Gender and the Social Costs of Sentencing:

An Analysis of Sentences Imposed on Male and Female Offenders in Three U.S. District Courts

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Disparity in the treatment of offenders involved in the criminal justice system has been the topic of a substantial amount of research over the past thirty years. Perhaps the most compelling evidence of disparity is found in the demographics of the inmate population in state and federal prisons throughout the United States. Most of those incarcerated in our nation's prisons are men, and the incarceration rates for blacks and Hispanics are substantially higher than the rate for whites.[2] These disparities in rates of imprisonment, which have persisted for more than three decades, have led researchers to focus on the sentencing stage of the criminal justice process.[3] They also have led

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[2] Cassia Spohn et al., *Race/Ethnicity, Gender, and Sentence Severity in Dade County, Florida: An Examination of the Decision to Withhold Adjudication*, 21 J. OF CRIME & JUST. 111, 111-38 (1998). For example, regarding racial disparities, in 1999, African-Americans comprised only 13% of the population yet accounted for 46% of the state and federal prison population. CASSIA SPOHN, HOW DO JUDGES DECIDE? THE SEARCH FOR FAIRNESS AND JUSTICE IN PUNISHMENT 172 (2002) [hereinafter SPOHN 2002]. Regarding gender disparities, in 1997, there were 1,123,478 men and only 74,112 women incarcerated in the United States. *Id.* at 145.

[3] MARC MAUER, RACE TO INCARCERATE 118-40 (1999).

policymakers to search for ways to constrain judicial discretion in sentencing.

In an attempt to eliminate unwarranted sentencing disparity caused by judicial discretion in the context of an indeterminate, individualized sentencing structure, state legislatures and the United States Congress adopted determinate sentencing, voluntary sentencing guidelines, or presumptive sentencing guidelines. At the federal level, for example, Congress responded to calls for reform of the sentencing process by enacting the Sentencing Reform Act of 1984 ("Act").[4] The Act created the United States Sentencing Commission ("Commission"), which was authorized to develop and implement presumptive sentencing guidelines designed to achieve "honesty," "uniformity," and "proportionality" in sentencing.[5] The Act also abolished discretionary release on parole,[6] permitted departures from the guidelines only with written justification,[7] and provided for appellate review of sentences to determine if the guidelines were correctly applied or if a departure was reasonable.[8]

The Federal Sentencing Guidelines ("Guidelines") promulgated by the Commission, which went into effect in 1987, base the offender's sentence on the seriousness of the offense and the offender's prior criminal record.[9] They also require the sentencing judge "to follow complex and abstract rules and to make minute arithmetic calculations in order to arrive at a sentence."[10] Critics charge that this process is overly rigid and mechanical. They contend that the "traditional judicial role of deliberation and moral judgment" has been replaced with "complex quantitative calculations" that convey a false impression of scientific precision and objectivity.[11]

Although the Guidelines are fairly rigid, they are not inflexible. The Guidelines provide for a spread of about 25% between the minimum and the maximum sentence for each combination of offense seriousness and prior record; judges therefore have discretion to impose sentences within that range.[12] In addition, defendants who plead guilty may qualify for a two- or three-level reduction in the guideline range for "acceptance of responsibility;" this results in a sentence reduction of approximately 25%. Further, defendants who provide

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[4] Sentencing Reform Act of 1984, 18 U.S.C. §§ 3551-3626, 28 U.S.C. §§ 991-98 (2006).
[5] U.S. SENTENCING GUIDELINES MANUAL ch. 1, pt. A.3 (2001).
[6] *Id.* ch. 1, pt. A.2.
[7] 18 U.S.C. § 3553(c) (2006).
[8] 18 U.S.C. § 3742 (2006).
[9] U.S. SENTENCING GUIDELINES MANUAL, *supra* note 5, at 2.
[10] KATE STITH & JOSÉ A. CABRANES, FEAR OF JUDGING: SENTENCING GUIDELINES IN THE FEDERAL COURTS 83 (1998).
[11] *Id.* at 82.
[12] 28 U.S.C. § 994(b)(2) (2006).

"substantial assistance" -- that is, information that leads to the prosecution and conviction of another offender -- also can be sentenced outside the applicable guideline range.[13] This type of departure is especially common in cases involving drug offenses, many of which carry a mandatory minimum sentence.[14] A substantial assistance motion made by the prosecutor and granted by the court removes the mandatory minimum sentence that otherwise would be binding at sentencing.[15] Finally, if the case involves unusual circumstances, the judge can depart from the sentence range indicated by the Guidelines, either upward or downward.[16]

There are, however, very limited grounds for these upward or downward departures.[17] The statute states that judges may depart from the Guidelines only on a finding that "there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines . . . ."[18] Moreover, the Guidelines expressly state that certain factors "are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range."[19] Included among the "specific offender characteristics" that are "not ordinarily relevant" are the defendant's age, education, vocational skills, mental and emotional condition, physical condition (including drug dependence), employment record, family ties and responsibilities, and community ties.[20] These provisions, then, effectively preclude judges from considering what many regard as the "commonsense bases for distinguishing among offenders."[21]

The goals of those who championed sentencing reform varied. Liberals argued that structured sentencing practices would enhance fairness and hold judges accountable for their decisions, while conservatives asserted that the

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[13] 18 U.S.C. § 3553(e) (2006).

[14] *See* Myrna Raeder, *Gender Issues in the Federal Sentencing Guidelines and Mandatory Minimum Sentences*, 8 CRIM. JUST. 20, 60-61 (1993).

[15] 18 U.S.C. § 3553(e).

[16] 18 U.S.C. § 3553(b)(1) (2006).

[17] *Id.*

[18] *Id.*

[19] U.S. SENTENCING GUIDELINES MANUAL, *supra* note 5, at 407-09.

[20] 28 U.S.C. § 994(d) (2006).

[21] MICHAEL TONRY, SENTENCING MATTERS 77 (1996). In 2005, the United States Supreme Court handed down *United States v. Booker*, 125 S. Ct. 738 (2005), which severed and excised two statutory provisions that made the Guidelines mandatory. According to the Court's ruling, "district courts, while not bound by the guidelines, must consult those guidelines and take them into account when sentencing," subject to review by the courts of appeal for "unreasonableness." *Id.* at 767.

reforms would lead to harsher penalties that would deter criminal behavior. Reformers on both sides of the political spectrum, however, intended the changes to curb discretion and reduce unwarranted disparity.[22] Both conservatives and liberals urged sentencing reform as a means of reducing "lawlessness" in sentencing.[23] Reflecting this, the *Federal Sentencing Guidelines Manual* states that one of the three objectives Congress sought to achieve in enacting the Sentencing Reform Act of 1984 was "reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders."[24]

The degree to which the Guidelines have been able to achieve this goal is open to debate. In fact, a number of studies demonstrate that unwarranted racial disparity has not been eliminated.[25] These studies reveal that blacks and Hispanics receive harsher sentences than similarly situated whites[26] and that the sentences imposed on female offenders are substantially more lenient than those imposed on their male counterparts.[27]

While racial and ethnic disparities in sentencing have been given an enormous amount of attention, there is a smaller body of research focusing on gender disparities in the federal sentencing process.[28] This is somewhat surprising, since studies have found that gender effects favoring female offenders over male offenders occur at a significantly higher rate than race effects favoring white offenders over black offenders.[29] One explanation for this suggests that women are sentenced more leniently than men because they are convicted of less serious crimes and have less serious criminal records than men.[30] According to this explanation, once these legally relevant factors are taken into consideration,

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[22] TONRY, *supra* note 21, at 4.

[23] Marvin Frankel, *Lawlessness in Sentencing*, 41 U. CIN. L. REV. 1, 3 (1974).

[24] U.S. SENTENCING GUIDELINES MANUAL, *supra* note 5, at 9.

[25] *See* Cassia Spohn, *Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process*, *in* POLICY, PROCESSES, & DECISIONS OF THE CRIMINAL JUSTICE SYSTEM 427, 478-79 (Julie Horney ed., 2000).

