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SENTENCING DISPARITY  
AND DISCRIMINATION

*A Focus on Gender*



*An ironic result of sentencing reform is that in the name of a restricted notion of equality with men, more women (especially black women) are being incarcerated than ever before.*

—Kathleen Daly and Michael Tonry,  
“Gender, Race, and Sentencing” (1997:241)

**D**esperate for money to buy drugs, Jane Simmons, a 22-year-old drug addict with no prior felony convictions, agreed to deliver a package containing 100 grams of cocaine to a waiter at a local restaurant. The waiter turned out to be an undercover police officer, and Jane has been convicted of possession of cocaine with intent to deliver. Under the laws of the state in which she was convicted, Jane could be placed on probation or sentenced to prison for up to 10 years. If she is sentenced by Judge A, a hard-liner who believes that drug use and drug-related crimes are destroying American cities, she will receive the maximum penalty of 10 years in prison. If she is sentenced by Judge B, who believes that imprisonment is not an effective punishment for drug-addicted offenders, she will be placed on probation and will be required to complete a 12-month substance abuse treatment program.

Is this fair? Should the sentence Jane receives depend on the judge who imposes it? Should a sentence depend on a judge's philosophy of punishment or personal beliefs about the dangers of drug abuse? Or should it be based on an objective evaluation of the seriousness of the crime and the offender's prior criminal record?

Consider another hypothetical situation. Two 19-year-old men have been convicted of motor vehicle theft. Each of them has one prior conviction for burglary; neither of them has served time in jail or prison. Both appear before the same judge for sentencing. James Jones, who is white and works part-time at a fast food restaurant, is sentenced to 6 months in jail. William Barnes, an unemployed African American, receives 2 years in prison.

Is this fair? Should Barnes receive a longer sentence than Jones because he is black and unemployed? Should the judge be required to impose the same sentence on similarly culpable offenders convicted of the same crime?

Critics of the sentencing process contend that these scenarios are real, not hypothetical. They contend that judges who are not bound by sentencing rules or guidelines and are free to fashion sentences as they see fit often impose different sentences on similarly situated offenders or identical sentences on offenders whose crimes and prior criminal histories are different. Echoing Judge Marvin Frankel (1972a), these critics suggest that unconstrained discretion leads to "lawlessness" in sentencing.

In this chapter and the next, we examine these allegations. We assess the degree to which the sentencing process is characterized by disparity and discrimination. We begin with a discussion of the meaning of these terms. We then describe the various types of sentencing disparity and discrimination and illustrate that not all sentence disparities are unwarranted. This chapter goes on to present information about differences in sentences received by men and women, indicating the degree to which such differences appear to be a result of discrimination. Chapter 5 analyzes disparities in sentencing based on race and ethnicity and examines the results of research exploring the interrelationships between race, ethnicity, gender, and sentencing.

## DISPARITY AND DISCRIMINATION

Allegations of lawlessness in sentencing reflect concerns about both disparity and discrimination. Although these terms are sometimes used interchangeably,

they do not mean the same thing. *Disparity* is a difference in treatment or outcome that does not necessarily result from intentional bias or prejudice. For example, the fact that very few people over the age of 50 enroll at the typical college or university reflects a disparity but not discrimination. There is a difference based on age, but it is not a difference that results from bias or prejudice against older students. No official policies bar older adults from being admitted, and admission decisions are made on the basis of factors other than age. In other words, the small number of students over the age of 50 reflects the fact that most people go to college soon after graduating from high school, and applications from people in the 50-and-over age group are rare.

*Discrimination*, on the other hand, is differential treatment of individuals based on irrelevant criteria, such as race, gender, or social class. For example, suppose a college or university were to base admission decisions on whether applicants were white or African American, male or female, or rich or poor, rather than on applicants' high school grades or test scores. The fact that most of those admitted were rich, white, and male would be a reflection of discrimination, not simply of disparity. It would reflect intentional bias or prejudice against racial minorities, women, and the poor.

Applied to the sentencing process, disparity exists when similar offenders are sentenced differently or when different offenders receive the same sentence. It exists when judges impose different sentences on two offenders with identical criminal histories who are convicted of the same crime, when judges impose identical sentences on two offenders whose prior records and crimes are very different, or when the sentence depends on the judge who imposes it or the jurisdiction in which it is imposed. In the scenario described at the beginning of this chapter, the fact that Jane Simmons would receive a significantly harsher sentence for possession of cocaine with intent to deliver from Judge A, the hard-liner, than she would from Judge B, the advocate for drug treatment, is an example of sentencing disparity.

In contrast, sentencing discrimination exists when legally irrelevant characteristics of a defendant affect the sentence that is imposed after all legally relevant variables are taken into consideration. It exists when African American and Hispanic offenders are sentenced more harshly than similarly situated white offenders, when male offenders receive more punitive sentences than comparable female offenders, and when poor offenders receive harsher sentences than middle-class or wealthy offenders. In the second scenario presented at the beginning of this chapter, the judge imposed a harsher sentence

on William Barnes, an unemployed African American, than he did on James Jones, who is white and employed part-time, despite the fact that the two offenders had identical prior records and were convicted of the same crime. This is an example of sentencing discrimination.

### ***Types of Sentencing Disparity***

Defining sentencing disparity as a situation in which similar offenders are treated differently or different offenders are treated the same is overly simplistic. There are actually a number of different types of sentencing disparity (Exhibit 4.1), and not all sentencing disparities are equally problematic.

#### *Interjurisdictional Disparity*

The sentencing decisions of judges on the bench in a particular state are guided by a uniform set of state statutes that define crimes and set punishments. Similarly, all federal judges impose sentences within the constraints imposed

<b>EXHIBIT 4.1</b> <b>Types of Sentencing Disparity</b>		
<i>Type of Disparity</i>	<i>Definition</i>	<i>Example</i>
Interjurisdictional	Judges in different jurisdictions sentence similarly situated offenders differently.	Offenders convicted of possession of crack cocaine are sentenced more harshly by federal court judges than by state court judges.
Intrajurisdictional	Judges in the same jurisdiction sentence similarly situated offenders differently.	Drug-addicted offenders convicted of burglary in a midwestern county get probation coupled with drug treatment if sentenced by Judge Smith and 3 years in prison if sentenced by Judge Jones.
Intrajudge	An individual judge makes inconsistent sentencing decisions.	Judge Johnson sentences a Hispanic offender convicted of armed robbery to 5 years in prison; she sentences a similarly situated white offender convicted of an identical crime to 2 years in prison.

by the federal sentencing guidelines. These statutory restrictions limit, but do not eliminate, the discretion of judges to tailor sentences to fit individuals and their crimes. As a result, the sentences imposed by judges within the same jurisdiction will not necessarily be the same. Even greater variability in sentences is to be expected across states or between sentences imposed in state and federal courts. Judges applying statutes that define crimes and punishments differently would not be expected to arrive at identical decisions regarding appropriate punishments.

Interjurisdictional differences occur when the sentencing patterns of judges in different jurisdictions vary. They come about because certain categories of crimes are viewed as more serious and certain types of offenders are perceived as more dangerous in some jurisdictions than in others. For example, offenders convicted of serious felonies may be sentenced more leniently in large urban court systems, which routinely try such crimes, than in rural areas, where misdemeanors and less serious felonies dominate court dockets. Similarly, offenders convicted of selling drugs may be sentenced more harshly in cities plagued by drug use and drug-related violent crime than in cities in which drug abuse is less problematic. These geographic variations in sentence outcomes signal interjurisdictional disparity.

Evidence of interjurisdictional sentencing disparity is found in studies that compare the sentences imposed by judges serving different communities within a single state. For example, Ulmer (1997) compared the sentencing decisions of judges in three Pennsylvania counties. He found that despite the existence of statewide sentencing guidelines,<sup>1</sup> the sentences imposed by judges in the three counties varied. The sentences handed down by judges in a large urban county were the least severe, those handed down by judges in a medium-sized suburban county were the most severe, and those handed down by judges in a small rural county fell in between. These differences reflected jurisdictional differences in judges' philosophies of punishment. According to Ulmer (1997:169), "stiff, retributive sentences were reserved mostly for the serious violent and drug trafficking offenses" in the urban county. In the suburban county, on the other hand, there was "a strong consensus in favor of tougher sentencing standards that reflected an emphasis on deterrence, just deserts, and incapacitation goals" (Ulmer 1997:169).

Evidence of interjurisdictional sentencing disparity is also found in studies that examine the sentencing decisions of judges in different states. One study compared the sentencing decisions of judges in nine counties in three different

states (Eisenstein et al. 1988). When the authors examined the sentences imposed on convicted offenders who were arrested for the same offense, they found significant differences. For example, the incarceration rate for offenders arrested for burglary ranged from 26 percent in DuPage County, Illinois, to 52 percent in Erie County, Pennsylvania, to 75 percent in Kalamazoo County, Michigan. Judges in Kalamazoo also imposed longer sentences than judges in the other eight counties. In other words, the “going rates” in Kalamazoo were substantially harsher than those found in the other jurisdictions.

A final type of interjurisdictional disparity is disparity in sentences imposed by judges in state and federal courts. The federal sentencing guidelines coupled with mandatory minimum sentences often require harsher sentences than do state criminal codes. This is particularly true for drug offenses, especially those involving crack cocaine. For example, under the U.S. Sentencing Guidelines, possession of 5 grams of crack cocaine triggers a mandatory minimum prison sentence of 5 years. In contrast, the Illinois Criminal Code, which does not differentiate between crack and powder cocaine, specifies a sentence ranging from 1 to 3 years for possession of up to 15 grams of cocaine, and probation is an option.

As shown in Exhibit 4.2, drug offenders sentenced in U.S. District Courts received substantially harsher sentences than those sentenced in the 75 largest counties in the United States. The federal incarceration rate for drug trafficking was more than twice the rate in these counties, and the average sentence handed down by federal court judges was about 16 months longer than the mean sentence imposed by state court judges. Federal offenders convicted of simple possession also faced significantly higher odds of imprisonment than did offenders convicted of simple possession in state courts, but state offenders who were sentenced to prison got longer sentences than did federal offenders.

