

Gender and Sentencing: A Meta-Analysis of Contemporary Research

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ABSTRACT

Daly and Bordt's review of sentencing studies published between 1960 and 1990 found that women were generally at an "advantage" over male defendants in sentencing decisions.¹ Given twenty-one years of additional gender/sentencing inquiry, and extensive revisions to criminal justice policy and practice since the publication of the meta-analysis, those findings no longer inform current discussions of gender and justice. This inquiry seeks to bridge this gap, beginning first with a brief review of the conflicting theoretical arguments concerning the relationship between gender and sentencing decisions, followed by a comprehensive synthesis of gender and sentencing studies published since 1991. The evaluation incorporates meta-analytic techniques to answer two fundamental research questions. First, does contemporary gender and sentencing research support the hypothesis that sentencing outcomes for women are comparable to those of men? Second, what, if any, impact does research design, methodology or data selection have on the study results. Overall, the results suggest that women receive less severe sentences than men across a variety of methodological conditions. However, the most recent research points to greater balance in sentencing outcomes for men and women.

Keywords: Gender, Women, Sentencing, Justice, Chivalry theory, Focal Concerns, Guidelines

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

I. INTRODUCTION

There are currently over one million women under the supervision of the United States criminal justice system.² This includes more than 100,000 women incarcerated in local jails and federal and state prisons.³ These statistics are not entirely surprising given that since 1985, women have been entering prison at twice the rate of males and now represent the fastest-growing segment of the United States prison population.⁴ Scholars credit amplified law enforcement efforts, changes to state and federal sentencing guidelines, and “equality with a vengeance” for the dramatic growth in the female prison population.⁵ Statistics reveal that the number of female arrests has risen 34% from the early 1980s through 2000.⁶ However, the 34% increase in arrests provides only a partial explanation for the 400% jump in female imprisonment.⁷

Changes in state and federal sentencing policies are, by far, the most commonly cited cause of the expansion in the female prison population.⁸ Researchers point specifically to the “war on drugs” and associated sentencing policies as being primarily responsible for new trends in female sentencing practices.⁹ As a result of these policies and practices, women stand a higher chance of serving time for drug offenses than men.¹⁰

Shifts from indeterminate to determinate sentencing structures at both the state and federal levels could have also had a potentially negative impact on female offenders. In the push to eliminate judicial discretion and create a one-size-fits-all sentencing scheme, policymakers chose “equal” sentencing

2. THE SENTENCING PROJECT, WOMEN IN THE CRIMINAL JUSTICE SYSTEM 2 (2007) [hereinafter WOMEN IN THE CRIMINAL JUSTICE SYSTEM], available at http://www.sentencingproject.org/doc/publications/womenincj_total.pdf.

3. Paige M. Harrison & Allen J. Beck, *Prisoners in 2005*, in BUREAU JUST. STAT. BULL. 4 (U.S. Dep’t of Justice, NCJ 215092, 2006), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p05.pdf>.

4. WOMEN IN THE CRIMINAL JUSTICE SYSTEM, *supra* note 2.

5. Meda Chesney-Lind, *Patriarchy, Prisons and Jails: A Critical Look at Trends in Women’s Incarceration*, 51 PRISON J. 51, 52 (1991).

6. Rhonda R. Dobbs, *Gender and Sentencing: An Examination of Florida’s Determinate Sentencing Policies* (Sept. 2, 2004) (Ph.D. dissertation, Florida State University), available at <http://etd.lib.fsu.edu/theses/available/etd-11072004-125224/unrestricted/Dissertationfinal.pdf>.

7. *Id.*

8. See, e.g., MEDA CHESNEY-LIND, *THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME* 149 (1997).

9. *Id.* at 47.

10. WOMEN IN THE CRIMINAL JUSTICE SYSTEM, *supra* note 2.

over “special treatment” of female offenders.¹¹ This choice effectively ended judicial consideration for mitigating circumstances such as family obligations, and has translated into longer prison terms for women.¹² As documented by Daly and Tonry, determinate sentencing guidelines are based on “past average sentences for men or on an average for men’s and women’s sentences.”¹³ The development of sentencing grids based on male or male/female averages “equalizes” justice by increasing female prison terms to the equivalent of their male counterparts.¹⁴ Researchers are now beginning to explore the impact of these policy changes on women in the criminal justice system.

During the past twenty years, there has been an indisputable rise in the number of women serving prison sentences.¹⁵ The expanding female prison population is often linked to contemporary shifts in federal and state sentencing policies.¹⁶ However, empirical investigations of the relationships among these phenomena have produced inconsistent findings. Three of the most recent studies on gender and sentencing report that judicial decision-making favors female over male offenders.¹⁷ Other scholars report no substantive differences in sentencing outcomes between women and men, after controlling for legal and demographic characteristics.¹⁸

Inconsistent scientific findings produced by gender/sentencing research are not entirely unexpected given the considerable differences in data, methodology, and statistical analyses found among sentencing studies. Daly and Bordt’s study, *Sex Effects and Sentencing: A Review of the Statistical Literature*, is the most recent attempt to control for methodological

11. Kathleen Daly & Michael Tonry, *Gender, Race, and Sentencing*, 22 CRIME & JUST. 201, 206 (1997).

12. *Id.* at 241.

13. *Id.* at 205.

14. *Id.* at 205–06.

15. CHESNEY-LIND, *supra* note 8, at 146.

16. *See id.* at 149.

