

# Gender and Sentencing: A Canadian Perspective

by

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## ABSTRACT

### **GENDER AND SENTENCE: A CANADIAN PERSPECTIVE**

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The debate surrounding the impact of gender on sentence severity is ongoing. The majority of the research contributing to this debate has been based in the United States and has focused primarily on the effect that offender characteristics have on sentencing outcomes. This study utilizes 28 years of homicide data from a large Canadian urban jurisdiction to examine the effect that the gender of both the victim and offender has on determining sentence length. Results show that an offender's gender alone has no effect on sentence length, but that offenders who kill female victims receive longer sentences and male offenders who kill female offenders receive the longest sentences. A deep-sample exploratory qualitative analysis further demonstrates that other gendered factors such as prior victimization and familial roles may have an impact on sentencing decisions in Canada. Future research directions from this analysis are discussed.

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## **Chapter One: Introduction**

Early feminist and human rights movements advocated for equal opportunities for men and women in North American society (Chunn 2007). During this time, a central actor in the second wave feminist movement was the Women's Liberation Movement, which strongly supported the concept of gender neutrality. These second wave feminists wanted society to view women and men as equals (Chunn 2007). "Formal equality, gender neutrality and equal opportunities" were common ideas by the late 1980s and these "equality feminists" fought hard to be treated the same as men (Chunn 2007:47). While feminists were striving to attain equality along gendered lines, human rights movements similarly attempted to reduce race/ethnicity and class disparities in the criminal justice system (Daly and Tonry 1997). These social justice movements encouraged the adoption of policies to limit the amount of judicial discretion in criminal justice systems (Daly and Tonry 1997). Daly and Tonry (1997:204) suggested that these policies of limited discretion meant that extra-legal factors, such as the defendant's race/ethnicity, gender, education level, employment and familial statuses, were to be exempt from sentence decisions. Certain social activist groups expounded the belief that the amount of judicial discrimination directed towards marginalized societal groups would be diminished by attempting to avoid the influence of the defendant's demographic information and only allowing relevant information about past criminal activities to be included in the trial (Daly and Tonry 1997).

During the 1970s, in response to the outcry of marginalized groups regarding discriminatory practices in the criminal justice system, the Canadian Sentencing

Commission and the United States Sentencing Commission were created to evaluate the problems associated with sentencing processes (Roberts and Birkenmayer 1997). The sentencing commissions found evidence of unequal treatment of offenders and emphasized the need to accumulate more information on sentencing patterns. Since the 1980s, many large-scale quantitative studies conducted by U.S. scholars have assessed the role that offender characteristics – mainly race/ethnicity and gender – play in determining sentence outcomes (Albonetti 1997; Franklin and Fearn 2008; Huang et al. 1996; Nooruddin 2007; Steffensmeier et al. 1993; Steffensmeier et al. 1998). However, there is still a need in Canada for more analyses to examine the differences in sentencing between men and women, as well as other marginalized groups.

This study addresses the gap in the Canadian literature by analyzing the effects of gender on sentence length in one large, urban jurisdiction. More specifically, this study examines whether female and male offenders receive similar or differential sentences for their crimes and potential reasons for the gendered disparate sentences. Before discussing the details of this study, recent feminist perspectives on equality are introduced, as are feminist perspectives on appropriate sentencing processes for female offenders. The feminist perspective is important because it provides a critical lens to analyze the findings of this study. Initially sentencing studies focused on racial differences in sentences and found that racialized offenders were treated differently when compared to white offenders (see reviews in Kleck 1981, Kramer and Steffensmeier 1993). The disparity between the two groups was seen as highly problematic and, thus, the studies provided evidence for an equal (meaning same) treatment between white and non-white offenders (Daly 1994; Daly and Tonry 1997). The equal treatment of offenders became (and still is)

a romanticized goal of the criminal justice system (Daly and Tonry 1997). However, as will be discussed, formal equality has negative implications for female offenders.

This chapter has three main sections. First, the meaning of formal equality and its potential negative consequences for female offenders and female victims of violence is outlined. Next, substantive equality and a dominance model are discussed as possible solutions for addressing some of the potential injustices experienced by female offenders under an equality model. Finally, the outline of the current study is discussed.

### **Formal Equality in the Criminal Justice System**

One of the governing principles of North American criminal justice systems is the 'rule of law'. The 'rule of law' stipulates "that rules should not only be fair and impartial, they should also be carried out honestly, in accordance with standards of 'due process' and without regard to race/ethnicity, class, or position" (Friedman 1977:63). According to Friedman (1977), judges should have a limited amount of discretion in order to maintain equality among defendants. The importance of the limited use of discretion is also represented in the North American symbol of justice, the blindfolded woman balancing a set of scales. Nagel and Hagan (1983: 92) claim the symbolic meaning of the woman is clear, "all men (and women?) are equal before the eyes of justice; and the relevant facts, and only those, will be judiciously weighed on the juridical scales." This position explained by Friedman (1977) as well as Nagal and Hagan (1983) advances the concept of "formal equality." Within the criminal justice system, formal equality means that all accused deserve to be treated the same, without reference to race/ethnicity, class, or gender. The majority of second wave feminists supported formal equality and they

believed that in order to be equal to men, women needed to be treated the same as men (Thompson 2002).

### **Negative Consequences of Formal Equality for Females**

There may be negative consequences when adopting a formal equality approach. Formal equality is a male-centred approach that erases gendered inequalities by encouraging women to become more like men so they can receive equal treatment (Chunn 2007). More specifically, Chunn (2007:51) claims that formal equality entrenches “the white middle-class male experience as the norm rather than facilitating the reform of the (male) standard to incorporate the lived experiences of differently situated others.” This creates a situation whereby men set the idealized standard against which all other groups are measured. Daly and Chesney-Lind (1988:526) state that, “equality defined as equal treatment of men and women, especially when men’s experiences and behaviors are taken as the norm, forestalls more fundamental change and, in some instances, may worsen women’s circumstances.” In other words, women cannot obtain equality in a male-dominated model without becoming like the idealized male standard (MacKinnon 1987). The problem with this androcentric way of thinking is that it ignores persisting gender inequalities that exist due to the biological and social differences of women and men, and instead assumes that their positions are similar (Boritch 1997).

More importantly treating women like men ignores the embedded power structures that continue to oppress women, patriarchal control. Women’s bodies, their spaces, and their movements are constantly affected by the invasive nature of male control and women will continue to be discriminated against in all aspects of society if

systems of male power are neglected. Chesney-Lind (2006: 9) asserts that “patriarchy is a system of social stratification, which means that it uses a wide array of social control policies and practices to ratify male power and keep girls and women subordinate to men.” For example, rather than passing laws which actively prohibit female participation in the public sphere, the media, state and non-state institutions attempt to morally reform women in an attempt to maintain traditional, domestic, and feminine gender roles. This subtly invasive system of control affects all aspects of North American society, including the criminal justice system. When patriarchy is ignored during the sentencing of offenders, it is argued that women who receive the same sentences as men experience “vengeful equity” (Chesney-Lind 2006:18). Chesney-Lind (2006) coined this term to describe situations where female offenders receive the same sentence and/or treatment as male offenders, despite the fact that female offending may often be linked to victimization at the hands of a male patriarch.

Violence against women is argued to be the most explicit form of patriarchy that exists in North American society (Dobash and Dobash 1979; Deseredy 1990; LaViolette and Barnett 2000) and many studies have highlighted the link between female offending and violence against women (Daly 1994; Harlow 1999; Kruttschnitt and Gartner 2003; Raedar 1993; Silvestri and Crowther-Downey 2008). Further, Dobash et al. (1992:81) explained that patriarchy creates differences in male and female offending:

Men often kill wives after lengthy periods of prolonged physical violence accompanied by other forms of abuse and coercion; the roles in such cases are seldom if ever reversed. Men perpetuate familicidal massacres, killing spouse and children together; women do not. Men commonly hunt down and kill wives who have left them; women hardly ever behave similarly. Men kill wives as part of planned murder-suicides; analogous acts by women are almost unheard of. Men kill in response to revelations

of wifely infidelity; women almost never respond similarly, though their mates are more often adulterous. The evidence is overwhelming that a large portion of the spouse-killing perpetrated by wives, but almost none of those perpetrated by husbands are acts of self-defense.

