GENDER AND SOCIAL CONTROL: EXAMINING THE FEDERAL JUSTICE PROCESS FOR WOMEN OFFENDERS

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by

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ABSTRACT OF DISSERTATION

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Abstract

With the “war on drugs” and increased attention on immigration crime, more women defendants have entered the federal criminal justice system. However, women continue to comprise a small proportion of federal criminal justice defendants overall and remain an often-understudied population. The current work explores the unique and at times overlooked condition of federal justice outcomes for women.

In 2005, the Supreme Court decision of the *United States vs. Booker* declared mandatory federal sentencing guidelines unconstitutional, rendering guidelines as advisory only. As a result, judges were afforded greater discretion in sentencing practices. Increased judicial discretion and contemporary prosecutorial focus on drug and immigration offenses resulted in the potential for increased disparity in justice outcomes. The current study examines the nature of disparity in this post-*Booker* context, uniquely exploring outcomes at the pre-sentencing, sentencing, and commitment phases of the process. The overall goal is to present a clearer understanding of justice outcomes for women defendants in the contemporary federal justice system, utilizing feminist theory to explicate differences in justice process decisions.

This study utilizes hierarchical modeling techniques to explore justice outcomes for women, allowing for examination of differences across federal court districts. Cross-level interactive models explore the impact of sex representation in the justice workforce on outcomes for defendants generally, and women defendants specifically. Partitioned analyses allow for comparisons by sex and examination of theoretically relevant factors that condition outcomes for women. Findings suggest continued leniency for women in justice outcomes; however, leniency
is not complete and is conditioned by other characteristics including legal factors, parental status, a defendant’s race, and ties to social control. Not all women experience leniency in an equivalent manner. Additionally, assumptions of blameworthiness appear to be independent of decision-maker characteristics; sex representation of judges and prosecutors has little impact on leniency. Findings suggest a need for ongoing contemporary analysis of federal justice process for women. Assumptions of dangerousness and guilt are gendered and judgments are more complex than distinctions of women versus men. Outcomes suggest the need to explore the process holistically; much is missed in viewing factors in isolation. Theoretical explanations for outcomes are posited.
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Chapter 1 Introduction and Literature Review

The current research presents three primary goals. First, whereas the majority of sentencing studies explore sentencing within the context of state-level sentencing decisions, the current work explores justice decisions at the federal level, allowing for an examination of sentencing across the nation as a whole. Second, the current work explores the federal justice system at multiple decision points, beyond decisions of whether or not a defendant goes to prison or for how long a defendant is sentenced. Finally, this work presents a contemporary focus in its exploration of the gendered nature of justice decisions. In general, questions examined represent a current test of whether sex disparities exist in the modern federal criminal justice system. Additionally, analyses explore the interaction of sex with other key conditioning variables in order to explore how the justice process is influenced by the social construction of gender roles.

As the federal criminal justice system has expanded its authority over the last two decades, the number of women defendants imprisoned has skyrocketed. From 1984 to 2004, the rate of women held in federal custody increased 509 percent, as compared to 421 percent for men. The average yearly increase in federal imprisonment was 9.9 percent for women and 8.6 percent for men. In state institutions, the average yearly incarceration rate increase for the same period was 8.5 percent for women inmates and 5.7 percent for men (Hill & Harrison, 2005a, 2005b).

Slowing growth rates for state incarceration more recently overshadow a continued increase in federal imprisonment. In 2009, the number of prisoners in state jurisdiction was lower than the previous year for the first time since the year 1977 and, there has been a general decline
in annual growth rates for imprisonment since 2006. However, this decrease in incarceration has not been mirrored at the federal level. During 2009, the state imprisonment rate decreased by 0.2 percent, while the federal imprisonment rate increased by 3.4 percent. For women specifically, the average annual rate of change in federal imprisonment between 2000 and 2009 was 3.3 percent, while for women in the state system it was 2.5 percent. The percent change federally for women from 2008 to 2009 specifically was 2.7 percent, while for state defendants it was -1.5 percent (Ulmer, Light, & Kramer, 2011b; West, Sabol, & Greenman, 2010).

As the federal criminal justice system has expanded its authority over drug, firearm and immigration crimes, increasing numbers of women defendants have been brought into the system. However, women still comprise a small proportion of people within the federal justice system, and frequently, little attention is given to their experiences. Since the mid-1990s and early 2000’s, significant changes in the incarceration of women have resulted in a shift to mass incarceration and focus on incapacitation and punishment over rehabilitation and reform. This is particularly true in relation to the post-war-on-drug environment and increased focus on immigration issues.

Changes to federal sentencing guidelines have left many questions as to the potential impacts on justice outcomes. The United States Supreme Court decision United States v. Booker ("United States v. Booker," 2005) in 2005 rendered federal sentencing guidelines advisory, where they had previously been mandatory. Since the decision, social scientists and legal scholars have been closely following potential post-Booker changes in judicial outcomes; however, to date there has been no specific examination of the post-Booker impact for women defendants in the federal justice system. Despite the sustained increase in federal imprisonment,
and fundamental changes to federal sentencing dictates, little research specifically targets women as they are involved in the contemporary federal justice process. Due to dramatic increases in imprisonment, it becomes imperative to understand the nature of women’s involvement in the federal criminal justice system. The current work provides an opportunity to understand the potentially unique gendered system of justice operating within the federal justice system by exploring the nature of the justice outcomes for women federally.

While women remain an understudied population, historical analysis of women’s involvement in the justice system suggests that agents of social control may not treat women and men equally in the execution of justice. The treatment of women historically has been less just, characterized by exposure to harsher conditions, less access to resources, and less protection of self and rights. An important, yet still relatively unknown, factor in assessing the adequacy of federal criminal justice system responses to women offenders lies in understanding women’s direct and unique experience of justice across various stages of the system. While some researchers have examined the experiences of women within state-level justice systems, far less is known about federal institutions. In analyzing data at multiple decision points of the federal criminal justice process, this study explores the way in which federal criminal justice decisions enforce sex role stereotypes.

During the last few decades of the 20th century, gendered analyses of justice grew, exposing sex disparities in treatment at individual stages of the criminal justice process, from arrest and charging to sentencing and imprisonment (see Daly, 1995; Nagel & Hagan, 1983; Steffensmeier, Kramer, & Streifel, 1993), and examining aggregate institutional trends (see Chesney-Lind, 1991; Rafter, 1989, 1990). However, research specifically analyzing women’s
experiences in the federal criminal justice process has become less common in recent years. In general, sentencing literature suggests disparities by sex in justice decisions (see Farrell, 2004; Johnson, 2003, 2005, 2006), but further research specifically examining the treatment of women as defendants in the criminal justice process is necessary. Research examining women’s experiences in the criminal justice system indicates that women receive differential treatment by agents of social control, a disparity that Rafter (1990) labels “partial justice.” Ultimately, criminal justice administrators approach women with greater leniency; however, such leniency generally does not translate to improved treatment. For example, women may experience far less access to institutional privileges including recreation, fresh air, programming, vocational training, protection, visitation, and staff contact.

In examining the objectives cited at the introduction of this chapter, the current work addresses basic questions including the following, as specifically targeting the post-Booker judicial context:

1. What are the characteristics of women involved in the various phases of the federal criminal justice system and how do they compare to men involved in the same processes?

2. Do disparities continue to exist in justice decisions for women defendants in a contemporary post-Booker context?

3. What explains disparities in the treatment of women at various phases of the federal justice process?
The overall goal is to present a clearer understanding of the experience of women defendants in the contemporary federal justice system, utilizing prior theory to explicate differences in justice process decisions.

In exploring a contemporary analysis of the justice process for women defendants, it becomes important to make the distinction between sex and gender. Simply put, sex constitutes the biological distinction of women versus men while gender incorporates social and cultural aspects speaking to the role of socially constructed norms. Gender represents a complex interaction of factors beyond the basic distinction of man versus woman. According to Belknap, “Most differences between men and women are gender differences, which are determined by society; they are not biologically determined” (Belknap, 2001, p 8). She goes on to state, “Because society creates these inequalities, society must also be the solution to restructuring images and opportunities of women and men (and girls and boys) in order to achieve equality” (Belknap, 2001, p 8).

I would suggest that the criminal justice system as an institution plays a role in constructing gender and ultimately should play a role in addressing inequalities resulting from gendered constructions. It is also important to note that the criminal justice system often views gender distinctions in a dichotomous fashion more closely resembling sex. Most research simply includes sex as a control variable and does little to delve into the complexities of gender. In criminology, the majority of data sets and data analyses are limited to distinctions of sex. While primary analyses in the current study were limited to distinctions of sex based on available data, interactive impacts are explored in order to begin the process of targeting the gendered nature of justice outcomes. The differential treatment of women, I would suggest and as is supported by
prior research, is far more complex than biological distinctions and is instead rooted in social constructions and gender role determinations.

The Contemporary Federal Justice Context

The data analyzed in the current study were specifically selected to in order to provide a more contemporary analysis of sentencing patterns and trends and to address the implications of changes in sentencing guidelines. Analyses specifically track defendants processed in the federal justice system during the period from 2006 through 2009. Some researchers have begun to explore the influence of changes to sentencing guidelines and the implications within the contemporary sentencing context; however to date, little research has specifically examined the effect of changes to federal sentencing guidelines as related to justice decisions for women beyond utilizing sex as a control variable. The current study explores the impact of the contemporary federal justice system on women at multiple justice decision points. Potential disparate treatment is examined in the processing, sentencing and commitment of women at the federal level. This section presents and explores the history of federal sentencing and recent changes to federal sentencing guidelines.

Federal Sentencing Guidelines

In 1984, the Sentencing Reform Act was passed as part of the Comprehensive Crime Control Act, creating legislation leading to the establishment of federal sentencing guidelines in an attempt to improve consistency in federal sentencing. The act additionally abolished federal

1 The specific time period represented in the current analyses is that of the federal fiscal years 2006 through 2009. This period encompasses justice decisions occurring between October 2005 and September 2009.
parole and set the provisions for the creation of the United States Sentencing Commission, an independent body of the judicial branch charged with the promulgation of sentencing guidelines. The creation of these guidelines eliminated indeterminate sentencing within the federal government. The guidelines created were presumptive, setting a range of penalties for an offense based on the seriousness of the offense committed and the defendant’s criminal history. Judges were bound by sentencing guidelines with the exception of cases in which specifically delineated departures were granted. Guidelines were subject to congressional directives and mandatory minimum penalties (www.ussc.gov, see alsoSeghetti & Smith, 2007).

With the establishment of guidelines, judges’ discretion in sentencing at the federal level was significantly constrained. Judges were forced to sentence within guideline dictates and any departures had to be justified under specific departure mechanisms delineated by the guidelines. However, research examining sentencing during the period of mandatory federal sentencing guidelines shows that disparate treatment in sentencing outcomes beyond those controlled for legal and case characteristics was present despite the proscriptive nature of guidelines. Despite structured sentencing, defendant characteristics including sex and race did significantly affect sentencing outcomes.

The discretion allowed federal judges was further constrained with the passing of the Feeney Amendment to the PROTECT\(^2\) Act in 2003. The Feeney Amendment changed sentencing guidelines substantially. The amendment restricted the authority of district court judges to depart from sentencing guidelines, specifically in cases of sexual abuse and child

pornography. Despite significant opposition on multiple legal fronts, the Amendment was enacted and subsequently limited judicial discretion and resulted in fewer guideline departures. The amendment reduced the authority of courts to depart from guidelines in child abduction and abuse cases, as related to the fundamental focus of the PROTECT Act itself. However, the amendment made a variety of additional stipulations affecting sentencing generally, including direction to the Sentencing Committee to drastically reduce downward departures in all cases. The outcome additionally allowed for greater prosecutorial control and an increase in plea bargains. Outcomes included few trials and higher sentences (Bibas, 2004; Department of Justice, 2003; "PROTECT Act," 2003). The amendment put significant restraints on federal judges and reduced the judiciary’s capacity for discretion. Ultimately, the Feeney Amendment ushered in an era of drastically restricted sentencing.

**United States v. Booker and Federal Sentencing Guidelines**

In 2005, the United States Supreme Court case of *United States v. Booker* ("United States v. Booker," 2005) restored discretion to judges in the federal court system. *Booker* raised the question as to whether imposition of enhanced sentences under United States sentencing guidelines constituted a violation of the Sixth Amendment. This question was addressed in the combined Supreme Court decision consolidating the cases of *United States v. Booker* and *United States v. Fanfan*. In *United States v. Booker*, a federal district court judge enhanced a sentence based on judicially determined facts not heard by a jury. In *United States v. Fanfan*, the defendant could have received an enhanced sentence; however, the district judge opted not to

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enhance based on prior case law. Both cases addressed the question of whether enhanced sentences under guidelines based on judicial determination violate Sixth Amendment rights and question the constitutionality of sentencing guidelines. Precedence for this examination is rooted in the cases of *Apprendi* and *Blakely*. *Apprendi v. New Jersey* ("Apprendi v. New Jersey," 2000) decided that any fact, other than a prior conviction, that increased a sentence beyond statutory minimum must be submitted to a jury. *Blakely v. Washington* ("Blakley v. Washington," 2004) found that under mandatory state sentencing guidelines, the Sixth Amendment prohibits judges from enhancing sentences on facts other than those decided in the presence of a jury or as admitted by the defendant. This decision on the Sixth Amendment violation of judicial discretion under mandatory guidelines would later shape the decision of the constitutionality of federal sentencing guidelines ("Apprendi v. New Jersey," 2000; "Blakley v. Washington," 2004; Seghetti & Smith, 2007; "United States v. Booker," 2005).

*United States v. Booker* decided that a judge cannot use evidence beyond that which is presented by the jury to enhance a sentence. The Supreme Court found that the rulings of *Apprendi* and *Blakely* did apply to federal sentencing guidelines and mandatory guidelines constituted a violation of a defendant’s Sixth Amendments rights. In *Booker*, the Supreme Court rendered federal sentencing guidelines to be advisory only. Judges’ discretion was significantly enhanced based on the fact that judges were not required to follow sentencing guidelines, but instead were to utilize guidelines as an advisement to their sentencing decisions. Under *Booker*, district courts are not bound by guidelines but must consult guidelines when sentencing. A sentence outside of the guideline range may be reversed under appeal if it does not meet a standard of reasonableness ("Apprendi v. New Jersey," 2000; "Blakley v. Washington," 2004;

**Additional Cases Influencing Guidelines**

Subsequent case decisions further clarified changes to the federal sentencing guidelines. *Rita v. United States* ("Rita V. United States," 2007) clarified appellate guidelines for addressing *Booker*’s concerns of guideline constitutionality. In *Rita* it was ruled that sentencing within the guideline range could be presumed reasonable; however, appellate courts were not required to assume the reasonable of guidelines. The discretion of judges was affirmed; however, the Court clarified the importance of judges providing reasons for sentencing decisions as suggested in *Booker*. Under such a model, judges could sentence above or below sentencing guideline recommendation by departure or by applying §3553(a) reasoning. More specifically, 18 U.S.C. §3553(a) delineates factors to be considered in imposing a sentence (as detailed in the footnote below)⁴ (18 U.S.C. §3553(a), also see Heckman, 2008; Seghetti & Smith, 2007). Also in 2007,

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⁴ Factors To Be Considered in Imposing a Sentence. The court shall impose a sentence sufficient, but not greater than necessary. The court, in determining the particular sentence to be imposed, shall consider:

1. the nature and circumstances of the offense and the history and characteristics of the defendant;
2. the need for the sentence imposed:
   - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
   - (B) to afford adequate deterrence to criminal conduct;
   - (C) to protect the public from further crimes of the defendant; and
   - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
3. the kinds of sentences available;
4. the kinds of sentence and the sentencing range established for—
   - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
     - (i) issued by the Sentencing Commission pursuant to section 994 (a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994 (p) of title 28); and
the *United States v. Gall* (*Gall v. United States,* 2007) decision of the Supreme Court clarified that a sentence falling outside of the dictates of sentencing guidelines cannot be assumed to be unreasonable. Again, guideline dictates were not automatically deemed reasonable. In fact, clarification by the Court supported the importance of individual, case-by-case assessment.

Further, in the case of *Kimbrough v. United States* (*Kimborough v. United States,* 2007), the Court clarified that guideline dictates could in fact be unreasonable, such as in the example of the disparity in the penalties for crack versus powder cocaine (*Gall v. United States,* 2007; Heckman, 2008; "Kimborough v. United States," 2007; United States Sentencing Commission, 2009).

Court decisions in the wake of *Booker* directed district court judges to calculate the guideline range, consider departures motions including substantial assistance, and consider § 3553 (a) factors in determining whether or not a sentence outside of the guideline range would be appropriate. Supreme Court decisions clarifying federal sentencing guidelines, along with the original *Booker* decision, increased the discretion of federal district judge and pointed to the importance of § 3553(a) factors in justifying sentencing decisions. In determining not to follow

(ii) that, except as provided in section 3742 (g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994 (a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994 (p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994 (a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994 (p) of title 28); and

(B) that, except as provided in section 3742 (g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense. (18 U.S.C. §3553(a))

The time period for the current study was specifically chosen to explore the impact of changes to federal sentencing guidelines on the sentencing of women defendants. As mentioned before, little research specifically examines the gender impact of post-*Booker* sentencing. With the increased discretion afforded federal judges comes the potential for a noticeable impact on the observance of justice outcome disparities, and there is no reason to suspect that that increased discretion would not also impact the leniency afforded to women defendants. The primary dataset for the current study is comprised of those federal cases processed in the fiscal years 2006 to 2009, a period after the *Booker* decision was in effect and federal sentencing guidelines became advisory. A comparative analysis is conducted for sentencing outcomes exploring potential differences between initial and later post-*Booker* outcomes, addressing the impact of clarification provided in *Rita* and *Gall*. All analyses explicate the impact of federal criminal justice outcomes in a contemporary post-*Booker* context. The next section presents a brief overview of what is known to date regarding the disparate treatment of women across the justice process.
Differential Treatment of Women in Criminal Justice Institutions

Most research examining gender and social control is limited to a single stage or specific decision within the criminal justice process. However, justice decisions do not function in isolation and as such there lies value in the examination of outcomes at a variety of decision points in the justice process. As Eisenstein and Jacob pointed out in 1977, “The defendant does not encounter single persons or agencies as his case is processed; rather he confronts an organized network of relationships, in which each person who acts on his case is reacting to or anticipating the actions of others” (Eisenstein & Jacob, 1977, p. 10). Sentences and criminal outcomes are the result of interactions at all stages of the criminal justice process and among various criminal justice actors. Norms are developed and followed in the criminal justice process, and procedures and structures of the system can lead to cumulative bias (Eisenstein & Jacob, 1977; Jacob, 1972). Prior research has demonstrated that women are not treated equivalently or even equitably within the justice context. Prior to the current investigation of whether this is true in a contemporary context, it becomes important to review prior research exploring the nature of disparate treatment.

Pre-trial

The research on sex and charging is mixed. Spohn et al. (1987) found that females were significantly more likely than males to have charges against them rejected. If charges were filed, females were more likely to have charges against them dismissed prior to trial. Albonetti (1992) suggested that sex did not produce significant effects on the decision to reduce charges at the initial screening stage. Albonetti (1998) subsequently found that the effect of pleading guilty
had no significant impact for women, while men who plead guilty experienced decreased sentence outcomes. Nagel and Hagan (1983) suggested that the role of sex in decision to prosecute could not be accurately assessed due to weak research controls including lack of measures examining strength of evidence. The authors hypothesized that sex would not have a significant effect on outcomes at the decision-to-prosecute phase. This hypothesis was drawn from the fact that the best research the authors were able to observe did indicate that sex had no significant effect. Nagel and Hagan (1983) observed that there were too few quantitative studies to draw solid conclusions about plea agreements; however, they determined that sex does not appear to make a systematic difference. Based on research findings at other stages, the authors suggested that differences, where present, would most likely be more pronounced in misdemeanor and nonviolent property offenses. A study by Brennan (2009) specifically examined charging decisions among women, found that black women were more likely to receive charge reductions as compared to white women, but were ultimately more likely to be sent to prison. However, results were inconclusive and certainly more specific and methodologically sound examinations are necessary, exploring potential differences between sexes as well as among women.

Leniency appears to be present in the decision to release women to the community prior to trial. In their examination of research on sex and case processing decisions, Nagel and Hagan (1983) found many studies of pre-trial release to have implemented poor measurement and weak control. In general, however, they suggested that the research prior to their review demonstrated a connection between sex and decision to release or implement bail, but no sex effect on the amount of money requested for bail. In general, research has suggested that women
are more likely to be released from custody prior to trial; however, controls for sex-related disparities reduce this advantage (Kruttschnitt, 1984; Maxwell Sheila & Davis, 1999). Ball and Bostaph (2009) found women to be more likely to receive non-financial pretrial release, or release on one’s own recognizance. Women were more likely to be released on bail in general and were negatively impacted by having a prior criminal history to a greater extent than were men. Here one can see potential support for leniency toward women based on the enforcement of gendered social roles. For example, leniency may be afforded to women in the form of community release in order to allow women the capacity to return to childcare and other responsibilities. Further, as in the study conducted by Ball and Bostaph, there appears to be evidence for a more complex theoretical explanation. Perhaps women are afforded leniency because of social norms (patriarchy/chivalry), or more specifically, norms of gendered roles (such as the influence of women’s caretaker responsibility). However, when women have a history of engaging in criminal behavior, it may be evidence of violation of gendered roles and stereotypes and thus constitute behavior that is more harshly punished. This disproportional harshness based on violation of gender norms is depicted in the theoretical posits of the “evil woman hypothesis,” which will be discussed in the next chapter.

**Sentencing**

Sex disparate treatment is also evident in the sentencing of offenders. The majority of disparity analyses to date have focused on the sentencing phase of the justice process. As result, more data are available depicting gendered outcomes in sentencing decisions. For some states and at the federal level, sentencing guidelines have been established for the purposes of eliminating disparity and increasing fairness in criminal sentencing; however, criminal justice
actors retain some discretion in the determination of punishment. At the federal level, the Sentencing Reform Act of 1984 set specific guidelines for sentencing. As a result, only legally relevant variables should play a role in the determination of the enactment of sentences. In 2005, as was discussed earlier in this chapter, federal judicial discretion was increased when guidelines were deemed advisory, as will be discussed in further detail in a subsequent section.

Research since the enactment of guidelines posits a variety of extra-legal variables, including both race and sex, as having influence throughout the sentencing process, from decision to prosecute through sentencing. Even when legal factors such as crime type, criminal history, and guideline recommendations are controlled, female defendants are more likely to obtain departures downward from the dictates of sentencing guidelines, thus receiving more lenient sentences than male counterparts (Albonetti, 1998; Farrell, 2004; Johnson, 2003, 2005; Kramer & Ulmer, 1996; Spohn & Fornango, 2009). Similar disparities based on sex in sentencing are found in the examination of whether or not a prison sentence is imposed as well as in severity of sentencing. Women defendants are less likely to be incarcerated than male defendants (Albonetti, 1998; Farrell, Ward, & Rousseau, 2010; Johnson, 2006; Steffensmeier et al., 1993{Farrell, 2009 #203; Ward, Farrell, & Rousseau, 2009) and the length of sentences imposed for female defendants is less severe (Albonetti, 1997; 1998Farrell, 2009 #203; Farrell et al., 2010; Sessions et al., 2010; Ulmer, Light, & Kramer, 2011a; Ulmer et al., 2011b; Ward et al., 2009).

In the contemporary sentencing context, as discussed in the introduction, rates of incarceration have significantly increased, and disproportionally so for women. Policy changes and enforcement practices including the “War on Drugs” have led to an increase in women’s
imprisonment and even more so for black women. Sex differences in the capacity to provide the most valuable information in informant deals may account, at least partially, for disproportionate increases in incarceration rates and the increasing incarceration of women federally. Minimum mandatory sentences decrease judicial discretion for individual factors. Generally, women have different pathways into drug offending and may be less likely to trade drug trafficking information to enhance their position (Radosh, 2008).

Women appear to continue to experience leniency in sentencing decisions despite disproportional growth in imprisonment. Sentencing practices potentially suggest contemporary evidence of justice institutions are enforcing social role stereotypes. Sentencing research suggests the validity of chivalry and paternalism as potential explanatory mechanisms for justice decisions and the disparate treatment of women. Franklin and Fearn (2008) found decreased severity in the sentencing for women, suggesting more lenient and perhaps protective treatment of women defendants. In examining offender and victim dyads, male offenders targeting women victims experienced the most severe sanctions, suggesting evidence that the justice system may make decisions in a manner that is conducive to the protection of women generally.

Blackwell et al. (2008), in an examination of Pennsylvania sentencing, found consistent leniency toward women across various enactments of sentencing guidelines, including a period in which guidelines were suspended. Here, women were less likely to be sentenced to prison and when sentenced received shorter terms of imprisonment. Leniency did not increase when judicial discretion was increased with the suspension of guidelines, as one might expect. It becomes important to note that not all research definitively suggests leniency toward women at all stages of the legal decision-making process. While Steffensmeier et al. (1993) found that sex
had a small to moderate effect on whether a defendant received a prison sentence, sex had no effect on the length of the sentence imposed.

In examining potential disparities in criminal justice process decisions, analyses need to look beyond simple sex/gender differences to examine the interactive complexities influencing the implementation of social control and the enforcement of gendered social roles on women. Research can explicate the nature of the justice system’s judgments of dangerousness and culpability by examining the nature of sentencing across gender as moderated by other defendant characteristics. These contemporary examinations of sentencing decisions will elucidate the presence, or lack thereof, of the institutional enforcement of gendered roles through the potential chivalric and paternalistic treatment of women involved in the justice system. The current work does so within the contemporary federal justice context, controlling for the impact of individual defendant as well as court contextual factors on justice outcomes.

Leniency is not as clear-cut as women simply being treated more leniently; instead, the effects of other defendant characteristics, such as the interactions of sex with class and race, must be taken into account. Kruttschnitt (1980-1981) found that the likelihood of receiving a harsh sentence increased if a woman was economically disadvantaged and if a woman had been subject to prior legal control. Research by Bickle and Peterson (1991) discovered unique effects for women based on race where marital status and provision of emotional supports for dependents differentially affected leniency for women. In qualitative analysis of courtroom workers, Daly (1987, 1989a, 1989b) found that the degree of leniency toward women changed according to whether or not the defendant had dependent children. Further, there is evidence that leniency is experienced disproportionately by race, with non-white women experiencing less leniency than
white women in sentencing outcomes. For example, Brennan (2009) found that black women were more likely than white women to be sentenced to prison. Additionally, in a study by Crow and Kunselman (2009) of drug offenders in Florida, minority women were disadvantaged at both the incarceration and sentence-length decisions. In research specifically explicating post-

*Booker* sentencing trends, the United States Sentencing Commission (2010) found continued leniency in the lengths of sentences imposed for women of all races as compared to white men. This was true for all time periods examined. However, there were significant differences between women of different races, with black women and women of other races experiencing greater leniency in sentence severity as compared to white and Hispanic women.

It is important to examine the impact of place on justice decisions in the contemporary post-

*Booker* era. Attention must be taken to control for the influence of context. It makes sense that where sentencing occurs would matter and that differences would occur in sentencing as decisions are made in different districts. Exploring differences in sentencing as it occurs between districts and circuits takes into account the influence of local context, where decisions within a district would seemingly be more similar than decisions in a different part of the country. Further, controlling for district addresses potential differences in interpretation of laws. As district and appellate judges attempt to make sense of outcomes and meanings of post-

*Booker* discretion, legal interpretations and sentencing outcomes can and will differ significantly between the eleven federal circuits.

While most contextual analyses of sentencing occurred before *Booker* changes to federal guidelines, researchers have begun to examine more current analyses of contextual variation in sentencing. While studies generally have not specifically targeted the unique
experiences of women within federal sentencing, sex is commonly included in sentencing analyses as a control variable and thus sex differences in outcomes can be examined. In a study by Ulmer et al. (2011a), leniency in sentencing for women defendants continues to be present in the current post-Booker context controlling for sentencing within federal court districts; however, it appears that this disparity in the sentencing of women may be decreasing over time instead of increasing with increased judicial discretion. According to the authors’ findings, disparities in the influence of extra-legal factors including defendant characteristics such as sex have not increased post-Booker and subsequent decisions. However, the number of post-Booker hierarchical sentencing analyses remains limited and more studies are necessary to support initial findings. A more in-depth understanding of the influence of guideline changes on justice decisions for women necessitates an examination of the justice process for women defendants beyond inclusion as a control variable. The current study goes beyond this basic inclusion of sex to target specifically the experience of justice decisions for women. The current study not only focuses on women, but also explores the conditioning effects of other important variables on sex. While legal experts and scholars are beginning to explicate the effects of changes to sentencing guidelines, outcomes remain preliminary and little attention is specifically focused on the impact for women who become part of the criminal justice system.

**Correctional placement**

The institutional control of women through federal sentencing and imprisonment maintains a rich and variable history. Criminal punishment has historically been the nearly exclusive authority of the states. Few prisoners were held in the federal system and female offenders did not have their own federal institution until 1927, despite the fact that female state facilitates were developed a
century earlier. The first women’s federal institution opened its doors in Alderson, West Virginia in 1927 (Heffernan, 1992, 1994; SchWeber, 1980). Before the opening of this prison, women charged with federal crimes were housed in state facilities. The construction of Alderson was completed in 1930. It was the sole federal correctional facility until 1955, housing all females serving a sentence of more than one year for charges within federal districts as well as the District of Columbia (SchWeber, 1980). It was not until 1993 that the Bureau of Prisons developed and implemented a designation and classification system for female offenders (www.bop.gov).

Currently, 27 federal facilities house female inmates and seven of these facilities house only women (Alderson, West Virginia; Bryan, Texas; Carswell, Texas; Danbury, Connecticut; Dublin, California; Tallahassee, Florida; and Waseca, Minnesota) with the rest serving mixed populations. Of those facilities that house women, 8 are prison camps, 5 federal correctional facilities, 13 administrative facilities, and one is a secure unit within a federal penitentiary (Federal Bureau of Prisons, www.bop.gov). According to the Bureau of Prisons, within the federal prison system, women are provided with services and programs comparable to those of men, but that also meet the specific needs of women. Educational and recreation programs are available to all women and apprenticeship training programs are accredited by the Women’s Bureau of the U.S Department of Labor, Bureau of Apprenticeship and Training.

**A Roadmap for Current Analyses**

It is possible that federal criminal justice system is simply becoming more willing to incarcerate women than they have been in the past. Increases in incarceration seem to be more
related to changes in decision making (sentencing guidelines) and “get tough” policies (“war on drugs”) than actual changes in the behavioral patterns and commission of crime within the female population (Chesney-Lind, 1991). Increases may also be attributable to increased federal prosecution of specific offenses such as immigration or drug offenses. Partial justice in the treatment of women within systems of criminal justice can be viewed as paradoxical. While women in general have continued to experience leniency in prosecution and sentencing severity as compared to men, their imprisonment rates are increasing at a rate greater than that of men. A comprehensive understanding of the paradox of sex disparities and the gendered nature of the punishment of women in the criminal justice system becomes imperative. This understanding will illuminate the specific impact of increased punitiveness towards women. Ultimately, it will be interesting to see just where disparate treatment towards women stands in a contemporary federal justice setting. Of additional note will be the significance of exploring the effect that changes in federal sentencing guidelines will have on disparities in the sentencing of women defendants. It is possible that increases in the discretion given to federal court judges may lead to even greater disparity in federal sentencing decisions and the treatment of women within the federal justice process.

Prior research has consistently indicated a lack of parity in justice outcomes for women. More recent research (seeSessions et al., 2010; Ulmer et al., 2011a; Ulmer et al., 2011b) confirms continued disparity in justice decisions. However, specific focus on women within the justice process is limited and most contemporary research includes sex only as a control measure. As cited above, the current work not only examines the treatment of women at various decisions points of the justice process and specifically within the unique federal justice system,
but also does so within a contemporary justice context. This contemporary context becomes increasingly significant in an examination of the increased discretion afforded federal judges.

This work begins with a discussion of relevant theoretical explanations of the gendered roles of women and gender as it exists in and influences justice institutions. Chapter 2 will present an overview of theory. Chapter 3 will introduce specific questions to be addressed and related hypotheses. Chapter 3 will also detail the data and methodology that are utilized in the analyses conducted throughout this work. This will include presenting details of datasets as well as strategies for analysis including description of the use of hierarchical linear models to address the nature of federal justice decisions as they occur within federal court districts. Chapters 2 and 3 will lay the roadmap for the substantive chapters to follow.

Chapter 4 presents a descriptive overview and characterization of women within the federal criminal justice system within a contemporary justice context. This chapter generally explores the characteristics of women involved in the justice system at various justice decision points. Further, the chapter will address how women compare to similarly situated male defendants.

Chapter 5 examines pretrial decisions and explores early theoretical factors, specifically targeting gendered characteristics of justice decisions occurring before sentencing. This chapter will explore women’s experience of pretrial release and likelihood of going to trial, with specific attention paid as to how sex is conditioned by other important defendant-level characteristics as well as contextual district-level characteristics.
Chapter 6 specifically addresses the leniency experienced by women defendants in federal sentencing decisions. The chapter answers the question of whether, in a contemporary post-Booker sentencing context, women experience leniency in the decision to incarcerate, in the severity of sentences imposed, and in the likelihood of receiving various types of departures downward from the recommendations of federal sentencing guidelines. As with pretrial decisions, sentencing outcomes are further explored within their context of potential theoretical explanation, including defendant-level moderating effects and district-contextual factors. This chapter will examine whether sentencing decisions for women differ dependent on district of sentencing, and further, whether the “feminization” of the justice workforce or increased racial representation in the justice workforce influences how women are treated in federal sentencing decisions. Chapter 6 will conclude with a comparison of early and later contemporary post-Booker sentencing decisions. Analyses attempt to explore the impact of the Booker decision as it becomes part of the norms of justice institution. Analyses further examine the impact of subsequent decisions such as Rita and Gall.

Chapter 7 explores the experience of women in relation to classification and correctional placement. Justice decisions are explored as they relate to correctional placement and access to much needed substance abuse and mental health programming. Finally, Chapter 8 will present conclusions drawing together and making meaning out of analyses. Chapter 8 will present an overview and theoretical assessment of the experience of women within a contemporary federal justice context, providing commentary on where women stand in the post-Booker federal justice system.
Chapter 2 Theoretical Explanations for Gender Differences in Justice Decisions

Explaining the Differential Treatment of Women as Defendants

Despite decades of research on women and disparities in the criminal justice system, the theoretical explanation for differences is far from definitive. A variety of explanations have been posited, including claims of chivalry and paternalism, the evil woman hypothesis, familial paternalism, social control, considerations of legal factors and levels of blameworthiness. Court actors may be attempting to protect women in general or to protect women as caretakers of dependent children. Disparities may also be the result of an attempt to protect stereotypically labeled “good women,” or women who abide by socially imposed gender norms, and punish “bad women” who violate norms. There is some evidence for disparate treatment based on such characteristics as race, age, and class.

Sex Role Theories

Explanations for why women are treated differently in justice decisions often rely of discussions of sex role theory. Many early theoretical discussions of leniency suggest the influence of chivalry and/or paternalism. Chivalry and paternalism both imply leniency for women based on the perception that women are in need of protection. In the case of chivalry, women are theoretically put on a pedestal and treated gallantly because they are perceived to be naturally weak and in need of protection. Chivalry is characterized by an unwillingness to inflict harm upon women, in addition to disbelief surrounding the capacity for women to be criminal (Moulds, 1980). Conceptions of chivalry are seen early in criminological thought in the works of Thomas (1907), Pollak (1961), and Simon (1975) among others (see Nagel & Hagan, 1983).
Paternalism implies a power relationship, and according to Moulds (1980), has a pejorative connotation. With paternalism, women are treated in a childlike manner that assumes that the system is dealing with a defenseless individual who cannot be held responsible and who is in need of guidance. Both chivalry and paternalism imply the need for protection of those perceived as the “weaker sex”. Protection occurs in a manner that suggests women are socially and legally inferior. These early theories suggested differential treatment based on the dominant role of men in systems of social control. (for a more detailed examination of chivalry and paternalism, see Moulds, 1980; Nagel & Hagan, 1983)

More recent research lends support to the validity of theories of chivalry and paternalism in a more contemporary justice decision context. Griffin and Wooldredge (2006) found support for chivalric treatment of women in examination of sentencing in Ohio comparing pre- and post-guideline sentencing patterns. Franklin and Fearn’s (2008) analysis of victim and offender dyads further supported the theories of chivalry and paternalism in their findings that those in the justice system perceived women as more deserving of protection. In examining punishment based on characteristics of victims and offenders, the criminal justice system can be seen to punish those who fail to protect women per socially determined gender roles.

With sex-role based theoretical interpretations, being an offender and active participant in the criminal justice system is viewed as outside of the normative sex role of women. Women are perceived to be inherently are less dangerous and culpable and ultimately not really a threat. Women instead deserve protection and norms suggest the need to shield women from the justice system. However, other theories may suggest a limit to the perceived need of protection and inherent innocence of women.
The “evil woman” hypothesis shares with the explanations of chivalry and paternalism an origin in the rigid constructions of gender norms and rules. This theory suggests that more severe punishments are imposed on women when illegal behavior also contradicts norms of appropriate gender behavior. Punishment is the result of beliefs within the criminal justice system that women who commit certain offenses or perhaps are repeat offenders are “evil” and need assistance and rehabilitation to see the error of their ways. This may be the case particularly when women are perceived to commit stereotypically male offenses. Research by Boritch (1992) examining historic criminal justice dispositions in Canada between 1871 and 1920 found potential support for the validity of the “evil woman” hypothesis. In this study, women were more likely than men to receive prison sentences and when sentenced to prison received longer sentences. Albonetti (1998) also found support for the “evil woman” hypothesis in that gender can be seen to moderate sentence severity. Albonetti found that, although a direct effect of sex produces increased leniency, “the findings of gender differences in the effect of two central features of the guidelines structure, final guidelines offense level and number of criminal history points, suggests that females are more severely punished for counter-gender stereotypes centering around offense-related information and prior criminal involvement” (Albonetti, 1998, p. 35). Ball and Bostaph (2009) found that women were disproportionately impacted by having a criminal history in comparison with men. These findings suggest that women may be treated with leniency to a certain extent, but with demonstration of what could be a criminal nature via subsequent charges and convictions, women could be impacted more significantly than men. It may be that it is more difficult for society to view women as criminals because this goes against a societal norm for prescribed gender roles; however, with repeated behavior, women are labeled
criminal and punished harshly for both the criminal behavior and the violation of normative
gender behavior.

