1987b). Steffensmeier (1980) also suggests that court officials hold differing gender-based conceptions of the seriousness of criminality (men are perceived as more dangerous) and of the potential for reform (women are viewed as more easily directed to law-abiding behavior).

The distinctions drawn between familial and non-familial defendants and the justification for treating them differently stem from two sources: social control and social costs. Court officials typify familial defendants as more anchored in the normative social order because their day-to-day lives are constrained by having responsibilities for the welfare of others (Daly 1987a). Interwoven with this characterization of greater social control in the lives of familial defendants is the court’s concern with the consequences of decisions for separating defendants from families or jeopardizing the family units. In contemplating jail time, judges say

they do not want to “inflict a hurt on society” (Mann, Wheeler and Sarat 1980, p. 488) by jailing a familial defendant.

To review, those individuals with higher levels of informal social control are less likely to need formal social control. Thus, because women usually have more informal social control, they may be seen as less in need of supervision in jail or prison following law-breaking behavior. In addition, court officials tend to perceive women as having more responsibility for the care of others, mainly their children, and often find it impractical to incarcerate them. Furthermore, in the eyes of the state, it is easier to replace financial support of a family, usually provided by the father, than it is to replace care-giving.

#### Paternalism

Finally, a third theoretical orientation, which speaks to gender differences in sentencing, is the paternalism hypothesis. Much of the research that suggests women are treated paternalistically by agents of the criminal justice system focus on what appears to be clear evidence of judicial reluctance to sentence women harshly. Criminology texts and the like routinely state that women are less likely to be held in custody at the pretrial stage, less likely to be convicted if tried, and, if convicted, more likely than men to avoid imprisonment (Chesney-Lind 1978).

The paternalism argument posits that judges and other court officials try to protect women as the “weaker sex” from the stigma of a criminal record or the harshness of jail. Typically, researchers either interpret statistics indicating that women are favored as evidence of judicial paternalism (e.g., Curran 1983; Moulds 1980; Nagel and Weitzman 1971), or conclude that “widespread conviction” (Martin 1934: 58) and “popular beliefs” (Baab and Furgeson 1967: 497) offer convincing proof (Daly 1987b). According to this view, judges (and, presumably,

prosecutors and juries as well) treat women more leniently than men because they do not want to subject the supposedly physically weaker sex to the harsh conditions of prison; because they see women as less violent, and thus as less of a threat to society than men; or because they assume that many women are the sole caretakers of young children and that incarcerating them may leave children homeless or place a burden on the state for their care. The paternalism argument applies most directly to sentencing but also has been used to explain lower rates of conviction and higher dismissal rates.

Moulds (1980) argues that a distinction should be made between judicial chivalry and judicial paternalism. By definition, paternalism is meant to imply a power relationship; the term has always had a negative connotation. For Moulds the key element in paternalism is the likening of the female to a child. Paternalism presumes that one is dealing with a defenseless, propertyless individual who cannot be held responsible for his or her own actions, who is incapable of assessing information, and who is incapable of making proper decisions. Such a person is in need of guidance and protection.

On the other hand, the term “chivalry” emerged in Europe during the Middle Ages. It described an institution of service rendered by the crusading orders to the feudal lords, to the divine sovereign, and to womankind. After the disappearance of chivalry as a formal institution, a number of chivalrous practices regarding women continued to exist in the world of social convention. Insofar as manners define proper behavior for “ladies” and “gentlemen,” the modern concept of chivalry has provided us with a set of behavior models which assist in defining the relationship of males and females. The concept of chivalry is helpful primarily in describing the superficial elements in male-female relationships, namely, the social amenities. This focus on the

benefits women presumably derive from the practice of chivalry has diverted attention from the obvious accompanying power relationship of male domination.

The most widely cited investigation of the effect of sex on judicial behavior, and one which has provided support for the paternalism hypothesis, is Nagel and Weitzman's analysis of nationwide data collected, to examine procedures for providing attorneys to indigent defendants (Chesney-Lind 1978). Nagel and Weitzman (1971) examined the experience of criminal defendants charged with either grand larceny or felonious assault and concluded that the courts were treating women "paternalistically" rather than punitively. Fewer women when compared to men were sentenced to jail, more women than men were held less than two months before trial, and more received suspended sentences or probation. Their interpretation was that women were, in general, being treated "paternalistically" by the court. This finding was especially true for women who committed traditional female crimes. Despite their supportive findings, their research did not control for a number of important variables that are known to affect judicial outcomes (e.g., prior record and criminal status) (Chesney-Lind 1978). In addition, out of sixteen possible court actions only seven confirmed the paternalistic hypothesis.

Gruhl, Welch, and Spohn (1984) found evidence in support of the paternalism explanation, suggesting that female defendants are treated more leniently than male defendants. Specifically, paternalism is evident in the prosecutor's decision to dismiss the charges against the defendant and in the judge's decision to incarcerate the defendant. On the other hand, they found no evidence of paternalism in the judge or jury's decision to convict the defendant. The authors also found no differences between males and females in the decision to plead guilty. The absence of gender differences in convicting also suggests that the paternalism argument applies most obviously to sentencing and, to a lesser extent, to dismissing, where the decisions whether to take

defendants out of their homes, with all this entails, are made directly. Decisions whether to convict defendants do not, as directly, confront the specter of children made homeless or women brutalized by prison. These findings illustrate the importance of examining more than one stage in the criminal justice process.

Daly (1987a) examined the impact of having a family on pretrial detention time, dismissal/indictment decisions, acquittal/guilty findings, severity of nonjail sentences, and the likelihood of a jail sentence for a sample of 1,483 male and 198 female defendants prosecuted in a New York City criminal court in order to test her familial paternalism thesis. She found many important findings. First, she found that women received more lenient treatment than men in pretrial release and in the severity of nonjail sentences. Her second finding was that sex effects diminished when the family status variable was included in the model and disappeared when a sex/family status interaction term was considered. Next, she found that family status differentiated the treatment received by women more than men. Finally, she discovered that having dependents, rather than being married, was the key family status factor leading to more lenient outcomes. These findings led her to conclude that, net of other factors, “male and female defendants were treated differently on the basis of their ties and responsibilities for others (Daly 1987a: 167).”

According to Daly (1987b), interviews show that although a form of paternalism exists in the court, it does not center on the protection of women. Rather, its ideological emphasis is on protecting the social institution of the family; more specifically, keeping families together, maintaining familial defendants' labor, and protecting those dependent on defendants' economic support or care. These results challenge the commonly held notion that courts protect women (female paternalism), and reveal instead that the real object of court protection is families

(familial paternalism). Daly (1987b) believes that familial women may be treated more leniently than familial men for two reasons. First, gender divisions of labor define women, not men, as the primary caregivers, and second, the court attaches more importance to caregiving than breadwinning in maintaining family life.

To summarize, the preferential (or paternalistic) perspective postulates that female offenders are treated more leniently than males. According to this view, females are more likely than males to receive probation, to receive shorter sentences, to serve shorter terms, and to complete probation or parole without revocation. Simon and Steffensmeier (cited above) have explained this leniency in terms of several theories about the nature of female crime, attitudes of the judiciary, and attitudes of parole officials. "Practicality" has also been identified as a rationale behind preferential treatment. This explanation focused on the fact that females are typically responsible for their children. If the mother is incarcerated, care of the children becomes a major issue; this consideration, it is claimed, results in more lenient dispositions of females with children (Parisi 1982).

### CHAPTER THREE: DATA AND METHODS

In the present study, I use data from three years (2001-2003) of the Monitoring of Federal Criminal Sentences program compiled by the United States Sentencing Commission (USSC). The data include all cases received by the USSC that had sentencing dates between October 1, 2000, and September 30, 2003 and were assessed as constitutional (total=194,521 cases). Data from the three years were combined to create one large data set, thus providing larger case sizes for both male and female defendant groups. These data are especially appropriate for this study as they contain some of the richest and most detailed information available on the processing of cases at the sentencing stage. Many of the single-city or state-level data sets used in prior studies have lacked the large number of legal control variables found in the federal guidelines data. Having these variables available enabled a more adequate elimination of alternative explanations for extralegal effects on sentencing outcomes (e.g., Demuth and Steffensmeier 2004; Spohn and Holleran 2000). Furthermore, the federal sentencing guidelines provide a more rigid and conservative test of the impact of extralegal factors on sentencing outcomes.

For this analysis, I eliminate several defendant groups from the sample. First, noncitizens are deleted from the analysis. Federal sentencing of noncitizen defendants often differs greatly from sentencing of citizen defendants in many ways and, as a result, makes comparisons of sentencing outcomes between them difficult (Demuth 2002). For instance, a large proportion of noncitizen cases involve immigration violations that cannot be directly compared to citizen cases. Furthermore, because noncitizens can be deported, the sentencing process for noncitizens is often qualitatively different (the goal being to send the defendant back to his country of origin and not to punish) from that of U.S. citizens. Finally, case information provided for noncitizens

may be incomplete and this will most likely result in an underestimation of prior criminal history. Second, defendants under the age of 18 are excluded from the analysis because their cases are substantively and legally different due to their juvenile status. Third, defendants who receive upward departures are deleted from the analysis as they comprised only 0.8 percent of departure cases and made comparisons across departure type very difficult. And fourth, using listwise deletion, all cases with missing information for all variable used in the analysis are deleted. Analyses were run pre- and post-deletion of missing information and the elimination of these cases did not significantly change the overall results. The final analytic sample for the present study is 109,181.

### Dependent Variables

Sentencing outcomes are the result of a two-stage decision making process: the decision to incarcerate and, once incarceration is selected, the sentence length decision (for discussion, see Spohn 2002). In the present study, I use logistic regression to model the incarceration decision. The in/out decision variable (INOUT) is coded dichotomously, with 1 indicating a prison sentence and 0 indicating a non-incarceration sentence (e.g., probation, community service). The sentence length decision is modeled using OLS regression and includes only those defendants who receive a prison sentence. Sentence length (SENTTOT0) is a continuous variable representing the logged length of the prison sentence in months. Logging sentence length helps to normalize the distribution and taking the antilog of the coefficient in the logged sentence length model provides a useful proportional interpretation. Sentence length is capped at 470 months. Any sentence length beyond that duration is considered to be life in prison.

In addition to looking at the decision to incarcerate and the sentence length outcome as dependent variables, the departure status of the defendant was also examined as an outcome variable. The defendant's departure status (DEPART) was treated in the present study as both a dependent variable and an independent variable (described in detail in the legal variables section on page 44). When used as a dependent variable, departure status is coded as 1 for receiving a sentencing departure (either a downward or a substantial assistance departure) and 0 for receiving no sentencing departure (being sentenced according to the sentencing guidelines). Downward departure sentences are those initiated by judges in accordance with the guidelines, while substantial assistance departures are initiated by prosecutors in cases where the defendant can provide assistance, usually in the form of information, to the government. Thus, the logistic regression models are displaying the odds of receiving a sentencing departure.

#### Extralegal Variables

Defendant gender (MONSEX) is a dummy variable coded 1 if the defendant is female and 0 if the defendant is male. Race/ethnicity (NEWRACE) is coded as four dummy variables: white non-Hispanic, black non-Hispanic, Hispanic of any race, and other. Defendant age (AGE) is a continuous variable representing the age of the defendant at the time of sentencing. It ranges from 15 to 100 (however, as discussed previously, only those 18 and over were included in the analysis). Furthermore, defendant age has been grouped in logical ranges consistent with Steffensmeier et al. (1998) and is coded as a series of dummy variables (18 to 20, 21 to 29, 30 to 39, 40 to 49, 50 to 59, and 60 and over).

Education level (NEWEDUC) is coded as three dummy variables: less than high school, high school, and more than high school, with those who graduated high school as the reference

category. Marital status (MARRIED) is coded as six dummy variables: single, married, cohabiting, divorced, widowed, and separated. Those defendants who are single serve as the reference category. Number of dependents<sup>1</sup> (NUMDEPEN) is a continuous variable indicating responsibility of support by the defendant of their dependents. For the purposes of this study, number of dependents has been recoded into a dichotomous variable indicating that defendants either have no dependents or have one or more dependents. Initial analyses were conducted using a full range of categories for this variable, but it was found that no differences existed between higher levels of dependents. Many studies have shown that female defendants that are married or have dependents receive greater leniency from the courts than their male or unmarried and childless female counterparts (Bickle and Peterson 1991; Daly 1987a, 1987b, 1989; Eaton 1987; Farrington and Morris 1983; Kruttschnitt and Green 1984; Kruttschnitt and McCarthy 1985; Simon 1975). Daly (1989) found that families men and women (those who have dependent children) are less likely to be detained pretrial, and they are less likely to receive the harsher types of non-jail sentences than the non-families men and women. Having dependents, whether in a marital context or not, is generally the more determining feature of whether defendants receive lenient treatment. However, while the majority of prior research uses the terms ‘child or children’, the present study uses ‘dependent’ as the data do not specify what type of dependent the defendant is responsible for.

### Legal Variables

Under the Federal Guidelines, federal judges retain discretion for sentencing individuals within the range determined by the offense level and criminal history of the offender. Sentence ranges

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<sup>1</sup> The “number of dependents” variable may not accurately represent a defendant’s potential family responsibilities because the Sentencing Commission has not differentiated among types of dependents (e.g., children, spouses, significant others, aged parents, or extended family members, etc.).

are determined using a grid that takes these two variables into account, one on each axis. However, it has been argued (see Engen and Gainey 2000) that a variable representing the presumptive guideline sentence, where criminal history and offense severity are combined into a single measure, is a more appropriate strategy and actually explains more of the variation in sentencing outcomes. This analytic strategy is also used by the United States Sentencing Commission (USSC 2004). Therefore, I include a variable representing the guideline minimum sentence, in months (XMINSOR). I also include a measure of criminal history (XCRHISSR), which ranges from 1 to 6 and indicates the final criminal history category of the defendant, as assigned by the court. According to Ulmer (2000), measures of offense severity and prior record have important main, curvilinear, and interactive influences on in/out and sentence length that cannot be reduced to the effect of presumptive sentence measures. This suggests that it is statistically and substantively important to include offense severity and prior record even if one is including a presumptive sentence measure. However, Ulmer also points out that including all three legally prescribed variables results in problematic multicollinearity in the OLS models of sentence length. As a result, an offense severity score variable is not included in the analysis because it is highly collinear with the guideline minimum sentence variable.

Case Disposition (NEWCNVTN) is a dichotomous variable, which indicates whether the offender's case is settled by plea agreement or trial. It is coded 1 for trial and 0 for guilty plea. I also include a measure of multiple counts (NOCOUNTS). A dummy variable is coded 0 for cases involving a single count and 1 for cases that involve multiple counts. Offense type (OFFTYPET) indicates the primary offense type for the case generated from the court of conviction with the highest statutory maximum sentence (in case of a tie, the count with the highest statutory minimum is used). The codebook categorizes 32 offense types, which are listed

in Appendix A at the end of the study. Offense type is used in several analyses throughout the current study, for example, when comparing drug vs. nondrug offenders, but is not included in regular models because a measure for offense type is included in the guideline minimum sentence variable (XMINSOR).

The variable departure (DEPART) indicates the defendant's departure status. Departure status is coded 0 for no departure, 1 for a downward departure and 2 for a substantial assistance departure. Upward departure cases were deleted from the sample as they only made up 0.8 percent of the sample and deleting them does not significantly change the findings. If, and when, judges issue a sentencing departure, they must indicate their reasoning for said departure. The federal sentencing statutes include provisions that permit judges to depart either above or below the sentence prescribed by the guidelines. Judges may award these sentencing departures based on a legitimate reason if they feel the defendant does not deserve the sentence stated under the prescribed guidelines. Overall, however, the overwhelming direction of departures is downward.

The narrow range of factors that judges may consider when sentencing either above or below the prescribed guideline range makes the Federal Sentencing Guidelines much more rigid than similar state structured sentencing systems (Farrell 2004). Consequently, federal courts are prohibited from departing from the Guidelines based on the race, gender, religion, or class of an individual defendant. However, the Sentencing Commission has deferred to the courts to interpret how extensively judges may use offender characteristics to justify departures from the guideline range.

Several control variables are also included in the models. Since multiple years of data were used in the present study (Y2001-Y2003), a dummy variable for each of the three years was constructed. Prior studies have indicated that judicial circuit, as well as other court contextual

variables, may be important influences on sentencing outcomes (Peterson and Hagan 1984; Steffensmeier and Demuth 2000). One cause of disparities is that not all states or judicial circuits have implemented guidelines systems. The variable judicial circuit (MONCIRC) indicates the judicial circuit in which the defendant was sentenced. Judicial circuits are broken down into 11 categories, which were then made into dummy variables and renamed circ1 thru circ11. In addition, even though guidelines do exist in federal courts, judicial discretion has not been completely eliminated. Examining differences between circuits is beyond the scope of this study; however, judicial circuit and year are included in the models, but are not shown in the tables.

### Plan of Analysis

In the present study, I analyze the data and present the results in several chapters. In the first results chapter, I present descriptive statistics for all variables used in the models. Second, I use logistic and OLS regression (includes only those defendants who receive a prison sentence) to examine the incarceration and sentence length decisions and answer four separate research questions. First, is there a gender gap in the sentencing of male and female defendants sentenced in U.S. Federal courts? Second, can the gender gap in sentencing outcomes be explained by extralegal (i.e., level of education, marital status) or legal characteristics (plea bargain, prior criminal history)? Third, is the gender gap uniform across all kinds of cases or does it exist only under certain circumstances (i.e., specific offense types – drug vs. non-drug)? Fourth, do legal (prior criminal history, offense severity) and extralegal (marital status, number of dependents) characteristics weigh equally for male and female defendants when it comes to their sentencing outcomes?