In other words, female offenders when compared to male offenders are more often victims of violence who are forced to kill in self-defence. Further, many scholars have reported that a higher proportion of women who commit violent crimes have past histories of victimization by men in the form of domestic violence or sexual abuse (Chesney-Lind 2004; Daly 1992; Kruttschnitt and Gartner 2003; Moore 2008; Silvestri and Crowther-Downey 2008). Belknap and Holsinger (2006) found that abused girls were more likely to be involved in violent crimes and criminal arrests when compared with girls who did not report abuse or to abused boys. For female offenders, victimization and offending can be directly linked to the patriarchal system of control that creates norms surrounding appropriate feminine and masculine roles. Since patriarchy exists in all forms of social interaction, sentencing decisions for both female and male offenders must account for this reality.

Formal equality also has negative effects for female victims of homicide. Similar to female offenders, female victims are also affected by patriarchy. According to Johnson (2006) and Dobash et al. (1992) female victims are more likely to be killed as a final lethal act of intimate terrorism, whereas male homicide victims are more likely to be killed in resistance to their on-going abuse. Due to these differences in female and male victims' scenarios treating cases with female victims similarly to cases with male victims would not produce just or fair results. Violence against women should be condemned and viewed as an abhorrent act by the criminal justice system.

## **Substantive Equality in the Criminal Justice System**

Due to the problems associated with formal equality discussed above, many feminist scholars have begun to argue for substantive equality. Substantive equality supports the differential or the special treatment of female offenders. This approach advances the notion that equality does not mean sameness; instead equality can only be achieved when sentences recognize or consider the disadvantaged position of women and other disadvantaged groups from a social and historical perspective (Ferdinand and McDermott 2002). Substantive equality allows for sentencing decisions to take into account the power of the patriarchal system within North American society and to consider the prior victimization and abuse experienced by many female offenders and victims. In other words, female offenders are able to receive more appropriate sentences for their crime when the criminal justice system uses a substantive equality approach.

Another benefit of substantive equality is its ability to emphasize the inequalities that exist in society today. Formal equality suggests that women have succeeded in becoming equal to men; however, women are still systematically discriminated against in most arenas of North American society. This is due to the fact that, while the law states that men and women should be seen and treated as equals, there is a lag in the institutional practice. Pound (1912) discusses the discrepancy between the actual workings of the law and the laws themselves whereby “law in practice is different from formal law as written due to a “general lag of law relative to the social conditions, the failure to take into account advances in the social sciences, the rigidity of legislation, and defects in the administration of law” (Deflem 2008:100). Where formal equality lacks in

its ability to account for the differing experiences of male and female offenders, it has been theorized that substantive equality is better able to address and help disadvantaged groups in the criminal justice system (Ferdinand and McDermott 2002). The ability to take these experiential differences into account is pivotal in creating just sentences for female offenders and in creating just sentences for abusive males who victimize women.

Despite the perceived benefits of the substantive equality approach for female offenders, advocating for different or special treatment troubles some feminists “because it perpetuates damaging stereotypes of female weakness, implying a moral inferiority that undermines claims to full citizenship and even personhood” (Nagel and Johnson 1994:197). Further, MacKinnon (1987:33) claims that there is a “built in tension between this concept of equality, which presupposes sameness, and the concept of sex, which presupposes differences. Sex equality thus becomes a contradiction in terms, something of an oxymoron, which may suggest why we are having such a difficult time getting it.” In other words, the term gender equality really only gives women two options: be like men or be different from men. Neither position allows for women to value their feminine successes while having access to male resources of power (MacKinnon 1987). MacKinnon (1987) encourages a “dominance approach” which, instead of minimizing power differences, acknowledges the socially-embedded differences in power and provides women with warranted forms of gender disparity (e.g. abused women who kill their chronically abusive partners would receive a different sentence than a man with a similar criminal history who kills his wife).

Overall, drawing from feminist perspectives is crucial while studying the effect of gender on sentence length. It helps to destabilize the view that women deserve and want

formal equality from the criminal justice system. Previously, most large-scale, quantitative, gendered sentencing analyses were based on an “equal treatment assumption” (Daly 1994:270); that is, the assumption that women or other marginalized groups deserve and want to be treated like white, middle-class men. However, as discussed above, many feminists argue this equal treatment of female and male offenders may create a situation of “vengeful equity” (Chesney-Lind 2006:18). Instead, feminists argue that female offenders and female victims — due to histories of abuse, marginalized positions, and differential social experiences — may sometimes deserve differential sentences compared to male offenders or cases with male victims.

### **The Current Study**

This study addresses the current gaps in Canadian sentencing research by examining the effect of gender on sentencing. The majority of studies that have examined gendered sentencing differences have utilized U.S. datasets that span only a few years (e.g. Curry et al. 2004, 2006; Franklin and Fearn 2008; Spohn and Spears 1997; Steffensmeier et al. 1993; 1995; Swatt and He 2006). This study fills both of these gaps by completing a multi-year analysis of sentencing patterns in the Canadian context. Drawing from various theories, discussed in Chapter Two, this study uses 28 years of homicide data from Toronto, Ontario to statistically examine the effects of gender on sentencing outcomes. Specifically, this study evaluates three main research questions: (1) Do female homicide offenders receive shorter sentences compared to male homicide offenders? (2) Do offenders who murder female victims receive longer sentences? (3) Are there other gendered factors that affect homicide offenders’ sentence lengths in the

Canadian Criminal Justice System? Due to the lack of Canadian research on sentencing outcomes by gender, this study provides an important analysis of the current status of ‘equality’ between genders at the sentencing stage. The section below provides an overview of the chapters in this study.

## **Chapter Overview**

Chapter Two outlines the six theoretical perspectives that are relevant in an examination of the effect of gender on sentence length. The first group of broader theoretical perspectives explains *why* the judiciary may rely on extra-legal characteristics of the victim and/or offender when making sentencing decisions. The second group of theoretical perspective provides a more specific gendered understanding of how gender affects sentence outcomes.

Chapter Three provides a comprehensive literature review of previous studies on gender and sentence outcomes. First, this chapter illuminates the effects of gender on sentencing. Second, the literature review focuses more specifically on previous studies that have examined how gender affects sentence lengths for violent crimes, especially homicide. Finally, this chapter highlights other gender related factors that also have been shown to affect sentencing outcomes.

Chapter Four describes the methodology of this study, including a description of the sample, the dependent, independent, and control variables. Then, this chapter discusses the analytic techniques for the quantitative analysis and deep-sample exploratory qualitative analysis. Chapter Five discusses the results of the quantitative and deep-sample exploratory analyses. The quantitative analysis examines the effect of

offender gender, victim gender, and the victim and offender gender combinations on sentence length. The deep-sample exploratory analysis uses 15 matched cases involving male and female offenders to discover other factors that may affect sentencing outcomes in this large, urban Canadian jurisdiction.

Chapter Six discusses the findings in the context of the prior literature and theoretical frameworks presented in Chapters Two and Three. Future research directions are discussed, and theoretical and policy implications are considered using the critical feminist perspective outlined in Chapter One.

## **Chapter Two: Theoretical Framework**

### **Introduction**

Sentencing research demonstrates a link between an offender's gender and sentence severity, and victim's gender and sentence severity (Curry et al. 2006; Franklin and Fearn 2008; Kruttschnitt 1984; Nagel and Hagan 1983; Nooruddin 2007; Pollak 1950). Various theories can be used to help explain the evidence of gendered treatment in the criminal justice system. In particular, there are two sets of theories relevant to this study that help explain how offenders are sentenced. The first half of this chapter discusses theories that explain why stereotypes about victims and offenders might affect sentence outcomes. In this section, three theoretical perspectives are discussed: (1) bounded rationality, (2) focal concerns, and (3) blameworthiness attribution. The second half of this chapter discusses more specifically theories that explain why gender may affect sentence outcomes. In this section, four theoretical perspectives are described: (1) the chivalry/paternalism hypothesis, (2) the evil woman hypothesis, (3) dependency hypothesis and (4) familial paternalism hypothesis.