Although ultimately leading to contradictory outcomes (leniency versus more severe
punishment), theories of chivalry/paternalism and the “evil woman” hypothesis may not be
As the authors posited, “It may be that women are preferentially treated, compared to men, until
such time as the basis for that preferential treatment- chivalry or paternalism - is rendered
inappropriate. Then, by virtue of seriousness of the offense charged, the lessening of the
presumption of innocence, and the evidence of deviation from traditional female patterns of
behavior, the woman is moved into the evil women category, and preferential treatment ceases”
(Nagel & Hagan, 1983, p. 135). Here, gendered sex role expectations may both provide initial
protection and perhaps subsequent punitiveness when normative behavior is violated.

Subsequent to the examination of chivalry/paternalism hypotheses, researchers began to
theorize that differential treatment results from rationales beyond simple gender role stereotypes
regarding the protection of women. Explanations become more complex than simply the notion
of women being in need of protection solely because they are women. Simon (1975) suggested
the need to examine practical issues such as the burden placed on society by jailing women with
children. Daly (1987, 1989a, 1989b, 1995) found that courtroom actors are more specifically
concerned with familial issues and the protection of dependents of a defendant as opposed to
concerns with the protection of women as the weaker sex. Leniency directed toward women
with dependents, or familial paternalism, is multifaceted and concern is not specifically for the
women as women, but for children, since care giving to dependents is highly valued. Leniency
for females is tied to being “familied” and to the caretaking status many women hold where
“familied” women are thought to be more deserving of the court’s leniency. Steffensmeier et al.
(1993) suggested women’s childcare responsibilities and pregnancy might be significantly
influential in the decision-making of judges. These theories begin to look at the perceived
impact of women’s ties to informal social control and familial responsibilities. The role a woman
plays as a mother came to be posited as an explanation for leniency in justice decisions. Women
frequently play a primarily role in parenting dependent children, and while the children of
incarcerated men are more likely to live with the other parent, children of mothers in prison
generally do not remain with a parent (see Foster, 2011). Thus, judges may take into
consideration the impact incarceration has not only on the woman defendant, but also on the
children of the woman who may be left without a caretaker.

Social Control Theories

Gendered differences in courtroom outcomes can also be explained by theories of social
control, where explanations of disparate treatment can be attributed to the fact that, in general,
women have been exposed to greater levels of social control. In such theories women who are
more socially integrated receive leniency in justice outcomes. Leniency is still attributed to
societal distinctions of gender roles and norms. Research began to examine the influence of
women’s ties to informal social control (education, families, and economic dependency) and the
impact of formal social control for women with the suggestion that with increased connections to
informal social control, women may pose less of a risk. Perhaps women are not treated more
punitively until they have violated societal norms of sex role stereotypes related to family and
connectedness.
Some researchers have suggested that gender disparities in sentencing can be attributed to women’s social and cultural characteristics, and more specifically, indicators of respectability and social status, such as economic dependency and familial responsibilities. Because women are tied to others (informal social control), there is less of a need for formal social control because statuses of dependency would predict greater chances for future lawful behavior. According to Kruttschnitt, “The likelihood of receiving a lenient sentence increases not only if a female defendant is employed, but also if she holds an alternative ‘socially integrated’ status.” (1980-1981, p.259) Kruttschnitt specifically found that courtroom outcomes are tied to women’s social status in a manner by which women who have lower economic standing, are on the periphery of society, and have experienced prior legal control are less likely to experience judicial leniency (Kruttschnitt, 1980-1981). Kruttschnitt & Green (1984) demonstrated that differences in levels of informal social control comparing men and women parallel differences in the degree to which defendants are subjected to formal social control. Eaton (1986) found comparable results in examining social control in Great Britain. In her study of courtroom actors in a Magistrate’s Court near London, Eaton discovered that women receive more lenient outcomes based on the significance of familial social control. Further, those without family ties received less support from lawyers and other courtroom actors (Eaton, 1986). Women are impacted based on their adherence, or lack thereof, to normative gender roles. In theories of social control, respectability and dependency become important, and familial connections offer what is perceived to be a comparable control mechanism to prisons and other institutions of formal social control.
It is also possible that a combination of factors causes gender disparities. Disparate treatment may be attributable to interpretations of blameworthiness and issues of practicality. Researchers have suggested practical explanations beyond paternalism. Steffensmeier (1980) suggested functional explanations for gender distinctions in justice outcomes, including that men are inherently more dangerous and women more amenable to reform.

Practical considerations may also include legal factors. Steffensmeier et al. (1993) proposed the relevance of legal factors including that women often have nonviolent prior records or may have played a more minor role in the offense. In this explanation, women experience leniency because they commit less serious crimes and have less significant criminal histories. The authors also imply that beyond determinations of “blameworthiness,” leniency might be attributable to issues of practicality including childcare responsibilities, emotional or physical problems, or the availability of jail space. According to this perspective, observed sex differences in sentencing outcomes may result in disparities that are actually warranted or justified (Steffensmeier et al., 1993).

While a significant foundation of research examining sex disparity in sentencing now exists, no definitive theoretical explanation for disparities has been found. Even less theory shapes our understanding of the gendered nature of other phases of the criminal justice process. While quite a bit is known about sex disparity in sentencing, disparity is generally explicated at a single decision point within the criminal justice process. Disparities have been found at various stages in the criminal justice process; however, significant integration in the examination of the systemic phases has yet to be made.
Judicial Motivation

It is expected that in exploring the treatment of women defendants within a contemporary federal criminal justice environment, there will continue to be differences in the treatment of women because women are in fact distinct. Women’s paths into the justice system are unique. Historically, the treatment of women has been different from that of men, and there is little reason to suspect the contemporary context to be different. However, the gendered nature of federal justice decisions has not specifically been examined in a contemporary context to show definitively that old patterns still hold true. As more women are sentenced to time in prison within the federal criminal justice context and as more women also join the federal justice workforce, the mechanism and exact nature of the disparate treatment of women could begin to look quite different. As theory suggests, difference may be expected simply based on the differential participation of women in activities leading to sentencing and incarceration. However, evidence appears to indicate that this is not entirely the case.

Exploration of the nature of disparate treatment at the individual level will elucidate potential theoretical explanations for divergent treatment of women. Specific individual-level characteristics will help to illuminate potential judicial motivation. For example, overall leniency experienced by women, particularly in areas with greater proportions of male decision-makers, might support an explanation of chivalry or paternalism. A finding that women with children experience increased leniency as compared to women who do not have children will support a familial paternalism theory, suggesting that judges may place significant value on the parental role women defendants hold. Should women not experience leniency, or experience leniency differentially based on crime type or personal characteristics, there may be evidence to
suggest the validity of an “evil woman” hypothesis for sentencing decisions. Having a prior
criminal history may differentially impact women, with women being punished with a
disproportional severity based on violation of normative general role dictates. Variables tied to
indications of social control mechanisms will help to explicate the gendered significance of these
connections in the eyes of federal decision makers.

It is possible, and prior research has supported the suggestion, that judges make decisions
based on assumptions and characterizations of those defendants in their courtrooms. Here judges
focus on specific characteristics of defendants and utilize generalizations to make assumptions of
blameworthiness, responsibility, dangerousness, or capacity for reform. Albonetti (1991, 1997,
1998; 1996) makes such a proposition in her presentation of uncertainty avoidance and casual
attributions theory. As Albonetti suggests, “In the situation of having incomplete knowledge, the
actor attempts to reduce uncertainty by relying upon a rationality that is the product of habit and
social structure.” (Albonetti, 1991)

Accordingly, in the modern sentencing context, we could expect to see a variety of
potential outcomes in sentencing decisions. First, judges may tend to impose sentences that
continue to fall within the parameters of United States Sentencing Commission guidelines,
despite the fact that sentencing guidelines no longer dictate the decisions of judges. Here, judges
may continue to rely on sentencing guidelines as a means of uncertainty avoidance. For those
judges who have been part of the system prior to Supreme Court changes to guidelines may fall
into a predefined pattern or “habit.” There is evidence to suggest that judges who were
appointed prior to federal sentencing guidelines were less affected by potential appellate review
of decisions to depart from sentencing guidelines and more likely to depart as well as issue
shorter sentences (Fischman & Schanzenbach, 2011) It is possible that judges appointed during a period when sentencing guidelines were mandatory and most stringent may continue to sentence in a pattern more rigidly determined by guidelines, despite *Booker* and subsequent court rulings. It is possible that habits in sentencing patterns have come to pervade the culture of courtroom workgroups more generally, where reliance on prior techniques (i.e. utilization of the dictates of sentencing guidelines) continue not only to dominate decision-making for those who have long been part of the previously mandatory guidelines, but more generally define a means for uncertainty avoidance.

Judges may utilize causal attributions in decision-making even when they exercise discretion. That is, where guidelines provided some semblance of control or “certainty” in the past, it is possible that judges now increasingly attempt to manage uncertainty in decision-making by attributing characteristics such as blameworthiness, responsibility, or ability to be reformed to individual personal characteristics. Here judges look to decisions occurring earlier in the judicial process as well as individual-level defendant characteristics in order to attempt to predict blameworthiness and potential for recidivism, specifically,

Based on the work on uncertainty avoidance and causal attribution in punishment, judges would attempt to manage uncertainty in the sentencing decision by developing “patterned responses” that are themselves the product of an attribution process influenced by casual judgments. Judges would rely on stereotypes that link race, sex, and outcomes from earlier processing stages to the likelihood of future criminal activity. (Albonetti, 1991)
Accordingly, the analyses exploring the influence of defendant characteristics will help to explicate the nature of judges’ assessments of dangerousness and delineate precisely how “patterned responses” occur. Dissecting individual characteristics, specifically as they are related to gender distinctions will elucidate the nature, of judges’ individual-level assessments, further clarifying the potential presence of disparity. As Albonetti suggests, “Discrimination and disparity in sentencing decisions, the underlying focus of the legal/extra-legal debate, may be the product of judicial attempts to achieve a ‘bounded rationality’ in sentencing by relying on stereotypical images of which defendant is most likely to recidivate” (Albonetti, 1991). With the loosening of the judicial restriction created by federal sentencing guidelines, it is possible that such attempts for bounded rationality have become even more prevalent. Analyses examining defendant characteristics in the current study will specifically explore the impact of early justice decisions as well as judgments regarding individual-level variables, including defendant characteristics and level of connection to informal social control mechanisms, all of which could potentially represent the focus of causal attributions of judges.

**The Significance of Justice Workforce Representation**

Judicial discretion is also examined as it occurs within the distinct courtroom workgroups of federal districts. With the Supreme Court decision of *U.S. vs. Booker* ("United States v. Booker," 2005) and other related rulings rendering federal sentencing guidelines advisory instead of mandatory dictates, federal judicial discretion increased significantly. With increased
allowance for judicial freedom in decision making, one might expect more dramatic sentencing
distinctions than those observed during periods of mandatory guideline compliance. Inter-
district variation in sentencing patterns may become more prevalent as there is greater flexibility
for disparate outcomes based on workgroup norms in sentencing for different areas, as well as
differential interpretations and implementation of court decisions and dictates. Here,
inconsistent impacts may be noted by region, with justice outcomes varying significantly
dependent on from what district decisions originate. In this post-Booker justice environment, a
contemporary examination of the location and nature of disparity becomes important in order to
have a better understanding of the nature and context of current sentencing environments. It is
possible that changes in discretion will result in justice-decision disparity that is inconsistent
across context. Disparate treatment may look very different dependent on the district in which
justice decisions occur. Hierarchical analyses will help to explicate potential motivations of
those sentencing, as disparate treatment may noticeably vary based on characteristics of the
district. Increased discretion in the post-Booker sentencing era may result in greater regional
differences, potentially ensuing from differences in beliefs and in implementation of gender role
stereotypes influenced by regional differences but also the makeup of the courtroom workgroup.
Disparities may be evident based on characteristics of decision makers within the district in
which a woman is sentenced. Research to date has shown that characteristics of district court
communities, as well as those individuals employed as justice decision makers, influence justice
outcomes.

There is reason to believe that increased racial diversity in the justice workforce
influences justice outcomes; however, results are at times inconsistent. Most recently, justice
workforces have witnessed an increase in the number of minorities employed within the justice context as there has been a push for racial diversification of the justice workforce. For example, between 2001 and 2008, Hispanic representation in federal judges increased by 45 percent (Schiavoni, 2009). Research suggests that districts with greater representation of non-traditional or minority groups exhibit greater parity in sentencing outcomes (see Farrell, Ward, & Rousseau, 2009; Ward et al., 2009 Farrell, 2010#209). For example, black judges have been found to be more evenhanded in the decision to incarcerate black and white defendants, but not necessarily in relation to sentence severity (Welch, Combs, & Gruhl, 1988). Other research has found that an increased proportion of black judges on the bench reduces disparities between black and white defendants in sentence length, probability of jail time, and the likelihood of receiving departures from sentencing guidelines, but that increased black representation is not likely to reduce sentencing severity for black offenders who commit serious offenses. Further, an increased proportion of Hispanic judges was found to result in lower disparities between black, white and Hispanic offenders; however, the outcome may be attributable to Hispanic views of specific offenses and not individual defendant characteristics per se (Schanzenbach, 2005). Research has also specifically compared justice workforce representation as it mirrors the diversity characteristics of the specific districts represented. There is significant evidence that characteristics of the decision makers in individual court communities influence level of disparity in justice decisions, and that when justice workforce representation reflects the diversity of the district represented, the result is more equal sentencing outcomes (see Farrell et al., 2009, 2010; Ward et al., 2009)
Increased representation of non-traditional groups may also have an impact on sentencing outcomes, specifically for women defendants. It is possible that a general increase in minority representation in the justice workforce will have an impact on the sentencing of women specifically, with potential increases in liberalness and sentencing parity. Increased representation of minority groups could potentially impact the focus and priority of the judicial workforce for a particular district. Understanding differential treatment across districts can help to clarify the nature of the disparate treatment of women. (see Farrell et al., 2009; Fearn, 2005; Johnson, 2003, 2005, 2006; Johnson, Ulmer, & Kramer, 2008; Ward et al., 2009)

Theory suggests that organizations, including organizations of the criminal justice system, are not gender neutral. Joan Acker’s theory of gendered organizations suggests gender itself is inherent in organizations and attributes of gender are assumed and reproduced. While occupations may assume a disembodied universal worker, the underlying presumption in organizations such as the criminal justice system is that this worker is male. Gender orders practices, activities, and social structure. Further, law and other institutions are “historically developed by men, currently dominated by men, and symbolically interpreted from the standpoint of men in leading positions, both in the present and historically” (Acker, 1992, p. 567). Men continue to dominate institutions such as the justice system and gender is present in the processes of these institutions, including in the enactment of law (Acker, 1990, 1992, 1998; Britton, 2000). This gendered context can be seen in the enactment of the law through institutions such as the court, but also in other institutions of the justice system including prisons. Utilizing interview data, Britton (1997) detailed the masculine nature of prisons. Here, skills that were seen as uniquely male were valued more highly than those that were considered feminine.
The author also found that training assumed the experience of a male officer, and further that male workers (officers) gained status through the construction of occupational masculinity. Male officers, even working in women’s prisons, were viewed by correctional staff as more capable.

Contemporary administrations have made a specific effort to increase the representation of the federal judicial workforce. During the period between 2001 and 2008, there was a 25 percent increase in the appointment of women judges to the federal court. It is also important to note that generally the majority of increases in representative appointments to the judiciary occur within districts that already employ members from non-traditional groups, potentially explaining district distinctions in sentencing. However, by the end of the Bush administration, all federal court circuits employed at least one woman judge, and in most cases, multiple (Schiavoni, 2009).

Women judges may sentence differentially than their male counterparts, and the introduction of women into the judicial workforce may bring an increased parity in judicial decisions. Schanzenbach (2005) found greater proportions of women serving on the bench to be associated with lower sex disparity in sentencing for serious offenders, with the greater proportion of women corresponding to a lower disparity in sentencing outcomes. It is suggested that greater gender equality in treatment with greater proportions of women judges may be the result of the experience of paternalistic bias for women defendants in districts with more male judges. However, not all research supports the assumption of increased equality with more women in the judicial workforce. Steffensmeier and Hebert (1999) found women’s sentencing outcomes to be harsher, particularly in relation to repeat black offenders. Additionally, they
reinforce the hypothesis that the nature of women’s sentencing is different, being more focused on context, defendant characteristics, and prior record.

A single woman judge may have less of an impact when she is the only woman present in the judicial workforce. This token representation will have far less impact on the potential “feminization” or gendered influence on a judicial workforce as compared to multiple women and increasing gender representation within the workgroup. It is with attainment of a critical mass of any group that significant impact occurs. As Collins et al. have suggested, the influence of women is dependent on the presence of other women. This research has suggested that women are more likely to hand down liberal decisions once a critical mass of women within the judicial workforce is obtained. (Collins, Manning, & Carp, 2010) Thus, as women come to represent a greater proportion of the judicial workforce, the outcome may be a significant impact on justice decision-making. With more women working within the federal justice system, there could result an increase in parity in sentencing as well as more liberal decision outcomes.

**Theoretical Explanations for the Impact of Workforce Representation**

We can look to feminist theory to help explain the potential effects that increased diversity in the courtroom workforce might have on sentencing and imprisonment decisions. Theoretically, equal rights or liberal feminism would suggest that equal access to the justice system through increased agency would result in a greater equality in treatment outcomes. This approach speaks to the belief that women should be treated with equality, or more specifically in this case, women should be treated in the same capacity as men within the federal criminal justice system. The establishment of equal treatment and equal rights must occur so that, as a
result, there is no need for special treatment. With equal treatment and equal rights, power
differentials and the influence of patriarchy will change and through law, autonomy and equal
rights are possible. Equal rights feminism would suggest that a more representative workforce –
that is, districts with increased gender and race representation- would result in decreased
disparities in sentencing. A comparable phenomena can be seen in examining racial balance in
representation and its effect on the sentencing of black defendants (see discussion of balanced
representation in Ward et al., 2009). For example, in relation to racial representation, Ward et al.
(2009) found that increased black representation in the courtroom workgroup led to a narrowing
of racial disparity in sentencing. It could be hypothesized that the same effect could be present
in relation to the sentencing of women.

In relation to justice outcomes, a liberal feminist approach would suggest that women
should be treated equal to men and that increased diversity in the justice workforce could lead to
achieving such equality. obtaining equality would result in men and women experiencing
proportionality in sentencing decisions with equal outcomes dependent on legal factors,
including severity of offense and criminal history.

However, it is also possible that increased representation of women in the courtroom
workforce could bring an “ethic of care” (Gilligan, 1993) to judicial settings and thus increased
leniency, both for women as well as for defendants overall. Cultural difference feminism would
suggest the importance of equity, not necessarily equality. In relation to the imprisonment of
women within the federal criminal justice system, cultural feminism would align with the notion
that it is not necessarily in the best interest of women to be treated equally to men in the system,
but instead that women have unique needs and that these needs must be recognized. Here one
must understand that women’s pathways to crime are unique, and thus women within the system need to be treated differently. Law itself does not necessarily promote community and family, and this may be seen as a detriment to women within the justice system who may be more relational by nature and have greater ties to families, dependent children, and additional forms of informal social control.

If sentencing practices fit with a cultural difference perspective, women would potentially continue to be treated with leniency even with increases in the gender diversity of courtroom workgroups. Leniency would be maintained, not because of chivalry or paternalism, but instead due to the integration of an “ethic of care.” Such an overall leniency could be witnessed in an increased tendency for leniency, including pre-sentencing release from custody and below-range sentencing, particularly within the contemporary courtroom context of increased judicial discretion. It will be important to explore whether or not districts with increased gender representation are more likely to sentence below the range of guideline recommendations and to sentence more leniently, both for women as well as for defendants overall.

With the infusion of an “ethic of care” into the workforce as women obtain a critical mass in justice positions, there is potential for an increased leniency overall, which could be witnessed in an increased likelihood of pre-sentencing release from custody, a decreased likelihood of imprisonment or shorter sentence lengths, and a greater frequency of sentencing below the departures from federal sentencing guidelines. In a pre-

*Booker* examination of sentencing disparity, Farrell et al. (2010) found that increased gender representation in judges and prosecutors resulted in decreased prison lengths of offenders overall. The researchers also found that increased sex representation in the justice workforce increased leniency toward women
specifically. Ultimately, in line with this cultural difference approach, there is potential to see continued leniency toward women based on incorporation of an “ethic of care” and treatment that is equitable but not necessarily equal. Additionally, it is possible to observe an overall increase in the liberalness of justice decision outcomes resulting in less punitive decision outcomes.

In general, it is expected that women will experience criminal justice outcomes in a different manner from men based on judges’ conceptions of women and judgments of how women participate within the justice system. It is predicted that women will continue to experience leniency in justice decisions. It is also expected that these difference could and will vary significantly dependent on the district in which a woman is sentenced. As federal legislation continues to result in increases in judicial discretion in sentencing, and as more women join the federal justice workforce, it is possible that leniency in justice decisions could increase rather than dissipate, and further, that the specific nature of the experience of leniency could change. It is possible that with increased discretion in justice decisions coupled with more women employed within the justice workforce, that the impact of outcomes in districts with increased representation would be even more notable. Exploring the exact nature of this leniency will paint a more distinct portrait of the theoretical mechanisms for the role of gender in social control.

The Impact of Inter-district Variation

Research to date supports evidence for differential treatment based on characteristics of the court district in which an individual is sentenced beyond characteristics of judicial decision-
makers. Multilevel models allow for the examination of justice decisions based on differences in
district characteristics. Exploring the influence of district contextual characteristics will become
important in more precisely defining the nature of disparate treatment experienced by women
defendants. While district contextual disparities in sentencing decisions have been examined
before, incorporating the district level examination of court context into a contemporary post-
*Booker* justice environment will provide insight into the current nature of leniency for women
defendants specifically. District- and circuit- level characteristics are controlled in the current
study with the suggestion that place matters. By incorporating measures of district, analyses
control for norms in justice decisions that are specific to particular localities. The United States
does not enact justice decisions as a single entity, but in individual localized units (districts),
each with its own norms and practices. Further, federal court circuits are included in the current
study to control for differential practices in the interpretations of guidelines and court rulings
shaping federal guidelines. As appellate courts attempt to make sense of Supreme Court rulings
including *Booker* and subsequent clarifying decisions, the impact of justice practices can vary
dependent of the circuit in which sentencing decisions are made.

Controlling for district and circuit recognizes that justice interpretations and decisions
within a particular region (district) will be more similar than outcomes generally and provides
statistical control for this fact. Research has indicated that district judges anticipate behavioral
changes at the circuit level and adapt behavior accordingly. In a post-*Booker* context, judges are
constrained by the prospect of appellate review, with district judges modifying decisions in order
to avoid reversals. Judicial outcomes also vary significantly by circuit dependent on whether
review of departures within a specific region is strict versus differential (Fischman &
Schanzenbach, 2011). Accordingly, it makes sense that both district and circuit of origin would potentially play a fundamental role in determination of disparities in justice outcomes, and thus justifies controlling for the context of district and circuit.
Chapter 3 Data, Methodology, and Analytic Strategy

During the last part of the 20th century, a significant body of research arose examining sex differences in criminal justice outcomes and attempting to explain resultant disparities. As discussed in the prior chapter, it is expected that leniency will be observed in the modern criminal justice outcomes. This expectation is based on prior literature and past sentencing patterns of federal criminal justice courtroom actors. However, it is possible that the nature of disparate treatment could be different in a more contemporary context, particularly resulting from changes to federal sentencing guidelines and the increased discretion afforded judges. The strength of observed leniency could potentially vary at different decision points within the criminal justice process or across different contextual justice settings. Although prior research does not present a complete portrait of gender disparity and contradictory data do exist, hypotheses were posited based on what prior research in the area of gendered justice has found. The current study both details disparities and explicates the specific nature of disparate treatment through analyses of potential theoretical explanations.

The current chapter will detail the methodological approach for analyses as they were conducted in the current study. First, research questions and hypotheses are presented. Next, an overview of the datasets is offered and methodologies are discussed. Finally, data information and analytic strategies are detailed for the specific focus of subsequent chapters, including pre-trial analyses (Chapter 5), sentencing (Chapter 6) and correctional placement and classification (Chapter 7).
Questions Examining Gender Disparities in Justice Decisions and Posited Hypotheses

Prior research indicates that leniency will be observed in the modern criminal justice outcomes. The exact representation of what this leniency will look like is unclear; however, and changes to federal sentencing guidelines could potentially have had a significant impact on how women are treated within the justice system. With the increase in discretion of federal district court judges, there may be a noticeable difference in the leniency afforded to women involved in the federal justice system. It is possible that the strength of observed leniency may not be consistent throughout the various stages of the criminal justice process. Although the majority of specific gendered examinations of justice decisions is now dated and gaps and some contradictory data exist, hypotheses are grounded in outcomes one would postulate from prior literature in general.

Most theoretical explanations posit moderating effects of sex and other variables, beyond main effects for sex. Not all women may experience leniency in an equivalent manner, and additional variables are known to interact with sex to influence severity of treatment. Research to date, primarily examining sentencing, has suggested that non-white women experience less leniency than white women in relation to sentencing reductions/departures, decision to incarcerate, and sentence length (Albonetti, 2002; Daly & Tonry, 1997; Zatz, 2000). Women have been demonstrated to experience increased leniency due to caretaking roles (Daly, 1987, 1989b, 1995), greater levels of conformity (Daly, 1995; Steffensmeier et al., 1993), and greater informal social control (Kruttschnitt, 1980-1981, 1982; Kruttschnitt & Green, 1984). Accordingly, it is hypothesized that women with greater connections to institutions of informal
social control as well as greater conformity and less history of involvement in formal social control would experience increased leniency.

In addition, sentencing analyses examine implications of higher-level district variables. The current study controls for the influence of district and circuit effects and explores the effect of gender representation in courtroom workgroups to determine the impact of increased representation of non-traditional groups within the justice workforce, paying specific attention to the impact on women defendants.

At each stage of federal justice decision-making, disparities were explored and theoretical explanations for gender disparities were addressed. To specifically target gendered outcomes as well as variation within the sentencing of women defendants, datasets were partitioned by sex. In general, disparity analyses target the following hypotheses:

**Pre-trial analyses Chapter 5.**

**Question. Are women defendants treated differently from men at the pre-trial phase of the criminal justice process?**

**Hypothesis:** At the pre-trial phase women defendants are more likely to receive bail/bond than men defendants.

**Hypothesis:** At the pre-trial phase women defendants are more likely to receive less restrictive types of bond (i.e. be released on recognizance) than men defendants.

**Hypothesis:** Women defendants are more likely to obtain a plea agreement than men.

**Question. Do women of color experience leniency in the pretrial phase of the federal criminal justice system differently in comparison to white women?**

**Hypothesis:** Women of color experience *less* leniency at the pre-trial phase (bail/plea) of the criminal justice system as compared to white women.
Question. Do women with dependent children experience leniency in the pretrial phase of the federal criminal justice system differently than women who are non-familied?

Hypothesis: Women with children are more likely to experience leniency in pre-trial decisions (bail/plea/etc.).

Question. Do women with higher levels of education experience leniency in the pretrial phase of the federal criminal justice system differently than women with less education?

Hypothesis: Women with higher levels of education are more likely to experience leniency in pre-trial decisions (bail/plea/etc.).

Question. Do disparities in the treatment of women within the pretrial phase of the criminal justice system depend on the district in which the individual is sentenced?

Hypothesis: The disparate treatment of women defendants will decrease in court districts with greater gender representation of courtroom workers.

Sentencing analyses- Chapter 6.

Question. Are women defendants treated differently from men at the sentencing phase of the criminal justice process?

Hypothesis: Women defendants are more likely than men to be offered departures from sentencing guidelines as compared to men.

Hypothesis: Women defendants are less likely than men to be sentenced to a prison term.

Hypothesis: If sentenced to prison, women defendants receive a more lenient term (shorter prison sentence) than men.

Question. Do women of color experience leniency in the federal criminal justice system differently in comparison to white women?

Hypothesis: Women of color experience less leniency in sentencing decisions (incarceration decision/sentence length) as compared to white women.

Question. Do women with dependent children experience leniency in the federal criminal justice system differently than women who are non-familied?

Hypothesis: Women with children are more likely to experience leniency in sentencing decisions (incarceration decision/sentence length).

Question. Do women with higher levels of education experience leniency in the federal criminal justice system differently than women with less education?
**Hypothesis:** Women with higher levels of education are more likely to experience leniency in sentencing decisions (incarceration decision/sentence length).

**Question.** Do women who experience earlier leniency in the federal criminal justice process also experience subsequent leniency?

**Hypothesis:** Women released on bail are more likely to experience leniency in sentencing (incarceration decision/sentence length).

**Hypothesis:** Women who receive a plea agreement are more likely to experience leniency in sentencing (incarceration decision/sentence length).

**Question.** Do disparities in the treatment of women within the criminal justice system depend on the district in which the individual is sentenced?

**Hypothesis:** The disparate treatment of women defendants will decrease in court districts with greater gender representation of courtroom workers.

**Correctional placement and classification analyses (Chapter 7).**

**Question.** Are women defendants treated differently from men at the imprisonment phase of the criminal justice process?

**Hypothesis:** Women defendants are more likely to be committed to a non-BOP facility than men.

**Hypothesis:** Women defendants are more likely to be committed to institutions in a state outside of their state of residence.

**Hypothesis:** Women defendants are less likely to be housed in BOP facilities offering residential drug treatment and dual-diagnosis programs.

A comparative disparity analysis was conducted in Chapter 6 examining potential differences between earlier post-Booker sentencing decisions and decisions occurring further from the implementation of changes to federal sentencing guidelines. This will provide a more specific understanding of the effects of modifications in federal sentencing guidelines as related to gendered differences in federal justice decisions, exploring the potential impact on changes and how changes permeate the courtroom workgroup over time.
Primary Defendant-Level Data

Analysis of the processing of female offenders from pre-trial to commitment decisions will be conducted through quantitative analysis of federal criminal justice data from the Federal Justice Statistics Program (FJSP) collected by the Bureau of Justice Statistics. The Federal Justice Statistics Resource Program is compiled by the Urban Institute with the sponsorship of the Bureau of Justice Statistics. The data were housed previously at the Federal Justice Statistics Resource Center (http://fjsrc.urban.org/) and currently at the National Archive of Criminal Justice Data (NACJD at www.icpsr.umich.edu/icpsrweb/NACJD).\(^5\)

Historically, federal criminal justice statistics have been reported separately by each federal agency, including the Executive Office of U.S. Attorneys, the Administrative Office of the U.S. Courts, the U.S. Sentencing Commission, and the Federal Bureau of Prisons. These reports measured and provided information on factors including race and sex disparities in processing in different ways, making comparisons between the agencies difficult. In 1995, the Bureau of Justice Statistics was charged with studying and reconciling the reporting differences. The Bureau of Justice Statistics found differences in statistics resulting from differences in definitions of case processing events; divergent time periods in reporting; and differences in methods for classification of offenses, offense types, dispositions, and sentences imposed. The federal government decided it was unnecessary for reporting agencies to develop a common

\(^5\) The Federal Justice Statistics Resource Center was utilized to obtain original data for analyses in the current study. Subsequent data including more current sentencing data were obtained from the National Archive of Criminal Justice Data. Data are no longer accessible at the Federal Justice Statistics Resource Center (fjsrc.urban.org) website, but instead only through the NACJD website at Interuniversity Consortium for Political and Social Research (ICPSR). Per the request of the Bureau of Justice Statistics, data in this series have been restricted to public use and permission for use has been obtained for the current study. General summaries of data are available at the Bureau of Justice Statistics website (www.boj.gov).
methodology; instead, the Bureau of Justice Statistics could reconcile reported data by adopting a common method to process, compile and report the statistics once collected. Through a centralized reporting mechanism, agencies would be able to share data in a manner that minimized discrepancies and reduced redundant data collection (Scalia & Sabol, 1999).

The Bureau of Justice Statistics creates Standard Analysis Files (SAFs) for each agency. Each SAF represents the annual cohort of all defendants involved at each particular phases of the justice process. It is important to note that in creation of the SAFs, the Bureau of Justice Statistics redacts all identifiable information distinguishing individual defendants. Data are recorded by case; that is, a defendant could be included in a dataset multiple times during a given year if he or she were involved in multiple and distinct cases. Each SAF is based on the federal fiscal year (October 1 through September 30).

The data that comprise the Federal Justice Statistics Program allow for examination of outcomes from multiple agencies and occurring at multiple points in the federal justice process. In examining the Federal Justice Statistics Program data, a variety of analyses will be conducted in order to appraise sex differences and gender attributes of the federal criminal justice process. All defendant-level data were obtained from the Federal Justice Statistics Program, including those data used to examine pre-trial (Chapter 5), sentencing (Chapter 6), and correctional placement (Chapter 7) decisions. As will be discussed, data for the current analyses were specifically drawn from United States Sentencing Commission dataset for pre-trial and sentencing decisions and Bureau of Prisons dataset for correctional placement and classification decisions. Data for pre-trial and sentencing outcomes include those defendants processed federally for the fiscal years 2006-2009 (October 2005 through September 2009). Bureau of
Prison data represent those defendants in custody at year-end 2008.

Pre-trial and sentencing decision analyses were drawn from United States Sentencing Commission (USSC) data. These data were obtained from the Federal Justice Statistics Program via the Urban Institute and National Achieve of Criminal Justice Data (NACJD) database. The USSC dataset entitled “The Federal Justice Statistics Program: Defendants Sentenced Under the Sentencing Reform” contains information on criminal defenders sentenced pursuant to the provisions of the Sentencing Reform Act of 1984 whose records have been obtained by the United States Sentencing Commission. The dataset consists of variables from the Monitoring Department's database, limited to those defendants whose records have been furnished to the United States Sentencing Commission, by United States district courts and United States magistrates, as well as variables created by the United States Sentencing Commission's Office of Policy Analysis' (OPA) specifically for research purposes (http://www.icpsr.umich.edu/icpsrweb/NACJD). The data comprising the Sentencing Commissions database are obtained from five primary sources including the Presenting Investigation Report (PSR), the Judgment and Commitment Order (J & C), the Statement of Reasons (SOR), the Plea Agreement, and the Charging Document (United States Sentencing Commission, 2009).

Correctional placement analyses use the data provided by the Federal Bureau of Prisons to the Bureau of Justice Statistics housed at the Federal Criminal Justice Statistics Program.

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6 Bureau of Prison data are included for a single time point so as not to repeat information on those individuals who were serving time in federal institutions over multiple years. These data were chosen as a representation of those inmates incarcerated during the timeframe of the current study.
Data were acquired through the Federal Justice Statistics Resource Program (originally housed at www.fjsrc.urban.org). The Federal Bureau of Prisons represents the agency overseeing the incarceration of all federal inmates including 117 federal institutions, 27 of which house female inmates (www.bop.gov). The Bureau of Prisons (BOP) dataset contains information on all offenders housed in federal prison during a specific fiscal year. The data utilized in the current study provide information regarding those offenders in federal prison at the end of the year 2008.

**Secondary District-Level Data**

A dataset was created combining multiple databases and aggregating a variety of secondary-level data, which looked at the contextual characteristics of the federal judicial districts in which justice decisions occur. This dataset represents a collection of variables from a variety of primarily government databases, and ultimately, the dataset establishes a portrait of the federal court districts in which criminal justice decisions occur. Demographic and crime rate data were obtained from census data and statistics housed at the Fed Stats program ("FedStats,") for the year 2006\(^7\). Fed Stats is a website which provides public data access to federal government data and statistical information collected from over 100 different agencies. Map Stats, as part of the Fed Stats database, provides statistical profiles of states, counties, cities, congressional districts, and federal judicial districts. Demographic and crime data are available by county and the dataset for the current study was constructed through the aggregation of county data to the federal district level. An overall district profile was compiled through a combination

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\(^7\) All district-level data were obtained from respective sources and acquired for a period that would be reflective of the post-Booker period of justice decisions observed in the current study. District and courtroom workgroup data were drawn from one time period dataset in order to provide a portrait of the district and workgroup context in which the justice decisions of the current study occurred. In general, a single year of data were used for each relevant agency to characterize contextual data without the inclusion of repetitive information.
of demographic district data and crime rate data, including proportional measures by race and sex for each federal.

As with general district data, courtroom data were acquired from multiple databases, with information aggregated to the district-level as necessary. General district court data was obtained through the Administrative Office of the U.S. Courts and Federal Court Management Statistics (www.uscourts.gov). Judge data including sex, race/ethnicity, and general demographic characteristics were obtained from the Federal Judicial Center and more specifically the Biographical Directory of Federal Judges for the time period of 2006-2007 (www.fjc.gov). In incorporating judge data, a variety of variables were created. Judicial variables included a measure of number of years on the bench, sex and race demographics, indication of whether the judge came from a private or public practice, and party of nomination. Data were aggregated to the district level and totals and proportional measures were created, including number of judges per district and proportional indices of the race and sex makeup of each district’s judicial workgroup.

Demographic data on federal prosecutors was obtained from the U.S. Office of Personnel Management for the year 2007. In compiling the profile of federal prosecutors, data were included only for attorney level and above. Clerical employees were eliminated from the current study in order to prevent the gender analyses from being skewed, potentially due to a false overrepresentation of women in the prosecutorial workforce resulting from the fact that women, more frequently than men, are employed in clerical and administrative assistant-type positions. If position level were not controlled, results could indicate an inaccurately high level of sex representation in prosecutors as part of the courtroom workgroup. Race and sex data were
aggregated from general prosecutor data; all data were aggregated to totals for the federal court
district level. From these totals, district proportions were created by race and by sex.

Ultimately, in combining information derived from multiple databases, a dataset was
created that provides an overall characterization of demographic, crime and courtroom
characteristics encompassed in each distinct federal court district examined in the current study.
These data allow for a more complex examination of contextual factors and comprise the
hierarchical and theoretical analyses included in this study.