### *Intrajurisdictional Disparity*

The sentences imposed by judges in the same jurisdiction may also vary. Judges in a particular jurisdiction may have differing perceptions of crime seriousness or may give greater or lesser weight to legally relevant factors, such as the seriousness of the crime and the offender’s prior criminal record. As a result, similar offenders sentenced by different judges may receive substantially different sentences. For example, if some judges routinely sent all burglars with no previous felony convictions to prison, whereas others

<b>EXHIBIT 4.2 Sentences Imposed on Drug Offenders by Federal and State Court Judges, 2004</b>		
	<i>Sentenced to Prison (%)</i>	<i>Mean Prison Sentence (months)</i>
<b>Sentences imposed in U.S. district courts<sup>a</sup></b>		
Drug trafficking	96.5	76.4
Simple possession	60.4	4.5
<b>Sentences imposed in 75 largest U.S. counties<sup>b</sup></b>		
Drug trafficking	39	60
Simple possession	35	37

a. Compiled from data presented in the *2004 Sourcebook of Federal Sentencing Statistics* (table 12 and table 13) by the U.S. Sentencing Commission, 2005. Washington, DC: Author.

b. Compiled from data presented in *State Court Sentencing of Convicted Felons, 2004: Statistical Tables* (tables 1.2 and 1.3), by the Bureau of Justice Statistics. Available online at <http://www.ojp.usdoj.gov/bjs/pub/html/scscf04/tables/scs04102tab.htm>.

typically sentenced all such offenders to probation, the result would be intra-jurisdictional sentencing disparity. A similar outcome would result if some judges routinely handed out either substantially harsher or substantially more lenient sentences than their colleagues on the bench. In both cases, the severity of the sentence the offender receives rests in part on the judge who imposes it.

A number of studies document the existence of intrajurisdictional sentencing disparities (Forst and Wellford 1981; Hogarth 1971; Uhlman 1979). Some of these are simulations in which a group of judges determines sentences in identical hypothetical cases. For example, two simulation studies of sentencing by federal district court judges found that some judges were consistently more severe and others consistently more lenient than were their colleagues on the bench (Clancy et al. 1981; Forst and Wellford 1981). These studies also revealed that judges disagreed about the appropriate sentences for particular types of offenders or particular types of cases. These findings led Clancy and his colleagues to conclude, "Disparity is a widespread phenomenon. . . . Substantial dissensus exists among judges about the sentences that convicted offenders should serve" (1981:553).

Studies of actual sentences imposed by state court judges also reveal intrajudicial disparities. Uhlman's (1978) study of sentences imposed by 91 judges in a Pennsylvania county found substantial between-judge variation in mean sentence severity. Uhlman compared the mean sentences imposed by each judge, controlling for the seriousness of the conviction charge. He found that more than half of the judges imposed sentences that were more than 10 percent harsher or more lenient than the overall mean, 16 judges were at least 30 percent harsher than average, and one judge, whom he characterized as a "hanging judge," imposed sentences that were nearly twice as harsh as those imposed by the other 90 judges (Uhlman 1978:890).<sup>2</sup>

Further evidence of intrajudicial disparity is found in Exhibit 4.3, which displays the sentences imposed on drug offenders by 12 judges in Cook County (Chicago), Illinois. All offenders had at least one prior felony conviction and were convicted in 1993 of either possession of narcotics with intent to deliver or simple possession. Both the incarceration rates and the average sentences vary by judge. Looking first at offenders convicted of possession of narcotics with intent, the incarceration rate ranged from 73.2 percent (Judge #12) to 100 percent (Judge #1), and the average sentence ranged from 44.3 months (Judge #4) to 55.8 months (Judge #7). The differences for simple possession, which is a less serious offense, were even more pronounced. The incarceration rate for the most severe judge (#6) was 90 percent, more than twice the rate for the least severe judge (#11), who sent only 37.5 percent of the offenders to prison. The average sentence also ranged from 14.5 months to 42.0 months. Although these sentence differences may result from differences in the type or amount of drugs involved in the offense, the large disparities between judges at the two ends of the punishment continuum suggest that judges in Cook County based their sentencing decisions at least in part on factors other than crime seriousness and prior criminal record.

The reasons that judges in a particular jurisdiction sentence similar offenders differently are complicated. As explained in Chapter 1, judges have different beliefs about the purposes of punishment, and these beliefs may influence the sentences they impose. A judge who is convinced that imprisonment effectively deters offenders from committing future crimes may be more likely to sentence those convicted of drug offenses and less serious property crimes to prison than a judge who believes that imprisonment has a criminogenic effect. As one scholar concludes, "Each judge has a point of view, a set of standards and values, a bias, if you will, which will color, influence, and



**EXHIBIT 4.3** Sentences Imposed on Drug Offenders by Judges in Cook County (Chicago), Illinois, 1993<sup>a</sup>

	Possess Narcotics With Intent		Simple Possession	
	Sentenced to Prison (percentage)	Average Prison Sentence (months)	Sentenced to Prison (percentage)	Average Prison Sentence (months)
Judge #1	100.0	45.6	85.0	33.2
Judge #2	95.4	47.6	78.6	17.4
Judge #3	93.8	47.2	70.0	24.0
Judge #4	92.9	44.3	64.3	16.0
Judge #5	92.3	51.0	55.6	19.2
Judge #6	91.7	47.2	90.0	21.8
Judge #7	90.1	55.8	80.0	42.0
Judge #8	88.6	48.6	77.8	16.1
Judge #9	84.2	47.9	84.6	21.5
Judge #10	82.8	45.5	80.0	14.5
Judge #11	78.6	46.9	37.5	24.0
Judge #12	73.2	52.7	79.5	25.5

SOURCE: From *The Effect of Race on Sentencing: Final Report to the National Science Foundation*, by C. Spohn and M. DeLone, 1998. Unpublished data.

a. All offenders had at least one prior felony conviction. All offenders convicted of possession of narcotics with intent were convicted of either Class 1 or Class 2 offenses. All offenders convicted of simple possession were convicted of a Class 4 offense.

direct the nature of his verdicts independently of the specific condition of the criminal being charged” (Gaylin 1974:162).

It is also possible that judges from different backgrounds sentence differently. A judge who spent many years as a defense attorney may impose more lenient sentences than a judge who came to the bench from the prosecutor’s office. A female judge may be more likely than a male judge to view sexual assault, domestic violence, and other crimes that disproportionately victimize women as serious crimes that merit harsh punishment. A Hispanic judge who grew up in a drug-infested inner-city barrio may impose more punitive sentences on drug traffickers than a white judge raised in an upper-middle-class neighborhood in which drug use and drug-related crime were rare. In other words, because the sentencing philosophies and background characteristics of judges in a particular jurisdiction may vary, the sentences they impose may also differ.

#### *Intrajudge Disparity*

A third type of sentence disparity is intrajudge disparity. This type of disparity occurs when an individual judge makes inconsistent sentencing decisions. In other words, the judge imposes different sentences on equally culpable offenders whose crimes are indistinguishable. Although these sentence variations might be attributable to subtle, and thus not easily observed or measured, differences in crime seriousness and offender blameworthiness, they might also be due to idiosyncratic behavior on the part of the judge. Sentences might vary from case to case depending on the judge’s mood; evaluation of the defendant’s character, attitude, or demeanor; or feelings about the attorney who is representing the defendant.

Sentencing decisions might also reflect a judge’s attitudes toward particular types of offenders or toward offenders who behave in a particular way. As explained in Chapter 3, some judges believe that they are justified in imposing harsher sentences on defendants who refuse to plead guilty. Although most judges claim that they are not penalizing defendants who refuse to plead guilty but rewarding defendants who admit their guilt, skeptics counter that the effect is the same: Those who insist on trials get harsher sentences than those who plead guilty. Judges may also take an offender’s truthfulness into account. In one U.S. district court case, for example, the judge announced at the sentencing hearing that he had decided to impose a harsher sentence than usual because the defendant had lied on the stand. He

told the defendant, “It is my view that your defense was a complete fabrication without the slightest merit whatsoever. I feel it is proper for me to consider that fact in the sentencing, and I will do so” (*United States v. Grayson*, 438 U.S. 41, 98 S.Ct. 2610 [1978]). When the case was appealed, the U.S. Supreme Court ruled that the judge had not abused his discretion in this case. In fact, the court stated that “the defendant’s readiness to lie under oath—especially when, as here, the trial court finds the lie to be flagrant—may be deemed probative of his prospects for rehabilitation” (*United States v. Grayson*, 438 U.S. 41, 98 S.Ct. 2610 [1978]).

Intrajudge disparity might also reflect intentional bias or prejudice against certain types of offenders by individual judges. A judge who believes that African American and Hispanic offenders are particularly dangerous and especially likely to recidivate may impose harsher sentences on them than on otherwise identical white offenders. A judge who is concerned about the social costs of incarcerating female offenders with young children may refuse to send such offenders to prison but may not hesitate to incarcerate similarly situated male offenders. Thus, these types of intrajudge sentencing disparities may signal the presence not just of disparity but of *discrimination* based on race, gender, social class, or other legally irrelevant defendant characteristics.

### ***Types of Sentencing Discrimination***

Like disparity, discrimination can take a number of forms (Exhibit 4.4). Walker, Spohn, and DeLone (2007:19) suggest that discrimination falls along a continuum that ranges from “pure justice,” or “no discrimination at any time or place in the criminal justice system,” to “systematic discrimination,” or “discrimination that occurs at all stages of the criminal justice system, in all places, and at all times.” Pure justice is the ideal, the goal that societies strive to achieve. An example of systematic discrimination is the treatment of blacks by the criminal justice system in the era of slavery. During this period, black defendants were routinely tried by all-white juries, were rarely acquitted, and often received substantially harsher punishment than did similarly situated white defendants. In fact, some pre-Civil War statutes provided for differential punishment depending on the race of the offender and the race of the victim. Another example is the use of the death penalty for the crime of rape: 405 of the 453 men executed for the crime of rape in the United States from 1930 through 1976 were black (Wolfgang and Reidel 1973, 1975).