The first three theoretical perspectives help scholars understand the effect of stereotypes on sentencing outcomes. All three of the theories help explain why the judiciary is often forced to rely on stereotypes about offender and/or victim characteristics. The purpose of outlining these theories is to emphasize why the judiciary may rely on non-legal variables, such as gender, when making decisions about sentencing. The differences amongst the three theories are discussed separately below.

## **Bounded Rationality**

The first theoretical perspective, bounded rationality, helps to explain why disparities in sentencing outcomes exist (Albonetti 1991). This theoretical perspective combines work on the attribution process, uncertainty avoidance, and bounded rationality to help explain how judges come to their sentencing decisions (Albonetti 1991). The attribution process occurs when judges reduce uncertainty by relying on extra-legal attributes about the offender such as race/ethnicity, gender, and employment status. While some posit that in order to have a fair and unbiased legal system, there must be no reference to race/ethnicity, class, gender or position in society, Albonetti (1991) argues that stereotypes about individuals are used in legal decision-making as a gauge to predict future recidivism. While case evidence helps provide some insight into an offender's likelihood of reoffending, many judges may still be uncertain about the appropriate sentence so they rely on "patterned responses" (Albonetti 1991: 797). Judges retain "patterned responses" of how previous and similar offenders have reacted and this stored information helps them make decisions when legal and case material do not provide enough insight into future criminal acts (Albonetti 1991:797). Albonetti (1991) highlights the importance of Simon and March's (1958) theory of 'bounded rationality' which asserts that verdicts rely on "past experiences, stereotypes, prejudices and highly particularized view of present stimuli" (Clegg and Dunkerley 1980:265). The theory of bounded rationality suggests imbedded societal stereotypes about individuals can influence the judiciaries' sentencing decisions. For example, since more men come through the criminal justice system a judge may view them as being more likely to reoffend and punish them more severely for a crime than they would a female offender.

### **Focal Concerns (Protection of Community, Blameworthiness, Practicality)**

Complementary to Albonetti's theory, Steffensmeier et al. (1993; 1998) argue that there are three focal concerns affecting judicial decision-making. The three focal concerns, borrowed from Miller (1958), suggest that sentencing decisions are based on an offender's "blameworthiness and the degree of harm caused to the victim", the need to protect citizens in the community, and the practicality of the sentencing decision (Steffensmeier et al. 1998:766).

The first focal concern suggests the judiciary assesses an offender's blameworthiness based on their culpability and the degree of harm caused to their victim(s). While culpability, harm caused, and the seriousness of the offence are the three primary sources of blameworthiness, other characteristics may be used to measure blame. According to Steffensmeier et al. (1998), other factors used to measure blameworthiness include prior criminal record, a history of abuse, and whether the offender played a primary or secondary role in the offence. For example, an offender with a history of abuse could be seen as less blameworthy. Conversely, a history of abusing others could increase their blameworthiness.

While blameworthiness is a consideration in pronouncing appropriate punishment, the second focal concern assesses public safety. Steffensmeier et al. (1998) utilizes Albonetti's (1991) and Simon and March's (1991) concept of "bounded rationality" to explain his second focal point. To ensure public safety the decision makers attempt to predict the future risk of the offender. Without the ability to accurately predict risk, the judiciary rely on stereotypes of previous offenders. While legal characteristics

are considered, other problematic stereotypes about offender's race/ethnicity, age, gender, social and economic status may also be used to decide sentence outcomes.

Finally, the third focal concern discusses the organizational and structural constraints of the criminal justice system. Specifically, this last focal concern suggests that the judiciary also makes decisions based on the practicality of the sentence (Steffensmeier et al. 1998). For example, Dixon (1995) argues that, in addition to the appropriate punishment, judges have to keep in mind the efficiency and organization of the criminal justice system. This third focal concern posits that judges, aside from predicting future criminal behaviour, must also attempt to meet criminal justice system goals of providing a quick, efficient, and cost effective solution. Steffensmeier et al. (1998:767) argue that judges consider factors like "ensuring the stable flow of cases, and being sensitive to local and state correctional crowding and resources" when sentencing offenders. Finding a suitable sentence requires a fine balance between punishing the behaviour, providing safety for the community and maintaining a cost-effective and efficient criminal justice system. The interplay between the three focal concerns and Albonetti's (1991) attribution process helps to explain the complex role that the judiciary plays in making sentencing decisions.

### **Blameworthiness Attribution**

The third theoretical perspective, blameworthiness attribution, once again uses stereotypes to explain how the judiciary decides on sentencing outcomes. However, in contrast to the first two theories that argue judges use stereotypes about offender's characteristics to create sentencing decisions, this theory suggests that judges also rely on

stereotypes based on victim characteristics. This theory blends together Albonetti's (1991) attribution process and Steffensmeier et al. (1993) focal concern blameworthiness, in order to create a theory that explains differential sentences based on victim characteristics. The theory of attribution suggests that there is a complex relationship between the causality of internal and external attributions (Albonetti 1991). Baumer et al. (2000) claim that "the more an outcome is attributed to external forces, the less the assignment of internal causality and blame. In the case of a crime, the greater the causality attributed to the victim (an external force), the less the causality attributed to the defendant (an internal force)" (283). This theory is useful when explaining differences in sentence length based on victim characteristics. According to this theory, offenders may receive a shorter sentence if the judiciary attributes blame toward the victim, based on a victim's prior criminal record, victim provocation, or more problematic characteristics such as the victim's race/ethnicity, age, gender and the victim's familial, social or employment status.

The above three perspectives are complementary in their discussions about how stereotypes based on offender and/or victim characteristics could affect sentencing outcomes. Bounded rationality discusses how stereotypes are used when judges are uncertain in predicting future behaviour of offenders. Focal concerns, also discusses the effect of stereotypes on sentences, but more specifically how stereotypes help to frame an offender's blameworthiness for the crime. The last theory is a combination of the two earlier theories. Blameworthiness attribution focuses on how stereotypes about the victim make them seem more or less blameworthy and the effect it has on an offender's sentence. The next section discusses conceptual frameworks that emphasize the potential

effects gender stereotypes and gender related characteristics could have on sentencing decisions.

### **Chivalry/Paternalism Hypothesis**

Theoretical discussions about gendered differences in sentencing began in the 1950s with the introduction of the chivalry hypothesis. Pollak (1950) argues that society's traditional views about appropriate feminine characteristics translate into women enjoying more lenience in the court.<sup>1</sup> He asserts that chivalrous attitudes about femininity support the belief that all women are weak and passive creatures who depend on men for their safety and well-being (Pollak 1950). Other scholars argue that judicial decisions are more lenient for women because the judiciaries are seen as wanting to protect women rather than punish them (Bickle and Peterson 1991; Crew 1991; Curry et al. 2004; Franklin and Fearn 2008; Kruttschnitt and Green 1984; Moulds 1987; Nagel and Hagan 1983). The assumptions that women are passive and dependent (chivalry) combined with the assumption that women need protection (paternalism), creates the chivalry/paternalism hypothesis. The chivalry/paternalism hypothesis states that these stereotypes about females encourage the judiciary to give female offenders shorter sentences when compared to male offenders in the criminal justice system.

