

Federal Probation

Bulging Prisons, an Aging U.S. Population, and the Nation's
Violent Crime Rate *Darrell Steffensmeier*
Miles D. Harer

Accreditation: Making a Good Process Better *N.C.J.R.S.* *Lynn S. Branham*

Texas Collects Substantial Revenues From Probation Fees *Peter Finn*
Dale Parent

ACQUISITIONS

Factors Influencing Probation Outcome: A Review of the
Literature *Kathryn D. Morgan*

Public Policy, Prison Industries, and Business: An Equitable Balance
for the 1990's *Diane C. Dwyer*
Roger B. McNally

Prosecutorial and Judicial Treatment of Female Narcotic
Offenders *Cecelia Saulters-Tubbs*

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Richard Newel

Looking at the Law—Are Clarifying Amendments to the Sentencing
Guidelines Retroactive? *Toby D. Slawsky*

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This Issue in Brief

Bulging Prisons, an Aging U.S. Population, and the Nation's Violent Crime Rate.—Have rapidly rising rates of imprisonment reduced the Nation's violent crime rate? No—according to authors Darrell Steffensmeier and Miles D. Harer—who analyzed data for the years 1980-92 from the two main sources of national statistics on violent crimes—the Uniform Crime Reports and the National Crime Survey. Their findings indicate not only that violence levels have been increasing in recent years but that changes in the population's age structure have had a major impact on violent crime trends. In light of these findings, the authors urge policymakers to rethink whether spending more and more money on incarcerating more and more offenders will solve the crime problem.

Accreditation: Making a Good Process Better.—The accreditation of correctional facilities and programs has led to substantial improvements in the conditions and practices in such facilities and programs across the country. Yet there are a number of ways in which the accreditation process can be improved. Author Lynn S. Branham, a member of the Commission on Accreditation for Corrections, discusses steps that the Commission can and should take to ensure that accredited facilities meet constitutional requirements, that the information provided by auditors to the Commission is accurate and complete, and that the accreditation decisions of the Commission are reliable.

Texas Collects Substantial Revenues From Probation Fees.—With correctional costs skyrocketing, many government officials and legislators have decided that offenders should help pay for the cost of their own supervision and rehabilitation. A recent approach to this strategy is to require employable probationers to pay for at least some of the costs of their supervision. Authors Peter Finn and Dale Parent describe how many probation field offices in Texas—motivated by legislation that provides strong incentives to collect fees—raise substantial amounts of money from assessing probation fees. The authors note that other states and counties may be able to increase revenues from probation fees considerably by adopting some of the statutory incentives and local practices implemented in Texas.

Factors Influencing Probation Outcome: A Review of the Literature.—Past research has provided important insight into what factors influence probation outcome and which offenders are more likely to succeed or fail under probation supervision. Research has pointed to significant relationships between certain variables—such as age, gender, employment, educational attainment, and prior criminal record—and probation success or failure. Author Kathryn D. Morgan reviews some of those studies and their findings. She focuses on studies reporting probation failure

CONTENTS

Bulging Prisons, an Aging U.S. Population, and the Nation's Violent Crime Rate . . . Darrell Steffensmeier	144738	Miles D. Harer	3
Accreditation: Making a Good Process Better		Lynn S. Branham	11
Texas Collects Substantial Revenues From Probation Fees	144739	Peter Finn	
		Dale Parent	17
Factors Influencing Probation Outcome: A Review of the Literature		Kathryn D. Morgan	23
Public Policy, Prison Industries, and Business: An Equitable Balance for the 1990's		Diane C. Dwyer	
		Roger B. McNally	30
Prosecutorial and Judicial Treatment of Female Narcotic Offenders	144740	Cecelia Saulters-Tubbs	37
Two Executions in 19th Century Rural Illinois		Beverly A. Smith	
		Lois A. Guyon	43
Teen Court: Juvenile Justice for the 21st Century?		Deborah Williamson	
		Michelle Chalk	
		Paul Knepper	54
Comparing Hair and Urine Assays for Cocaine and Marijuana	144741	Tom Mieczkowski	
		Richard Newel	59
Departments			
News of the Future			68
Looking at the Law			72
Reviews of Professional Periodicals			76
Your Bookshelf on Review			81
It Has Come to Our Attention			87