[26] Darrell Steffensmeier & Stephen Demuth, *Ethnicity and Sentencing Outcomes in US Federal Courts: Who is Punished More Harshly?*, 65 AM. SOC'Y REV. 705, 708 (2000).

[27] Celesta Albonetti, *Sentencing Under the Federal Sentencing Guidelines: Effects of Defendant Characteristics, Guilty Pleas, and Departures on Sentence Outcomes for Drug Offenses, 1991-1992*, 31 L. & SOC'Y REV. 789, 808 (1997).

[28] *See* Kathleen Daly & Rebecca Bordt, *Sex Effects and Sentencing: A Review of the Statistical Literature*, 12 JUST. Q. 141, 141 (1995).

[29] *Id.*; David Mustard, *Racial, Ethnic, and Gender Disparities in Sentencing: Evidence From the U.S. Federal Courts*, 44 J.L. & ECON. 285, 296 (2001).

[30] Darrell Steffensmeier et al., *Gender and Imprisonment Decisions*, 31 CRIMINOLOGY 411, 437 (1993).

the gender differences in sentence severity will disappear.[31]

A related explanation of gender disparities in sentencing suggests that the disparities reflect differences based on legitimate but gender-linked sentencing goals. Kathleen Daly's research, for example, reveals that judges' sentencing decisions are affected by defendants' family circumstances; "familied" defendants receive more lenient sentences than defendants without family ties.[32] According to Daly, the more lenient treatment of female defendants reflects judges' beliefs that females are more likely than males to have informal social controls in their lives, and that the "social costs" of incarceration are higher for female offenders than for male offenders.[33] The relatively higher likelihood that women are the sole caretakers of young children may be a relevant consideration for judges who believe that it is important to keep families together in order to protect the interests of young children.[34] As Myrna Raeder argues, "Any cost-benefit analysis would seem to dictate that children be considered in the sentencing decision, particularly when societal costs regarding any future criminality of the children are weighed."[35]

Other researchers contend that gender disparities in sentencing arise from unwarranted factors or legally irrelevant variables that should not be taken into account.[36] These researchers argue that the more lenient treatment of female offenders does indeed reflect discrimination in favor of women or, alternatively, discrimination against men.[37] Typically, this is attributed either to "chivalry" or "paternalism" on the part of the largely male judiciary.[38] The gentler treatment

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[31] *Id.*

[32] *See* Kathleen Daly, *Structure and Practice of Familial-Based Justice in a Criminal Court*, 21 L. & SOC'Y REV. 267, 267-284 (1987) [hereinafter Daly 1987]; Kathleen Daly, *Neither Conflict Nor Labeling Nor Paternalism Will Suffice: Intersections of Race, Ethnicity, Gender, and Family in Criminal Court Decisions*, 35 CRIME & DELINQ. 136, 138 (1989) [hereinafter Daly 1989a]; Kathleen Daly, *Rethinking Judicial Paternalism: Gender, Work-Family Relations, and Sentencing*, 3 GENDER & SOC. 9, 16-22 (1989) [hereinafter Daly 1989b]; KATHLEEN DALY, GENDER, CRIME, AND PUNISHMENT 258-63 (1994), [hereinafter DALY 1994]; Daly & Bordt, *supra* note 28, at 160.

[33] Daly 1989a, *supra* note 32, at 138; *see* Darrell Steffensmeier et al., *The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male*, 36 CRIMINOLOGY 763, 787 (1998).

[34] I.H. Nagel & B.L. Johnson, *The Role of Gender in a Structured Sentencing System: Equal Treatment, Policy Choices, and the Sentencing of Female Offenders Under the United States Sentencing Guidelines*, 85 J. CRIM. L. & CRIMINOLOGY 181, 190 (1994).

[35] Raeder, *supra* note 14, at 24-25.

[36] Nagel & Johnson, *supra* note 34, at 190.

[37] *Id.*

[38] *Id.*

accorded women, in other words, stems from judges' perceptions of women as childlike and dependent, as well as from their desire to protect women from the harshness of jail or prison.[39]

Confounding the issue further, some scholars argue that examining the effects of gender and race on sentencing without taking into account possible interactions between these variables will mask important differences among offenders and generate misleading conclusions regarding disparities in sentencing.[40] If discriminatory treatment of criminal defendants is restricted primarily to black and Hispanic males, while preferential treatment is reserved for white females, examining only the direct effects of gender and race/ethnicity will lead to erroneous conclusions about the effects of these variables on sentence outcomes.

Considered together, these competing explanations of gender disparity in sentencing highlight the importance of controlling adequately for legally relevant indicators of offense seriousness and prior criminal record, as well as the importance of considering potential interactions between the gender of the offender and other legally irrelevant offender characteristics. In this Article, we focus on interactions among the gender of the offender, the offender's marital status, the offender's responsibility for dependent children, and the severity of the sentence. While we acknowledge the importance of the interaction between race and gender, a discussion of race is beyond the scope of the Article.

In Part I, we discuss prior research on the effect of gender on criminal case-processing decisions. We examine both theoretical explanations for gender disparity and empirical research testing these theoretical explanations in both state and federal courts. In Part II, we explain our research design and methods. In Part III, we present our findings by using sentences imposed on offenders convicted of drug offenses in three U.S. District Courts to test four hypotheses relating to the treatment of men and women in sentencing decisions. These hypotheses were that (1) females would be treated more leniently than males; (2) married offenders would be treated more leniently than unmarried offenders; (3) offenders with dependent children would be treated more leniently than offenders without dependent children; and (4) having dependent children would benefit female offenders but not male offenders. In Part IV, we summarize our results

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[39] *See* Cassia Spohn & Dawn Beichner, *Is Preferential Treatment of Female Offenders a Thing of the Past? A Multisite Study of Gender, Race, and Imprisonment*, 11 CRIM. JUST. POL'Y REV. 149, 174-79 (2000).

[40] Cassia Spohn & Jeffrey Spears, *Gender and Case-Processing Decisions: A Comparison of Case Outcomes for Male and Female Defendants Charged with Violent Felonies*, 8 WOMEN & CRIM. JUST. 29 (1997).

and evaluate our four hypotheses.

We found that while judges and prosecutors take the offender's gender into account, sentencing decisions are not affected by the offender's marital status or responsibility for dependent children. We also found that females with dependent children are treated about the same as similarly situated males with dependent children in terms of the sentence length imposed and the magnitude of substantial assistance departures. However, although females with children were significantly more likely than females without children to receive substantial assistance departures, males with children did not receive the same benefit.

I. Prior Research

Research investigating the effect of gender on criminal case-processing decisions generally reveals that females are treated more leniently than males.[41] As noted above, however, the theoretical explanations that have been advanced to explain this result have varied. In the sections that follow, we discuss the theoretical explanations for the effect of gender on sentencing. We then discuss the results of recent research examining the sentences imposed on male and female offenders.

A. Gender and Sentencing: Theoretical Explanations

The theoretical explanations for gender disparity in sentencing revolve around three themes.[42] The first theme, and the one most commonly found in early studies of gender and sentencing outcomes, is that the more lenient treatment of women is due to either paternalism or chivalry on the part of the largely male judiciary.[43] Judicial paternalism posits that judges (as well as other court officials such as prosecutors and probation officers) view females as weak and in need of protection from the harsh environments of jails and prisons.[44] As a result, female offenders are either diverted from incarceration or receive shorter sentences than similarly situated male offenders.[45] Some scholars use the terms "paternalism" and "chivalry" interchangeably, but Elizabeth Moulds argues

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[41] *See* Daly & Bordt, *supra* note 28, at 141; Kathleen Daly & Michael Tonry, *Gender, Race, and Sentencing*, 22 CRIME & JUST. 201, 202 (1997); Spohn & Beichner, *supra* note 44, at 162.

[42] Daly 1987, *supra* note 32, at 268.

[43] Cassia Spohn et al., *Women Defendants in Court: The Interaction Between Sex and Race in Convicting and Sentencing*, 66 SOC. SCI. Q. 178, 179 (1985).

[44] Daly 1987, *supra* note 32, at 283.