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<sup>1</sup> Many of the previous large-scale quantitative analyses, which look at differential sentencing patterns between genders, have found that women are treated with more "lenience" than their similarly situated male offenders. The problem with the term leniency is that it denotes an unequal treatment between men and women and it implies that women need to be treated as harshly as men. However, these quantitative analyses that discover more lenient sentences for women neglect to analyze whether the differences in sentencing outcomes are warranted or desired. Feminist scholars argue that shorter sentences handed out to female offenders cannot be deemed lenient because "women are subjected to a gendered criminal justice system, characterized by gendered organizational logics and gendered agents of power" (Silvestri and Crowther-Downey 2004:33).

The chivalry/paternalism hypothesis also provides an explanation for scenarios in which men who victimize women receive longer sentences. Thus, the chivalry/paternalism hypothesis can predict both the effect of an offender's gender on sentencing decisions, as well as the effect of a victim's gender (Curry et al. 2004). Specifically, Curry et al. (2004:323) suggest "the chivalrous desire to protect women could manifest itself in terms of harsher sentences for those who use violence against women." This interplay, between victim characteristics and the chivalry/paternalism hypothesis, discussed by Curry et al. (2004) can be extended to suggest that males who victimize women are given the longest sentences because they are viewed as victimizing a group that they have a duty to protect. This also relates to the blameworthiness attribution perspective (Baumer et al. 2000). Men are seen as more blameworthy because they are deviating from the law and neglecting their duty to protect women.

Overall, the chivalry/paternalism hypothesis is able to provide a theoretical understanding for women who receive shorter sentences compared to men when they commit a similar crime.<sup>2</sup> This theoretical perspective also provides a way to understand the effect a victim's gender may have on sentence length.

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<sup>2</sup> While the chivalry/paternalism hypothesis is helpful in predicting sentences, Moulds (1978) cautions scholars who combine the terms chivalry and paternalism. Moulds (1978) researches the historical meanings of the two terms and differentiates chivalrous treatment from paternalistic treatment. The term chivalry denotes two beliefs that make up the chivalrous hypothesis: first, society does not want to harm women by punishing them; second, society does not believe women could behave criminally. Compared to the notion of chivalry, which provides "ladies" a gentler treatment, paternalism suggests that women are child-like. The theory of paternalism equates women with children, thus perpetuating an image that women are defenseless, need guidance from their superiors (males), lack basic human rights (ability to own property, and the ability to vote), cannot be responsible for their own actions, and can be manipulated to perform in the interest of their husband or other male adults (Moulds 1987). Although, both chivalry and paternalism theoretically afford women 'lenience' in the criminal justice system, paternalism explicitly undermines women's achievements in the social, political, economic and legal spheres. Due to the different root meanings of the two terms, Moulds (1987) advises scholars to examine the terms separately. Arguably, when analyzing large quantitative studies it becomes methodologically challenging to operationalize two separate variables that adequately measure the distinct meanings of chivalry and paternalism. Thus, this study focuses on the overarching implications of both chivalry and paternalism combined.

## **Evil Woman Hypothesis**

The evil woman hypothesis is another theory used to explain the differential treatment of female offenders compared to males in the criminal justice system. This hypothesis emerged from criticisms of the chivalry/paternalism hypothesis. Kruttschnitt (1984) refutes the chivalry/paternalism hypothesis because it assumes *all* women receive 'lenience' in the criminal justice system. Although not all women receive different treatment from men, all women are proscribed to rigid roles of femininity that suggest they are motherly, passive, and domesticated. When women divert from these feminine roles, they are considered abnormal or unfeminine. Franklin and Fearn (2008:281) argue that judicial leniency does not extend to women who transcend feminine boundaries; instead, these women are "deemed unworthy of protection." For example, marginalized, "non-white" women are not seen to be extended the same leniency under the law because they are viewed as problematic offenders who are often perceived as more threatening than their white counterparts (Franklin and Fearn 2008:280). As well, the preferential treatment of the 'good woman' does not apply to black women who "occupy different rungs in the social hierarchy" (Nooruddin 2007:281). Rather, white women's privileged status is due to society regarding white women as "gentle creatures" whereas black women are often stereotyped as being "lazy, promiscuous and irresponsible" (Nooruddin 2007:281).

This differential treatment of female offenders was coined the evil woman hypothesis (Nagel and Hagan 1983). This theoretical framework supports the hypothesis that women who adhere to appropriate feminine gender roles and white women are given shorter sentences compared to marginalized women and men. Similarly, Lloyd (1995)

suggests using the term ‘doubly deviant’ to reflect that women can receive more severe punishments than men because the criminal justice system punishes them for both their criminal activities and for their violations of sex-role expectations.

Some scholars argue that instead of viewing the evil woman hypothesis as the antithesis to the chivalry/paternalism hypothesis, scholars should view the two hypotheses as complementary. For example, Nagel and Hagan (1983) argue that all women are afforded a more ‘lenient’ sentence in the criminal justice system until the chivalrous or paternalistic treatment is no longer viable. Specifically, Nagel and Hagan (1983:135) state “by virtue of the seriousness of the offense charged, the lessening of the presumption of innocence, and the evidence of deviation from traditional female patterns of behavior, the woman is moved into the evil woman category, and preferential treatment ceases.” Viewing the evil woman hypothesis as complementary to the chivalry/paternalism hypothesis helps provide a holistic explanation of gendered sentencing.

As well, the evil woman hypothesis can also be used to predict how a victim’s gender could affect sentence severity. The concept of victim blameworthiness (Baumer et al. 2000) complements the evil woman hypothesis when explaining how victim characteristics affect sentencing decisions. The evil woman hypothesis suggests that shorter or longer sentences are given based on females’ ability to adhere to feminine gender roles. If female victims do not adhere to feminine gender roles they may be seen as more blameworthy for the crime. Conversely, if the victim is a white, upper-class female who has never been involved in crime, the offender may face a more severe punishment for killing an innocent woman. The evil woman hypothesis and the

blameworthiness attribution theory provide the theoretical framework to explain why the judiciary might favour a longer sentence for harm committed against an innocent, white female victim.

Both the evil woman hypothesis and the chivalry/paternalism hypothesis discuss the specific effect of gender on sentencing outcomes. The next section departs from a gender-only theoretical framework to a perspective that predicts the interplay of gender, social control, and familial characteristics.

### **Other Gender Related Theories: Dependency and Familial Paternalism**

More recently, scholars have suggested other gender-related theories to explain the differential sentencing of offenders. The first theory, dependency theory, argues that sentencing outcomes differ based on other characteristics associated with gender (levels of informal social control) rather than gender being the key contributing factor to sentencing discrepancies (Kruttschnitt 1982,1984). This theory suggests that women who are economically dependent on their male partners and women who have families will receive more lenient sentences (Kruttschnitt 1982a/b,1984). The dependency theory draws on Black's (1976:107-111) concept that "law varies inversely with other social control." In other words, if a woman is subject to high degrees of social control by her husband (highly dependent), then there is a reduced need for punitive legal sanctions or control (Kruttschnitt 1982a/b).

The second theory suggests that female offenders are given preferential treatment when the offender is a housewife or a mother because in these cases "incarceration would be seen as a serious disruption of the traditional family unit" (Bishop and Frazier

1984:386). Daly (1987b:268) constructs this preferential treatment of mothers as “familial paternalism” because it seeks to protect families. This preferential treatment suggests that the justice system perpetuates traditional patriarchal familial values by giving shorter sentences to mothers rather than maintaining the rule of law. Due to the fact most female offenders are more likely have children than male offenders and since familial women tend to fulfill more of their parental obligations than men, females are more likely to receive a lenient sentence (Daly 1987b).

Research by Kruttschnitt (1980/81, 1982a/b, 1984), Bishop and Frazier (1984) and Daly (1987a/b, 1989a/b, 1994) emphasize the importance of evaluating the effects of marital, employment and familial statuses when analyzing the relationship between gender and sentencing outcomes. These scholars use familial paternalism and dependency-social control theoretical perspectives to predict the kinds of women who receive shorter sentences than men in the criminal justice system. These perspectives argue that only women who have a family (dependents) or women subjected to informal social control from their male partners are given a lighter sentence. These theoretical perspectives can be seen as complementary to the evil woman hypothesis because in both these theories only ‘good’ mothers and wives receive lenient sentences in the criminal justice system.