**EXHIBIT 4.4** Types of Sentencing Discrimination

**A. The Discrimination Continuum**

<i>Type of Discrimination</i>	<i>Definition</i>	<i>Example</i>
Pure justice	No discrimination at any time or in any place	The ideal toward which societies strive
Institutional discrimination	Discrimination that results from evenhanded application of policies or procedures	Policies that allow judges to consider the offender's employment history or family situation
Contextual discrimination	Discrimination that occurs in some contexts or under some circumstances	Blacks convicted of murdering whites (but not blacks convicted of murdering other blacks) are more likely to be sentenced to death than whites convicted of murder
Individual acts of discrimination	Discriminatory decisions made by a few individuals within the system	Judge Miller imposes more lenient sentences on all female offenders; other judges in the jurisdiction do not consider gender in determining the sentence
Systematic discrimination	Discrimination at all stages, in all places, and during all time periods	Use of the death penalty for rape; 89 percent of those sentenced to death for rape were black

**B. Direct Versus Subtle Discrimination**

<i>Type of Discrimination</i>	<i>Definition</i>	<i>Example</i>
Direct discrimination (main effect)	Race, ethnicity, or gender affects sentence severity when crime seriousness and prior record are held constant	Black and Hispanic offenders face higher odds of incarceration than white offenders who are convicted of identical crimes and have identical prior criminal records
Subtle discrimination (indirect effect)	Race, ethnicity, or gender affects sentence severity through some other factor	Blacks are more likely than whites to be in custody prior to trial; as a result, blacks receive harsher sentences than whites
Interaction effect	The effect of race, ethnicity, or gender on sentence severity depends on some other factor; the effect of some other factor depends on race, ethnicity, or gender	Blacks receive harsher sentences than whites for drug offenses but not for violent crimes or property offenses; having dependent children reduces the sentence for women but not for men

SOURCE: Walker, Spohn, and DeLone (2007:19).

In the middle of the continuum are institutionalized discrimination, contextual discrimination, and individual acts of discrimination. *Institutionalized discrimination* refers to differences in treatment or outcomes resulting from established policies or procedures that are not themselves based explicitly on race, ethnicity, or gender. For example, the North Carolina sentencing guidelines allow judges to consider whether the defendant is gainfully employed (U.S. Department of Justice, Bureau of Justice Assistance 1996:80). This policy, which reflects an assumption that those who are employed have more stakes in conformity and therefore will be less likely to commit additional offenses, is intended to be race neutral. All defendants, regardless of race or ethnicity, get a break at sentencing if they are employed. However, the effect of the policy may not be race neutral. Because members of racial minorities are more likely than whites to be unemployed, they may be sentenced more harshly than whites. In other words, the evenhanded application of a seemingly race-neutral policy might result in institutionalized racial discrimination.

The other two types of discrimination result not from the evenhanded application of rules or policies but rather from decision makers' biases or prejudice against entire groups of people. *Contextual discrimination* is "discrimination in certain situations or contexts" (Walker et al. 2007:20). It refers to discrimination that is not systematic but is instead confined to certain regions of the country, certain stages of the decision-making process, certain types of crimes, or offenders with particular constellations of characteristics. For example, there is evidence that gender affects the decision to incarcerate but does not affect the length of the sentence, the effect of race or ethnicity is confined primarily to less serious crimes, and the effect of offender race on the likelihood of a death sentence depends on the race of the victim. All three of these are examples of contextual discrimination. *Individual discrimination*, which falls closer to the "pure justice" end of the continuum, involves discriminatory acts by particular criminal justice officials. It involves a situation, for example, in which one judge in a particular jurisdiction sentences members of racial minorities more harshly than whites or sentences females more leniently than males, but other judges do not. As Walker and his colleagues note, "These are discriminatory acts, but they do not represent general patterns of how the criminal justice system operates" (Walker et al. 2007:21).

Researchers also differentiate between direct and subtle discrimination. *Direct discrimination* refers to a situation in which race, ethnicity, or gender affects sentence severity after all legally relevant case and offender characteristics

are taken into consideration. Stated another way, direct discrimination occurs when blacks and Hispanics are sentenced more harshly than whites (or men are sentenced more harshly than women) and these differences cannot be attributed to differences in crime seriousness, prior criminal record, or other legally relevant factors. This type of finding is often called a *main effect*.

*Subtle discrimination* refers to what researchers characterize as indirect or interaction effects (Zatz 1987:70). An *indirect effect* occurs when an independent variable influences a dependent variable through some other factor rather than directly. Consider a situation in which a researcher discovers that race does not significantly affect the likelihood of incarceration once crime seriousness and prior record are taken into consideration. However, the researcher also discovers that defendants who are detained in jail before trial are substantially more likely to be sentenced to prison than those who are released before trial and that black defendants are more likely than white defendants to be detained before trial. In this case, the researcher could conclude that race indirectly affects sentence severity through its effect on pretrial detention.

An *interaction effect* occurs when either the effects of race or gender vary because of some other factor or when the effects of other variables are conditioned by offender race or gender. If the effect of race is confined to certain types of cases (e.g., to less serious crimes in which judges have greater discretion at sentencing) or to certain types of offenders (e.g., young males), we would conclude that race interacts with crime seriousness or offender age or gender to affect sentence outcomes. We would reach a similar conclusion if we found that, for example, going to trial rather than pleading guilty increased sentence severity for racial minorities but not for whites or that having dependent children reduced sentence severity for females but not for males. As Zatz notes, indirect and interaction effects “reflect more subtle institutionalized biases, but still fall within the purview of discrimination if they systematically favor one group over another” (1987:70).

### ***Warranted Versus Unwarranted Disparity***

Not all types of sentencing disparities are necessarily unwarranted. Some of them may be reasonable and justifiable. Although one might question the fairness of a system in which the sentence an offender receives depends on the jurisdiction in which the case is adjudicated, variations in laws and in criminal justice resources might produce interjurisdictional sentencing disparity. In both the federal and state court systems, the judge’s discretion at sentencing is

constrained by the penalty range, established by the legislature, for crimes of varying seriousness. In one state, the presumptive sentence for burglary might be 5 to 7 years; in another state, the range might be from 7 to 10 years. The fact that an offender convicted of burglary in the first state received 5 years but a seemingly identical offender convicted of burglary in the second state got 7 years is not indicative of unwarranted disparity. In each instance, the judge imposing the sentence determined that the offender deserved the minimum punishment specified by statute for the particular crime.

Jurisdictional and regional differences in values and in attitudes toward crime and punishment might also foster sentencing disparity. Public opinion polls reveal that people living in urban areas are substantially more likely than those living in suburban or rural areas to believe that crime is a serious neighborhood problem.<sup>3</sup> These polls also indicate that people residing in the western United States are more likely than those residing in other regions of the country to support the legalization of marijuana.<sup>4</sup> If we assume that the attitudes of judges at least to some extent mirror those of the communities in which they serve, we might expect the sentences imposed by judges in urban areas to differ from those imposed by judges in rural areas. Similarly, we might expect judges in western states to impose more lenient sentences on offenders convicted of possession of marijuana. In other words, principled and thoughtful judges sitting in different jurisdictions might come to different conclusions about the appropriate punishment for identical offenders.

The legitimacy of intrajurisdictional sentencing disparities is more questionable. One might argue that some degree of disparity in the sentences imposed by judges in a particular jurisdiction is to be expected in a system that attempts to individualize punishment and in which there is no universal agreement on the goals of sentences. As long as these differences resulted from the application of legitimate criteria and reflected fundamental disagreements about the purposes of punishment, they might be regarded as warranted.

Alternatively, it could be argued that justice demands that similarly situated offenders convicted of identical crimes in the same jurisdiction receive comparable punishments. In other words, to be fair, a sentencing scheme requires the evenhanded application of objective standards. Thus, the amount of punishment an offender receives should not depend on the values, attitudes, and beliefs of the judge to whom the case is assigned. As Gaylin notes, "These sets of values constitute bias in a non-pejorative sense—but bias nonetheless, and a bias that will influence equality and fairness in exactly the same way as naked

bigotry does” (1974:165). The legitimacy of intrajudge disparity is even more questionable. We expect a particular judge to evaluate cases objectively and to determine sentences based on legally relevant case and offender characteristics. Doing so should result in similar punishments for identical offenders sentenced by that judge. A judge who makes subjective sentencing decisions based on legally irrelevant factors, such as his or her feelings about the attorney handling the case or disapproval of the offender’s lifestyle, is not dispensing justice.

The problem is that it is not entirely clear which factors are legally irrelevant and therefore should not be taken into consideration at sentencing. A good example is the offender’s employment status. Some might argue that whether an offender is employed is irrelevant: It bears no relationship to the offender’s blameworthiness and thus has no bearing on the sentence that should be imposed. Those who challenge the use of employment status at sentencing might also point out that unemployment is linked to social class and race or ethnicity. Thus, imposing more severe sentences on those who are unemployed might result in harsher sentences for the poor and for racial minorities. Others might counter that an unemployed offender has fewer financial resources than one who is employed and that therefore he or she would be more likely to return to a life of crime. According to this line of reasoning, the offender’s employment status is an indicator of his potential for rehabilitation. The use of other offender characteristics might be similarly controversial. As Tonry notes, “Judges . . . make decisions about whole people, and not about generic offenders who have committed offense X and have criminal history Y. Not surprisingly, they often feel moved to take the individual offender’s circumstances into account in deciding what to do” (1996:19).

Regardless of how this issue is resolved, it is clear that sentencing disparities that reflect discrimination are unwarranted. This would be true of both sentencing disparities between jurisdictions and those within jurisdictions. In fact, much of the criticism of sentencing disparity centers on the issue of discrimination based on race, ethnicity, gender, and social class. Allowing judges unrestrained discretion in fashioning sentences opens the door to discrimination, it is argued, with the result that members of racial minorities are sentenced more harshly than whites, men are sentenced more harshly than women, and the poor are sentenced more harshly than those who are not poor.