In the second results chapter, I examine sentencing departures. More specifically, I examine whether or not gender plays a significant role in who is/is not granted a sentencing departure. In addition, I treat sentencing departures as both an independent and a dependent variable in the regression models. This enables an examination of departure as both a mediating factor and an outcome variable. Finally, in the last results chapter, I examine the interaction of gender and race/ethnicity on sentencing outcomes. In addition, I examine race/ethnicity within each gender group to determine what differences exist by race/ethnicity for male and female defendant groups. I also examine gender and race/ethnicity interactions on offense type, departure type, and the odds of receiving a sentencing departure.

## CHAPTER FOUR: ARE THERE GENDER DIFFERENCES?

In this chapter I examine the influence of gender on sentencing outcomes. Specifically I address several questions. First, does a gender gap exist in the sentencing of male and female defendants in the federal court system? Second, can the gender gap be explained by legal (e.g., plea bargain, prior criminal history) or extralegal factors (number of dependents, level of education)? Third, is the gap in sentencing outcomes uniform over different types of offenses or particular to particular kinds of offending? And, finally, do legal and extralegal factors influence sentencing outcomes the same for male and female defendants?

### Expectations

Guided by the theoretical frameworks discussed in the previous chapter and the findings of past research on the effect of gender on sentencing outcomes, I develop several hypotheses for the present study. In the following hypotheses, receiving a “more severe sentence outcome” means that after controlling for important legal and contextual factors defendants (1) are more likely to receive an incarceration sentence than a non-incarceration sentence (e.g., probation, fine) and (2) are more likely to receive a longer incarceration sentence. Drawing on prior research, I propose the following:

Hypothesis 1: On average, female defendants will receive more lenient sentences than male defendants. For the most part, this gender gap will be explained by differences in relevant legal factors that are the main criteria for determining sentences within the guidelines. Men tend to be convicted of more serious offenses and to have accrued more extensive criminal records than

female defendants. After accounting for these legal differences between men and women, the gender gap in sentencing outcomes will be substantially reduced.

Hypothesis 2: Even after controlling for relevant legal and contextual factors, a gender gap in sentencing will persist. I expect that female defendants will be less likely to receive an incarcerative sentence and will receive shorter sentence length terms than similarly situated male defendants.

Hypothesis 3: A primary focus of the present study is to try to explain why a gender gap in sentencing exists. As stated above, I predict that most of the gender gap in sentencing outcomes is simply a function of gender differences in the factors that are legally relevant in determining sentences. However, given that I expect a gender difference to exist even after taking into account these legal differences, I explore a variety of possible explanations for the persistence of this gender effect. The first possibility I explore is that extralegal factors associated with gender might help to explain the more lenient sentences received by women vis-à-vis men. I expect that defendants that have more education, more marital stability, and dependents will be afforded greater leniency than defendants that have less education, are single, or have no dependents. Because it is likely that female defendants have more of these prosocial characteristics than male defendants, I expect that after controlling for education, marital status, and the presence of dependents (in addition to the other legal factors), the gender gap will be further reduced.

Hypothesis 4: Another possibility is that the predicted gender gap in sentencing is not uniform across all kinds of cases. For example, prior research on race and sentencing shows that racial

disparities tend to be greatest in drug cases (Demuth 2002). The theoretical explanation is that stereotypes and negative attributions surrounding drugs and racial minorities are particularly salient in the minds of legal agents and tend to lead to harsher sentences for black and Hispanic drug defendants. Similarly, gender might be particularly salient in “street crimes” involving drugs where women tend to take on more gender-constrained and less supervisory roles (Steffensmeier and Allan 1996) than in white-collar crimes (e.g., fraud). As such, I expect that the gender gap will be larger in cases involving drugs as compared to fraud. However, it is also possible that the gender gap could be smaller in drug cases than in fraud cases. Prior research finds that extralegal factors such as gender and race tend to matter less in more serious cases (Spohn 2002). That is, because the crime is so serious, judges and prosecutors have little reason to consider gender or race in assessing seriousness. Alternatively, in less serious cases, legal agents might look (rightly or wrongly) for additional information to help them assess the relative danger to the community, blameworthiness, and complications for the legal system of the defendant.

In the next chapter (Chapter 5), I explore another way in which gender might exert itself in decision making at sentencing: guideline departures. Departures represent an interesting compromise in the formalization of sentencing that allows judges and prosecutors a great deal of discretion. Legal agents may legally depart from recommended sentences for a variety of reasons that may be closely associated with gender. For instance, defendants who show remorse may be legally given reduced sentences.

Hypothesis 5: Finally, I explore the possibility that legal and extralegal factors might influence sentencing differently for male and female defendants. Prior research examining race and

ethnicity in the federal courts finds few differences in the influence of legal factors among white, black, and Hispanic defendants. However, to my knowledge, no studies have examined this issue as it relates to gender. Therefore, I hypothesize that legal and extralegal factors will exert similar effects on sentencing outcomes for both male and female defendants.

## Results

Table 1 presents the percentages and means of all variables used in the analysis. The descriptive statistics are partitioned by gender. Overall, men make up 83 percent of the sample, while 17 percent are women. In terms of race, I found similar percentages in each racial category for both men and women. The plurality of defendants in the sample are white, approximately 44 percent, while 34 percent are black and 18 percent are Hispanic. This holds true when the sample is partitioned by gender. In terms of age, the largest portion of the sample fell in the 21 to 29 age range, followed closely by the 30 to 39 year age range.

Looking at sentencing outcomes, a smaller percentage of women are incarcerated than men, with 85 percent of men receiving a prison sentence while only 62 percent of females in the sample are incarcerated. The sentence length gap for incarcerated defendants is also quite substantial between male and female defendants; male defendants receive sentence lengths of roughly 60 months, while female defendants are sentenced to approximately 21 months of incarceration. The average sentence length for the total sample falls close to that for male defendants (approximately 53 months).

These large differences in sentencing outcomes may be explained by both legal and extralegal factors. In terms of legal characteristics, male defendants have longer criminal histories, and they also receive higher recommended minimum guideline sentences than do

female defendants due to the greater severity of the offenses committed by men as compared to women. In addition, a higher percentage of male defendants are sentenced on multiple counts. Furthermore, a smaller percentage of female defendants go to trial.

Looking at extralegal factors that might be related to gender, a slightly higher percentage of female defendants have one or more dependents. More specifically, about 62 percent of female defendants have at least one dependent, compared to 59 percent for male defendants. Also, male defendants are more likely to be single than female defendants (46 vs. 40 percent), but female defendants are more likely to be divorced (14 vs. 11 percent) or separated (8 vs. 5 percent) than male defendants. Furthermore, a higher percentage of female defendants, roughly 6 percent more, have more than a high school education compared to their male defendant counterparts.

### *Is There a Gender Gap?*

Table 2 shows the main effects for the in/out decision in three nested models, all controlling for judicial circuit and year. Model 1 controls only for basic defendant demographics including gender, race, and age. In support of Hypothesis 1, female defendants have odds of incarceration roughly 74 percent lower than similarly situated male defendants. Hispanic defendants have the highest odds of incarceration, while white defendants have the lowest, and black defendants fall in the middle. Overall, the odds of incarceration follow an upside-down U-shaped pattern with increasing age. Defendants age 21 to 39 have odds of incarceration roughly 40-50 percent higher than defendants age 18 to 20. After age 50, the likelihood of receiving an incarceration sentence drops substantially, with defendants age 60 and over having odds of incarceration roughly half that of the youngest defendants.

Turning to the sentence length decision, female defendants receive sentences that are about 50 percent ( $\exp[b]$ ) shorter than similarly situated male defendants. This is also consistent with Hypothesis 1. Black defendants receive the longest sentence lengths, approximately 50 percent longer than white defendants. Hispanic defendants fall in the middle with it comes to sentence length outcomes. Overall, sentence lengths increase until age 30 to 39, then decrease thereafter, with defendants age 60 and over receiving sentences similar to those received by defendants age 18 to 20.

Model 2 builds on the baseline variables by adding legal factors indicating number of counts, trial or guilty plea, prior criminal history, and guideline minimum sentence (which accounts for offense severity). As expected, the legal factors are strongly related to whether a defendant receives a prison sentence or probation. Defendants with longer criminal histories are more likely to be sentenced to prison than defendants with shorter criminal records. In addition, defendants that are sentenced for multiple offense counts have odds of incarceration that are roughly 64 percent higher than defendants sentenced on only a single count. Furthermore, defendants that go to trial are considerably more likely to be sentenced to an incarceration term than defendants that plead guilty (odds ratio = 2.32). Looking at gender, net of legal factors, the odds of incarceration for females are 41 percent lower than the odds of incarceration for males. This represents a substantial reduction in the gender gap as compared to the findings presented in Model 1 where the odds of incarceration for women are 74 percent lower for women than men.

Similar findings emerge for sentence length in Model 2. After controlling for legal factors, female defendants receive sentences approximately 29 percent shorter than those received by male defendants. As with the in/out decision, defendants with longer criminal histories and who commit more serious offenses receive longer sentences. Those defendants with

multiple counts receive sentences approximately 30 percent longer than those sentenced for only a single count. Defendants that go to trial receive sentences about 15 percent longer than those who plead guilty. Notably, by including legal variables in the model, the male-female gap in sentence length is reduced from a 50 percent difference to a 29 percent difference. This result is consistent with Hypothesis 2 in that a gender gap persists even after controlling for legal factors in the model.

Model 3 represents the full model and includes three groups of variables indicating educational attainment, marital status, and number of dependents. These extralegal variables were added separately because they can be considered gendered in nature. The odds ratio for female defendants remains roughly the same as in Model 2, indicating that female defendants have odds of incarceration approximately 42 percent lower than male defendants with similar characteristics. But, defendants with less than a high school education are more likely to be incarcerated than those with a high school education, and defendants with more than a high school education are less likely to receive an incarceration sentence than those with only a high school education. Furthermore, defendants that are divorced have higher odds of incarceration than defendants that are single, while married and widowed defendants are less likely to be incarcerated. In addition, defendants that have one or more dependents are significantly less likely to be incarcerated than defendants who have no dependents. Overall, the results are consistent with the predictions made in the first part of Hypothesis 3, that defendants with higher education levels, more marital stability, and dependents are awarded more lenient sentences.

In terms of the sentence length decision, female defendants receive the same sentence length outcome as they did in Model 2, even after the addition of educational attainment, marital status, and number of dependents. Defendants with more than a high school education receive

sentences approximately 10 percent shorter than those with a high school education. Those defendants that are married receive sentences that are 7 percent shorter than those defendants that are single. Thus, the findings do not support the expectations that the gender gap will be further reduced with the addition of extralegal factors, as stated in the later part of Hypothesis 3.

Overall, several findings emerge from this examination. First, legal factors account for a considerable portion of the gender gap in sentencing. Second, however, even after accounting for these legal factors, a sizeable gender gap remains. Third, although educational status, marital status, and number of dependants appear to influence sentencing outcomes, they only partially explain the gender gap in sentencing outcomes. I explore further the influence of these three gender-related extralegal variables on sentencing outcomes again later in this chapter and also in Chapter 5. Later in this chapter, I examine the possibility that education, marriage, and number of dependents influence sentencing outcomes differently for male and female defendants (i.e., interaction effects). And, in Chapter 5, I explore the possibility that education, marriage, and number of dependents influence sentencing indirectly through the use of highly discretionary sentencing guidelines departures.

### Gender Differences by Offense Type

This section of the analysis examines whether there are gender differences by offense type. Some researchers argue that gender-based sentencing leniency may be more or less likely depending on specific characteristics of offenders or their cases (such as the type of crime they commit) and not just gender by itself (Boritch 1992; Crew 1991; Farnworth and Teske 1995; Spohn 1999; see also Chesney-Lind 1977; Daly and Tonry 1997). Thus, I examine different types of offense categories and their influences on the sentencing outcomes of male and female defendants. This

section will be broken down into two sub-sections. First, I examine differences between drug and non-drug offenses for the full sample. This comparison between drug and non-drug cases is a common breakdown used by previous researchers (Demuth 2002). Second, I explore whether differences exist between drug trafficking, firearms, and fraud offenses. These offense categories were chosen because they ranked as the three most common offenses committed by the defendants in the sample. Z-tests of differences between regression coefficients are conducted to determine if there are statistically significant differences in the effects across offense types (see Paternoster et al. 1998).

#### *Drug vs. Non-Drug Offenses*

Table 3 examines the decision to incarcerate and the sentence length outcome for defendants sentenced for drug and non-drug offenses. Looking at the odds of incarceration, female defendants sentenced for both drug and non-drug offenses have significantly lower odds (odds ratio = .51 and .66, respectively) of receiving a prison sentence than their male counterparts. Z-tests of differences between gender coefficients across drug and non-drug offense models reveal that gender differences in incarceration are significantly larger in drug cases than in non-drug cases. The effects of the extralegal characteristics appear to be larger in drug cases. More specifically, having higher levels of education appears to have bigger effects for those defendants committing drug offenses. Prior record, on the other hand, plays a stronger role for non-drug than drug offenders.

In terms of the sentence length decision, female drug and non-drug offenders both receive sentence length outcomes significantly shorter than their male counterparts (22 and 33 percent, respectively). Gender differences in sentence length are significantly larger in non-drug than in

drug cases. Sentence lengths for drug offenders increase until age 40 to 59 and then drop off slightly for those defendants age 60 and over. In contrast, sentence lengths for non-drug offenders decrease with age, with defendants age 60 and over receiving sentence lengths about 19 percent shorter than defendants age 18 to 20. Overall, non-drug offenders receive longer sentence terms when it comes to being sentenced on multiple counts and having prior criminal history. In terms of extralegal factors, it appears that drug and non-drug offenders are treated similarly, especially those defendants with one or more dependents.

### *Drug Trafficking, Firearms, and Fraud*

Following the analyses of drug and non-drug offenders, the current section examines three of the more frequently committed offenses for the defendant sample. Table 4 reports the sentence outcomes for those defendants sentenced for drug trafficking, firearms use and possession, and fraud offenses. Again, z-tests of differences are calculated to determine differences across offense type.

Looking at the odds of incarceration, female defendants sentenced for all three offenses have lower odds of receiving a prison sentence than their respective male counterparts; however there are notable differences across offense type. Female defendants sentenced for fraud offenses are sentenced more similarly to male fraud defendants; however there is still a substantial gap in their odds of incarceration (approximately 19 percent). The largest gap in the odds of incarceration is found for defendants sentenced for firearms offenses. Female firearms defendants have odds of incarceration roughly 70 percent lower than male firearms defendants. The gender gap in odds of incarceration is significantly larger in firearms cases than in drug trafficking or fraud cases. In terms of race, Hispanic and black defendants have the highest odds

of incarceration for drug trafficking offenses, while black defendants have the highest odds for both firearms and fraud offenses. Overall, the odds of incarceration for defendants in all three offense categories decrease with age. Furthermore, defendants age 60 and over in all three offense categories have the lowest odds of incarceration.

Drug trafficking offenders with more than a high school education are less likely to be incarcerated than those with a high school education. In addition, drug trafficking and fraud offenders who are divorced have higher odds of incarceration than defendants who are single. On the other hand, drug trafficking and firearms offenders who are married are less likely to be incarcerated than those defendants who are single (17 and 27 percent, respectively). Overall, level of education, marital status, and number of dependents do not appear to matter for fraud offenders, however they do make an impact for both drug trafficking and firearms offenders.

In terms of the sentence length decision, female defendants across all three offense categories receive sentence length outcomes significantly shorter than their male counterparts (22, 28, and 13 percent, respectively). Black defendants sentenced for drug trafficking receive the longest sentence outcomes, roughly 15 percent longer than white defendants sentenced for the same offense. This finding also holds true for black firearms offenders. These defendants are sentenced about 6 percent longer than their white counterparts. Unlike the age pattern for trafficking and firearms offenses, sentence lengths for fraud offenders continually increase with age with those defendants age 50 and over having the longest sentence lengths (approximately 23-24 percent longer than the reference group). Overall, firearms offenders age 60 and over have the shortest sentence length outcomes, receiving sentences about 18 percent shorter than firearms defendants age 18 to 20. Drug trafficking defendants that are married or cohabiting receive slightly shorter sentence lengths than defendants that are single. Defendants sentenced for drug

trafficking offenses that have one or more dependents receive sentence lengths about 3 percent longer than those without dependents. On the other hand, firearms and fraud offenders with one or more dependents receive sentences 3-4 percent shorter than their respective reference categories.

Overall, Hypothesis 4 receives partial support. I expected to find that the gender gap would be larger in cases involving drugs as compared to fraud. While this is true, the results are somewhat more complicated than predicted. In the drug vs. non-drug comparison, there is a larger gender gap for the decision to incarcerate between male and female drug offenders. However, in terms of sentence length outcomes, the larger gender gap is present for non-drug offenders. In addition, when examining differences between drug trafficking, firearms, and fraud (Table 4), the largest gender gap is found between male and female firearms offenders. Male and female fraud offenders are sentenced most similarly, with drug trafficking offenders falling in the middle.