17. S. Fernando Rodriguez et al., *Gender Differences in Criminal Sentencing: Do Effects Vary Across Violent, Property, and Drug Offenses?*, 87 SOC. SCI. Q. 318, 318 (2006); Darrell Steffensmeier & Stephen Demuth, *Does Gender Modify the Effects of Race-Ethnicity on Criminal Sanctioning? Sentences for Male and Female White, Black, and Hispanic Defendants*, 22 J. QUANTITATIVE CRIMINOLOGY 241, 241 (2006); Jeffery T. Ulmer & Mindy S. Bradley, *Variation in Trial Penalties Among Serious Violent Offenses*, 44 CRIMINOLOGY 631, 652 (2006).

18. Ronald Helms & David Jacobs, *The Political Context of Sentencing: An Analysis of Community and Individual Determinants*, 81 SOC. FORCES 577, 596 (2002); Barbara A. Koons-Witt, *The Effect of Gender on the Decision to Incarcerate Before and After the Introduction of Sentencing Guidelines*, 40 CRIMINOLOGY 297, 297 (2002).

variations and synthesize this body of work.¹⁹ Their review of over forty sentencing studies published between 1960 and 1990 found that women were generally at an “advantage” over male defendants in sentencing decisions.²⁰

Since the early 1990s, sentencing practice has undergone a major transformation with the implementation of sentencing guidelines, mandatory sentencing, and “get tough” policies.²¹ Sentencing research is also evolving to include the examination of the indirect and interactive effects of explanatory variables in analytic models and multilevel interactions between place, judicial culture, and individual characteristics.²² Daly and Bordt’s study is still relevant to understanding how gender impacts sentencing, but with the changes in sentencing policy and research, there is a wealth of new scholarship on this this topic that should inform this discussion.²³

This Article seeks to bridge this gap, beginning first with a brief review of the conflicting theoretical arguments concerning the relationship between gender and sentencing decisions. The theoretical overview is followed by a comprehensive evaluation of gender and sentencing studies published since 1991. The evaluation will incorporate meta-analytic techniques to answer two fundamental research questions. First, does contemporary gender and sentencing research support the hypothesis that sentencing outcomes for women are comparable to those of men? And, second, what, if any, impact does research design, methodology, or data selection have on the study results?

II. THEORETICAL PERSPECTIVES ON GENDER AND SENTENCING

Theoretical discussions of gender and sentencing can be divided into two categories: those expecting greater leniency for women and those suggesting more severe treatment of female offenders. Chivalry and Focal Concerns perspectives argue that a variety of practical and extralegal factors weigh upon criminal justice decision-making, creating greater leniency for

19. Daly & Bordt, *supra* note 1.

20. *Id.*

21. Cassia C. Spohn, *Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process*, in NAT’L INST. OF JUSTICE, POLICIES, PROCESSES, AND DECISIONS OF THE CRIMINAL JUSTICE SYSTEM, CRIMINAL JUSTICE 2000, at 427, 430 (vol. 3, 2000), available at https://www.ncjrs.gov/criminal_justice2000/vol_3/03front.pdf.

22. Richard D. Hartley, *Sentencing Reforms and the War on Drugs: An Analysis of Sentence Outcomes for Narcotics Offenders Adjudicated in U.S. District Courts on the Southwest Border*, 24 J. CONTEMP. CRIM. JUST. 437 (2008); Brian D. Johnson, Jeffery T. Ulmer & John H. Kramer, *The Social Context of Guidelines Circumvention: The Case of Federal District Courts*, 46 CRIMINOLOGY 737, 737–38 (2008).

23. Daly & Bordt, *supra* note 1.

female than male offenders.²⁴ In contrast, Evil Women and Evil Women hybrid theories hold that women are singled out by the criminal justice system and incur stiffer sentences than men.²⁵

Advocates of Paternalistic or Chivalry theories of gender and sentencing often cite a simple perception of women as less threatening, dangerous, and culpable than men as the primary reasons why women are treated with greater leniency by the courts.²⁶ In addition, they argue that male judges often view female offenders as inappropriate for imprisonment because they are weaker than men.²⁷ These perceptions and feelings are often coupled with a paternalistic desire to protect and aid women in times of need.²⁸ These sentiments, however, are not extended to all female offenders, just those female offenders that fit the mold of a specific construction of femininity.²⁹

Spohn and Beichner offer an attributional theory regarding how female offenders are treated by judicial decision-makers that complements the Chivalry perspective.³⁰ Using qualitative data from judicial interviews, Spohn and Beichner's analysis of judicial decision-making exposes a view of women as "less culpable, less likely to recidivate, and more amenable to rehabilitation."³¹ These attributions influence sentencing and incarceration in a way that favors women over men, resulting in shorter sentences and lower

24. SUSAN S. M. EDWARDS, *WOMEN ON TRIAL: A STUDY OF THE FEMALE SUSPECT, DEFENDANT, AND OFFENDER IN THE CRIMINAL LAW AND CRIMINAL JUSTICE SYSTEM* 183-85 (1984); Debra A. Curran, *Judicial Discretion and Defendant's Sex*, 21 *CRIMINOLOGY* 41, 42 (1983).