In the sections that follow, we examine this issue. We begin with a discussion of gender discrimination in sentencing. In Chapter 5, we discuss the evidence for racial and ethnic discrimination in sentencing.



## GENDER DISPARITY IN SENTENCING

In 2006, 112,498 females and 1,458,363 males were incarcerated in state and federal prisons. Stated another way, there were 13 times as many men as women in our nation's prisons (U.S. Department of Justice, Bureau of Justice Statistics 2007e, table 3). This clearly is evidence of disparity. There is a striking difference between the number of men and women who are incarcerated. But is it evidence of discrimination? Consider the following statistics. Do they reflect gender disparity, gender discrimination, or both?

- Of all offenders convicted in U.S. district courts in 2003, 82.8 percent of the males were sentenced to prison but only 57.5 percent of the females. Among offenders convicted of violent crimes, 95.0 percent of the males and 76.4 percent of the females were incarcerated. For these offenses, the average sentence was 90.7 months for men and 42.5 months for women (*Sourcebook of Criminal Justice Statistics Online 2003* N.d., tables 5.20.2003 and 5.21.2000).
- Forty-two percent of the male offenders sentenced by state court judges in 2004 were sentenced to prison, compared with 27 percent of the female offenders. The average maximum prison sentence was 61 months for males and 42 months for females (U.S. Department of Justice, Bureau of Justice Statistics 2007g, tables 2.4 and 2.6).
- There were 3,228 prisoners under sentence of death on December 31, 2006; of these, only 51 were women (U.S. Department of Justice, Bureau of Justice Statistics 2007a, tables 4 and 12).
- Among offenders convicted of felonies in 1994 in Cook County (Chicago), Illinois, 28.3 percent of the females and 63.9 percent of the males were sentenced to prison. The corresponding proportions of offenders who were incarcerated in Jackson County (Kansas City), Missouri, were 16 percent (females) and 45 percent (males). The figures for Dade County (Miami), Florida, were 60.2 percent (females) and 69.2 percent (males) (Spohn and Beichner 2000).

These data provide compelling evidence of *gender disparity* in sentencing (see also Box 4.1, which focuses on sentencing of female teachers accused of having sexual relationships with their students). Women are substantially less likely than men to be sentenced to prison in federal and state courts, the sentences

**BOX 4.1****Female Teachers and Sex With Students:  
Is There a Double Standard?**

In January 2002, Pamela Diehl-Moore, a 43-year-old teacher from Lyndhurst, New Jersey, pled guilty to sexual assault for having had sexual relations with a 13-year-old male student. Under New Jersey law, sexual assault is a second-degree felony, punishable by up to 10 years in prison. As part of the plea agreement, the prosecutor assigned to the case agreed to treat the crime as a third-degree felony and to recommend a minimum sentence of 3 years in prison. At the sentencing hearing, New Jersey Superior Court Judge Bruce A. Gaeta instead sentenced the teacher to 5 years' probation.

In 2004, Debra Lafave, a teacher at Greco Middle School, in Temple Terrace, Florida, was arrested and charged with two counts of lewd and lascivious battery for having had sexual relations with a 14-year-old male student at her school. A year later, Lafave pled guilty and was sentenced to 3 years of house arrest, followed by 7 years of probation. She could have faced up to 15 years in prison for each count.

In July 2008, Michelle Morano was sentenced to 3 years' probation after she pled guilty to having had sex with a 17-year-old male special education student. The prosecutor in the case had asked the judge to sentence her to a year in jail, but Judge Donald J. Volkert Jr. imposed the more lenient sentence, noting that "there is a difference between justice and vengeance" (Kleinknect 2008).

These cases, and others like them, have led some commentators to argue that there is a double standard for female teachers who have sex with students. As Susan Estrich (2006), a law professor at the University of Southern California, has noted,

There is no question that there is a double standard in sex abuse cases, and nowhere is it more apparent than in what seems to be the growing number of teacher sex cases.

Critics charge that sexual relations between female teachers and their students are viewed differently than sexual relations between male teachers and their students—and that, consequently, females receive substantially more lenient punishment than similarly situated males. As another commentator (Morris 2007) has noted,

The public is more willing to accept the female abuser's claim that she had a "relationship" with the victim. And in cases in which the male is a teenager, the sexual abuse is more likely to be dismissed as a rite of passage. The questionable, yet overriding assumption is that women predators are somehow different from men.

Certain comments made by judges who have imposed sentences in these types of cases support the notion that a double standard of behavior for men and women does, in fact, exist. For example, Judge Gaeta, who sentenced Pamela Diehl-Moore to probation for having sexual relations with a 13-year-old boy, stated as follows:

I really don't see the harm that was done here and certainly society doesn't need to be worried. I do not believe she is a sexual predator. It's just something between two people that clicked beyond the teacher-student relationship. (Kupelian 2006)

Judge Gaeta emphasized that the sexual relations were consensual, and he went on to say that there was no evidence "that shows this young man has been psychologically damaged by her actions" (Kupelian, 2006). The judge's comments generated public outrage and led to a review of his conduct by a state judicial conduct commission. His actions also prompted the prosecutor handling the case to appeal the sentence. After an appeals court ruled that the original sentence was inappropriately lenient, Diehl-Moore was resentenced by a different judge. She received 3 years in prison.

Professor Estrich (2006) suggests that there are at least three reasons that explain why trivializing sex between female teachers and their male students is wrong. First, doing so implies that male sexuality is not deserving of protection under the law and makes it difficult for boys to report their victimization. According to Estrich, "If a boy should consider himself lucky to be the object of a teacher's attentions, then what does it say about the boy who complains?"

Second, Estrich says, "It ignores the power relationship between the woman and her student, which makes this different from the usual male-female relationship, and puts the boy on a different footing." In other words, because teachers wield power over their students in a school environment, the assertion that their sexual relationships with students are "consensual" may be called into question.

Finally, trivializing teacher-student sexual relations allows criminal justice officials to circumvent laws prohibiting this type of behavior. As Estrich notes,

*(Continued)*

(Continued)

There is no constitutional right of teachers to have sex with their students or students to have sex with their teachers. . . . And short of such a right, it is up to the legislature to set society's standards for acceptable conduct.

What do you think? Is there a double standard, such that male teachers who have sexual relations with female students are punished more harshly than female teachers who have sexual relations with male students? If so, is this fair?

Are there any legitimate reasons for treating the two types of cases differently?

SOURCE: Estrich, Susan, "Is Teacher-Student Sex OK If the Student Is 18?" FOXNews.com, June 18, 2006; Kleinknect, William, "West Essex Teacher Gets Probation After Admitting Sex With Student," *New Jersey Star-Ledger*, July 25, 2008; Kupelian, David, "What's Behind Today's Epidemic of Teacher-Student Sex?" *World Net Daily*, March 22, 2006; Morris, Rebecca, "Female Sex Offenders Reveal Double Standard," *Seattle Times*, September 10, 2007.

imposed on women are significantly shorter than those imposed on men, and women are much less likely than men to be sentenced to death. But do these data prove that women receive preferential treatment or that judges discriminate against men? Are these gender disparities unwarranted, or are there legitimate explanations for them?

One explanation suggests that women are sentenced more leniently than men because they are convicted of less serious crimes and have less serious prior criminal records than men. In other words, there are substantially more men than women in prison because most offenders arrested for and convicted of the crimes that merit imprisonment (violent crimes and serious property and drug offenses by repeat offenders) are men. According to this explanation, once these legally relevant factors are taken into consideration, the gender differences in sentence severity will disappear. If we compare the sentences imposed on offenders convicted of the same crimes, with identical prior criminal records, we will find that women are sentenced no differently than men. If this is the case, the gender disparities in sentence severity clearly would be warranted. They would be due to legitimate differences in

the crimes men and women commit and in the criminal histories that men and women carry with them into court.

It also is possible that women are sentenced less harshly than men because of “gendered presuppositions of crime and justice” (Daly 1994:197). One theoretical perspective on judicial decision making contends that judges’ sentencing decisions are guided by three focal concerns: their assessment of the blameworthiness or culpability of the offender, their desire to protect the community by incapacitating dangerous offenders or deterring potential offenders, and their concerns about the practical consequences, or social costs, of sentencing decisions (Steffensmeier et al. 1998). The more lenient sentences imposed on women, then, might reflect the fact that judges believe that women are generally less dangerous, less blameworthy, less likely to recidivate, and more likely to be deterred. They might also reflect judges’ beliefs that the social costs of incarcerating women, who are more likely than men to be the sole caretakers of young children, are high. Some might question the legitimacy or fairness of basing sentencing decisions on an offender’s child care responsibilities, but sentencing disparities that reflect differences in the way judges evaluate the culpability or dangerousness of male and female offenders are not necessarily unwarranted. These types of disparities reflect differences based on legitimate but gender-linked sentencing goals. (This issue is discussed in more detail in the next section.)

Of course, it is possible that gender disparities in sentencing cannot be explained away in this fashion. In fact, some scholars argue that the more lenient treatment of female offenders does reflect discrimination *in favor of women* or, alternatively, discrimination *against men*. According to this view, judges explicitly and inappropriately take gender into account when determining the sentence. Typically, this is attributed either to “chivalry” or “paternalism” on the part of the largely male judiciary. In other words, the gentler treatment accorded women stems from judges’ perceptions of women as child-like and dependent and their desire to protect the “weaker sex” from the harshness of jail or prison. If this is the case, gender differences in sentence severity would remain even after we controlled for crime seriousness, for the offender’s prior criminal history, dangerousness, and blameworthiness, and for other legally relevant offender and case characteristics.

We evaluate these competing explanations for gender disparities in sentencing in the section after the “Focus on an Issue.” We begin by testing the

validity of the assumptions inherent in each explanation. We then discuss the results of empirical research that compares the sentences imposed on men and women, focusing on the results of recent methodologically sophisticated studies.