#### Main Effects Models by Gender

The first section of this chapter, the analysis of main effects, revealed that there remains a substantial gap in the sentencing of male and female defendants. In this section I will examine male and female models separately in order to determine if there are differences in the factors that influence sentencing for male and female defendants. In Table 5, I present the results for the male and female defendants in the sample.

*Decision to Incarcerate*

Male and female defendants with prior criminal history are more likely to be incarcerated than defendants with no prior criminal history. A higher likelihood of incarceration is also found for defendants sentenced on multiple counts and those who go to trial. But, z-tests of difference indicate that the effect of being sentenced on multiple counts plays a stronger role for female defendants than male defendants. Overall, the odds of incarceration decrease with age, with the oldest defendants having the lowest odds of incarceration (40 and 56 percent lower, respectively). In addition, there are also some interesting differences in terms of extralegal factors. Overall, being single and less educated hurts male defendants more than women. More specifically, male defendants completing less than a high school education are 46 percent more likely to be incarcerated than those male defendants with a high school education. However, for women, these factors matter very little. For women, it appears having dependents is the more influential factor. In fact, men receive no leniency at incarceration if they have dependents, but women do. These female defendants are approximately 11 percent less likely to be imprisoned.

In terms of race, incarceration outcomes appear to be influenced more strongly for male defendants ( $p < .05$ ). Hispanic male and female defendants have the highest odds of incarceration with male defendants roughly 49 percent more likely and females 12 percent more likely to be incarcerated than their respective white counterparts. On the other hand, black female defendants have the lowest odds of incarceration, while black male defendants are still more likely to go to prison than their white counterparts.

### *Sentencing Length*

In terms of sentence length outcomes, the results for male and female defendants are greatly different. Black male defendants receive the longest sentence terms, roughly 9 percent longer than similarly situated white defendants. On the other hand, black female defendants receive the shortest sentence length outcomes, approximately 6 percent shorter than their white female counterparts. Sentence lengths for male defendants decrease with age, with defendants age 60 and over receiving sentences about 12 percent shorter than defendants age 18 to 20. Defendants, both male and female, with prior criminal history, multiple counts, and those who go to trial receive longer sentence lengths overall. Male and female defendants with less than a high school education receive sentences slightly longer than defendants who finished high school. Furthermore, male defendants who have continued their educations beyond high school are sentenced to significantly shorter terms (approximately 10 percent shorter). Defendants who are married receive significantly shorter sentence lengths than their single counterparts. This finding holds true for both male and female defendants. Overall, male defendants receive sentences roughly 6 percent shorter, while female defendants are sentenced to terms about 8 percent shorter than the reference groups.

To summarize, Hispanic defendants have the highest overall odds of incarceration, while the results for sentence length are mixed. Black male defendants receive the longest sentence terms and black females receive the shortest sentences. In terms of legal variables, these characteristics appear to play an important role in sentencing outcomes, both the decision to incarcerate and the sentence length. Overall, prior criminal history and multiple counts appear to weigh equally for male and female defendants when it comes to the sentence length decision. However, being sentenced on multiple counts plays a stronger role in the decision to incarcerate

for female defendants. On the other hand, the effects of the extralegal variables are not as clear cut and the overall results are mixed. For male defendants, their level of education plays a significant role in the decision to incarceration, but having dependents does not. Having less than a high school education weighs more heavily during the decision to incarcerate, but having more than a high school education is important when it comes to sentence length outcomes. The opposite is true for female defendants. Education plays a significant role only in the sentencing length decisions of female defendants, and having dependents decreases the odds that they will receive an incarceration sentence. Therefore, Hypothesis 5 is partially supported, as legal factors appear to exert similar effects on sentencing outcomes for male and female defendants, but extralegal factors do not.

### Conclusions

Several important findings emerge from this chapter. First, female defendants receive more lenient sentence outcomes than their similarly situated male counterparts. Second, legal factors account for a considerable portion of the gender gap in sentencing. However, even after accounting for these legal factors, a sizeable gender gap remains. Therefore, Hypothesis 1 and 2 are fully supported by the findings of the analysis. Third, although educational status, marital status, and number of dependants appear to influence sentencing outcomes, they do not help to minimize the gender gap in sentencing outcomes. Thus, Hypothesis 3 receives partial support in that defendants who have more education, more marital stability, and dependents receive more lenient sentence outcomes, but these extralegal factors do not aid in further reducing the gender gap. One reason as to why this group of variables is not helping to narrow the sentencing gap between male and female defendants may be that judges on the federal level, compared to the

state level, are more insulated from community pressures and political forces and less able to exercise their discretion than their state or local counterparts.

Fourth, I found that the gender gap in sentencing is not uniform across all kinds of cases, specifically across different types of offense categories. Overall, Hypothesis 4 received partial support. I expected to find that the gender gap would be larger in cases involving drugs, as compared to fraud. While this was found to be true, the results were somewhat more complicated than hypothesized. A larger gender gap existed between male and female drug offenders when it came to the decision to incarcerate. On the other hand, a larger gap was found for non-drug offenders for the sentence length outcome. Furthermore, when examining differences between drug trafficking, firearms, and fraud offenses, the largest gender gap was found between male and female firearms offenders. Male and female fraud offenders were sentenced most similarly, with drug trafficking offenders falling in the middle. More importantly, these findings suggest that the more “vanilla”, non-street types of crime are less influenced by extralegal factors. Gun and drugs may be perceived as “dangerous” and might be more influenced by popular perceptions of gender.

Finally, after examining each gender group separately, I found that extralegal factors do influence sentencing differently for male and female defendants. In terms of legal variables, criminal history and multiple counts play an important role and appear to weigh equally for male and female defendants during the sentence length decision, but multiple counts plays a stronger role for female defendants during the incarceration decision. On the other hand, extralegal variables like education level and the presence of dependents affect defendants somewhat differently. For male defendants, the level of education they have completed plays a significant role, while the sentence outcomes of female defendants are affected by having dependents.

Therefore, Hypothesis 5 receives only partial support. These findings are consistent with the work of Daly (1987a, 1987b, 1989) in that those defendants who provide day-to-day care are believed to deserve more lenient treatment. In addition, leniency is accorded along traditional gender lines of work and family, specifically that women are more likely to care for others while men provide economic support.

## CHAPTER FIVE: ARE DEPARTURES GENDERED?

In addition to the legal and extralegal factors examined in the previous chapter, the current chapter addresses the impact of sentencing departures on the sentencing outcomes of male and female defendants, as well as examining whether there are gender differences in the likelihood of receiving a departure. Overall, it is imperative to determine whether or not gender influences the type of sentencing departure given. In order to do this, the sample is analyzed in several steps. First, I briefly outline the descriptive statistics for departure status, partitioned by gender. Second, I examine the main effects model, introduced in the previous chapter, with departure status added to the models as a mediating factor for each gender grouping. Third, I partition the sample by type of departure to see if gender differences are uniform in cases that conform to the guidelines and those that depart from the guidelines. Finally, I examine departure status as a dependent variable. I explore not only whether gender differences exist in the likelihood of receiving a departure, but also whether the same/different factors explain the receipt of a departure by men and women.

### Expectations

As mentioned previously, the federal sentencing statutes include provisions that permit judges to depart either above or below the sentence prescribed by the guidelines. Judges may award these sentencing departures based on legitimate reasons if they feel defendants do not deserve the sentence stated under the prescribed guidelines. Due to the narrow range of factors that may be considered by judges, the Federal Sentencing Guidelines tend to be much more rigid than state structured sentencing systems (Farrell 2004). However, within the Sentencing Commission's

guidelines, prosecutorial departures (also called substantial assistance departures) are much less restrictive than regular downward departures. Although, U.S. courts are prohibited from granting a departure based on race, gender, religion, or class, but being awarded a sentencing departure may still be related to extralegal factors. Continuing from the previous chapter, I propose the following:

Hypothesis 6: Even after adding sentencing departures into the main effects model, I predict that a gender gap in sentencing outcomes will persist. I expect that female defendants will be less likely to be incarcerated and will receive shorter sentences than similarly situated male defendants, despite controlling for departure status.

Hypothesis 7: In addition to differences by offense type (examined in Chapter 4), it is possible that the predicted gender gap is not consistent across types of sentencing departure. After taking into account legal and extralegal factors, I hypothesize that the smallest difference in the sentence outcomes between males and females will be found for defendants who do not receive sentencing departures and thus will be larger for those defendants who receive sentencing departures.

Hypothesis 8: I also examine departure status as an outcome (or dependent) variable. I predict that male and female defendants may be differentially considered for sentencing departures. Therefore, I expect that after controlling for legal and extralegal factors, female defendants will be more likely to be awarded sentencing departures, either downward departures or substantial assistance departures.

Hypothesis 9: Finally, in this chapter I explore the possibility that legal and extralegal factors may influence the type of sentencing departure given to male and female defendants. Along the same lines as Hypothesis 1, legal factors are expected to play a large role in explaining sentencing differences between male and female defendants. Thus, I hypothesize that defendants with more extensive criminal histories, multiple criminal counts, and those convicted at trial, will be less likely to receive sentencing departures. However, I also predict that defendants that commit more serious offenses will be more likely to receive departures. This may seem counterintuitive, but past research suggests that departures are unlikely unless sufficiently serious sentence lengths are possible (Ulmer and Johnson 2004). Furthermore, on par with Hypothesis 3, I predict that defendants with more than a high school education, more marital or relationship stability, and dependents will be given greater sentence leniency and will be more likely to receive sentencing departures.

## Results

Overall, departure sentences (both downward and substantial assistance) constitute approximately 33 percent of all cases (see Table 6). Downward departures initiated by judges make up about 36 percent of all departure cases and about 12 percent of all sentences. Substantial assistance (SA) departures, which are initiated by prosecutors in cases where defendants provide assistance, usually in the form of information to the government, comprise about 65 percent of all departure sentences and 21 percent of all sentences. SA departures reflect a unique combination of judicial and prosecutorial discretion, and this type of departure is usually less constrained by the Sentencing Commission guidelines than regular downward departures. This is the case because SA departures are initiated by prosecutors in cases where the

defendant can provide some kind of assistance to the government. The number of cases involving an upward departure totaled only 0.8 percent of the overall sample (N=970) and were thus deleted from the analysis.

Looking at sentencing outcomes, a higher percentage of men are incarcerated than women (85 percent compared to 62 percent). The sentence length outcome is also quite different. Female defendants receive average sentence lengths of about 21 months, while male defendants receive sentences roughly 60 months long. Overall, a higher percentage of female defendants receive a sentencing departure. Approximately 22 percent of female defendants receive substantial assistance departures, while roughly 14 percent receive downward departures. Again, these differences are most likely explained by legal factors. For example, male defendants have higher prior criminal history scores, and they also receive higher recommended guideline minimum sentences than do female defendants. In addition, a higher percentage of male defendants go to trial and a smaller percentage of female defendants are sentenced on multiple counts.

#### Are There Differences by Departure Type?

Table 7 shows the main effects model, including departure status, for the full sample. By adding departure status into the model, the results are slightly different from the main effects model first presented in Chapter 4. In this case, the odds of incarceration for female defendants are slightly higher after including departure status in the model (.61 compared to .58). Furthermore, this indicates that the inclusion of departure status in the model helps to further close the gap in the odds of incarceration between male and female defendants, despite the small change. Similar to the findings from the previous chapter, Hispanic defendants have the highest odds of

incarceration, roughly 36 percent higher than their white counterparts. The odds of incarceration decrease with age; defendants age 60 and over receive odds about 43 percent lower than defendants age 18 to 20.

In terms of legal and extralegal variables, the findings are very similar between main effects models. Being sentenced on multiple counts, going to trial, and having prior criminal history increases the odds of incarceration for defendants in the sample. However, the effect of going to trial on the incarceration decision is significantly less pronounced than in the original main effects model (1.70 compared to 2.37 in the original model). Part of the leniency afforded to people who plead guilty (rather than go to trial) may be the reduction given in the form of a sentencing departure. People that go to trial are less likely to receive a sentencing departure, or vice versa. Defendants that receive departures are significantly less likely to be sent to prison than defendants sentenced according to the guidelines. Defendants with less than a high school education are significantly more likely to be incarcerated than those who have completed high school. In addition, divorced defendants receive higher odds of incarceration than their single counterparts. Defendants with one or more dependents receive odds of incarceration about 9 percent lower than defendants with no dependents. Thus, Hypothesis 6 is supported, as female defendants are significantly less likely to be incarcerated.

Looking at the sentence length decision, female defendants receive sentence length outcomes roughly 27 percent shorter than their male counterparts. This finding is very similar to the results from the original main effects model. In that case, female defendants received sentence length terms about 29 percent shorter than male defendants. Black defendants receive the longest sentence terms, about 4 percent longer than their white counterparts. However, all of the racial groups are sentenced similarly. Again, the oldest defendants receive the shortest

sentence length outcomes, while defendants age 21 to 29 receive the longest terms. All of the legal variables indicate the presence of longer sentence terms than defendants sentenced for a single count, those who plead guilty, or defendants with no prior record. Defendants that are awarded departures (downward or substantial assistance) receive sentence lengths 32-33 percent shorter than defendants receiving no sentencing departure. In addition, defendants that completed more than a high school education receive shorter sentence lengths, while those with less than a high school education receive slightly longer prison terms. Finally, married defendants receive sentence length outcomes about 6 percent shorter than similarly situated single defendants. Once again, the findings are consistent and supportive of Hypothesis 6; female defendants receive shorter sentence length terms than male defendants even after the inclusion of departure status.

#### Sentencing Differences by Type of Departure

The majority of the analyses conducted thus far have used departure status as a control variable in order to examine the odds of incarceration and subsequent sentence length outcomes. The focus of this stage of the analysis is to determine whether the gender gap is a universal phenomenon, or whether gender has a greater influence when cases are sentenced outside the guidelines. Table 8 presents the results for the full sample and is partitioned by type of departure. Overall, regardless whether they receive a departure, female defendants are sentenced more leniently than their male counterparts. However, there are notable differences in the influence of gender, depending on whether defendants were sentenced within or outside the guidelines. The gender gap is smallest within the guidelines or when judges issue a downward sentencing departure. The gender gap is largest for substantial assistance departures cases (also called prosecutorial departures) and z-tests of difference support this finding at the  $p < .05$  level.

Hispanic defendants in all three departure categories have the highest odds of incarceration, compared to their respective white counterparts. For defendants sentenced according to the guidelines, the effect of going to trial and having prior criminal history plays a strong role in their odds of incarceration. In addition, defendants that receive substantial assistance departures and are sentenced on multiple counts have odds of incarceration about 64 percent higher than those defendants sentenced on a single count.

Substantial assistance departure recipients who have completed more than a high school education are about 13 percent less likely to be incarcerated. In terms of marital status, the results are mixed. Married defendants in the no departure or substantial assistance groups receive odds of incarceration roughly 14 to 17 percent lower than their single counterparts. In addition, widowed defendants that receive no sentencing departure or a downward departure receive significantly lower odds of incarceration. Divorced defendants that received substantial assistance departures are the only group more likely than single defendants (in the same departure category) to be incarcerated. These defendants are about 22 percent more likely to be sent to prison than similarly situated single defendants. Finally, defendants with one or more dependents receive lower odds of incarceration. This finding only holds true for defendants receiving downward departures or those defendants sentenced according to the guidelines. Therefore, Hypothesis 7 is supported by the findings from the in/out decision; female defendants in the substantial assistance departure group have odds of incarceration roughly 45 percent lower than male defendants.

Looking at the sentence length decision, female defendants in all three departure categories receive shorter sentence length outcomes than their respective male counterparts. Overall, the largest gender difference is found for defendants that do not receive sentencing

departures ( $p < .05$ ). Female defendants in this group receive sentences roughly 28 percent shorter than similarly situated male defendants. For those who receive sentencing departures, black defendants are sentenced approximately 5 to 7 percent longer than the reference group. On the other hand, Hispanic defendants not receiving a departure are sentenced to slightly longer terms than similarly situated white defendants. In terms of age, the oldest defendants consistently receive the shortest sentence length outcomes across all three departure groups. Being sentenced for multiple counts increases the sentence length of defendants across the board. Their sentences range from 23 to 31 percent longer than defendants sentenced on only a single count. Overall, going to trial does not play a significant role in the defendants' sentencing length outcomes.

Defendants in all three departure categories with more than a high school education consistently receive shorter sentence lengths than defendants with high school educations. Married defendants, regardless of their departure status, receive shorter sentence length outcomes than their single counterparts. This finding is also true for downward departure defendants that are in cohabiting relationships. On the other hand, cohabiting defendants that receive no sentencing departure are sentenced to slightly longer terms than their single counterparts in the same no departure group. Finally, only those defendants with dependents that do not receive sentencing departures are awarded slightly shorter sentence length outcomes. Thus, the results of the sentence length terms do not support Hypothesis 7 because the largest gender gap is found for defendants who are not awarded sentencing departures.

### Departure Status as a Dependent Variable

In order to gain a different perspective on sentencing departures, this section examines sentencing departure status as an outcome variable. In other words, these models represent the

odds of receiving any type of sentencing departure. Departures were coded dichotomously in order to focus on whether circumstances were present that warranted granting a departure, regardless of type. Initially, departure types were examined separately; however no significant differences were found between the categories and they were subsequently combined. In other words, the goal is not to compare across types of departure, but simply to compare departure recipients with non-recipients.