Methodological Overview

The first component of the current study examines characteristics of women’s federal
criminal justice population for the federal fiscal years 2006 through 2009. Demographic data
were explored to develop a portrait of women defendants within the federal criminal justice
process. Univariate and bivariate statistics were analyzed for variables that could potentially
influence sex differences and criminal justice outcomes. Analyses were conducted separately for
men and women defendants in each stage of the criminal justice process. (For example of the
use of partitioned data see Albonetti, 1998.) T-tests were used to test for the presences of
differences in case and defendant characteristics between men and women within the federal
criminal justice systems. Exploratory descriptive analyses examine the question of whether
women coming into the various stages of the federal criminal justice system are characteristically
different from men. Specific attention was paid to differences in age, citizenship, race,
educational attainment, and parenthood, as well as case and criminal history characteristics.
Descriptive analyses additionally helped to delineate which variables constituted important
control factors in subsequent multivariate analyses.

It is important to note that the variable being compared is biological sex, not gender. While sex is often used interchangeably with gender or as a means of assessing more complex gender differences, it is important to remember that the measure of sex is more limited. Later stages of analysis attempt to use data partitioned by sex and the specific interaction of sex and other key variables to explore the more complex aspects of gender, including social factors and the influences of social control that may shape the manifestation of gender roles.

In order to test hypotheses examining disparities in justice outcomes, separate analyses examined the treatment of women at various decision points in the criminal justice system. Appropriate models were implemented according to the specific criminal justice phase, hypothesis, and dependent variable being analyzed. These analyses determined at what phase or phases disparities occur. Models explored the influence of a variety of important variables hypothesized to be related to gendered determinants of criminal justice outcomes. The main effect of sex was included in all primary models and analyses were conducted across phases of criminal justice decisions. Datasets were also partitioned by sex, resulting in a sample of women-only and men-only defendants. Partitioning allowed for a more specific exploration of the “gendered” nature of federal justice outcomes. Data specifically examined offenders as they progressed through the criminal justice process for the federal fiscal years 2006-2009, or more specifically, for the period October 1, 2005 through September 30, 2009, a period after the federal sentencing guidelines had become advisory. In principle, only legally relevant variables should exert influence on criminal case outcomes under the federal sentencing guidelines. Disparities that exist after controlling for such factors indicate the impact of defendant
characteristics such as sex as well as the influence of increased discretion for federal judges.

The current study includes justice decisions originating from 89 of the 94 federal sentencing districts. Puerto Rico, Virgin Islands, Guam, The Northern Mariana Islands, and Washington, D.C. were excluded from the current analyses due to limited data and the unique nature of these districts.

For pre-trial and sentencing outcome analyses, which were drawn from United States Sentencing Commission data, the final sample for sentencing analyses during the 2006-2009 period included 282,588 cases. Missing data were additionally excluded due to procedural dictates of hierarchical modeling programming (HLM, HGLM). Final samples for the primary logistic analyses (HGLM analyses) included 238,686 defendants. Sample size for sentence length analyses where only sentenced defendants were included was 213,639. Analyses of Bureau of Prisons data include those offenders in custody at year-end for 2008 with the total number of offenders in analyses being 174,582. Appropriate multivariate regression techniques were implemented based on dependent variables. For each multivariate analysis, unconditional models were conducted utilizing HGLM for dichotomous variables and HLM for continuous variables. Federal sentencing occurs across 94 separate federal district courts and it is possible that differences specific to the district itself may influence gender disparities (Farrell, 2004; Johnson, 2003, 2005, 2006). All models indicated that outcomes varied significantly by the

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8 The five districts were eliminated from analyses because within these districts, the federal court functions in a unique capacity not comparable to the majority of federal court districts across the nation. Within most states, the state justices system takes role of prosecuting the majority of criminal cases. In the eliminated districts, the federal district court serves as the primary judicial decision-making body for all justice matters.

9 Missing data were examined separately to assess for potential variation from the sample of data analyzed as related to key variables of interest. No significant concerns were noted.
federal court district in which decisions occurred. Accordingly, multilevel modeling was implemented in lieu of alternative techniques (logistic and OLS regression).

In utilizing multilevel modeling techniques, individual-level effects can be assessed within the contextual framework of districts in order to control for characteristics of federal court districts. HGLM and HLM analyses allow for the examination of individual-level defendant characteristics, while at the same time examining characteristics of the jurisdiction in which each defendant was processed. Accordingly, individual-level characteristics (defendant characteristics) can be specifically examined as they are grouped within higher units of analysis (specific federal court district characteristics), where units of the same group may be more similar than units of different groups. The utilization of hierarchical models facilitates analysis that controls for potential correlation between the independent defendant-level characteristics within districts, allowing for analysis of both members and collective groups simultaneously. Utilizing hierarchical models allows for the examination of interactive effects between specific defendant and district characteristics (for example, in the examination of how differences in courtroom workgroup composition affect women defendants specifically). (For more on hierarchical models, see Kreft & De Leeuw, 1998; Luke, 2004; Raudenbush & Bryk, 2002; Snijders & Bosker, 1999.)

Fixed and random effects models were implemented. Random effects allow for variation by federal court circuit and district and the examination of defendants nested within specific federal districts. Multiple HGLM and HLM models were used to estimate both separate and interactive effects of defendant and district-level characteristics. All basic models examine decision outcomes controlling for the influence of circuit and district. Analyses utilizing data
partitioned by sex were examined in order to explore differences in outcomes by sex. These partitioned models also allowed for a more detailed examination of the factors that condition justice outcomes for women. In pre-trial and sentencing outcomes, separate models were conducted controlling for court contextual factors in order to determine the potential influence of court workgroup and district context factors on justice decisions for women defendants. (For more specifics on use of hierarchical models, variability prediction and interpretation see Kreft & De Leeuw, 1998; Luke, 2004; Raudenbush & Bryk, 2002; Snijders & Bosker, 1999)

In addition to sex, the current study includes a variety of additional independent variables to test hypotheses and to provide statistical control including defendant characteristics, legally relevant variables, and contextual factors. The examination of defendant characteristics is of fundamental importance in fleshing out disparities and theoretical explanations for gender-disparate treatment. In the current study, legally relevant variables include criminal history, a presumptive sentence measure, crime type, departure status, sentencing guideline variables, whether a defendant was held in custody prior to sentencing, and whether the defendant partook in a plea agreement. Legally relevant variables, particularly criminal history and offense severity, explain the greatest variance in justice outcomes, as would be expected. Steffensmeier et al. (1993) suggested the importance of legal variables in sentencing outcomes, stating, “as is found more generally in sentencing studies, the bivariate analysis reveals that offense severity and prior record have large effects on sentence outcomes and thus are important statistical controls for estimating gender effects” (Steffensmeier et al., 1993 423). Qualitative research has suggested that a defendant’s prior record represents the most influential factor cited by judges in explanation of their decision-making process (Daly, 1989b). Failure to adequately control for
legally relevant variables represents a fundamental flaw in sentencing research. Legally relevant variables help to explore theoretical perspectives examining social control (blameworthiness, respectability) and legal model explanations. For example, Kruttschnitt (1980-1981) found that women who had been subject to previous legal control were more likely to receive harsher sentences. Examination of legal factors allows for greater understanding of the influence of formal social control and helps to explicate the hypothesis that women with less history of involvement with informal social control will experience less social control.

Defendant characteristics were examined in order to explore the precise nature of disparate treatment. As mentioned, sex constitutes the primary variable of interest in the current study. Other defendant characteristics examined in the current study include defendants’ race, defendants’ ethnicity, defendants’ age, defendants’ level of education, defendant’s citizenship status, and whether a defendant has dependent children.

Contextual factors control for characteristics of the district within which the defendant was sentenced as well as explore the impact of courtroom workers on disparity. Research suggests the importance of controlling for contextual factors and regional differences that could influence sex role attitudes (see Farrell et al., 2009; Fearn, 2005; Johnson et al., 2008; Nagel & Hagan, 1983). As Johnson et al. have suggested, “Concern over interjurisdictional variation in federal sentencing is not new; yet interdistrict variation in such disparity remains seriously understudied” (Johnson et al., 2008, 741). Variables for the current study included measures for district size, region, rate of violence, political ideology, and race and gender representation of both judges and prosecutors. These variables were used to examine the contextual impact of district characteristics on individual-level defendant-based justice outcomes.
Pre-trial

**Multilevel methodology for pre-trial analyses.** To determine applicability of multilevel models, unconditional models were run and it was determined pre-trial outcomes did vary dependent on district. District variation accounted for 5 percent of the variance in both the decision for a defendant to be released on bail and the decision of whether a case was settled by plea agreement or was taken to trial. As a result, hierarchical models were implemented to address pre-sentencing decisions as they are nested within federal court districts, controlling for the fact that decisions within districts are not completely independent of each other, but instead occur within a common decision-making environment. HGLM models were utilized based on the dichotomous nature of the dependent variables examined.

**Pre-trial analyses data.** Pre-trial analyses were conducted utilizing United States Sentencing Commission data from the Federal Justice Statistics Program discussed above in the section entitled Primary Defendant Level Data. The utilization of the United States Sentencing Commission data for pre-trial-outcome examinations was limited as data were available only for those cases in which a defendant was sentenced, either by plea or conviction at trial. United States Sentencing Commission data were used because these data provide more comprehensive information. Data from the Executive Office for the United States Attorneys and the Administrative Office of the United States Court do not include measures for gender, the primary focus of this study. Ideally, data on those arrested and arraigned would have provided the most useful analysis of pre-trial decisions; however, these data were not usable for reasons already stated. Accordingly, much of early pre-trial leniency is potentially missed in not analyzing those
defendants who were not sentenced\textsuperscript{10}.

In pre-trial data analyses, hierarchical models were utilized to control for contextual distinctions and variation by court district. Data for multilevel models were obtained from the district contextual dataset as described in section Secondary District-level Data earlier in this chapter. There is reason to believe that characteristics of district composition matter, even in early justice decision outcomes. Norms within the justice workforce may directly influence outcomes within the justice process from decisions of whether bail was granted or a plea was offered through ultimate sentencing. Examining district variation allows for the examination of context in which justice decisions occur. Variation in district factors results in the establishment of a unique justice context and establishes norms that pervade justice decisions prior to the actual sentencing of a defendant.

\textbf{Dependent variables.}

\textit{Bail decision.} The bail variable is a representation of the pre-trial decision to release a defendant from custody prior to sentencing. This variable is a dichotomous indication of any type of release from custody prior to sentencing including bail, bond, or a defendant being released on his or her own recognizance. The variable was coded a zero when a defendant was held in custody prior to sentencing and 1 when a defendant received some form of pre-trial release including bail, bond, or was released on his or her own recognizance. The dichotomous bail measure was also used as a control variable in analysis of whether or not a case is taken to

\textsuperscript{10} Pre-trial analyses did not include those defendants who were charged but had cases dismissed prior to sentencing. For comparative purposes, defendants charged in criminal cases for the fiscal years 2006-2009 include 365,739 cases. Those defendants sentenced for the fiscal years 2006-2009 represent 303,300 cases (Bureau of Justice Statistics, 2012).
trial (see dependent variable trial below).

**Release on own recognizance.** The released on own recognizance (ROR) variable was included as an indication of those defendants receiving the least restrictive form of pre-trial release. These defendants were released from federal custody on a non-monetary conditional release prior to sentencing occurring. The variable is dichotomous and was coded a 0 when a defendant did not receive a non-financial release and 1 when the defendant was released on his or her own recognizance prior to sentencing.

**Trial.** The trial variable represents an additional pre-trial decision and is an indication of whether or not a case was taken to trial or settled by a plea agreement. This dependent variable was coded 0 when a case was settled by a plea agreement, and 1 when a case went to trial. In general, extant literature suggests a benefit in sentencing severity to cases that are settled by a plea agreement, indicating the presence of a “trial penalty” for those cases taken to trial. Research is mixed as to whether this trial penalty holds as consistently for women defendants as for men. The dichotomous trial variable was additionally used as a control measure in the pre-trial release analyses (see dependent variables bail decision and release on own recognizance above).

**Independent variables.** The study included a variety of independent variables to test hypotheses and to provide statistical control including defendant characteristics, legally relevant variables, and contextual factors. The examination of defendant characteristics will be of fundamental importance in fleshing out disparities and theoretical explanations for gender-disparate treatment. Independent variables were selected as theoretically appropriate and as
supported by other research in the field, within the contemporary context of justice-outcome analyses. For example, variables were considered for analysis based on recommendations of the U.S. Sentencing Commission.\textsuperscript{11}

Variables included in pre-trial outcome models were criminal history score, age, citizenship, sex, race, ethnicity, whether a case was decided by plea or trial, whether a defendant was held in custody prior to sentencing, presumptive sentence, offense type, education level, and departure status or sentence outcome relative to the guideline range. Legally relevant variables, particularly criminal history and offense severity, should explain the greatest variance in justice outcomes. Included variables were utilized in a series of analyses exploring the intricacies of the treatment of women within the federal criminal justice system. The development of independent variables for pre-trial outcome analyses is detailed below.

\textit{Legally relevant case level variables.}

\textit{Criminal history.} This measure, a case-level legal factor, represents a score indicating a defendant’s criminal history and was included as a control for the offender’s criminal history score. The variable is part of U.S. Sentencing Committee dataset and represents the criminal history category or criminal history points, calculated on a scale ranging from one to six, with a higher score indicating a more significant criminal history. Scores are calculated by the United

\textsuperscript{11} See USSC report \textit{Demographic Difference in Federal Sentencing Practices: An update of the Booker Report’s Multivariate Regression Analysis}, particularly the “refined model” presented by the USSC. Preliminary considerations for independent variables was based on this report (Sessions et al., 2010). See Ulmer et al. (2011b) and Ulmer et al. (2011a) for recommendation of inclusion of criminal history measure in addition to presumptive sentence and additional justification for inclusion of specific independent variables for contemporary analyses of sentencing decisions.
States Sentencing Commission and are based on prior sentence, status and recency (United States Sentencing Commission, 2009). While criminal history is calculated as a component of the presumptive sentence measure, the criminal history score was additionally included as a control measure in the current study. Criminal history was not included as a control variable in the report of the United States Sentencing Commission’s post-

**Booker** analyses (Sessions et al., 2010); however, other recent research does validate the utilization of this measure (Ulmer et al., 2011a, 2011b; Ward et al., 2009 among others).

**Presumptive sentence.** The presumptive sentence variable takes into account federal sentencing guideline recommendations and was utilized in models as a control for guideline recommendations. The presumptive sentence represents the logged minimum months of incarceration recommended by the federal sentencing guidelines and quantifies the combined effect of a defendant’s criminal history and offense severity. The measure was derived from United States Sentencing Commission guideline information and the measure is capped at 470 months as with sentencing data. Adjusted guideline range minimum trumps were taken into account in the calculation of this variable. The log of the measure was calculated to address positive skewness and zero scores were recoded to 0.1 to allow for the log to be taken without the elimination of cases due to zero scores.

**Departure status.** A departure represents a judge’s decision to impart a sentence outside of the range of those recommendations provided by the federal sentencing guidelines. Prior to the **Booker** decision discussed in the first chapter, departures were the only mechanism for discretion in sentence outcome by judges. Before the increased discretion allowed under **Booker**, judges needed to justify sentences outside of recommendations through citation to specifically
delineated departures. Judges now have more freedom to sentencing outside of guideline recommendations. However, guideline recommendations must first be calculated, and in general justification is provided for judicial discretion when decisions are made and sentences fall outside of guideline recommendations. Many judges continue to utilize specifically delineated departures; however, in some cases, justification is not provided other than that afforded by Booker. In this study, departures from sentencing guidelines were measured by a series of dichotomous variables indicating sentences outside of the range delineated in federal sentencing guidelines. Each variable was coded 1 if a particular type of departure was applied and zero if the departure was not applied. For control variables in all models, basic dichotomous variables were created indicating whether or not a defendant received (1) a sentence within range, (2) a sentence above range, (3) a downward departure, or (4) a prosecutor-motivated substantial assistance departure.

*Pre-trial custody status.* Pre-trial custody status is a dichotomous case level variable indicating whether or not a defendant was held in custody prior to sentencing. The variable is coded 1 for defendants held in custody prior to sentencing or 0 for defendants released on bail/bond or if a defendant was released on his or her own recognizance. This measure represents a control measure in the analysis of whether or not a case went to trial. The variable is also included in sentencing analyses in later chapters.

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12 Current justifications for sentencing decisions outside of the dictates of federal sentencing guidelines include the following: (1) a 5K1.1 substantial assistance departure, (2) a 5K3.1 early disposition or “fast track” departure, (3) a government sponsored below range departure, (4) a traditional downward departure, (5) a below range departure citing §3553 reasoning, or (6) a below range sentencing departure under Booker with no specific citation made.

13 All departure status variables were recoded from the United States Sentencing Commission BOOKERCD variable.
Plea agreement versus trial. The conviction method variable represents a dichotomous indication of whether a defendant was convicted by a case trial or by plea agreement. The variable is coded 0 for plea agreement, 1 trial. This variable is included as a control measure in the pre-trial custody outcomes as well as in sentencing analyses in subsequent chapters.

Crime type. The crime type variable is a variable created as a control measure indicating the type of offense committed. Indication of the type of crime committed is represented by a series of dichotomous variables created based on the recommendations of the United States Sentencing Commission and in conjunction with their 2010 report on post-Booker analyses (see Sessions et al., 2010). The series of specific offense types included in analyses are violent offense, sexual abuse offense, drug offenses, white collar offenses, immigration offenses, and other type of offenses. Each variable was coded based on corresponding guideline measures as recommended by the United States Sentencing Commission.

Defendant characteristics.

Defendant sex. Defendant sex represents a dichotomous variable indicating the sex of the defendant. Women were coded as 1 and men as zero, indicating a proxy measure of female and male sex respectively. Sex constitutes the primary independent variable of consideration in the current study. Within the statistical analyses, the variable able to be tested is actually an indication of biological sex (analysis of women versus men). Here, biological sex becomes a proxy measure for attempts to explore sex.

Defendant race and ethnicity. Defendant race represents a series of dichotomous variables indicating the defendant's racial categorization. Defendant race was coded 1 indicating
a defendant was identified as particular race, or zero indicating the defendant was not identified as the specified racial category. The race categories utilized in the current study include dichotomous variables for white, black, and other races. “Other” represents all defendants identified as American Indian, Asian or Pacific Islander, multi-racial, or other. In addition to race, the defendant’s ethnicity is also examined. A dichotomous variable was created indicating whether or not a defendant was of Hispanic origin.

**Defendant age.** A dichotomous variable was created indicated whether a defendant was older than 25\textsuperscript{14}. The variable was coded zero for defendants less than 25 years of age at time of sentencing and 1 for defendants 25 and older. The creation of this variable was modeled after United States Sentencing Commission analyses (see Sessions et al., 2010).

**Defendant citizenship status.** Defendant citizenship represents a dichotomous variable coded zero if the defendant is a citizen of the United States and 1 if the defendant is a non-citizen.

**Defendant education level.** Dichotomous variables were created indicating whether a defendant had less than a high school degree, a high school degree or equivalent, some college, or was college graduate and/or had some graduate schooling\textsuperscript{15}. In analyses having less than a high school degree was used as the reference variable. Variables indicating a defendant’s educational attainment were included in analyses as control variables and additional for theoretical analyses of gendered outcomes in the partitioned datasets.

\textsuperscript{14} Defendant age was recoded from the variable AGE representing a continuous measure of age in years.

\textsuperscript{15} The defendant education variable is a series of dichotomous variables created from the United States Sentencing Commission variable EDUCATN.
Dependent children. The dependent children variable is a dichotomous variable indicating whether or not a defendant has one or more children as dependents\(^\text{16}\). The variable was recoded as dichotomous variable with zero indicating a defendant with no reported dependent children and 1 indicating a defendant with one or more dependent children. This indication of whether or not a defendant has dependent children was created and utilized for theoretical analyses to target some of the specific issues facing women defendants. The variable is a proxy measure for motherhood; however, it must be recognized that this most likely constitutes a limited and perhaps less-than-accurate indication of parenthood, and more specifically, caregiving responsibilities.

District-level contextual variables. District and circuit measures were included in all hierarchical models in order to control for contextual variation in outcomes. District-level contextual variables indicating gender representation in the justice workforce were included in some models to examine the impact of gender representation in the justice workforce as well as to explore cross-level gender interactions. Gender representation of judges and prosecutors were included in hierarchical models exploring the impact of gendered workforce representation at both pre-sentencing and sentencing decisions.

District. The district variable represents the classification of the 94 federal district courts. Of these districts, 89 were utilized in the current study. A variety of district data was collected in creation of the characterization of districts. These data were collected from census data for districts and included population, population change, population by age, racial composition, etc.

\(^{16}\) The variable was created from the United States Sentencing Commission variable NUMDEPN.
Additionally, courtroom size was operationalized, including a proxy measure for district court size represented in the number of judges. For most analyses, this was the variable included as a control measure for court district size.

*Gender representation of judges.* An index of gender representation was additionally created. The population proportion of women for each district was determined utilizing census data. An index was created comparing the proportion of women who were district judges to the proportion of women in the district. Scores above 1 indicate overrepresentation of women judges for a district. A score less than 1 indicates underrepresentation of women as judges.

*Gender representation of prosecutors.* This measure represents the index for representativeness of women prosecutors. As with the judicial measure, this variable was created as an index comparing the proportion of women prosecutors for the district to the proportion of women in the district population. Population information was obtained from census data. Scores on this measure greater than 1 indicate overrepresentation of women within the district workforce for prosecutors. Scores less than 1 represent underrepresentation of women within the prosecutor workforce.

**Sentencing**

*Multilevel methodology for sentencing analyses.* As with pre-trial justice-decision analyses, sentencing outcomes were examined exploring the question of whether or not disparities in justice decisions exist in contemporary sentencing contexts. More specifically, sentencing outcomes were examined as they occur contextually within federal sentencing districts. Because prior research has supported the fact that sentencing decisions vary by court
district, multilevel models were considered in all sentencing examinations. Initially, unconditional models were run to determine variance in each of the dependent variables analyzed. While defendant- and case-level characteristics account for the majority of variance in sentencing decisions, outcomes did vary significantly by district. For example, in models examining sentencing severity, district-level variation accounts for 6 percent of the variation in defendant sentence length and 9 percent of the variance in decision of whether a defendant will be sentenced to prison. The use of multilevel models was justified in all sentencing examinations. Hierarchical Generalized Linear Models (HGLM) analyses were utilized for dichotomous variables and Hierarchical Linear Models (HLM) for continuous variables.

Sentencing analyses data. As with the pre-trial decision analyses discussed above in the prior section, sentencing decision analyses utilized the United States Sentencing Commission (USSC) data for federal fiscal years 2006 through 2009. This data were obtained from the Federal Justice Statistics Program and discussed in detail above in the Primary Defendant-Level Data section. Additionally, secondary-level data were included as detailed in section above entitled Secondary District-level Data.

Dependent Variables. For the current study, sentence severity was explored in a two-step fashion, first examining whether or not a defendant received sentencing that included time in prison, and second, if sentenced, a determination of the length of the sentence imposed. Sentence severity is operationalized in a variety of ways within the sentencing literature, including both one- and two-step analyses. For example, in its most recent post-Booker sentencing analyses, the United States Sentencing Commission conceptualizes sentence severity as the length of confinement imposed including non-imprisonment cases. Non-imprisonment
cases include alternative confinement such as home detention, community confinement, and intermittent confinement. The United States Sentencing Commission post-	extit{Booker} analysis utilizes an OLS regression in a one-step incarceration and sentence length analysis (Sessions et al., 2010). Other studies utilize a one-step process and analyze outcomes using Tobit analysis to address censored data. (For a discussion of Tobit analysis see McDonald & Moffit, 1980; Roneck, 1992). Still other researchers support a two-step model as employed in the current study. (For examples of studies implementing a two-step sentencing decisions process see Farrell et al., 2009; Ulmer et al., 2011a, 2011b; Ward et al., 2009). As with any statistical analysis, each approach has inherent strengths and weaknesses. A two-step model was chosen for the current study after preliminary analyses and unconditional models indicated the validity of multilevel analysis due to the fact that sentencing outcomes did vary dependent on the federal court district in which a defendant was sentenced. Hierarchical modeling using HLM does not allow for Tobit analysis to address censored data. In order to examine sentencing severity using hierarchical models, a two-step process was employed, first examining whether or not a sentence was imposed, and then analyzing the length of sentence imposed with cases involving no prison time removed. GHLM and HLM analyses were used respectively.

**Imprisonment Decision.** The imprisonment decision variable represents a dichotomous variable coded 0 when no prison sentence was received, or 1 when 1 or more months of federal prison time were imposed. This variable includes the general population of defendants sentenced (in the current study minus immigration cases).

**Sentence-Length Decision.** The sentence-length variable represents a continuous variable indicating sentence length in number of months. For analyses involving sentence
length, only those cases in which the defendant was sentenced to time to serve in prison were included. Sentence-length analyses do not include alternative sentences such as home detention, community, confinement, or intermittent confinement as did analyses conducted by United States Sentencing Commission. Utilization of a measure of confinement without alternative sentences is supported in the literature (for examples see Ulmer et al., 2011a; Ulmer et al., 2011b). Life sentences and sentence lengths over 470 months were recoded to a value of 470 in order to match United States Sentencing Commission recommendations. Sentence length was capped at 470 months to address life expectancy and provide more reliable data as recommended by the U.S. Sentencing Commission and prior research (See Sessions et al., 2010; United States Sentencing Commission, 2009). Due to the positively skewed nature of sentencing data, the natural log of the sentence length was calculated and this value was utilized in analyses to address skewness. See Byrne & Turner (2010); Farrell et al.(2009); Ulmer & Bradley (2006); Ulmer et al. (2010): Ulmer et al. (2011b); Ulmer et al. (2011a); Sessions et al. (2010): and Ward et al. (2009) among others for examples. After analysis, sentence length was retransformed through utilization of the antilog in order for more meaningful interpretations allowing for analysis of proportional differences between groups. Table coefficients represent results of logged sentence length; however, textual interpretation and discussions speak to proportional differences derived after reconverting the logged results.

**Departure status.** Departure status was included in analyses generally as a control variable, but was also analyzed more specifically as an outcome variable in order to explore disparities in the likelihood of receiving a sentence below the range of that which is recommended by federal sentencing guidelines. As a dependent variable, departure status was
broken down into a series of dichotomous variables coded zero if a defendant did not receive a
particular type of below-range sentence, or 1 if a defendant did receive the particular type of
below-range sentence. Six classifications of below-range sentencing departures were analyzed
and each was coded into a dichotomous variable. The six categories of below-range sentences
were (1) 5K1.1 substantial-assistance departures, (2) 5K3.1 early disposition or “fast track”
departures, (3) government-sponsored departures, (4) traditional downward departures, (5)
below-range departures citing 3353 reasoning, and (6) below-range sentences under Booker in
which judges do not cite to specific justifications.

Traditional downward departures and substantial-assistance departures represent the
primary departure categories analyzed in sentencing literature. Downward departures represented
judicial discretion for sentencing outside of sentencing dictates. Judges could not sentence
outside of sentencing guidelines without specific justification of a pre-determined downward
departure. Substantial assistance departures represented the discretion afforded prosecutors in
implementing less severe sentences for defendants who acted as informants in other criminal
cases. Here, a defendant’s sentence may fall below guidelines based on specific assistance
provided to the state. However, since Booker, judicial restrictions have significantly loosened
and it is important to examine and understand the intricacies of sentencing justifications. For
example, judges may still cite to a traditional “downward departure” resection for sentencing
outside of guideline calculations. Additionally, prosecutor-motivated departures for information
and state cooperation remain a potential reason for sentencing outside of guidelines; however, in
the current analyses these specific departures originating from cooperation with prosecutors were
distinguished from more general government-sponsored out-of-range sentences. Distinct from
judges who cite traditional downward departures, 18 U.S.C § 3553(a) outlines specific guidelines for consideration when imposing a sentence and judges may cite to § 3553 factors to justify below range departures in lieu of citation to specifically allocated “downward departures.” However, judges may also exercise discretion without specific citation based on reasonableness. For discussion see Heckman (2008); Berman and Hofer (2009).

**Independent variables.** A variety of independent variables were included in sentencing analyses both as control measures and additionally to provide theoretical information about sentencing disparities in federal sentencing. Legally relevant variables include criminal history, a measure of presumptive sentence or the predicted minim sentence as calculated by federal guidelines, pre-trial custody status, plea agreement status, crime type, and departure status. Defendant characteristics examined include sex, race/ethnicity, citizenship, education level, and whether or not a defendant had dependent children. District-level contextual factors include district, district size, region, rate of violence, political ideology, race/ethnic representation in judges, race/ethnic representation in prosecutors, gender representation in judges, and gender representation in prosecutors. For discussion of independent variables, see *Pre-trial* section

Independent Variables.

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17 For specific detailing of §3553 sentencing guidelines, see Footnote 5 above.
18 With increasing federal attention to illegal immigration cases, the United States Sentencing Commission was authorized to develop “fast-track” downward departures in which an expedited judicial process can be initiated pending a motion set forth by the prosecutor. In such cases, prosecutors are authorized to offer a below range sentence in exchange for an immediate guilty plea and a defendants agreement to waive pre and post sentencing rights. The departure was authorized by Congress as part of the PROTECT (2003), in an attempt to ease the burden of a growing number of immigration cases. This form of departures is available only in cases of illegal immigration and is not an option available or utilized in all federal districts, as not all districts have authorized its implementation. (Berry, Ringquist, Fording, & Hanson, 1998)60} This particular type of departure is not included in final analyzes because of lack of availability and variability across all federal court districts in current sentencing outcome analyses.
**District-level contextual variables.** District-level contextual measures of gender representation were included in hierarchical models examining cross-level interactions. See the discussion of district-level contextual variables above in the Pre-trial decision section.

**Correctional Placement and Classification**

**Methodology for correctional placement analyses.** The corrections component of the current study provides a glimpse into the impact of justice decisions on the imprisonment of women within the federal correctional system. The correctional placement chapter presents an overview of current trends in the federal incarceration of women. This chapter presents a specific examination of the nature of women in federal prison custody and explores important justice decisions at the incarceration stage, explicating the potential presence of differential treatment in the imprisonment of women. Correctional placement analyses move disparity examinations beyond incarceration decisions. The chapter presents a portrait of the contemporary corrections system for women as it is experienced at the federal level and is rooted in the history of women’s imprisonment generally.

Demographic analyses were conducted and correctional trends compared specifically examining differences between women and men offenders. Analyses were also conducted exploring potential disparities in correctional classification and placement patterns between women and men in the type of prisons to which women were sent as well as potential disparities in access to programming. Hierarchical modeling techniques were utilized in correctional placement analyses in order to control for the influence of federal court district and circuit of origin. Outcomes do vary significantly by district, and district of origin explains between 3 and
18 percent of variance in outcomes examined in correctional placement analyses. Overall, the correctional placement chapter will explore disparate treatment and convey a general portrait of the experience of women with the federal justice correctional system.

**Correctional Placement Dataset.** Bureau of Prison data were acquired through the Federal Justice Statistics Resource Program (originally housed at www.fjsrc.urban.org. See discussion in Primary Defendant Level Data section above.) Additionally, secondary-level district variables were included to control for correctional placement based on federal court district of origin.

**Correctional Placement Analytic Period.** Primary analyses for Bureau of Prisons examinations will be conducted in the period paralleling that of the federal sentencing analyses. Initial Bureau of Prisons analyses will be conducted examining offenders housed in federal custody at year-end for the fiscal year 2008. Bureau of Prisons descriptive data will be compared to general descriptive data of early prison records where possible.

**Dependent Variables.**

*Facility Type.* Facility type is operationalized as a series of dichotomous variables. The types of facilities examined were Federal Bureau of Prisons institution, private facility, or contract facility. Each dichotomous variable is coded 1 for the specific type of facility and zero for other (i.e. 1= Federal Bureau of Prison facility, zero = non-Bureau of Prisons facility). This variable is utilized to examine the type of institution to which an offender is sent, allowing for the examination of potential difference by race or sex.

*Facility Distance.* Facility distance represents a dichotomous variable indicating 1, an
offender is currently housed in an institution within the state of sentencing, or 0, an offender is housed in a facility outside of the state of sentencing. This variable is a proxy measure for examination of how far defendants were sent from their residence of origin, and potentially how far they were from family and other protective resources.

**Program Availability.** The RDAP variable represents a dichotomous indication of whether or not an institution houses a Residential Drug Treatment Program (RDAP) within the facility. The variable is coded 1 where a RDAP program is present, or 0 if no RDAP program is present within the facility. The Residential Drug Abuse program constitutes the Bureau of Prisons’ most intensive substance abuse treatment program. The program is based on Cognitive Behavioral Therapy model of treatment utilizing a modified therapeutic community. In this intensive treatment program, residents live in a residential unit separate from general population. The inmates participate in half-day programming and engage in work, schooling, and vocational activities for the other part of the day. The program is generally nine months in duration. Research indicates a reduction in recidivism of RDAP participants, and participants have been shown to be less likely to relapse as compared to those who do not complete the program (www.bop.gov). An additional dichotomous variable was created to indicate whether or not an offender was committed to a facility offering specific programming for co-occurring disorders or treatment addressing both mental health and substance abuse issues.

**Independent Variables.**

**Sex.** As with sentencing analyses, the independent variable of primary interest is that of defendant’s sex. This variable is coded 1 for women offenders or zero for men offenders. Here
again the data available were actually a representation of offender sex (women offenders versus men offenders). Accordingly, offender sex must be utilized as a proxy measure for gender analyses. This is obviously a very limited measure of gendered effects; however, it will indicate the potential differential treatment of women versus men within the federal correctional system.

**Race and Ethnicity.** Race represents an indication of the race of the offender and is coded as a series of dichotomous variables. This variable includes offender black, offender, white, and offender of other race, representing offenders who were American Indian, Asian, or of other racial identification. Each variable is coded in a binary fashion. For example, the offender black variable is coded 1 for offender blacks, zero for offenders who were non-black. Ethnicity is a representation of Hispanic decent and is coded as a dichotomous variable where 1 equals an offender of Hispanic origin and zero equals non-Hispanic offender.

**Age.** Age is coded as a dichotomous variable where 1 indicates that an offender is age 25 or older and zero indicates that an offender is under 25 years of age.

**Citizenship.** Citizenship is an indication of country of origin. The variable is coded as a dichotomous variable with 1 indicating the offender is a United States citizen and zero indicating that the offender is a non-United States citizen.

**Offense Type.** For correctional placement analyses, offense type is represented by a series of dichotomous variables. Offense type variable categories include violent offense, sexual abuse offense, drug offenses, white-collar offense, immigration offense and other types of offenses.

**District-level contextual variables.** District-level variables were included in order to
control for regional differences in justice decision-making. For a discussion of district-level variables, refer to the pre-trial decision section earlier in this chapter.

**Conclusion**

After all analyses were conducted according to those guidelines presented above, an overall assessment was conducted, combining results and determining the theoretical meaning and implications of outcomes. Disparities were examined as they exist across the justice system, and as they occur at various decision points in the process. Outcomes, and the precise nature of disparate results, are utilized to explicate potential theoretical explanations for why women are treated in a divergent manner within the justice system. Data gathered from the analyses discussed above provide a contemporary contextualization of justice-decision practices as they affect women defendants within a current justice environment characterized by increased discretion in federal decision-making and a dramatic increase in the imprisonment of women federally.
Chapter 4 Exploring Defendant Characteristics

The current chapter presents a general analysis of the characteristics of women and men at the various stages of the federal criminal justice process. In this chapter, I explore the characteristics of defendants processed in the federal criminal justice system during the years 2006-2009, comparing the characteristics of men and women. Statistics are presented from an earlier sentencing period (2000-2002), prior to changes to federal sentencing guidelines, as a means of contextualizing current descriptive patterns and providing a comparison of the current criminal justice process with that of the past. This examination of what is different in the current federal justice context sets the foundation for understanding post-Booker changes which subsequent chapters analyze and explain. In the current demographic portrait, analyses do not target specific sub-questions or hypotheses but instead present a general portrait of women within the federal justice process as compared to men addressing the following general question:

Question. What are the characteristics of women involved in the various phases of the federal criminal justice system and how do they compare to men involved in the same processes?

Data and Analyses

For descriptive examinations, data were obtained through the Federal Justice Statistics Program collected by the Bureau of Justice Statistics. These data represent the population of

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19 In composing the Federal Justice Statistics Program database, the Bureau of Justice Statistics (BJS) collects comprehensive data across operational agencies addressing the various stages of the criminal justice process representing the total population of individuals served by federal agencies in each phases of the criminal justice system (http://fjsrc.urban.org, Scalia & Sabol,
defendants within the federal sentencing process (approximately 280,000 individuals for the period of current study FY2006-FY2009), with women comprising approximately 13% of the population of sentenced individuals and 10% of incarcerated individuals. Data for the comparative 2000-2002 time period were also obtained from the Federal Justice Statistics Program\textsuperscript{20}. District characteristics are also explored and compared.

In examining defendant and case characteristics, differences by sex are explored using appropriate statistical techniques.\textsuperscript{21} Sex represents the variable of primary focus as this work attempts to explicate gender differences in justice outcomes. In the initial descriptive exploration, data are first presented for the entirety of defendants sentenced and subsequently broken down by sex (women and men). As it mentioned elsewhere throughout this work, it is important to take caution in using sex as a proxy measure of the complex nature of gender. It is through the theoretical questions in subsequent chapters that the current work attempts to target some of the fundamental components of gender and justice; however, it is understood that analyses remain limited by data availability constraints.

I examine the characteristics of district level data to describe differences across federal districts. District level data come from a variety of sources as discussed in greater detail in the last chapter. All district level data were aggregated and combined into a newly created dataset

\textsuperscript{1999). Current data are drawn from the U.S. Sentencing Commission. Data are discussed in greater detail in Chapter 3.}

\textsuperscript{20} Some of the summary data were obtained directly from the Bureau of Justice Statistics webpage at http://bjs.ojp.usdoj.gov/fjsrc/.

\textsuperscript{21} Descriptive outcomes are obtained and analyzed utilizing SPSS statistical software. Comparisons between men and women defendants are conducted for all key variables using appropriate techniques including Independent Sample T Tests.
characterizing the contextual attributes of the federal court districts within the current study. The current analyses explore features of 89 distinct federal court districts.

**Individual Level Descriptive Statistics for Pre-sentencing and Sentencing Decisions**

**Defendant characteristics.** The current chapter provides an overview of the nature of defendants processed within the contemporary federal justice system as well as a descriptive portrait of the federal court districts within which they are processed. In addition to presenting a characterization of the “typical” federal defendant, this chapter details characteristics of both men and women within the justice system, and explores defendant differences over time.