## FOCUS ON AN ISSUE

### Should Men and Women Be Treated the Same?

#### Women and the "Imprisonment Binge"

In the past two decades, the number of women incarcerated in state and federal prisons has increased dramatically; 112,498 women were under the jurisdiction of state and federal authorities in 2006, compared with only 12,331 in 1980 (U.S. Department of Justice, Bureau of Justice Statistics 1999e; 2007e, table 3). Much of this growth in women's imprisonment is not attributed to an increase in the seriousness of crimes women commit but to the crime control policies pursued in the past three decades. Some scholars suggest that these policies, which produced an "unprecedented imprisonment binge" (Irwin and Austin 1997:1), had a particularly pronounced effect on women. For example, Meda Chesney-Lind contends that public calls to get tough on crime, "coupled with a legal system that now espouses 'equality' for women with a vengeance when it comes to the punishment of crime, has resulted in a much greater use of imprisonment in response to women's crime" (1997:251).

Several authors suggest that recent increases in the number of women incarcerated in state and federal prisons can be traced directly to the "war on drugs" and the resultant emphasis on increasing the penalties for possession and sale of drugs (Chesney-Lind 1995). Recent data on incarcerated offenders support this assertion. For example, surveys of state prison inmates reveal that the number of women incarcerated for drug offenses increased from 2,400 in 1986 to 24,625 in 2006. Among offenders incarcerated in state prisons in 2006, 28.7 percent of the females were convicted of drug offenses but only 18.9 percent of the males (U.S. Department of Justice, Bureau of Justice Statistics 1997c, 2007e). Among offenders incarcerated in federal prisons in 2003, an astonishing 65.5 percent of the white females and 63.3 percent of the black females were convicted of drug offenses (*Sourcebook of Criminal Justice Statistics Online*, table 6.56). Citing evidence such as this, Chesney-Lind concludes that the "'war on drugs' has translated into a war on women" (1995:111). Other scholars have made analogous arguments. Noting that the increase of women in prison has been fueled by the "war on drugs," Durham suggests that "women who had previously been the beneficiary of more lenient sentencing . . . are now being treated like their male counterparts, or

even more harshly" (1994:111). Daly and Tonry similarly contend that reformers' attempts to enhance gender equality in sentencing, "coupled with the War on Drugs and the law-and-order campaigns of the 1980s, has yielded dramatically increasing incarceration rates" (1997:241).

These statements imply that chivalrous or paternalistic treatment of female offenders is a thing of the past. More to the point, they imply that equal treatment of male and female offenders, particularly for drug offenses, has resulted in spectacular increases in the female prison population.

### **The Equal Treatment Controversy**

The question of whether female offenders should be treated the same as male offenders has generated considerable controversy. Those on one side of the argument suggest that fairness and justice demand equal treatment (Nagel and Johnson 1994; Williams 1984–1985). Although they acknowledge that men and women differ in many important respects, the advocates of gender neutrality argue that special treatment of women carries significant risks. With respect to sentencing, they assert that using gender-linked criteria, such as family ties, responsibility for the care of young children, or prior victimization, to determine the appropriate sentence validates traditional sex roles and perpetuates negative stereotypes of female weakness and moral inferiority. They also contend that using these factors to reduce sentence severity may have the unintended consequence of increasing sentences for female offenders without these characteristics. In other words, if women with family ties or responsibility for raising young children are deemed more reformable, then women without these characteristics may be viewed as less reformable and more in need of harsh punishment.

Those on the other side of the argument suggest that cultural and biological differences between male and female offenders may be relevant and legitimate considerations at sentencing (Wolgast 1980). For example, the fact that women are more likely than men to be the sole caretakers of young children may be a relevant consideration for judges who believe that it is important to keep families together and to protect the interests of children. As Myrna Raeder argues, "Any cost benefit analysis would seem to dictate that children be considered in the sentencing decision, particularly when societal costs regarding any future criminality of the children are weighed" (1993:959). According to those in the "special treatment" camp, other potentially legitimate considerations include pregnancy, prior battering or sexual assault victimization, the presence of coercion or abuse by male codefendants, and the offender's subordinate role in the offense. As Kathleen Daly observes, "Allowing for gender-linked criteria is not the same as assuming that men's and women's natures differ. . . . It is to assume that some features of men's and women's lives may differ and ought to be acknowledged in sentencing" (1994:270). In other words, if the goal of sentencing is justice and not

simply equality, then special treatment of women is justified by virtue of their special circumstances.

What do you think? Are the “special circumstances” of female offenders a legitimate consideration at sentencing, or does justice demand equal treatment of similarly culpable male and female offenders who are convicted of the same crime?

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### ***Gender and Sentencing: Disparity or Discrimination?***

As explained earlier, there are at least two reasons for concluding that gender disparities in sentencing do not reflect discrimination in favor of women or against men. The first suggests that differences in the sentences imposed on men and women result from differences in crime seriousness and prior record. According to this line of reasoning, gender differences in sentence severity will disappear once these two legally relevant variables are taken into consideration. The second suggests that male–female sentence differentials result not only from differences in crime seriousness and prior record but also from differences in judges’ perceptions of males’ and females’ dangerousness, blameworthiness, and child care responsibilities. This explanation assumes that gender differences will disappear once we take these factors into account.

We tested these underlying assumptions using data on offenders convicted of felonies in Cook County (Chicago), Illinois, in 1993. To test the assumption that gender differences will disappear when crime seriousness and prior record are held constant, we compared the sentences imposed on male and female offenders who were convicted of the same offense (possession of drugs with intent to deliver) and who had no prior felony convictions. As shown in Part A of Exhibit 4.5, males were still twice as likely as females to be sentenced to prison; 33.6 percent of the males were incarcerated but only 17.4 percent of the females. The mean prison sentence for men (48.6 months) was also slightly longer than the mean sentence for women (45.0 months).

A more refined test of the validity of the first explanation involves the use of logistic regression, a statistical technique that allows the researcher to identify the effect of a particular variable (gender) on some outcome (the decision to incarcerate or not) while controlling for other variables. We used logistic regression to analyze the likelihood of incarceration, controlling for the offender’s gender, the seriousness of the conviction charge (11 different



**EXHIBIT 4.5** The Effect of Gender on Sentencing Decisions in Cook County (Chicago), Illinois, 1993

A. Sentences imposed on males and females who were convicted of possession of drugs with intent to deliver and who had no prior felony convictions

	<i>Sentenced to Prison</i>	<i>Sentence Length (months)</i>
Males	33.6%	48.6
Females	17.4%	45.0

B. Predicted probabilities of incarceration for typical male and female offenders: controlling for crime seriousness and prior criminal record<sup>a</sup>

	<i>Possession of Drugs w/Intent</i>	<i>Simple Possession</i>
Males	61.9%	52.7%
Females	38.1%	29.5%

C. Predicted probabilities of incarceration for typical male and female offenders: controlling for crime seriousness, prior criminal record, use of a weapon, and responsibility for dependent children<sup>b</sup>

	<i>Possession of Drugs w/Intent</i>	<i>Simple Possession</i>
Males	49.4%	37.5%
Females	28.4%	19.9%

SOURCE: The data displayed in this table are unpublished. They were collected by C. Spohn and M. DeLone for their three-city study of sentencing decisions.

a. We used the results of the logistic regression analysis to calculate the predicted probability of incarceration for male and female offenders with the following characteristics: convicted of either possession of drugs with intent or simple possession, convicted of a Class 2 felony, one prior felony conviction, and no prior prison terms of more than 1 year.

b. We used the results of the logistic regression analysis to calculate the predicted probability of incarceration for male and female offenders with the following characteristics: convicted of either possession of drugs with intent or simple possession, convicted of a Class 2 felony, one prior felony conviction, no prior prison terms of more than 1 year, did not use a weapon to commit the crime, and has responsibility for dependent children.

types of offenses), the statutory classification of the conviction charge (Class X, Class 1, Class 2, Class 3, or Class 4 felony), and the offender's prior criminal record (the number of prior felony convictions and the number of prior prison terms of more than 1 year). We found that gender was a statistically significant predictor of the decision to incarcerate or not. In fact, judges were 2.5 times more likely to sentence male offenders to prison than to sentence female offenders to prison, even when we held these legally relevant factors constant.<sup>5</sup>

We used the results of this analysis to calculate the predicted probability of incarceration for "typical" male and female offenders: offenders who had been convicted of Class 2 offenses, had been convicted of either possession of drugs or possession of drugs with intent to deliver, and had one prior felony conviction but had not previously been imprisoned for more than 1 year. As shown in Part B of Exhibit 4.5, there were large differences in the predicted probabilities of incarceration for males and females convicted of these two types of drug offenses. Nearly two thirds (61.9 percent) of the males convicted of possession with intent were sentenced to prison but only 38.1 percent of the females. There were similar differences for simple possession: 52.7 percent of the men and 29.5 percent of the women were incarcerated.

These results raise doubts about the validity of the argument that gender disparities in sentence severity are due primarily to differences in crime seriousness and prior record. The gender differences did not disappear when these legally relevant variables were held constant. The data presented in Part C of Exhibit 4.5 address the validity of the second argument, that gender disparities will disappear once the offender's dangerousness and child care responsibilities are held constant. To test this, we re-ran the analysis, adding a variable measuring the offender's dangerousness (whether the offender used a weapon to commit the crime) and a variable measuring the offender's child care responsibilities (whether the offender had dependent children) to the model. We then calculated predicted probabilities of incarceration for offenders who had been convicted of a Class 2 drug offense, had one prior felony conviction but no prior prison terms of more than 1 year, did not use a weapon during the crime, and did have responsibility for the care of dependent children. As shown in Part C of Exhibit 4.5, although responsibility for dependent children reduced the likelihood of incarceration for both males and females, the gender differences did not disappear. For both offenses, men were substantially more likely than women to be sentenced to prison.