Table 9 presents the results of the logistic regression for departure status for the full sample in three nested models. Model 1 controls for basic demographics including gender, race, and age of the defendant. Female defendants have odds of receiving a sentencing departure roughly 15 percent higher than male defendants. Model 2 incorporates legal variables including number of counts, trial or guilty plea, prior criminal history, and guideline minimum sentence. Looking at gender, net of legal factors, the odds of receiving a departure sentence for females is 31 percent higher than the odds for male defendants. The odds of receiving a sentencing departure increase after controlling for legal factors, showing that women receive more departures than expected, despite their less serious offending. That is, they are more likely to receive a departure vis-à-vis men. In addition, the opposite occurs for black and Hispanic defendants. They are less likely to receive a departure after accounting for legal factors.

Model 3 represents the full model and includes three additional variables indicating educational attainment, marital status, and number of dependents. Overall, even after controlling for legal, extralegal, and contextual factors (judicial circuit and year), female defendants have higher odds of receiving a sentencing departure than their male counterparts. More specifically, the odds ratio remains roughly the same as in Model 2, indicating that female defendants are about 32 percent more likely to receive a departure sentence. As in Model 2, white defendants

have the highest likelihood of receiving a sentencing departure. Again, defendants age 60 and over have the highest odds of receiving a sentencing departure, while defendants age 40 to 59 are about 11-12 percent less likely to receive a departure sentence. Going to trial significantly reduces the odds of receiving a sentence departure. For these defendants, taking their chance in court makes them about 84 percent less likely to receive a sentencing departure. Having more than a high school education increases the odds of receiving a sentencing departure by about 12 percent. Furthermore, married and cohabiting defendants have higher odds of receiving a departure sentence. In addition, the presence of dependents has no effect on receiving a sentencing departure. Thus, support is found for Hypothesis 8 in that female defendants are more likely to be awarded a sentencing departure, net of legal, extralegal, and contextual factors.

### *Gender Specific Models*

Table 10 shows the odds of receiving a sentencing departure for male and female defendants in the sample. Among male defendants, whites have the highest likelihood of receiving a sentencing departure. On the other hand, among women, Hispanic defendants have the highest odds of receiving a sentencing departure, roughly 13 percent higher than white female defendants. For both male and female defendants, having prior criminal history and being sentenced on multiple counts decreases the odds of receiving a departure sentence in a similar fashion. The effect of going to trial decreases the odds of receiving a departure for both males and females, but is significantly stronger for male defendants. Also, defendants with higher guidelines sentences are more likely to get a departure. Thus, the first part of Hypothesis 9 is supported.

Having more than a high school education improves the odds of receiving a sentencing departure for male defendants however for female defendants, having less than a high school education increases the odds of receiving a sentencing departure. Married male defendants, as well as those who are in a cohabiting relationship, are significantly more likely to receive a departure sentence than single male defendants. For women it is the reverse. Married female defendants are significantly less likely to receive a sentencing departure than single female defendants (about 11 percent). Therefore, the later part of Hypothesis 9 is partially supported, although only for male defendants. The findings are consistent with the prediction that defendants with more than a high school education and more marital/relationship stability have higher odds of receiving a sentencing departure. In this case, however, number of dependents does not influence the sentencing outcomes of male or female defendants. One explanation for this finding is that departure sentences are being awarded along the lines of traditional gender-role expectations.

### Conclusions

Overall, incarceration and the sentence length outcomes continue to be considerably different for male and female defendants in the sample, thus indicating that the gender gap in sentencing outcomes has yet to be explained. However, there are several important findings. First, even after controlling for sentencing departures, female defendants continue to have lower odds of incarceration and receive shorter sentence length terms than their male counterparts. Therefore, Hypothesis 6 is fully supported by the findings of the analysis.

Second, I found that the gender gap in sentencing is not consistent across departure categories. Overall, Hypothesis 7 is supported by the findings from the in/out decision, but not

by the sentence length outcome. I expected to find that the smallest gender gap would exist for those defendants who did not receive sentencing departures. The findings were consistent with this expectation, showing that gender differences are present even when defendants are sentenced within the guidelines. In this instance, female defendants have odds of incarceration about 30 percent lower than male defendants. However, when examining the sentence length outcome, I found that the smallest difference between males and females came for defendants who received substantial assistance departures.

Third, when examining departure status as a dependent variable, female defendants were more likely to receive a sentencing departure than were male defendants. Thus, support was found for Hypothesis 8, net of legal, extralegal, and contextual factors. Finally, legal factors continue to play an important role in sentencing outcomes in that defendants sentenced on multiple counts, those that go to trial and have prior criminal histories have lower odds of receiving a sentencing departure. Thus, the first part of Hypothesis 9 is supported for both male and female defendants. On the other hand, the latter part of Hypothesis 9 is only partially supported, as only male defendants with more education and marital/relationship stability have higher odds of receiving sentencing departures.

## CHAPTER SIX: ARE THERE GENDER-BY-RACE/ETHNICITY INTERACTION EFFECTS?

Thus far, I have sought to understand the various ways in which gender might have an impact on sentencing outcomes. I have examined whether the gender gap can be explained by legal and extralegal factors; whether offense type influences gender differences in sentencing outcomes in any way; whether the addition of departure status as a control variable changes gender outcomes; whether gender differences are uniform across departure cases; and finally, whether gender influences the likelihood of receiving a sentencing departure.

In this stage of the analysis, I examine how gender and race/ethnicity act jointly to influence incarceration and sentence length outcomes. First, I briefly outline the descriptive statistics for the six gender-race/ethnicity defendant groups. Second, I examine whether the effects of gender and race/ethnicity interact such that the meaning and impact of gender at sentencing is different for white, black, and Hispanic defendants (Table 12). To add another perspective, I examine the effect of race/ethnicity with the sample partitioned by gender (Table 13). In addition, I examine the gender and race/ethnicity interaction effects on offense type (Table 14 and 15), departure type (Table 16), and the odds of receiving a departure sentencing (Table 17).

### Expectations

Research conducted in the 1980s suggests that few studies focus specifically on the interaction between gender and race. Much of this research has used a limited number of control variables as well as inadequate sample sizes. However, there has been a recurrence as of late emphasizing the connection between gender and race (Crawford 2000; Steffensmeier et al. 1998; Steffensmeier

and Demuth 2006). According to the findings of Steffensmeier et al. (1998), in Pennsylvania, within-gender comparisons showed that black males were sentenced more severely than white males and black females were sentenced slightly more severely than white females. In addition, they found a consistent gender effect producing more lenient treatment of female defendants that persisted across racial groups as well as race/age groups. Based on these findings, I find it important to examine further the joint effects of gender and race on sentencing outcomes. Thus,

Hypothesis 10: I expect that there will be an interaction between gender and race/ethnicity such that male defendants in all racial/ethnic groups will receive more severe sentence outcomes than female defendants in all racial/ethnic groups. But, gender gaps will be largest among black/Hispanic defendants and smallest among white defendants.

Hypothesis 11: There will be differences within racial/ethnic groups by gender such that black and Hispanic male defendants will receive more severe sentence outcomes than white male defendants. This will also hold true for female defendants where black and Hispanic female defendants will receive more severe sentence outcomes than white female defendants.

Hypothesis 12: Along the same lines as Hypothesis 4, prior research on race and sentencing has found that racial disparities tend to be greater in drug cases than non-drug cases. In addition, gender may also play a role in the sentencing outcomes of offenders involved with drugs, compared to those not involved with drugs. Therefore, I expect that an interaction will occur between gender and race/ethnicity such that the gender gap will be larger for black and Hispanic drug offenders than for white drug offenders.

Hypothesis 13: As shown in Chapter 5, the gender gap in sentencing outcomes is not uniform across departure status categories. In addition, there were also significant racial/ethnic differences found. Therefore, I expect that gender and race/ethnicity will interact to produce similar results. Thus, I hypothesize that larger gender differences will exist for black and/or Hispanic defendants that receive sentencing departures. In addition, smaller gender gaps will be found among white defendants, especially those who do not receive sentencing departures.

Hypothesis 14: Following from the Chapter 5 examination of departure status as a dependent variable, female defendants and white defendants received the highest likelihood of receiving a sentencing departure. Thus, I predict that the gender gap in odds of receiving a sentencing departure will be smallest between white male and white female defendants.

## Results

Table 11 shows the descriptive statistics for this stage of the analysis. They are partitioned by both gender and race/ethnicity. For males (left side of the table) a higher percentage of black male defendants are incarcerated (roughly 91 percent), compared to whites and Hispanics (79 and 90 percent, respectively). When these black defendants are sent to prison they receive average sentences lengths around 84 months, compared to 44 months for whites and 53 months for Hispanics. The harshness in sentencing outcomes for black male defendants can be partially explained by legal characteristics. Overall, a larger percentage of black males go to trial and are sentenced on multiple counts. In addition, they have higher prior criminal history scores and longer guideline minimum sentences. A higher percentage of black male defendants are sentenced according to the specified guidelines (receive no sentencing departure) while more

Hispanics receive downward departures and white receive substantial assistance departures. In terms of extralegal variables, a higher percentage of Hispanic male defendants completed less than a high school education, with more white male defendants completing high school and/or beyond. Black males have the largest percentage of single defendants. Also, Hispanic males are more likely to cohabit and are the group with the highest percentage of defendants to have one or more dependents.

Looking at female defendants (right side of the table), a larger percentage of Hispanic female defendants are incarcerated (about 70 percent), and these defendants receive slightly longer sentence length outcomes (23 months, on average). By comparison, 62 percent of white females are incarcerated and 59 percent of blacks, and if incarcerated receive 21 month and 23 month sentences (white and Hispanics, respectively). Much like the black male defendants, a higher percentage of black female defendants are sentenced on multiple counts. Furthermore, this defendant group has a larger percentage of members that go to trial and receive higher criminal history scores. However, Hispanic females receive the longest guideline minimum sentences. Again, a larger percentage of black defendants do not receive sentencing departures. In terms of education, a higher percentage of Hispanic females completed less than a high school education, while a larger percentage of black females continued their educations beyond high school. White female defendants fall in the middle, having the highest percentage of defendants completing high school educations. Hispanic females are more often separated or in cohabiting relationship and black female defendants are more likely to be single. Finally, Hispanic female defendants are more likely to have one or more dependents while more white females have no dependents.

## Effects of Gender partitioned by Race/Ethnicity

### *In/Out Decision*

Table 12 shows the effects of gender on sentencing outcomes separately for each of the race/ethnicity subgroups in the sample. Across the board, female defendants have lower odds of incarceration, compared to their male counterparts. The largest gap in the odds of incarceration is found between male and female Hispanic defendants. Hispanic females have odds of incarceration roughly 49 percent lower than similarly situated Hispanic males. The smallest gender gap is found for white defendants, with black defendants falling in the middle. Z-tests of differences between gender coefficients confirm these findings at the  $p < .05$  level. Overall, across all racial/ethnic groups, those defendants with prior criminal history, multiple counts, and those who go to trial have a higher likelihood of being incarcerated. Interestingly, black defendants stand out from the two other groups in terms of the substantial penalty paid for being convicted at trial and on multiple counts. This might also indicate that blacks don't receive the benefits of departures that whites, and even Hispanics, do. Black defendants that go to trial are about 2.5 times more likely to be incarcerated and about 91 percent more likely if they are sentenced for multiple counts. Defendants receiving downward or substantial assistance departures have significantly lower odds of incarceration than similarly situated defendants that receive no sentencing departure. Defendants with less than a high school education are more likely to be incarcerated than those with at least a high school education, and this is especially pronounced for Hispanic defendants ( $p < .05$ ). Finally, those defendants with one or more dependents have lower odds of incarceration than defendants with no dependents (9-17 lower).

### *Sentence Length Decision*

Table 12 also shows the interaction effects of gender by race/ethnicity for the sentence length decision. Much like the results for the in/out model, all of the female defendants receive shorter sentence length terms than their respective male counterparts. In terms of the gender gap between racial/ethnic groups, black female defendants show the largest difference from similarly situated black males, receiving terms about 37 percent shorter. Whites and Hispanics look similar, and black defendants appear to be treated the most harshly. Overall, it looks like black defendants get the worst treatment for the sentence length decisions and these findings are supported by z-tests of differences ( $p < .05$ ). Being sentenced on multiple counts, as well as having prior criminal history, increases the length of sentence terms for defendants in all racial/ethnic groups. Defendants that go to trial also receive longer sentence lengths than their counterparts who plead guilty and this is apparent for Hispanic defendants.

Similar to the decision to incarcerate, sentence lengths for defendants given downward or substantial assistance departures are significantly shorter than terms given to the reference category for each racial/ethnic group. Defendants with more than a high school education receive sentences roughly 7-12 percent shorter than those defendants who complete only a high school education. Married white and black defendants, as well as divorced black defendants are given slightly shorter sentence lengths than their respective single counterparts. Finally, white defendants with one or more dependents are the only group to receive slightly shorter sentence lengths.

Overall, female defendants are not sentenced on par with men. Female defendants have odds of incarceration ranging from 28 to 49 percent lower than male defendants, depending on their race/ethnicity. When female defendants are incarcerated, they receive sentences about 20 to

37 percent shorter than their male counterparts. In terms of legal characteristics, the effect of trial and number of counts is most pronounced for black defendants. In addition, defendants in all racial/ethnic categories have lower odds of incarceration if they carry responsibility for dependents. This finding also holds true for married and widowed defendants of certain race/ethnicities. Overall, it appears that black defendants are treated more harshly than their white or Hispanic counterparts when it comes to certain legal variables; however the findings are mixed when it comes to extralegal variables like education and marital status. Thus, Hypothesis 10 is supported in that male defendants in all racial/ethnic categories receive more severe sentence outcomes (in/out and length) than their respective female defendants.

#### Effects of Race/Ethnicity partitioned by Gender

##### *In/Out Decision*

Table 13 also shows the results partitioned by gender. Hispanic male defendants have the highest odds of incarceration, compared to their white counterparts. In addition, black female defendants are significantly less likely to be sent to prison (roughly 17 percent less) than white female defendants. Being sentenced on multiple counts weighs more heavily for female defendants (z-tests are significant at the  $p < .05$  level). Both male and female defendants with less than high school educations are more likely to be given an incarceration term than those defendants who finish high school, but the effect of less education plays a stronger role for male defendants. Once again, the effects of marital status are mixed. Divorced male and females defendants have higher odds of incarceration than their single counterparts. On the other hand, married male defendants and widowed female defendants have significantly lower odds of being sent to prison. Finally, defendants that have one or more dependents receive lower odds of incarceration (6 to

11 percent lower). Overall, men benefit more from marriage and higher levels of education, while women benefit more from having dependents.

### *Sentence Length Decision*

Unlike the results for the in/out model, black male defendants and Hispanic female defendants receive the longest sentence length outcomes (6 percent in both cases). The effect of going to trial is more pronounced for female defendants, producing longer sentence lengths, while the effect of being sentenced on multiple counts is stronger and leads to longer sentence lengths for male defendants ( $p < .05$ ). Defendants with less than a high school education receive longer sentence terms than those defendants who complete high school. Furthermore, married defendants receive shorter sentence length outcomes than their single counterparts (roughly 5 to 9 percent shorter). Male defendants who are divorced receive slightly longer sentence terms.

For men, black/white differences are non-existent, but Hispanics are treated more harshly. Hispanic male defendants have the highest odds of incarceration. For females, no Hispanic/white differences exist for the incarceration decision. When it comes to sentence length outcomes, black male defendants and Hispanic female defendants receive the longest overall terms. It is also notable that black women are treated more leniently than white women during both stages of the sentencing process. In terms of legal factors, the effect of trial plays an especially strong role for female defendants during the sentencing length decision. The opposite holds true for multiple counts. The result of being sentenced on multiple counts is more pronounced for female defendants during the in/out decision and for male defendants at the sentence length decision. In addition, male defendants who are married and female defendants who are widowed have lower odds of incarceration. This finding also holds true for defendants

with one or more dependents. Therefore, Hypothesis 11 is partially supported as Hispanic male defendants are more likely to be incarcerated than their white counterparts. In addition, the findings are supportive in that black and Hispanic male defendants receive longer sentence length outcomes than white male defendants. However for female defendants, only Hispanic female defendants are sentenced to longer terms than white female defendants.

#### Interaction Effects for Drug vs. Non-Drug Offenders

Table 14 presents the effects of gender separately for each racial/ethnicity group for drug and non-drug offenders. Looking at the top portion of the table (drug offenders), the largest gender gap is found for black drug offenders. More specifically, black female drug offenders have odds of incarceration roughly 46 percent lower than black male drug offenders. In addition, when examining the sentence length outcomes, black female drug offenders receive sentences approximately 22 percent shorter than their male counterparts. For non-drug offenders, the results are slightly different. The largest gender gap in the odds of incarceration is found for Hispanic non-drug offenders. Hispanic female non-drug offenders are 49 percent less likely to be incarcerated than male offenders in the same category. However, in terms of sentence length, black female non-drug offenders receive terms about 40 percent shorter than black male non-drug offenders. Thus, Hypothesis 12 is supported in that the gender gap in both sentencing outcomes is larger for both black and Hispanic drug offenders compared to white drug offenders. This finding also holds true for Hispanic non-drug offenders during the in/out decision and black non-drug offenders during the sentence length decision. Furthermore, the gender gap is smallest for white, non-drug offenders.