I begin with a depiction of defendants themselves. Thirteen percent of all defendants within the federal criminal justice system processed between 2006 and 2009 were women. Thirty-eight percent of defendants were white, 22 percent black, 39 percent Hispanic, and 7 percent were of other races including Asian, American Indian, and multiracial decent. In examining racial distinctions by sex, we see that 43 percent of women defendants were white, 22 percent black, 34 percent Hispanic, and percent of other races. Thirty-eight percent of men were white, 23 percent black, 42 percent Hispanic, and 6 percent of other races. Only the proportion of black defendants was not significantly different by sex. Refer to Table 4-1.
There were more white defendants sentenced in the current analysis period as compared to defendants processed in 2000-2002. This was significantly true for defendants of both sexes. A significantly smaller proportion of defendants were black during the later time period. There was a significant increase in Hispanic defendants sentenced within the federal system during the post-Booker period. For temporal comparisons, refer to Table 4.2.
Table 4.2 Comparative defendant descriptive statistics 2000-2002 and 2006-2009

<table>
<thead>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ALL</td>
<td>WOMEN</td>
<td>MEN</td>
<td>ALL</td>
</tr>
<tr>
<td></td>
<td>N=183,416</td>
<td>N=26,175</td>
<td>N=157,341</td>
<td>N=272,831</td>
</tr>
<tr>
<td>Women</td>
<td>14%</td>
<td>13%</td>
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<td></td>
</tr>
<tr>
<td>White</td>
<td>34%</td>
<td>42%</td>
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<td>38%</td>
</tr>
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<td>28%</td>
<td>28%</td>
<td>22%</td>
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<td>39%</td>
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<tr>
<td>Non-citizen</td>
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<td>21%</td>
<td>39%</td>
<td>40%</td>
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<tr>
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</tr>
<tr>
<td>Children (y/n)</td>
<td>59%</td>
<td>61%</td>
<td>59%</td>
<td>0.64</td>
</tr>
</tbody>
</table>

* p < .10  ** p < .05  *** p < .01 for 2000-2002 vs. 2006-2009 comparison all defendants

During the 2006-2009 period of analysis, 40 percent of defendants were not citizens of the United States, while men were more likely to be non-citizens than women (42 and 22 percent respectively). Both men and women were more likely to be non-citizens during the 2006-2009 post-Booker sentencing period as compared to the 2000-2002 period. (Refer to Table 4.2.) This increase potentially indicates a shift in the federal justice system to increased attention to and focus on immigration cases.

In relation to education, 46 percent of defendants had less than a high school degree or its equivalent during the 2006-2009 period. Men (48 percent) were more likely than women (34 percent) to not have graduated high school. Twenty-nine percent of defendants were high school graduates, with 32 percent of women and 29 percent of men having graduated high school. This difference was statistically significant. Fifteen percent of those sentenced in the federal justice system attended at least some college, with women (23 percent) being more likely than men (14 percent).
percent) to have attended college but not graduated. Six percent of defendants graduated college or attended graduate school, with women being more likely than men to have college or graduate degrees (7 percent and 5 percent of defendants respectively). Refer to Table 4.1 for descriptive data.

During the 2006-2009 period, sixty-four percent of defendants were reported to have dependent children, with 63 percent of women and 64 percent of men reporting children. The number of children of defendants ranged from 0 to 29, with men reporting more children than women. For women, the greatest number of children recorded was 12. On average, defendants had 1.64 children, with men having more children than women. (See Table 4.1.) Defendants sentenced during the period of the current study (2006-2009) were more likely to have children and had more children than defendants sentenced in 2000-2001. (See Table 4.2.) In general, it must be noted that the dependent children measure is somewhat limited in that it does not measure primary caretaking. The fact that men report more children than women does not reflect the reality of parenting or that women are more likely to be the primary caretaker of dependent children. For example, children of fathers in prison are more likely to live with their other parent than are children whose mothers are incarcerated (Foster, 2011). The fact that more defendants had children during the post-Booker time period suggests that in a contemporary justice context, the collateral consequences of incarcerating women defendants may be greater and that more children may become displaced as the result of incarcerated mothers.

**Case and legal factors.** Overall, over 87 percent of defendants are sentenced to serve time in prison with 91 percent of men and 71 percent of women being sentenced to serve time in a correctional facility. The difference between men and women in likelihood of imprisonment is
statistically significant. Again, this measure does not include alternate confinement sentences such as community and home confinement or intermittent confinement sentences.

Table 4.3 Descriptive statistics for case and legal factors 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>All cases N=286,588</th>
<th>Women N=35,761</th>
<th>Men N=238,665</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>% or mean    Range</td>
<td>% or mean    Range</td>
<td>% or mean    Range</td>
</tr>
<tr>
<td>Sentence Length *</td>
<td>56.35 0-470</td>
<td>33.29 0-470</td>
<td>59.96 0-470 ***</td>
</tr>
<tr>
<td>Prison</td>
<td>87% 71%</td>
<td>91%</td>
<td></td>
</tr>
<tr>
<td>Criminal History</td>
<td>2.47 1-6</td>
<td>1.63 1-6</td>
<td>2.61 1-6 ***</td>
</tr>
<tr>
<td>Trial</td>
<td>4% 3%</td>
<td>4%</td>
<td></td>
</tr>
<tr>
<td>Bail</td>
<td>25% 52%</td>
<td>21%</td>
<td></td>
</tr>
<tr>
<td>Released on own Recognizance</td>
<td>5% 11%</td>
<td>4%</td>
<td></td>
</tr>
<tr>
<td>Violent</td>
<td>9% 3%</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>2% 1%</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>Drug Offenses</td>
<td>34% 33%</td>
<td>35%</td>
<td></td>
</tr>
<tr>
<td>White Collar Crime</td>
<td>15% 35%</td>
<td>12%</td>
<td></td>
</tr>
<tr>
<td>Immigration</td>
<td>24% 14%</td>
<td>27%</td>
<td></td>
</tr>
<tr>
<td>Other Crime</td>
<td>17% 15%</td>
<td>14%</td>
<td></td>
</tr>
<tr>
<td>Below range sentence</td>
<td>25% 25%</td>
<td>26%</td>
<td></td>
</tr>
<tr>
<td>Within Range</td>
<td>59% 56%</td>
<td>59%</td>
<td></td>
</tr>
<tr>
<td>Upward departure or above range</td>
<td>2%    1%</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>Substantial Assistance 5K.1.1</td>
<td>14% 18%</td>
<td>13%</td>
<td></td>
</tr>
<tr>
<td>Early disposition</td>
<td>8% 5%</td>
<td>9%</td>
<td></td>
</tr>
<tr>
<td>Government sponsored</td>
<td>4% 3%</td>
<td>4%</td>
<td></td>
</tr>
<tr>
<td>Traditional downward departure</td>
<td>2% 3%</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>Downward departure citing 3553</td>
<td>1% 2%</td>
<td>1%</td>
<td></td>
</tr>
<tr>
<td>Remaining below range</td>
<td>10% 12%</td>
<td>10%</td>
<td></td>
</tr>
</tbody>
</table>

*N for sentence length analyses 243,138. For women only, N=24,874. For men only N=213,991.

*≤ .10  ** < .05  *** < .01

Clearly, greater proportions of men as compared to women continue to be sentenced to serve time in prisons. Of those defendants who are sentenced to serve time in prison, the average length of the sentence length imposed is 56 months. Broken down by sex, men received an
average sentence length approximately 60 months (about 5 years) and women received an 
average sentence length of 33 months (two and three-quarter months).

One quarter of defendants was released from custody prior to sentencing; however, there 
was a noticeable difference between men and women in the likelihood of being released. 
Twenty-one percent of men received pre-sentencing release, while 52 percent of women were released from custody prior to being sentenced. When looking specifically at the least restrictive 
form of pre-trial release, that is individuals released on their own recognizance; women were over twice as likely to be afforded this less restrictive, non-monetary release. On average, 5 percent of defendants were released on their own recognizance, while the average was 4 per cent for men and 11 percent for women. Overall 4 percent of defendants’ cases went to trial; however, on average, a man is more likely (4 percent) to have his case be taken to trial as opposed to receiving a plea agreement. Only 3 percent of women’s cases were taken to trial. All outcomes were statistically different by sex.

In looking specifically into details of case and legal factors, many indices point to potential legal explanations for at least part of the leniency experienced by women within the federal justice system. Men had more significant criminal histories than women. While the overall average criminal history score during the 2006-2009 period was 2.47, the average from men was 2.61 and women 1.63. See Table 4.3.

The types of crimes defendants were charged with additionally differed dependent on sex of the defendant. For the 2006-2009 period, white collar (35 percent) and drug (33 percent) offenses were the most common offenses for women defendants. For men, the most common
offenses were drug offenses (35 percent) followed by immigration offenses (27 percent). Men were significantly more likely to be sentenced to violent crime than were women with violent offenses representing 10 and 3 percent of offences by each sex respectively. This suggests that there continues to be validity to the claim that women are less violent than men. Outcomes suggest that women in a contemporary context were less likely to be sentenced to violent offenses. See Table 4.3.

It is possible that some of the leniency experienced by women can be attributable to the fact that women are charged with less violent crimes and thus perceived to be less of a danger to society. Such differences suggest at least some viability to theories positing differences in justice outcomes based on perceptions of differing levels of blameworthiness and culpability. However, analyses in subsequent chapters explicate leniency for women controlling for the influence of legal and case factors. Later chapters will suggest that leniency in justice outcomes for women remains net these specific controls for case and legal factors. This suggests the specific influence of defendant characteristics on justice outcomes beyond legal explanations as will be explored in later chapters. Comparative results indicate a shift in the likelihood of defendants being sentenced to immigration offenses, with a more targeted focus on immigration occurring in the post-

*Booker* period. A greater proportion of defendants were sentenced with immigration offenses in the more contemporary post-

*Booker* context. More women were sentenced to immigration offenses, 14 percent compared to 6 percent during the 2000-2002 period. In the more contemporary context, for men sentenced in federal courts, immigration offenses represented 27 percent of cases, as compared to 18 percent in the 2000-2002 period. These outcomes suggest a significant shift in attention of justice decision makers, with increased
attention and resources of the federal government focused on immigration crime. This rise in immigration offenses, in part, can help to explain the growth in federal incarceration rates, and in particular the growth in the imprisonment of women. See Table 4.4.

Table 4.4 Comparative descriptive statistics for case and legal factors 2000-2002 and 2006-2009

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ALL</td>
<td>WOMEN</td>
<td>MEN</td>
<td>ALL</td>
<td>WOMEN</td>
<td>MEN</td>
</tr>
<tr>
<td></td>
<td>N=183,416</td>
<td>N=26,175</td>
<td>N=157,341</td>
<td>N=272,831</td>
<td>N=35,716</td>
<td>N=236,665</td>
</tr>
<tr>
<td>Sentence Length</td>
<td>66.74</td>
<td>34.72</td>
<td>71.61</td>
<td>56.35</td>
<td>33.29</td>
<td>59.96</td>
</tr>
<tr>
<td>Prison</td>
<td>80%</td>
<td>70%</td>
<td>84%</td>
<td>87%</td>
<td>71%</td>
<td>91%</td>
</tr>
<tr>
<td>Criminal History</td>
<td>2.40</td>
<td>1.62</td>
<td>2.57</td>
<td>2.47</td>
<td>1.63</td>
<td>2.61</td>
</tr>
<tr>
<td>Trial</td>
<td>6%</td>
<td>3%</td>
<td>6%</td>
<td>4%</td>
<td>3%</td>
<td>4%</td>
</tr>
<tr>
<td>Bail</td>
<td>50%</td>
<td>70%</td>
<td>46%</td>
<td>25%</td>
<td>52%</td>
<td>21%</td>
</tr>
<tr>
<td>ROR</td>
<td>13%</td>
<td>20%</td>
<td>12%</td>
<td>5%</td>
<td>11%</td>
<td>4%</td>
</tr>
<tr>
<td>Violent</td>
<td>4%</td>
<td>2%</td>
<td>4%</td>
<td>9%</td>
<td>3%</td>
<td>10%</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>1%</td>
<td>0%</td>
<td>1%</td>
<td>2%</td>
<td>1%</td>
<td>2%</td>
</tr>
<tr>
<td>Drug Offenses</td>
<td>41%</td>
<td>40%</td>
<td>42%</td>
<td>34%</td>
<td>33%</td>
<td>35%</td>
</tr>
<tr>
<td>White Collar</td>
<td>19%</td>
<td>34%</td>
<td>16%</td>
<td>15%</td>
<td>35%</td>
<td>12%</td>
</tr>
<tr>
<td>Immigration</td>
<td>17%</td>
<td>6%</td>
<td>18%</td>
<td>24%</td>
<td>14%</td>
<td>27%</td>
</tr>
<tr>
<td>Other Crime</td>
<td>19%</td>
<td>19%</td>
<td>19%</td>
<td>17%</td>
<td>15%</td>
<td>14%</td>
</tr>
<tr>
<td>Below range</td>
<td>11%</td>
<td>14%</td>
<td>11%</td>
<td>25%</td>
<td>25%</td>
<td>26%</td>
</tr>
<tr>
<td>Substantial Assistance</td>
<td>22%</td>
<td>22%</td>
<td>22%</td>
<td>14%</td>
<td>18%</td>
<td>13%</td>
</tr>
</tbody>
</table>

*≤ .10   ** < .05   *** < .01 for comparison 2000-2002 vs. 2006-2009 all defendants

Specifically examining sentencing in relation to federal sentencing guideline recommendations, defendants in the post-Booker sentencing period were sentenced within the dictates of guidelines approximately 60 percent of the time. Women were less likely to be sentenced within guideline ranges than men; however, women were sentenced within guideline dictates in the majority of cases (56 percent of cases within guideline limits for women).

Although most defendants did not receive sentences above the recommendations of guidelines (2 percent overall), men (2 percent) were twice as likely as women (1 percent) to receive sentences
that were greater than those recommended by federal guidelines. Women were more likely overall to receive sentences below the range of federal guideline recommendations. The only departure downward from sentencing guidelines that men were significantly more likely to receive as compared to women were early disposition or “fast track” departures. Overall 8 percent of the defendants in the current study received early disposition departures. Nine percent of men and 5 percent of women in the current study received early disposition departures. Early disposition departures represent a mechanism for addressing immigration case, and are available only in certain districts. For descriptive data refer to Table 4.3.

While the proportion of women charged with immigration cases is rising, men remain more likely than women to face charges involving immigration offenses. Women were more likely than men to receive all other types of below range sentences. The most common form of departure received was the substantial assistance of prosecutor-motivated departure, followed by general departures under the guise of Booker sentencing allowances. This last category represents those departures that are imparted without specific citation to ruling or departure type. There were more below guideline range departures granted during the 2006-2009 period as compared to the 2000-2002 period. However, in looking at substantial assistance departures specifically, there were fewer prosecutor-motivated departures granted in the post-Booker period as compared to the earlier (2000-2002) period. While women continue to experience increased leniency in departures from sentencing guidelines, the nature of the implementation of departures appears to be changing, with greater discretion coming from judges and less from prosecutors. This makes sense in light of the increased discretion afforded judges in the wake of Booker and subsequent related court rulings. Below range departures from sentencing guidelines remain a
significant mechanism for the implementation of leniency toward women defendants; however, the shift in implantation of departures is noteworthy. For comparative descriptive data, refer to Table 4.4.

**Federal Judicial District Characteristics**

Next, characteristics of the federal court districts are explored. Characteristic of district populations and courts were examined both for the contemporary post-Booker federal court district compositions as well as for federal district during an earlier pre-Booker period (2001-2002). Outcomes for the two time periods were compared using t-test for comparison of means. Districts did vary in their level of diversity. The proportion of population white varied from a low of 27 percent to other districts that were almost entirely white (97 percent white). The mean proportion of white citizens for a district was 81 percent. For blacks, the proportion of district population ranged from 0 to 42 percent, with a mean of 12 percent. For the Hispanic population, the range was 1 to 43 percent with a mean of 9 percent. For American Indians the range was 0 to 16 percent with a mean of 91 and for the Asian population the range was 0 to 41 percent with an average proportion of 3 percent. The average rate of violence was 191 per 10,000 population. The average political ideology score was 46 (on a possible scale of 0 to 100). The range of political ideology scores for districts when from 9.5 to 95. Refer to Table 4.5.
Table 4.5 Federal district descriptive statistics 2001-2002 and 2006-2009

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Min</td>
<td>Max</td>
<td>Mean</td>
<td>Min</td>
<td>Max</td>
<td>Mean</td>
</tr>
<tr>
<td><strong>District Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population white</td>
<td>24%</td>
<td>97%</td>
<td>78%</td>
<td>27%</td>
<td>97%</td>
<td>81%</td>
</tr>
<tr>
<td>Population black</td>
<td>0%</td>
<td>37%</td>
<td>12%</td>
<td>0%</td>
<td>42%</td>
<td>12%</td>
</tr>
<tr>
<td>Population Hispanic</td>
<td>2%</td>
<td>42%</td>
<td>8%</td>
<td>1%</td>
<td>43%</td>
<td>9%</td>
</tr>
<tr>
<td>Population American Indian</td>
<td>0%</td>
<td>16%</td>
<td>1%</td>
<td>0%</td>
<td>16%</td>
<td>1%</td>
</tr>
<tr>
<td>Population Asian</td>
<td>0%</td>
<td>51%</td>
<td>3%</td>
<td>0%</td>
<td>41%</td>
<td>4%</td>
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<tr>
<td>Political Ideology Score</td>
<td>6.25</td>
<td>97.50</td>
<td>47.18</td>
<td>9.49</td>
<td>94.77</td>
<td>45.99</td>
</tr>
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<td><strong>Judge Characteristics</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judges in District</td>
<td>1.50</td>
<td>28.00</td>
<td>7.34</td>
<td>2.00</td>
<td>43.00</td>
<td>10.47</td>
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<tr>
<td>Judges White</td>
<td>54%</td>
<td>100%</td>
<td>86%</td>
<td>50%</td>
<td>100%</td>
<td>89%</td>
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<tr>
<td>Judges Black</td>
<td>0%</td>
<td>33%</td>
<td>9%</td>
<td>0%</td>
<td>50%</td>
<td>7%</td>
</tr>
<tr>
<td>Judges Hispanic</td>
<td>0%</td>
<td>46%</td>
<td>4%</td>
<td>0%</td>
<td>50%</td>
<td>3%</td>
</tr>
<tr>
<td>Judges with Democratic appointment</td>
<td>0%</td>
<td>100%</td>
<td>44%</td>
<td>0%</td>
<td>100%</td>
<td>39%</td>
</tr>
<tr>
<td>Average number of years on bench</td>
<td>2.50</td>
<td>25.00</td>
<td>10.30</td>
<td>10.00</td>
<td>27.00</td>
<td>16.87</td>
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<td><strong>Prosecutor Characteristics</strong></td>
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<td></td>
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<tr>
<td>Prosecutors White</td>
<td>0.50</td>
<td>100%</td>
<td>86%</td>
<td>36%</td>
<td>100%</td>
<td>86%</td>
</tr>
<tr>
<td>Prosecutors Black</td>
<td>0%</td>
<td>33%</td>
<td>9%</td>
<td>0%</td>
<td>19%</td>
<td>7%</td>
</tr>
<tr>
<td>Prosecutors Hispanic</td>
<td>0%</td>
<td>20%</td>
<td>3%</td>
<td>0%</td>
<td>28%</td>
<td>4%</td>
</tr>
<tr>
<td><strong>Representation Index Variables</strong></td>
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<tr>
<td>White judge representation</td>
<td>0.54</td>
<td>1.00</td>
<td>0.86</td>
<td>0.58</td>
<td>3.13</td>
<td>1.13</td>
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<td>Black judge representation</td>
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<td>0.96</td>
<td>0.00</td>
<td>5.13</td>
<td>0.66</td>
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<td>Hispanic judge representation</td>
<td>0.00</td>
<td>0.24</td>
<td>0.68</td>
<td>0.00</td>
<td>8.16</td>
<td>0.22</td>
</tr>
<tr>
<td>White prosecutor representation</td>
<td>0.50</td>
<td>1.00</td>
<td>0.86</td>
<td>0.75</td>
<td>1.51</td>
<td>1.08</td>
</tr>
<tr>
<td>Black prosecutor representation</td>
<td>0.00</td>
<td>0.03</td>
<td>0.75</td>
<td>0.00</td>
<td>1.92</td>
<td>0.59</td>
</tr>
<tr>
<td>Hispanic prosecutor representation</td>
<td>0.00</td>
<td>3.49</td>
<td>0.45</td>
<td>0.00</td>
<td>2.47</td>
<td>0.45</td>
</tr>
<tr>
<td>Women Judges</td>
<td>0%</td>
<td>85%</td>
<td>20%</td>
<td>0%</td>
<td>50%</td>
<td>14%</td>
</tr>
<tr>
<td>Women Prosecutors</td>
<td>27%</td>
<td>73%</td>
<td>48%</td>
<td>15%</td>
<td>58%</td>
<td>43%</td>
</tr>
</tbody>
</table>

*≤ .10    ** ≤ .05    *** < .01 for comparison of means
Data were also obtained to characterize the judges serving for each federal court district. In examining district court size, the average number of judges per district was just over 10, with a range from 2 to 43. Racial distinctions in judges serving in each district also ranged significantly. The proportion of white judges for a district ranged from 50 percent to 100 percent. Black judges ranged from 0 to 50 percent, with a mean of 7 percent. Hispanic judges also ranged from 0 to 50 percent, with a mean of 3 percent. Less than one percent of judges were of Asian or Native American decent. On average 39 percent of judges were appointed by a Democrat. The average number of years that judges had served on the federal court was just under 17, with a range in districts from an average of 10 to 27 years.

On average, 86 percent of federal prosecutors were white. Districts ranged in proportion of white prosecutors from 36 to 100 percent. Blacks on average represented 7 percent of federal prosecutors with a district range from 0 to 19 percent. On average, 4 percent of federal prosecutors were Hispanic, with a range in federal districts from 0 to 28 percent. Three percent and 1 percent of federal prosecutors were Asian and Native American respectively.

According to federal court district data, women continue to be underrepresented within the federal justice workforce. On average, only 14 percent of federal judges are women. In looking at federal districts, the range of women’s representation on the bench varies from 0 to 50 percent. There is somewhat greater representation in examination of federal prosecutors. On average, 43 percent of federal prosecutors are women, with a range in districts from 15 to 58 percent. Thus overall, while some districts appear to be gaining an increasing representation of women in the justice workforce, in general women are underrepresented in the roles of federal prosecutors and more specifically federal judges.
Finally, index measures were created in order to examine the representativeness of the courtroom workgroup in relation to the composition of the federal court districts themselves. Measures were created comparing the racial representation in judges and prosecutors as related to the representation of each race in the general population of the district. A score was created for judge and prosecutor representation for each district. Scores over one indicate an overrepresentation of a race within the justice workforce as compared to the population generally. Scores under 1 indicate an under representation of the racial category. A score of 1 indicates equivalent representation between the population and the judicial workforce. The average representation score for white judges was 1.13, indicating an overrepresentation of white judges. The range of scores for white judges was 0.58 to 3.13. For black judges the mean score was 0.66 with a range from 0 to 5.13. For Hispanic judges, the score ranged from 0 to 8.16 with a mean score of 0.22. In relation to prosecutors, whites were also generally overrepresented with a mean score of 1.08 and a range from 0.75 to 1.51. For black federal prosecutors, the range was 0 to 1.92 with a mean score of 0.59. For Hispanic prosecutors, the range was 0 to 2.47 with a mean score of 0.45.

As a comparative mechanism, district contextual data were examined for an early prior of time. Here, federal judicial district and justice workgroup data were analyzed from the period 2001-2002. For an overview of district contextual data for 2001-2002, see Table 4.3.

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22 The 2001-2002 data were obtained from a variety of data sources, as was detailed for the establishment of the 2006-2007 district contextual dataset. These sources include data from FedStats, the Administrative Office of the U.S. Courts, the Measuring Citizen and Government Ideology in the American States database, the Federal Judicial Center, and the U.S. Office of Personnel Management. All sources are discussed earlier in this chapter and in greater detail in Chapter 3. 2001-2002 data was compiled and analyzed in the same manner as the 2006-2007 district contextual data.
Interestingly, it appears that the representativeness of the courtroom workgroup has not become more diverse, but in fact may be less diverse in 2006-2007 as compared to earlier in the decade. The average index measure of black representation of federal judges and prosecutors both went down. The average measure of representation of black judges in 2001-2002 was 0.96 while in 2006-2007 the average measure was 0.66. While not a statistically significant difference, the result does indicate a decrease in representation. The average representation score for black Prosecutors in 2001-2002 was 0.75, while in 2006-2007 the average score was 0.59, a statistically significant decrease in representativeness. Hispanic judge representation also decreased in the later period, while the representativeness of Hispanic prosecutors remained constant. In 2001-2002, the average score of Hispanic representation for federal judges was 0.68. In 2006-2007, the average score was 0.22.

In examining gender representation, it appears that the proportion of women represented in the justice workforce has decreased during the period from 2001-2002 to 2006-2007. In the early part of the decade, women represented over twenty percent of federal judges and over 48 percent of federal prosecutors. In the period of 2006-2007, women represented 14 percent and 43 percent of judges and prosecutors respectively. These results are statistically significant. Interestingly, it appears the gender representation within the federal justice workforce may not be increasing with time, as one might suspect. Instead, it appears that there may be less representation of women among federal judges and prosecutors. The fact remains that women are underrepresented within the federal court workgroup, particularly among federal judges.
Descriptive statistics for the Commitment Phase of the Justice Process

Women represent a small proportion of those offenders housed in federal correctional institutions. For each year in the period of 2006 through 2009, women have represented less than 7 percent of offenders in federal correctional custody. In 2008, women constituted 6.7 percent of the population of federally incarcerated offenders. See Table 4.6

Table 4.6 Federal prison population by sex 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>N 158,093</td>
<td>164,323</td>
<td>166,542</td>
<td>172,981</td>
</tr>
<tr>
<td></td>
<td>% 93.37</td>
<td>93.18</td>
<td>93.29</td>
<td>93.37</td>
</tr>
<tr>
<td>Women</td>
<td>N 11,227</td>
<td>12,023</td>
<td>11,988</td>
<td>12,292</td>
</tr>
<tr>
<td></td>
<td>% 6.63</td>
<td>6.82</td>
<td>6.71</td>
<td>6.63</td>
</tr>
<tr>
<td>Total</td>
<td>N 169,320</td>
<td>176,346</td>
<td>178,530</td>
<td>185,273</td>
</tr>
</tbody>
</table>

Fifty-six percent of the incarcerated population was white, 40 percent black, 31 percent Hispanic, and 3 percent of other races. The average age of those committed to prison was 38. For commitment decision descriptive, refer to Table 4.5.
The majority of those offenders committed to prison federally were serving time for sentences related to drug offenses. This was true both for offenders committed during the current period of analysis as well as for the earlier comparison period (2000-2001). Fifty-two and 57 percent respectively of offenders were committed to prison federally for drug offenses. For both time periods, 11 percent of offenders were serving time for an immigration offense. While the sentencing results discussed earlier indicated that more defendants were being sentenced for immigration offenses, changes in the processing of immigration offenses can be seen to help explain the lack of increase in offenders committed for immigration offenses. The use of immigration specific “fast track” early disposition departures has diverted potential inmates from prison in certain districts.
Table 4.8 Correctional placement characteristics 2008

<table>
<thead>
<tr>
<th>Commitment Characteristics 2008</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>BOP facility</td>
<td>82%</td>
</tr>
<tr>
<td>Contract facility</td>
<td>5%</td>
</tr>
<tr>
<td>Sentenced to in-state facility</td>
<td>23%</td>
</tr>
<tr>
<td>RDAP</td>
<td>39%</td>
</tr>
<tr>
<td>Dual Diagnosis</td>
<td>2%</td>
</tr>
</tbody>
</table>

Table 4.8 refers to characteristics of commitment of federal offenders. Eighty-two percent of defendants were sentenced to Bureau of Prison facilities. Twenty-three percent of offenders were committed to facilities within their state of origin. Thirty-nine percent of offenders were committed to facilities offering residential substance abuse treatment programming and 2 percent were committed to facilities offering intensive dual diagnosis specific treatment.
Table 4.9 Federal Bureau of Prisons facilities for women

<table>
<thead>
<tr>
<th>Bureau Institutions Housing Female Offenders</th>
<th>Administrative:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Camps:</strong></td>
<td></td>
</tr>
<tr>
<td>FPC Alderson*, West Virginia</td>
<td>MDC Brooklyn, New York</td>
</tr>
<tr>
<td>FPC Bryan*, Texas</td>
<td>FMC Carswell*, Texas</td>
</tr>
<tr>
<td>SPC Coleman, Florida</td>
<td>MCC Chicago, Illinois</td>
</tr>
<tr>
<td>SPC Greenville*, Illinois</td>
<td>MDC Guaynabo, U.S. Virgin Islands</td>
</tr>
<tr>
<td>SPC Lexington, Kentucky</td>
<td>FDC Honolulu, Hawaii</td>
</tr>
<tr>
<td>SPC Marianna, Florida</td>
<td>FDC Houston, Texas</td>
</tr>
<tr>
<td>SPC Phoenix*, Arizona</td>
<td>MCC Los Angeles, California</td>
</tr>
<tr>
<td>SPC Victorville, California</td>
<td>FDC Miami, Florida</td>
</tr>
<tr>
<td></td>
<td>MCC New York, New York</td>
</tr>
<tr>
<td></td>
<td>FTC Oklahoma City, Oklahoma</td>
</tr>
<tr>
<td></td>
<td>FDC Philadelphia, Pennsylvania</td>
</tr>
<tr>
<td><strong>Other:</strong></td>
<td>MCC San Diego, California</td>
</tr>
<tr>
<td>SFF Hazelton, West Virginia</td>
<td>FDC Seatac, Washington</td>
</tr>
</tbody>
</table>

*With RDAP (Residential Drug Abuse Treatment Program)

Highlighted institutions are female only

The majority of federal offenders are housed in Bureau of Prison facilities. However, women are only housed in 27 of the 117 federal prisons. Table 4.9 details those Bureau of Prison facilities that house female offenders including delineation for the six facilities that also offer intensive substance abuse programming. As will be explore in greater detail in Chapter 7,
where offenders are committed does appear to impact their experience of the federal justice process and influence their potential access to needed programming and resources.

Ultimately, the above characterizations suggest that although women comprise a small proportion of those sentenced in federal district courts and committed to federal institutions, they are in fact distinct from their male counterparts in many ways. The next three chapters will specifically explore the unique nature of gendered disparities in justice outcomes examining pre-sentencing decisions, sentencing outcomes, and correctional placement. A multitude of variables will be explored in order to allow for greater statistical control in comparisons as well as to target unique mediating factors. The next chapter analyzes pre-sentencing outcomes for women and men.
Chapter 5 Differential Treatment of Women in Early Justice Process Decisions

Evidence of disparate treatment of women within the justice system has been witnessed throughout the criminal justice process including arrest (Smith, Visher, & Davidson, 1984; Visher, 1983), pre-trial decisions (Albonetti, 1998; Nagel & Hagan, 1983; Spohn et al., 1987), and sentencing (Albonetti, 1997, 1998; Farrell, 2004; Johnson, 2003, 2005; Kramer & Ulmer, 1996; Steffensmeier et al., 1993). To date most research examining sex disparity has been conducted on sentencing decisions; however, earlier process decisions may help explain disparities observed at later stages of the criminal justice process.

Research examining pre-trial justice decisions, particularly that targeting the experience of women defendants, is both limited and dated. Primarily, assessments of pre-trial justice decisions that have been conducted have investigated outcomes at the state level. In general, examinations of early justice process decisions have proven to be less conclusive and less statistically rigorous than sentencing outcome analyses. In their examination of research on sex and case processing decisions, Nagel and Hagan (1983) found many studies of pre-trial release to have implemented poor measurements and weak controls. The authors suggest some evidence of a connection between sex of defendant and the likelihood of receiving bail. Albonetti (1992) found that sex did not produce significant effects on the decision to reduce charges at the initial screening stage. In a subsequent study, Albonetti (1998) found that the effect of pleading guilty was not significant for females, while males who plead guilty experienced decreased sentence outcomes. Kruttschnitt and Green (1984) found women to be more likely to obtain pre-trial release as compared to similarly situated men. More current studies have supported the
suggestion that women, as a whole, are more likely to be released pre-trial than are men (Ball & Bostaph, 2009; Maxwell Sheila & Davis, 1999)

In the current examination, I expected that leniency would be observed in modern criminal justice outcomes and that this leniency would be present in the examination of early justice process decisions. Further, in examination of pre-trial process decisions, it was posited that women would differentially experience leniency based on individual characteristics as these characteristics interact with the influence of gender. It was predicted that sex of defendant would be conditioned by interactions with other important characteristics including race, whether or not a woman is the mother of dependent children, and further based on ties to informal and formal social controls. Partitioned data and multilevel models were used to explore gendered experiences beyond distinctions of women versus men and to engage a more theoretical and detailed examination of gendered disparate treatment in justice process decisions.

**Data and Analyses**

Pre-trial data were obtained through the Federal Justice Statistics Program collected by the Bureau of Justice Statistics\(^\text{23}\). These data represent the population of defendants within the federal sentencing process (approximately 270,000 individuals for the period of current study FY2006-FY2009), with women comprising approximately 13% of sentenced individuals. As discussed in Chapter 3, using United States Sentencing Commission data to explore pre-trial justice decisions is somewhat limiting based on the fact that the data include only those

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\(^{23}\) In composing the Federal Justice Statistics Program database, the Bureau of Justice Statistics (BJS) collects comprehensive data across operational agencies addressing the various stages of the criminal justice process representing the total population of individuals served by federal agencies in each phases of the criminal justice system (http://fjsrc.urban.org, Scalia & Sabol, 1999). Current data were drawn from the U.S. Sentencing Commission.
defendants actually sentenced. For example, for the current period of examination (federal fiscal years 2006 through 2009) there were 365,739 defendants charged in criminal cases and 303,300 defendants sentenced. Outcomes for those defendants charged but not sentenced are missed as a result. Excluding data on those cases where defendants’ cases were dismissed prior to sentencing potentially prohibits examination of a significant proportion of disparity in justice outcomes. However, the decision to use this data was based on the availability of variables important to analyses in the current study.

In exploring pre-trial decision disparities, unconditional models were initially run and it was determined that all outcomes pertinent to the current chapter’s questions did vary significantly dependent on the federal court district in which justice decisions occurred. Accordingly, hierarchical models were employed to explore the pre-sentencing justice decision disparities as they occur within the specific sentencing patterns of individual federal court districts. GHLM models were implemented for appropriate analysis of dichotomous pre-trial outcomes, controlling for inter-district variation and the fact that justice decisions are not independent, but instead occur within the context of the justice environment of each federal district.

Dependent variables include measures of (1) whether or not a defendant was released from custody prior to sentencing\(^24\); (2) whether or not a defendant received a non-financial pre-

\(^{24}\) This variable represents a dichotomous measure of whether a defendant was released from custody prior to sentencing (coded 1) or whether a defendant was held in custody prior to sentencing (coded 0).
trial release\textsuperscript{25}, and (3) whether or not a defendant’s case was settled via a plea agreement versus going to trial.\textsuperscript{26}

In analyses examining pre-trial decisions, sex represents the independent variable of primary interest. In the initial descriptive exploration, data were first presented for the entirety of defendants sentenced and subsequently broken down by sex (men versus women). In analyses of pre-trial outcomes, hierarchical regression models were conducted including sex of defendant as a specific factor. To address theoretically based questions, data were partitioned by sex and analyzed to explore the unique intricacies of process decisions for women. Here, sex constitutes a proxy measure for examination of gendered outcomes.

Additional variables were included in the analyses of the current chapter, both as control variables and to further explicate the gendered nature of social control. Variables included in models consist of criminal history score\textsuperscript{27}, age\textsuperscript{28}, citizenship\textsuperscript{29}, sex\textsuperscript{30}, race and ethnicity\textsuperscript{31}, presumptive sentence\textsuperscript{32}, offense type\textsuperscript{33}, and education level. Additionally, district contextual

\textsuperscript{25} This variable represents a dichotomous measure of whether a defendant was received the least restrictive, non-monetary form of presentencing release. This variable indicates a defendant who was released on his or her own recognizance (coded as 1) or the defendant was released on his/her own recognizance or was held in custody (coded 0). This variable was created as an indication of receiving the least restrictive pre-trial release and further as an indication of potential leniency in process decisions.

\textsuperscript{26} This variable represents a measure of whether a defendant as offered a plea agreement which the defendant accepted (coded 0) or whether the defendants case went to trial (coded 1).

\textsuperscript{27} Criminal history score represents a measure of a defendant’s criminal history coded on a scale from 1 to 6.

\textsuperscript{28} Age is coded as a dichotomous variable 0 = 25 or younger, 1= over 25 years of age.

\textsuperscript{29} Indication of whether or not a defendant is a U.S. Citizen, where 0 is coded as U.S. citizen and 1 is coded as non-citizen.

\textsuperscript{30} Sex is coded as a dichotomous variable 0 = men, 1= women.

\textsuperscript{31} Race is operationalized as a series of dichotomous variables coded 0 or 1 for each. Categories include white, black and other race. The other race category includes those who identify as Asian, American Indian, or multi-raced. Ethnicity is coded as a dichotomous variable 0 = non-Hispanic, 1= Hispanic. Race and gender interactions were additionally created and also represent a series of dichotomous variables with white male defendants as the control.

\textsuperscript{32} The presumptive sentence is equal to minimum months of incarceration recommended by sentencing guidelines.
level factors include gender representation of judges and prosecutors. Case and legal based variables (such as criminal history, offense severity and guideline recommendations) should be the primary determinate of differences in justice decision outcomes of whether a defendant is released from custody prior to sentencing or whether a case ends up going to trial as these measures constitute representations of dangerousness and offense severity. Any differences beyond legal case characteristics would suggest the presence of disparate treatment.