These results suggest that gender disparities in sentence severity cannot be attributed to differences between men and women in crime seriousness, prior criminal record, dangerousness, and child care responsibilities. Holding these characteristics constant did not cause the sentence differences to disappear. However, we obviously cannot generalize these results, which reflect sentencing decisions made in one jurisdiction in a single year, to other jurisdictions, other time periods, or other types of offenders. We cannot conclude on the basis of these results alone that gender disparities in sentencing are unwarranted.

### ***Gender and Sentencing: The Results of Recent Research***

A comprehensive review of research comparing the sentences imposed on male and female offenders is beyond the scope of this book. Instead, we discuss the results of research comparing the sentences imposed on male and female offenders convicted in state courts and comparing sentence outcomes for male and female offenders convicted in federal courts. In each section, we also discuss the results of studies that explore the relationships between gender, race or ethnicity, and sentence severity. We end the chapter with a discussion of death penalty research that addresses a different type of gender disparity in sentencing: disparity based on the race and sex of the victim.

#### *Gender and Sentencing Decisions in State Courts*

There is a fairly large body of research that examines the sentences imposed on male and female offenders convicted of felonies in state courts. Although many of these studies focused on drug offenses or less serious felonies, one study used data on defendants charged with violent felonies in Detroit to examine the effect of gender and race on a series of charging, convicting, and sentencing decisions (Spohn and Spears 1997). Building on research suggesting that chivalry is denied to women who violate sex role stereotypes and commit violent crimes, the authors of the study hypothesized that males and females charged with these crimes would be treated similarly. Their hypothesis was not confirmed: Females charged with violent crimes were more likely than males charged with violent crimes to have all of the charges against them dismissed; females convicted of violent crimes also were less likely to be incarcerated and received shorter prison sentences than their

male counterparts. Further analysis revealed an interaction between race and gender: white females, but not black females, were more likely than males of either race to have their charges dismissed, and black females were sentenced less harshly than either black males or white males. The authors concluded that their results “highlight the importance of testing an interactive model that incorporates the effects of both gender and race” on sentencing decisions (Spohn and Spears 1997:52).

The importance of testing for interaction effects is illustrated as well by two studies of sentencing in Pennsylvania. Steffensmeier et al. (1993) used guideline sentencing data to assess the effect of gender on the decision whether to incarcerate and the length of the prison sentence. They found that female offenders faced somewhat lower odds of incarceration than male offenders (a difference of 12 percentage points), but gender did not affect the length of the prison sentence. When they estimated separate models of sentence length for males and females, however, they found that gender interacted with both race and the type of offense. There were no racial differences in the sentences imposed on males, but black females received sentences that averaged 3 months longer than the sentences imposed on white females. Females received slightly shorter sentences than males when convicted of a serious felony and slightly longer sentences than males when convicted of a less serious felony or a misdemeanor.

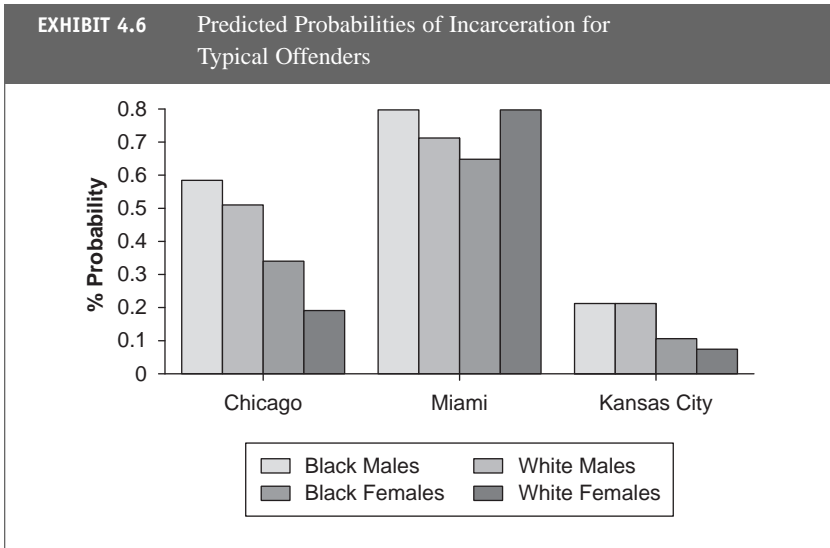
Somewhat different results surfaced in a later study that also examined sentencing decisions in Pennsylvania (Steffensmeier et al. 1998). Although the authors of this study found that female offenders faced both lower odds of incarceration and shorter sentences than male offenders and that black offenders were sentenced more harshly than white offenders, they also found that the effects of race and age were conditioned by gender. Younger male offenders were sentenced more harshly than older male offenders, but age had a negligible effect on sentence severity among female offenders. Among males, race affected sentence severity for younger offenders but not for older offenders. Among females, on the other hand, the effect of race did not vary by age; black females, regardless of age, were sentenced more harshly than white females. The authors also found that the harshest sentences were imposed on young black males. These findings led them to conclude that the main effects of race and gender are modest compared with the interactive effects of race, gender, and age (Steffensmeier et al. 1998:785).

Spohn and Beichner’s (2000) analysis of the effects of gender and race on sentence outcomes for offenders convicted of felonies in Chicago, Kansas

City, and Miami in 1993 produced different findings that nevertheless confirmed the interaction between race and gender. Like Steffensmeier and his colleagues, they found that female offenders faced significantly lower odds of incarceration than male offenders in all three jurisdictions. Further analysis revealed that both black females and white females were less likely than their male counterparts to be sentenced to prison in Chicago and Kansas City. In Miami, on the other hand, black females faced lower odds of incarceration than black males, but white females were sentenced to prison at the same rate as white males. As shown in Exhibit 4.6, these gender differences were both statistically significant and nontrivial. In Chicago, for example, the estimated probability of incarceration for a typical offender was 48 percent for white men and only 18 percent for white women; it was 55 percent for black men and 32 percent for black women (Spohn and Beichner 2000:169). In Kansas City, the probabilities ranged from 7 percent (white females) to 10 percent (black females) to 20 percent (black males and white males).

Similar results were found by Steffensmeier and Demuth (2006a), who examined sentence outcomes for white, black, and Hispanic male and female offenders convicted of felonies in the most populous counties in the United States in 1990, 1992, 1994, and 1996. They found that female offenders were significantly less likely than male offenders to be incarcerated; in fact, the odds of incarceration for males were 71 percent higher than the odds for females. Male offenders also received sentences that were about 20 percent longer than those imposed on female offenders (Steffensmeier and Demuth 2006a:252). When they partitioned the data by the race or ethnicity of the offender, the researchers found that female offenders, regardless of race or ethnicity, were treated more leniently than their male counterparts. Further analysis revealed that there were no differences in the sentences imposed on white females and those imposed on black or Hispanic females and that the harshest sentences were imposed on Hispanic males, followed by black males and white males. Steffensmeier and Demuth concluded that although their findings were consistent with the expectation that female offenders would receive more lenient treatment than similarly situated male offenders, they were “sharply at odds with the traditional view that chivalry or leniency in court sanctioning typically by-passes ‘women of color’” (2006a:257).

A study of sentences imposed on offenders convicted of drug offenses in Cook County (Chicago), Illinois, in 1993 also tested for interaction between gender and other offender characteristics, including responsibility for dependent



SOURCE: Data are from “Is Preferential Treatment of Female Offenders a Thing of the Past? A Multi-Site Study of Gender, Race, and Imprisonment” (table 4), by C. Spohn and D. Beichner, *Criminal Justice Policy Review* 11:149–184.

NOTE: A “typical offender” has the following characteristics: age = 29 years; convicted of 1.4 counts of a drug offense; convicted of Class 2 felony (Chicago), third-degree felony (Miami), or Class C felony (Kansas City); one prior prison term of more than a year; not on probation at time of arrest for current crime; represented by a public defender; released prior to trial; and pled guilty. For Miami, the figures represent the predicted probability of being sentenced to jail or prison. For the other two jurisdictions, they represent the predicted probability of being sentenced to prison.

children and a prior drug conviction (Spohn 1998). Spohn found that women were significantly less likely than men to be detained in jail before trial and to be sentenced to prison upon conviction. Noting that pretrial detention was one of the strongest predictors of incarceration, Spohn concluded that these results were indicative of a pattern of cumulative advantage for female drug offenders. The war on drugs and concern about drug use and drug-related crime notwithstanding, women charged with drug offenses in Chicago faced substantially lower odds of incarceration than their male counterparts.

Spohn also tested for interaction between gender and two variables, responsibility for dependent children and a prior drug conviction, which had been identified by previous research as affecting sentence severity for female offenders. She suggested that female drug offenders with dependent children would not benefit from familial paternalism. She reasoned that such women,

like women who are convicted of child abuse or prostitution, may be viewed as bad mothers whose children would be better off living with relatives or in foster care (Spohn 1998:382). As she noted, if this is the case, judges may not hesitate to send such women to prison or to impose lengthy terms of incarceration. She similarly suggested that judges would not be reluctant to send female drug offenders to prison if they had a prior conviction for a drug offense (Spohn 1998:374).

Consistent with these expectations, Spohn found that preferential treatment of female offenders was confined to cases involving offenders without dependent children and to offenders without a prior conviction for a drug offense. Women with children and those who were repeat offenders did not face lower odds of incarceration than their male counterparts. According to Spohn, this suggests that judges' calculations of the social costs of punishment and assessments of blameworthiness are not invariant but reflect the combined effects of the offender's gender, child care responsibilities, prior criminal record, and type of offense (Spohn 1998:392).

#### *Gender and Sentencing Decisions in Federal Courts*

In contrast to the large body of research examining the effect of gender on sentencing decisions in state courts, little research explicitly explores the effect of gender on sentencing decisions in U.S. district courts. In a recent report on the first 15 years of federal sentencing guidelines, the U.S. Sentencing Commission (2004:127) reported that "the gap in average prison terms between male and female offenders has widened in the guidelines era." The commission examined both the odds of imprisonment and the length of the prison sentence imposed on male and female offenders from 1998 to 2002. They found statistically significant gender effects for both drug offenses and nondrug offenses. For each of the 5 years examined, male offenders were twice as likely as female offenders to be sentenced to prison, and their sentences were 25 to 30 percent longer than those imposed on female offenders (U.S. Sentencing Commission 2004:127).