[45] *Id.*

against this, contending that the application of these two theories can yield very different results.[46] Whereas the paternalism explanation suggests that all women will be treated more leniently than men, the chivalry explanation suggests that judges will extend "courtesies" only to female defendants who exhibit "traditional sex-role behaviors."[47] Some scholars suggest that these characteristics are more often seen in white, middle-class women than in black, lower-class women, which may account for interaction effects between race and gender.[48]

The second theme in the research on gender disparity in sentencing is the use of what Daly calls "multifactor explanations."[49] Some researchers add other factors to the paternalism/chivalry explanations mentioned above, suggesting, for example, that judges' views of offender dangerousness and blameworthiness are linked to race, ethnicity, age, and gender.[50] Using the "focal concerns" perspective, these researchers argue that females receive less severe sentences than males because they are viewed by judges as less dangerous, less threatening, and more amenable to rehabilitations.[51] Researchers who adopt this position also argue that the more lenient sentences imposed on female offenders reflect the practical costs and consequences of incarceration.[52] Judges' reluctance to sentence female offenders to prison, in other words, stems in part from the fact that female offenders are more likely than male offenders to be responsible for the care of dependent children and that there are "social costs" involved in incarcerating offenders with young children.[53]

The third theme found in the theoretical explanations for gender disparity in sentencing is what Daly refers to as "social control arguments."[54] Through her review of the early literature, Daly found that this argument takes one of two forms.[55] The more common argument is that women have more forms of informal social control in their lives than men; as a result, they are less in need of the formal social control provided by the criminal justice system.[56] Women are

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[46] Elizabeth F. Moulds, *Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System*, 31 W. POL. Q. 416 417-19 (1978).
[47] Daly 1989b, *supra* note 32, at 10.
[48] Daly 1989a, *supra* note 32, at 140.
[49] Daly 1987, *supra* note 32, at 269.
[50] Steffensmeier, *supra* note 33, at 786.
[51] *Id.* at 766, 786; Steffensmeier, *supra* note 30, at 435.
[52] Steffensmeier, *supra* note 30, at 438; Daly 1987, *supra* note 32, at 269.
[53] Daly 1989a, *supra* note 32, at 138.
[54] Daly 1987, *supra* note 32, at 269.
[55] *See id.* at 270.
[56] *Id.*

more likely than men to depend on and value relationships with family members and friends; these relationships, in turn, serve as informal social controls which reduce the need for formal social control through incarceration.[57] The second type of social control argument contends that incarceration is used less often for females, not because of their dependency on others, but because of the dependency and interest *men* have in keeping women in their "familial labor" roles.[58]

To assess the validity of these three competing theoretical explanations of the more lenient treatment of female offenders, Daly interviewed thirty-five court officials, including judges, probation officers, prosecutors, and defense attorneys.[59] Her research produced three major findings. First, Daly found that prosecutors and judges generally believed that the more lenient treatment of offenders who were what Daly termed "familied" was justified.[60] These officials felt that it was reasonable to give less severe sentences to offenders who were providing economic support or caring for dependents.[61] Second, Daly found that court officials justified this leniency by arguing that familied offenders, as opposed to nonfamilied offenders, have a greater stake in conformity due to their connections to informal social control.[62] Daly's third major finding was that family circumstances had more pronounced mitigating effects on outcomes for female defendants, particularly black females, than for male defendants.[63] Daly attributed this to the combined effect of the fact that "court officials see more 'good' mothers than 'good' fathers" and that judges view childcare (typically provided by women) as more essential to the maintenance of families than economic support (more often provided by men).[64] Daly concluded that judges' sentencing decisions are not motivated by a desire to protect women but rather by their concerns about protecting children and families, a motivation she referred to as "familial paternalism."[65]

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[57] *Id.*
[58] *Id.*
[59] *Id.* at 271.
[60] *Id.* at 273.
[61] *Id.*
[62] *Id.* at 274.
[63] *Id.* at 279.
[64] *Id.*
[65] *Id.* at 282.

B. Gender and Sentencing: Results of the Research

Most of the research on gender and sentencing uses state-level data, and will be discussed here first, followed by a discussion of research on the effect of gender on sentencing decisions in the federal courts.

1. Gender and State Sentencing Decisions

Spohn and Spears used data on defendants charged with violent felonies in Detroit to examine the effect of gender and race on a series of charging, convicting, and sentencing decisions.[66] Building on research suggesting that chivalry is denied to women who violate sex-role stereotypes and commit violent crimes, they hypothesized that males and females charged with these crimes would be treated similarly.[67] They found that females were more likely than males to have all of the charges against them dismissed; females also were less likely to be incarcerated and received shorter prison sentences than their male counterparts.[68] Further analysis revealed an interaction between race and gender: white females, but not black females, were more likely than males of either race to have their charges dismissed and black females were sentenced less harshly than either black males or white males.[69] The authors concluded that their results "highlight the importance of testing an interactive model that incorporates the effects of both gender and race" on sentencing decisions.[70]

The importance of testing for interaction effects is illustrated as well by two recent studies of sentencing in Pennsylvania.[71] Steffensmeier, Kramer, and Streifel used guideline sentencing data to assess the effect of gender on the decision whether to incarcerate and the length of the prison sentence; they also examined departures from the guidelines and judges' reasons for these departures.[72] They found that female offenders faced somewhat lower odds of incarceration than male offenders (a difference of twelve percentage points), but that gender did not affect the length of the prison sentence.[73] When they estimated separate models of sentence length for males and females, however,

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[66] Spohn & Spears, *supra* note 40, at 30.
[67] *Id.* at 33.
[68] *Id.* at 43.
[69] *Id.* at 51.
[70] *Id.* at 52.
[71] Steffensmeier, *supra* note 30, at 429; Steffensmeier, *supra* note 51, at 774.
[72] Steffensmeier, *supra* note 30, at 419.
[73] *Id.* at 424, 428.

they found that gender interacted with both race and the type of offense.[74] There were no racial differences in the sentences imposed on males, but black females received sentences that averaged three months longer than the sentences imposed on white females.[75] Females received slightly shorter sentences when convicted of a serious felony, and slightly longer sentences when convicted of a less serious felony or a misdemeanor.[76]

Somewhat different results surfaced in a later study that also examined sentencing decisions in Pennsylvania.[77] Although the authors of this study found that female offenders faced both lower odds of incarceration and shorter sentences than male offenders and that black offenders were sentenced more harshly than white offenders, they also found that the effects of race and age were conditioned by gender.[78] Younger male offenders were sentenced more harshly than older male offenders, but age had a negligible effect on sentence severity among female offenders.[79] Among males, race affected sentence severity for younger offenders but not for older offenders.[80] Among females, on the other hand, the effect of race did not vary by age; black females, regardless of age, were sentenced more harshly than white females.[81] The authors also found that the harshest sentences were imposed on young, black males.[82] These findings led them to conclude that the main effects of race and gender are relatively modest compared to the interactive effects of race, gender, and age.[83]

Spohn and Beichner's analysis of the effects of gender and race on sentence outcomes for offenders convicted of felonies in Chicago, Kansas City, and Miami in 1993 produced different findings that nevertheless confirmed the interaction between race and gender.[84] Like Steffensmeier and his colleagues, they found that female offenders faced significantly lower odds of incarceration than male offenders in all three jurisdictions.[85] Further analysis revealed that both black and white females were less likely than their male counterparts to be

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[74] *Id.* at 430.
[75] *Id.*
[76] *Id.*
[77] Steffensmeier, *supra* note 51, at 783.
[78] *Id.*
[79] *Id.* at 784.
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.* at 785.
[84] Spohn & Beichner, *supra* note 39, at 173.
[85] *See id.*

sentenced to prison in Chicago and Kansas City.[86] In Miami, on the other hand, black females faced lower odds of incarceration than black males, but white females were sentenced to prison at the same rate as white males.[87] These gender differences were both statistically significant and non-trivial.[88] In Chicago, for example, the estimated probability of incarceration for a typical offender was 48% for white men and only 18% for white women; it was 55% for black men and 32% for black women.[89] In Kansas City, the probabilities ranged from 7% (white females) to 10% (black females) to 20% (black males and white males).[90]