**Disparities in Pre-Trial Release Decisions**

Women, on average, were more likely than men to be released from custody prior to trial (52 percent for women as compared to 22 percent for men). Women were also more likely to receive less restrictive forms of pre-trial release as compared to their male counterparts. Eleven percent of women, and only four percent of men, on average, were released on their own recognizance prior to sentencing. The percentage of men whose case went to trial as compared to being settled by a plea agreement was greater than that for women; however, the majority of all defendants did settle case via plea agreement\(^{34}\). Leniency may be explained by legally relevant factors including criminal history and offense severity. It may be that women are treated with increased leniency in pre-trial decisions based on legitimate factors including levels of responsibility and dangerousness or concerns for women’s caretaking roles. The current

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33 Offense types were determined by recommendations of the U.S. Sentencing Commission. (See Sessions et al., 2010). Crime type categories include violent crime, sexual offenses, drug offenses, white collar crime, and other crimes.

34 Variable measures defendant going to trial as compared to receiving a plea agreement and includes both jury and bench trials.
section will examine gendered leniency net other factors that may be relevant to justice process decisions.

Because initial unconditional models revealed that pre-sentence decisions did vary significantly dependent on federal district sentencing, multivariate models were analyzed using hierarchical linear modeling. GHLM models were implemented due to the dichotomous nature of variables assessed. Approximately 8 percent of the variance in pre-trial release decisions and 7 percent of variance in whether a case went to trial can be accounted for by federal court district variability.35

In general higher levels of education led to an increased likelihood of being released from custody prior to sentencing. Older defendants were more likely to be released from custody. Defendants of other races (Asian, American Indian, etc.) were more likely than white defendants to be released on bail prior to sentencing. Non-citizens and those with a greater criminal history were less likely to be released from custody prior to sentencing. As compared to white defendants, black and Hispanic defendants were less likely to be released on bail. For specific details regarding multilevel modeling outcomes of the likelihood to be released from custody prior to being sentenced, refer to Table 5.1.

35 Unconditional models are important for the calculation of the interclass correlation measure, a statistic which allows us to make meaningful assumptions about variance within hierarchical models. Consistent with Johnson (2006) interclass correlation (ICC) calculations are based on the assumption that the level 1 random effect variance is $\frac{\pi^2}{3}$, due to lack of meaningful individual-level variance component of dichotomous variables. The amount of variance in the outcome attributed to federal court district differences is determined through the calculation of ICC. Variance between federal court districts in of a defendant receiving a prison sentence are significant <.001 level. According to ICC calculations the variability for pre-trial release accounted for by district variation was 8 percent, for decisions to release on own recognizance 35 percent, and for cases that went to trial 7 percent.
Table 5.1 Likelihood of receiving pre-sentencing release and non-financial pre-sentencing release 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>Release on bail</th>
<th></th>
<th>Non-financial release</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
<td>Odds</td>
<td>B</td>
</tr>
<tr>
<td>Intercept</td>
<td>-1.56</td>
<td>0.07</td>
<td>0.21</td>
<td>***</td>
</tr>
<tr>
<td>Criminal History</td>
<td>-0.47</td>
<td>0.00</td>
<td>0.62</td>
<td>***</td>
</tr>
<tr>
<td>Women</td>
<td>0.50</td>
<td>0.02</td>
<td>1.65</td>
<td>***</td>
</tr>
<tr>
<td>Black</td>
<td>-0.16</td>
<td>0.01</td>
<td>0.85</td>
<td>***</td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.17</td>
<td>0.01</td>
<td>0.84</td>
<td>***</td>
</tr>
<tr>
<td>Other Race</td>
<td>0.19</td>
<td>0.03</td>
<td>1.21</td>
<td>***</td>
</tr>
<tr>
<td>Non-Citizen</td>
<td>-2.05</td>
<td>0.02</td>
<td>0.13</td>
<td>***</td>
</tr>
<tr>
<td>Age (25 and above)</td>
<td>0.34</td>
<td>0.02</td>
<td>1.40</td>
<td>***</td>
</tr>
<tr>
<td>High School</td>
<td>0.36</td>
<td>0.01</td>
<td>1.43</td>
<td>***</td>
</tr>
<tr>
<td>Some College</td>
<td>0.55</td>
<td>0.02</td>
<td>1.73</td>
<td>***</td>
</tr>
<tr>
<td>College Graduate</td>
<td>0.77</td>
<td>0.03</td>
<td>2.15</td>
<td>***</td>
</tr>
<tr>
<td>Dependents</td>
<td>0.14</td>
<td>0.01</td>
<td>1.15</td>
<td>***</td>
</tr>
</tbody>
</table>

Variance SD Variance SD Variance
Level-2 0.41 0.17 *** 1.43 2.03 ***
Level-3 0.18 0.03 *** 0.23 0.05

* ≤ .10    ** < .05    *** < .01

Note: Additional variables including presumptive sentence and offense types were included as control measures in above models. Full models available on request.

Sex differences were also specifically explored utilizing the GLHM model. Analyses target the following question:

**Question. Are women defendants treated differently than men at the pre-trial phase of the criminal justice process?**

**Hypothesis:** At the pre-trial phase women defendants are more likely to receive bail/bond than men defendants.

Controlling for all other factors in the model, including legally relevant variables, women defendants were more likely to be released pre-trial. Women experienced a 65 percent increase in the odds of being released from custody prior to sentencing as compared to their male
counterparts, net other variables in the model. Sex differences in the likelihood of being released from custody prior to sentencing appear to be significant beyond legal differences and it appears that disparate treatment cannot be explained solely by women being less dangerous or having less prior involvement in institutions of formal social control.

In looking at the least restrictive, non-monetary pre-trial release, differences look similar to the general pre-trial release model. Those defendants with greater levels of education were more likely to be released on their own recognizance. Non-citizens and those with a greater criminal history were less likely to be released on their own recognizance. Older defendants were more likely to receive the less restrictive release. Compared to white defendants, black and Hispanic defendants were less likely to be released on their own recognizance. As compared to violent crimes, drug and immigration offenses were less likely and white-collar offenses are more likely to receive less restrictive release requirements. For model outcomes, refer to Table 5.1 above.

Next, analyses specifically examine data to address the next sex hypothesis as follows:

**Question.** Are women defendants treated differently than men at the pre-trial phase of the criminal justice process?

**Hypothesis:** At the pre-trial phase women defendants are more likely to receive less restrictive types of bond (i.e. be released on recognizance) than men defendants.
As with general decisions for pre-sentencing release, in examination of all sentenced defendants, women were significantly more likely than men to receive less restrictive forms of release from custody. Utilizing hierarchical modeling and holding all other variables constant, a woman experiences a 25 percent increased odds of being released on her own recognizance as compared to her male counterpart. Here again, these results are present even when controlling for legally relevant variables suggesting that leniency is attributable to factors beyond criminal history and sentence severity. More specific differences will be explored later in this chapter. Outcomes can be seen in Table 5.1.

**Disparities in Decisions of Whether a Case Goes To Trial**

Additionally, the current research explores data explicating the decision of whether or not a case goes to trial. Those defendants with increased education were more likely to have their cases go to trial. Those with a greater criminal history were less likely to go to trial. Older defendants were more likely to have their cases go to trial. Compared to white defendants, black defendant and defendants of other races were more likely to go to trial; Hispanic defendants were less likely, which may be attributable to the utilization of early disposition “fast track” departures. See Table 5.2 for detailed outcomes.
Finally, through the model we explore our last gendered pre-sentence hypothesis:

**Question.** Are women defendants treated differently than men at the pre-trial phase of the criminal justice process?

**Hypothesis:** Women defendants are more likely to obtain a plea agreement than men.

There was no sex difference in the likelihood of a case going to trial. Again it is important to note that the majority of all cases, for both women and men, were settled by plea agreement. Overall, sex differences were noted in the pre-sentencing decisions to release defendants on bail and in the likelihood of receiving less restrictive forms of pre-trial release net other variables; however, sex differences were not present in the determination of whether a case was settled by plea or at trial. The next section will more specifically explore the intricacies of

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>SE</th>
<th>Odds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>-4.00</td>
<td>0.05</td>
<td>0.02 ***</td>
</tr>
<tr>
<td>Criminal History</td>
<td>-0.14</td>
<td>0.01</td>
<td>0.87 ***</td>
</tr>
<tr>
<td>Women</td>
<td>-0.04</td>
<td>0.04</td>
<td>0.96</td>
</tr>
<tr>
<td>Black</td>
<td>0.49</td>
<td>0.03</td>
<td>1.63 ***</td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.12</td>
<td>0.02</td>
<td>0.89 ***</td>
</tr>
<tr>
<td>Other Race</td>
<td>0.33</td>
<td>0.05</td>
<td>1.40 ***</td>
</tr>
<tr>
<td>Non-Citizen</td>
<td>0.06</td>
<td>0.03</td>
<td>1.07 **</td>
</tr>
<tr>
<td>Age (25 and above)</td>
<td>0.62</td>
<td>0.04</td>
<td>1.86 ***</td>
</tr>
<tr>
<td>High School</td>
<td>0.17</td>
<td>0.03</td>
<td>1.18 ***</td>
</tr>
<tr>
<td>Some College</td>
<td>0.29</td>
<td>0.03</td>
<td>1.34 ***</td>
</tr>
<tr>
<td>College Graduate</td>
<td>0.81</td>
<td>0.04</td>
<td>2.25 ***</td>
</tr>
<tr>
<td>Dependents</td>
<td>-0.11</td>
<td>0.02</td>
<td>0.89 ***</td>
</tr>
</tbody>
</table>

*≤ .10 ** < .05 *** < .01

Note: Additional variables including presumptive sentence and offense types were included as control measures in above models. Full models available on request.
the leniency experienced by women. These subsequent analyses explicate potential theoretical explanations for leniency as it is experienced.

**Dissecting Disparities in the Pre-Trial Outcomes of Women Defendants**

In general, the literature supports the fact that women have been treated more leniently in justice decisions and more specifically in sentencing decisions. Evidence is less well developed and outcomes less clear when discussing early justice process decision-making. It is generally posited that women are more likely to experience across the board leniency as compared to men; yet this does not appear to completely be the case. Current examinations discussed above suggest that leniency in pre-trial decisions continues to be present in a contemporary justice setting for the decision to release a defendant prior to sentencing. In order to more fully understand the gendered nature of the justice process, the current section explores the nature of the treatment of distinct subgroups of women. It is here that the complexities of gendered social control will be revealed and theoretical mechanisms will be explored.

By partitioning the data by sex, the current analyses can more specifically examine the nature of justice leniency for women. Analyses target a variety of questions exploring interactions or sex and race, parenthood, and level of education. Partitioned data more generally reveal the influence of legally relevant variables and the influence of women’s ties to mechanisms of informal as well as formal social control. First analyses explored the interaction of sex and race, addressing the following question and hypothesis:

**Question. Do women of color experience leniency in the federal criminal justice system differently in comparison to white women?**
Hypothesis: Women of color experience less leniency at the pre-trial phase (bail/plea) of the criminal justice system as compared to white women.

Contrary to hypothesized outcomes, white women did not experience the most leniency likelihood of release from custody prior to sentencing. Black women defendants were more likely than white defendants to be released from custody prior to sentencing, with a 17 percent increase in the odds of release. Women of other races were also more likely than white women to be released prior to sentencing. Hispanic women were less likely to be released from custody than were white women. For men, the interactive impact of sex and race does not follow the same pattern. Black and Hispanic men were less likely than white men to be released from custody. Men of other races were more likely to be released. The differential impact of the conditioning effect of race on sex for black and Hispanic defendants was significantly different for women as compared to men. For results see Table 5.3.
Table 5.3 Likelihood of being released prior to sentencing by sex, 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>Women</th>
<th>Men</th>
<th>Sex Recovery</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
<td>Odds</td>
</tr>
<tr>
<td>Intercept</td>
<td>0.20</td>
<td>0.09</td>
<td>1.22 **</td>
</tr>
<tr>
<td>Black</td>
<td>0.17</td>
<td>0.04</td>
<td>1.19 ***</td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.04</td>
<td>0.03</td>
<td>0.96 *</td>
</tr>
<tr>
<td>Other Race</td>
<td>0.23</td>
<td>0.06</td>
<td>1.25 ***</td>
</tr>
<tr>
<td>High School</td>
<td>0.31</td>
<td>0.03</td>
<td>1.37 ***</td>
</tr>
<tr>
<td>Some College</td>
<td>0.48</td>
<td>0.04</td>
<td>1.62 ***</td>
</tr>
<tr>
<td>College Graduate</td>
<td>0.59</td>
<td>0.06</td>
<td>1.81 ***</td>
</tr>
<tr>
<td>Dependents</td>
<td>0.18</td>
<td>0.03</td>
<td>1.19 ***</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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<td>Level-2</td>
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<td>Level-3</td>
<td>0.23</td>
<td>0.05</td>
<td>***</td>
<td>0.18</td>
</tr>
</tbody>
</table>

* ≤ .10 ** < .05 *** < .01

Note: Additional variables including citizenship, age, criminal history, presumptive sentence and offense types were included as control measures in above models. Full models available on request.

In looking more specifically at the least restrictive form of pre-sentencing release from custody, or release with no financial conditions, results were slightly different. Hispanic women were less likely than white women to receive a non-financial release condition. A Hispanic woman in the current analyses had a 10 percent decreased odds of being released on her own recognizance as compared to a black women. This unique effect for Hispanic women defendants may be attributable to contemporary focus on immigration offenses. Both black and Hispanic men were less likely than white men to be released on their own recognizance, with a 19 percent and 22 percent decrease in the odds of release respectively. Women and men were differentially impacted by race as it influences the likelihood or receiving non-financial pre-sentencing release. For results refer to table 5.4.
Table 5.4 Likelihood of non-financial release prior to sentencing by sex, 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>Women</th>
<th></th>
<th></th>
<th>Men</th>
<th></th>
<th></th>
<th>Sex Comparison</th>
<th>Z Score</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
<td>Odds</td>
<td>B</td>
<td>SE</td>
<td>Odds</td>
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<td></td>
</tr>
<tr>
<td>Intercept</td>
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<td>0.16</td>
<td>0.13</td>
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<td>-3.68</td>
<td>0.17</td>
<td>0.03</td>
<td>***</td>
</tr>
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<td>0.83</td>
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</tr>
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<td>Hispanic</td>
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<td>0.02</td>
<td>0.80</td>
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</tr>
<tr>
<td>Other Race</td>
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<td></td>
<td>-0.06</td>
<td>0.05</td>
<td>0.95</td>
<td></td>
</tr>
<tr>
<td>High School</td>
<td>0.21</td>
<td>0.04</td>
<td>1.23</td>
<td>***</td>
<td>0.25</td>
<td>0.03</td>
<td>1.25</td>
<td>***</td>
</tr>
<tr>
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<td>0.05</td>
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<td>***</td>
<td>0.37</td>
<td>0.03</td>
<td>1.45</td>
<td>***</td>
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<tr>
<td>College Graduate</td>
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<td>***</td>
<td>0.54</td>
<td>0.04</td>
<td>1.71</td>
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<tr>
<td>Dependents</td>
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<td>0.04</td>
<td>1.07</td>
<td>*</td>
<td>0.05</td>
<td>0.02</td>
<td>1.05</td>
<td>**</td>
</tr>
</tbody>
</table>

<p>| | | | | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
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<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Variance</td>
<td>SD</td>
<td>Variance</td>
<td></td>
<td>SD</td>
<td>Variance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level-2</td>
<td>1.40</td>
<td>1.95</td>
<td>***</td>
<td>1.42</td>
<td>2.00</td>
<td>***</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level-3</td>
<td>0.19</td>
<td>0.03</td>
<td></td>
<td>0.023</td>
<td>0.05</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*≤ .10  ** < .05  *** < .01

Note: Additional variables including citizenship, age, criminal history, presumptive sentence and offense types were included as control measures in above models. Full models available on request.

The interactive effect of sex and race is examined as it influences the likelihood of a defendant’s case going to trial versus being settled by a plea agreement. Black women were more likely than white women to have their cases settled at trial. A black woman had a 66 percent increased odds of being sentenced at trial. Hispanic women were less likely to have their case settled at trial, with a 23 percent decrease in the odds of trial as compared to white women. Women of other races were more likely than white women to have their cases go to trial. Black men and men of other races were more likely than white men to have their cases settled at trial. Hispanic men were less likely. The impact of race on going to trial was not significantly different for women than it was for men. The significant difference in the likelihood of trial for both Hispanic women and Hispanic men may be attributable to how immigration offenses are processed in the contemporary justice process and potentially the use of “fast track” departure mechanisms. For complete results see Table 5.5 below.
Table 5.5 Likelihood of case being settled at trial by sex 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>Women</th>
<th></th>
<th>Men</th>
<th></th>
<th>Sex Comparison</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
<td>Odds</td>
<td>B</td>
<td>SE</td>
</tr>
<tr>
<td>Intercept</td>
<td>-4.02</td>
<td>0.08</td>
<td>0.02***</td>
<td>-3.93</td>
<td>0.05</td>
</tr>
<tr>
<td>Black</td>
<td>0.49</td>
<td>0.08</td>
<td>1.66***</td>
<td>0.47</td>
<td>0.03</td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.22</td>
<td>0.08</td>
<td>0.77***</td>
<td>-0.12</td>
<td>0.03</td>
</tr>
<tr>
<td>Other Race</td>
<td>0.29</td>
<td>0.13</td>
<td>1.40**</td>
<td>0.33</td>
<td>0.05</td>
</tr>
<tr>
<td>High School</td>
<td>0.30</td>
<td>0.09</td>
<td>1.35***</td>
<td>0.15</td>
<td>0.03</td>
</tr>
<tr>
<td>Some College</td>
<td>0.30</td>
<td>0.10</td>
<td>1.36***</td>
<td>0.30</td>
<td>0.03</td>
</tr>
<tr>
<td>College Graduate</td>
<td>1.14</td>
<td>0.11</td>
<td>3.14***</td>
<td>0.76</td>
<td>0.04</td>
</tr>
<tr>
<td>Dependents</td>
<td>-0.27</td>
<td>0.07</td>
<td>0.76***</td>
<td>-0.10</td>
<td>0.02</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>SD</th>
<th>Variance</th>
<th>SD</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level-2</td>
<td>0.36</td>
<td>0.13***</td>
<td>0.33</td>
<td>0.11***</td>
</tr>
<tr>
<td>Level-3</td>
<td>0.15</td>
<td>0.02*</td>
<td>0.08</td>
<td>0.01**</td>
</tr>
</tbody>
</table>

*≤ .10 ** < .05 *** < .01

Note: Additional variables including citizenship, age, criminal history, presumptive sentence and offense types were included as control measures in above models. Full models available on request.

The next question and hypothesis address the influence of parenthood on pre-sentencing decisions. The question addressed is as follows:

**Question. Do women with dependent children experience leniency in the federal criminal justice system differently than women who are non-familied?**

**Hypothesis:** Women with children are more likely to experience leniency in pre-trial decisions (bail/plea/etc.).

Both men and women were more likely to be released from custody prior to sentencing if they have dependent children. Women who have dependent children had an 18 percent increased odds of being released from custody prior to trial as compared to those defendants who do not have children. Men who were fathers experienced a 13 percent increase in odds of release. The
impact of parenthood on likelihood of pre-sentencing release was greater for women ($p = 0.06$). For results refer back to Table 5.3.

In looking specifically at the least restrictive form of pre-trial release, being a parent continued to have a significant but smaller impact. Women with dependent children had a 7 percent increased odds of being released on their own recognizance, men with dependent children had a 5 percent increased odds. There was no significant difference in the impact of having children on non-financial release in comparing women and men. Refer to Table 5.4.

In examining likelihood of a case going to trial, having children was also consequential. Women who are parents had a 24 percent decreased odds of having their case settled at trial. Men who are parents had a 9 percent decreased odds of going to trial. The impact of parenthood on likelihood of going to trial was significantly different dependent on defendant sex, with women who are mothers being less likely to go to trial as compared to men who are fathers. Refer to Table 5.5 for details.

Finally, the interaction of sex and level of education was examined as an example of for one potential tie to informal social control mechanisms. Here education can be seen to represent a proxy measure for the theoretical influence of informal social control. The question addressed is as follows:

**Question. Do women with higher levels of education experience leniency in the federal criminal justice system differently than women with less education?**

**Hypothesis:** Women with higher levels of education are more likely to experience leniency in pre-trial decisions (bail/plea/etc.).
Women with higher levels of education were significantly more likely to be released from custody prior to sentencing. Women who were high school graduates had a 31 percent increased odds of release. Women with some college had a 48 percent increased odds and women who are college graduates or attended graduate school had a 59 percent increase in odds of release. Men also experienced a similar benefit from education with 37, 56 and 79 percent increased odds respectively according to level of educational attainment. Results were significantly different by sex, with men receiving greater benefit from education. For results refer to Table 5.3.

Education played a significant impact in the likelihood of non-financial pre-trial release. Here women with increased levels of education were more likely to be released on their own recognizance. Women who graduated high school had a 23 percent increased odds of being released on their own recognizance as compared to those women defendants who did not graduate high school. Women who attended some college and were college graduates had 36 and 40 percent increased odds of release respectively. Men were also significantly impacted by the interaction of education and receiving non-financial release. Men who graduated high school experienced a 25 percent increased odds of release, men who attend some college 45 percent, and men who were graduates of college 71 percent. The interactive impact of being a college graduate was significantly different between women and men. Men, as compared to women, appear to receive greater benefit from advanced education. Results can be found in table 5.4.

Finally, education significantly impacted likelihood of a case going to trial. Women who had greater levels of education were more likely to go to trial. The same was true for men. The impact of having graduated college was significantly different between women and men, where women college graduates had greater odds of going to trial as compared to their male
counterparts. It appears that the interaction of education attainment and determination of how a case is decided may be more complex. While most defendants settled cases by plea, those that did end up at trial were more likely to have higher education attainment. This would be an interesting area for further examination. Perhaps, women with greater educational attainment were more likely to reject a plea agreement and take their case to trial. More educated defendants may also have a greater understanding of potential benefits of going to trial in certain cases. These women may have had greater access to higher quality legal representation and thus potential for a more successful case outcome\textsuperscript{36}.

**District Contextual Analyses of Pre-sentencing Decisions**

Models were constructed to explore the impact of sex representation in federal court districts on the likelihood of experiencing leniency in pre-sentencing justice outcome decisions\textsuperscript{37}. It was expected that as more women entered the justice workforces as judges and prosecutors, the increased feminization of the justice workforce could result in differential outcomes including the potential for increased parity and leniency. Justice outcomes did differ significantly dependent on where sentencing occurs, and it would make sense that characteristics of different districts would influence disparate treatment. However, as outcomes indicate, the impact of district gender representation was minimal. Analyses address the following hypotheses:

\begin{itemize}
  \item Variables indicating type of legal representation were not available for current analyses.
  \item Models were additionally conducted examining the impact of other district and workforce characteristic, however models had little or no impact on gendered justice decisions. Additional models available on request.
\end{itemize}
Question. Do disparities in the treatment of women at the pre-trial phase of the federal criminal justice system depend on the district in which the individual is sentenced?

Hypothesis: The disparate treatment of women defendants will decrease in court districts with greater gender representation of courtroom workers.

First, analyses explored district contextual impacts on the likelihood of being released from custody prior to sentencing.

Table 5.6 Influence of sex district workforce representation on pre-sentencing release 2006-2009

<table>
<thead>
<tr>
<th>Model 1</th>
<th>Model 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B</strong></td>
<td><strong>SE</strong></td>
</tr>
<tr>
<td>Intercept</td>
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<tr>
<td>Female Judge</td>
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</tr>
<tr>
<td>Female Prosecutor</td>
<td>0.93</td>
</tr>
<tr>
<td>Women</td>
<td>0.50</td>
</tr>
<tr>
<td>Female Judge</td>
<td>0.13</td>
</tr>
<tr>
<td>Female Prosecutor</td>
<td>-0.01</td>
</tr>
</tbody>
</table>

Variance SD Variance SD Variance
| Level-2 | 0.41  | 0.17  | 0.41  | 0.16  | 0.22  | 0.05  |
| Level-3 | 0.19  | 0.04  | 0.18  | 0.03  |

*≤ .10 ** < .05 *** < .01

Note: Additional variables including citizenship, age, criminal history, presumptive sentence and offense types were included as control measures in above models. Full models available on request.

Two models were implemented. The first model explored the impact of workforce gender representation on sentencing generally, and the second incorporated the cross level interactive impact of workforce gender representation and justice outcomes for women defendants. The sex of judges and prosecutors did not have a significant impact on the likelihood of pre-sentencing release for defendants generally or women defendants specifically. See Table 5.6.
Next, models explored the impact of district characteristics on the likelihood of a defendant being released on his or her own recognizance.

Table 5.7 Influence of sex district workforce representation on non-financial release 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
</tr>
<tr>
<td>Intercept</td>
<td>-3.44</td>
<td>0.17</td>
</tr>
<tr>
<td>Female Judge</td>
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<td>1.26</td>
</tr>
<tr>
<td>Female Prosecutor</td>
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<td>2.15</td>
</tr>
<tr>
<td>Women</td>
<td>0.25</td>
<td>0.03</td>
</tr>
<tr>
<td>Female Judge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female Prosecutor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Variance</td>
<td>SD</td>
<td>SD</td>
</tr>
<tr>
<td>Level-2</td>
<td>1.37</td>
<td>1.89</td>
</tr>
<tr>
<td>Level-3</td>
<td>0.24</td>
<td>0.06</td>
</tr>
</tbody>
</table>

*≤ .10   ** < .05   *** < .01

Note: Additional variables including citizenship, age, criminal history, presumptive sentence and offense types were included as control measures in above models. Full models available on request.

Again, outcomes suggest little impact of gender representation in the district workgroup. Gender representation in the justice workforce appeared to have had no noteworthy impact on the decision to afford non-financial release to defendants generally, or women defendants specifically. See Table 5.7 for results.

Finally, results were examined as related to the likelihood of a case being decided at plea agreement or trial. Again distinct models were run examining district gender representation and the impact of the interaction of district gender representation and gendered justice decisions. Gender representation in the justice workforce had little to no impact on the likelihood of trial for either defendants generally or women defendants specifically. See Table 5.8.
Table 5.8  Influence of sex district workforce representation on likelihood of trial 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th></th>
<th>Odds</th>
<th>Model 2</th>
<th></th>
<th>Odds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
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<td>0.05</td>
<td>0.02</td>
<td>***</td>
<td>-3.99</td>
<td>0.05</td>
</tr>
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<td>0.69</td>
<td>-0.37</td>
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<td>0.69</td>
</tr>
<tr>
<td>Female Prosecutor</td>
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<td>2.62</td>
<td>*</td>
<td>0.98</td>
<td>0.54</td>
</tr>
<tr>
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<td>0.04</td>
<td>0.96</td>
<td>-0.06</td>
<td>0.05</td>
<td>0.94</td>
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<td>0.43</td>
<td>1.19</td>
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<td></td>
<td>0.76</td>
<td>0.71</td>
<td>2.13</td>
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<p>| | | | | | | |</p>
<table>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Variance</td>
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<td>0.10</td>
<td>***</td>
<td>0.31</td>
<td>0.10</td>
<td>***</td>
</tr>
<tr>
<td>Level-2</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>Gender</td>
<td>0.25</td>
<td>0.06</td>
<td>***</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level-3</td>
<td>0.08</td>
<td>0.01</td>
<td>*</td>
<td>0.08</td>
<td>0.01</td>
<td>*</td>
</tr>
</tbody>
</table>

Note: Additional variables including citizenship, age, criminal history, presumptive sentence and offense types were included as control measures in above models. Full models available on request.

Overall, examination of district contextual factors and the impact of district gender representation of the justice workforce as it interacts with sex resulted in non-significant findings. It appears that as more women enter the justice workforce, the impact on disparate treatment is minimal. It has been hypothesized that as more women enter the justice workforce, they may bring with them feminist jurisprudence and the potential integration of an “ethic of care” as discussed earlier in Chapter 2. Further, the impact of the potential feminization of the justice workforce could be magnified with the increased discretion afforded decision makers in the wake of the *Booker* decision. However, this does not appear to be the case, particularly in relation to pre-sentencing decisions including the decision to release women from custody prior to sentencing and the likelihood of a case being decided at trial. Women experience leniency in
presenting decisions. However, this does not appear to be the direct impact of more women serving as judges and prosecutors.

Chapter Conclusions

The goal of the current chapter was to begin to take a look at contemporary differences between men and women within the federal justice process. To such extent, this chapter explored the descriptive composition of federal defendants sentenced in a post-Booker decisions sentencing context. Descriptive analyses were specifically partitioned by sex to present a portrait of the distinct nature of men and women as they proceed through decision points of sentencing. In the interaction of sex and other conditioning factors, we begin to see the influence of gender as it is enacted within the justice process.

It was posited that there would continue to be differences between justice decisions for men and women within a contemporary sentencing context. Further, it was hypothesized that gendered differences in justice decisions would be present at early decisions points including pre-sentencing decisions. The analyses in this chapter begin to paint a portrait of the contemporary federal justice context and will lay the foundation for sentencing examinations in the chapters to follow. While outcomes generally suggest leniency for women, findings also begin to suggest a complexity beyond simple distinctions of women versus men.

Women were more likely to be released from custody prior to sentencing as compared to men. Further, women were more likely to receive least restrictive forms of release, including being released on one’s own recognizance. Both of these results were maintained, even when controlling for other factors including legal and case factors such as offense type and criminal
history. There was no significant difference by sex in the likelihood of a case being settled at trial. Thus, while women were more likely to benefit in decisions of pre-trial custody, women did not appear to experience a clear-cut or complete leniency in relation to pre-trial outcomes.

In further dissecting the leniency experienced by women in pre-sentencing decisions, it becomes clear that women did not experience leniency in an equivalent manner. Black women and women of other races were more likely than white women to be released on bail, Hispanic women less were less likely. Hispanic women were less likely than white women to be released on their own recognizance. Increases in educational attainment result in increased leniency, that is those women whit higher levels of education were more likely to receive bail and to receive less restrictive types of bail. However, better educated women were more likely to have their case settled at trial.

There is evidence that preferential treatment was given to women who are mothers. Women with dependent children were more likely; net all other factors, to both be released on bail prior to sentencing and to receive less restrictive forms of bail. Further, a woman who is a mother was more likely to have her case settled via plea agreement as compared to going to trial. Accordingly, there is some support for the theory that women with caretaking and family responsibilities are treated with increased leniency, based not solely on their sex but on the fact that they are caretakers to children. Familial paternalism may be one factor influencing the leniency in federal justice decisions afforded women in the contemporary context.

Validity exists for theories of social control that suggest that women who are more socially integrated are those that receive increased leniency in justice treatment. Informal social
control based on ties to social institutions and family as well as dependency created from such ties may help to explain disparate treatment. For example, those women more closely tied to formal education are treated with greater leniency in pre-sentencing release decisions. Further, as mentioned, women with children experience greater leniency in pre-sentencing release decisions.

There is also evidence that some of the leniency observed is warranted and attributable to legal factors including criminal history and offense severity. Here we see support for theories suggesting leniency is warranted due to legal factors such as dangerousness and level of responsibility. More specifically, women with more extensive criminal histories were less likely to be released on bail and to be released on their own recognizance. Further the presumptive sentence, an indication of the minimum guideline recommendation based on offense severity and criminal history suggests that women with greater legal culpability and increased ties to formal social control were less likely to be released on bail and were less likely to receive less restrictive forms of bail. Accordingly, there is indication that some leniency is warranted due to blameworthiness and level of criminality. However, legal factors do not explain leniency completely. Even when legally relevant and case severity factors are controlled, disparate treatment exists. Theoretically, it appears that some aspects of the defendants themselves do play a role in the experience of leniency. Further, it is important to note that leniency was not experienced across the board by women.

Subsequent chapters continue to examine the experience of leniency for women within the federal justice system. The next chapter looks specifically at potentially leniency in the decision to incarcerate, in sentence severity, and in the issuance of departures from
recommendations of the federal sentencing guidelines. As in this chapter, the next chapter explores overall disparate treatment by sex in these decisions. Analyses attempt to target the intricacies of within gender disparities and examine potential theoretical explanations for disparity where it does exist.
Chapter 6 Sentencing Disparity Analysis

Differential Treatment of Women in Sentencing

As discussed in earlier chapters, research to date suggests the presence of leniency in the treatment of women defendants within the justice system. As was evidenced in the examination of pre-trial decision in the last chapter, gendered leniency continues to exist in a contemporary justice setting. In this chapter, justice disparity is examined as it occurs within the realm of sentencing decisions. Sentencing decisions represent the most commonly examined justice outcome in previous disparity literature. Further, research exploring sentencing decisions has provided the most conclusive evidence. Within the federal sentencing context, research to date has suggested the occurrence of disparity in sentencing practices. Even when legal factors such as crime type and criminal history were controlled, women defendants were more likely to obtain departures downward from the dictates of sentencing guidelines, (Albonetti, 1998; Farrell, 2004; Johnson, 2003, 2005; Kramer & Ulmer, 1996; Spohn & Fornango, 2009), were less likely to be incarcerated than male offenders (Albonetti, 1998; Johnson, 2006; Steffensmeier et al., 1993) and were more likely to have less severe sentences imposed (Albonetti, 1997, 1998). While the prior chapter examined the nature of differential treatment by sex in earlier judicial decisions including pretrial release and the implementation of plea bargains, the current chapter specifically examines the nature justice decisions in relation to sentencing. The goal is to present a contemporary portrait of the federal sentencing of women in post-Booker sentencing. The current chapter will examine whether or not sex disparity exits in a contemporary federal sentencing context; further, the chapter will explore the theoretical nature of disparities as they do exist.
Data and Analyses

As discussed in earlier chapters, sentencing analyses utilized data obtained through the Federal Justice Statistics Program collected by the Bureau of Justice Statistics. Data represent the population of individuals involved in the federal sentencing process individuals for the period of current study (FY2006-FY2009), with women comprising approximately 13 percent of the population of sentenced individuals and 10 percent of incarcerated individuals. Data specifically include sentences for individuals after the federal sentencing guidelines had become advisory.

In principle only legally relevant variables should exert influence on criminal case outcomes under the federal sentencing guidelines. Disparities that exist after controlling for these factors will indicate the impact of defendant characteristics such as sex. Appropriate multivariate regression techniques were implemented based on dependent variables. Federal sentencing occurs across 94 separate federal district courts and it is important to recognize that differences specific to the district itself may influence sex disparities (Farrell et al., 2009; Johnson, 2003, 2005, 2006). Unconditional models of sentencing outcome variables were conducted and results indicated that outcomes did differ significantly by district. As a result,

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38 In composing the Federal Justice Statistics Program database, the Bureau of Justice Statistics (BJS) collects comprehensive data across operational agencies addressing the various stages of the criminal justice process representing the total population of individuals served by federal agencies in each phases of the criminal justice system (http://fjsrc.urban.org; Scalia, 1999#214). Current data are drawn from the U.S. Sentencing Commission.
40 As Nagel and Hagan (1983) suggest, “Federal court jurisdictions, involving an identical body of law that is differentially applied in a wide variety of settings, provide an ideal opportunity to examine these kinds of possibilities” (Nagel & Hagan, 1983, p. 137).
41 Unconditional models were run for all dependent variables including in the current analyses. Results of unconditional models indicated that outcome variables did vary significantly depending on the federal district in which sentencing occurred. Accordingly, hierarchical models were justified and utilized to address nested data and the impact of differences by federal court districts. Through hierarchical linear modeling (HLM) individual level
multilevel models were implemented in order to control for variation by federal court district and circuit. Multilevel modeling allows for an interesting analysis of potential regional variations and will specifically address theoretical implications of context. With multilevel models, GHLM and HLM models were used for dichotomous and continues variables respectively in order to address nested data. All analyses were conducted utilizing Hierarchical Linear Modeling examining sentencing practices across 89 federal court districts\(^{42}\). Hierarchical models were utilized in order to examine district variation, controlling for similarities within federal sentencing districts and circuits. Further, hierarchical models were used in order to examine cross level interactions including the specific influence of federal court district characteristics on the sentencing of women defendants. In all analyses, three level HLM or HGLM models were implemented in order to control for defendants as they were situated within federal court districts and circuits. A three level model allows for the control of both district and circuit.

For sex comparisons, the individual level defendant datasets were partitioned by sex resulting in separate hierarchical analyses for women and for men. After these models were calculated for both incarceration decision (HGLM) and sentence length decision (HLM), outcomes were compared using z score calculations. The z scores were used to determine if outcomes are significantly different for women as compared to men. The partitioned datasets also allow for a more in-depth examination of potential theoretical explanations for disparities in characteristics (defendant characteristics) will be specifically examined as they are grouped within higher units of analysis (district courts) where units of the same group may be more similar than units of different groups. The utilization of hierarchical models facilitates analysis that controls for potential correlation between the independent defendant level characteristics within the districts, allowing for the analysis of both members and collective groups simultaneously (see Luke, 2004; Raudenbush & Bryk, 2002).

\(^{42}\) While there are 94 federal sentencing districts, the current study utilizes 89 districts. Puerto Rico, Virgin Islands, Guam, Northern Mariana Island, and Washington D.C, were excluded from the current analyses due to limited data and the unique nature of these districts.
sentencing outcomes. Partitioned data explicate the conditioning effects of sex and other key variables such as race, ties to informal social connections, and impact of being a parent thus targeting the more general influence of the construct of gender.

Data were also partitioned by time, to allow for a basic temporal comparison between early and late post-Booker decisions. Here data were partitioned into cases decided between October 2005 and December 2007 and cases decided between January 2008 and September 2009. This partitioning explored the potential differential impact of sentencing and particularly of sentencing disparities as more time has lapsed since the Booker decision. Partitioning also allowed for examination of the impact of subsequent clarifying rulings. Analyses were conducted examining imprisonment decision (HGLM) and sentence severity (HLM) for the two time periods and outcomes are compared through the calculation of z scores. Differences in sentencing outcomes between the two periods were noted.

Dependent variables for the current analysis included measures of (1) whether or not a defendant was sentenced to prison; (2) if sentenced, the length of the prison sentence; and (3) specific measures of sentences falling below the specific range suggested by federal sentencing guidelines. The first dependent variable or likelihood of receiving a prison sentence was operationalized as a dichotomous variable (1= a prison sentence was received, 0 = no prison sentenced received). The second dependent variable represented the length of sentence imposed in months, of those defendants who were sentenced to serve time in prison (capped at 470
Due to the fact that the sentence length variable was positively skewed, the natural log of the sentence length is utilized in analysis as supported by prior research\textsuperscript{44}. Finally, departures downward from sentencing guidelines were broken down into a series of dichotomous variables. Six specific downward departure were examined including (1) substantial assistance (5K1.1) departures; (2) early disposition or “fast track” (5K3.1) departures (3) additional government sponsored downward departures; (4) downward departures with \textit{Booker} citing 3553 reasoning\textsuperscript{45}; (5) traditional downward departures, and (6) sentences below range allowed under \textit{Booker} (with no citation to guidelines or departure status). Each was conceptualized using a dichotomous $1 =$ specific departure utilized $0 =$ specific departure not utilized. The departure variables are described in greater detail in Chapter 3.