### Interaction Effects for Drug Trafficking vs. Firearms vs. Fraud

Table 15 presents the gender and race/ethnicity interaction effects for drug trafficking, firearms, and fraud offenders in the sample. Looking at the top third of the table (drug trafficking offenders), the largest gender gap is found for black defendants. More specifically, black female drug trafficking offenders have odds of incarceration roughly 57 percent lower than black male drug trafficking offenders. In regard to sentence length outcomes, black female drug offenders receive sentences approximately 22 percent shorter than their male counterparts ( $p < .05$ ).

For firearms offenders, the largest gender gap in the odds of incarceration is found for Hispanic defendants; however this finding should be interpreted with caution due to the small sample size in this category. The results indicate that Hispanic female firearms offenders are 81 percent less likely to be incarcerated than male offenders in the same category. A more confident finding exists for black firearms offenders in that females are 73 percent less likely to be incarcerated than male firearms offenders. In terms of sentence length, black female firearms offenders receive terms about 37 percent shorter than black male firearms offenders.

Finally, findings indicate that black female fraud offenders are significantly different from their male counterparts. They are about 19 percent less likely to receive incarceration than are similarly situated black male fraud offenders. In addition, the largest gender gap in sentencing length is found between black male and female fraud offenders. Female fraud offenders receive sentences that are 16 percent shorter on average. Overall, the gender gap is smallest (and not significant) for the in/out decision for white defendants sentenced for fraud offenses. The gender gaps are biggest for black and Hispanic firearms cases. Furthermore, gender and race interactions appear to matter more in drug cases. Black and Hispanic male defendants are receiving especially harsh punishments.

### Interaction Effects by Type of Departure

Table 16 shows the gender by race/ethnicity interaction effects for type of departure. The top third of the table shows defendants that do not receive sentencing departures. The largest gap between males and females is found for Hispanic defendants. Hispanic female defendants are approximately 46 percent less likely to be incarcerated than Hispanic male defendants. In contrast, white female defendants in this departure category are only 17 percent less likely to be incarcerated than their white male counterparts. However, when examining the sentence length decision, the largest gender gap is found for black defendants. Black female defendants receive sentence length terms about 39 percent shorter than black male defendants.

Turning to defendants that receive downward sentencing departures, the largest gender gap in odds of incarceration exists between Hispanic defendants. Thus, Hispanic female defendants are roughly 44 percent less likely to receive an incarceration term than Hispanic male defendants. In addition, the largest gender gap in sentence length outcomes is found between black male and female defendants. Black females in the downward departure category are sentenced to terms 34 percent shorter than black male defendants. Again, I found that the smallest gender difference is found for white defendants for the incarceration decision and for Hispanic defendants during the sentence length decision.

For those defendants who receive substantial assistance departures, the largest gender gap in sentencing outcomes is found for black defendants. Black female defendants receive odds of incarceration roughly 54 percent lower than similar black male defendants. Furthermore, in terms of sentence length outcomes, black female defendants receive terms about 32 percent shorter than their black male counterparts. Unlike the defendants in the previous categories, white defendants who receive substantial assistance departures show the smallest gender differences

for both the incarceration and sentence length decision. Therefore Hypothesis 13 is fully supported, as minority defendants (black and/or Hispanic) who receive sentencing departures are found to have larger gender differences during the sentencing process. In addition, white defendants are found to have smaller gender differences, especially when they are sentenced according to the guidelines. This finding is consistently true for the incarceration decision.

#### Interaction Effects for Departure as a Dependent Variable

Table 17 presents the gender by race/ethnicity interaction results for the odds of receiving a sentencing departure. Each gender by race/ethnicity section presents only the odds ratio for gender (variables are equivalent to Table 9). The findings indicate that the odds of a white female defendant's receiving a departure are 19 percent greater than the odds of a white male defendant's receiving a sentencing departure. For black defendants, the gender gap is significantly larger than for white defendants. Overall, black female defendants are 39 percent more likely to be awarded a sentencing departure than black male defendants. Looking at Hispanic defendants, females have odds of receiving a sentencing departure roughly 62 percent higher than Hispanic male defendants. Overall, Hypothesis 14 is supported in that the gender gap in the odds of receiving a sentencing departure is smallest for white defendants.

#### Conclusions

Overall, there are several important findings from this chapter. First, female defendants in all racial/ethnic categories receive less severe sentence outcomes than male defendants in the same categories. This holds true for both the incarceration decision and the sentence length decision. Therefore, Hypothesis 10 is fully supported by the findings of the analysis. Second, I found that

there are differences within each racial/ethnic group for male and female defendants. Overall, Hypothesis 11 is supported in that Hispanic male defendants are more likely to be incarcerated than their white counterparts. In addition, black and Hispanic male defendants receive longer sentence length outcomes than white male defendants. However the findings for female defendants are only partially supportive of Hypothesis 11 as white defendants receive more severe sentence outcomes than black defendants at both stages of the sentencing process. Hispanic female defendants, however, receive longer sentence length terms than white female defendants.

Third, I found that an interaction occurred between gender and race/ethnicity that influences the sentencing outcomes of drug and non-drug offenders. Overall, Hypothesis 12 is supported by the findings of the analysis in that the gender gap in sentencing outcomes is larger for both black and Hispanic drug offenders compared to white drug offenders. In addition, this finding also holds true for black non-drug offenders. Fourth, the smallest gender gap in incarceration was found for white defendants in fraud offenses, while the largest gender gap in sentence length was found among blacks and Hispanics in firearms cases. This finding further indicates that race and gender interact to influence sentencing outcomes differentially.

Fifth, much like the findings from Chapter 5 the gender gap in sentencing is not consistent across departure categories. I expected to find that larger gender differences would exist for black and/or Hispanic defendants that received sentencing departures. Furthermore, I predicted that gender differences would be smaller among white defendants, especially those who did not receive a departure. Overall, the findings were consistent with my expectations and therefore supportive of Hypothesis 13. And finally, I found that the gender gap in the odds of

receiving a sentencing departure is smallest for white defendants and largest for Hispanics; the gender gap among blacks places them in the middle. Thus, Hypothesis 14 is supported.

## CHAPTER SEVEN: DISCUSSION AND CONCLUSIONS

A large body of empirical research exists which examines the impact of race on sentencing outcomes in the criminal justice system. However, what appears to be lacking from the literature is the role gender plays in the sentencing outcomes of defendants in U.S. federal courts. While it is important to understand the racial inequality that exists within many aspects of our world, developing a better understanding of the gendered nature of sentencing has the potential to help us more fully explain the disparities that are present within the criminal justice system, and how best to address these differences in the future. Previous gender research has found that differences do in fact exist in the sentencing of male and female defendants (Bickle and Peterson 1991; Daly and Bordt 1995; Spohn 2002; Steffensmeier et al. 1993), however they often fail to try and explain empirically how gender influences the decision making process. Drawing on previous sentencing literature, the current study investigated the role that gender plays in the sentencing process, including both the decision to incarcerate and the length received, but also extended this framework by incorporating multiple legal, extralegal, and contextual factors that have been known to influence sentencing outcomes. In addition, the data used in the current study, Monitoring of Federal Criminal Sentences (USSC 2001-2003), are some of the best available because they are rich in detail, include important legal control variables, and contain sufficient numbers of female and Hispanic defendants.

Prior research has pointed to a fairly persistent finding that female defendants are treated more leniently than male defendants (Bickle and Peterson 1991; Daly and Bordt 1995; Spohn 2002; Steffensmeier et al. 1993); however research by Kruttschnitt and Green (1984) reports no differences. Legally relevant factors, such as offense severity and prior record, have helped to explain the differences found in the likelihood of incarceration and sentence length outcomes

between male and female defendants. However, researchers have struggled to explain the remaining gender gap, basing their reasoning on speculative and anecdotal evidence provided by only a few available judges.

In an attempt to understand the meaning of gender in the criminal justice process, Daly (1987a; 1989) has made advances to our knowledge on how judges weigh a defendant's role in the household. Whether they provided day-to-day care, or served as the family breadwinner, the judges in Daly's studies believed these tasks mattered a great deal. In addition, these court personnel are concerned about the removal of day-to-day caregivers, especially the negative impact it may have on children in the home. Also, research by Steffensmeier (with Kramer and Ulmer 1998; with Demuth 2006) has pointed to the importance of examining the interaction of gender and race/ethnicity. Overall, these researchers found larger gender gaps between black and Hispanic defendants, however more favorable treatment of female offenders was found among all whites, blacks, and Hispanics, in comparison to male defendants.

The current study addressed three specific questions concerning the gender gap in sentencing outcomes. First, is the existence of a gender gap uniform across all kinds of cases or does it only exist under certain circumstances? For example, is the gender gap larger in drug cases than in nondrug cases? And, does gender play a larger role in cases sentenced according to the prescribed guidelines or in cases that fall outside the sentencing guidelines? Second, can the gender gap be explained by legal (e.g., offense seriousness, departures) and extralegal (marital status, number of dependents) differences between males and females that have yet to be examined by other researchers? Furthermore, do these legal and extralegal factors have the same impact for male and female defendants – that is, are gendered explanations required? Third, do

the effects of gender and race/ethnicity interact such that the meaning and impact of gender at sentencing depends in part on race and ethnicity?

The current study also had several major goals. First and most important, I focused on gender, which is a characteristic that has been overlooked in previous sentencing studies. By examining gender on a very basic level, as well as the interaction between gender and race/ethnicity, the present study was able to address gaps in existing research and provide a better understanding of the role that gender plays in the criminal justice decision making process. Second, the current study set out to address the limitations of the criminal justice system after the implementation of stricter sentencing reforms; a system which now operates under a fixed sentencing process. Central to the sentencing guidelines is the notion that defendant characteristics such as gender and race are considered extralegal factors that should not be considered during the sentencing process. However, even with these guidelines in place disparities persist, calling into question the effectiveness of their implementation. Third, research from the areas of criminology, criminal justice, and family sociology were brought together to examine the role of marriage, education, and dependents on sentencing outcomes for male and female defendants. The present research included measures for marital status, education level, and the presence of dependents, in addition to legally relevant factors, to give a well-rounded look into the life and world of each defendant. Finally, the current study analyzed a federally-compiled data set containing detailed legal, extralegal, and background information on each defendant, as well as an oversampling of female and Hispanic defendants. To date, most research has used smaller state data sets or single city samples, which made the task of generalizing results very difficult.

## Key Findings

Consistent with prior sentencing research, I found that legal factors play an important role in sentencing outcomes. Overall, defendants with prior criminal records and those who commit more serious offenses are more likely to receive harsher sentences than defendants with no prior criminal history and less serious offense conduct, regardless of the defendant's gender. However, the findings of the current research also show that gender appears to have a significant effect on sentencing outcomes, after accounting for legal factors. Female defendants are less likely to receive an incarceration sentence than male defendants and receive shorter sentence length terms. Furthermore, my findings indicate that the influence of gender is not uniform across all kinds of cases and that judges might be considering gender (or race/ethnicity) in their decisions, despite a guideline system which prohibits such behavior. I outline below some of the specific key findings.

### *Gender Differences*

Many important findings emerged from the first stage of the analysis that supports the hypotheses that gender influences decision making. First, female defendants receive more lenient sentence outcomes than their male counterparts. Second, legal factors (i.e., offense severity and prior record) account for a large portion of the gender gap in sentencing outcomes between males and females. But, even after controlling for these legal variables, a sizeable gender gap in sentencing outcomes remains. Third, despite the influence of extralegal factors (marital status, education, and number of dependents) on sentencing outcomes, these factors do not help reduce the gender gap in outcomes. Fourth, the gender gap in sentencing outcomes was not found to be uniform across all kinds of cases, specifically the type of offense committed. Overall, a larger

gender gap was found for the decision to incarcerate in drug cases than in non-drug cases. Conversely, a larger gender gap was found for non-drug offenders when it came to sentence length decisions. Furthermore, when examining additional offense categories (drug traffickers, firearms, and fraud offenders) the largest gap between male and female defendants was found for firearms and drug trafficking offenses, and the smallest gap was found for fraud offenses. Finally, extralegal factors were found to influence male and female defendants differently when the sample was partitioned by gender and examined separately, while legal factors appear to weigh equally for both defendant groups. Level of education plays a significant role in the decision to incarcerate for male defendants, while having dependents plays a role in the sentence length terms given to female defendants. These findings are consistent with the work of Daly (1987a, 1987b, 1989) in that those defendants who provide day-to-day care are believed to deserve more lenient treatment. In addition, leniency is accorded along traditional gender lines of work and family, specifically that women are more likely to care for others while men provide economic support.

### *Departure Differences*

The second portion of the analysis examined the role of sentencing departures in the outcomes of sentences received by male and female defendants in the criminal justice system. Several findings are particularly noteworthy. First, female defendants continue to have lower odds of incarceration and receive shorter sentence length terms than similarly situated male defendants, even after controlling for sentencing departures. But, accounting for departures does shrink the gender gap. Second, the gender gap in sentencing outcomes fluctuates across departure categories. The smallest gender differences existed among defendants who were sentenced

within the guidelines with female defendants having odds of incarceration roughly 30 percent lower than their male counterparts. However, in terms of sentence length outcomes, the smallest gender gap was found between male and female defendants who received substantial assistance departures. Third, when departure status was examined as a dependent variable, female defendants were more likely to receive a sentencing departure than male defendants, even after controlling for legal, extralegal, and contextual factors. And finally, those defendants who are sentenced on multiple counts, have an extensive prior criminal history, and go to trial have lower odds of receiving a sentencing departure. Thus, legal variables continue to play an influential role in sentencing outcomes for both male and female defendants. On the other hand, extralegal factors have different effects on the likelihood of receiving a departure sentence for men and women. For male defendants, those with more education and marital/relationship stability have higher odds of receiving sentencing departures. For females, lower levels of education increase the likelihood of receiving a departure, while being married actually decreases the odds that female defendants will receive a sentencing departure. The presence of dependents does not appear to influence departure decision-making as it did in previous analyses of incarceration and sentence length decisions.

### *Interaction Effects*

The final chapter of analysis examined the impact of gender and race/ethnicity on sentencing outcomes for male and female defendants. Several important findings from the analysis stand out. First, female defendants in all racial/ethnic categories receive less severe sentence outcomes than male defendants in the same categories across the two-stage sentencing process. Second, there are gender differences within each racial/ethnic group. Hispanic male defendants are more

likely to be incarcerated than white male defendants. Also, black and Hispanic male defendants receive longer sentence length outcomes than white male defendants. In addition, white female defendants receive more severe sentence outcomes than black female defendants. While the findings for male defendants are consistent with prior research and expectations of the current study, the findings for black female defendants are somewhat unexpected in that they have lower odds of incarceration and receive shorter sentence length terms than white female defendants. However, Hispanic female defendants receive longer sentence length outcomes than white female defendants. Thus, future research should continue to explore gender\*race/ethnicity interaction effects to determine what is taking place in the lives of these black female defendants and what factors are influencing these more lenient sentence outcomes.

Third, the sentencing outcomes of drug and non-drug offenders were influenced by an interaction between gender and race/ethnicity. The gender gap in sentencing outcomes was larger for both black and Hispanic drug offenders, compared to their white counterparts, and also between black and white non-drug offenders. Fourth, the smallest gender gap in incarceration was found for white defendants for drug trafficking, firearms, and fraud offenses, while the largest gender gap in sentence length was found for black defendants. Fifth, the gender gap in sentencing is not consistent across departure categories, much like the findings from the previous chapter of analyses. Larger gender differences were found for black and/or Hispanic defendants who received a sentencing departure. In addition, gender differences were smaller among white defendants, especially those who did not receive a departure sentence. And lastly, the gender gap in the odds of receiving a sentencing departure (when departure is examined as a dependent variable) is smallest for white defendants. The gap between white defendants is 19 percent, while

the gender gap between black and Hispanic defendants is 39 percent and 62 percent, respectively.

### Theoretical Implications

The current study was guided by three theoretical frameworks, each supporting a different perspective about the role gender plays in the sentencing process. The results of the current study are consistent with the focal concerns perspective (Steffensmeier 1980, 1993, 1998) that argues that legal decision-making is organized around concerns of blameworthiness, protection of the community, and practical constraints and consequences. Overall, the primary influences of sentencing decisions are legal factors (e.g., prior criminal history, offense seriousness); however I also found that extralegal characteristics play an important role in defendant's outcomes. The findings support the idea that judges attribute meaning to past and present behavior of defendants, as well as stereotypes associated with various gender or racial/ethnic groups. These extralegal sources of sentencing disparity indicate that these stereotypes may be very influential and that inequalities in the application of the law and subsequent court proceedings may be taking place, despite the existence of sentencing guidelines designed to avoid such unequal treatment.

The findings of the current study are also consistent with the theoretical frameworks of social control theory and paternalism. More specifically, the findings indicate that the sentences of female defendants are influenced more by the presence of dependents than the sentences of male defendants. Daly's research (1986, 1987a), focusing on both social control and social costs, posits that court officials believe defendants with a day-to-day responsibility for others are more anchored in the normative social order and that removing them from this care position would

carry high social costs and greatly jeopardize the family unit. Furthermore, the findings of the current study are also consistent with Daly's research (1987b) that paternalism exists in the courts, not to protect women, but to protect families. In other words, practicality takes over as the rationale for women's more lenient sentences, as gender divisions of labor define women, not men, as the primary caregivers of their dependents.