25. See CAROL F. KARLSEN, *THE DEVIL IN THE SHAPE OF A WOMAN* (1998); Meda Chesney-Lind, *Sentencing Women to Prison: Equality Without Justice*, in *RACE, GENDER, AND CLASS IN CRIMINOLOGY: THE INTERSECTION* 127-40 (Martin D. Schwartz & Dragan Milovanovic eds., 1996); B. Keith Crew, *Race Differences in Felony Charging and Sentencing: Toward an Integration of Decision-Making and Negotiation Models*, 14 *J. CRIME & JUST.* 99 (1991); Rodriguez et al., *supra* note 17. Cf. Cassia C. Spohn & Jeffrey W. Spears, *Gender and Case Processing Decisions: A Comparison of Case Outcomes for Male and Female Defendants Charged with Violent Felonies*, 8 *WOMEN & CRIM. JUST.* 29 (1997).

26. See EDWARDS, *supra* note 24, at 185; Darrell Steffensmeier & John H. Kramer, *Sex-Based Differences in the Sentencing of Adult Criminal Defendants: An Empirical Test and Theoretical Overview*, 66 *SOC. & SOC. RES.* 289, 298-300 (1982).

27. Ilene H. Nagel & John Hagan, *Gender and Crime: Offense Patterns and Criminal Court Sanctions*, in 4 *CRIME AND JUSTICE* 91, 113, 145 (Michael Tonry & Norval Morris eds., 1983).

28. EDWARDS, *supra* note 24, at 184.

29. Christy A. Visher, *Gender, Police Arrest Decisions, and Notions of Chivalry*, 21 *CRIMINOLOGY* 5, 22-23 (1983).

30. See Cassia Spohn & Dawn Beichner, *Is Preferential Treatment of Female Offenders a Thing of the Past? A Multisite Study of Gender, Race, and Imprisonment*, 11 *CRIM. JUST. POL'Y REV.* 149, 150 (2000).

31. *Id.* at 175.

odds of incarceration.³² The authors also reveal that judges often cite childcare responsibilities as a primary cause of sentencing differentials between men and women.³³ Further, many of the judicial interviewees claimed that the social cost of putting mothers behind bars is too great to justify incarcerating women.³⁴

In addition to these extralegal influences on judicial decision-making, there are also more practical gender-related constraints that impact sentencing outcomes for female offenders. The Focal Concerns theory presented by Steffensmeier, Ulmer, and Kramer argues that judges make sentencing decisions based, in part, on the practical constraints of their verdicts.³⁵ Practical constraints include the social cost that incarceration and/or sentence length would have on society as a whole.³⁶ Consideration of these constraints generally privileges women in sentencing decisions. Because women are frequently primary caregivers, incarcerating them leaves children and family members without adequate support and supervision, and these practical consequences factor into judicial decision-making.³⁷ Interview data reported by Steffensmeier and colleagues, like the data reported by Spohn and Beichner,³⁸ suggests that judges were often reluctant to send mothers to prison because the perceived social cost of such incarceration was too great.³⁹ Freiburger's survey of Pennsylvania judges further supports these views, reporting that offenders in caretaker roles were less likely to receive a prison sentence.⁴⁰ These findings were consistent with those of Spohn and Beichner, and suggest that judicial decision-making affecting female defendants is driven in part by commonly-held views about female culpability and the practical implications of incarcerating female defendants.⁴¹

32. *Id.* at 164.

33. *Id.* at 163.

34. *See id.* at 175.

35. Darrell Steffensmeier et al., *The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male*, 36 *CRIMINOLOGY* 763, 788 (1998).

36. *See id.* at 767 (defining practical constraints as items such as prison overcrowding, effects to ties to children and families, and the impact of recidivism).

37. Gayle S. Bickle & Ruth D. Peterson, *The Impact of Gender-Based Family Roles on Criminal Sentencing*, 38 *SOC. PROBS.* 372, 390 (1991).

38. Spohn & Beichner, *supra* note 30, at 175.

39. Steffensmeier et al., *supra* note 35, at 787.

40. Tina L. Freiburger, *The Effects of Gender, Family Status, and Race on Sentencing Decisions*, 28 *BEHAV. SCI. & L.* 378, 378 (2010).

41. *See id.*; Spohn & Beichner, *supra* note 30.

In contrast, the Evil Women theory holds that female offenders are likely to be punished more severely than men because of their violation of gender norms and values.⁴² This argument resembles the work of Carol F. Karlsen, who argued that women who deviated from “normal” gender roles in Puritan society were more susceptible to accusations of witchcraft.⁴³ Collectively, Evil Women theories suggest that female offenders will be treated more harshly than males in sentencing decisions because they have committed a double offense: breaking the law and violating gender roles in society.⁴⁴

Offering a hybrid of the Evil Women and Chivalry hypotheses, Nagel and Hagan suggest that women who commit the most serious “personal” offenses are punished just as harshly as men, while all others are treated with greater leniency.⁴⁵ In addition, they argue that females whose offense pattern most dramatically departs from gender norms—e.g., those prosecuted for armed bank robbery, auto theft, etc.—will fare worse than their more traditional female counterparts—e.g., those prosecuted for shoplifting or embezzlement.⁴⁶ These discussions imply that situational factors, such as the type of crime, ultimately condition or contextualize the effect of gender on sentencing decisions. These contributions also suggest that women who deviate from cultural norms by committing crimes that are not “typical” female offenses are somehow more threatening and are potentially subject to increased risk of incarceration or longer prison terms.