Sex constitutes the independent variable of primary consideration. In the second component of this chapter, partitioning data by sex allows for more in-depth examination the effects of gendered characteristics and experiences. Criminal justice outcomes may be conditioned by a combination of experiences that are more gendered than biological sex alone. However, it must ultimately be understood that gender roles as prescribed by society are a more complex phenomenon than can easily be measured by statistical counts of defendant characteristics.

\textsuperscript{43} Sentence length is capped at 470 months to address life expectancy and provide more reliable data as per recommended by the U.S. Sentencing Commission and prior research. See USSC, 2009; Sessions et al., 2010.

\textsuperscript{44} See Byrne & Turner, (2010); Farrell et al. (2009); Ulmer & Bradley (2006); Ulmer et al. (2010); Ulmer et al. (2011b); Ulmer et al. (2011a); Sessions et al.(2010), Ward et al. (2009) among others for example. After analysis, sentence length is retransformed through utilization of the antilog in order for more meaningful interpretations allowing for analysis of proportional differences between groups. Table coefficients represent results of logged sentence length; however textual interpretation discusses proportional differences derived after reconvertting the logged results.

\textsuperscript{45} 18 U.S.C § 3553(a) outlines specific guidelines for consideration when imposing a sentence. Judges may justify variance from guideline recommended sentences based on § 3553 factors. For discussion see Heckman (2008).
The study included a variety of additional independent variables to test hypotheses and to provide statistical control including defendant characteristics, legally relevant variables, and contextual factors. The examination of defendant characteristics was of fundamental importance in fleshing out disparities and theoretical explanations for gender disparate treatment.

Independent variables were selected as theoretically appropriate and as supported by other research in the field. Variables included in models consist of criminal history score, age, citizenship, sex, race and ethnicity, whether a case was decided by plea or trial, whether a defendant was held in custody prior to sentencing, presumptive sentence, offense type, education level, and departure status or sentence placement relative to the guideline range.

Legally relevant variables, particularly criminal history and offense severity should explain the

46 See recommended variables utilized by U.S. Sentencing Commission (Sessions et al., 2010). See Ulmer et al. (2011a, 2011b) for recommendation of inclusion of criminal history measure in addition to presumptive sentence.
47 Criminal history score represents a measure of a defendant’s criminal history coded on a scale from 1 to 6.
48 Age is coded as a dichotomous variable 0 = 25 or younger, 1 = over 25 years of age.
49 Indication of whether or not a defendant is a U.S. Citizen, where 0 is coded as U.S. citizen and 1 is coded as non-citizen.
50 Gender is coded as a dichotomous variable 0 = male, 1 = female.
51 Race is operationalized as a series of dichotomous variables coded 0 or 1 for each. Categories include white, black and other race. The other race category includes those who identify as Asian, American Indian, or multi-raced. Ethnicity is coded as a dichotomous variable 0 = non-Hispanic, 1 = Hispanic. Race and gender interactions were additionally created and also represent a series of dichotomous variables with white male defendants as the control.
52 If a defendant’s case went to trial, this variable was coded as 1. If the defendant’s case was settled by a plea agreement, the variable was coded as 0.
53 Bail was coded 1 = defendant released from custody prior to sentencing and 0 = defendant held in custody prior to sentencing.
54 The presumptive sentence is equal to minimum months of incarceration recommended by sentencing guidelines and after application of any mandatory minimums. Because of skewness, the log is taken and the variable is capped at 470.
55 Offense types were determined by recommendations of the U.S. Sentencing Commission. See Sessions et al., 2010. Crime type categories include violent crime, sexual offenses, drug offenses, white collar crime, and other crimes.
56 Education level is broken down into less than high school degree; high school graduate, some college, and college graduate or graduate school. Less than high school degree serves as the reference category in analyses. Each level of schooling was coded as a dichotomous variable.
57 When utilized as a control variable in models, departure status was coded as a series of dichotomous variables including upward departures, downward departures, and substantial assistance departures with within range sentences as a control.
greatest variance in sentencing decisions.\textsuperscript{58} Legally relevant variables helped to explore theoretical perspectives examining social control (blameworthiness, respectability) and legal model explanations. Included variables were utilized in a series of analyses exploring the intricacies of the treatment of women within the federal criminal justice system.

\textbf{Disparities in Imprisonment Decisions}

Initially, unconditional models were run to justify multilevel models and estimate the rate by which variance in likelihood of imprisonment could be explained by differences in federal sentencing district. While defendant and case level characteristics account for the majority of variance in the likelihood of a defendant being sentenced to prison, the decision to incarcerate did vary significantly by district, with 9 percent of variance accounted for by federal court level characteristics\textsuperscript{59}. Models were examined determining the influence of individual level variables on the determination of likelihood of imprisonment. Fixed effects models were produced for defendant variables, with random effects allowing for variation by federal court district with the examination of defendants nested within specific federal court districts to control for the lack of

\textsuperscript{58} Steffensmeier et al. (1993) suggested the importance of legal variables in sentencing outcomes stating, “as is found more generally in sentencing studies, the bivariate analysis reveals that offense severity and prior record have large effects on sentence outcomes and thus are important statistical controls for estimating gender effects” (Steffensmeier et al., 1993, p. 423).

\textsuperscript{59} Unconditional models are important for the calculation of the interclass correlation measure, a statistic which allows us to make meaningful assumptions about variance within hierarchical models. The interclass correlation coefficient is calculated according to the formula: 

\[
\rho = \left( \frac{\tau}{\tau + \sigma^2} \right)
\]

The interclass correlation measures the proportion of the variance in the level one dependent variable that can be accounted for by the level two units. Consistent with Johnson (2006) interclass correlation (ICC) calculations are based on the assumption that the level 1 random effect variance is $\pi^2/3$, due to lack of meaningful individual-level variance component of dichotomous variables. The amount of variance in the outcome attributed to federal court district differences is determined through the calculation of ICC. Variance between federal court districts in of a defendant receiving a prison sentence are significant <.001 level.
independence of intra-district sentencing. In examining the influence of defendant and legal variables on the likelihood of a defendant being sentenced to prison, HGLM models were used to estimate effects. A variety of individual defendant and legal characteristics predicted the likelihood of a defendant being sentenced to prison (see Table 6.1 for details). As would be expected from prior literature, criminal history predicted an increased likelihood of being sentenced to prison. Defendants over the age of 25 were less likely to be sentenced to a prison term. Those cases that went to trial as well as defendants who were held in custody prior to sentencing were more likely to receive a prison sentence. As compared to those with less than a high school degree, defendants that had graduated high school or who had attended college were less likely to receive a prison sentence. In examination of race, black defendants were more likely to be sentenced to time to serve in a prison facility as compared to white defendants. Black defendants had had a 12 percent increased odds of being sentenced to prison as compared to white defendants. The non-significant difference between white defendants and Hispanic defendants as compared to white defendants and black defendants may be attributable to the differential way immigration defenses are addressed in the current federal justice system including the use of “fast track” departures and the potential for deportation. When immigration offenses are removed from analyses, Hispanic defendants had a higher likelihood of imprisonment.

HGLM models were utilized based on dichotomous dependent variables. All models were grand-mean centered. Results for models were based on unit-specific models with robust standard errors.
Table 6.1 Likelihood of Imprisonment for all defendants 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>B</th>
<th>SE</th>
<th>Odds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>4.17</td>
<td>0.05</td>
<td>64.84 ***</td>
</tr>
<tr>
<td>Criminal History</td>
<td>0.24</td>
<td>0.01</td>
<td>1.27 ***</td>
</tr>
<tr>
<td>Trial</td>
<td>0.75</td>
<td>0.07</td>
<td>2.12 ***</td>
</tr>
<tr>
<td>Bail</td>
<td>-1.54</td>
<td>0.02</td>
<td>0.21 ***</td>
</tr>
<tr>
<td>Women</td>
<td>-0.44</td>
<td>0.02</td>
<td>0.64 ***</td>
</tr>
<tr>
<td>Black</td>
<td>0.11</td>
<td>0.03</td>
<td>1.12 ***</td>
</tr>
<tr>
<td>Hispanic</td>
<td>0.03</td>
<td>0.02</td>
<td>1.03</td>
</tr>
<tr>
<td>Other Race</td>
<td>-0.05</td>
<td>0.04</td>
<td>0.95</td>
</tr>
<tr>
<td>Non-Citizen</td>
<td>1.46</td>
<td>0.04</td>
<td>4.31 ***</td>
</tr>
<tr>
<td>Age (25 and above)</td>
<td>-0.14</td>
<td>0.03</td>
<td>0.87 ***</td>
</tr>
<tr>
<td>High School</td>
<td>-0.17</td>
<td>0.03</td>
<td>0.84 ***</td>
</tr>
<tr>
<td>Some College</td>
<td>-0.17</td>
<td>0.03</td>
<td>0.84 ***</td>
</tr>
<tr>
<td>College Graduate</td>
<td>-0.11</td>
<td>0.04</td>
<td>0.90 ***</td>
</tr>
<tr>
<td>Dependents</td>
<td>0.03</td>
<td>0.02</td>
<td>1.03</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>SD</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Variation</td>
<td>0.45</td>
<td>0.20     ***</td>
</tr>
<tr>
<td>Circuit Variation</td>
<td>0.04</td>
<td>0.00     ***</td>
</tr>
</tbody>
</table>

*≤ .10  ** < .05  *** < .01

Note: Additional variables including presumptive sentence, pre-trial release status, trial status, departure status, and offense types were included as control measures in above model. Full models available on request.

Analyses were conducted to examine research questions posed as part of the current study and to target results examining the effects of specific defendant characteristics, with particular focus on sex and potential disparities in treatment by sex. HGLM analyses were conducted examining the specific predictive influence of individual level defendant characteristics focusing on differences in the sentencing of women defendants as compared to men. Analyses specifically address the question of gendered differences in the likelihood of receiving a prison sentence.

**Question:** Are women defendants treated differently than men at the sentencing phase of the criminal justice process?

**Hypothesis:** Women defendants are less likely than men to be sentenced to a prison term.
For sex outcomes in likelihood of imprisonment, refer to Table 6.1. As was predicted, women defendants were less likely than men to receive a federal prison sentence. Again it is important to note that the variable examined looks specifically at sentences of incarceration in a prison facility and did not include alternative incarceration sentences (including home confinement, intermittent confinement or community confinement). Being a woman resulted in just over a 36 percent decrease in the odds of serving time in prison as compared to men, holding all other variables constant (see Table 6.1). Women in general were less likely to be sentenced to serve time in prison as compared to men and results suggest that leniency continues to be present in the post-Booker sentencing context. The specific interactions between race and gendered leniency will be discussed later in this chapter.

**Disparities in Sentence Length Decisions**

HLM analyses were conducted in order to assess disparity in the length of sentences imposed on defendants who were sentenced to time in prison. Again, these analyses were conducted examining only those defendants who received a sentence of imprisonment with a term to serve in a correctional facility. Results may be even more conservative than examinations including other forms of alternative imprisonment such as community confinement, intermittent confinement, or home detention. Unconditional models of sentence length outcomes were initially conducted. As with the decision of whether to incarcerate a defendant, variance in the length of sentences imposed can primarily be explained by legal and individual defendant level characteristics. However, sentence length did vary significantly dependent on the federal court jurisdiction in which the defendant was sentenced. According to
interclass correlation (ICC)\(^6^1\) calculations, approximately 7 percent of the difference in sentence length imposed can be attributed to federal court district variation.

Defendant and case characteristics were examined to determine their predictive influence on the length of prison sentence imposed at sentencing. Many variables were predictive in determining sentence severity (see Table 6.2 for reference). An increase in criminal history scores correlated with an increase in sentence length imposed. Older defendants (25 and older) received slightly higher sentence lengths when sentenced to time in prison. There was evidence of a trial penalty, where defendants who settled their cases at trial received longer terms of imprisonment than those who settled by plea. Defendants who were not released on bail also received longer prison sentences. In examining education, advanced education led to shorter terms of imprisonment. Those defendants who received downward departures from sentencing guidelines or who received substantial assistance departures for cooperation with prosecutors received shorter sentences, as would be expected. Non-citizens received longer sentences than did U.S. citizens. Black defendants received longer sentences as compared to white defendants. Black defendants received sentence lengths that were, on average, 12 percent longer than sentences of white defendants\(^6^2\).

\[^6^1\] Interclass correlation is calculated according to $\rho = \frac{\tau}{\sqrt{\tau^{00} + \sigma^2}}$. The ICC measures the proportion of the variance in the level 1 dependent variable that can be accounted for by the level 2 units. Variance between federal court districts are significant <.001.

\[^6^2\] Table outcomes for sentence length represent proportional difference in logged months. For textual interpretations, the antilog of the coefficient is calculated. Subtracting 1 from the antilog and multiplying the result by 100 provides the proportional difference in the dependent variable (sentence length).
**Table 6.2 Sentence length outcomes for all defendants 2006-2009**

<table>
<thead>
<tr>
<th></th>
<th>Sentence Length</th>
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<th>SE</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>3.38</td>
<td>0.03</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>Criminal History</td>
<td>0.05</td>
<td>0.00</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>Trial</td>
<td>0.29</td>
<td>0.01</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>Released on Bail</td>
<td>-0.40</td>
<td>0.00</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>Women</td>
<td>-0.21</td>
<td>0.01</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>0.04</td>
<td>0.00</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.01</td>
<td>0.00</td>
<td>**</td>
<td></td>
</tr>
<tr>
<td>Other Race</td>
<td>0.00</td>
<td>0.01</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Citizen</td>
<td>0.02</td>
<td>0.00</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>Age (25 and above)</td>
<td>0.05</td>
<td>0.00</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>High School</td>
<td>0.01</td>
<td>0.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Some College</td>
<td>-0.02</td>
<td>0.01</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>College Graduate</td>
<td>0.01</td>
<td>0.01</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dependents</td>
<td>0.00</td>
<td>0.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Random Effects</td>
<td>Variance</td>
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<td></td>
</tr>
<tr>
<td>District variation</td>
<td>0.12</td>
<td>0.01</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>level-1</td>
<td>0.73</td>
<td>0.53</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circuit variation</td>
<td>0.07</td>
<td>0.01</td>
<td>***</td>
<td></td>
</tr>
</tbody>
</table>

* b ≤ .10  ** < .05  *** < .01

Note: Additional variables including presumptive sentence, pre-trial release status, trial status, departure status, and offense types were included as control measures in above model. Full models available on request.

More specifically, analyses were conducted to examine the specific questions posed by the current research, exploring the influence of sex on the imposition of sentencing decisions addressing the following question and related hypothesis.

**Question: Are women defendants treated differently than men at the sentencing phase of the criminal justice process?**

**Hypothesis: If sentenced to prison, women defendants receive a more lenient term (shorter prison sentence).**
During the period of 2006 through 2009, when sentenced to serve time in prison, women defendants experienced increased leniency in sentencing outcomes as compared to men. For example, on average, women received sentences that were approximately 35 percent or roughly 20 months shorter than male counterparts, holding other factors constant. For outcomes see Table 6.2. In examination of a contemporary sentencing context, women continued to be less likely than men to be sent to prison, and when women did receive time to serve in a correctional institution, their sentences were significantly shorter than comparably situated male defendants. Again, more specific interactions of the influence of race and sex on determinations of sentence length will be discussed later in this chapter.

Disparities in Departure Decisions

In the post-*Booker* period of federal sentencing, judges have gained significantly more discretion in sentencing decisions, as well as in potential options for justification and explanation of their sentencing decisions. Decisions outside of guideline specifications warrant the examination of distinct justifications, or lack thereof, for a judges’ decision to sentence outside of guidelines. Departures from guidelines represent one of the mechanisms for the leniency experienced by women defendants as compared to their male counterparts. As discussed in the sections above, women continue to experience leniency in the current post-*Booker* sentencing context. In order to foster a more specific understanding of the nature of this leniency, downward sentencing departures, or sentences falling below the suggestion of federal sentencing guidelines, have been broken down into six categories for analysis. These specific downward departure categories include: substantial assistance departures (5K1.1 departures), early
disposition or “fast track” (5K3.1) departures, government sponsored departures\textsuperscript{63}, downward departures with \textit{Booker} citing to 18 U.S.C. §3553(a) justifications\textsuperscript{64}, traditional downward departures, and below range sentences with no citation to guidelines or departures.

With the general sample of defendants, 14 percent of those sentenced received a 5K1.1 departure for providing prosecutors information or assistance in a case. Four percent of defendant received some other form of government sponsored departure. Eight percent of defendants also received early decision departures under 5K3.1. In examining the other types of below range sentences, 2 percent of defendants received traditional downward departures, 1 percent received departures citing to §3553 reasoning, and 10 percent received below range sentences that had no citations to guidelines but instead remained below guidelines purely by discretion afforded to judges post-\textit{Booker}.

Prior research has examined disparities in the implementation of below range sentencing, but departures are most frequently broken down into a general downward departure category (traditional downward departures) and substantial assistance departures. Further detail may provide insight both into the intricacies of sentencing post-\textit{Booker} and the specific mechanisms for leniency in outcomes for women defendants. In order to examine distinctions in the implementation of departures from sentencing guidelines, multilevel models were used to address differences attributable to the specific federal district and circuit in which the case was

\textsuperscript{63} These cases include government sponsored departures that are not “fast track” or substantial assistance departures. The category of other government sponsored downward departures include “cases with a reason for departure indicating that the prosecution initiates, proposes, or stipulates to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.” (United States Sentencing Commission, 2005)

\textsuperscript{64} 18 U.S.C. §3553(a) outlines factors to be considered in determining sentence outcomes. Chapter 1 discusses the proscribed recommendations of 18 U.S.C. §3553(a) in greater detail.
sentenced. Initial unconditional models were conducted to determine the likelihood of receiving each type of departure downward from sentencing guidelines. While it was determined that legal and individual level characteristic explain the majority of variation in the likelihood of receiving a downward departure, the likelihood of receiving any type of leniency outside of guideline dictates did vary by federal court district. The district in which a case was sentenced accounted for anywhere from 8 percent to 25 percent of the variance in likelihood of receiving a departure downward, dependent on the specific nature or justification of the departure. Prosecutorial discretion departures (substantial assistance departures) and decisions to sentence below guidelines that occurred under Booker without specific justification were the least likely to vary by federal court district.

As the decision to sentence below United States Sentencing Commission guidelines does vary dependent on the federal court district in which sentencing occurs, multilevel models were utilized for the examination of the specific nature of below-range sentences allowing for variation within specific districts. HGLM models are used to examine each specific departure type, where the departures were analyzed as dichotomous variables (1 indicating specific type of departure from guidelines was implemented, 0 indicating the specific departure was not

\[ \rho = \frac{\tau}{\tau + \sigma^2} \]

Variance between federal court districts in of a defendant receiving all types of departures downward from sentencing guidelines are significant \(<.001\) level. Variance explained was as follows: Substantial Assistance (12 percent); Government Sponsored (25 percent); Traditional Downward Departure (12 percent); Downward Departure with 3553 explanation (22 percent); and Below Range under Booker (8 percent). The vast majority of variance in Early Disposition “fast track” departures is explained by federal district difference based on the fact that this departure is implemented differentially and not available in all districts.

\[ 65 \] Again, variance in the outcome attributed to federal court district differences is determined through the calculation of the interclass correlation (ICC). ICC calculations are based on the assumption that level 1 random effect variance is \( \pi^2/3 \), due to lack of meaningful individual-level variance component of dichotomous variables. The interclass correlation coefficient is calculated according to the formula:
implemented.) HGLM models allow for the contextualization of results within the framework of federal court districts. Models were implemented to address the following question and related hypothesis:

**Question:** Are women defendants treated differently than men at the sentencing phase of the criminal justice process?

**Hypothesis:** Women defendants are more likely to be offered departures from sentencing guidelines as compared to men.

With the exception of “fast track” departures, women were more likely to receive sentences below the range of Sentencing Commission guidelines recommendations, indicating that departures remain a mechanism for leniency in the sentencing of women within the contemporary federal sentencing context. Women experienced a 42 percent increase in the odds of receiving a substantial assistance (5K1.1) departure for providing assistance to prosecutors in cases as compared to men. Women had a 10 percent increased odds of receiving other government sponsored downward departures for sentencing dictates. There was no significant difference between women and men in the likelihood of receiving a 5K3.1 “fast track” departure. For sex outcomes in below range departures, refer to Table 6.3.
Table 6.3 Below range departure outcomes for women 2006-2009

<table>
<thead>
<tr>
<th>Departure outcomes for women</th>
<th>B</th>
<th>SE</th>
<th>Odds</th>
</tr>
</thead>
<tbody>
<tr>
<td>SA5K1.1</td>
<td>0.35</td>
<td>0.02</td>
<td>1.42 ***</td>
</tr>
<tr>
<td>ED5K3.1</td>
<td>0.03</td>
<td>0.13</td>
<td>1.04</td>
</tr>
<tr>
<td>Govnt Sponsored</td>
<td>0.13</td>
<td>0.04</td>
<td>1.14 ***</td>
</tr>
<tr>
<td>Downward Departure</td>
<td>0.34</td>
<td>0.04</td>
<td>1.40 ***</td>
</tr>
<tr>
<td>Downward 3553</td>
<td>0.35</td>
<td>0.04</td>
<td>1.42 ***</td>
</tr>
<tr>
<td>Below Range</td>
<td>0.17</td>
<td>0.02</td>
<td>1.19 ***</td>
</tr>
</tbody>
</table>

*≤ .10  ** < .05  *** < .01

Note: This table represents data compiled from six separate models. Additional variables including presumptive sentence, pre-trial release status, trial status, imprisonment decision, offense types, race and ethnicity, citizenship status, age, education, and parental status were included as control measures in above models. Full models available on request.

In examining mechanisms for judicially-motivated below range sentencing, women were more likely than men to receive departures downward from federal guideline recommendations. Holding other variables constant, women had 40 percent increased odds of receiving traditional downward departures as compared to men. Women experienced a 42 percent increase in the odds of receiving a below range sentence citing to justifications under §3553. Women had a 19 percent increased odds of receiving a departure in which the judge had not provided specific justification, but simply chosen a sentence that fell below guideline recommendations as allowed by *Booker*. For details of judge motivated below range outcomes refer to Table 6.3.

These findings make sense in relation to the significant history of sentencing research suggesting that women are treated with greater leniency within the justice system. It appears that post-*Booker* sentencing determinations are no different. The current work confirms that leniency continues to be experienced by women subsequent to legislative changes to sentencing guidelines and within the modern operational context of contemporary federal district
courtrooms. It appears that departures downward from sentencing guideline recommendations continue to represent one of the specific mechanisms for the more lenient treatment of women defendants. There is indication that judges have shifted in the utilization of traditional downward departures requiring justification as delineated in the federal sentencing guidelines to below range sentencing as allowed under *Booker*. This may indicate a shift in the pattern of departing from sentencing guidelines to implementation of less specifically detailed departures; however, does not necessarily indicate an increase in overall departures from guidelines.

**Theoretical Correlates of Disparities in the Sentencing of Women Defendants**

As discussed in Chapter 3, the complete dataset was partitioned by sex and analyses were conducted in exploration of the more specific nature of gendered outcomes and potential theoretical explanations for gender distinctions. Partitioned data also allow for the examination of gendered sentencing outcomes beyond the distinction of man versus woman, instead exploring the unique interactions of sex with other defendant characteristics thought to be gendered. As feminist theory would suggest, gender differences are not clear-cut and all women do not experience disparities in an equivalent manner.

Analyses target a set of hypotheses posited examining the specific nature of gendered sentencing outcomes. These analyses explore sex as it interacts with such factors as race, parenthood, education (informal social control), and influence of early justice decisions. Indications of formal social control are also examined including the influence of criminal history. Beyond exploration of differences among women, models present a comparison of the impact of pertinent factors for women as compared to how the same factors impact men. First, analyses
explore the interaction of sex and race, focusing on the following questions and related hypothesis:

**Question:** Do women of color experience leniency in the federal criminal justice system differently in comparison to white women?

**Hypothesis:** Women of color experience less leniency in sentencing decisions (incarceration decision/sentence length) as compared to white women.

In examining the interaction of sex and race as presented in Table 6.4, outcomes suggest that black women were significantly less likely to be sentenced to prison than white women. Black women experienced an 11 percent decrease in the odds of receiving a prison sentence during the period of current examination as compared to white women. In exploration of the impact of sex and race interaction, results indicate that men and women were differently impacted by race in the judges’ decision to sentence a defendant to federal prison time. Black males were significantly more likely than white males to be sentenced to time in prison. Black women experienced leniency, while black male defendants were the most likely to be sentenced to serve time in prison. For detailed outcomes in partitioned analyses of incarceration decision, refer to Table 6.4.
Table 6.4 Likelihood of imprisonment by sex 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>Women</th>
<th></th>
<th>Men</th>
<th></th>
<th>Sex Comparison</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
<td>Odds</td>
<td>B</td>
<td>SE</td>
</tr>
<tr>
<td>Intercept</td>
<td>1.67</td>
<td>0.06</td>
<td>5.29</td>
<td>4.73</td>
<td>0.06</td>
</tr>
<tr>
<td>Black</td>
<td>-0.12</td>
<td>0.04</td>
<td>0.89</td>
<td>0.20</td>
<td>0.03</td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.06</td>
<td>0.04</td>
<td>0.94</td>
<td>0.07</td>
<td>0.03</td>
</tr>
<tr>
<td>Other Race</td>
<td>-0.01</td>
<td>0.08</td>
<td>0.99</td>
<td>-0.06</td>
<td>0.05</td>
</tr>
<tr>
<td>High School</td>
<td>-0.06</td>
<td>0.05</td>
<td>0.94</td>
<td>-0.23</td>
<td>0.03</td>
</tr>
<tr>
<td>Some College</td>
<td>-0.06</td>
<td>0.05</td>
<td>0.94</td>
<td>-0.23</td>
<td>0.03</td>
</tr>
<tr>
<td>College Graduate</td>
<td>-0.03</td>
<td>0.07</td>
<td>0.97</td>
<td>-0.12</td>
<td>0.04</td>
</tr>
<tr>
<td>Dependents</td>
<td>-0.04</td>
<td>0.04</td>
<td>0.96</td>
<td>0.06</td>
<td>0.02</td>
</tr>
<tr>
<td>Bail</td>
<td>-1.38</td>
<td>0.04</td>
<td>0.25</td>
<td>-1.59</td>
<td>0.03</td>
</tr>
<tr>
<td>Trial</td>
<td>0.73</td>
<td>0.13</td>
<td>2.08</td>
<td>0.77</td>
<td>0.08</td>
</tr>
<tr>
<td>Criminal History</td>
<td>0.24</td>
<td>0.02</td>
<td>1.27</td>
<td>0.22</td>
<td>0.01</td>
</tr>
</tbody>
</table>

Variance SD Variance SD Variance
District Variation 0.44 0.19 *** 0.45 0.20 ***
Circuit Variation 0.06 0.00 *** 0.04 0.00 ***

*≤ .10  ** < .05  *** < .01

Note: Additional variables including presumptive sentence, pre-trial release status, trial status, departure status, and offense types were included as control measures in above models. Full models available on request.

In examination of sentence severity, the interactive effect of sex and race appears minimal. Black women did not receive prison sentences that significantly differed than those imposed on white women defendants. Hispanic women received shorter prisons sentences than did white women. Women of other races, when sentenced, received longer prisons sentences than did white women. In comparing this impact to that of men, black males received sentences that were longer than those received by white males, with black men receiving sentences that were over 22 percent longer than white men, or on average just over 62 months. The interactive impact of race and sex for all racial categories did differ significantly between women and men. Black men were sentenced more severely, while black women were not. Hispanic women experienced greater leniency in sentencing outcomes, while Hispanic men did not. Women of
other races were sentenced to longer sentences as compared to white women, while men of other races did not experience more putative treatment in comparison to white men. For detailed outcomes, refer to Table 6.5.

### Table 6.5 Sentence length by sex 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>Women</th>
<th></th>
<th>Men</th>
<th></th>
<th>Gender Comparison</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B  SE **</td>
<td></td>
<td>B  SE **</td>
<td></td>
<td>Z Score</td>
</tr>
<tr>
<td>Intercept</td>
<td>2.73 0.06 ***</td>
<td>3.49 0.02 ***</td>
<td>***</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>0.01 0.02</td>
<td>0.04 0.00 ***</td>
<td>-1.75 **</td>
<td>**</td>
<td></td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.03 0.02 **</td>
<td>0.00 0.00</td>
<td>-1.81 **</td>
<td>**</td>
<td></td>
</tr>
<tr>
<td>Other Race</td>
<td>0.08 0.03 **</td>
<td>-0.02 0.01 *</td>
<td>2.66 ***</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>High School</td>
<td>0.00 0.02</td>
<td>0.01 0.00</td>
<td>-0.41</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Some College</td>
<td>-0.01 0.02</td>
<td>-0.03 0.01 ***</td>
<td>0.66</td>
<td></td>
<td></td>
</tr>
<tr>
<td>College Graduate</td>
<td>0.01 0.03</td>
<td>0.00 0.01</td>
<td>0.32</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dependents</td>
<td>-0.04 0.02 **</td>
<td>0.01 0.00 ***</td>
<td>-3.36 ***</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>Bail</td>
<td>-0.46 0.02 ***</td>
<td>-0.39 0.00 ***</td>
<td>-3.93 ***</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>Trial</td>
<td>0.39 0.04 ***</td>
<td>0.28 0.01 ***</td>
<td>2.66 ***</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>Criminal History</td>
<td>0.08 0.01 ***</td>
<td>0.05 0.00 ***</td>
<td>4.69 ***</td>
<td>***</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Variance</th>
<th>SD  Variance</th>
<th>SD  Variance</th>
<th>***</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Variation</td>
<td>0.25 0.06 ***</td>
<td>0.11 0.01 ***</td>
<td>***</td>
<td></td>
</tr>
<tr>
<td>Level-1</td>
<td>1.09 1.19</td>
<td>0.67 0.44</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circuit Variation</td>
<td>0.16 0.02 ***</td>
<td>0.06 0.00 ***</td>
<td>***</td>
<td></td>
</tr>
</tbody>
</table>

* ≤ .10 ** < .05 *** < .01

Note: Additional variables including presumptive sentence, pre-trial release status, trial status, departure status, and offense types were included as control measures in above models. Full models available on request.

Next, partitioned analyses were conducted to explore the impact of having children on sentencing decisions, and specifically the impact of motherhood and caretaker roles on women’s imprisonment. Analyses were conducted to answer the following question:

**Question: Do women with dependent children experience leniency in the federal criminal justice system differently than women who are non-familied?**
Hypothesis: Women with children are more likely to experience leniency in sentencing decisions (incarceration decision/sentence length).

The influence of having dependent children had no significant impact on the likelihood of a women being sentenced to serve time in prison. However, men who had dependent children were more likely to be sentenced to prison. Differences between men and women in the influence of being a parent to dependent children were significant. For outcomes see table 6.4 above.

Although women were not significantly less likely to go to prison if they were mothers, they did receive significantly shorter prison sentences as demonstrated in Table 6.5. Women with dependent children received sentences that were on average 4 percent shorter than women who did not have dependent children. For men, the impact was reversed. Men who had dependent children received prison sentences that were 1 percent longer than men who did not have dependent children. The difference in impact of having children was significantly different for women and men.

Next, the impact of educational attainment was examined as an indication of ties to informal social control and stakes in conformity. Higher educational attainment is seen to potentially represent a greater likelihood that an individual has investment in institutions outside of formal mechanisms of social control. The impact of multiple levels of education was explored as guided by the following question and hypothesis:
Question: Do women with higher levels of education experience leniency in the federal criminal justice system differently than women with less education?

Hypothesis: Women with higher levels of education are more likely to experience leniency in sentencing decisions (incarceration decision/sentence length).

Level of educational attainment did not have a significant influence on whether or not a woman was sentenced to prison. For men, having more education decreased the likelihood of imprisonment. The impact of education was significantly different from women and men defendants, with education impacting imprisonment outcomes for men but not for women. See Table 6.4.

Level of education also did not have a significant impact of the severity of sentence imposed for women offenders. For men, the impact was minimal as well, with only those defendants who had some college varying significantly from the control group of defendants with less than a high school degree. There was no significant difference in the effect of education on sentence length imposed for women and men. For detailed outcomes see Table 6.5.

In order to gauge the cumulative impact of the justice process, the impact of early justice outcomes on sentencing decisions was examined. Analyses explored whether women who experienced earlier leniency would experience subsequent lenient treatment. Through these analyses, the role of increased involvement in formal social control mechanisms was explicated. Initially posed questions were as follows:
Question: Do women who experience earlier leniency in the federal criminal justice process also experience subsequent leniency?

Hypothesis: Women released on bail are more likely to experience leniency in sentencing (incarceration decision/sentence length).

Hypothesis: Women who receive a plea agreement are more likely to experience leniency in sentencing (incarceration decision/sentence length).

Women who were released from custody prior to sentencing were less likely to be subsequently sentenced to serve time in prison. Women released prior to sentencing on any type of pretrial release experienced a 75 percent decreased odds of being sentenced to prison. Men also were less likely to be imprisoned if released from custody prior to sentencing. Men who were released prior to sentencing experienced an 80 percent decrease in the odds of incarceration as compared to those held in custody. The difference in the impact of pre-sentencing release was significantly different for women and men, with men experiencing the greatest impact. For outcomes refer to Table 6.4.

Women who were released from custody prior to sentencing, when sentenced to prison, received shorter terms of imprisonment. Women defendants released from custody prior to sentencing received sentences that were 37 percent shorter than those imposed on women who were held in custody. Men also received shorter sentences if they had been released prior to sentencing. Men released on some form of bail received sentences that were approximately 32 percent shorter than men held in custody. The impact of receiving bail was significantly different for women and men. Refer to Table 6.5.
Women who had cases decided at trial were more likely to be sentenced to serve time in a prison institution as compared to those whose cases were settled by plea agreement. Women who went to trial experienced a 108 percent increased odds of incarceration (Table 6.4). The impact for male defendants was similar, with no significant difference in the impact between women and men defendants.

Going to trial also had a significant impact on the length of sentence imposed. Women who had cases that went to trial received sentences that were 48 percent longer than those of women released from custody prior to sentencing. Men whose cases went to trial also received longer prison sentences, with men who went to trial receiving sentences that were 32 percent longer. Further the difference in impact of trial was significantly different for women and men, with women being impacted more harshly than men. For outcomes see Table 6.5.

Looking further at the impact of formalized social control, women who had prior involvement with the criminal justice system had an increased likelihood of incarceration. For women, as their criminal history score increased, so too did the likelihood of serving time in prison (See Table 6.4). A unit increase in criminal history score led to a 27 percent increase in the odds of a woman being incarcerated. However, the impact of prior criminal justice involvement on being sentenced to prison was not significantly different for women compared to men. For men, an increase in criminal history score led to a 25 percent increase in the odds of incarceration.

Having prior involvement with the criminal justice system also had a significant impact on the length time in prison a defendant received, for both women and men (see Table 6.5).
With an increase in criminal history score, women received sentences that were over 8 percent longer. The impact of criminal history on length of sentence imposed was greater for women than it was for men. Men experienced a 5 percent increase in length of sentence imposed for each unit increase in criminal history score. While women may not have been more likely to go to prison than men because of their criminal history, they were more likely to receive an increasingly severe sentence. Women were differentially impacted by prior involvement in formal social control in relation to the amount of time they were sentenced to serve in prison. This suggests some support for an “evil women” hypothesis, where women are treated more harshly due to violation of gender norms (i.e. having a criminal history).

**District Contextual Analyses of Imprisonment Decisions**

Models were run examining disparities in the decision to incarcerate while controlling for federal court district variation and more specifically district variation in gender representation of the justice workforce. For a descriptive characterization of the federal court districts in the current study, refer to Chapter 4. The current models presented in this section explore cross-level interactions between district level characteristics and sex differences in sentencing. Here, the following hypothesis is addressed:

**Question. Do disparities in the treatment of women within the criminal justice system depend on the district in which the individual is sentenced?**

66 Supplementary models were examined exploring other district contextual characteristics. Outcomes did not significantly impact the current gender examinations. Additional models available upon request.
Hypothesis: The disparate treatment of women defendants will decrease in court districts with greater gender representation of courtroom workers.

Table 6.6 District contextual influences on likelihood of imprisonment 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
</tr>
<tr>
<td>Intercept</td>
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<td>0.05</td>
</tr>
<tr>
<td>Female Judge</td>
<td>-0.31</td>
<td>0.42</td>
</tr>
<tr>
<td>Female Prosecutor</td>
<td>-0.22</td>
<td>0.72</td>
</tr>
<tr>
<td>Women</td>
<td>-0.44</td>
<td>0.02</td>
</tr>
<tr>
<td>Female Judge</td>
<td>-0.43</td>
<td>0.31</td>
</tr>
<tr>
<td>Female Prosecutor</td>
<td>0.37</td>
<td>0.52</td>
</tr>
<tr>
<td>Variance</td>
<td>SD</td>
<td>SD</td>
</tr>
<tr>
<td>District variation</td>
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<td>0.20</td>
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<tr>
<td>Sex</td>
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<td>0.05</td>
</tr>
<tr>
<td>Circuit variation</td>
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<td>0.00</td>
</tr>
</tbody>
</table>

*≤ .10 ** < .05 *** < .01

Note: Additional variables including presumptive sentence, pre-trial release status, trial status, departure status, and offense types were included as control measures in above models. Full models available on request.

Gender representation did not have a significant impact on sentencing outcomes as might have been expected. Increased representation of women as judges and prosecutors had no impact on the likelihood of imprisonment generally or for women defendants specifically. See Table 6.6.