#### Limitations and Directions for Future Research

One limitation of this study was that socioeconomic status (SES) information was not available in the data set (Monitoring of Federal Criminal Sentences), and thus, could not be included in the current analysis. It is not unusual for measures of SES to be missing from sentencing research. In prior years of federal data a variable representing defendant income was available, however over 50 percent of defendants listed their incomes as \$0, making it difficult to analyze the true effects of this variable and how it might interact with gender or race/ethnicity (see Steffensmeier and Demuth 2000). Future research should explore the extent to which gender disparities are truly a function of gender perceptions versus economic constraints that limit the ability of defendants to resist legal sanctions and acquire appropriate counsel.

Another limitation of the current study is that the variable indicating number of dependents (NUMDEPEN) does not differentiate between the types of dependents. In other words, it is unclear as to whether the defendant is claiming responsibility for their dependent children, their spouse or significant other, some other family member, or a combination of all of the above. Much of the prior research cited in the current study specifically explores the effect of children on sentencing outcomes, regardless of the defendant's marital context (Bickle and Peterson 1991; Daly 1987a, 1987b, 1989; Eaton 1987; Farrington and Morris 1983; Kruttschnitt

and Green 1984; Kruttschnitt and McCarthy 1985; Simon 1975). However, in this context, the definition leaves much room for interpretation. This is especially true given the very different worlds of parenting across various racial/ethnic groups, including instances of multiple partner fertility, mixed family households, extended family care, and responsibilities for aged dependents. Therefore, future research would benefit from an analysis broken down by marital status, specifically targeting single defendants, to determine if significant differences are present when children are the only dependent examined. Furthermore, future research should strengthen our understanding of different family forms, especially across racial/ethnic groups and same-sex partnerships.

Another limitation of the current study is that I was only able to examine the outcomes of citizen defendants. Noncitizen defendants, because of the incomplete nature of their background information, were eliminated from the analysis. Further, their prior criminal history is often underestimated and the nature of their cases are often quite different, making comparisons of sentencing outcomes difficult between the two groups. Because Hispanic defendants comprise the majority of noncitizen cases in the federal system, future research would benefit from a thorough examination of these individuals to explore the interactions of gender and race/ethnicity in conjunction with their illegal or residential alien status.

A final limitation of the current study is that I was only able to examine one stage of the criminal justice decision making process. More specifically, because earlier stages of the process were not explored, it is possible that the full effect of gender has not yet been discovered. For example, I was unable to examine the process of charge bargaining, which takes place before and during the trial and plea bargaining stage of the criminal justice process. During this process, prosecutors have the final discretionary decision as to what formal charge they will apply to the

defendant's case. Overall, the discretion used by prosecutors ultimately influences the other stages of the system in a hydraulic function. That is, the decision making shifts from one stage to another within the same system. Therefore, future research should examine each individual stage of the decision making process, as well as their combined impact, to determine exactly what influence the earlier stages have on the latter.

### Conclusions

The analysis of gender differences in federal courts explored in the current study provides insight into the important influence of this legally irrelevant factor on sentencing outcomes, even with strict sentencing guidelines in place. Overall, the findings of the current study are consistent with those of past research on gender and sentencing indicating that female defendants are sentenced to less severe sentence outcomes than similarly situated male defendants, even after controlling for legal, extralegal, and contextual factors. In addition, the current study found that gender weighed differently across offense type, type of sentencing departure, and racial/ethnic category. Also, extralegal factors were found to influence defendants differently when the sample was partitioned into individual gender groups.

In light of these findings, future research should continue to include gender as a focal variable, as there is still much to learn about the differences that exist between male and female defendants in the criminal justice system in general and the federal courts in particular. Future research would also benefit from continued examination of offense type. The current study found larger gender differences between male and female drug offenders when it came to the incarceration decision, but for sentence length a larger gender gap was found for non-drug offenders. In addition, when examining additional offense categories, the smallest gender gap was

found among fraud cases. It could be possible that the offender's role in the criminal act, or the amount or type of drug in their possession, is influencing their sentence outcome, perhaps in conjunction with gender. While these factors may be accounted for by the sentencing judge, discounts could still be given, resulting in female defendants being sentenced at the lower end of the sentencing grid. Also, continued research on black female defendants is important, in light of their more lenient sentencing outcomes compared to white female defendants. Previous research (Chilton and Datesman 1987; Daly 1987a, 1987b, 1989) has cited racial reasons, as well as family responsibilities, as the main influence of leniency, however further examination may reveal additional characteristics of this defendant group as the sources of disparity.

In addition, future research should continue to investigate the circumstances around which sentencing departures are awarded by judges. Included in the current data, a variable (REASON) exists which would allow investigation into the reasoning for granting a sentencing departure, whether it be above or below the prescribed sentencing guidelines. This investigation was beyond the scope of the present analysis, but would further aid in our understanding of the way judges take individual circumstances into account when making important sentencing decisions. As would the use of other qualitative techniques, such as gathering more detailed interview and observational information from judges, and other members of the courtroom workgroup. Finally, gaining access to individual case files from the Sentencing Commission, including notes made by judges, lawyers, probation and parole officers, would allow a more complete picture of each defendant and their past and present behavior. This may also bring to light other factors that are accounting for sentencing differences, factors that were beyond the scope of the current study. Finally, further research should continue to include Hispanics (both

citizens and non-citizens) and to look at the interaction of gender with race/ethnicity and its combined influence on sentencing outcomes.

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## Appendix A

## Offense Type (OFFTYPET)

- 1 = Murder
- 2 = Manslaughter
- 3 = Kidnapping/Hostage
- 4 = Sexual Abuse
- 5 = Assault
- 6 = Bank Robbery (includes OFFTYPE 7, other Robbery)
- 9 = Arson
- 10 = Drugs: Trafficking
- 11 = Drugs: Communication Facilities
- 12 = Drugs: Simple Possession
- 13 = Firearms: Use (includes OFFTYPE 14, Firearms possession)
- 15 = Burglary/Breaking and Entering
- 16 = Auto Theft
- 17 = Larceny
- 18 = Fraud
- 19 = Embezzlement
- 20 = Forgery/Counterfeiting
- 21 = Bribery
- 22 = Tax Offenses
- 23 = Money Laundering
- 24 = Racketeering (includes OFFTYPE 8, Extortion)
- 25 = Gambling/Lottery
- 26 = Civil Rights Offenses
- 27 = Immigration
- 28 = Pornography/Prostitution
- 29 = Offenses in Prison
- 30 = Administration of Justice – Related; including accessory after the fact, misprision of felony, witness tampering
- 31 = Environmental, Game, Fish, and Wildlife Offenses
- 32 = National Defense Offenses
- 33 = Antitrust Violations
- 34 = Food and Drug Offenses
- 35 = Traffic Violations and Other Offenses
- 99 = Missing

<i>Independent Variables</i>	Overall		Males		Females	
	<i>N</i>	Percentage	<i>N</i>	Percentage	<i>N</i>	Percentage
<b>Gender</b>						
Male	90,297	82.70%	90,297	100%	-	-
Female	18,884	17.30%	-	-	18,884	100%
<b>Race</b>						
White	48,003	43.97%	39,568	43.82%	8,435	44.67%
Black	37,541	34.38%	31,408	34.78%	6,133	32.48%
Hispanic	19,348	17.72%	15,988	17.71%	3,360	17.79%
<b>Age</b>						
18-20	5,427	4.97%	4,516	5.00%	911	4.82%
21-29	37,777	34.60%	31,455	34.84%	6,322	33.48%
30-39	32,702	29.95%	26,950	29.85%	5,752	30.46%
40-49	20,305	18.60%	16,427	18.19%	3,878	20.54%
50-59	9,537	8.74%	8,000	8.86%	1,537	8.14%
60 & over	3,433	3.14%	2,949	3.27%	484	2.56%
<b>Legal Variables</b>						
Multiple Counts	23,142	21.20%	20,274	22.45%	2,868	15.19%
Trial	4,536	4.15%	4,062	4.50%	474	2.51%
Prior Criminal History (points)	2.40	-	2.57	-	1.60	-
Guideline Minimum Sentence (months)	58.92	-	65.11	-	29.33	-
<b>Education</b>						
Less than High School	38,587	35.34%	32,794	36.32%	5,793	30.68%
High School	40,484	37.08%	33,544	37.15%	6,940	36.75%
More than High School	30,110	27.58%	23,959	26.53%	6,151	32.57%
<b>Marital Status</b>						
Single	48,909	44.80%	41,349	45.79%	7,560	40.03%
Married	30,588	28.02%	25,448	28.18%	5,140	27.22%
Cohabit	10,702	9.80%	9,087	10.06%	1,615	8.55%
Divorced	12,529	11.48%	9,817	10.87%	2,712	14.36%
Widowed	626	0.57%	315	0.35%	311	1.65%
Separated	5,827	5.34%	4,281	4.74%	1,546	8.19%
<b>Number of Dependents</b>						
No Dependents	44,677	40.92%	37,411	41.43%	7,266	38.48%
One or More Dependents	64,504	59.08%	52,886	58.57%	11,618	61.52%
<i>Dependent Variables</i>						
<b>Incarcerated</b>	88,647	81.19%	76,979	85.25%	11,668	61.79%
<b>Sentence Length (months)</b>	52.87	-	59.50	-	21.17	-
<i>N</i>	109,181		90,297		18,884	

Table 2. Main Effects Model												
Variable	Model 1				Model 2				Model 3			
	In/Out		Ln(Length)		In/Out		Ln(Length)		In/Out		Ln(Length)	
<b>Gender</b>												
Male <sup>a</sup>	-		-		-		-		-		-	
Female	0.26	***	-0.70	***	0.59	***	-0.34	***	0.58	***	-0.34	***
<b>Race</b>												
White <sup>a</sup>	-		-		-		-		-		-	
Black	1.65	***	0.40	***	1.04	***	0.07	***	1.03	***	0.06	***
Hispanic	1.80	***	0.13	***	1.45	***	0.05	***	1.37	***	0.03	***
<b>Age</b>												
18-20 <sup>a</sup>	-		-		-		-		-		-	
21-29	1.48	***	0.26	***	0.95	***	0.00	***	1.05	***	0.04	***
30-39	1.42	***	0.32	***	0.83	***	-0.04	***	0.96	***	0.01	***
40-49	1.05	***	0.20	***	0.79	***	-0.06	***	0.91	***	0.00	***
50-59	0.73	***	0.08	***	0.69	***	-0.10	***	0.80	***	-0.03	*
60 & over	0.48	***	-0.06	*	0.48	***	-0.19	***	0.55	***	-0.12	***
<b>Legal Variables</b>												
Multiple Counts					1.64	***	0.26	***	1.67	***	0.27	***
Trial					2.32	***	0.14	***	2.37	***	0.15	***
Prior Criminal History					1.69	***	0.05	***	1.65	***	0.05	***
Guideline Minimum Sentence					1.09	***	0.01	***	1.09	***	0.01	***
<b>Education</b>												
Less than High School									1.33	***	0.03	***
High School <sup>a</sup>									-		-	
More than High School									0.95	*	-0.11	***
<b>Marital Status</b>												
Single <sup>a</sup>									-		-	
Married									0.89	***	-0.07	***
Cohabiting									1.05	***	0.01	***
Divorced									1.16	***	0.01	***
Widowed									0.69	**	0.02	***
Separated									1.08	***	0.00	***
<b>Number of Dependents</b>												
No Dependents <sup>a</sup>									-		-	
One or More Dependents									0.91	***	-0.01	*
Max-resealed R <sup>2</sup>	0.13		-		0.54		-		0.54		-	
Adjusted R <sup>2</sup>	-		0.12		-		0.61		-		0.61	
N	109,181		88,647		109,181		88,647		109,181		88,647	

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

<sup>a</sup> Represents the reference category

Controls for circuit and year are included in all models

Table 3. Drug vs. Non-Drug Offenses								
Variable	Drug Offenses				Non-Drug Offenses			
	In/Out		Ln(Length)		In/Out		Ln(Length)	
<b>Gender</b>								
Male <sup>a</sup>	-		-		-		-	
Female	0.51	*** <sup>b</sup>	-0.25	*** <sup>b</sup>	0.66	*** <sup>b</sup>	-0.40	*** <sup>b</sup>
<b>Race</b>								
White <sup>a</sup>	-		-		-		-	
Black	1.37	***	0.14	***	1.05		0.02	*
Hispanic	1.62	***	0.02	**	1.20	***	-0.08	***
<b>Age</b>								
18-20 <sup>a</sup>	-		-		-		-	
21-29	1.19	*	0.14	***	1.07		-0.09	***
30-39	1.20	*	0.15	***	0.93		-0.13	***
40-49	1.37	***	0.13	***	0.83	**	-0.14	***
50-59	1.07		0.16	***	0.73	***	-0.13	***
60 & over	0.75		0.12	***	0.49	***	-0.21	***
<b>Legal Variables</b>								
Multiple Counts	1.54	***	0.20	*** <sup>b</sup>	1.55	***	0.35	*** <sup>b</sup>
Trial	1.40		0.16	***	2.44	***	0.17	***
Prior Criminal History	1.42	*** <sup>b</sup>	0.02	*** <sup>b</sup>	1.67	*** <sup>b</sup>	0.09	*** <sup>b</sup>
Guideline Minimum Sentence	1.05	***	0.01	***	1.13	***	0.01	***
<b>Education</b>								
Less than High School	1.45	***	0.01		1.25	***	0.04	***
High School <sup>a</sup>	-		-		-		-	
More than High School	0.76	*** <sup>b</sup>	-0.06	***	0.98	<sup>b</sup>	-0.05	***
<b>Marital Status</b>								
Single <sup>a</sup>	-		-		-		-	
Married	0.83	***	-0.03	***	0.91	**	-0.05	***
Cohabiting	1.11		-0.02		0.98		0.01	
Divorced	1.17	*	0.02		1.17	***	0.00	
Widowed	0.57	*	0.06		0.68	**	0.00	
Separated	1.12		-0.01		1.07		0.01	
<b>Number of Dependents</b>								
No Dependents <sup>a</sup>	-		-		-		-	
One or More Dependents	0.98		0.03	*** <sup>b</sup>	0.90	***	-0.03	*** <sup>b</sup>
Max-resealed R <sup>2</sup>	0.40		-		0.57		-	
Adjusted R <sup>2</sup>	-		0.61		-		0.61	
N	48,688		44,942		60,493		43,705	
* p < .05    ** p < .01    *** p < .001								
<sup>a</sup> Represents the reference category								
<sup>b</sup> Coefficients are different between drug and non-drug cases at p < .05 (two-tailed z-test)								
Controls for circuit and year are included in all models								

Variable	Drug Trafficking		Firearms		Fraud	
	In/Out	Ln(Length)	In/Out	Ln(Length)	In/Out	Ln(Length)
<b>Gender</b>						
Male <sup>a</sup>	-	-	-	-	-	-
Female	0.47 ***bc	-0.25 ***bc	0.30 ***bd	-0.33 ***bd	0.81 ***cd	-0.14 ***cd
<b>Race</b>						
White <sup>a</sup>	-	-	-	-	-	-
Black	1.46 ***c	0.14 ***bc	1.43 ***d	0.06 ***bd	1.13 *cd	-0.05 ***cd
Hispanic	1.46 ***c	0.02 *	1.26	0.02	0.94 c	-0.02
<b>Age</b>						
18-20 <sup>a</sup>	-	-	-	-	-	-
21-29	1.14	0.13 ***	0.83	0.01	0.87	0.09
30-39	1.17	0.14 ***	0.56 **	-0.01	0.79	0.14 *
40-49	1.32 **	0.17 ***	0.52 **	-0.03	0.61 **	0.20 **
50-59	0.95	0.16 ***	0.32 ***	-0.03	0.54 ***	0.22 ***
60 & over	0.66 *	0.12 ***	0.20 ***	-0.20 ***	0.37 ***	0.21 **
<b>Legal Variables</b>						
Multiple Counts	1.42 ***	0.19 ***	1.79 ***	0.43 ***	1.55 ***	0.19 ***
Trial	2.46 **	0.18 ***	3.89 ***	0.15 ***	2.41 ***	0.16 ***
Prior Criminal History	1.50 ***	0.03 ***	1.50 ***	0.12 ***	1.62 ***	0.12 ***
Guideline Minimum Sentence	1.04 ***	0.01 ***	1.09 ***	0.01 ***	1.15 ***	0.03 ***
<b>Education</b>						
Less than High School	1.38 ***	0.01	1.38 ***	0.01	1.04	0.00
High School <sup>a</sup>	-	-	-	-	-	-
More than High School	0.74 ***c	-0.06 ***bc	0.85	-0.01 bd	0.97 c	0.06 ***cd
<b>Marital Status</b>						
Single <sup>a</sup>	-	-	-	-	-	-
Married	0.83 **	-0.03 ***	0.73 ***d	-0.02	0.95 d	0.01
Cohabiting	1.06	-0.02 *	0.83	0.02	0.96	0.00
Divorced	1.19 *	0.01	1.06	0.00	1.27 **	-0.01
Widowed	0.64	0.04	1.50	0.00	0.73	0.05
Separated	1.15	-0.01	1.24	-0.02	1.03	0.06
<b>Number of Dependents</b>						
No Dependents <sup>a</sup>	-	-	-	-	-	-
One or More Dependents	0.97	0.03 ***bc	0.92	-0.03 **b	0.93	-0.04 *c
Max-resealed R <sup>2</sup>	0.33	-	0.48	-	0.47	-
Adjusted R <sup>2</sup>	-	0.61	-	0.67	-	0.50
N	46,606	43,798	13,339	12,244	14,837	9,298