A study of sentences imposed on offenders convicted of drug offenses in Cook County (Chicago), Illinois in 1993 also tested for interaction between gender and other offender characteristics, in this case responsibility for dependent children and a prior drug conviction.[91] Spohn found that women were significantly less likely than men to be detained in jail prior to trial and to be sentenced to prison upon conviction.[92] Noting that pretrial detention was one of the strongest predictors of incarceration, Spohn concluded that these results were indicative of a pattern of cumulative advantage for female drug offenders.[93] The war on drugs and concern about drug use and drug-related crime notwithstanding, women charged with drug offenses in Chicago faced substantially lower odds of incarceration than their male counterparts.[94]

Spohn also tested for interaction between gender and two variables, responsibility for dependent children and a prior drug conviction, which had been identified by previous research as affecting sentence severity for female offenders.[95] She suggested that female drug offenders with dependent children would *not* benefit from familial paternalism.[96] She reasoned that such women, like women who are convicted of child abuse or prostitution, may be viewed as bad mothers whose children would be better off living with relatives or in foster care.[97] As she noted, if this is the case, judges may not hesitate to send such

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[86] *Id.*
[87] *Id.*
[88] *See id.*
[89] *Id.* at 169.
[90] *Id.*
[91] Cassia Spohn, *Gender and Sentencing of Drug Offenders: Is Chivalry Dead?*, 9 CRIM. JUST. POL'Y REV. 365 (1998).
[92] *Id.* at 384.
[93] *Id.* at 392.
[94] *Id.*
[95] *Id.* at 382.
[96] *Id.*
[97] *Id.*

women to prison or to impose lengthy terms of incarceration.[98] She similarly suggested that judges would not be reluctant to send female drug offenders to prison if they had a prior conviction for a drug offense.[99]

Consistent with these expectations, Spohn found that preferential treatment of female offenders was confined to cases involving offenders without dependent children and to offenders without a prior conviction for a drug offense.[100] Women with children and those who were repeat offenders did not face lower odds of incarceration than their male counterparts.[101] According to Spohn, this suggests that judges' calculations of the social costs of punishment and assessments of blameworthiness are not invariant but reflect the combined effects of the offender's gender, childcare responsibilities, prior criminal record, and type of offense.[102]

Finally, researchers have analyzed gender differences in the likelihood of receiving departures from sentencing guidelines and gender differences in the magnitude of such departures. Using six years of sentencing data under the Pennsylvania guidelines, Kramer and Ulmer analyzed both dispositional departures (a downward departure from an initial sentence of incarceration to no incarceration) and durational departures (a downward departure in sentence length).[103] They found that criminal history and offense severity were the strongest predictors of both types of departures.[104] However, the authors also found that female offenders were twice as likely as male offenders to receive dispositional departures and that whites were approximately 10% more likely than blacks to receive dispositional departures.[105] Gender, on the other hand, did not affect durational departures, and the effect of race, while statistically significant, was small.[106]

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[98] *Id.* at 373.
[99] *Id.* at 374.
[100] *Id.* at 383.
[101] *Id.* at 388.
[102] *Id.* at 392.
[103] John H. Kramer & Jeffery T. Ulmer, *Sentencing Disparity and Departures from Guidelines*, 13 JUST. Q. 81, 85 (1996).
[104] *Id.* at 90.
[105] *Id.* at 90, 96.
[106] *Id.* at 96.

2. Gender and Federal Sentencing Decisions

In contrast to the large body of research examining the effect of gender on sentencing decisions in state courts, relatively little research explicitly explores the effect of gender on sentencing decisions in U.S. District Courts. Moreover, no federal studies address the issue of familial paternalism, a result that can be attributed to the fact that the data available from the Commission did not, until fairly recently, include information on the offender's marital status or number of dependent children.[107]

In a recent report on the first fifteen years of federal guidelines sentencing, the Commission reported that "the gap in average prison terms between male and female offenders has widened in the guidelines era."[108] The Commission examined both the odds of imprisonment and the length of the prison sentence imposed on male and female offenders from 1998 to 2002.[109] They found statistically significant gender effects for both drug offenses and non-drug offenses.[110] For each of the five years examined, male offenders were twice as likely as female offenders to be sentenced to prison and their sentences were 25-30% longer than those imposed on female offenders.[111]

Other evidence demonstrates that federal courts treat women more leniently than men. Albonetti's analysis of offenders convicted of drug offenses found that female offenders faced lower odds of incarceration and received shorter sentences than male offenders.[112] Other scholars found similar results for all federal offenders (drug and non-drug offenders).[113] Mustard, for example, found that females received sentences that averaged 5.5 months less than the sentences imposed on similarly situated men.[114] He also found that women were significantly more likely than men to receive a downward departure and that those who did receive a downward departure received a larger sentence discount

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[107] Even when this information was included, there was a substantial amount of missing data.

[108] UNITED STATES SENTENCING COMMISSION, FIFTEEN YEARS OF GUIDELINES SENTENCING: AN ASSESSMENT OF HOW WELL THE FEDERAL CRIMINAL JUSTICE SYSTEM IS ACHIEVING THE GOALS OF SENTENCING REFORM 1, 127 (2004).

[109] *Id.* at 128.

[110] *Id.* at 127.

[111] *Id.*

[112] Albonetti, *supra* note 27, at 817.

[113] Mustard, *supra* note 29, at 308; Ronald S. Everett & Roger A. Wojtkiewicz, *Difference, Disparity, and Race/Ethnic Bias in Federal Sentencing*, 18 J. QUANTITATIVE CRIMINOLOGY 189, 201 (2002).

[114] Mustard, *supra* note 29, at 310-11.

than their male counterparts.[115]

Albonetti's research has also demonstrated that gender and race/ethnicity interact to produce more lenient sentences for some types of female offenders, and that gender and race/ethnicity condition the effects of guideline departures, guilty pleas, offense seriousness, and criminal history on sentence severity. Her 1997 study, for example, found that the offender's gender affected sentencing decisions for white offenders and black offenders, but not for Hispanic offenders.[116] Her 2002 study found that white females received the greatest benefit from substantial assistance departures and that the guideline offense level had a more pronounced effect on sentence length for white females than for black females.[117]

Although the studies of the federal sentencing process that have been conducted to date demonstrate that female offenders are treated more leniently than male offenders, none of these studies has examined the possibility of interaction between the gender of the offender, the offender's marital status, and the offender's responsibility for dependent children. Therefore, research has not been able to test Daly's assertions regarding the social costs of incarcerating female offenders and the degree to which judges' sentencing decisions are motivated by familial paternalism.

Our study builds on and extends past research exploring the relationship between gender and sentencing. We use data on offenders convicted of drug offenses in three U.S. District Courts during 1998, 1999, and 2000 to examine the effect of the offender's gender, marital status, and responsibility for dependent children on a series of sentencing decisions. Although prior studies of sentences imposed in state courts have included marital status and parental status as controls, this is the first study of sentences imposed in federal courts to do so.[118] We also test for interaction between the offender's gender and responsibility for dependent children. We test four hypotheses regarding differences in treatment. In each hypothesis, more lenient treatment means (1) a shorter sentence, (2) a greater likelihood of receiving a downward departure for providing substantial assistance, and (3) a larger sentence discount for providing substantial assistance.

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[115] *Id.*

[116] Albonetti, *supra* note 27, at 814.

[117] Celesta A. Albonetti, *The Joint Conditioning Effect of Defendant's Gender and Ethnicity on Length of Imprisonment under the Federal Sentencing Guidelines for Drug Trafficking/Manufacturing Offenders*, 6 J. GENDER RACE & JUST. 39, 55-56 (2002).

[118] The data provided by the United States Sentencing Commission does not include either of these variables. We obtained the data from the Presentence Report included in the court file.

H1. Female offenders will be treated more leniently than male offenders.

H2: Married offenders will be treated more leniently than unmarried offenders.

H3: Offenders with dependent children will be treated more leniently than offenders without dependent children.

H4: Responsibility for dependent children will benefit female offenders but will not benefit male offenders.