Other evidence demonstrates that federal courts treat women more leniently than men. Albonetti's (1997) analysis of offenders convicted of drug offenses found that female offenders faced lower odds of incarceration and received shorter sentences than male offenders. Other scholars found similar results for all federal offenders (drug and nondrug offenders) (Albonetti 2002;

Everett and Wojtkiewicz 2002; Mustard 2001; Stacey and Spohn 2006). For example, Mustard found that females received sentences that averaged 5.5 months less than the sentences imposed on similarly situated men. He also found that women were significantly more likely than men to receive a downward departure and that those who did receive a downward departure received a larger sentence discount than their male counterparts (Mustard 2001:310–311).

Albonetti's research has also demonstrated that gender and race or ethnicity interact to produce more lenient sentences for some types of female offenders and that gender and race or ethnicity condition the effects of guideline departures, guilty pleas, offense seriousness, and criminal history on sentence severity. For example, her 1997 study found that the offender's gender affected sentencing decisions for white offenders and black offenders but not for Hispanic offenders (p. 814). Her 2002 study found that white females received the greatest benefit from substantial assistance departures and that the guideline offense level had a more pronounced effect on sentence length for white females than for black females. Albonetti concluded that the findings of her research "suggest that the federal sentencing guidelines have not eliminated sentence disparity linked to defendant characteristics for defendants convicted of drug offenses" (1997:818).

Another study of federal sentence outcomes examined the combined effects of the offender's gender, marital status, and responsibility for dependent children (Stacey and Spohn 2006). This study used data on offenders convicted of drug offenses in three U.S. district courts in 1998, 1999, and 2000. As illustrated by Exhibit 4.7, which presents sentence outcomes for male and female offenders, for married and unmarried offenders, and for offenders with and without dependent children, the length of the prison sentence was affected by the offender's gender but not by the offender's marital status. Female offenders received shorter sentences than male offenders, but there were no significant differences in the sentences imposed on married and unmarried offenders. In addition, and contrary to the researchers' expectations, offenders with children received significantly longer sentences than offenders without children. This difference reflects the fact that the average sentences imposed on male offenders with children (103.05 months) were significantly longer than the average sentences imposed on male offenders without children (79.20 months). There were no differences in the sentences imposed on female offenders with and without children.



<b>EXHIBIT 4.7 Sentences Imposed on Offenders in Three U.S. District Courts</b>	
<i>Offender Characteristics</i>	<i>Sentence Length (months)</i>
<b>Gender</b>	
Male	59.76*
Female	97.11
<b>Marital status</b>	
Married	85.92
Unmarried	91.93
<b>Parental status</b>	
Offender with children	95.46*
Offender without children	76.39
<b>Gender and parental status</b>	
Female with children	57.93
Female without children	55.61
Male with children	103.05*
Male without children	79.20

SOURCE: Adapted from Stacey and Spohn (2006, table 2).

\*Indicates differences that are statistically significant at the .05 level of significance.

When the authors of this study controlled for crime seriousness, prior record, and other offender and case characteristics, they found that female offenders received significantly shorter sentences than male offenders, but there were no differences in the sentences imposed on married and unmarried offenders or on offenders with and without children. They also found no support for their hypothesis that having dependent children would benefit female offenders but not male offenders. Although female offenders with children did receive more lenient treatment than male offenders (with or without children), there were no differences in the sentences imposed on female offenders with and female offenders without children. Their findings suggest “that federal court judges evaluate female offenders differently than male offenders, irrespective of their family situations or childcare responsibilities” (Stacey and Spohn 2006:76).

The results of these empirical studies of sentences imposed in state and federal courts confirm that gender discrimination in sentencing is not a thing of the past. Even after controlling for crime seriousness, the offender's criminal history, and other legally relevant variables, these studies reveal that female offenders are treated more leniently than male offenders. The studies also highlight the importance of testing for intersections between gender, race or ethnicity, and other legal and extralegal variables. As these studies reveal, discriminatory treatment of criminal defendants may be restricted primarily to black males, and preferential treatment may be reserved for white females. Alternatively, female offenders, regardless of race or ethnicity, may be treated more leniently than male offenders. Finally, the studies reveal that concerns about the social costs of sentencing do not necessarily produce more lenient sentences for female offenders with responsibility for the care of dependent children.

#### *Explanations for More Lenient Treatment of Female Offenders*

Researchers have offered a number of explanations for the more lenient treatment of female offenders. For example, Steffensmeier and his colleagues (1993; 1998) advanced two complementary explanations for the patterns of findings revealed by their research. They based these explanations on two types of qualitative data: the reasons given by judges for departures from the Pennsylvania Sentencing Guidelines and comments made by judges whom they interviewed. Regarding the more lenient treatment of female offenders, they noted that judges viewed female offenders as less dangerous, less culpable, and more repentant than male offenders. Pennsylvania judges also believed that differential treatment of females was justified and sensible. It was justified because of differences in blameworthiness and sensible because females were more likely than males to have child care responsibilities and mental or health problems that could not be treated in a jail or prison setting.

Similar conclusions are found in Kathleen Daly's influential work (Daly 1987, 1989, 1994; see also Kruttschnitt 1980–1981). Daly contends that although statistical studies of sentencing “may reveal more lenient outcomes for women, they tell us little about how court officials arrive at these decisions” (1987:268). Her own research suggests that judges' pretrial release and sentencing decisions are affected by defendants' family circumstances. Familied defendants (i.e., those who are married and living with a spouse, living with parents or other relatives, or caring for young children) are treated

more leniently than nonfamilied defendants. According to Daly, this more lenient treatment of familied defendants reflects judges' beliefs that these offenders have greater informal social control in their lives and judges' concerns about maintaining families and protecting innocent children, which she labels the "social costs of punishment" (1989:138).

Daly's work also reveals that family circumstances have more pronounced mitigating effects on outcomes for female defendants, particularly for black females, than for male defendants. She attributes this to the combined effect of the fact that "court officials see more 'good' mothers than 'good' fathers" and that judges view child care (typically provided by women) as more essential to the maintenance of families than economic support (more often provided by men) (1987:279). She also suggests that judges make "gender-based character judgments" (1994:227). Women are viewed as better candidates for reform than men because of their greater conventionality and less serious prior records. They are perceived as less blameworthy than men because of "blurred boundaries" between their past victimization and their current criminality (1994:260). Daly concludes that judges' sentencing decisions are not motivated by a desire to protect women but by an intent to protect families, a motivation that she calls "familial paternalism" (Daly 1987:268; see also Bickle and Peterson 1991; Crew 1991).

The explanation offered by Spohn and Beichner (2000) also focuses on judges' perceptions and stereotypes of men and women. They suggest that the findings of their study lend credence to assertions that court officials attempt to simplify and routinize the sentencing process by relying on stereotypes that link defendant characteristics such as race or ethnicity and gender to perceptions of blameworthiness, dangerousness, and risk of recidivism. They note that criminal justice officials interviewed for the study admitted that they viewed female offenders, particularly those with dependent children, differently from male offenders. They conclude that judges' assessments of offense seriousness and offender culpability interact with their concerns about protecting society from crime and about the practical effects of incarceration in producing more severe treatment of black and Hispanic male offenders and more lenient treatment of female offenders. As Spohn and Beichner note, "In these three jurisdictions, court officials apparently stereotype black and Hispanic male defendants as particularly blameworthy, violent, and threatening. Conversely, they appear to view all female defendants as less culpable, less likely to recidivate, and more amenable to rehabilitation" (2000:174–175).

**BOX 4.2****Gender and Sentencing: Perceptions of Criminal Court Judges in Three Jurisdictions**

I try not to look at females differently than males. There are very few females in the system and even fewer who have been charged with violent crimes. Sometimes when I have a female offender, I have to stop and ask myself if she is being treated any differently than a male offender. Usually I can honestly say “No.” If she is been convicted of possession of a controlled substance and it’s her first offense, I’m not going to sentence her to prison, but it’s not because she is a female but because she is a first offender.

—Male judge in Cook County (Chicago), Illinois

Of course I look at female offenders differently. They get off easier. I think that the forces that motivate female offenders are different: lack of self-esteem as opposed to machismo. In a lot of the cases I see, the woman is more the victim than the offender.

—Male judge in Cook County (Chicago), Illinois

There is a perception that I’m harder on females than on males. I was shocked to learn this because I think I’m very sensitive to women who are trying to raise their kids alone. What I don’t like is when they bring their kids to court and try to use them as pawns to get to me. I hate that—using the kids in that way—and I’ll tell the woman in no uncertain terms that her children don’t belong in court.

—Female judge in Jackson County (Kansas City), Missouri

I would like to think that being female has no effect on the likelihood of incarceration, but I think that it does. We probably still have that Neanderthal belief that they are the primary caretakers of kids. It may not be irrational to treat women differently; we all know that females are not as likely to commit violent crimes, not as likely to recidivate, and are likely to be the primary caretakers of young children. So I won’t give you the socially desirable answer and tell you that gender is irrelevant in my courtroom.

—Male judge in Jackson County (Kansas City), Missouri

The offender's social and economic circumstances should have no effect on the sentence. However, if the offender is a female with kids at home to take care of, and she is charged with a drug offense, I may be looking for drug treatment rather than jail or prison.

—Male judge in Dade County (Miami), Florida

SOURCE: Personal interviews with the author in 1995.