This section describes theoretical perspectives directly related the possible effects of gender on sentence severity. Table 1 displays relevant factors and hypotheses for each of these latter theories. The first two theories, chivalry/paternalism hypothesis and evil woman hypothesis, provide explanations for the differential treatment of women based on society’s embedded perceptions about appropriate feminine and masculine roles. The last

**TABLE 1. Summary of the Gendered and Gender Related Sentencing Theories**

<b>Gendered Sentencing Theories</b>	<b>Predicted Sentencing</b>	<b>Judiciary Reasoning Behind sentencing decision</b>
<i>Chivalry/ Paternalism Hypothesis</i> (Pollak 1950)	<p><b>Varies by Gender</b></p> <ol style="list-style-type: none"> <li>1. Male offenders will receive longer sentences than female offenders.</li> <li>2. Male offenders accused of killing female victims will receive the longest sentence, compared to any other offender and victim gender combination.</li> </ol>	Judiciary view women as being less dangerous than men, and in greater need of protection.
<i>Evil Women Hypothesis</i> (Nagel and Hagan 1983; Lloyd 1995)	<p><b>Varies based on Appropriate Gender Roles</b></p> <ol style="list-style-type: none"> <li>1. Females, who commit crimes, are stepping out of their traditional “feminine” gender roles and will receive longer sentence than males who commit homicide.</li> <li>2. Males who kill females who do not fit into the traditional feminine gender roles, will receive a shorter sentence compared to males who kill females who fit society’s view of feminine.</li> </ol>	Judiciary view women whose crimes or demeanor violate sex role expectations to be more repugnant than men, they are deemed “doubly deviant”.
<p><i>Other gender related theories:</i></p> <p><i>Dependency and Familial Paternalism Hypothesis</i> (Kruttschnitt 1980/81; Bishop and Frazier 1984; Daly 1987a/b)</p>	<p><b>Varies by Status</b></p> <ol style="list-style-type: none"> <li>1. Women who are dependent (unemployed and married/cohabitating) on their male partners will receive more lenient sentences (Dependency Theory)</li> <li>2. Women who have children will receive more lenient sentences than men who have children and women who have no children. (Familial Paternalism)</li> </ol>	Judiciary do not have uniform views about women, rather decisions depend more on marital status, employment status, women’s dependency on men and familial status. Women who are more dependent on men, and who are mothers are viewed as needing less punitive sentencing, in order to maintain the family unit.

two gender related theories, dependency and familial paternalism hypothesis, suggest that it is not necessarily gender that affects sentencing but gender related to social control and familial characteristics. The following chapter discusses what research has shown to date about the effect of gender and gender related factors on sentence outcomes.

## **Chapter Three: Literature Review**

### **Introduction**

The sentencing literature is vast and complex; for the past 60 years scholars have looked at a wide variety of factors affecting sentencing. One of the main focuses has been the effect of gender on sentence severity. This literature review provides an overview of victim, offender, and incident characteristics that are identified as being relevant in research on gender and sentencing outcomes. The first section highlights the major findings surrounding the effect of offender and victim gender on sentencing outcomes for all types of crimes. The second section focuses more specifically on studies that have examined the effect of offender and victim gender on sentence length in violent or homicide crimes. The last section discusses the effect on sentencing outcomes of gender in conjunction with other factors: race/ethnicity and age, familial characteristics (employment status, marital status, and dependents), victimization, and victim-offender relationship.

### **Gender and Sentencing Across All Types of Crime**

Sentencing studies since the 1950s have focused on the effect an offender's gender has on sentencing outcomes (for detailed reviews of this literature see Doobs 2004; Daly and Bordt 1995; Steffensmeier et al. 1993). Through an examination of the differences in legal outcomes between males and females in New York, France, and Chicago, Pollak (1950) found, using descriptive bivariate statistics that males were more likely than female to be convicted for all types of crimes. Pollak (1950) was the first to use the chivalry hypothesis to explain why women, when compared to men, were more

likely to receive what he referred to as ‘lenient’ treatment in the criminal justice process. Since the 1950s, studies have continued to test the effect of gender on sentence length and have found similar results (Daly 1987a; Moulds 1980; Zingraff and Thompson 1984). However, many of these early studies have been criticized for inadequately controlling for legal characteristics (Steffensmeier et al. 1993). For example, Moulds (1980) used cross-tabular analyses and was unable to control for offence seriousness and prior record at the same time. Daly (1987a) was criticized by Steffensmeier et al. (1993) for using broad offence categories as her controls instead of the severity of the offence (Daly 1987a). As well, Zingraff and Thompson (1984) controlled for prior record with a dichotomous variable (prior record versus no prior record) rather than controlling for the severity of the offender’s criminal record. It is now recognized that failure to properly control for legal and offence characteristics means there is a risk of exaggerating the effect of gender on sentence outcomes.

Despite the weaknesses of earlier studies, many scholars still find that female offenders receive different sentences when compared to male offenders for all types of crimes. Moreover, these studies have used rigorous multivariate techniques and, for the most part, used appropriate controls for legal characteristics.<sup>3</sup> Studies found that female defendants were more likely to have the charges against them dismissed (Spohn and Spears 1997); female offenders were less likely to be sent to jail (Curran 1983; Daly and Bordt 1995; Doobs 2004; Engen and Gainey 2000; Griffin and Wooldredge 2006; Gruhl and Welch 1984; Mustard 2001; Spohn 2002; Spohn and Beichner 2000; Spohn and Spears 1997; Steffensmeier et al. 1993; Steffensmeier and Demuth 2006); and female offenders were more likely to receive shorter sentences compared to male offenders

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<sup>3</sup> Many studies still continue to use a dichotomous measure for prior record, similar to Thompson (1984).

(Albonetti 1997; Blackwell et al. 2008; Brennan and Spohn 2009; Franklin and Fearn 2008; Huang et al. 1996; Jeffries 2001; Jeffries and Bond 2010; Spohn and Spears 1997; Steffensmeier and Demuth 2006).

In contrast to these findings, a smaller body of scholarship supports the “evil woman hypothesis” which suggests that women who are convicted of a crime are seen as “doubly deviant”, since they deviate both as a criminal and from their feminine gender roles (Bernstein et al. 1977; Lloyd 1995; Nooruddin 2007). There has been limited support for this theory and few studies have found that female offenders are sentenced more severely when compared to male offenders. The two main studies that found support for this theory were completed more than 20 years ago. They found that female offenders were less likely to receive a charge reduction when compared to male offenders (Bernstein et al. 1977; Figueria-McDonough 1985). More recently, Nooruddin (2007) found that women were more likely to be sentenced to the death penalty compared to male defendants. However, this study included case information for only 82 offenders. Nooruddin (2007) encouraged scholars to complete more research on this topic because of his small sample size.

Another body of literature found that an offender’s gender had no effect on sentencing (Steffensmeier et al. 1993). Specifically, these studies found that an offender’s gender had no effect on charge reductions or plea bargaining (Bishop and Frazier 1984; Curran 1983), the likelihood of incarceration (Koons-witt 2002; Kruttschnitt and Green 1984), the likelihood of conviction (Evans 2005; Rapaport 1991), or the length of sentence (Crew 1991; Doobs 2004; Griffin and Wooldredge 2006; Steffensmeier et al. 1993; Wooldredge 1998). As highlighted by the studies above, the relationship between

offender gender and criminal justice outcomes continues to be debated and contested amongst scholars.