II. Research Design and Methods

This study uses federal sentencing data from three U.S. District Courts to investigate the effects of the offender's gender, marital status, and responsibility for dependent children on sentencing decisions in cases involving drug offenses. We limit our analysis to drug offenses for two reasons. First, a number of researchers contend that increasingly punitive treatment of drug offenders is the main cause of the explosion in state and federal prison populations over the past two decades.[119] Chesney-Lind, in fact, argues that the war on drugs is largely responsible for the dramatic increases in the number of women incarcerated in state and federal prisons.[120] Second, focusing on drug offenders ensures that the offenders and their cases will be more similar than they would be if all offenders were included in the analysis.

The original data file included information on all offenders sentenced in the District of Minnesota, the District of Nebraska, and the Southern District of Iowa during fiscal year 1998, fiscal year 1999, and fiscal year 2000. The Commission provided the Offender Data File for each district for each year. This data file contained detailed information on the offender, the case, and the sentence; it also included a unique identifier that was used to match the case to case files maintained by each U.S. District Court. Information in the Offender Data File was supplemented with information contained in the Presentence Report, the Plea Agreement, and the Order of Judgment for each case.

The original data file included 3139 cases, consisting of 1188 cases from Minnesota, 1027 from Nebraska, and 924 from Southern Iowa. The data for this

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[119] SPOHN 2002, *supra* note 2, at 245.

[120] MEDA CHESNEY-LIND, THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME 147 (1997).

study, however, include only those offenders convicted of drug offenses. The final sample consists of 556 cases from the District of Minnesota, 661 cases from the District of Nebraska, and 633 cases from the Southern District of Iowa, for a total of 1850 cases.

A. Dependent Variables

This study uses three dependent variables, as shown in Table 1.[121] The first dependent variable is the length of the sentence imposed on offenders sentenced to prison; it is measured in months.[122] The second dependent variable is a dichotomous measure of whether the offender received a downward departure for providing substantial assistance in the prosecution and conviction of another offender (yes = 1; no = 0). The third dependent variable is the magnitude of the sentence discount given to those offenders who did receive a downward departure for substantial assistance. The magnitude of the discount for a departure is the ratio of the sentence discount to the presumptive sentence; stated another way, it is the percentage by which the presumptive sentence was reduced as a result of a downward departure or a departure for providing substantial assistance. We determined the sentence discount by subtracting the actual sentence imposed from the presumptive sentence. To determine the magnitude of the discount, we divided the sentence discount by the presumptive sentence. If, for example, the presumptive sentence was 120 months, but the sentence imposed by the judge was 80 months, the sentence discount would be 40 months (*120 - 80*) and the magnitude of the sentence discount would be 33.3% (*40/120*).

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[121] Although many studies also include a measure of the decision to incarcerate or not, this is not used in the current study due to the fact that only fifty-two drug offenders were *not* sentenced to prison.

[122] The variable we use takes into account amended judgments where an offender's sentence was reduced, either as a result of a clerical error, an appeal, or a departure for substantial assistance. If the sentence recorded on the amended judgment was less than that found in the United States Sentencing Commission's Offender Data File, the sentence recorded on the amended judgment was used.

Table 1. Dependent and Independent Variables: Codes and Frequencies

Dependent variables		**Frequency**	**%**	**Mean**
Sentence length (months)				91.33
Substantial assistance departure		705	38.1	
Magnitude of departure (months)				50.25
Independent variables		**Frequency**	**%**	**Mean**
Offender characteristics	Gender			
	Male	1543	83.4	
	Female	307	16.6	
	Married	453	24.7	
	Parent of dependent children	1350	73.8	
	Gender x parental status			
	Female with children	244	13.3	
	Female without children	60	3.3	
	Male with children	1106	60.4	
	Male without children	420	23.0	
	Race/ethnicity			
	White	772	42.3	
	Black	472	25.9	
	Hispanic	580	31.8	
	Non-citizen	434	23.6	
	Age (years)			31.86
	Unemployed	755	42.6	
	Education			
	No high school degree	785	42.5	
	High school degree only	766	41.4	
	Some college	268	14.5	
	College degree	31	1.7	
Case characteristics	Presumptive sentence (months)			114.95
	Substantial assistance departure	705	38.1	
	Other downward departure[a]	188	10.2	
	In custody prior to trial	1153	62.6	
	Pled guilty	1698	92.1	
	Using hard drugs[b] at time of offense	922	49.8	
	Jurisdiction			
	Iowa	633	34.2	
	Minnesota	556	30.1	
	Nebraska	661	35.7	

Notes

[a] Downward departure that is not a substantial assistance departure.

[b] Cocaine, crack, heroin, or methamphetamine.

B. Independent Variables

In all of the analyses, we control for offender and case characteristics that have been shown to affect sentence severity. The offender characteristics include the offender's gender (female = 1; male = 0), race/ethnicity, age, education, citizenship status (non-citizen = 1; citizen =0), employment status (unemployed = 1; employed = 0), marital status (married = 1; not married = 0), and whether the offender had dependent children (1 = yes; 0 = no). Age is a continuous variable, and race/ethnicity is measured by three variables: white (the reference, or comparison, category), black, and Hispanic.[123] A set of variables measures education by distinguishing those offenders without a high school degree (the reference category); those with a high school degree; those with some college; and those with a college degree. To test for interaction between the offender's gender and whether the offender had responsibility for dependent children, we created four variables: female offender with children (the reference category); female offender without children; male offender with children; and male offender without children.

The case characteristics include the presumptive sentence; whether the offender was using hard drugs at the time of the offense (1 = yes; 0 = no); whether the offender was in custody prior to sentencing (1 = yes; 0 = no); whether the offender pled guilty (coded 1) or went to trial (coded 0); and the jurisdiction in which the case was adjudicated (Southern Iowa (the reference category), Nebraska, or Minnesota). In analyzing the length of the sentence, we also control for whether the offender received a regular downward departure and whether the offender received a departure for substantial assistance.

Although most prior research on federal sentencing outcomes controlled for the offense seriousness score and the offender's criminal history score, the present study controls for the presumptive sentence.[124] The presumptive sentence, which is based on the offense seriousness score and the criminal history score, is the minimum sentence that the judge could impose without departing. Generally, the presumptive sentence was measured as the guideline minimum. However, mandatory minimum sentences were prevalent in drug cases, and when

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[123] These are "dummy variables" in which offenders who are white are coded 1, and all other offenders are coded 0; offenders who are blacks are coded 1, and all other offenders are coded 0; and offenders who are Hispanic are coded 1, and all other offenders are coded 0. In all of the analyses, outcomes for whites are compared to outcomes for blacks and Hispanics.

[124] *See* Rodney L. Engen & Randy R. Gainey, *Modeling the Effects of Legally Relevant and Extralegal Factors under Sentencing Guidelines: The Rules Have Changed*, 38 CRIMINOLOGY 1207, 1212-14 (2000).

a mandatory minimum sentence indicated a longer sentence than the guideline minimum, the mandatory minimum sentence served as the presumptive sentence. If there was a mandatory minimum sentence, but the safety valve was applied, the presumptive sentence was the guideline minimum.[125]

The fact that offenders who were not sentenced to prison are excluded from the sentence-length sample creates a sample selection bias.[126] To correct for this problem, each offender's predicted probability of imprisonment is included in the model. Essentially, we use logistic regression to estimate the likelihood that the offender would be sentenced to prison.[127] For each case the logistic regression model produces a hazard rate, which is the predicted probability of exclusion from the sentence length sample. We then include the hazard rate as a control in the regression equation for sentence length.[128]

We use both logistic regression analysis and ordinary least squares ("OLS") regression analysis to test our hypotheses. We use logistic regression to analyze the dichotomous indicator of whether the offender received a departure for substantial assistance. We use OLS regression to analyze the length of the prison sentence and the magnitude of the discount for substantial assistance.