Further, increased gender representation had no impact on the length of sentence women defendants received. There was some leniency in overall sentence length noted in districts with greater proportions of women judges, but impact was minimal See Table 6.7.
Table 6.7 District contextual analyses on sentence length 2006-2009

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th></th>
<th>Model 2</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
<td>B</td>
<td>SE</td>
</tr>
<tr>
<td>Intercept</td>
<td>3.38</td>
<td>0.03</td>
<td>***</td>
<td>3.39</td>
</tr>
<tr>
<td>Female Judge</td>
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<td>0.11</td>
<td>**</td>
<td>-0.22</td>
</tr>
<tr>
<td>Female Prosecutor</td>
<td>-0.10</td>
<td>0.19</td>
<td></td>
<td>-0.06</td>
</tr>
<tr>
<td>Women</td>
<td>-0.21</td>
<td>0.01</td>
<td>***</td>
<td>-0.25</td>
</tr>
<tr>
<td>Female Judge</td>
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<td>0.24</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female Prosecutor</td>
<td>0.01</td>
<td>0.41</td>
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<td></td>
</tr>
</tbody>
</table>

Variance SD Variance SD Variance

Level-2 0.11 0.01 *** 0.12 0.01 ***
Sex 0.26 0.07 ***

Level-3 0.07 0.01 *** 0.05 0.00 ***

*≤ .10  ** < .05  *** < .01

Note: Additional variables including presumptive sentence, pre-trial release status, trial status, departure status, and offense types were included as control measures in above models. Full models available on request.

The increased feminization of the workforce as represented by districts with a great representation of women in the justice workgroup had little impact on the treatment of women or of sentencing decisions more generally. Women were not treated with increased leniency in districts with more women judges or prosecutors. Defendants in general did not experience increased leniency in districts with greater gender representation in the justice actors. Outcomes suggest that the posited gender representation hypotheses are not supported. Within the current examination, there is no evidence to specifically support the conception that women introduce an “ethic of care” to the justice environment. While gendered leniency in sentencing decisions continues to be present overall, it appears to be influenced little by gender representation in the justice workers. For a complete examination of district contextual outcomes, see Table 6.6 and Table 6.7.
Post-Booker Comparison in Sentencing Disparity

Analyses were conducted comparing early post-Booker (2005-2007) to later post-Booker (2008-2009) cases. The 2005-2007 data encompassed approximately 145,000 cases and 2008-2009 138,000 cases. Comparative imprisonment decisions are presented in Table 6.8.

Table 6.8 Likelihood of imprisonment for all defendants 2005-2007 versus 2008-2009

<table>
<thead>
<tr>
<th></th>
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<th></th>
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<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>4.35</td>
<td>0.06</td>
<td>77.52</td>
<td>***</td>
<td>4.06</td>
<td>0.06</td>
<td>57.81</td>
<td>***</td>
<td>4.06</td>
<td>0.06</td>
<td>57.81</td>
<td>***</td>
<td>4.06</td>
<td>0.06</td>
</tr>
<tr>
<td>Criminal History</td>
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<td>0.01</td>
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*≤ .10 ** < .05 *** < .01

Note: Additional variables including presumptive sentence, pre-trial release status, trial status, departure status, and offense types were included as control measures in above models. Full models available on request.

While women were less likely to be sentenced to serve time in prison as compared to their male counterparts, the difference in the experience of leniency was not significantly different in comparing the 2005-2007 to the 2008-2009 time periods. However, the trend
appears to be moving in the direction of increased leniency. Additionally, results indicate some changes in sentencing perspectives and approaches. For example, in the later post-Booker time period immigration offenses are treated more harshly.

Comparisons between the two time periods in sentence severity are presented in Table 6.9.

Table 6.9 Sentence length outcomes for all defendants 2005-2007 versus 2008-2009

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<tr>
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</tbody>
</table>

*≤ .10 ** < .05 *** < .01

Note: Additional variables including presumptive sentence, pre-trial release status, trial status, departure status, and offense types were included as control measures in above models. Full models available on request.

As with the decision to imprison, leniency afforded women in severity of sentences imposed was not significantly different in the later post-Booker period; however, the difference does appear to be moving in the direction of increased leniency. Outcomes indicate a potential
trend of increased leniency resulting from increased judicial discretion generally and perhaps more specifically for women over time. The trial penalty effect was decreased in the later period, and the leniency experienced by those released from custody prior to sentencing increased. Sentences were shorter for all offense type in the later period. According to results generally, it appears that discretion is increasing with time since the implementation of *Booker* and subsequent Supreme Court decisions.

**Chapter Conclusions**

This chapter represents an examination of the current status of the treatment of women within the federal criminal justice system at the stage of sentencing decisions. This work presents a contemporary examination of disparities in sentencing decisions for women and explores nature of the mechanisms through which women experience leniency. According to the results, women continue to experience leniency within the justice system when sentenced in federal court.

The general hypothesis that leniency toward women would be observed in a modern criminal justice sentencing decisions was supported. As is consistent with prior findings, women were more likely to receive departures downward from sentencing guidelines, were less likely to be imprisoned, and if sentenced received shorter terms of incarceration. A specific analysis of interest in the current study is the breakdown of distinct types of below range sentences. In analyzing the intricacies of sentencing decisions in post-*Booker* sentencing, it appears that lenient treatment continues and women are more likely to receive *all* forms of departures from sentencing recommendations, with the exception of early disposition “fast track” departures.
While departures appear to continue to represent a primary mechanism for leniency in the sentencing of women defendants, it seems that the pattern of below range sentencing may be changing in that judges are moving from specifically delineated downward departure mechanisms provided by federal sentencing guidelines to more general unspecified departures allowed under *Booker*.

The hypothesis that leniency in the sentencing of women would be conditioned by other important characteristics received mixed results. Contrary to expectation, black women were less likely to be sentenced to a term in prison than were white women. While black women appeared to experience leniency in the decision to incarcerate, black men were the most likely to be sent to prison. Hispanic women received significantly shorter sentences than did white defendants and women of other races received longer sentences. It is possible that the impact of imprisonment could be related to judgments about social roles. For example, black women could be treated with greater leniency because of a primary caretaker responsibility. Overall, the effect of sex as conditioned by race was inconsistent, and the hypothesis that white women would experience increased leniency was not supported.

Whether a woman had dependent children did not increase leniency in imprisonment decisions, but did result in shorter sentences for women. Level of education did not have a significant impact on sentencing decisions generally for women. Although some of the lack in significant findings may be attributed to limitations in variables, outcomes call into question across the board assumptions that women who have increased involvement in institutions of informal social control will experience increased leniency. It appears that when leniency was experienced, the impact occurred not in the decision not to send a woman to prison but instead in
the decision to impose more lenient sentences. In sentencing decision outcomes, there was some evidence of familial paternalism and leniency afforded for women due to their role as mothers, but less concrete evidence of a gendered impact of informal social control mechanisms generally.

Unlike some prior findings of mixed results for the significance of case characteristics for women, factors such as the presence of a “trial penalty” appeared to be just as significant for women as has been found generally. Women who had lower criminal history scores, women who were released from custody prior to sentencing and women who resolved their cases in plea agreements experience increased leniency. The impact of pretrial release on likelihood of incarceration and sentence length, as well the impact of trial and increased criminal history on length of sentence imposed were significantly greater for women as compared to men. Thus it appears that women did experience increased leniency in conjunction with less involvement with formal social control. Results indicated that there was a gendered impact in the influence of formal social control. Women may experience leniency generally; however, when women step outside of societally prescribed norms they were treated more putatively. It may be that with increased interaction with formal criminal justice systems, women were deemed “criminal” and thus in violation of normative gender behavior. These women who were “criminal” were punished more harshly as compared to more “redeemable women” who have somehow been led astray and have come in contact with the justice system.

Gender representation in the justice workforce appears to have little impact on severity of justice decision in the contemporary sentencing context. Districts with increased representation of women as judges and prosecutors did not exhibit significant difference in leniency in sentencing decisions, either generally or specifically targeted toward women. With the increased
discretion afforded decision makers in the wake of *Booker* and related decisions, one might expected a more noticeable increase in the effect of women entering the justice workforce. According to the current results, increased discretion did not manifest itself in a strong indication of the introduction of an “ethic of care” to federal justice sentencing decisions. Greater representation of women in the workforce did not necessarily equate to increased leniency, as cultural difference feminist predictions would suggest. While defendants continued to experience leniency in sentencing decisions generally, greater gender representation did not result any increase in such leniency.

Findings suggest evidence against a chivalry or patriarchal explanation for leniency generally, as districts with greater representation of men in the justice workforce do not sentence women more leniently. Overall, neither the postulation of a chivalry/paternalism explanation or an ethic of care hypothesis receive strong support. However, women continue to experience leniency generally.

While results appear to be moving in a direction of increased discretion, perhaps not enough time has lapsed to allow for the impact to be significant. Overall strict adherence to guidelines appeared to be decreasing; however, only at a moderate rate. Accordingly, there was some indication that judges have not relied on strict adherence to guidelines as a mechanism for uncertainty avoidance or norm maintenance, but more time is needed to fully understand the impact.

Findings point to the fact that the intricacies of the gendered experience of the justice system may be more complex than originally anticipated. Further, findings may point to one of
the fundamental limitations of the current study, which is the difficulty of measuring the

construct of gender within quantitative sentencing analysis. Quantitative analysis was limited by

the data available in the USSC dataset. Quantitative data do not accurately capture the

intricacies of gender, and variables available do not satisfactorily address important factors in the

lives of women (for example, the influence of victimization, influence of being a mother,

significance of participating in crime as a co-defendant, etc.).

Women represent a small proportion of the population of defendants sentenced federally. There exist far fewer female penal institutions, and women in general are less violent and have

less criminal involvement than men. However, the distinct impact of sentencing decisions on

women cannot be overlooked. On the contrary, it becomes important to explore the unique

impact of sentencing decisions on women, particularly in a contemporary context and in light of

changes to sentencing guidelines. The next chapter explores correctional classification and

placement. Analyses investigate the justice experience of women offenders as they interact with

the Bureau of Prisons.
Chapter 7 Correctional Placement and Classification

Another fundamental aspect of women’s interaction with the federal criminal justice systems exists in the classification of women after sentencing and subsequent placement in correctional facilities. The nature of women’s imprisonment often receives even less attention than examinations of the impact of sentencing, particularly within the United States. The limited presence of women in the federal offender population leads to the potential for a disproportionate dearth of programming and an increase of collateral consequences. For example, because there are so few federal female institutions, women may be more likely to be institutionalized at a further distance from family and community of origin, thus decreasing the likelihood of access to visits and community based resources. To understand the potential impact of such collateral consequences, a more precise understanding of the nature and pattern of female federal incarceration is necessary.

Women’s federal incarceration has had a rich and very interesting history. Philosophies of incarceration of women offenders are like a pendulum, swinging from ideals of reform and fostering women’s relational growth to models of incapacitation and punishment. It becomes important to understand the history of incarceration in order to better explicate the current state of women’s treatment within contemporary federal incarceration. A generalized understanding of the federal incarceration of women will help contextualize women’s imprisonment currently.

Historically, few women prisoners were held in federal institutions and women offenders did not have their own federal institution until 1927, despite the fact female state facilitates were developed a century earlier. The first women’s federal institution opened its doors in Alderson, West Virginia in 1927(Heffernan, 1992, 1994; SchWeber, 1980). Before such time, women
charged with federal offenses were held in state facilities. The establishment and transition of women’s institutions seemingly parallels the disparate treatment of female defendants in general in a manner where their needs often fall second to the dictates of the needs of male offenders. A volatile history of the opening, closing and transitioning of female only and co-ed correctional facilities abounds throughout the development of the federal prison system.

Overall, the Federal Bureau of prisons appears to have begun to increase its attention to the unique needs of female inmates, particularly as related to classification, medical, and parental rights concerns. However, it remains unclear as to whether female offender needs are completely and appropriately understood or addressed. To begin to address issues related to women’s incarceration, it becomes beneficial to garner a contemporary portrait of women’s correctional placement and classification.

The current examination explores the federal system’s capacity to appropriately handle the needs of female offenders, when female inmates make up such a small percentage of those inmates in federal custody, currently less than 10%, and historically an even smaller percentage. Analyses explore whether women are treated in an equivalent manner, despite their smaller numbers as compared to male offenders. Penal institutions represent but one, albeit fundamentally important, aspect of the manifestation of differential and at times unequal treatment of women as part of the criminal justice process.

**Research Questions and Hypotheses**

A variety of questions were explored examining the nature of women’s correctional classification and placement in the federal criminal justice system. These questions were
established to begin to look at how resources are allocated and specifically explore whether disparities in treatment exist by sex at the commitment phase. The questions explore outcomes of where women are sent and how resources are allocated to them. This comes out of the assumption that women may continue to experience differential treatment and potentially limited options based on the fact that they are so much smaller a proportion of the incarcerated population as compared to men.

I predicted that women will experience differential treatment in correctional placement due to their small numbers overall in the correctional population. Because of small numbers, there are fewer female institutions and potentially less access to resources. Historically, women were more likely to be contracted to non-Bureau of Prison facilities because there were less federal institutions designed to house women (Hanrahan, 2003; Harris, 1936; SchWeber, 1980). Because there are less female facilities in the United States, it would seem that women would be more likely to be housed further from their homes and thus potentially sacrifice access to family and other important resources. In this way, limited placement options could result in a partial justice. Finally, because men make up the significant majority of all prison offenders; it is possible that male offenders have greater access to resources and programming due to the fact that the vast majority of both institutions and programs are originally designed with men in mind. Those questions addressed above were included as representative proxy measures for exploration of disparate treatment in correctional placement with the understanding that there are a variety of ways in which women could potentially experience disparity in classification and correctional placement.
Data and Analyses

Data for correctional classification and placement analyses were drawn from the Federal Justice Statistics Program, specifically the data submitted by the Bureau of Prisons and discussed in greater detail in Chapter 3. Data in the current chapter examine those offenders in federal custody at years end, 2008. Data were specifically selected for the current study because the “Prisoners in federal custody at year’s end” data represent the most options in variables for analyses. Information available as part of the Bureau of Prisons dataset was more limited in comparison to the United States Sentencing Commission data. Data were selected for one point in time during the study period so as not to repeatedly count data from the same offenders who were incarcerated over consecutive years. Accordingly, a single snapshot of incarceration during the period of interest was examined to provide a general analysis of the incarceration of offenders who have been sentenced during the post-Booker period of federal sentencing.

Analyses were conducted controlling for federal district and circuit of origin in order to control for unique regional differences in classification and commitment processes. Initially, unconditional models were run to determine if outcomes examined did vary significantly by district. All outcomes in the current chapter did vary significantly dependent on federal court district of origin. The level of variance in outcome explained by district differences ranged from 5 percent to 18 percent. Because of outcomes, multilevel models were implemented in all analyses to control for variation by district. Analyses were conducted using hierarchal linear

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67 Nine percent of variation in likelihood of commitment to a Bureau of Prisons facility could be explained by federal district, 3 percent for contract facility, and 18 percent for private facilities. Sixteen percent of the variation in determinations of when a defendant was sent to an institution within or outside of state of residence was explained by district variation. Five percent of variance in likelihood of an offender being sent to a prison with a RDAP program (drug treatment program) can be explained by district variation.
modeling, specifically HGLM due to the dichotomous nature of outcome variables. Analyses were conducted controlling for circuit and district.

Dependent variables in the current chapter included measures of (1) type of facility to which offender is committed, (2) when facility is in state of residence or not, and (3) whether offender is committed to an institution that offers a Residential Drug Abuse Program (RDAP) or intensive mental health programming. The first examination was comprised of dichotomous variables indicating whether or not an offender was committed to a Bureau of Prisons faculty or to a contract facility. The second measure was a dichotomous variable indicating whether an offender was committed to a facility in the same state as they had previously resided in or not. This represents a proxy measure for distance an offender was sent away from their home. When an offender is sent to a facility that is far from their home, they often face many limitations including lack of contact with family, limited visitation, and limited access to resources. This variable attempted to assess some of these potential limitations and examine whether or not women were more likely to experience limitations due to their smaller proportions in the offender population and the smaller number of women’s federal correctional facilities as compared to those for men. Finally, indications of whether an offender was sentenced to a facility offering RDAP programming or intensive co-occurring disorders programming were included as a proxy measure for access to programming. Here analyses attempted to explore potential disparity in access to programming. RDAP represents the Bureau of Prisons’ most intensive substance abuse treatment. It is based on a Cognitive Behavioral Therapy model and involves a modified therapeutic community in which residents live on a unit separate from the general population. Participants engage in treatment, as well as educational and vocational
activities. Results from program evaluations indicate general success in relation to both recidivism and relapse (Federal Bureau of Prisons, 2012). Additionally, a dichotomous analysis examined whether or not the offender was committed to a facility that offers specific programming addressing co-occurring disorders. This is programming that targets both substance abuse and mental health issues and can be seen to represent a proxy measure for access to intensive substance abuse and mental health programming, both fundamental needs for women offenders.

As with prior chapters and analyses, sex represents the variable of primary interest with biological sex serving as a proxy measure for gender. Additional independent variables were included for control. Control variables included offender’s race, citizenship status, age, and offense type. Controls were also included for federal circuit and district in which the case originated.

**Disparities in Facility Type**

Throughout the history of federal incarceration, and more specifically the incarceration of women, offenders have been contracted out to facilities outside of designated federal penal institutions. Prior to the establishment of federal women’s facilities, women were housed in state facilities. With the growing number of women being incarcerated federally, state facilities began to refuse to accept federal inmates due to overcrowding. For perspective, in 1921, the federal government placed 192 women in state facilities. In 1922, 247 women were placed in state faculties. In 1925, the number grew to 563. The first dedicated federal women’s correctional facility was not established until 1930, where women only state institutions began to be
established as early as 1873. During such time, the federal government would contract out to state facilities to house women offenders (Heffernan, 1992, 1994; Rafter, 1990; SchWeber, 1980). During the 1930’s, after the establishment of the women’s federal facility at Alderson, 8 percent of women and 1 percent of men were housed under state contracts. During the 1940s and 1950s, up to one-third of women were housed in state facilities (Heffernan, 1994). Today 9 percent of women (n = 1,081) and 5 percent of men (n = 8158) are housed in state facilitates.

Thus there is a significant history of women’s placement in facilitates outside of Bureau of Prisons institutions. It was posited that because women make up less than 7 percent of the federally incarcerated prison population at any time and because there are fewer female federal prison institutions than there are male facilities, women would be more likely to be contracted to outside facilities as they have often been in the past. Analyses were conducted to address this question as follows:

**Question. Are women defendants treated differently than men at the imprisonment phase of the criminal justice process?**

**Hypothesis: Women defendants are more likely to be committed to a non-BOP facility than men.**

Dichotomous analyses explored whether an offender was sentenced to a Bureau of Prisons facility or was contracted out to a state or local facility. Interestingly no women were committed to private facilities, while over 13 percent of men offenders were. Because no women were committed to private facilities, private facilities were not included in subsequent multivariate analyses. Over 90 percent of women were committed to Bureau of Prisons facilities. Less than
10 per cent were contracted to outside facilities. When private facilities are excluded, the proportion of men offenders committed to Bureau of Prisons and contract facilities were 94 percent and 6 percent respectively. Hierarchical multivariate analyses were conducted to examine the likelihood of a woman offender being committed to Bureau of Prisons and contract facilities. Analyses were conducted using HGLM to explore dichotomous outcomes of likelihood of commitment controlling for similarities within federal districts. Outcomes can be seen in Table 7.1.

Table 7.1 Likelihood of commitment to BOP and Contract facilities 2008

<table>
<thead>
<tr>
<th></th>
<th>BOP Facility</th>
<th></th>
<th>Contract Facility</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
<td>Odds</td>
<td>B</td>
</tr>
<tr>
<td>Intercept</td>
<td>2.95</td>
<td>0.05</td>
<td>19.12</td>
<td>-2.95</td>
</tr>
<tr>
<td>Women</td>
<td>-0.29</td>
<td>0.04</td>
<td>0.74</td>
<td>0.29</td>
</tr>
<tr>
<td>Black</td>
<td>0.24</td>
<td>0.03</td>
<td>1.27</td>
<td>-0.24</td>
</tr>
<tr>
<td>Hispanic</td>
<td>0.19</td>
<td>0.04</td>
<td>1.21</td>
<td>-0.19</td>
</tr>
<tr>
<td>Other Race</td>
<td>-0.06</td>
<td>0.07</td>
<td>0.95</td>
<td>0.06</td>
</tr>
<tr>
<td>Non-citizen</td>
<td>0.86</td>
<td>0.05</td>
<td>2.35</td>
<td>-0.86</td>
</tr>
<tr>
<td>Age Range</td>
<td>0.42</td>
<td>0.04</td>
<td>1.51</td>
<td>-0.42</td>
</tr>
<tr>
<td>Sex Abuse Crime</td>
<td>0.93</td>
<td>0.10</td>
<td>2.54</td>
<td>-0.93</td>
</tr>
<tr>
<td>Drug Crime</td>
<td>0.02</td>
<td>0.05</td>
<td>1.02</td>
<td>-0.02</td>
</tr>
<tr>
<td>White Collar Crime</td>
<td>-0.63</td>
<td>0.06</td>
<td>0.53</td>
<td>0.63</td>
</tr>
<tr>
<td>Immigration</td>
<td>-1.41</td>
<td>0.07</td>
<td>0.25</td>
<td>1.41</td>
</tr>
<tr>
<td>Other Crime</td>
<td>-0.15</td>
<td>0.05</td>
<td>0.86</td>
<td>0.15</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>SD</th>
<th>Variance</th>
<th>ME</th>
<th>SD</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Variation</td>
<td>0.27</td>
<td>0.07</td>
<td>**</td>
<td>0.27</td>
<td>0.07</td>
</tr>
<tr>
<td>Circuit Variation</td>
<td>0.11</td>
<td>0.01</td>
<td>**</td>
<td>0.11</td>
<td>0.01</td>
</tr>
</tbody>
</table>

As table 7.1 indicates, women were significantly less likely than men to be committed to a Bureau of Prisons (federal) facility. Controlling for other factors, women had a 26 percent decreased odds of being sent to a Bureau of Prisons facility. Women were more likely than men to be committed to a public contract facility, having a 34 percent increased odds of classification to a non-Bureau of Prisons contract facility. Results indicate that women continue to be more
likely than their male counterparts to be contracted to state or local prison facilities; however, the percentage of women committed to contract facilities was less than at other points historically.

**Disparities in Correctional Placement**

Next analyses explored place of commitment. Because there are fewer federal penal institutions for women, one could assume that women would have a greater likelihood of being sent outside of their state of residence for commitment. Women would be sent to an unfamiliar area, further away from the support of family, the potential for visits and access to other resources. It was posited that women would be more likely to serve time farther from their home. This assumption was conceptualized as follows:

**Question. Are women defendants treated differently than men at the imprisonment phase of the criminal justice process?**

**Hypothesis: Women defendants are more likely to be committed to institutions in a state outside of their state of residence.**

When controlling for other relevant variables, women were significantly less likely to be committed within their state of origin. Women experienced an 8 percent decrease in the odds of being committed in-state. It is important to note that the majority of all federal offenders are committed to facilities outside of the state of origin. Over three-quarters of offenders are sent to out of state institutions. In recognizing this, women in the federal system remain even more likely to be sent out of state of origin as compared to their male counterparts. For outcomes refer to Table 7.2.
Table 7.2 Likelihood of in-state commitment for all offenders 2008

<table>
<thead>
<tr>
<th>In-state commitment</th>
<th>B</th>
<th>SE</th>
<th>Odds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>-1.63</td>
<td>0.18</td>
<td>0.20 ***</td>
</tr>
<tr>
<td>Women</td>
<td>-0.08</td>
<td>0.02</td>
<td>0.92 ***</td>
</tr>
<tr>
<td>Black</td>
<td>-0.05</td>
<td>0.02</td>
<td>0.96 ***</td>
</tr>
<tr>
<td>Hispanic</td>
<td>0.08</td>
<td>0.02</td>
<td>1.09 ***</td>
</tr>
<tr>
<td>Other Race</td>
<td>0.07</td>
<td>0.04</td>
<td>1.07</td>
</tr>
<tr>
<td>Non-citizen</td>
<td>-1.86</td>
<td>0.03</td>
<td>0.16 ***</td>
</tr>
<tr>
<td>Age Range</td>
<td>0.04</td>
<td>0.03</td>
<td>1.04</td>
</tr>
<tr>
<td>Sex Abuse Crime</td>
<td>0.16</td>
<td>0.05</td>
<td>1.18 ***</td>
</tr>
<tr>
<td>Drug Crime</td>
<td>0.58</td>
<td>0.04</td>
<td>1.79 ***</td>
</tr>
<tr>
<td>White Collar Crime</td>
<td>0.64</td>
<td>0.05</td>
<td>1.90 ***</td>
</tr>
<tr>
<td>Immigration</td>
<td>0.12</td>
<td>0.06</td>
<td>1.13 **</td>
</tr>
<tr>
<td>Other Crime</td>
<td>0.41</td>
<td>0.04</td>
<td>1.50 ***</td>
</tr>
</tbody>
</table>

Variance SD Variance
District Variation 0.67 0.45 ***
Circuit Variation 0.53 0.29 ***

*≤ .10  ** < .05  *** < .01

Disparities in Access to Programming

Finally, analyses explored access to programming. As a proxy measure of access to programming, the current analysis explored whether or not an offender was committed to a facility offering the Bureau of Prison’s most intensive level of substance abuse programming as well as co-occurring disorders programming. Over half of all offenders serving federal time during the period of examination were committed for a primary drug offense. Even more have probably committed offenses secondary to drug addiction. While individual evidence of addiction cannot be controlled for in the current study, substance abuse is an issue that affects many offenders and access to substance abuse treatment stands to benefit the majority of offenders. The Residential Drug Abuse Program represents the Bureau of Prisons most intensive substance abuse treatment. The program was begun in 1995 and is based on empirical research on substance abuse. The program is comprised of 500 hours of substance abuse treatment over a
period of 9 months to one year (Federal Bureau of Prisons, 2009). The rising number of women committed to federal prisons is often attributed, at least in part to the war on drugs and women have been found to have more significant drug usage than men, using more frequently, using harder drugs, and using for unique reasons (Langan & Pelissier, 2008). Thus, access to substance abuse treatment becomes fundamental for women offenders.

It is important to remember that the RDAP program was used simply as a proxy measure of access to treatment and data available as part of the current study cannot measure participation in treatment. However, the program does represent the primary and most intensive substance abuse programming offered by the Bureau of Prisons. Additionally, select federal facilities also offer intensive substance abuse counseling in conjunction with mental health programming, also known as co-occurring disorders programs. The access to programming addressing both substance abuse and mental health was also examined as both represent issues of significant importance in the lives of women offenders. Access to substance abuse treatment was conceptualized as follows:

**Question. Are women defendants treated differently than men at the imprisonment phase of the criminal justice process?**

**Hypothesis: Women defendants are less likely than are men to be housed in BOP facilities offering residential drug treatment and dual-diagnosis treatment programs.**

Results indicate that that a majority of women were committed to facilities offering the Bureau of Prisons residential substance abuse treatment program. Fifty-nine percent of women were housed in facilities offering RDAP programming. Further, after controlling for other relevant
factors, women were significantly more likely to be committed to a facility offering residential substance abuse programming as seen in Table 7.3.

Table 7.3 Likelihood of placement in a facility offering RDAP or co-occurring disorder programs 2008

<table>
<thead>
<tr>
<th></th>
<th>RDAP Facility</th>
<th></th>
<th>Co-Occurring Disorder Programming</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
<td>Odds</td>
<td>B</td>
</tr>
<tr>
<td>Intercept</td>
<td>-0.46</td>
<td>0.08</td>
<td>0.63</td>
<td>***</td>
</tr>
<tr>
<td>Women</td>
<td>0.73</td>
<td>0.02</td>
<td>2.07</td>
<td>***</td>
</tr>
<tr>
<td>Black</td>
<td>-0.15</td>
<td>0.01</td>
<td>0.86</td>
<td>***</td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.17</td>
<td>0.02</td>
<td>0.85</td>
<td>***</td>
</tr>
<tr>
<td>Other Race</td>
<td>-0.10</td>
<td>0.03</td>
<td>0.90</td>
<td>***</td>
</tr>
<tr>
<td>Non-citizen</td>
<td>-1.17</td>
<td>0.02</td>
<td>0.31</td>
<td>***</td>
</tr>
<tr>
<td>Age Range</td>
<td>0.08</td>
<td>0.02</td>
<td>1.08</td>
<td>***</td>
</tr>
<tr>
<td>Sex Abuse Crime</td>
<td>-0.52</td>
<td>0.04</td>
<td>0.59</td>
<td>***</td>
</tr>
<tr>
<td>Drug Crime</td>
<td>-0.04</td>
<td>0.03</td>
<td>0.96</td>
<td></td>
</tr>
<tr>
<td>White Collar Crime</td>
<td>-0.22</td>
<td>0.04</td>
<td>0.80</td>
<td>***</td>
</tr>
<tr>
<td>Immigration</td>
<td>-0.23</td>
<td>0.04</td>
<td>0.79</td>
<td>***</td>
</tr>
<tr>
<td>Other Crime</td>
<td>-0.31</td>
<td>0.03</td>
<td>0.73</td>
<td>***</td>
</tr>
</tbody>
</table>

Variance

|                     | SD | Variance | SD | Variance |
|---------------------|---------------------|---------------------|
| District Variation  | 0.23 | 0.05 | *** | 0.41 | 0.17 | *** | *** |                     |                     |
| Circuit Variation   | 0.24 | 0.06 | *** | 0.52 | 0.27 | *** | *** |                     |                     |

*≤ .10    ** < .05    *** < .01

Women had a 107 percent increased odds of commitment to a facility offering RDAP programming. While there are fewer federal correctional facilities for women as compared to men offenders, programming and services, at least for substance abuse issues, appear to be appropriately targeted to allow for women to access these programs.

The federal medical centers at FMC Lexington, Kentucky, FMC Carswell, Texas, and USMCFP Springfield, Missouri also offer a co-occurring disorders program. These facilities specifically target dual diagnosis addressing the co-occurrence of substance abuse and mental illness. FMC Carswell is a women’s only facility. Proportionally, women were significantly more likely to be committed to a medical center facility specifically addressing co-occurring...
mental health and substance abuse issues in residential treatment programming. While the availability of such targeted treatment might initially appear limited because of the smaller number of federal institutions for women, the greater access for women makes sense based on need. Women inmates generally are more likely to be diagnosed with mental illness as compared to men offenders. Women face multiple physical and mental health problems, often have histories of trauma, and most frequently are convicted of a drug, or drug related crime and face significant substance abuse problems (Bloom, Covington, & Owen, 2003; Covington, 2000; Covington & Bloom, 2006).

Chapter Conclusions

Of the 117 federal correctional institutions currently run by the Bureau of Prisons, 27 house women offenders. Of these 7 are women-only facilities. Women represent less than 7 percent of the federal prison population. Accordingly, women constitute a very small component of those offenders to which the Bureau of Prisons provides services. One might assume that the majority of the Bureau of Prison’s focus and development would be dedicated primarily to men who represent the vast majority of those offenders in its care, as has historically been the case. However, findings suggest that this is not completely the case in a contemporary context.

Within the history of the Bureau of Prisons, women were initially treated in a manner that assumed that the needs of women offenders were unique. Mary Harris, the superintendent of the first federal women’s correctional facility at Alderson, West Virginia ran the institution based on the idea that women should be treated with dignity and provided opportunities. Women were allowed self-governance and provided skills to be able to earn a living. However, as the Bureau
of Prisons grew, women’s facilities came to be administered more in line with the male facility model. Institutions were managed under a chain of command model and no longer supported cooperative clubs and self-governing cottage models of Alderson’s early days. Gone was the informal domestic feel of the early Alderson campus. Uniformity came to take the place of freedoms. A single example can be seen in the following quote by political activist Elizabeth Gurley Flynn from her memoir of her time at Alderson: “In 1955 there were two styles of dress in many colors; red, green, blue, yellow, brown, and plaid. When I left there was only one style, a coat dress buttoned down the front. The tendency was to uniformity and not the variety of earlier days.” (Flynn, 1963, p. 35) Ideals of reform came to be replaced with goals of incapacitation and punishment. Flynn describes the overall change in ideals in discussing the early involvement of reformers and women’s organizations in the establishment of Alderson: “It would be well if these same organizations would check on the discrepancies between the original plans and the fine work for Dr. Harris as compared to the conditions at present. Practically all of her methods and ideas have been discarded. Her treatment of inmates as adult human beings has been abandoned.” (Flynn, 1963, p. 107). So did the pendulum begin to swing towards increased discipline and punishment and the treatment of women more in line with the treatment of men. However, because of their small numbers, women often came to be marginalized as they were integrated into the bigger model of incarceration, one developed for men.

The current work presents a snapshot of the status of the treatment of women currently within the federal imprisonment system. Women continue to comprise less than 7 percent of inmates in federal prison. The majority of women in the current study were housed in Bureau of Prison institutions; however, women did have an increased odds of being contracted to a non-
federal facility as compared to their male counterparts. Prior to the establishment of the first women’s federal facility at Alderson, West Virginia, women federal inmates were housed in state and local facilities. During the 1940s and 1950s as many as one-third of women federal inmates were housed under state contracts (Heffernan, 1994). In the current study, over 90 percent of women were housed in Bureau of Prison facilities. Less than 9 percent were contracted to state facilities. Further, while over 13 percent of men serving time for federal offenses were housed in private facilities, no women offenders were committed to private facilitates.

Because they constitute a small proportion of the incarcerated population comparatively, women often face limitations. Due to their smaller numbers, there are significantly fewer prison facilities for women. At the state and federal level, women often are sent further away from their original residence because of limitations on the availability of closer facilities. In the current study, women were more likely than men to be sent to facilities outside of their state of origin.

When sent further from home, women may be unable to access family and other resources. Women may be unable to receive visits from family and children. The fact that federally incarcerated women are most often sent far from home can complicate addressing the specific needs of women offenders. Being further from home may make it more difficult to address some of the fundamental issues leading to women’s offending including unresolved familial issues, unemployment, and parental roles. Women are more frequently caretakers to dependent children, have more significant unemployment issues, and may be more likely to have family members in prison (Bloom et al., 2003; Covington & Bloom, 2006). Women most frequently turn to substance abuse after a major loss or life crisis. By nature women are
relational and relationships can be the catalysis for substance abuse and criminal activities but also the primary motivation for change (see Buchanan et al., 2011). Stability for many women depends on healthy relationships and this can be further complicated when removed from networks and home environment. Children may be a primary motivator for change, and moving women far from their children may be detrimental to potential rehabilitation. Positive family support on release and individualized reintegration is key, and it can be difficult to maintain networks and connections when committed far from one’s home. Women’s relational nature may not be best served by the current system of federal incarceration where distance may make individualized and contextualized treatment more difficult.

While most women were committed away from their state of residence, and away from family and other potential resources, they do not appear to experience marginalization in relation to access to treatment. Women have unique needs as they enter the system. They are more likely to have been convicted of a drug or drug related offense and often have other family members involved in the criminal justice system. Women are frequently survivors of physical and/or sexual abuse. Women have multiple physical and mental health problems and frequently have significant substance abuse problems. Women’s treatment issues are compounded by the fact that they are more likely to have grown up in homes where drugs were present, are more likely to have experienced physical and sexual abuse, and are more likely to have serious mental had physical health problems (Bloom et al., 2003; Covington & Bloom, 2006; Langan & Pelissier, 2008). In a study of male and female prisoners in substance abuse treatment, Langan and Pelissier found women to have more serious drug abuse histories and to be disadvantaged in multiple ways. Findings also indicate different motivations for using which would suggest the
need for differential treatment. The authors suggest the need for treatment of women that addresses well-being and relational issues (Langan & Pelissier, 2008). Findings suggest the importance of women having access to mental health and substance abuse treatment. Evidence of unique pathways into the criminal justice system and of increased risk further suggests a need for services that may be greater than that of men offenders within the system. Due to the limited number of facilities for women in comparison to men and to the fact that much of Bureau of Prison programming was originally developed for men, there is often concern that the needs of women are not being met. In examining access to substance abuse treatment, women were significantly more likely to be committed to an institution offering the Bureau of Prisons highest level of residential substance abuse treatment. Women proportionally were more likely to be committed to an institution specifically offering dual diagnosis treatment addressing intensive needs of both mental health and substance concurrently. This means that, within the federal prison system, women do have access to mental health and substance abuse treatment. The system appears to recognize that these are issues of fundamental importance to women.

Today, women are managed as part of the bigger institution of the Bureau of Prisons. However, despite the introduction of a more uniformly administered system, the Bureau of Prisons seems to be moving towards the recognition of women’s needs. There appears to be at least to some degree, willingness to direct resources toward the needs of women. The Bureau of Prisons does purport to address the unique requirements of women offenders within the system. For example, a separate classification system was developed for women in 1993. Further, the Bureau claims to appropriately address women specific issues such as pregnancy, birth control and abortion (Federal Bureau of Prisons, 2012). The Bureau of Prisons recognizes the unique
needs of women, including the need for unique approaches to substance abuse treatment (Langan & Pelissier, 2008).

Many people, including those who have served time in women’s prison, would agree that prison is not the ideal place to treat the unique needs of women. As Clare Hanrahan, a former Alderson inmate in 2001 points out, women are the fastest growing and least violent population of prisoners. As she describes, residential cottages are being torn down and replaced with “concrete warehouses” to meet the capacity for drug and other non-violent offenders. As she states, “The cruelty of this punitive system inflicts a particular anguish on mothers who are forced to leave young children behind.” (Hanrahan, 2005, p. 48). As Hanrahan noted, the current model of imprisonment may not be the appropriate place for healing and for treatment of substance abuse issues. And women’s often complex histories of trauma only complicate the situation, where imprisonment becomes retraumatizing (Hanrahan, 2003, 2005).

It can certainly be suggested that prison is not the ideal place to address women’s unique pathways into prison, including trauma and substance abuse issues. However, results of the current study do suggest that the Bureau of Prisons is not ignoring the needs or women or marginalizing women as an offender group. Instead, it appears that the Bureau of Prisons does recognize the unique needs for women specifically as related to substance abuse and mental health treatment and is willing to target resources to allow women to access programming and treatment within the system.

While housed potentially significant distances from “home”, women may gain access to resources that are rehabilitative in nature and that potentially allow women to address some of
the issues that have led them to become involved in the justice system. Because there is
indication that the federal system does recognize the needs of women, it may be that women are
not marginalized as compared to men, at least to the degree that has been witnessed at various
points in the history of women’s imprisonment. While in general incapacitation may not be ideal
for addressing the complex issues faced by women offenders, services are available and
accessible to women in a manner that is equivalent to if not greater than for men. There is
indication that women fare better in placement than at periods in the past. It is also possible that
women may not face harm in terms of placement disproportionate to that of the harm
experienced by men.