Offender gender is only one component of sentencing disparities. More recently, the effect of victim's gender has been examined. Compared to the effect of offender gender on criminal justice decision-making, the effect of victim gender has been less frequently examined, but the findings have been more consistent. Specifically, offenders who victimized females received the harshest sentence compared to offenders who victimized males (Baumer et al. 2000; Curry et al. 2004; Curry 2010; Farrell and Swigert 1986; Franklin and Fearn 2008; Glaeser and Sarcedote 2000; Williams and Holcomb 2004; Williams et al. 2004; 2007).<sup>4</sup> While several studies have been conducted in the past five years, Franklin and Fearn (2008) claimed that a gap in gendered sentencing analyses still exists because many scholars focus solely on offender characteristics without incorporating victim characteristics. The above review highlights the effect of offender and victim gender on sentencing outcomes. However, the majority of the current studies that have examined the effect of victim gender on sentencing outcomes have used violent or homicide crime statistics. With that in mind, the effect of victim gender on sentence length will be discussed more in the next section where gender, violent crimes and sentence length are examined in more depth.

### **Gender, Violent Crimes, and Sentence Length**

Compared to the body of literature that discussed the effect of gender on sentencing outcomes for all types of crimes, some studies have found that gendered sentencing differences may vary by the type of criminal act (Curry et al. 2006; Dobbs

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<sup>4</sup> For a dissenting view see Myers (1979).

2004; Spohn and Bordt 1995; Steffensmeier et al. 1993). Recently, Curry et al. (2006) and Curry (2010) found that, when comparing different types of crime, the effect of gender on sentence length was most pronounced for violent offences compared to non-violent offences. In addition, a study conducted in New Zealand discovered that female violent offenders compared to male violent offenders received a shorter sentence by 12 months whereas female non-violent drug offenders only received a shorter sentence by five months (Jeffries 2001). The findings from all three of these studies were consistent: the effect of gender was most significant on sentence length for violent crimes. In contrast, Dobbs (2004) and Nagel and Hagan (1983) found that women received shorter sentences than men for property and drug offences but that there was no difference in sentence length for violent offences. These studies, despite their mixed findings, highlighted the importance of considering the type of crime when examining gendered sentencing differences. With this in mind, the rest of this section provides a more detailed summary of research that has examined the effect of gender on sentence length for violent crimes only.

Several multivariate studies have examined the effect of gender on sentencing outcomes for homicide offenders.<sup>5</sup> Of these studies, some of them examined the effect of an offender's gender on sentence length and found female offenders received shorter sentences than male offenders when convicted of homicide (Franklin and Fearn 2008; Huang et al. 1996) or violent crimes, including homicide (Spohn and Spears 1997). Another body of studies revealed that gender had no effect on sentencing outcomes when testing the effect of gender on the likelihood of receiving the death penalty sentence (Evans 2005; Rapaport 1991). Rapaport (1991) compared female and male homicide

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<sup>5</sup> For some of the studies, homicide offenders were examined amongst offenders of other violent crimes.

offenders, using bivariate analyses and case profiles of men and women, and discovered that women were less likely than men to be sentenced to death. However, she concluded the women were not spared the death penalty because of discriminatory sentencing practices, but because the men were more likely to have violent criminal records.

Finally, another body of literature focused on the effect of victim gender and/or the combination of victim and offender gender on sentence length. The results from these analyses were overwhelmingly consistent. First, cases with female victims resulted in longer sentences than cases with male victims regardless of the offender gender (Baumer et al. 2000; Curry 2010; Farrell and Swigert 1986; Glaeser and Sacerdote 2000; Stauffer et al. 2006; Williams and Holcomb 2004; Williams et al. 2004;2007). Second, male offenders who victimized females received the longest sentences compared to any other victim and offender gender combination (Curry et al. 2004; Franklin and Fearn 2008). Baumer et al. (2000) uses the blameworthy attribution theory to argue that cases with female victims may elicit a longer sentence from the criminal justice system. The longer sentences may be a result of feminine stereotypes. Stereotypes that suggest female victims of homicide are less responsible for their own deaths (Rapaport 1991). Moreover, violence against women by men is often perceived as more blameworthy than violence against men by women (Felson and Feld 2009), thereby, men are often the recipients of longer sentences. While there have been more consistent findings for the effect of victim gender than offender gender on sentence length for homicide cases in the U.S., the Canadian literature has yet to comprehensively examine the effect of both offender and victim gender on sentence length.<sup>6</sup>

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<sup>6</sup> Dawson (2004a) has used both victim and offender gender as controls during her analysis of the effect of victim and offender relationships on sentencing outcomes.

## **Gender Related Factors and Their Effects on Sentencing**

### *Gender, Race/Ethnicity and Age*

Many studies completed in the U.S. reported a significant association between gender, race/ethnicity and sentencing outcomes. In this literature, some studies suggested that white women were the only gender and race/ethnicity combination that received shorter sentences from the criminal justice system when compared to black women and white and black men (Nooruddin 2007; Steffensmeier et al. 1993; Steffensmeier et al. 1998). Another body of scholarly work found that black males received the longest sentences when compared to any other offender race/ethnicity and gender combination for violent felonies (Spohn and Spears 1997) and all felonies (Brennan and Spohn 2009; Crew 1991; Doerner and Demuth 2010; Steffensmeier et al. 1998).

Some studies have examined the interaction between age, gender and race/ethnicity. Doerner and Demuth (2010) and Steffensmeier et al. (1998) examined felony crimes. Both discovered that young, black males received the longest sentences compared to any other gender, race/ethnicity, and age combination. Applying the bounded rationality framework, Albonetti (1991) suggests that young, black male offenders are given longer sentences because they are stereotyped as being more dangerous and more likely to recidivate.

Other studies have examined the interactions between victim gender, race/ethnicity, and sentencing outcomes. The majority of these studies examined violent crimes or homicides and have found offenders who killed or violently victimized white, female victims received the longest sentence when compared to any other race and gender victim combination (Curry 2010; Glaeser and Sacerdote 2000; Williams et al.

2004; Steffensmeier et al. 1998; Steffensmeier and Demuth 2000). Williams et al.'s (2004:878) research on the death penalty labeled this differential treatment the "white female effect." Using the focal concern blameworthiness framework, Curry (2010:444) suggested that perhaps offenders who killed white, female victims were given longer sentences because "white females are seen as less responsible for their criminal victimization because criminal behaviour and associations are seen as atypical for this group."

### *Gender and Familial Characteristics*

Familial characteristics, including dependent children, employment and marital status, emerged in the sentencing debate at the beginning of the 1980s when scholars began to argue that not all women were uniformly given preferential treatment when compared to men in the criminal justice system. The gender and familial analyses have focused primarily on non-violent crimes, such as property and drug offences; there has been little researched about the effect of familial characteristics on the sentencing of violent crime. Kruttschnitt (1980/81:247) discovered, using a sample of women who committed non-violent crimes, that "women's various social characteristics" were "good predictors of the nature and extent of their sentences." More specifically, Kruttschnitt (1980/81) found that females who were employed and females who were "socially integrated" (i.e. a student or a housewife compared to an individual on welfare) were granted more lenience by the law than those who were not. These findings supported the dependency/social control theory because women who have more social control from different avenues received more lenient sentences (Kruttschnitt 1980/81). Subsequent

studies also found a relationship between gender and employment status for felony offenders in the U.S. (Crew 1991; Nobiling et al. 1986).

These findings by Kruttschnitt (1980/81, 1984) prompted subsequent research that attempted to identify the familial gendered characteristics that accounted for divergent sentences among women. Follow-up studies examined other familial factors and found evidence for the effect of children on sentencing outcomes (Crew 1991; Daly 1987a/b, 1989a/b, 1994; Koons-Witt 2002; Kruttschnitt 1984). In a quantitative multivariate analysis, Daly (1987a) found that all familial men and women were shown more lenience by the courts, but that familial women received more lenience than familial men. The lenience provided to familial offenders was described by Daly (1987b) as familial paternalism.

Most qualitative analyses of judicial decision-making have found support for the familial paternalism theory (Daly 1987b; 1989a; 1994; Freiburger 2010; Steffensmeier et al. 1993). Daly (1987b; 1989a) interviewed judges about the factors they considered when making sentencing decisions and discovered that an offender's prior record was most influential, followed by characteristics such as the offender's familial status, education or employment, and the nature of the criminal offence. However, judges in Daly's (1989a) study clarified that family statuses alone did not produce a more lenient sentence for offenders; rather, offenders who were seen as providing emotional support were given more favourable sentences (Daly 1989a). In other words, the judges were more concerned about the "social costs of punishment" and how removing the mother and care giver from the family would affect the children (Daly 1989a:18).