The discussion of the Evil Women and Chivalry theories highlights the fact that there are two conflicting hypotheses on the relationship between gender and sentencing. Karlsen and the Evil Women theorists suggest that women who have not, will not, or cannot fulfill traditional gender roles are more likely to face incarceration than those who meet certain cultural expectations of femininity.⁴⁷ Chivalry and Focal Concerns theorists, in contrast, suggest that judicial actors often view women as less culpable, blameworthy, and threatening, and feel constrained in sentencing decisions by the practical implications of incarcerating women with children and families.⁴⁸ Both traditions offer important and relevant insights into the

42. Spohn & Spears, *supra* note 25, at 32.

43. KARLSEN, *supra* note 25, at xiv.

44. See KARLSEN, *supra* note 25; Chesney-Lind, *supra* note 25; Crew, *supra* note 25; Rodriguez et al., *supra* note 17; Spohn & Spears, *supra* note 25, at 32.

45. Nagel & Hagan, *supra* note 27.

46. *Id.* at 116.

47. See KARLSEN, *supra* note 25; Chesney-Lind, *supra* note 25; Crew, *supra* note 25; Rodriguez et al., *supra* note 17; Spohn & Spears, *supra* note 25, at 32.

48. Spohn & Beichner, *supra* note 30, at 163–64.

gender and sentencing dynamic. The goal of this study is to assess the level of empirical support for the Chivalry and Focal Concerns perspectives. Specifically, this investigation will examine: (1) whether sentencing outcomes are related to gender; and (2) the impact of methodological characteristics on study findings.

III. DATA AND METHODOLOGY

The relationship between gender and sentence severity is the focus of this assessment. The study employed various techniques to locate research for inclusion in the review. These methods include electronic database searchers, bibliography review, and citation searchers.

The Authors relied on electronic databases as the primary search techniques to locate gender and sentencing research. The Authors searched Article First, WorldCat, JSTOR, the National Criminal Justice Reference System, LexisNexis, Dissertation Abstracts, Dissertations at Florida State University, and the Web of Science using specific terms. The Authors located government publications through the Justice Information Center of the National Criminal Justice Reference Service and the National Institute of Justice online publication list.

Database searches included a variety of search terms. Gender and sex were used to identify gender research. These terms were paired with one of the following sentencing research indicators: punishment, guidelines, sentencing, prison, imprisonment, incarceration, departure, disparity, and discretion. Gender and sentencing article indicators were paired and entered into each database search field. Search combinations were entered into the abstract, key word, title, and paper fields.

Online databases were not the only technique used to identify studies testing the Chivalry hypothesis. The Authors also completed citation reference and bibliography searches of relevant authors and studies to identify additional research on gender and sentencing. Finally, the Authors conducted a manual review of the most recent issues of *Criminology*, *Crime and Delinquency*, *American Journal of Sociology*, *Journal of Criminal Justice*, *Journal of Quantitative Criminology*, *Journal of Research in Crime and Delinquency*, *Law and Society Review*, *Social Forces*, *Social Problems*, *Social Science Quarterly*, and *Sociological Quarterly* to ensure all research in this area was located for the meta-analysis.

A. Study Selection Criteria

Studies were considered for inclusion in the evaluation if they met the following criteria. First, only studies focused on adult populations were included in the analysis, because juvenile and adult sentencing decisions occur within different theoretical, practical, and ideological frameworks. Second, only rigorous empirical evaluations of gender and sentencing from

scholarly sources—peer-reviewed journals, government publications, and books—were selected for the assessment. Research that employed experimental or quasi-experimental designs was included in the analysis; studies from non-scholarly sources and/or those that only presented descriptive analysis or bivariate relationships were not appropriate for the meta-analysis. The inclusion of a direct comparison of male and female sentencing outcomes was a third selection criterion. Studies were only included if they incorporated a model that contained a coefficient for gender. While the combined effect of gender and other legal and extralegal factors is important, studies presenting only interaction terms of gender and other factors were excluded from the analysis.⁴⁹ Finally, aiming to continue the work of Daly and Bordt, the assessment only includes work published after 1990.

B. Criteria for Counting Estimates and Methods

All of the articles included in the meta-analysis presented an empirical evaluation of the relationship between gender and sentencing.⁵⁰ The present analysis used unique estimates of individual gender and sentencing outcomes as the unit of analysis. This approach ensured that the meta-analysis results were not biased by one or two studies with an overlapping and similar result. Some of these studies contained multiple estimates—either Multivariate Regression or Hierarchical Linear Modeling coefficients—of the gender/sentencing relationship, and the Authors developed criteria to identify and count unique findings in such cases. Findings were considered unique if the measure of gender and/or sentencing were conceptually distinct. For instance, Nobiling, Spohn, and DeLone incorporated two sentencing measures in their analysis: incarceration decisions and sentence length.⁵¹ The coefficients for both of the dependent variables were included as distinctive estimates of the gender and sentencing relationship. Subsample results were also considered unique indicators of the gender/sentencing connection. For example, Gorton and Boies assessed the change in sentence length by gender for three distinct time periods, and the analysis included each estimate.⁵²

49. See Celesta A. Albonetti, *The Joint Conditioning Effect of Defendant's Gender and Ethnicity on Length of Imprisonment Under the Federal Sentencing Guidelines for Drug Trafficking/Manufacturing Offenders*, 6 J. GENDER RACE & JUST. 39, 47 (2002).

50. See *infra* Appendix A for a full list of articles considered for the analysis.

51. Tracy Nobiling et al., *A Tale of Two Counties: Unemployment and Sentence Severity*, 15 JUST. Q. 459, 466 (1998).

52. Joe Gorton & John L. Boies, *Sentencing Guidelines and Racial Disparity Across Time: Pennsylvania Prison Sentences in 1977, 1983, 1992, and 1993*, 80 SOC. SCI. Q. 37, 41 (1999).