While these outcomes address general access, more needs to be explored in the
contemporary incarceration context including qualitative analyses of programming and whether
Bureau of Prison programming at women’s facilities specifically target the unique needs of
women. The question remains as to whether commitment to prison represents the best way to
address the complex needs of women offenders. As more facilities are opened that serve
women offenders, women appear to have greater access to resources and suffer less disparity in
treatment. However, equal access is not necessarily better. In many cases, such “equality” has
come at the cost of recognition of the unique needs of women. As women are treated more like
men, long gone are the days of the seemingly more empathic treatment of facilities such as
Harris’ early Alderson. With equality comes a loss of the recognition of the unique needs and
nature of women offenders, and the individualization in treatment and recognition of the
“women’s sphere” as Harris and other’s so clearly supported.
Chapter 8 Conclusions, Discussion and Future Research

The current work examines the experience of women as they interact with the contemporary federal criminal justice system. This explication of justice outcomes for women is unique in that it explores criminal justice processes at a federal level, examines decision-making at multiple justice decision points in the federal criminal justice process, and assesses outcome disparities in a contemporary post-Booker justice context. The use of hierarchical modeling techniques allowed for analyses that target the unique variation in justice decision outcomes across place and context. The federal context allowed for an interesting analysis of justice decision guided by a singular set of guidelines but enacted across circuits and districts of the United States. Analysis in the post-Booker time period has allowed a glimpse into the influence of the increased discretion afforded federal judges as sentencing guidelines moved from mandatory dictates to recommendations. This work offers a portrait of how the treatment of federal female offenders has changed in a contemporary justice context and provides testing of previously developed gender theories in a current justice context.

The current chapter presents an overview of the current state of the justice process for women federal offenders. First, this chapter will summarize the findings of analyses in the current study. Second, the chapter will review theory testing of previously posited theories of gendered justice, examining the validity of these theories in a contemporary justice context. Finally, this chapter will explore the meaning of outcome in context of contemporary justice and suggest next steps for an understanding and addressing the gendered nature of justice.
Justice Process Outcome Findings for Women

Women involved in the federal criminal justice system are different from men. In general, women were more connected to institutions such as education and less connected to institutions of formal social control and punishment. Women were more likely to be well educated. Women, on average, had less significant criminal histories and were less likely to be charged with violent offenses. Women were less likely to go to trial and more likely to be released from custody prior to sentencing. They were more likely to receive all types of downward departures with the exception of early disposition “fast track” departures. Thus, there is some validity to the suggestion that women experience leniency due to decreased blameworthiness and culpability. When charged in the federal system, women were significantly more likely to be charged with non-violent and drug related offenses as research on women offenders generally suggests.

The current study specifically examined the differential impact of sex and gender on federal justice outcomes including justice decisions at the pre-trial, sentencing, and commitment phases of the justice process. While overall gender leniency continues to be present in federal justice outcomes, leniency was not complete across all outcomes nor was it necessarily consistent for all groups of women.

Pre-trial outcomes. Women experienced leniency in the decision to release a defendant from custody prior to sentencing. Women were significantly more likely to be released from custody prior to sentencing as well as to receive the least restrictive, non-financial form of pretrial release. However, this outcome appears to be conditioned by other theoretically
important factors including defendant characteristics such as race. For example, black women were significantly more likely than white women to be released from custody prior to sentencing as compared to black men who were significantly less likely than white men to be released. This suggests that leniency is not based simply on distinctions of women versus men. Instead, gendered leniency is conditioned by other defendant as well as legal factors in a multifaceted way. For example, the impact of race on pre-sentencing justice outcomes is itself gendered. Simply looking at race or sex individually would disguise the fact that black women experience the greatest leniency in pre-sentencing release decisions, while black male defendants experienced the most punitive treatment.

Additional factors affecting justice outcomes appear to be gendered as well. For example, while women overall tended to be more well educated and have a greater connection to the informal social control of advanced education, higher education had more of a beneficial impact on justice outcomes for men. While all parents received leniency in pre-sentencing release decisions, women who were mothers were more likely than men who were father to be released on bail. While a very small percentage of cases were decided by trial as opposed to plea agreement, women were not significantly different from men in the likelihood of having a case settled at trial, again indicating a more complex gendered impact in pre-sentencing justice outcomes. Defendants who are parents were less likely to go to trial, with the greatest effect for women who are mothers.

The gender composition of the justice workforce was also explored, explicating the influence of gender representation in justice decision-makers on justice outcomes generally and for women defendants specifically. The gender composition of federal district judges and
prosecutors made no difference in disparity experienced in pre-trial release or the determination of whether a case was settled by plea or went to trial. Districts with increase feminization of the justice workforce were not significantly different in pre-trial outcomes as compared to districts with less representation of women justice workers suggesting gender of decision-maker is not of fundamental significance in shaping early justice process outcomes.

Overall, outcomes indicated mixed findings in relation to the experience of leniency in pre-sentencing federal justice decisions, where outcomes were perhaps less predictable than one might expect. Women did experience leniency in relation to pre-trial outcomes; however, this leniency was moderated in a variety of ways suggesting multiple interactive factors complicating the story of women’s experience of lenient treatment.

Sentencing Decisions. Women experienced leniency in sentencing decisions with little exception. Women were less likely to be sentenced to serve time in prisons and, when sentenced to prison, received shorter sentences than comparably situated men. Women were also more likely to receive all forms of below range sentencing departures with the exception of early disposition “fast track” departures. These outcomes are not surprising based on prior research on women’s experience of sentencing as discussed earlier in this work. One might expect even greater leniency in sentencing outcome examined in the post-Booker sentencing context. Below range sentencing departures were significantly more common in the post-Booker period than prior to the Booker decision.

While leniency for women does appear to be increasing during the period following the Booker decision, the rate of growth is slow and thus far not significant. Ostensibly, judges are
afforded more discretion in outcomes; however, are still constrained by mandatory sentencing as well as perhaps longstanding norms of sentencing practices. Women’s rise in incarceration is often tied to offenses that carry mandatory sentences, such as drug offense charges. As with pre-sentencing decisions, sentencing outcomes are complicated by multiple conditioning factors. In some cases, women experienced increased severity as compared to similarly situated men due to individual characteristics such as prior involvement within the justice system.

Theoretically relevant factors conditioned the gendered effects of sentencing. Race played a significant, but not completely consistent role in sentencing outcomes for women. In the decision to incarcerate, black women were less likely to be sentenced to serve time in prison as compared to women of all other races. This is particularly interesting because black males were the most likely to be sentenced to time in prison, indicating a very significant race by gender interaction effect. Hispanic women received shorter prison sentences as compared to white women. Women of other races, on average, received somewhat longer prison sentences. The nature of racial disparities in sentencing is clearly conditioned by the gender of the defendant, with race impacting sentencing outcomes differentially for women and men. Race complicates the story of gendered leniency in sentencing outcomes and furthers the point that there is no single gendered experience of justice.

Sentencing outcomes also appear to be directly related to a woman’s ties to mechanisms of formal social control. Despite increased discretion, judges continue to place significance in factors set forth in sentencing guideline calculations including criminal history and sentencing severity. Results indicate that these factors may differentially affect women as compared to men in determination of sentencing outcomes. Women with greater criminal history scores were more
likely to be sentenced to serve time in prison and received longer sentences when sentenced to time in prison. The impact of criminal history on sentence severity was significantly greater than that for men, indicating a differential impact on defendants criminal history in influencing the amount of prison time received. Women who had cases that went to trial were significantly more likely to be sentenced to serve time in prison and received longer prison sentences compared who women who settled cases via plea agreement. The trial impact on sentence length was significantly harsher for women than it was for men. Women who were released on bail prior to sentencing experienced greater leniency than women who were held in custody. Those women who were released prior to sentencing were less likely to be sentenced to prison and received significantly shorter prison sentences. The leniency based on pre-sentencing release was greater for women than for men, both as related to decision to incarceration and length of sentence. Overall, results suggest that women who have had increased connection to mechanisms of formal social control were treated more severely than women who do not have prior ties to formal social control. Further, evidence of increased punativeness for connections to formal control for women as compared to men suggests support for the evil woman hypothesis where women are specifically punished for violation of gender roles and for acting outside of what is socially determined to be gender normative behavior.

Other factors had gendered impacts on sentencing, including the influence of informal social control. Advanced education had an impact on whether a defendant was sentenced to prison, but only for men not women. Women overall were more likely to have advanced education; however, the impact of education on justice outcomes was greater for men than for women. Men did not experience leniency in sentencing decisions for having children, but
women did receive shorter terms of imprisonment. Outcomes indicate recognition of women’s role as primary caregivers and suggest the fact that raising children represents adherence to a normative role and ultimately a mechanism for informal social control.

**Correctional classification and placement.** Where offenders are incarcerated makes a difference in access to programming, community connection, and ability for families to remain connected and offer support. Within the federal system, offenders may be housed in federal Bureau of Prison correctional institutions or contracted out to state and local facilitates. Women federal offenders were proportionally less likely to be housed in Bureau of Prison facilities than were men and women were more likely to be housed in contract institutions. This may be attributable to the significantly smaller number of women federal offenders as compared to men as well as the fact that there are less women’s federal prison facilitates. Currently, women are housed in 27 of the 117 federal correctional institutions. Seven facilities house women only. Women in the current examination were more likely to be housed outside of their state of origin than were men. Proportionally women were more likely to be housed in a facility offering the Bureau of Prison’s most intensive residential drug treatment. Women were also significantly more likely to be housed in facilities offering intensive dual diagnosis treatment addressing both substance abuse and mental health issues. The commitment process lacks the specifically delineated guidelines to address parity in justice outcomes as there are for example in sentencing. Yet within commitment outcomes women do not experience leniency to the degree they do in sentencing. This may generally be attributable to fact that there are far fewer prison facilities for women than men. Limited resources have collateral effects on women and their families. However, despite fewer institutions for women it does appear, at least to some degree, that the
Bureau of Prisons recognizes the distinct needs of women inmates including the likelihood of significant mental health and substance abuse issues. Even though there are fewer female facilities, women are proportionally more likely to be housed in facilities offering intensive mental health and substance abuse treatment suggesting recognition that these are issues that disproportionately affect women.

**Examining Explanations of the Differential Treatment of Women**

**Sex role theories.** As discussed in earlier chapters, a variety of sex role theories have been posited to explain why women are treated differently than men within the criminal justice system. Despite various theoretical posits as to how gender influences justice decisions, no definitive answer has been determined. Many theories seem limited in their contemporary application because of focus on a single explanatory factor. The application of theoretical explication of gendered justice is limited within a more contemporary justice context and gendered theoretical analyses seem to have received less attention more recently as compared to in past decades. Current results indicate that, in a contemporary justice context and specifically within the federal criminal justice system, we continue to see leniency in how women are treated; however, outcomes indicate that gendered disparity is not as straightforward as might be expected or previously postulated. Leniency for women was not experienced in a consistent manner across justice processes. Further, simple distinctions of women versus men lose the intricacies of multiple interactive processes influencing justice outcomes.

Early theoretical interpretations suggested the potential influence of chivalry and paternalism, where women are treated more leniently because of the inherent nature as women.
Chivalry and paternalism enforce gender norms and suggest that women are in need of protection from the criminal justice system. While both theoretical concepts suggest the need for protection, paternalism specifically infers a power differential where women are by their nature, defenseless. Some contemporary research suggests the possibility that chivalry/paternalism may continue to play a role in justice outcomes for women in the United States (see Franklin & Fearn, 2008; Griffin & Wooldredge, 2006). Research by Kruttschnitt and Savolainen (2009) found that in Finland, a nation characterized by greater gender equality and in which there is a greater presence of women in the justice workforce, the likelihood of imprisonment is not different by gender. Outcomes appear to indicate that the experience of leniency in the United States may continue to be influenced by gender norms and predefined gender roles, but also that gendered determinations are subject to change.

In the current justice context, disparities do not appear to be due to chivalric or paternalistic behavior. If gendered conceptions of chivalry were the primary mechanism for leniency for women in justice outcome, leniency would be more common in districts with greater male representation in the justice workforce and less prevalent with increased representation of women within the justice workforce. This is not the case. In multiple justice decisions including both pre-sentencing and sentencing outcomes, the proportion of men or women employed in the justice workforce did not have a significant impact on the leniency experienced by women defendants. Leniency for women was not greater in districts with a more “masculine” workforce. Results suggest that gendering of the justice decision-making workforce has little impact on gender outcome and that the occurrence of leniency is more complex than simple
explanations of chivalry and paternalism. Ultimately, theories of chivalry and paternalism are limited and too simplistic to be of current explanatory value.

At the seemingly opposite end of the spectrum to concepts of chivalry/paternalism lies the idea of the “evil woman” hypothesis where women are treated with increased punitiveness based on gender norms and violation thereof. Despite suggesting disparate treatment in the opposite direction, the “evil woman” hypothesis and hypotheses of leniency are not mutually exclusive. It is possible that women experience leniency generally, but that when women significantly violate normative gender behavior, they are treated more harshly. Following this concept, women who commit certain offenses, or who demonstrate a criminal nature are punished for violation of normative sex roles. In such model, women with significant criminal histories and records become labeled as criminal and are deemed to be in violation of gender norms and thus not deserving of leniency or capable of reform and rehabilitation. In the current study, women with criminal histories were less likely to be released from custody prior to trial. Women with increased interaction with formal social control (greater criminal histories, case going to trial, held in custody prior to sentencing) were more likely to be incarcerated and received longer prison sentences. Women were disproportionally impacted by prior criminal involvement and potential demonstration of a criminal nature, as compared to their male counterparts. Women who had criminal histories, who went to trial, and who were held in custody prior to sentencing received disproportionately harsher sentences as compared to men, suggesting support for the “evil woman” hypothesis. Through the criminal label, a woman is dualistically punished, for her violation of the law, but also for her violation of gender norms.
Familial paternalism and social control theories. Explanations for disparate treatment in justice outcomes go beyond determinations of chivalry/paternalism and leniency/punishment based on purely the distinction of being a woman. Gendered decisions are influenced by a variety of factors as evidenced in prior research. Women’s role as mothers (see Daly, 1987, 1989a, 1989b, 1995) and more generally women’s connections to mechanisms of informal social control (Steffensmeier et al., 1993) among other factors have been posited to influence justice decisions for women.

There is evidence that parental status influences outcome decisions within the federal justice system. Both men and women who are parents to dependent children were significantly more likely to be released from custody prior to sentencing; however, the effect was greatest for women defendants. Women with dependent children were also more likely to have their cases settled by plea agreement, significantly more so than men who are fathers. Women who are mothers did receive shorter prison sentences than women who are not parents. Men who are fathers did not experience leniency in sentencing outcomes. Despite somewhat limited measures, being a parent to dependent children does appear to play a significant role in the contemporary federal justice context, with this being particularly true for women. Women with children did experience greater leniency, potentially a reflection of decision-makers belief in the need to protect children.

These judgments of the influence of parenting are more impactful, and in the case of sentencing decisions solely true, for women as compared to men. Outcomes may reflect an ongoing adherence to judgments about gender norms and women’s role as mothers and primary caretakers. Outcomes speak to judgments about the relational nature of women’s normative
roles. If women are viewed as nurturing and as caretakers, then removing women from these roles may be perceived to be of greater detriment than benefit to society. Further, parenting may tie women to more normative and pro-social patterns of behavior, resulting in a greater potential for conformity with society. Current results indicate that judgments, and perhaps realities, regarding familial responsibilities remain focused on mothers as caretakers and that the justice system does respond to issues of familial care. Stereotypes of normative gender roles appear to continue to influence justice decision-making. This is not to suggest that there is a concrete dialectic to gender itself where there are only two dichotomous distinctions possible, but instead that the influence of normative gender behavior continues to influence outcomes within the justice system.

Educational attainment represents another mechanism of informal social control. Attaining advanced education can be viewed as a normative value, particularly within white middle class norms that often shape judgments of blameworthiness and potential for rehabilitation. Women defendants were significantly more likely than men to attain higher levels of education. In relation to pre-sentencing outcomes, the greater the level of educational attainment the more likely a defendant was to be released from custody prior to trial. This was true for both women and men. Higher levels of education also resulted in a greater likelihood of a case going to trial for both women and men. In pre-trial release decisions, greater education appears to offer defendants decreased involvement with mechanisms of formal social control. However, this apparent leniency based on educational ties does not appear to be gendered. There is also something about higher levels of education that results in defendants being more likely to go to trial. Perhaps higher levels of education can be equated with greater resources and the
ability to attain higher quality representation to pursue fighting a charge or charges. Again, while women were more likely to have attained higher levels of education, the impact of the effect of education on likelihood of trial does not appear to be significantly gendered. Higher levels of education also resulted in a decreased likelihood of incarceration, but only for men. Additionally, educational attainment had minimal impact of length of sentence. Education as a means of informal social control and a tie to conformity does not specifically explain the leniency experienced by women in justice outcomes as compared to their male counterparts.

In weighing justice outcome decisions, risk may be perceived to decrease with increased conformity with and ties to informal social control; however, the influence of social control was not specifically gendered in all aspects. Women’s ties to familial responsibilities appeared to have a greater impact than other specific ties to normative conformity such as pursuit of education. It seems reasonable to assume that determinations of justice outcomes and the experience of leniency were based on more than simple stereotypical assumptions of women’s need for protection solely based on sex alone. Justice decision-maker discretion can be seen to include a sphere of influence beyond the defendant herself, including consideration for the potential impact on dependent children. Normative gender roles of connectedness to family and the role of mother did appear to benefit women in justice outcome decision in the contemporary federal justice context.

As Kruttschnitt suggested, leniency may be tied to social connection and integration. Decades ago, Kruttschnitt found that women on the outside of norms, women with lower social status, and women with a history of ties to formal social control were significantly less likely to experience leniency in justice outcomes (Kruttschnitt, 1980-1981). Such assessment continues
to hold validity in the contemporary justice context where women’s assimilation with normative roles had a positive impact on leniency and women’s association with formal social control resulted in increased punitiveness, often beyond that experienced by men.

**Judicial motivation and women’s experience of justice.** In the contemporary justice context, United States Sentencing Commission federal sentencing guidelines still exert significant control over justice outcomes, despite changes to guidelines rendering the guidelines as recommendations only. In the early post-Booker period of the current study (2005-2007), 61 percent of sentencing decisions fell within the dictates of federal sentencing guidelines. Within the later period (2008-2009), 57 percent of decisions were within sentencing guidelines. Discretion appears to be increasing slowly, but generally justice decisions continued to fall within the dictates of the federal sentencing guidelines. Outcomes suggest that judges may continue, to utilize recommendations as a means of uncertainty avoidance. This may also be a reflection of the normative justice context, where most justice decision-makers were accustomed to more ridged guideline requirements. Where discretion was present, judges appeared to utilize causal attributions for making decisions of blameworthiness and culpability. Factors indicating interaction with agents of formal social control suggest that justice decision-makers utilized factors such as criminal history to determine outcome decisions. In many cases this was especially true for women defendants. Judgments about race and culpability and responsibility also appeared to shape outcomes. While black women experienced the greatest leniency, black males were consistently treated more punitively than any other race/gender combination. Women continued to experience leniency in decisions, which can be seen to represent a general assessment of women as potentially less culpably and dangerous than men.
Gender can be seen to shape judicial decisions of responsibility. Determinations of responsibility were influenced by interactions of gender and other defendant characteristic including parental status. Judgments were made about women as mothers where a mother of dependent children was afforded increased leniency in justice outcomes. The role of primary caretaker of dependent children may also have influenced racial distinctions. For example, black women who were afforded greater leniency than white women were also more likely to be mothers to dependent children (66 percent and 58 percent of black and white defendants respectively were mothers to dependent children.) Despite other influences on outcomes, justice decision makers continued to make generalizations based on defendant characteristics.

**Workforce representation and justice outcomes for women.** As discussed in Chapter 2, institutions themselves can be gendered, with gender and specifically masculinity shaping perception and action of those within the system. The criminal justice system can be viewed as an institution entrenched with masculinity. The history of the criminal justice system has been dominated by male law makers, decision-makers, and actors. It could be posited that as more women enter the justice workforce, there could result a shift that significantly impacts jurisprudence and the implementation of justice. Research suggests that women enact justice differently, although the answer as to how so is not always consistent. Some research suggests that women introduce parity in justice outcomes (Schanzenbach, 2005), while other research suggests that female judges may be harsher in their sentencing outcomes (Steffensmeier & Hebert, 1999). Farrell et al. (2010) found increased representation of women in the justice workforce to result in greater leniency for defendants in sentence length as well as increased leniency in sentencing for women defendants specifically.
In the current study, gender representation of prosecutors and judges had little impact on sentencing outcomes both for pre-sentencing justice outcomes as well as the decision to incarcerate and for how long. It is interesting that increasing proportions of women within the justice workforce has not had more of an impact on justice outcomes. Perhaps gender representation has not yet reached a significant balance. On average, women currently constitute 14 percent of federal judges within a district. This is down from 2001-2002 when women comprised 20 percent of judges in federal districts. This percent is significantly less than a recent study citing women representing on average 40 percent of judges in Finland. Female representation of prosecutors was also lower in the period of current analysis (48 percent) as compared to 2000-2002 (43 percent). It is possible that the representation of women has not yet reached a critical level to impact outcomes in either direction. However, results also suggest that gender representation in the justice workforce matters little in determination of gender parity justice outcomes.

District variation and workforce representation can also help explore theoretical explanations for gender disparity in justice outcomes. As discussed earlier, equal rights or liberal feminism would suggest that equalizing the justice workforce would lead to parity in justice outcomes. According to this theory, only legally relevant factors should determine outcomes, and both men and women should be judged based on responsibility, not based on power differentials or normative judgments attributable to gender. With equal, not simply equitable treatment, justice decisions based on the law alone will result in outcomes that are less gendered and specialized treatment will not be needed. Equal treatment will eliminate patriarchal judgments based on normative gender roles. For example, in a recent study by Kruttschnitt and
Savolainen (2009), increased equality in parenting and work as well as greater gender representation in the justice workforce in Finland led to greater gender parity in sentencing outcomes. This was not the case in the current study. In the United States in a post-Booker federal justice context, women continue to be treated with greater leniency in pre-sentencing and sentencing outcomes. While women overall were more likely to be released from custody prior to sentencing, were less likely to be sent to prison and were sentenced to shorter prison terms overall, outcomes did not differ significantly based on composition of the justice workforce. Women continue to be treated more leniently across districts and there was no significant difference between districts with increased gender representation and those with less. Parity has not been achieved in justice outcomes.

Cultural difference feminism would suggest theoretically that increased representation of women would introduce an ethic of care into the justice system and thus influence justice outcomes. It would be posited that with the introduction of an ethic of care, justice decision makers would exhibit leniency, for women, but also generally for defendants. A cultural difference approach would suggest that incapacitation through incarceration might not be the most effective means for rehabilitating offenders, particularly when many offenses are non-violent drug offenders where more intensive treatment might be indicated over increasing punitiveness. An ethic of care approach would value the importance of treatment, and factors such as familial connection. Imprisonment does not promote familial or community relationships and it seems would be viewed as a last resort in dealing with offenders.

If increasing women’s representation in the justice workforce led to the introduction of an ethic of care, we would expect to see an increase in leniency in districts with greater gender
representation. This was not the case. There was no significant difference in justice outcomes between districts as gender representation increased. This was true both for pre-sentencing decisions as well as for sentencing outcomes. Greater proportions of women prosecutors or judges had no significant effect on justice outcomes for defendants generally or for women specifically. Analyses across justice outcomes suggest that place continues to matter. Outcomes did differ significantly dependent on in which district and circuit justice decisions occur. Despite singular guidelines and statutes, regional differences exist within the federal justice context. As more and more immigration are prosecuted federally, and more specifically as more women are charged with immigration offenses, regional differences in how immigration is addressed may influence differences in outcomes. Additionally, disparity may be, in part, more appropriately attributable to differences in interpretation of the discretion afforded to justice decision-makers post-Booker. As circuit courts work to interpret Supreme Court rulings including Booker and subsequent rulings and enforce reasonableness determinations of guidelines, differences in interpretation of judicial rulings may affect the day to day decision-making of district and circuit justice workforces.

Limitations

This work is not within limitations. One limitation is that the study utilized secondary data not collected by this researcher. Because data were secondary, there was no specific control over data collection strategies and variable availability. There are a variety of variables that would have been interesting to include in gendered analyses including indication of marital status, employment information, co-defendant status, and legal representation among many others. However, because of the nature of the data, these variables were not available.
The conceptualization of gender versus sex constitutes an ongoing issue addressed earlier in this work, and represents one which plagues much of justice research. Gender is socially constructed, and represents what research is ultimately attempting to explore in analyzing institutions that are themselves gendered social constructions. However, available data often limit many analyses to distinctions of sex. While outcomes in the current study were limited to sex distinctions, additional analyses including the exploration of interactive effects, were implemented to begin to target the gendered aspects of justice processes.

Another limitation of the current study is that data did not allow for defendants to be tracked individually across all components of the justice system. For example, after sentencing, data did not allow the determination of where a specific woman was committed to which institutions. Because data were not linked through the entirety of the justice process and because arrest and charging datasets were limited on important gendered variables, the United States Sentencing Commission data were utilized for pre-sentencing analyses. This poses a significant limitation in that those defendants who were arrested but ultimately not sentenced were excluded from analyses. For example, a defendant who was arrested but whose case was dismissed prior to sentencing would not have been included in analyses of pre-sentencing release determinations. Because of this limitation, it is possible that a significant proportion of disparity is missed in outcomes.

There are some limits to the generalizability of this work. The current study explores the contemporary federal justice system. While this constitutes an important and at time underexplored focus, results may not be generalizable to other contexts. For example, outcomes...
may not translate to the justice process at the state level, where the majority of defendants are sentenced.

Although more research examining the contemporary experience of women within the criminal justice system is called for, the current work begins to paint a portrait of women as they interact with the federal criminal justice system in a contemporary context. This work is unique in its contribution in that it focuses on the federal criminal justice system, where incarceration of women has skyrocketed. This work is comprehensive in that it examines a variety of justice decisions. Further, this work is valuable in its focus on a more contemporary examination of the status of women within the justice system, specifically exploring gendered justice in a period where increased discretion has been afforded decision makers by the court. Examining gender is important, because women are unique, but the impact of gender on justice outcomes is not a direct linear one. The systemic impact of gender is far more complex requiring an integrative approach because there is no one gendered experience of justice.

**Meaning Making and Next Steps**

Several interesting findings develop out of the current research. First, there exists continued leniency for women in justice outcomes; however, leniency is not complete and is conditioned by context. There is leniency where we might expect less (sentencing for example) but decreased leniency in phases where there are less specific controls for parity. There exists the paradox of the fact that even in times of increased federal incarceration for women, women continue to experience leniency. Ultimately, there is no single gendered experience of justice. Parity and disparity in justice outcomes are far more complex for women and for federal
defendants generally. The remainder of this chapter will explore a few of the interesting findings of the current research as well as discuss potential future directions.

**The significance of race and gender interaction.** One interesting finding is that fact that black women experienced greater leniency than white women. On first glance this finding is surprising and is contrary to hypothesized outcomes based on prior research. This outcome is perhaps even more unanticipated because of the fact that black males are the most harshly treated group in reference to justice outcomes. However, as research begins to dissect race by gender impacts on justice outcomes, there is evidence that the conditioning effect of race is different by gender. For example recent research by the United States Sentencing Committee that separated racial categories by gender indicated differential impacts by race and gender and more specifically that black women did experience greater leniency in length of prison sentence imposed (See Sessions et al., 2010). In the current study, black women were more likely than white women to be released on bail, were less likely to have a case settled at trial, and were less likely to be sentenced to serve time in prison. This finding suggests a recognition by justice practitioners that gender differences are more complex that simple male versus female distinctions. Gender outcomes are conditioned by race, a fact which can easily be missed if gender and race analyses are conducted separately or as control measures only.

It is possible that this seemingly surprising finding represents recognition of the collateral consequences of incapacitation. Results generally suggest acknowledgement by federal justice decision-makers of the impact of incarceration on children. In the current study, parents and specifically mothers were more likely to be released from custody prior to trial and were less likely to be imprisoned. The increased leniency afforded black women may represent a
recognition that black children may already be disproportionately in crisis and be more severely impacted by removal of the mother from the home. Here the collateral consequences of incarceration for black families may be greater.

Because mass incarceration has had such an impact on black men, particularly black men of low economic urban communities, black women have been left in the shadow to raise black youth. Further, black women have significantly lower marriage rates than other women and the impact of increases in single parenthood are most dramatic for black women (Western, 2006; Western & Wildeman, 2009). Justice decision-makers may recognize the distinct impact putting black women in custody has on already disadvantaged neighborhoods and youth.

I would go further to suggest a theory of cultural assumption. The distinct interactive effect of race and gender in justice outcomes may be attributable to cultural norms and the influence of cultural norms on causal attributions made by justice decision-makers. Here, cultural assumptions are based on societally prescribed norms and society’s perception of the world in which we live. When race and gender interactions are not explored in research, intricacies of these cultural assumptions are missed.

Understanding cultural assumption could potentially help to explain the initially surprising finding that black women experienced the greatest leniency in justice outcomes while black males were treated the most putatively. The difference is based on cultural assumptions society attributes to different groups and more specifically to judgments of which groups are most deserving of empathy. In the current justice context, black women experience the greatest leniency. This could potentially be because they warrant the most empathic reaction by justice
decision-makers as compared to white women who may elicit a less empathic response. To some degree there may be a cultural reaction that white women “should know better.” However, in such model, black women represent an empathic character in front of the eyes of justice. There may exist justifications for the black woman’s path into the courtroom. More importantly as discussed above, the black women may be an empathic character because she is raising the next generation of black youth and particularly black males, frequently alone because of the current mass incarceration of black males. This woman perhaps “doesn’t know better” and has the odds stacked against her.

At the other end of the spectrum, based on this theory of cultural assumption, black men may evoke less of an empathic response as compared to white men, and justice decision-makers may be conditioned by this assumption. White men potentially “don’t know better.” There may be a projection of excuses for why the white man ends up in front of the judge. However, it could be assumed that the black male “should know better” because of their connection to past incarceration or the incarceration of other males in their life. They may be more likely to have someone connected to them have been or currently be incarcerated. The black male may also be viewed as a “lost cause,” or as inherently “evil” or “guilty”. Particularly in reference to the war on drugs, the black male may be viewed not as a victim of drugs, but instead as part of the problem. While a woman may be viewed as a victim of the drug war via addiction and unique pathways into drug abuse and offenses, black males are potentially viewed to have a very participatory and even causal role in the drug problem. The black male may be viewed as more stoic or hardened as they stand in front of decision-makers; they may be seen to be less amenable to reform.
Cultural assumption can also help to explain the increased impact criminal history and ties to formal control have for women defendants. Society through its norms may view women as less dangerous and more amenable to reform or to being provided a “second chance.” Women who become involved in the criminal justice system are treated with greater leniency than their male counterparts. However, recidivism weighs more harshly for women defendants who have been afforded empathy through these assumptions. It is possible that women who demonstrate more significant criminal histories, based on cultural assumptions, have been given a “break” and did not take advantage of opportunities afforded them. These defendants may be treated more harshly than someone for whom there is no expectation, because they have been given this chance and not taken advantage. A woman who demonstrates a criminal history is violating a cultural norm and may be viewed to no longer be deserving of an empathic response.

**Lack of influence of decision-maker characteristics.** Another interesting finding is the lack of impact of the gender of justice decision-makers. Leniency both generally and for women defendants was not dependent of the gender composition of the justice workforce. This finding suggests a more generalized recognition of the unique needs of women. Leniency was not patriarchal in nature or the result of the introduction of an ethic of care, but instead was based on judgments of defendants generally and the recognition of the unique context of women within the justice system.

I would suggest that the effect of cultural assumptions permeate the justice institution and is internalized by justice decision-makers. Justice decision-makers use these assumptions to make attributions of guilt or innocence independent of the race or gender of the decision-maker. This is supported by the fact that race and gender of justice decision-makers made no difference
What does this all mean? It becomes important to note that leniency is not necessarily a bad thing. During this “tough on crime” era, leniency has garnered a negative connotation and has come to represent the antithesis of being “tough on crime.” “Leniency” has been coopted and redefined as “weakness.” The “war on drugs” has led to cultural assumptions that have dehumanized the drug offender and more specifically the drug abusers. This dehumanization has occurred so as to make the incapacitation of drug offenders easier. The majority of all offenders serving federal prison time currently are doing so for drug offenses. Targeted justice offensives such as the war on drugs have led to a re-definition of the “bad guy.” Drug offenders need treatment or preventing recidivism is not realistic. However, decarceration of this population becomes unrealistic because of cultural assumptions and the institutions that have resulted. The potential economic toll of decarceration of drug offenders on these institutions makes this prospect a difficult task. However, even in prison, drug offenders are not necessarily receiving the treatment they need, because punishment is valued above treatment and rehabilitation. While women may have unique and perhaps more complex substance abuse needs, the need for substance abuse treatment among offenders is general. Looking beyond societally ingrained and deeply rooted cultural assumptions, in many cases; a more generalized leniency may be warranted.

It is also important to recognize the potential paradox of justice in disparity. Women do have distinct needs. As other theorists have suggested, leniency may in fact be warranted in
many cases. Those observing the process must question whether leniency is a negative thing or instead potentially reflects the unique experiences of women within the criminal justice process and the unique needs of women as they interact with justice systems. Women have unique criminogenic risk factors and needs. Women are more likely to have significant mental health and substance abuse histories. The collateral consequences of incarceration are often greater for women, particularly as they leave behind their roles as primary caretakers and community members. Overall, women have multiple mental and public health issues that need to be addressed.

Even in times of philosophical punitiveness, women interact with the system differently. Women are relational and seek to be engaged and interact with services. They seek mutuality and this type of interaction is effective in meeting the criminogenic needs of women. With increased funding to federal corrections systems over the last decade and recognition of the need to provide services to female populations including federal classification systems and targeted programming, results from the current study stand to better inform policy and practice decisions for federal justice institutions. Additionally, the current study suggests the need for further examination of the experience of women within the contemporary justice system. Here, an understanding of how the system enacts gender is fundamental. Women by nature are different. Further, their interaction with the justice system is changing over time. There is a

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68 For example, research suggests that while male risk assessment and classification instruments are equally predictive of prison violence for female offenders, a gender-specific application of the classification instrument is more appropriate. In general, the majority of female inmates is classified as minimum risk for prison violence or escape (Harer & Langan, 2001). In addition, programming developed initially for male inmates may not be appropriate for female participants. For example, in a study of drug treatment among federal inmates Langan and Pelissier (2008) found support for the fact that programs designed for men may not be appropriate for women who adopt different use patterns and typically have unique needs.
need to move beyond distinctions of parity and disparity and embrace what constitutes effective justice.

Contradictions in gendered justice may not be contradictions at all, but instead constitute a meaningful paradox of distinctive need. The current research suggests the need to recognize the complex nature of women’s interaction with the justice system. An understanding of women in the federal justice system needs to move beyond singularly focused theories and embrace a more holistic and integrative understanding and approach.

Next steps and future research. Future steps in the area of gender research call for a movement toward more holistic theories of gendered justice. As the current research has demonstrated, focused theories do not paint the whole picture. Additionally, research need be more holistic in focus and methodology. Sentencing and justice-outcome research needs to look beyond simple distinctions of race and gender and encompass the complexity of justice as it is enacted in contemporary systems. Analyses should explore not simple race effects and sex effects, but the unique interactions of gender and race as well as gender as it interacts with other key variables. If not, the interactive impact of race and gender will be lost and effects may be overshadowed by greater number of men in analyses.

This holistic approach should additionally move beyond the singularity of theories and explore interactions and complexities. Research should continue to monitor changes in justice decisions for women, particularly as more time elapses following Booker and subsequent decisions. Research should continue to monitor the complexities of gendered justice and follow the long term impact of the war on drugs and increased federal focus on immigration as it
specifically impacts women. In relation to the current work, it would be interesting to pursue analyses specifically focused on drug offenses to test cultural assumptions of and target treatment for drug offenders.

A holistic approach should include focus on methodologies. There is distinct value in the triangulation of research methodologies. Quantitative data should most certainly be supplemented by qualitative methods. It would be both interesting as well as valuable to undertake qualitative analysis including structured interviews of federal justice decision-makers. Research could pursue an understanding of decision-maker motivations and complement statistical portraits of justice outcomes. Qualitative approaches could explore the role of personal histories and individual perceptions and experiences as they influence decision outcomes. Additionally, qualitative analyses should explore the availability and effectiveness of programming, specifically gender responsive programming. Where the current study was only able to delineate potential access to general programs, qualitative analyses could explore the experience of women within the justice system as consumers of treatment services. Analyses could explore whether current programming is gender responsive, effective, trauma sensitive, and specifically determine if programming is meeting the multiple and complex needs of women. Is programming relational and interactive? Is it effective? Or is programming simply implemented in a one size fits all model?

Ultimately, results from the current study indicate a complexity in justice outcomes for women and the need for a more holistic approach. Women have unique criminogenic needs and risk factors. Women have unique pathways into interactions with the criminal justice system, and ultimately their interactions with systems of justice are unique. The collateral consequences
of imprisonment are unique for women. Women have multiple public and mental health needs that interact with justice processes, and the imprisonment of women has ripple effect that reaches beyond the women prisoners themselves into communities at large. The complexity of the current justice context lies in the fact that leniency is not consistent or evenhanded across person or context.

In criminology, our understanding of female criminality and the nature of the social control of women has taken a backseat to the examination of male offending and punishment. Women represent a small proportion of defendants and inmates, there exist far fewer female penal institutions, and women in general are less violent than men. However, such differences do not mean that the involvement of women in systems of criminal justice should be overlooked. On the contrary, it becomes important to understand the unique needs of female defendants and inmates, particularly when the incarceration of women federally is growing at unparalleled rates. The lack of adequate resources for women raises issues of equity and justice within correctional institutional processes. The current work has begun the exploration of how contemporary courts and penal institutions conceptualize the treatment of women offenders; however, this is only a beginning. It is time to focus specific and continued attention on to impacts of the justice system on women.
References


PROTECT Act (2003).