III. Findings

A. Descriptive Statistics

The data for this study consisted of 1,850 drug offenders sentenced to prison under the Federal Sentencing Guidelines in three mid-western U.S. District Courts. Table 1 shows the breakdown of the dependent variables (sentence length, likelihood of substantial assistance departures, and the magnitude of these departures) as well as the offender and case characteristics. Regarding offender characteristics, a majority of the offenders sentenced in these

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[125] The safety valve provision requires the court to impose a sentence pursuant to the Guidelines without regard to any statutory minimum sentences in cases in which the defendant does not have more than one criminal history point and did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense.

[126] *See* Richard A. Berk, *An Introduction to Sample Selection Bias in Sociological Data*, 48 AM. SOC. REV. 386, 387-88 (1983); Richard A. Berk & Subsash C. Ray, *Selection Biases in Sociological Data*, 111 SOC. SCI. RES. 352, 355 (1982).

[127] *See* Berk, *supra* note 126, at 391.

[128] Because only fifty-two offenders were not sentenced to prison, including the hazard rate does not change the results of the analysis. We include it because it is standard procedure to do so in analyses where sample selection bias is a potential problem.

courts (83.4%) were male. Approximately 42% of the offenders were white, 31.8% were Hispanic, and 25.9% were black. Nearly one fourth (23.6%) of the offenders were not citizens of the United States. The average age was 31.86 years. Nearly half of the offenders were unemployed at the time of the offense and had not completed high school (42.6% and 42.5%, respectively). Although approximately three quarters (73.8%) of the offenders had dependent children, fewer than one quarter (24.7%) were legally married. Female offenders with children comprise 13.3% of the sample, female offenders without children comprise 3.3% of the sample, male offenders with children comprise 60.4% of the sample, and male offenders without children comprise 23% of the sample.

The statistics for the case characteristics show that about half (49.8%) of the offenders were using cocaine, crack, heroin, or methamphetamine at the time of the offense. Almost two thirds (62.6%) of offenders were in custody prior to trial, and nearly all of them (92.1%) pled guilty. The mean presumptive sentence was 114.95 months; however, courts imposed an average sentence of only 91.33 months. This is explained by the fact that 10% of the offenders received a regular downward departure, and 38.1% received a downward departure for providing substantial assistance. For those who did receive a departure for providing substantial assistance, the mean sentence discount was 50.25%.

We begin our discussion of the findings with the results of a bivariate analysis of the relationships between the independent variables of interest and the three dependent variables. These results, which are presented in Table 2, illustrate the sentencing outcomes for male and female offenders, for married and unmarried offenders, and for offenders with and without dependent children.[129] Female offenders were treated more leniently than male offenders on all three indicators of sentence severity, but there were no differences between married and unmarried offenders on any sentence outcome. Moreover, and contrary to our expectations, offenders with children received significantly *longer* sentences than offenders without children. This difference reflects the fact that the mean sentences imposed on male offenders with children (103.05 months) were significantly longer than the mean sentences imposed on male offenders without children (79.20 months). There were no differences in the sentences imposed on female offenders with and without children. The likelihood of a substantial assistance departure and the magnitude of the sentence discount for substantial assistance did not vary between female offenders with and without children or male offenders with and without children.

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[129] The shading in the tables indicates that there were statistically significant differences between the offenders being compared.

Table 2. Bivariate Analysis

Independent variables	Dependent variables		
	Sentence length (months)	Substantial assistance departure	Magnitude of substantial assistance departure
Gender			
Female	59.76	0.50	57.38
Male	97.11	0.48	48.41
Marital status			
Married	85.92	0.39	49.84
Unmarried	91.93	0.38	50.40
Parental Status			
Offender with children	95.46	0.39	49.93
Offender without children	76.39	0.37	51.35
Gender x parental status[a]			
Female with children	57.93	0.54	56.64
Female without children	55.61	0.45	60.80
Male with children	103.05	0.35	47.92
Male without children	79.20	0.36	49.76

Notes

[a] The means for female (male) offenders with children are compared to the means for female (male) offenders without children.

▌ The shaded boxes denote differences (e.g., differences in sentence length for male offenders and female offenders) that are statistically significant at the 0.05 level of significance ($p \leq 0.05$).

These bivariate relationships suggest that sentence outcomes are affected by the offender's gender but not by the offender's marital status. These results also suggest that the presence of dependent children has an unexpected effect on sentence length, at least for male offenders. In the sections that follow, we present the results of our multivariate analyses, which control for the presumptive sentence, other case characteristics, and offender characteristics in addition to gender, marital status, and dependent children.

B. The Offender's Gender, Marital Status, and Parental Status: Direct Effects

Tables 3-5 present the results of our analyses investigating the direct effects of the offender's gender, marital status, and responsibility for dependent children. We hypothesized that females would be treated more leniently than males, married offenders would be treated more leniently than unmarried offenders, and offenders with children would be treated more leniently than offenders without children. As shown in Table 3, which presents the results of the OLS regression analysis of sentence length, only one of these hypotheses regarding the length of the sentence was confirmed. Female offenders received significantly shorter sentences than male offenders (a difference of 9.93 months), but there were no differences in the sentences imposed on married and unmarried offenders or on offenders with and without children.

Table 3. The Effect of Gender, Marital Status, and Parental Status on Sentence Length for Drug Offenders: Results of the OLS Regression Analysis

Offender characteristics	**B**[a]	**Beta**[b]	**T-value**[c]
Female	-9.93	-0.04	-4.04
Married	2.12	0.01	1.00
Offender with dependent children	2.52	0.01	1.22
Race/ethnicity (Comparison: white)			
Black	1.56	0.01	0.63
Hispanic	1.75	0.01	0.56
Non-citizen	-5.69	-0.03	-1.71
Age	0.06	0.01	0.54
Unemployed	2.11	0.01	1.16
Education (Comparison: no high school degree)			
High school degree only	-0.21	-0.00	-0.10
Some college	-0.84	-0.00	-0.30
College degree	-18.14	-0.03	-2.61
Case characteristics	**B**	**Beta**	**T-value**
Presumptive sentence	0.74	0.82	66.88
Substantial assistance departure	-51.12	-0.30	-26.50
Other downward departure	-27.38	-0.10	-9.31
In custody prior to trial	8.11	0.05	3.73
Pled guilty	-20.26	-0.07	-5.89
Using hard drugs at time of offense	-0.16	-0.00	-0.89
Jurisdiction (Comparison: Southern Iowa)			
Minnesota	10.72	0.06	3.46
Nebraska	-9.85	-0.06	-4.71
Predicted probability of imprisonment	-51.29	-0.04	-3.46
R^2 value[d]			0.82

Notes

[a] The unstandardized regression coefficient is the difference in months in the sentences imposed on offenders in the included category and the sentences imposed on offenders in the excluded category (the comparison group). For example, the B value of -9.93 for female offenders means that sentences imposed on females were 9.93 months shorter than sentences imposed on males.

[b] The standardized regression coefficient measures the strength of the relationship between the independent variable and the dependent variable. It varies from -1.0 to +1.0; coefficients closer to 1 (or -1) indicate stronger relationships.

[c] The t-value indicates whether the relationship between the independent variable and the dependent variable is significant.

[d] The R^2 for the model is 0.82, which indicates that 82% of the variance in sentence length is accounted for by the independent variables included in the model.

▌ T-values with an absolute value greater than or equal to 1.96 indicate a statistically significant relationship at the 0.05 level of significance.

Although the offender's gender was a significant predictor of the length of the sentence imposed by the judge, its effect was overshadowed by the effects of the case characteristics. Not surprisingly, the presumptive sentence was the strongest predictor of the actual sentence; every one-month increase in the presumptive sentence led to an increase of 22.3 days (*30 days x 0.74*) in the actual sentence. A departure for providing substantial assistance produced a sentence discount of 51.12 months, and a regular downward departure resulted in a sentence discount of 27.38 months. Other case characteristics that influenced sentence length were the offender's pretrial status and the mode of disposition in the case. Offenders who were in custody prior to trial received sentences more than eight months longer than those who were released, and offenders who pled guilty received sentences 20.26 months shorter than offenders who went to trial.