Aside from Daly, the majority of qualitative interviews or case studies surrounding judicial sentencing decisions have supported the idea that judges grant certain offenders with more favourable sentences when they have familial attachments (Freiburger 2010; Steffensmeier et al. 1993). Steffensmeier et al. (1993) examined judges' official reasoning for departing from sentencing guidelines. They found evidence to support Daly's work (1987a/b; 1989a/b) to the extent that judges favoured female offenders when they were pregnant or caring for dependents.

Only one study reported that women did not receive preferential treatment when they had dependents (Bickle and Peterson 1991). Bickle and Peterson (1991) found that judges favoured men when they were seen as providing emotional support to their dependents, but that familial women were not favoured over non-familial women. Overall, familial statuses have been found to have a significant gendered effect on sentencing.

### *Gender and Victimization*

Prior victimization is another factor reported by some scholars to affect sentencing outcomes. A vast body of scholarship has documented that female offenders experience higher rates of physical and sexual abuse prior to incarceration than men (Chesney-Lind 2004; Daly 1994; Harlow 1999; Kruttschnitt and Gartner 2003; Raedar 1993; Silvestri and Crowther-Downey 2008).<sup>7</sup> In her analysis of men's and women's pathways to felony court, Daly (1994:260) found that "boundaries between victim and

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<sup>7</sup> Allen (1987) criticized scholars for focusing only on the link between female offenders' histories and prior victimization because the links between male offender and victimization is ignored. More sites of male offender's victimization could be found if scholars look at the relationship between domination and masculinities among male peer groups. Moreover, Daly (1994:260) suggests that "men's claim of a victimized status comes at the price of undercutting their conception of manhood."

offender were more often blurred in the women's social histories." Daly (1994) points out that the connection between female offending and past histories of violent victimization often allows female offenders to be seen as less blameworthy for their crimes. Similarly, Allen (1987:93) found that "criminal women" were seen as being less responsible for their actions because the courts were more likely to position the women "as victims rather than aggressors." More recently, Jeffries' (2001) pair-wise analysis of male and female offenders in Australia also suggested that perhaps women's histories of victimization could partially explain gendered differences in sentencing. While there is a lack of research on the effect of victimization on sentence duration for homicide offenders, initial qualitative research suggests that females may receive more sympathy from the courts if they have a history of abuse.

#### *Gender and Victim-Offender Relationship*

Another characteristic that has more recently received attention is the effect of victim-offender relationship on sentence length. Two U.S. studies found contradictory findings regarding the effect of gender and victim-offender relationship on homicide sentencing. Auerhahn (2007) found that women who were convicted of intimate partner homicides were given a lesser sentence compared to male offenders. In contrast, a study completed by Nooruddin (2007) using homicide statistics found that female defendants who were charged with killing their intimate partners were more likely to be convicted, and severely punished, than males charged with killing their intimate partners. The results from this study support the "evil woman" hypothesis because women who kill their

intimate partners are violating “traditional gender roles of passivity and care giving but also a sexual hierarchy that grants men power over women” (Nooruddin 2007:323).

Two Canadian studies discussed the effects of intimacy on sentencing outcomes. The first study by Crocker (2005) used *Quick Law* to complete a qualitative analysis of judicial rationales for sentencing decisions in cases of intimate partner violence from 1970 to 2000. Overall, Crocker (2005:219) found few qualitative patterns in judicial decisions; however, she noted some judges viewed “battered women as a vulnerable group in need of protection.” The second Canadian study relied on Black’s (1976) theoretical assumptions, which claimed that intimate partner violence received more lenience from the courts when compared to violence that occurred between strangers or non-intimates. Dawson (2004b; 2006) found some evidence that defendants convicted of killing their intimate partners, regardless of gender, were more likely to receive shorter sentences than those who killed non-intimates. Dawson (2006) did not examine the interaction of gender and intimacy, but her study highlights the importance in the Canadian literature to control for victim-offender relationship.

## **Conclusion**

In summary, the literature suggests that offenders are more likely to be incarcerated and receive longer sentences if they are male (Franklin and Fearn 2008; Huang et al. 1996; Steffensmeier and Demuth 2006), murder a female victim (Baumer et al. 2000; Curry 2010; Glaeser and Sarcedote 2000), are non-white (Steffensmeier et al. 1998), and are without children (Daly 1989a/b, 1994). While the sentencing literature is vast, gaps nevertheless exist. The three gaps that this study addresses are the lack of

information about how victim gender shapes sentencing, the neglect of the relationship between gender and sentencing outside of the U.S. context, and the dearth of multi-year analyses. There have only been a few studies that adequately examine gendered sentencing patterns outside of U.S. (Boritch 1992; Dawson 2004a; Jefferies 2001,2010). This study realizes the importance of replicating U.S. studies to directly test the effect of victim and offender gender on sentencing outcomes in Canada over a 28-year period. The next chapter turns to a discussion about the methods, data, and analytic strategy employed in this study.

## **Chapter Four: Methodology**

### **Introduction**

This study utilizes both a quantitative and a deep-sample exploratory qualitative analysis to answer the following questions: How does offender gender affect sentence length? How does victim gender affect sentence length? What are other potential gendered factors that affect sentence length? This chapter provides an explanation of the methodology used to answer this study's research questions. First, the analytic procedures, the variables and their operationalization for the quantitative analysis are reviewed. Secondly, this chapter describes the analytic procedures of the deep-sample exploratory analysis used when researching other gendered factors that affect sentence length. Finally, the strengths and weaknesses for both the quantitative and deep-sample exploratory models are discussed.

### **Quantitative Research Design**

This study used secondary data analysis to examine the relationship between gender and sentence length for all homicide cases handled by Toronto courts from 1974 to 2002 (Dawson 2004a/b). Throughout this 28-year period, there were 1,612 reported homicides in Toronto and, of those reported, 1,137 individuals were charged and their cases processed by the courts (Dawson 2004a: vii). The data were collected in two stages. The first stage of data collection recorded information on homicides that occurred during the years of 1974-1996 by using crown attorney files, coroner's records, and newspaper archives (see Dawson 2004b for further details). Then the data were expanded to include the years 1997-2002 (Dawson 2004a). Using a standardized coding sheet, information

was collected on the circumstances surrounding the homicide, the characteristics of the offender and the victim, their relationship, and the criminal justice outcomes. The information from each case was entered for analysis into the Statistical Package for the Social Sciences (SPSS). Removing offenders' and victims' names and replacing them with numeric identifiers ensured confidentiality.

### *The Sample*

Drawing from these data, this study focused on cases of homicide in which the offender was convicted and sentenced. Offenders who were acquitted, dismissed, or found not criminally responsible by reason of mental disorder (NCRMD) were removed from the study.<sup>8</sup> The final dataset from 1974-2002 contained 856 homicide offenders.<sup>9</sup> Among the 856 offenders, nine percent were female and 91 percent were male.

### *Dependent Variable*

*Sentence Length:* In the quantitative model, the dependent variable used to measure the difference in sentence severity between male and female offenders was the length of incarceration an offender received when convicted of homicide. When an offender is found guilty of a homicide-related offence, they are most commonly convicted of first-degree murder, second-degree murder, or manslaughter.<sup>10</sup> In Canada, first-degree murder has a mandatory 25-years incarceration before parole eligibility and

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<sup>8</sup> Prior to 1992, the terminology used was 'not guilty by reason of insanity' (NGRI).

<sup>9</sup> There were a total of 956 homicides recorded in the dataset and a total of 1,138 different offenders, from the years 1974-2002.