Prosecutorial and Judicial Treatment of Female Offenders

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Introduction

WITHIN THE last two decades an issue of primary concern in the field of criminal justice has been the disparate treatment of women offenders. Prior research indicates that the criminal justice process generally tends to reinforce traditional sex-role stereotypes which place women offenders in one of two polar positions. Women offenders are regarded as either more deviant or less deviant than male offenders. On one end of the spectrum, female offenders receive more lenient treatment than do male offenders. Conflict theorists attribute this to the chivalrous and/or paternalistic nature of the criminal justice system. According to Parisi (1982) chivalry occurs when "male judges and prosecutors treat females more leniently because our society has taught them to approach females in a fatherly, protective manner and to assume that females have an inherently submissive, domestic nature" (Parisi, 1982, p. 207). While the concept of chivalry is analogous to a protective relationship, paternalism is a relationship based on power. "Superior" male criminal justice actors have power over "inferior" female offenders and frequently exert this power under the premise that the female offender's punishment is "for her own good." As Kirp, Yudof, and Franks (1986, p. 32) noted, "paternalism serves the broad purposes of preserving prevailing social arrangements and protecting women."

Although under both chivalry and paternalism some women offenders benefit from the lenient treatment, Datesman and Scarpitti (1980, p. 294) observed that "a major cost to them, however, is the continuation of a state of public consciousness which holds that women are less able than men and are thus in need of special protective treatment." Similarly, Price and Sokoloff (1982) suggested that the special protection offered women by men results in the curtailment of women's rights in exchange for their protection.

In contrast to the conflict theorists who maintain that women offenders are treated more leniently, labeling and social control theorists argue that some women offenders are treated more harshly than

their male counterparts. These theorists contend that disparate treatment is primarily due to the fact that women offenders not only violate the law, but also violate socially prescribed gender roles. Social control theorists contend that through the process of socialization, social bonds develop that control behavior or aid in conformity. Men who fail to conform to societal dictates are viewed as deviant. Women who fail to conform are considered even more deviant. Similarly, labeling theorists emphasize the significance of social reactions to women who do not think, behave, or exist according to socially prescribed roles. Unlike men who fall into a deviant category, women are deemed more immoral because deviance supposedly goes against their very nature. Women offenders are therefore guilty of "double deviance."

Pollack (1950) was one of the first scholars to claim that women who commit crimes betray their womanhood. As a consequence of this "betrayal," they receive more severe treatment. Other authors have also noted the severity of punishment of women offenders who break societal norms and expectations concerning the behavior befitting women. This phenomenon is most pronounced in cases involving women who commit masculine-type crimes such as homicide, assault, and robbery. Some researchers have found that these women receive harsher punishments than men who commit similar offenses (Chesney-Lind, 1978; Johnston, Kennedy, & Jhuman, 1987). Female offenders of this classification are generally deemed the most deviant of all offenders. Because society views women as passive, meek, and malleable, when a woman commits a violent offense other than in self-defense, she is considered inordinately deviant.

This study tests these two contradictory theories in regard to narcotic crimes. Both theoretical perspectives have been used to explain the treatment of women who commit traditionally female-type crimes, such as property offenses, fraud, and prostitution, and traditionally male-type crimes, such as homicide, assault, and robbery. However, little, if any, research has focused on the treatment of women narcotic offenders. Therefore, this study assesses the extent to which the gender of narcotic offenders influences the treatment they receive by criminal justice actors. More specifically, the research addresses the influence of the offender's gender on prosecutorial and judicial decisions in narcotic cases.

*The author wishes to thank Dr. Craig Uchida, National Institute of Justice, for access to the data.

Previous Prosecutorial and Judicial Research

Few studies exist on the influence of gender on prosecutor decision, but what is available suggests that women offenders are treated differently than male offenders. Some of these studies indicate that female offenders are treated more severely by prosecutors. For instance, Figueria-McDonough (1985) found that women were more likely to plead guilty due to ignorance and to receive harsher sentences. McLean and Burrows (1988) suggested that when females offender were charged with committing non-typical crimes, they were more likely to be refused bail than men charged with similar offenses. However, Orvis and Zupan (1990) found that the greatest disparity in prosecutorial treatment occurred in the prosecutors' sentencing recommendations. Interestingly, female offenders in their study received harsher sentence recommendations than male offenders for both gender-neutral and typically masculine crimes.