In addition, offenders sentenced in Minnesota and Nebraska received shorter sentences than offenders sentenced in Southern Iowa. The only offender characteristic, in addition to gender, that affected the length of the sentence was education; offenders with a college degree received sentences that were 18.14 months shorter than the sentences imposed on offenders without a high school degree.

Table 4 shows the results of the logistic regression analysis of the likelihood that the offender would receive a downward departure for providing substantial assistance. Consistent with the results of the analysis of sentence length, the offender's gender, but not the offender's marital status or parental status, affected the likelihood of a substantial assistance departure. Female offenders were 1.64 times more likely than male offenders to receive a substantial assistance departure, but the odds of a departure did not vary between married and unmarried offenders or between offenders with and without dependent children.

Table 4. The Effect of Gender, Marital Status, and Parental Status on the Likelihood of a Substantial Assistance Departure: Results of the Logistic Regression Analysis

Offender characteristics	**B**[a]	**SE**[b]	**Exp(b)**[c]
Female	0.497	0.144	1.64
Married	0.153	0.132	1.16
Parent of dependent children	0.090	0.129	1.09
Race/ethnicity (Comparison: white)			
Black	-0.409	0.152	0.66
Hispanic	-0.207	0.188	0.81
Non-citizen	-0.625	0.215	0.54
Age	-0.014	0.007	0.99
Unemployed	-0.098	0.114	0.91
Education (Comparison: no high school degree)			
High school degree only	0.207	0.124	1.23
Some college	0.377	0.170	1.46
College degree	-0.310	0.426	0.73
Case characteristics	**B**	**SE**	**Exp(b)**
Presumptive sentence	0.003	0.001	1.003
In custody prior to trial	-0.406	0.130	0.67
Pled guilty	3.30	0.529	27.00
Using hard drugs at time of offense	0.19	0.115	1.21
Jurisdiction (Comparison: Southern Iowa)			
Minnesota	-0.405	0.141	0.68
Nebraska	-0.230	0.129	0.79
Nagelkerke R^2 value[d]			0.184

Notes

[a] Logistic regression coefficient.

[b] Standard error.

[c] The odds ratio expresses the difference in the likelihood of a substantial assistance departure for offenders in the included category and offenders in the excluded category (the comparison group). For example, the odds ratio of 1.64 for female offenders indicates that females were 1.64 times more likely than males to receive a departure; the odds ratio of 0.66 for black offenders indicates that blacks were only 0.66 as likely as whites to receive a departure.

[d] The R^2 for this model is .184, indicating that the variables included in the model explain 18.4% of the variance.

If the absolute value of the logistic regression coefficient is twice the standard error, the independent variable has a statistically significant effect on the dependent variable at the 0.05 level of significance.

A number of variables other than offender characteristics affected the likelihood of receiving a substantial assistance departure. Offenders facing longer presumptive sentences were more likely to receive a departure for substantial assistance, as were offenders who pled guilty and offenders who were not in custody prior to trial. Offenders adjudicated in Minnesota also had a lower likelihood of receiving a substantial assistance departure than offenders adjudicated in Southern Iowa.

In contrast to the findings regarding sentence length, however, several of the offender characteristics, in addition to the offender's gender, had a significant effect on the odds of a substantial assistance departure. Black offenders had lower odds of receiving a departure than white offenders, older offenders had lower odds than younger offenders, and non-citizens had lower odds than citizens. Compared to offenders without high school degrees, offenders with some college had a greater likelihood of receiving a substantial assistance departure.

Table 5 presents the results of the OLS regression analysis of the third dependent variable, the magnitude of the sentence discount for a departure for substantial assistance. The results are consistent with the results for sentence length and the likelihood of a substantial assistance departure: female offenders received bigger sentence discounts (+7.16%) than male offenders, but there were no differences in the sentence discounts that judges gave to married and unmarried offenders or to offenders with and without children. The only other offender characteristic that affected the sentence discount was the offender's race; blacks received discounts that were 5.05% smaller than those given to whites.

Table 5. The Effect of Gender, Marital Status, and Parental Status on the Magnitude of the Discount for a Substantial Assistance Departure: Results of the OLS Regression

Offender characteristics	**B**	**Beta**	**T-value**
Female	7.16	0.14	3.70
Married	0.76	0.02	0.40
Parent of dependent children	-0.45	-0.01	0.81
Race/ethnicity (Comparison: white)			
Black	-5.05	-0.10	-2.37
Hispanic	-2.57	-0.05	-0.96
Non-citizen	-3.20	-0.05	-0.94
Age	-0.08	-0.03	-0.78
Unemployed	-3.16	-0.07	-1.93
Education (Comparison: no high school degree)			
High school degree only	-0.94	-0.02	-0.52
Some college	1.49	0.03	0.63
College degree	3.25	0.02	0.52
Case characteristics	**B**	**Beta**	**T-value**
In custody prior to trial	-7.56	0.18	4.14
Pled guilty	13.21	0.04	1.20
Using hard drugs at time of offense	-1.36	-0.03	-0.81
Jurisdiction (Comparison: Southern Iowa)			
Minnesota	15.93	0.32	7.74
Nebraska	17.21	0.39	9.46
Nagelkerke R^2 value			0.224

Notes
T-values with an absolute value equal to or greater than 1.96 indicate a statistically significant relationship at the 0.05 level of significance.

Of the case characteristics, only the presumptive sentence and the offender's pretrial status affected the sentence discount for providing substantial assistance. Offenders facing longer presumptive sentences got bigger discounts, and offenders who were in custody prior to trial received discounts that were 7.56% shorter than those given to offenders who were released prior to trial. Offenders sentenced in Minnesota and Nebraska received bigger discounts than offenders sentenced in Southern Iowa.

The results discussed thus far provide support for only one of the first three hypotheses. As predicted, female offenders were treated more leniently than male offenders at all three decision points. Contrary to our expectations, on the other hand, there were no differences in the treatment of married and unmarried offenders or in the treatment of offenders with and without children. In the section that follows, we explore the possibility that the offender's gender mediates the effect of having children.

C. The Interaction between the Offender's Gender and Parental Status

The final hypothesis tested is that responsibility for dependent children will benefit female offenders but not male offenders. We predicted that female offenders with dependent children would receive more lenient treatment than female offenders without dependent children, but that there would be no differences in the outcomes for male offenders with children and male offenders without children. To test this hypothesis, we re-ran the analyses, using a set of four dummy variables categorizing offenders as females with children, females without children, males with children, or males without children. To test for differences between female offenders with and without children, we ran the analyses with females with children as the reference category. To test for differences between male offenders with and without children, we ran the analyses with male offenders with children as the reference category. Our results are presented in Table 6.[130]

[130] We present only the results for the gender/parental status dummy variables; complete results are on file with the first author.

Table 6. The Interaction Between Gender and Parental Status: Results of the Multivariate Analyses (Abridged[a])

OLS Regression: Length of Sentence			
Offender characteristics	**B**	**Beta**	**T-value**
Comparison: female with children			
Female without children	-9.20	-0.02	-1.73
Male with children	8.22	0.05	2.98
Male without children	6.83	0.04	2.21
Comparison: male with children			
Male without children	-1.39	-0.01	-0.63
Female with children	-8.22	-0.03	-2.98
Female without children	-17.42	-0.04	-3.52
Logistic Regression Analysis: Likelihood of Substantial Assistance Departure			
Offender characteristics	**B**	**SE**	**Exp(b)**
Comparison: female with children			
Female without children	-0.61	0.30	0.54
Male with children	-0.64	0.16	0.53
Male without children	-0.63	0.18	0.53
Comparison: male with children			
Male without children	0.006	0.14	1.00
Female with children	0.64	0.16	1.89
Female without children	0.026	0.291	1.03
OLS Regression: Magnitude of Sentence Discount for Substantial Assistance			
Offender characteristics	**B**	**Beta**	**T-value**
Comparison: female with children			
Female without children	3.16	0.03	0.70
Male with children	-6.31	-0.15	-2.90
Male without children	-6.43	-0.12	-2.55
Comparison: male with children			
Male without children	-0.12	-0.00	-0.06
Female with children	6.31	0.11	2.90
Female without children	9.47	0.08	2.23

Notes

[a] We present only the results for the gender of offender/dependent children variables. Complete results are available from the authors.