In cases where there were multiple estimates in a single study that did not include subsample analysis, and the measures of the independent and dependent variables were not conceptually distinct, the gender and sentencing estimate from the model with the most control variables was included in the analysis. If there were an equal number of control variables, indicators from models with the largest coefficient of determination were chosen for inclusion in the meta-analysis.

The assessment incorporated the analytic techniques of descriptive statistics and chi-square analysis. The descriptive statistics demonstrated the baselines, such as the total sample (and percentage) of gender estimates. Chi-square analysis compares expected figures with observed figures. As the studies included in this analysis vary on many methodological and substantive issues, some would recommend conducting a true meta-analysis. This approach would involve comparing effect sizes among the sentencing studies which unfortunately is not an option in this research. The primary problem with conducting a full meta-analysis for this particular Article lies with the fact that most studies of sentencing outcomes employ methods that do not produce effect sizes, and there is no technique for converting regression coefficients into effect sizes. Lipsey and Wilson note that while some findings can be appropriately converted into effect sizes as needed in a meta-analysis, "the major exceptions are findings generated by multivariate analysis."⁵³ All of the studies included in this assessment utilized some form of multivariate regression, making it impossible to complete this element of a full meta-analysis. Despite this limitation, it is possible to summarize research findings across various attributes and use statistical tests to determine if the observed differences are significant. This assessment represents an important step in understanding the contemporary relationship between gender and punishment.

C. Variables in the Analysis

Each study was assessed for information in support of the Chivalry/Focal Concerns perspective, timeframe, control variables, and sentencing measures. Each unique estimate of the gender and sentencing relationship was coded "1" if the result was a significant finding in support of the Chivalry/Focal Concerns perspective. Following Daly and Bordt's suggestion, the study also identified three covariants—prior record, offense type, and offense severity—that should be included in gender and sentencing research.⁵⁴ The meta-analysis also captured the original timeframe of the study data and grouped them into pre-1970s estimates and findings from

53. MARK W. LIPSEY & DAVID WILSON, PRACTICAL META-ANALYSIS 16 (2001).

54. Daly & Bordt, *supra* note 1, at 151.

1970–1979, 1980–1989, 1990–1999, and 2000–2006. Finally, the review identified the sentencing measure of each study. Sentencing outcomes are grouped into four categories: the decision to incarcerate (generally known as the in/out decision), incarceration term (or sentence length), ordinal representations of sentence severity, and sentencing departures.

The Authors identified a total of fifty-eight studies of gender and sentencing, yielding 143 unique estimates of gender and sentencing outcomes. Each of these articles was published in a peer-reviewed journal or other scholarly resource between 1991 and 2011, and represents data collected between the early 1900s and 2006.⁵⁵ Table 1 provides descriptive statistics for articles that met the selection criteria and were included in the analysis.

Table 1
Summary of Gender and Sentencing Studies

Study Characteristics	# of Studies
<i>Number of Studies Included in the Meta-Analysis</i>	58
<i>Publication Year</i>	
1991–1999	19
2000–2006	39
<i>Total Number of Unique Estimates</i>	143
<i>Data Time Period (1908–2010)</i>	
Prior to 1970	3
1970–1979	8
1980–1989	43
1990–1999	70
2000–2010	19

IV. RESULTS

Meta-analysis strives to assess an entire body of literature for overall conclusions and determine if study design, data, or methods impact findings. Table 2 reports a summary of the gender and sentencing research findings.

55. See *infra* Appendix A.

This Part compares these results across three important methodological characteristics: the presence of adequate controls, the time period represented by the data, and variations in the outcome measure.

Table 2
Gender and Sentencing Estimates

	Total # of Estimates	Supportive of the Chivalry Hypothesis
<i>Gender and Sentencing Estimates</i>	143	65%
<i>Control for Prior, Severity & Type*</i>		
Control for 0	6	100%
Control for 1	19	32%
Control for 2	36	83%
Control for all 3	82	62%
<i>Time Period Represented by Data**</i>		
Prior to 1970	3	100%
1970–1979	8	50%
1980–1989	43	51%
1990–1999	70	77%
2000–2006	19	53%
<i>Measure of the Dependent Variable*</i>		
Incarceration	48	75%
Sentence Length	56	66%
Sentence Severity	17	12%
Sentencing Departure	22	81%

* Chi Square statistic is significant at .001.

** Chi Square statistic is significant at .05.

The results in Table 2 document the total number of estimates⁵⁶ and the percentage of estimates supportive of the Chivalry hypothesis. The meta-analysis reveals that 65% of the cases under review substantiate Chivalry/Focal Concerns perspectives of the gender and sentencing relationship. Further contextual analyses examine study results across three methodological contexts: the presence or absence of appropriate controls, the time period represented by the data, and sentencing outcome measures.

Researchers acknowledge the importance of accounting for offense history in studies of sentencing outcomes with most studies, at a minimum, controlling for prior record.⁵⁷ Other investigations include measures of offense severity and type of offense when modeling the relationship between gender and punishment.⁵⁸ The underlying logic is that individual characteristics such as gender or race interact with crime seriousness, prior offense history, and specific crime types in ways that either increase or decrease the probability of incarceration. As a result, if the influence of these factors is not taken into account, it is impossible to accurately estimate the impact of gender on sentencing outcomes.⁵⁹

According to the results in Table 2, the inclusion of important control variables significantly impacts the level of support for the Chivalry theory. The level of support for the Chivalry hypothesis is highest, at 100% support, with studies controlling for *none* of the measures of prior criminal history. Daly and Bordt reported the same outcome and suggested the possibility of spurious, or invalid, research findings among gender/sentencing research without prior offense controls.⁶⁰ Essentially, studies that do not correctly model the relationship between gender and sentencing by controlling for prior record should not be given serious consideration because the method does not accurately capture the real impact of gender on sentencing outcomes. Setting aside the level of support shown from non-control variable studies for these reasons, studies that held the influence of two out of the three prior record measures—prior offenses, crime type, and/or crime seriousness—produced estimates consistent with the Chivalry perspective in 83% and 62% of the cases, respectively.