These differences in the way judges view male and female defendants are highlighted by the comments presented in Box 4.2. Judges interviewed for the three-city study all indicated that they viewed males and females differently and stated that there were legitimate reasons for sentencing female offenders more leniently than male offenders.<sup>6</sup>

### ***Gender and the Capital Sentencing Process***

As noted earlier in this chapter, there are very few women on death row in the United States. Therefore, research on the capital sentencing process has not focused on the question of whether males are more likely than females to be sentenced to death. There are simply too few women convicted of death-eligible crimes to make such a study feasible.

However, two recent studies address the so-called female victim effect in the capital sentencing process. These studies, one of which was conducted using data from Georgia (Williams, Demuth, and Holcomb 2007) and the other of which was conducted using data from Ohio (Holcomb, Williams, and Demuth 2004), attempted to determine whether those who murdered females were more likely than those who murdered males to be sentenced to death. Each study also explored the possibility that those who murdered white females faced especially high odds of receiving a death sentence.

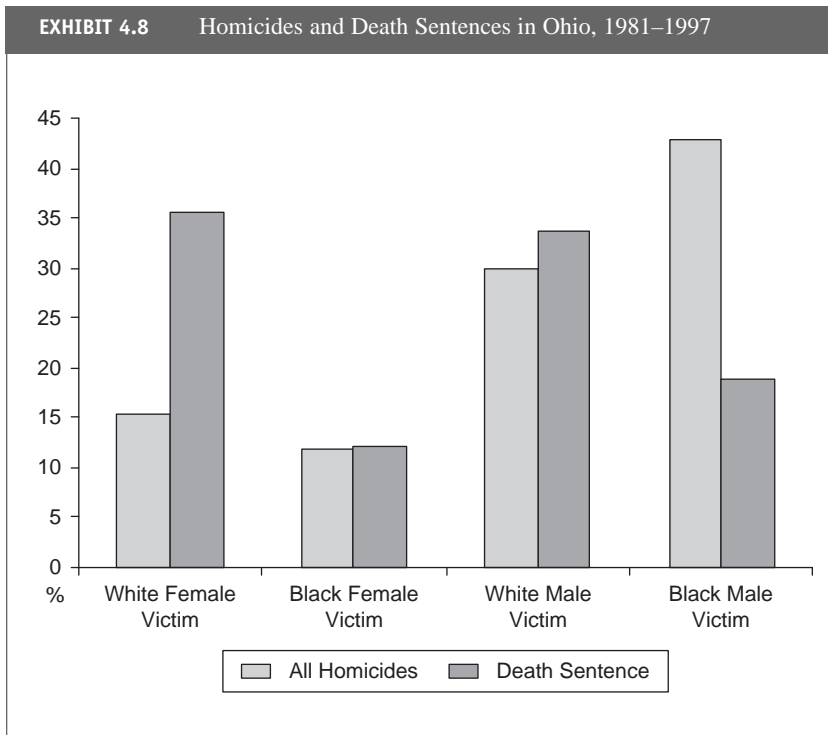
Williams, Demuth, and Holcomb (2007) used the data collected by David Baldus and his colleagues (i.e., the data used in the “Baldus study” that was at issue in the Supreme Court case of *McCleskey v. Kemp*) to examine the effect of the victim's gender on death penalty decisions in Georgia. Noting that “explanations for the harsher treatment of defendants accused and/or convicted of murdering women . . . usually are based on speculative or anecdotal notions of prosecutor or jury perceptions of female victims as weaker or more

deserving of protection than male victims” (2007:867), they also attempted to identify the factors that explained the more punitive treatment of those who murdered females.

The authors of this study found that the gender of the victim was a statistically significant predictor of death penalty decisions in Georgia, net of controls for crime seriousness, the offender’s prior record, and other legally relevant factors. Offenders convicted of crimes against females were more than two and a half times more likely to be sentenced to death than offenders convicted of crimes against males (Williams et al. 2007:877). Further analysis revealed an interaction between the gender of the victim and the race of the victim. Although offenders who killed black males faced lower odds of a death sentence than did offenders who killed black females, white males, and white females, the differences were particularly pronounced for those who killed white females. Offenders convicted of murdering white females were more than 14 times more likely to be sentenced to death than were offenders convicted of murdering black males (Williams et al. 2007:878, table 2).

Similar results were found in Holcomb, Williams, and Demuth’s (2004) study of Ohio death penalty decisions. As shown in Exhibit 4.8, cases with white female victims made up 15.3 percent of all homicides but 35.5 percent of the cases that resulted in a death sentence; conversely, cases with black male victims made up 42.9 percent of all homicides but only 18.8 percent of all death sentences. These differences did not disappear when the authors tested a multivariate model that controlled for the race and age of the offender, the age of the victim, the number of victims, whether a gun was used in the commission of the crime, whether the victim and offender were strangers, and whether the offense involved the commission of another felony. In fact, compared with cases involving white female victims, the odds of receiving a death sentence were 78 percent lower in cases involving a black male victim, 68 percent lower in cases with a white male victim, and 66 percent lower in cases with a black female victim (Holcomb et al. 2004:892–893). These findings led the authors to conclude that “a central factor in understanding existing racial disparity in death sentences may be the severity with which those who kill white females are treated relative to other gender–race victim combinations” (p. 898).

The study conducted in Georgia provides some clues about the reasons why offenders who kill females, especially white females, are more likely than those who kill males, especially black males, to be sentenced to death. Williams, Demuth, and Holcomb (2007:881) found that the “victim gender



SOURCE: Adapted from Holcomb, Williams, and Demuth (2004, table 2).

effect” was significantly reduced by the inclusion of three victimization factors in their models: The crime involved rape, the victim was without clothes when killed, and the victim was forced to disrobe. Of particular importance was forcing the victim to disrobe, which the authors of the study interpreted to mean that “prosecutors and jurors may view the sexual degradation or humiliation of the victim, and not just forced sex, as particularly heinous and deserving of the death penalty” (2007:882). The authors also found that the gender of the victim affected the jury’s decision to impose the death penalty but did not affect the prosecutor’s decision to seek the death penalty after a murder conviction. As the authors note, “It may well be that the sexually degrading nature of some female victimizations evokes strong sympathy from jury members” (2007:886).

## DISPARITY AND DISCRIMINATION IN SENTENCING: A SUMMARY

Critics of the sentencing process claim that unrestrained judicial discretion leads to disparity and discrimination in sentencing. There are important differences between disparity and discrimination, and both disparity and discrimination can take different forms. Sentencing disparities reflect differences in the sentences imposed on similarly situated offenders by judges in different jurisdictions, by judges in the same jurisdiction, or by individual judges. Sentencing discrimination results from bias or prejudice against racial minorities and the poor or in favor of women. Discrimination in sentencing can be either direct or subtle and can range from systematic to institutional to contextual to individual.

There is compelling evidence of gender disparity in sentencing. Women are substantially less likely than men to be sentenced to prison, women who are incarcerated receive significantly shorter prison terms than men, and women make up less than 2 percent of the death row population. There is also evidence that these differences, which do not disappear when crime seriousness, prior criminal record, and other legally relevant factors are taken into consideration, reflect discrimination in favor of women. The fact that studies of sentencing in federal and state courts found a consistent pattern of preferential treatment of female offenders—coupled with the fact that the gender differences uncovered were large—suggests that contemporary judges evaluate female offenders differently than male offenders. There also is evidence that jurors evaluate cases involving female victims, especially white female victims, differently from cases involving male victims: They are more likely to sentence those who kill females to death. Although some judges and researchers claim there are legitimate reasons for treating women differently from men and for treating those who victimize females differently from those who victimize males, these results suggest that gender discrimination in sentencing is not a thing of the past.

## DISCUSSION QUESTIONS

1. A researcher collects data on sentences imposed on offenders convicted of felonies in “Midwest City.” She discovers that 40 percent of the female offenders and 65 percent of the male offenders were



sentenced to prison. What evidence would she need to conclude that this difference was a disparity but did not reflect discrimination? What evidence would suggest that judges were discriminating in favor of women?

2. The researcher conducts further analysis and discovers that women convicted of property crimes are sentenced more leniently than men, and women convicted of violent crimes and drug offenses are sentenced no differently than men. Where would this type of discrimination fall on the discrimination continuum?
3. What is the difference between interjurisdictional sentencing disparity and intrajurisdictional sentencing disparity? Why is the latter more problematic than the former?
4. Should judges take the cultural and biological differences between men and women into consideration at sentencing? Why or why not?
5. Daly suggests that familial defendants are treated more leniently than nonfamilial defendants. Why? Do Stacey and Spohn's findings regarding the sentences imposed on female and male drug offenders in federal courts support this claim?
6. A reporter for the local newspaper is writing a story on gender differences in sentencing. He asks you to summarize the findings of research on this topic. What will you tell him?
7. What do you think is the most convincing explanation for the "female victim effect" in death penalty studies?

## NOTES

1. The Pennsylvania Sentencing Guidelines are less restrictive than the federal guidelines or than guidelines implemented in states such as Washington and Minnesota. For each combination of crime seriousness and prior criminal record, there is a standard sentence range, an aggravated sentence range, and a mitigated sentence range. Judges are allowed to depart from the guidelines but must provide a written justification for the departure. See Tonry (1996:36–37) and Ulmer (1997:18–19).

2. On the other hand, Anderson and Spohn (2005) examined the sentences imposed by judges in three U.S. district courts; they found that there were no significant

between-judge differences in sentence length once relevant offender and case characteristics were taken into account.

3. In 1995, 14.5 percent of the urban residents believed that crime was a neighborhood problem, compared with 4.9 percent of suburban residents and 2.2 percent of rural residents (U.S. Department of Justice, Bureau of Justice Statistics 1999f, table 2.3).

4. In 2002, the proportions who supported the legalization of marijuana were 45 percent (West), 38 percent (Midwest), 29 percent (Northeast), and 27 percent (South) (U.S. Department of Justice, Bureau of Justice Statistics 2004b, table 2.68).

5. The coefficients for gender were  $B = .977$ ,  $SE = .184$ , and odds ratio = 2.66.

6. These comments were made by judges who were interviewed by Spohn and DeLone (2000) for their study of sentencing decisions in three large urban jurisdictions.