\* p < .05 \*\* p < .01 \*\*\* p < .001  
<sup>a</sup> Represents the reference category  
<sup>b</sup> Coefficients are different between drug trafficking and firearms cases at p < .05 level (two-tailed z-test)  
<sup>c</sup> Coefficients are different between drug trafficking and fraud cases at p < .05 level (two-tailed z-test)  
<sup>d</sup> Coefficients are different between firearms and fraud cases at p < .05 level (two-tailed z-test)  
Controls for circuit and year are included in all models

Table 5. Main Effects Model - Males vs. Females								
Variable	Males				Females			
	In/Out		Ln(Length)		In/Out		Ln(Length)	
<b>Race</b>								
White <sup>a</sup>	-		-		-		-	
Black	1.11	*** <sup>b</sup>	0.09	*** <sup>b</sup>	0.86	*** <sup>b</sup>	-0.06	*** <sup>b</sup>
Hispanic	1.49	*** <sup>b</sup>	0.03	***	1.12	* <sup>b</sup>	0.06	**
<b>Age</b>								
18-20 <sup>a</sup>	-		-		-		-	
21-29	1.15	**	0.04	***	0.84		-0.01	
30-39	0.99		0.01		0.88		0.00	
40-49	0.95		-0.01		0.83		0.06	
50-59	0.86	*	-0.04	**	0.71	**	0.06	
60 & over	0.60	***	-0.13	***	0.44	***	-0.03	
<b>Legal Variables</b>								
Multiple Counts	1.59	*** <sup>b</sup>	0.27	*** <sup>b</sup>	1.95	*** <sup>b</sup>	0.22	*** <sup>b</sup>
Trial	2.47	***	0.15	***	2.14	***	0.22	***
Prior Criminal History	1.63	***	0.05	*** <sup>b</sup>	1.68	***	0.06	*** <sup>b</sup>
Guideline Minimum Sentence	1.09	***	0.01	***	1.09	***	0.01	***
<b>Education</b>								
Less than High School	1.46	*** <sup>b</sup>	0.02	*** <sup>b</sup>	1.09	<sup>b</sup>	0.09	*** <sup>b</sup>
High School <sup>a</sup>	-		-		-		-	
More than High School	0.96		-0.11	*** <sup>b</sup>	0.95		-0.03	<sup>b</sup>
<b>Marital Status</b>								
Single <sup>a</sup>	-		-		-		-	
Married	0.84	*** <sup>b</sup>	-0.06	***	0.99	<sup>b</sup>	-0.08	***
Cohabiting	1.01		0.00		1.09		0.02	
Divorced	1.11	*	0.02	*	1.22	**	-0.04	
Widowed	0.76		-0.06		0.62	**	0.06	
Separated	1.07		0.00		1.11		-0.04	
<b>Number of Dependents</b>								
No Dependents <sup>a</sup>	-		-		-		-	
One or More Dependents	0.95		-0.01		0.89	**	0.00	
Max-resealed R <sup>2</sup>	0.52		-		0.48		-	
Adjusted R <sup>2</sup>	-		0.61		-		0.51	
N	90,297		76,979		18,884		11,668	
* p < .05    ** p < .01    *** p < .001								
<sup>a</sup> Represents the reference category								
<sup>b</sup> Coefficients are different between male and female defendants at p < .05 level (two-tailed z-test)								
Controls for circuit and year are included in all models								

<i>Independent Variables</i>	Overall		Males		Females	
	<i>N</i>	Percentage	<i>N</i>	Percentage	<i>N</i>	Percentage
<b>Gender</b>						
Male	90,297	82.70%	90,297	100%	-	-
Female	18,884	17.30%	-	-	18,884	100%
<b>Legal Variables</b>						
Multiple Counts	23,142	21.20%	20,274	22.45%	2,868	15.19%
Trial	4,536	4.15%	4,062	4.50%	474	2.51%
Prior Criminal History	2.40	-	2.57	-	1.60	-
Guideline Minimum Sentence	58.92	-	65.11	-	29.33	-
<b>Departures</b>						
No Departure <sup>a</sup>	72,938	66.80%	60,816	67.35%	12,122	64.19%
Downward Departure	12,866	11.78%	10,289	11.39%	2,577	13.65%
Substantial Assistance Departure	23,377	21.41%	19,192	21.25%	4,185	22.16%
<i>Dependent Variables</i>						
<b>Incarcerated</b>	88,647	81.19%	76,979	85.25%	11,668	61.79%
<b>Sentence Length (months)</b>	52.87	-	59.50	-	21.17	-
<i>N</i>	109,181		90,297		18,884	

Table 7. Main Effects Model, including Departures								
Variable	ME Model, Chapter 4				ME Model, with Departures			
	In/Out		Ln(Length)		In/Out		Ln(Length)	
<b>Gender</b>								
Male <sup>a</sup>	-		-		-		-	
Female	0.58	***	-0.34	***	0.61	***	-0.31	***
<b>Race</b>								
White <sup>a</sup>	-		-		-		-	
Black	1.03		0.06	***	0.95		0.04	***
Hispanic	1.37	***	0.03	***	1.36	***	0.02	***
<b>Age</b>								
18-20 <sup>a</sup>	-		-		-		-	
21-29	1.05		0.04	***	1.07		0.03	**
30-39	0.96		0.01		0.97		0.00	
40-49	0.91		0.00		0.91		-0.01	
50-59	0.80	***	-0.03	*	0.79	***	-0.05	***
60 & over	0.55	***	-0.12	***	0.57	***	-0.13	***
<b>Legal Variables</b>								
Multiple Counts	1.67	***	0.27	***	1.64	***	0.25	***
Trial	2.37	***	0.15	***	1.70	***	0.04	***
Prior Criminal History	1.65	***	0.05	***	1.60	***	0.04	***
Guideline Minimum Sentence	1.09	***	0.01	***	1.12	***	0.01	***
<b>Departures</b>								
No Departure <sup>a</sup>	-		-		-		-	
Downward Departure	-		-		0.26	***	-0.38	***
Substantial Assistance Departure	-		-		0.12	***	-0.40	***
<b>Education</b>								
Less than High School	1.33	***	0.03	***	1.35	***	0.03	***
High School <sup>a</sup>	-		-		-		-	
More than High School	0.95	*	-0.11	***	0.99		-0.10	***
<b>Marital Status</b>								
Single <sup>a</sup>	-		-		-		-	
Married	0.89	***	-0.07	***	0.91	**	-0.06	***
Cohabiting	1.05		0.01		1.08		0.01	
Divorced	1.16	***	0.01		1.14	***	0.01	
Widowed	0.69	**	0.02		0.66	***	0.03	
Separated	1.08		0.00		1.07		0.00	
<b>Number of Dependents</b>								
No Dependents <sup>a</sup>	-		-		-		-	
One or More Dependents	0.91	***	-0.01	*	0.91	***	-0.01	
Max-resealed R <sup>2</sup>	0.54		-		0.59		-	
Adjusted R <sup>2</sup>	-		0.61		-		0.63	
N	109,181		88,647		109,181		88,647	
* p < .05    ** p < .01    *** p < .001								
<sup>a</sup> Represents the reference category								
Controls for circuit and year are included in all models								

Variable	No Departure		Downward Departure		Substantial Assistance Departure	
	In/Out	Ln(Length)	In/Out	Ln(Length)	In/Out	Ln(Length)
<b>Gender</b>						
Male <sup>a</sup>	-	-	-	-	-	-
Female	0.70 *** <sup>c</sup>	-0.34 *** <sup>bc</sup>	0.66 *** <sup>d</sup>	-0.27 *** <sup>b</sup>	0.55 *** <sup>cd</sup>	-0.25 *** <sup>c</sup>
<b>Race</b>						
White <sup>a</sup>	-	-	-	-	-	-
Black	1.00 <sup>b</sup>	0.03 *** <sup>c</sup>	0.83 * <sup>bd</sup>	0.05 **	1.03 <sup>d</sup>	0.07 *** <sup>c</sup>
Hispanic	1.20 **	0.04 *** <sup>b</sup>	1.23 **	-0.01 <sup>b</sup>	1.18 *	0.03
<b>Age</b>						
18-20 <sup>a</sup>	-	-	-	-	-	-
21-29	1.01	0.03 *	1.10	0.05	0.83	-0.01
30-39	0.92	0.01	0.90	0.03	0.70 **	-0.05
40-49	0.82 *	-0.01	0.75 *	-0.02	0.69 **	-0.07 *
50-59	0.67 ***	-0.04 *	0.54 ***	-0.02	0.58 ***	-0.14 ***
60 & over	0.53 ***	-0.11 ***	0.39 ***	-0.16 ***	0.35 ***	-0.19 ***
<b>Legal Variables</b>						
Multiple Counts	1.33 *** <sup>c</sup>	0.26 *** <sup>c</sup>	1.45 ***	0.27 *** <sup>d</sup>	1.64 *** <sup>c</sup>	0.21 *** <sup>cd</sup>
Trial	1.86 ***	-0.02	1.59 **	-0.03	1.01	0.08
Prior Criminal History	1.73 *** <sup>bc</sup>	0.04 *** <sup>b</sup>	1.41 *** <sup>b</sup>	0.08 *** <sup>bd</sup>	1.44 *** <sup>c</sup>	0.04 *** <sup>d</sup>
Guideline Minimum Sentence	1.42 ***	0.01 ***	1.07 ***	0.01 ***	1.05 ***	0.01 ***
<b>Education</b>						
Less than High School	1.33 ***	0.04 ***	1.42 ***	0.01	1.25 ***	0.04 **
High School <sup>a</sup>	-	-	-	-	-	-
More than High School	0.96	-0.10 ***	0.92	-0.08 ***	0.87 **	-0.11 ***
<b>Marital Status</b>						
Single <sup>a</sup>	-	-	-	-	-	-
Married	0.86 **	-0.05 *** <sup>b</sup>	0.93	-0.09 *** <sup>b</sup>	0.83 **	-0.05 ***
Cohabiting	1.00	0.03 *** <sup>b</sup>	0.92	-0.07 *** <sup>bd</sup>	1.08	0.00 <sup>d</sup>
Divorced	1.11	0.01	1.07	0.02	1.22 **	0.00
Widowed	0.51 *** <sup>c</sup>	0.05	0.58 *	-0.10	1.06 <sup>c</sup>	0.03
Separated	0.93	-0.01	1.16	0.00	1.14	0.02
<b>Number of Dependents</b>						
No Dependents <sup>a</sup>	-	-	-	-	-	-
One or More Dependents	0.92 *	-0.02 *** <sup>b</sup>	0.88 *	0.03 <sup>b</sup>	0.94	0.00
Max-resealed R <sup>2</sup>	0.77	-	0.46	-	0.52	-
Adjusted R <sup>2</sup>	-	0.67	-	0.62	-	0.56
N	72,938	60,551	12,866	9,634	23,377	18,462
* p < .05 ** p < .01 *** p < .001						
<sup>a</sup> Represents the reference category						
<sup>b</sup> Coefficients are different between no departure and downward departure cases at p < .05 level (two-tailed z-test)						
<sup>c</sup> Coefficients are different between no departure and substantial assistance departure cases at p < .05 level (two-tailed z-test)						
<sup>d</sup> Coefficients are different between downward and substantial assistance departure cases at p < .05 level (two-tailed z-test)						
Controls for circuit and year are included in all models						

Table 9. Departure as Dependent Variable - No vs. Any Departure						
	Model 1		Model 2		Model 3	
Variable	Odds		Odds		Odds	
<b>Gender</b>						
Male <sup>a</sup>	-		-		-	
Female	1.15	***	1.31	***	1.32	***
<b>Race</b>						
White <sup>a</sup>	-		-		-	
Black	0.82	***	0.73	***	0.73	***
Hispanic	1.05	*	0.94	**	0.95	**
<b>Age</b>						
18-20 <sup>a</sup>	-		-		-	
21-29	1.10	**	1.01		0.97	
30-39	1.11	***	1.01		0.95	
40-49	0.98		0.95		0.88	***
50-59	0.96		0.97		0.89	**
60 & over	1.17	***	1.26	***	1.16	**
<b>Legal Variables</b>						
Multiple Counts			0.82	***	0.82	***
Trial			0.16	***	0.16	***
Prior Criminal History			0.91	***	0.91	***
Guideline Minimum Sentence			1.01	***	1.01	***
<b>Education</b>						
Less than High School					1.01	
High School <sup>a</sup>					-	
More than High School					1.12	***
<b>Marital Status</b>						
Single <sup>a</sup>					-	
Married					1.13	***
Cohabiting					1.09	***
Divorced					0.97	
Widowed					1.03	
Separated					0.99	
<b>Number of Dependents</b>						
No Dependents <sup>a</sup>					-	
One or More Dependents					1.03	
Max-resealed R <sup>2</sup>	0.03		0.10		0.10	
N	109,181		109,181		109,181	
* p < .05    ** p < .01    *** p < .001						
<sup>a</sup> Represents the reference category						
Controls for circuit and year are included in all models						

Table 10. Departure as Dependent Variable - Males vs. Females				
	Males		Females	
Variable	Odds		Odds	
<b>Race</b>				
White <sup>a</sup>	–		–	
Black	0.73	*** <sup>b</sup>	0.81	*** <sup>b</sup>
Hispanic	0.91	*** <sup>b</sup>	1.13	* <sup>b</sup>
<b>Age</b>				
18-20 <sup>a</sup>	–		–	
21-29	0.94		1.09	
30-39	0.93	*	1.04	
40-49	0.86	***	0.91	
50-59	0.87	**	0.87	
60 & over	1.10		1.29	*
<b>Legal Variables</b>				
Multiple Counts	0.82	***	0.81	***
Trial	0.15	*** <sup>b</sup>	0.25	*** <sup>b</sup>
Prior Criminal History	0.92	***	0.93	***
Guideline Minimum Sentence	1.01	***	1.01	***
<b>Education</b>				
Less than High School	0.98	<sup>b</sup>	1.15	*** <sup>b</sup>
High School <sup>a</sup>	–		–	
More than High School	1.14	*** <sup>b</sup>	1.04	<sup>b</sup>
<b>Marital Status</b>				
Single <sup>a</sup>	–		–	
Married	1.20	*** <sup>b</sup>	0.89	** <sup>b</sup>
Cohabiting	1.12	*** <sup>b</sup>	0.96	<sup>b</sup>
Divorced	0.96		0.99	
Widowed	1.08		0.92	
Separated	0.96		1.01	
<b>Number of Dependents</b>				
No Dependents <sup>a</sup>	–		–	
One or More Dependents	1.03		0.95	
Max-resealed R <sup>2</sup>	0.10		0.14	
N	90,297		18,884	
* p < .05    ** p < .01    *** p < .001				
<sup>a</sup> Represents the reference category				
<sup>b</sup> Coefficients are different between male and female defendants at p < .05 level (two-tailed z-test)				
Controls for circuit and year are included in all models				

Table 11. Descriptive Statistics for Race/Ethnicity Interactions by Gender												
Independent Variables	White Males		Black Males		Hispanic Males		White Females		Black Females		Hispanic Females	
	N	%	N	%	N	%	N	%	N	%	N	%
<b>Age</b>												
18-20	1,424	3.60%	1,485	4.73%	1,317	8.24%	323	3.83%	268	4.37%	274	8.15%
21-29	9,612	24.29%	13,982	44.52%	6,743	42.18%	2,268	26.89%	2,405	39.21%	1,368	40.71%
30-39	11,303	28.57%	10,058	32.02%	4,637	29.00%	2,619	31.05%	1,939	31.62%	921	27.41%
40-49	9,553	24.14%	4,091	13.03%	2,187	13.68%	2,045	24.24%	1,049	17.10%	548	16.31%
50-59	5,446	13.76%	1,452	4.62%	836	5.23%	876	10.39%	390	6.20%	189	5.63%
60 & over	2,230	5.64%	340	1.08%	268	1.68%	304	3.60%	92	1.50%	60	1.79%
<b>Legal Variables</b>												
Multiple Counts	9,320	23.55%	7,683	24.46%	2,598	16.25%	1,317	15.61%	969	15.80%	419	12.47%
Trial	1,521	3.84%	1,890	6.02%	479	3.00%	208	2.47%	174	2.84%	69	2.05%
Prior Criminal History	2.24	-	3.23	-	2.20	-	1.60	-	1.76	-	1.40	-
Guideline Minimum Sentence	49.55	-	88.56	-	61.22	-	29.48	-	28.45	-	32.41	-
<b>Departures</b>												
No Departure	25,758	65.10%	22,197	70.67%	10,494	65.64%	5,334	63.24%	4,222	68.84%	1,922	57.20%
Downward Departure	4,900	12.38%	2,363	7.52%	2,558	16.00%	1,124	13.33%	560	9.13%	755	22.47%
Substantial Assistance Departure	8,910	22.52%	6,848	21.80%	2,936	18.36%	1,977	23.44%	1,351	22.03%	683	20.33%
<b>Education</b>												
Less than High School	10,481	26.49%	12,933	41.18%	8,272	51.74%	2,016	23.90%	1,793	29.24%	1,710	50.89%
High School	15,529	39.25%	11,810	37.60%	4,983	31.17%	3,482	41.28%	2,128	34.70%	995	29.61%
More than High School	13,558	34.27%	6,665	21.22%	2,733	17.09%	2,937	34.82%	2,212	36.07%	655	19.49%
<b>Marital Status</b>												
Single	14,724	37.21%	18,257	58.13%	6,781	42.41%	2,524	29.92%	3,357	54.74%	1,322	39.35%
Married	13,487	34.09%	6,043	19.24%	4,939	30.89%	2,834	33.60%	1,174	19.14%	836	24.88%
Cohabit	2,833	7.16%	3,648	11.61%	2,267	14.18%	679	8.05%	418	6.82%	406	12.08%
Divorced	6,414	16.21%	1,925	6.13%	1,192	7.46%	1,604	19.02%	610	9.95%	380	11.31%
Widowed	205	0.52%	73	0.23%	32	0.20%	155	1.84%	86	1.40%	55	1.64%
Separated	1,905	4.81%	1,462	4.65%	777	4.86%	639	7.58%	488	7.96%	361	10.74%
<b>Number of Dependents</b>												
No Dependents	19,137	48.36%	11,126	35.42%	5,612	35.10%	3,805	45.11%	2,076	33.85%	1,013	30.15%
One or More Dependents	20,431	51.64%	20,282	64.58%	10,376	64.90%	4,630	54.89%	4,057	66.15%	2,347	69.85%
<b>Dependent Variables</b>												
<b>Incarcerated</b>	31,344	79.22%	28,601	91.06%	14,343	89.71%	5,201	61.66%	3,597	58.65%	2,363	70.33%
<b>Sentence Length</b>	44.08	-	83.68	-	53.34	-	21.05	-	21.26	-	22.67	-
<b>N</b>	39,568	-	31,408	-	15,988	-	8,435	-	6,133	-	3,360	-