During the past thirty years, sentencing policy and practice has undergone tremendous transformation, shifting from indeterminate to

56. The total number of estimates is 143. The Authors include each unique estimate of the relationship in this total. For example, if a study has two dependent variables related to sentencing and models the effects of gender on each, that study would provide two estimates in the analysis.

57. Daly & Tonry, *supra* note 11, at 231.

58. See, e.g., Spohn & Spears, *supra* note 25, at 36.

59. Daly & Tonry, *supra* note 11.

60. Daly & Bordt, *supra* note 1, at 153.

determinate sentencing structures.⁶¹ The substantial increase in female incarceration is often linked to the implementation of determinate sentencing structures in state and federal courts.⁶² Daly and Tonry suggest that determinate sentencing equalizes justice by increasing sentencing lengths for women and eliminating consideration for extralegal factors such as child care obligations in judicial decision-making.⁶³ If these assumptions are accurate, then one would expect evidence of sentencing disparities favoring women to diminish after 1980.

Looking at Table 2, data from before 1970 are consistently in favor of the Chivalry hypothesis. However, the level of support drops to 50% for estimates produced from data collected between 1970 and 1979. These findings are based on a cumulative total of eleven cases and thus should be interpreted with caution. Estimates of the gender/sentencing relationship derived from data collected during the 1980s yield mixed support for the Chivalry theory, with 51% supportive findings. Data generated between 1990 and 1999 tend to corroborate the Chivalry perspective. Of these findings, 77% supported the assumption that women receive shorter sentences and/or are less likely to face incarceration when compared to male offenders. Substantiating estimates for the Chivalry hypothesis decline to 53% for data from 2000 to 2006.

Contrary to Daly and Tonry's expectation, the Authors' research demonstrates that the sentencing advantage afforded to women has not steadily decreased over time. In fact, the strongest evidence of significant male/female criminal justice differentials comes from data produced after the enactment of sweeping sentencing reforms at the state and federal level, between 1990 and 1999. This is the case even though support for the Chivalry theory has declined during the last decade.

The effect of gender on sentencing also varies by the four different sentencing measures: the in/out decision, sentence length, sentence severity, and sentencing departures. The results in Table 2 demonstrate substantial support for the Chivalry hypothesis for both the decision to incarcerate and sentence length—75% and 66% respectively. Of the sentence severity estimates, only 12% substantiate the Chivalry view of gender and punishment. Departures—deviations from sentencing guidelines—have become a recent focus of gender and sentencing research. 82% of estimates from this line of inquiry support the Chivalry perspective.

The results, further broken down by time period and outcome measure,

61. MICHAEL TONRY, SENTENCING MATTERS 4 (1996).

62. Daly & Tonry, *supra* note 11, at 241.

63. *See id.* at 206.

are presented in Table 3.⁶⁴ It should be noted that this analysis groups the estimates according to time period and outcome type, creating very small subsamples, and as such these results should be regarded with caution. For the most part, the results remain fairly supportive of the Chivalry perspective from 1980 through 2006. However, there is some variation across time period and sentencing outcome. For example, support for the Chivalry hypothesis appears to have decreased since 1999 across all sentencing outcomes. In contrast, data drawn from the 1980s assessing the impact of gender on sentence length yields findings favorable to the Chivalry viewpoint in 83% of the cases. During later time periods, the percentage of supportive estimates falls to 40% for studies incorporating data from 2000 through 2006.

Table 3
Gender and Sentencing Estimates, by Data Collection Time Period and Outcome Measure

	In/Out Decision	Sentence Length	Sentence Severity	Sentencing Departures
1970-1979	33%	75%	0%	n/a
1980-1989	64%	83%	0%	100%
1990-1999	88%	59%	100%	100%
2000-2006	50%	40%	n/a	60%

V. SUMMARY AND DISCUSSION

The rise in female incarceration is a troubling social fact that has received growing consideration from academics and criminal justice practitioners. Criminologists studying this phenomenon credit the adoption of determinate sentencing structures and a corresponding "equalization" of justice as the primary cause of higher female incarceration rates.⁶⁵ Early research on guideline systems supported this position, indicating that sentencing disparities between men and women were disappearing and sentence length and severity were increasing for female offenders.⁶⁶ Despite the importance of this issue, there has been no attempt to synthesize empirical research on the link between gender and sentencing in recent

64. Results from 1900-1969 are not presented because of the small sample size for those results.

65. Daly & Tonry, *supra* note 11, at 241.

66. Kay A. Knapp, *Impact of the Minnesota Sentencing Guidelines on Sentencing Practices*, 5 *HAMLIN L. REV.* 237, 243 (1982).

years.⁶⁷

Theoretically, there are competing expectations about how women will be treated by the criminal justice system. Evil Women theories expect that certain female offenders will face harsher or at least comparable punishment as male offenders,⁶⁸ while Chivalry or Focal Concerns theories predict that the criminal justice system is easier on females.⁶⁹ However, both of these perspectives assume that the offender's gender will significantly impact sentencing decisions, just in different ways. This debate has been renewed since the implementation of determinate sentencing policies, with some suggesting that Chivalry/Focal Concerns considerations would not factor into sentencing decisions as they once had.⁷⁰ This meta-analysis sought to answer two critical questions: (1) are sentencing decisions impacted by offender gender as suggested by both Chivalry and Evil Women hypotheses?; and (2) which methodological characteristics influence this relationship in gender and sentencing research?