There is also evidence to suggest that women offenders receive preferential treatment by prosecutors. Bishop and Frazier (1984) found no gender bias during plea bargaining, but they found females were treated more leniently in pre-plea bargaining phases, such as in the charging phase. Orvis and Zupan (1990, p. 12) determined that "the male suspect was more likely to be charged with a higher grade of crime than was the female suspect and was more likely to have multiple charges filed against him." Moreover, Spohn, Gruhl, and Welch (1987) discovered that district attorneys were more likely to dismiss charges against female defendants than against male defendants.

In the middle of this controversy, Ghali and Chesney-Lind (1986) and Curran (1983) argued that offenders are treated *equally* by prosecutors. These scholars suggested that judicial, not prosecutorial, discretion accounts for disparities in treatment. Women offenders, they pointed out, are more likely to receive lenient treatment by judges than are male offenders. However, given the powerful position of prosecutors and the discretion they wield, it would seem a prominent point of discriminatory treatment.

Compared to the sparse literature concerning prosecutorial disparities in the treatment of women offenders, research on the judiciary is more abundant. Sentencing seems to be the most conspicuous phase in which gender-based disparities result (Chesney-Lind, 1978). Studies searching for patterns of judicial discrimination have mixed results, and according to Neubauer (1984), this is partially due to differences in the courts studied and the statistical techniques utilized. However, Davidson, Ginsburg, and Key (1974) note that the findings are nevertheless suggestive concerning the existence of chivalry or paternalism patterns.

A vast quantity of research on courts reveals greater leniency in the sentenced imposed on women defendants than men (Cary, 1984; Curran, 1983; Eich, 1986; Feinman, 1980; Frazier, Bock, & Henretta, 1983; Johnston, Kennedy, & Jhuman, 1987; Kruttschnitt, 1984; Moulds, 1976; Steffensmeier & Kramer, 1983). An equally substantial amount of research has indicated that women offenders are given harsher sentences (Chesney-Lind, 1978; Crites, 1978; Feinman, 1979; Klein & Kress, 1975; Parisi, 1982; Rafter & Stanko, 1982; Smart, 1976).

Unfortunately, many of these studies on the influence of gender on sentencing fail to control adequately for important factors such as the offender's prior record, presentence investigations, etc. Therefore, the generalizability of some of the findings is limited by flaws in the research design. Spohn, Gruhl, and Welch (1981-82) point out a number of common methodological defects of prior research, including the use of only a small number of cases or small number of offenses, inadequate relevant "legal" and "extra-legal" variables, and inadequate statistical techniques. Parisi (1982, p. 215), however, maintains that "despite problems with research design, the data consistently show some degree of differential treatment of females at aggregate levels."

In summary, it appears that disparities in treatment based on the gender of offenders occur in the criminal justice system. Whether these disparities result to the advantage or disadvantage of women offenders is still open to debate, although both preferential and punitive treatment seems to exist at prosecutorial and judicial stages.

Methodology

Although in the processing of criminal cases, both prosecutors and judges make a number of critical decisions, this study addressed only two: the charging decisions made by prosecutors and the sentencing decisions made by judges. Other decision points such as sentencing recommendations and pretrial motions made by prosecutors were not considered due to the fact that most recommendations and motions are made orally, and thus no written records are maintained.

The charging decision of prosecutors actually entails a number of decisions including: a) whether or not to file charges against an individual; b) what criminal charges to file; and c) whether or not to reduce the original charge or charges at a later date. Therefore, data were collected for each of these three prosecutorial decision points.

In regard to judicial decisions, only sentencing decisions were considered. Because an overwhelming number of accused individuals plead guilty through

plea negotiations, the actual imposition of sentences comprised the bulk of documented judicial decisions.

The site for the present research was a large, urban county located in a southeastern state. The 1990 population for the county was estimated at close to 800,000. The data were collected from the formal records and files of the narcotic division of the county's major police department and both the general and limited jurisdiction state courts operating in the county.

County court records were found to be the most complete and, therefore, the most reliable source of data available. These documents contained the necessary information concerning cases from the initial point of prosecutorial action through sentencing. The less reliable police records were used as a supplement and cross-check on the court files.

The sampling frame consisted of every adult narcotic offender arrested and charged with a narcotic offense within the county between January 1, 1987, and December 31, 1988. For a case to be included in the sampling frame the *primary charge* against the defendant must have been a narcotic offense. For example, if the defendant was arrested for robbery and was later found to be in possession of marijuana, the narcotic charge would be considered incidental to the robbery. This case would not be included in the sample. In contrast, if the defendant was arrested for driving under the influence, and was found to be in possession of a controlled substance, the primary charge would be the felony narcotic charge. This case would be included in the sample.