Table 12. Gender\*Race/Ethnicity Interaction Effects: Partitioned by Race/Ethnicity

Variable	White		Black		Hispanic	
	In/Out	Ln(Length)	In/Out	Ln(Length)	In/Out	Ln(Length)
<b>Gender</b>						
Male <sup>a</sup>	-	-	-	-	-	-
Female	0.72 *** <sup>bc</sup>	-0.26 *** <sup>bc</sup>	0.56 *** <sup>b</sup>	-0.47 *** <sup>bd</sup>	0.51 *** <sup>c</sup>	-0.22 *** <sup>cd</sup>
<b>Age</b>						
18-20 <sup>a</sup>	-	-	-	-	-	-
21-29	1.04	0.09 ***	1.02	-0.07 ***	1.14	0.08 ***
30-39	0.98	0.08 ***	0.92	-0.14 ***	1.04	0.11 ***
40-49	0.98	0.05 *	0.79 *	-0.16 ***	0.93	0.09 ***
50-59	0.87	0.02	0.66 ***	-0.20 ***	0.67 **	0.07 *
60 & over	0.61 ***	-0.05 *	0.54 ***	-0.29 ***	0.51 ***	-0.03
<b>Legal Variables</b>						
Multiple Counts	1.61 *** <sup>d</sup>	0.24 *** <sup>bc</sup>	1.91 *** <sup>bd</sup>	0.29 *** <sup>bd</sup>	1.46 *** <sup>d</sup>	0.13 *** <sup>cd</sup>
Trial	1.43 *** <sup>d</sup>	0.05 **	2.51 *** <sup>b</sup>	0.04 * <sup>d</sup>	1.67	0.11 *** <sup>d</sup>
Prior Criminal History	1.53 *** <sup>bc</sup>	0.04 ***	1.69 *** <sup>b</sup>	0.04 ***	1.74 *** <sup>c</sup>	0.04 ***
Guideline Minimum Sentence	1.13 ***	0.01 ***	1.10 ***	0.01 ***	1.11 ***	0.01 ***
<b>Departures</b>						
No Departure <sup>a</sup>	-	-	-	-	-	-
Downward Departure	0.25 *** <sup>c</sup>	-0.38 *** <sup>bc</sup>	0.23 *** <sup>d</sup>	-0.31 *** <sup>bd</sup>	0.29 *** <sup>cd</sup>	-0.42 *** <sup>cd</sup>
Substantial Assistance Departure	0.11 *** <sup>b</sup>	-0.40 ***	0.16 *** <sup>bd</sup>	-0.38 *** <sup>d</sup>	0.11 *** <sup>d</sup>	-0.43 *** <sup>d</sup>
<b>Education</b>						
Less than High School	1.29 *** <sup>c</sup>	0.04 *** <sup>c</sup>	1.26 *** <sup>d</sup>	0.04 *** <sup>d</sup>	1.65 *** <sup>cd</sup>	0.01 <sup>cd</sup>
High School <sup>a</sup>	-	-	-	-	-	-
More than High School	1.00	-0.07 *** <sup>b</sup>	1.04	-0.13 *** <sup>bd</sup>	0.91	-0.07 *** <sup>d</sup>
<b>Marital Status</b>						
Single <sup>a</sup>	-	-	-	-	-	-
Married	0.89 **	-0.07 *** <sup>c</sup>	0.94	-0.06 *** <sup>d</sup>	0.91	-0.01 <sup>cd</sup>
Cohabiting	1.00	0.02	1.18 *	0.01	1.07	-0.01
Divorced	1.13 *	0.01 <sup>b</sup>	1.11	-0.05 *** <sup>bd</sup>	1.15	0.02 <sup>d</sup>
Widowed	0.80	0.01	0.53 *	0.01	0.38 **	0.02
Separated	1.17 *	0.01	0.97	-0.03	0.96	0.00
<b>Number of Dependents</b>						
No Dependents <sup>a</sup>	-	-	-	-	-	-
One or More Dependents	0.92 *	-0.02 *** <sup>b</sup>	0.91 *	0.01 <sup>b</sup>	0.83 **	0.00
Max-rescaled R <sup>2</sup>	0.58	-	0.62	-	0.53	-
Adjusted R <sup>2</sup>	-	0.61	-	0.66	-	0.61
N	48,003	36,545	37,541	32,198	19,348	16,706

\* p < .05    \*\* p < .01    \*\*\* p < .001  
<sup>a</sup> Represents the reference category  
<sup>b</sup> Coefficients are different between white and black defendants at p < .05 level (two-tailed z-test)  
<sup>c</sup> Coefficients are different between white and Hispanic defendants at p < .05 level (two-tailed z-test)  
<sup>d</sup> Coefficients are different between black and Hispanic defendants at p < .05 level (two-tailed z-test)  
Controls for circuit and year are included in all models

Table 13. Gender*Race/Ethnicity Interaction Effects: Partitioned by Gender							
Variable	Male			Female			
	In/Out		Ln(Length)	In/Out		Ln(Length)	
<b>Race</b>							
White <sup>a</sup>	-		-	-		-	
Black	1.01	<sup>b</sup>	0.06	*** <sup>b</sup>	0.83	*** <sup>b</sup>	-0.08
Hispanic	1.46	*** <sup>b</sup>	0.02	** <sup>b</sup>	1.11	<sup>b</sup>	0.06
<b>Age</b>							
18-20 <sup>a</sup>	-		-	-		-	
21-29	1.18	**	0.04	***	0.85		0.00
30-39	1.00		0.00		0.88		0.00
40-49	0.97		-0.03	*	0.80	*	0.04
50-59	0.86	*	-0.07	***	0.65	***	0.03
60 & over	0.63	***	-0.15	***	0.45	***	-0.05
<b>Legal Variables</b>							
Multiple Counts	1.57	*** <sup>b</sup>	0.26	*** <sup>b</sup>	1.87	*** <sup>b</sup>	0.20
Trial	1.76	***	0.03	** <sup>b</sup>	1.57	**	0.15
Prior Criminal History	1.58	***	0.04	***	1.66	***	0.06
Guideline Minimum Sentence	1.12	***	0.01	***	1.13	***	0.02
<b>Departures</b>							
No Departure <sup>a</sup>	-		-	-		-	
Downward Departure	0.25	***	-0.38	***	0.31	***	-0.41
Substantial Assistance Departure	0.13	***	-0.42	***	0.12	***	-0.36
<b>Education</b>							
Less than High School	1.47	*** <sup>b</sup>	0.02	*** <sup>b</sup>	1.11	* <sup>b</sup>	0.11
High School <sup>a</sup>	-		-	-		-	
More than High School	1.01		-0.10	***	0.96		-0.06
<b>Marital Status</b>							
Single <sup>a</sup>	-		-	-		-	
Married	0.88	***	-0.05	*** <sup>b</sup>	0.94		-0.09
Cohabiting	1.07		0.01		1.06		0.02
Divorced	1.10	*	0.02	* <sup>b</sup>	1.21	**	-0.04
Widowed	0.77		-0.06		0.58	**	0.05
Separated	1.06		0.00		1.08		-0.03
<b>Number of Dependents</b>							
No Dependents <sup>a</sup>	-		-	-		-	
One or More Dependents	0.94	*	0.00		0.89	**	-0.01
Max-rescaled R <sup>2</sup>	0.57		-		0.54		-
Adjusted R <sup>2</sup>	-		0.64		-		0.53
N	90,297		76,979		18,884		11,668
* p < .05    ** p < .01    *** p < .001							
<sup>a</sup> Represents the reference category							
<sup>b</sup> Coefficients are different between male and female defendants at p < .05 level (two-tailed z-test)							
Controls for circuit and year are included in all models							

Table 14. Gender*Race/Ethnicity Interaction Effects: Drug vs. Non-Drug												
Drug Offenders												
Variable	White				Black				Hispanic			
	In/Out		Ln(Length)		In/Out		Ln(Length)		In/Out	Ln(Length)		
<b>Gender</b>												
Male <sup>a</sup>	-		-		-		-		-		-	
Female	0.62	***	-0.16	***bc	0.54	***	-0.25	***bd	0.56	***	-0.20	***cd
Max-rescaled R <sup>2</sup>	0.47		-		0.41		-		0.39		-	
Adjusted R <sup>2</sup>	-		0.62		-		0.67		-		0.64	
N	17,477		15,430		17,538		16,853		12,489		11,631	
Non-Drug Offenders												
Variable	White				Black				Hispanic			
	In/Out		Ln(Length)		In/Out		Ln(Length)		In/Out	Ln(Length)		
<b>Gender</b>												
Male <sup>a</sup>	-		-		-		-		-		-	
Female	0.81	***bc	-0.33	***bc	0.65	***bd	-0.51	***bd	0.51	***cd	-0.22	***cd
Max-rescaled R <sup>2</sup>	0.62		-		0.70		-		0.62		-	
Adjusted R <sup>2</sup>	-		0.62		-		0.66		-		0.60	
N	30,526		21,115		20,003		15,345		6,859		5,075	
* p < .05 ** p < .01 *** p < .001												
<sup>a</sup> Represents the reference category												
<sup>b</sup> Coefficients are different between white and black defendants at p < .05 level (two-tailed z-test)												
<sup>c</sup> Coefficients are different between white and Hispanic defendants at p < .05 level (two-tailed z-test)												
<sup>d</sup> Coefficients are different between black and Hispanic defendants at p < .05 level (two-tailed z-test)												
All variables are included in the models												

Table 15. Gender*Race/Ethnicity Interaction Effects: Trafficking, Firearms, and Fraud												
Drug Trafficking												
Variable	White			Black			Hispanic					
	In/Out	Ln(Length)		In/Out	Ln(Length)		In/Out	Ln(Length)				
<b>Gender</b>												
Male <sup>a</sup>	-	-	-	-	-	-	-	-	-	-		
Female	0.61	*** <sup>b</sup>	-0.15	*** <sup>bc</sup>	0.43	*** <sup>b</sup>	-0.25	*** <sup>bd</sup>	0.54	***	-0.21	*** <sup>cd</sup>
Max-rescaled R <sup>2</sup>	0.41		-		0.39		-		0.38		-	
Adjusted R <sup>2</sup>	-		0.64		-		0.69		-		0.65	
N	16,524		15,059		16,825		16,343		12,131		11,398	
<b>Firearms Use and Possession</b>												
Variable	White			Black			Hispanic					
	In/Out	Ln(Length)		In/Out	Ln(Length)		In/Out	Ln(Length)				
<b>Gender</b>												
Male <sup>a</sup>	-	-	-	-	-	-	-	-	-	-		
Female	0.59	* <sup>b</sup>	-0.14	** <sup>b</sup>	0.27	*** <sup>b</sup>	-0.46	*** <sup>bd</sup>	0.19	*	-0.19	<sup>d</sup>
Max-rescaled R <sup>2</sup>	0.58		-		0.61		-		0.75		-	
Adjusted R <sup>2</sup>	-		0.67		-		0.72		-		0.70	
N	5,310		4,643		6,649		6,323		1,096		1,016	
<b>Fraud</b>												
Variable	White			Black			Hispanic					
	In/Out	Ln(Length)		In/Out	Ln(Length)		In/Out	Ln(Length)				
<b>Gender</b>												
Male <sup>a</sup>	-	-	-	-	-	-	-	-	-	-		
Female	0.91		-0.12	***	0.81	*	-0.17	*** <sup>d</sup>	0.71		-0.04	<sup>d</sup>
Max-rescaled R <sup>2</sup>	0.57		-		0.64		-		0.63		-	
Adjusted R <sup>2</sup>	-		0.53		-		0.61		-		0.57	
N	8,267		5,173		4,949		3,190		1,117		638	
* p < .05 ** p < .01 *** p < .001												
<sup>a</sup> Represents the reference category												
<sup>b</sup> Coefficients are different between white and black defendants at p < .05 level (two-tailed z-test)												
<sup>c</sup> Coefficients are different between white and Hispanic defendants at p < .05 level (two-tailed z-test)												
<sup>d</sup> Coefficients are different between black and Hispanic defendants at p < .05 level (two-tailed z-test)												
All variables are included in the models												

Table 16. Gender\*Race/Ethnicity Interaction Effects: Differences by Departure Type

No Departure												
Variable	White				Black				Hispanic			
	In/Out		Ln(Length)		In/Out		Ln(Length)		In/Out		Ln(Length)	
<b>Gender</b>												
Male <sup>a</sup>	-		-		-		-		-		-	
Female	0.83	***bc	-0.28	***bc	0.65	***b	-0.50	***bd	0.54	***c	-0.20	***cd
Max-rescaled R <sup>2</sup>	0.78		-		0.76		-		0.70		-	
Adjusted R <sup>2</sup>	-		0.64		-		0.69		-		0.65	
N	31,092		24,365		26,419		22,866		12,416		11,064	
Downward Departure												
Variable	White				Black				Hispanic			
	In/Out		Ln(Length)		In/Out		Ln(Length)		In/Out		Ln(Length)	
<b>Gender</b>												
Male <sup>a</sup>	-		-		-		-		-		-	
Female	0.81	*bc	-0.28	***b	0.59	***b	-0.41	***bd	0.56	***c	-0.23	***d
Max-rescaled R <sup>2</sup>	0.44		-		0.52		-		0.44		-	
Adjusted R <sup>2</sup>	-		0.59		-		0.65		-		0.63	
N	6,024		4,196		2,923		2,350		3,313		2,627	
Substantial Assistance Departure												
Variable	White				Black				Hispanic			
	In/Out		Ln(Length)		In/Out		Ln(Length)		In/Out		Ln(Length)	
<b>Gender</b>												
Male <sup>a</sup>	-		-		-		-		-		-	
Female	0.65	***bc	-0.19	***b	0.46	***b	-0.39	***bd	0.47	***c	-0.24	***d
Max-rescaled R <sup>2</sup>	0.50		-		0.56		-		0.47		-	
Adjusted R <sup>2</sup>	-		0.54		-		0.58		-		0.49	
N	10,887		7,984		8,199		6,982		3,619		3,015	

\* p < .05 \*\* p < .01 \*\*\* p < .001  
<sup>a</sup> Represents the reference category  
<sup>b</sup> Coefficients are different between white and black defendants at p < .05 level (two-tailed z-test)  
<sup>c</sup> Coefficients are different between white and Hispanic defendants at p < .05 level (two-tailed z-test)  
<sup>d</sup> Coefficients are different between black and Hispanic defendants at p < .05 level (two-tailed z-test)  
All variables are included in the models

Table 17. Gender*Race/Ethnicity Interaction Effects:		
Departure as Dependent Variable - No vs. Any Departure		
<b>White</b>		
	Model 3	
Variable	Odds	
<b>Gender</b>		
Male <sup>a</sup>	-	
Female	1.19	***
Max-rescaled R <sup>2</sup>	0.09	
N	48,003	
<b>Black</b>		
	Model 3	
Variable	Odds	
<b>Gender</b>		
Male <sup>a</sup>	-	
Female	1.39	***
Max-rescaled R <sup>2</sup>	0.11	
N	37,541	
<b>Hispanic</b>		
	Model 3	
Variable	Odds	
<b>Gender</b>		
Male <sup>a</sup>	-	
Female	1.62	***
Max-rescaled R <sup>2</sup>	0.13	
N	19,348	
* p < .05    ** p < .01    *** p < .001		
<sup>a</sup> Represents the reference category		
All variables are included in the model		