As to the first question, of the 143 unique statistical estimates of the gender and sentencing relationship, 65% indicate that female offenders are less likely than their male counterparts to come under the jurisdiction of state and federal penal systems.⁷¹ This clearly supports theories related to great leniency for female offenders—Chivalry/ Focal Concerns perspectives. Further, these findings are in line with prior researchers, including Harrington and Spohn, who note: "One of the more consistent findings of sentencing research is that females are treated more leniently than similarly situated male offenders . . ."⁷²

As to the second research question, there is evidence that methodological issues such as presence of appropriate controls, time frame of the study, and punishment outcome impact the level of support for Chivalry theories of gender and sentencing. Studies without any of the recommended control variables—prior record, offense type, crime seriousness—showed the strongest support for the Chivalry perspective. This is likely reflective of spurious associations and/or general methodological weakness, as opposed to the real effect of gender on sentencing outcomes. In comparison, studies that relied on at least two of the

67. For the most recent attempt to synthesize empirical research, see generally Daly & Bordt, *supra* note 1.

68. Nagel & Hagan, *supra* note 27, at 115.

69. Bickle & Peterson, *supra* note 37, at 233–34.

70. WOMEN IN THE CRIMINAL JUSTICE SYSTEM, *supra* note 2, at 2; Daly & Tonry, *supra* note 11, at 241–43.

71. See *supra* Table 2.

72. Michael P. Harrington & Cassia Spohn, *Defining Sentence Type: Further Evidence Against Use of the Total Incarceration Variable*, 44 J. RES. CRIME & DELINQUENCY 36, 39 (2007).

three empirically established necessary control variables reported support for the Chivalry theory 73% of the time. While limited, inclusion of appropriate control measures does reflect methodological strength, and the findings from these studies clearly demonstrate that women have a sentencing advantage over males charged with similar crimes and with comparable offense histories.

Of the decades with a substantive number of estimates—the 1980s and 1990s, as well as the period from 2000 to 2006—support for the Chivalry perspective was at its lowest during the 1980s, which marked the early years of sentencing reform. During this decade, fewer estimates showed that women were less likely to be incarcerated or imprisoned for shorter periods than during other time periods. Assertions that determinate sentencing guidelines and mandatory minimums would “equalize” justice for male and female offenders find support with the low number of estimates of gender differences in sentencing—51%—during this time frame.⁷³ The 1990s, however, reveal strong support for the Chivalry perspective with more than two-thirds of all estimates reflecting less severe sentencing outcomes for female offenders. It is important to note that these studies showing sentencing disparities favoring women appear during a time when the federal government and all states had some form of determinate sentencing system in place (although each system differed greatly in the type of crime covered, ability to deviate from guidelines, etc.).⁷⁴ This contradicts the results for the previous decade, suggesting that regardless of uniform sentencing policies, women are treated with greater leniency by the courts. Support for the Chivalry perspective, however, shifted again between 2000 and 2006, with only 53% of estimates showing gender bias in sentencing outcomes.⁷⁵ The 2000–2006 figures are based on nineteen unique estimates of gender and sentencing (compared to the 1990s figures, which are based on seventy estimates), but it is still worth noting this dramatic decline in the number of studies finding that women have better sentencing outcomes than men.

The equalization of sentencing outcomes after 1999 may be related to shifts in the likelihood of women being sent to prison and/or receiving a sentencing departure. During the 1990s, 88% of the estimates revealed that women were much less likely than men to be sentenced to prison, and 100% showed that women had significantly higher odds of getting a sentencing departure.⁷⁶ By 2006, the number of studies finding significant differences in

73. Daly & Tonry, *supra* note 11, at 201–03.

74. Kevin R. Reitz, *Sentencing*, in HANDBOOK OF CRIME AND PUNISHMENT 542, 546 (1998).

75. *See supra* Table 2.

76. *See supra* Table 3.

incarceration for male and female offenders dropped to 50%, and the number showing a departure advantage for female offenders declined to 60%.⁷⁷ Finally, sentence length differentials have declined sharply over time according to the analysis. In the 1980s, 83% of the estimates indicated that women received significantly shorter sentences than men, but that figure dropped to 40% between 2000 and 2006.⁷⁸ While these changes are dramatic and may explain the overall decline in the level of support for the Chivalry hypothesis, these results should be interpreted with caution because of the small sample size of these sub-groups. For instance, the 50% figure for incarceration from 2000–2006 is based on four estimates. With sub-groups this small, it is impossible to draw valid conclusions, but the results may hint at a shift towards “equal” justice for male and female offenders.⁷⁹