Another criteria for inclusion in the sampling frame was that the case had to be closed so that sentencing decisions could be analyzed. Cases were considered closed if they were either dismissed by the judge or adjudicated by the judge or jury, regardless of whether an appeal was pending.

In order to control for the influence of important demographic variables on prosecutorial and judicial decisions, a sample was selected from the sampling frame by matching male and female narcotic offenders on the following characteristics: age, race, and type of drug offense for which the defendant was originally arrested.¹ The sample was also matched on the number of prior misdemeanor and felony arrests and the type and severity of these offenses.

Of the total 175 female narcotic offenders arrested between January 1, 1987, and December 31, 1988, almost two-thirds were not charged by the prosecutor, thus eliminating them from the sampling frame. In comparison, less than one-fourth of the 1,482 male narcotic offenders had their charges dropped. Of the remaining 74 female offenders, only 70 could be matched to male offenders on age, race, type of drug

offense, and prior record. Consequently, the sample consisted of 140 individuals, or 70 matched male and female pairs.

Analysis

Because the independent variable and most of the dependent variables were nominal, chi-square statistics were calculated to test the hypothesis. Difference of means tests (t-tests) were conducted between males and females on the interval variables such as length of prison time, probation time, and amount of fine ordered by the court.

Sample Demographics

The total sample was composed of an almost equal number of blacks and whites arrested for possession of controlled substances (usually cocaine or crack) or for possession of marijuana. The age of the sample's offenders ranged from 20 to 56 years. Offenders between the ages of 20 and 39 comprised over half of the total sample. Only 5.7 percent of the sample had no prior arrests, while almost half (48.6 percent) had up to three prior arrests. Most of the prior arrests consisted of misdemeanor charges or minor felonies such as shoplifting or theft of property. However, there were a few matched cases in which the offenders were arrested for more serious crimes such as robbery and assault. Half of the sample had between 4 to 10 prior arrests, inclusively, and nearly one-tenth of the sample had 10 or more prior arrests. The greatest number of prior arrests was 20.

Charges, Charge Reduction, and Case Disposition

The most common charge filed by prosecuting attorneys against the individuals in the sample was possession of a controlled substance. Almost 53 percent (74) of the sample was charged with possession of a controlled substance, typically cocaine or crack. About 44 percent (62) were charged with possession of marijuana, and less than 3 percent (4) were charged with possession of a forged instrument (i.e., prescription).

An *equal* number of males and females were charged with one of these three crimes. Prosecutors in this study tended to charge offenders with the same crime for which they were originally arrested by the police. The male and female pairs in the sample were matched according to the crimes for which they were arrested; thus, it was not surprising that the sample would also be equally matched on the prosecutors' primary charges.

In the original sampling frame only three females were charged with sale or trafficking of a controlled substance. However, appropriate male offenders could not be found that matched these females on age, race, and prior record. This was unfortunate because it would be interesting to determine if offender gender

influenced prosecutorial charging decisions in these more serious narcotic offenses.

The data indicate that gender had little impact on prosecutorial decisions to reduce charges. Sixty-eight defendants had their charges reduced; exactly one-half of these defendants were female and one-half were male.

Gender also does not appear to influence the disposition of the case, including the judicial decision to dismiss charges against the defendant. In an overwhelming number of cases the defendants pled guilty either to the original charge or to a lesser charge rather than opting for a jury or bench trial. Over 92 percent (129) of the defendants pled guilty. Of this number, 27.1 percent (35) of the males and 25.6 percent (33) of the females pled guilty to reduced charges, while 22.5 percent (29) of the males and 24.8 percent (32) of the females pled guilty to the original charges.

Of the nine cases dismissed by the judge, five involved males and four involved females. Only two defendants, one man and one woman, were found guilty after jury trials.

In summary, the gender of the offender appeared to have little influence on the charging decisions of prosecutors. The data show that male and female offenders were charged with similar offenses and that by and large these were possession of controlled substance or possession of marijuana offenses. Gender also does not appear to influence the decisions of prosecutors to reduce charges or judges to dismiss charges.

Sentences

Whether or not defendants pled guilty to lesser charges appeared to have no significant bearing on the sentence they received. The majority of defendants received a combination of a suspended sentence and fine regardless of whether the charges were reduced. It is important to note that the state in which this research was conducted still has indeterminate sentencing, and judges have wide discretion to impose sentences.