▌ T-values with an absolute value equal to or greater than 1.96 indicate a statistically significant relationship at the 0.05 level of significance.

▒ If the absolute value of the logistic regression coefficient is twice the standard error, the independent variable has a statistically significant effect on the dependent variable at the 0.05 level of significance.

The results presented in Table 6 provide very limited support for our hypothesis that having dependent children would benefit female offenders but not male offenders. Although we did find, consistent with our hypothesis, that male offenders with children received similar treatment to male offenders without children, we found that female offenders with children also received similar treatment to female offenders without children for two of the three outcomes. The only findings that support our hypothesis are the findings for the likelihood of a substantial assistance departure. Females with children were significantly more likely than females without children to receive a departure for substantial assistance, but responsibility for children had no effect on the likelihood of a substantial assistance departure for male offenders. For all three dependent variables, female offenders with children received more lenient treatment than male offenders with or without children. In making decisions regarding the length of the sentence or the size of the sentence discount for providing substantial assistance, in other words, judges take the offender's gender into account but do not consider the offender's marital or parental status. The decision regarding whether to give the offender a departure for substantial assistance, on the other hand, is affected by the offender's gender and, if the offender is a woman, by her childcare responsibilities.

IV. Summary and Discussion

The purpose of this study was to determine if the Federal Sentencing Guidelines have accomplished their goal of eliminating unwarranted disparities in sentencing. We focused specifically on gender disparities in sentencing and asked whether sentencing outcomes for male and female offenders would be affected by whether or not they were "familied" through marriage and children.[131]

Like previous researchers on sentencing in state and federal courts, we found that female offenders were treated more leniently than male offenders. In these three U.S. District Courts, female offenders received sentences that were approximately ten months shorter than the sentences imposed on similarly situated male offenders. Females also were significantly more likely than males to receive a downward departure for providing substantial assistance, and those who did received bigger sentence discounts than their male counterparts.

The fact that we found consistently more lenient treatment of female offenders, even after we controlled for the presumptive sentence, the offender's

[131] *See* Daly 1987, *supra* note 32, at 267-90.

marital status, and whether the offender had dependent children, suggests that findings of gender disparity in sentencing are not a product of inadequate controls for relevant variables or the use of outdated data sets.[132] The large and statistically significant differences in sentence length, the likelihood of a downward departure for providing substantial assistance, and the sentence discount for a substantial assistance departure that we observed in the bivariate analysis did not disappear when we controlled for the presumptive sentence. The effect of the offender's gender was clearly overshadowed by the effect of the presumptive sentence. Nevertheless, the offender's gender did influence each of the sentence outcomes examined despite the fact it is a legally forbidden basis for judicial and prosecutorial decisions.

On the other hand, our hypotheses regarding the effects of the offender's marital status and responsibility for dependent children were not confirmed. Neither of these offender characteristics affected any of the three sentence outcomes. Our hypothesis that married offenders would be treated more leniently than unmarried offenders was derived from Daly's argument that "familied" offenders have less need for the formal social control administered by the criminal justice system.[133] Our expectation that offenders with dependent children would be treated more leniently than those without children reflected Daly's and Steffensmeier et al.'s contentions regarding the practical costs of incarcerating offenders with children.[134] Our results provide no support for either of these arguments.

Our findings also provide very limited support for the hypothesis that female offenders with children would be treated more leniently than female offenders without children, but that male offenders with children would not be treated differently than male offenders without children. Although we did find that there were no differences in the treatment of male offenders with and without children, we also found that there were no differences in the treatment of female offenders with and without children for two of the three dependent variables. Females with children received the same sentence, and the same sentence discount for a departure for substantial assistance, as females without children. The only finding consistent with our hypothesis was that females with children were significantly more likely than females without children to receive a departure for substantial assistance. This suggests that the effect of the offender's gender on the likelihood of a substantial assistance departure is

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[132] *See* Steffensmeier, *supra* note 30, at 412.

[133] Daly 1987, *supra* note 32, at 273-74.

[134] Daly 1987, *supra* note 32, at 277-82; Steffensmeier, *supra* note 30, at 435; Steffensmeier, *supra* note 51, at 767.

conditioned by the offender's childcare responsibilities. Prosecutors and judges seem to use the highly discretionary substantial assistance departure to mitigate the sentences of female offenders only when the practical costs of incarcerating them are high.

We were somewhat surprised to find that female offenders were more likely than male offenders to receive a downward departure for providing substantial assistance and that female offenders who did receive this type of departure received a larger sentence discount than male offenders. All of the offenders included in this study were convicted of drug offenses, meaning that substantial assistance departures would have been given primarily to offenders who could provide information leading to the arrest and prosecution of other members of their drug distribution network. It seems unlikely that women would be more likely than men to have this type of information or that women would be more likely than men to be willing to trade the information they did have for a lighter sentence. Prosecutors may have used the motion for substantial assistance to mitigate the sentences of sympathetic offenders, regardless of whether they had information they were willing to trade; if female drug offenders garnered more sympathy than male drug offenders, they would be more likely to receive substantial assistance departures. Alternatively, it is possible that female drug offenders were arrested and prosecuted in federal court with the expectation that they would provide information on the drug-dealing activities of their boyfriends or husbands. Future research, including qualitative research on prosecutor's motivations for filing motions for downward departures for substantial assistance, should address this issue.

Several other findings merit comment. We found that, consistent with the goals of the Sentencing Reform Act of 1984,[135] the presumptive guideline sentence was the strongest predictor of the actual sentence imposed and that the legally proscribed offender characteristics, with the exception of the offender's gender, had no effect on the length of the sentence imposed by the judge. This suggests that the Guidelines have constrained judges' discretion and, in doing so, have ensured that sentence lengths generally are uniform and consistent. We also found, however, that the likelihood of a substantial assistance departure was affected by several legally proscribed offender characteristics: gender, race, age, education, and citizenship status. These findings, coupled with the fact that receiving a substantial assistance departure resulted in a significantly shorter sentence, suggest that offender characteristics continue to indirectly affect sentences imposed under the Guidelines. As numerous commentators have

[135] *See* U.S. SENTENCING GUIDELINES MANUAL, *supra* note 5, ch. 1, pt. A.3.

pointed out, downward departures -- and especially downward departures for providing substantial assistance -- have reintroduced the unwarranted disparity that the Guidelines were designed to eliminate.[136]

V. Conclusion

The results of this study contradict assertions that "differential treatment of women in sentencing . . . is a thing of the past"[137] and call into question claims that "previous findings on the effect of gender on sentencing decisions are time bounded" or are artifacts of inadequate controls for legally relevant variables.[138] We examined recent data on offenders sentenced under the Federal Sentencing Guidelines, and we controlled for the presumptive sentence, other legally relevant variables, and offender characteristics in addition to the offender's gender. We also controlled for two variables -- the offender's marital status and childcare responsibilities -- that Daly[139] and Daly and Bordt[140] claim condition or mediate the effect of gender on sentence outcomes. The fact that we found a consistent pattern of preferential treatment of female offenders, coupled with the fact that neither the offender's marital status nor childcare responsibilities affected any of the three indicators of sentence severity, suggests that federal court judges evaluate female offenders differently than male offenders, irrespective of their family situations or childcare responsibilities. Future research should attempt to identify the factors that motivate judges and prosecutors to treat female offenders more leniently than male offenders. Future research also should attempt to determine if the patterns uncovered here vary depending upon the race or ethnicity of the offender.

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[136] *See* Mustard, *supra* note 29, at 308-12; STITH & CABRANES, *supra* note 10, at 116-21.
[137] CHESNEY-LIND, *supra* note 120, at 163.
[138] Steffensmeier, *supra* note 30, at 436.
[139] Daly 1987, *supra*, note 32, at 267-69; Daly 1989a, *supra* note 32, at 38-39; Daly 1989b, *supra* note 32, at 11-12; DALY 1994, *supra* note 32, at 234-35.
[140] Daly & Bordt, *supra* note 28, at 141.