Determinate sentencing guides were implemented to reduce bias in the criminal justice system.⁸⁰ One would expect the influence of extralegal factors, such as gender, to decline under this system and for research to reflect these changes. The results of this analysis neither fully support nor refute the Chivalry hypothesis, which holds that for a variety of reasons, women have a sentencing advantage over male offenders. Overall, 65% of the estimates indicate that women have better sentencing outcomes than men, supporting the Chivalry hypothesis theory.⁸¹ Empirically-sound studies are more likely to support this hypothesis, as are estimates produced from 1990s data during the peak of determinate sentencing implementation. However, more recent estimates—those based on 2000–2006 data—clearly demonstrate that women no longer enjoy significantly shorter sentences, have lower odds of incarceration, or have better chances at a sentencing departure than their male counterparts. This rather sudden variation in sentencing outcomes may reflect the “justice equalization” predicted by Daly and Tonry and signal that “equal treatment under the law” is becoming more of a practice than an ideal.⁸²

77. See *supra* Table 3.

78. See *supra* Table 3.

79. Daly & Tonry, *supra* note 11, at 242–43.

80. Reitz, *supra* note 74.

81. See *supra* Table 2.

82. See Daly & Tonry, *supra* note 11.

Appendix A**Studies included in the analysis (arranged in alphabetical order)**

1. Celesta A. Albonetti, *An Integration of Theories to Explain Judicial Discretion*, 38 SOC. PROBS. 247, 247–65 (1991).
2. Celesta A. Albonetti, *Sentencing Under the Federal Sentencing Guidelines: Effects of Defendant Characteristics, Guilty Pleas, and Departures on Sentencing Outcomes for Drug Offenses, 1991–1992*, 31 LAW & SOC'Y REV. 789, 789–822 (1997).
3. Celesta A. Albonetti, *Direct and Indirect Effects of Case Complexity, Guilty Pleas, and Offender Characteristics on Sentencing for Offenders Convicted of a White-Collar Offense Prior to Sentencing Guidelines*, 14 J. QUANTITATIVE CRIMINOLOGY 353, 353–78 (1998).
4. Alexander Alvarez & Ronet D. Bachman, *American Indians and Sentencing Disparity: An Arizona Test*, 24 J. CRIM. JUST. 549, 549–61 (1996).
5. Carole Wolff Barnes & Rodney Kingsnorth, *Race, Drug, and Criminal Sentencing: Hidden Effects of the Criminal Law*, 24 J. CRIM. JUST. 39, 39–55 (1996).
6. Brenda Sims Blackwell, David Holleran & Mary A. Finn, *The Impact of the Pennsylvania Sentencing Guidelines on Sex Differences in Sentencing*, 24 J. CONTEMP. CRIM. JUST. 399, 399–418 (2008).
7. Richard Braunstein & Amy Schweinle, *Explaining Race Disparities in South Dakota Sentencing and Incarceration*, 50 S.D. L. REV. 440, 440–74 (2005).
8. Pauline K. Brennan & Cassia Spohn, *Race/Ethnicity and Sentencing Outcomes Among Drug Offenders in North Carolina*, 24 J. CONTEMP. CRIM. JUST. 371, 371–98 (2008).
9. Pauline K. Brennan & Cassia Spohn, *The Joint Effects of Offender Race/Ethnicity and Sex on Sentence Length Decisions in Federal Courts*, 1 RACE & SOC. PROBS. 200, 200–17 (2009).

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14. Rodney L. Engen & Sara Steen, *The Power to Punish: Discretion and Sentencing Reform in the War on Drugs*, 105 *AM. J. SOC.* 1357, 1357–95 (2000).
15. Ronald S. Everett & Roger A. Wojtkiewicz, *Difference, Disparity, and Race/Ethnic Bias in Federal Sentencing*, 18 *J. QUANTITATIVE CRIMINOLOGY* 189, 189–211 (2002).
16. Noelle E. Fearn, *A Multilevel Analysis of Community Effects on Criminal Sentencing*, 22 *JUST. Q.* 452, 452–87 (2005).
17. Jeanne Flavin, *Of Punishment and Parenthood: Family Based Social Control and the Sentencing of Black Drug Offenders*, 15 *GENDER & SOC'Y* 611, 611–33 (2001).
18. Tina L. Freiburger & Carly M. Hilinski, *An Examination of the Interactions of Race and Gender on Sentencing Decisions Using a Trichotomous Dependent Variable*, 59 *CRIME & DELINQ.* 59, 59–86 (2013).
19. Joe Gorton & John L. Boies, *Sentencing Guidelines and Racial Disparity Across Time: Pennsylvania Prison Sentences in 1977, 1983, 1992, and 1993*, 80 *SOC. SCI. Q.* 37, 37–53 (1999).
20. Michael P. Harrington & Cassia Spohn, *Defining Sentence Type: Further Evidence Against Use of the Total Incarceration Variable*, 41 *J. RES. CRIME & DELINQ.* 36, 36–63 (2007).

21. Richard D. Hartley, *Sentencing Reforms and the War on Drugs: An Analysis of Sentence Outcomes for Narcotics Offenders Adjudicated in U.S. District Courts on the Southwest Border*, 24 J. CONTEMP. CRIM. JUST. 437, 437–61 (2008).
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23. Darnell F. Hawkins, *Race, Crime Type and Imprisonment*, 3 JUST. Q. 251, 251–69 (2005).
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33. John Kramer & Darrell Steffensmeier, *Race and Imprisonment Decisions*, 34 SOC. Q. 357, 357–76 (1993).
34. John H. Kramer & Jeffery T. Ulmer, *Sentencing Disparity and Departure From Guidelines*, 13 JUST. Q. 81, 81–106 (1996).
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49. Darrell Steffensmeier & Chester L. Britt, *Judges' Race and Judicial Decision Making: Do Black Judges Sentence Differently?*, 82 SOC. SCI. Q. 749, 749–64 (2001).
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