The most frequent sentences for the sampled narcotic offenders were a suspended sentence (69.3 percent received) or a fine (59.3 percent received). Over half (54.3 percent) received a combination of the two. Female offenders were only slightly more likely to receive suspended sentences. Overall, gender did not appear to substantially influence judicial decisions regarding suspended sentences.

In regard to the fines imposed by judges, there also appeared to be little difference between those received by male and female offenders. The number of male and female defendants ordered to pay fines was almost equal. Male defendants received an average fine that was approximately \$26 higher than those of women

defendants. However, a difference of means test (t-test) did not reveal a statistically significant difference between the mean amount of fines ordered of male and female defendants.

Almost one-third of the offenders received probation, usually ranging from 6 months to 3 years. Gender does not appear to influence whether or not a defendant is granted probation. Males received probation only 7 percent more often than females. The average length of time males were placed on probation was 10.6 months, while the average length of time for females was 11.6 months. A difference of means test (t-test) did not reveal a statistically significant difference between the mean number of months male and female defendants were sentenced to probation.

Few offenders (13.6 percent) received a prison sentence, and only one served any jail time. Women were only slightly, but not substantially, more likely than males to be sentenced to prison. There was an observed difference in the means of prison time given to men (8.3 months) and women (3.9 months) but a difference of means test (t-test) revealed that this was not a statistically significant difference.

The number of offenders who were sentenced to perform community service was very small, only two, or 1.4 percent of the total sample. Therefore, no further analysis was conducted with this variable.

Summary and Conclusions

This research was designed to test two conflicting theories regarding gender-based disparities in the treatment of narcotic offenders by prosecutors and judges. Conflict theorists maintain that women offenders receive preferential treatment during the criminal justice process due to the chivalrous and/or paternalistic nature of (primarily male) actors within the system. In contrast, social control and labeling theorists contend that women offenders receive more punitive treatment than their male counterparts because women are not expected to behave defiantly. Moreover, women who violate the law also deviate from socially prescribed gender roles and hence are labeled "double deviant."

The findings of this study fail to support either of these two theories. Compared to their male counterparts, women narcotic offenders were neither treated more leniently nor more harshly by prosecuting attorneys or judges. Therefore, neither the argument that female offenders receive preferential treatment nor the contention that female offenders receive more punitive treatment than male offenders were substantiated by this research.

One possible explanation for the equal treatment male and female narcotic offenders received may be found in the effect of increasing drug caseloads on

already clogged urban courts. Goerdts and Martin (1989) found that between 1983 and 1987, drug caseloads increased by 56 percent across 17 courts. Since 1987, additional and stricter drug laws coupled with increased and enhanced drug law enforcement have exacerbated the problem of overloaded courts. As pressure to deal with the influx of drug cases increases, so too does the need for administrative efficiency and organizational equilibrium. Both prosecutors and judges may resort to assembly line justice in order to deal efficiently and quickly with the burgeoning caseloads. In so doing, the gender of the offender may play only a minor role in both prosecutorial and judicial decisions.

The findings in this study, however, do not suggest that women narcotic offenders are treated the same as male narcotic offenders at all stages of the prosecutorial and judicial process. Analysis of the cases in the original sampling frame shows that prosecutors were much less likely to file charges against female narcotic offenders than male narcotic offenders. Of the 175 female and 1,482 male narcotic offenders arrested between January 1, 1987, and December 31, 1988, charges were filed against only 43 percent of the women. In contrast, charges were filed against 79 percent of the men.

There are numerous legitimate explanations for why prosecutors may decide not to file charges, including insufficient evidence, negative toxicology reports (drugs were found not to be controlled substances), and deficient police work, to name just a few. Also, it was observed in the police files that when both a male and female defendant were arrested, the male defendant often claimed responsibility for the drugs, thus negating any involvement by the female defendant. In all probability this admission would result in charges against the female being dropped by the prosecutor.

However, the difference between the proportion of female and male offenders who had no charges filed was so high that one must question other motives for this prosecutorial decision. Further research that focuses specifically on this earlier stage of the prosecutorial process is necessary in order to determine the extent to which offenders' gender influences prosecutor decisions to file charges.

NOTE

¹There were six possible offenses for which defendants in this study could be arrested by the police and charged by the prosecutor. These offenses included: 1) inchoate drug offenses; 2) drug possession and sale; 3) drug trafficking offenses; 4) sale on or near school campus; 5) possession of drug paraphernalia; and 6) additional penalties for unlawful sale within a 3-mile radius of public housing projects.

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