<sup>10</sup> Offenders found guilty of other offences were convicted of attempted homicide, robbery, aggravated assault, or accessory after the fact.

**TABLE 2. Coding of the Dependent, Independent, and Control Variables, Toronto, Ontario, 1974-2002 (N=856)**

<b>Variable</b>	<b>Coding</b>
<i>Dependent Variable</i>	
Sentence Length	Continuous Measure in years (0-25)
<i>Independent Variables</i>	
Male Offender	1=yes, 0=no
Male Victim	1=yes, 0=no
Offender and Victim	(1,0) Male-Male Homicides
Gender Combinations	(1,0) Male-Female Homicides (RC <sup>11</sup> ) (1,0) Female-Male and Female-Female Homicides
<i>Control Variables</i>	
<i>Legal Characteristics</i>	
Case went to Trial	1=yes, 0=no (Guilty Plea)
Murder Conviction	1=yes, 0=no
Multiple Victims	1=yes, 0=no
Primary Offender	1=yes, 0=no
Criminal Record	(1,0) Violent Criminal Record (1,0) Non Violent Criminal Record (1,0) No Criminal Record (RC) (1,0) Criminal Record Missing
<i>Case Characteristics</i>	
Year case entered court	Continuous Measure (1974-2002)
Gun Homicide	1=yes, 0=no
Victim Offender	(1,0) Intimates
Relationship	(1,0) Family (1,0) Acquaintance/Friend (1,0) Stranger (RC)
<i>Characteristics of the Offender</i>	
Age	Continuous Measure
White	1=yes, 0=no
Race/Ethnicity Missing	1=yes, 0=no
Married	1=yes, 0=no
Marital Status Missing	1=yes, 0=no
Employed	1=yes, 0=no
Employment Status Missing	1=yes, 0=no
<i>Characteristics of Victim</i>	
Age	Continuous Measure
White	1=yes, 0=no
Race/Ethnicity Missing	1=yes, 0=no
Married	1=yes, 0=no
Marital Status Missing	1=yes, 0=no
Employed	1=yes, 0=no
Employment Status Missing	1=yes, 0=no

<sup>11</sup> The variables labelled RC were not included in the models because they were used as reference categories.

**TABLE 3. Descriptive Statistics: Dependent, Independent, and Control Variables, Toronto, Ontario, 1974-2002 (N=856).**

<b>Variable</b>	<b>N</b>	<b>Percent (%)</b>
<i>Dependent Variable</i>		
Sentence Length	865	9.27
<i>Independent Variables</i>		
Gender of Offender		
Male Offender	776	91
Female Offender	80	9
Gender of Victim		
Male Victim	612	72
Female Victim	244	29
Gender Combinations		
Male-Male Homicide	544	64
Male-Female Homicide	232	27
Female-Male and Female-Female Homicide	80	9
<i>Control Variables</i>		
<u>Legal Characteristics</u>		
Mode of Conviction		
Case goes to Trial	386	45
Guilty Plea	470	55
Offender's Conviction		
Murder Conviction	342	40
Other Conviction	514	60
Number of Victims		
Multiple Victims	37	4
One Victim	819	96
Role of Accused		
Primary Offender	739	86
Secondary or Other Offender	117	14
Criminal Record of Offender (N=775)		
Violent Criminal Record	137	16
Non Violent Criminal Record	391	46
No Criminal Record	228	27
Criminal Record Missing	100	12
<u>Case Characteristics</u> <sup>12</sup>		
Method of Homicide		
Gun Homicide	203	24
Other Method	653	76

<sup>12</sup> The year the case entered court was removed from this table because it is a continuous variable and unlike age, an average year does not tell us much about the sample.

<b>Variable</b>	<b>N</b>	<b>Percent (%)</b>
<b>Victim Offender Relationship</b>		
Intimate	184	22
Friend or Acquaintance	371	43
Family Member	71	8
Stranger	200	23
Missing	30	4
<b>Characteristics of the Offender</b>		
Age (Years)	856	30.14
Race/Ethnicity		
White	438	51
Non-White	328	38
Race/Ethnicity Missing	90	11
Marital Status		
Married	313	37
Not Married	491	57
Marital Status Missing	52	6
Employment Status		
Employed	221	26
Unemployed	501	59
Employment Status Missing	134	16
<b>Characteristics of Victim</b>		
Age (Years)	856	34.59
Race/Ethnicity		
White	457	53
Non-White	315	37
Race/Ethnicity Missing	84	10
Marital Status		
Married	325	38
Not Married	461	54
Marital Status Missing	70	8
Employment Status		
Employed	301	35
Unemployed	425	50
Employment Status Missing	130	15

\*Due to rounding percentages may not add up to 100

second-degree murder has a mandatory minimum of ten years before parole eligibility (S.235 CCC). There is no mandatory minimum for people convicted of manslaughter. The dependent variable ranged from zero to 25. The average sentence given to offenders

was 9.27 years (for the duration of this discussion, see Tables 2 and 3 for the coding and descriptive statistics of the dependent, the independent, and the control variables).

### *Independent Variables*

*Gender of the Offender:* The first independent variable used in this study was the gender of the offender. The literature review summarized the findings about the effects of an offender's gender on sentence length for homicide and violent crimes, showing mixed results. The majority of scholars found women received shorter sentences compared to men (Auerhahn 2007; Franklin and Fearn 2008; Huang et al. 1996) with fewer scholars finding that women received harsher sentences when compared to men (Nooruddin 2007) or women and men received similar sentences (Crew 1991; Rapaport 1991). Drawing from this work, this study posed the following hypothesis:

**Hypothesis 1: Males convicted of homicide will receive a longer sentence compared to females convicted of homicide.**

In this study, males were coded as 1 and females were coded as 0. Ninety-one percent of the offenders were male and nine percent of the accused were female.

*Gender of the Victim:* The gender of the victim was the second independent variable in this study. Only recently has the gender of the victim become a focus in sentencing research. The majority of studies examining the victim's gender have discovered that longer sentences were given to offenders who killed female victims (Franklin and Fearn 2008; Williams et al. 2004; 2007). Due to these findings, this study hypothesized that:

**Hypothesis 2: Those convicted of homicide will receive longer sentences when their victims are female compared to those whose victims are male.**

The coding of victim gender replicated the coding of offender's gender, males (1) and females (0). In this sample, 71 percent of the victims were male and 29 percent of the victims were female.

*Offender and Victim Gender Combinations:* The third focal-independent variable used in this study was the offender and victim gender combinations. This independent variable enabled an examination of the combined effect of offender gender and victim gender on sentence length. Franklin and Fearn (2008) examined the impact of the relationship between offender gender and victim gender on sentence length. They discovered that when a male killed a female victim, the male received the longest sentence compared to a male convicted of killing a male victim or a female who killed either a male or female victim. Drawing from the literature, the hypothesis for the victim/accused gender combination was:

**Hypothesis 3: If a male is convicted of killing a female, his sentence will be longer than any other victim and offender gender combination.**

The coding of the victim and offender gender combinations in this current study differed from Franklin and Fearn's (2008) study. Instead of having four different dummy variables, this study had three because the category of female-female homicide accounted for less than two percent of the sample, making this category too small to include on its own. Therefore, female offenders with either a female or a male victim were collapsed into one category in the multivariate analysis.<sup>13</sup> The reference category for this variable was male/male homicide and this gender combination accounted for 64 percent of the

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<sup>13</sup> Collapsing the categories female offender/female victim and female offender/male victim into one category eliminates some valuable information about the effect that female offenders and their victims have on sentence length. However, with such a small sample size, the results would be unreliable because they would be based on only 15 offenders over 28 years. Future research should either accrue a Canadian dataset large enough to include the female offender/female victim category or complete a qualitative analysis on this specific group of offenders.

cases. The dummy variables included in the model were female offenders and male offenders who killed females. Female offenders accounted for nine percent of the sample and male-female homicide cases accounted for 27 percent of the sample.

### *Control Variables*

In this study, to isolate the effect of offender gender and victim gender on sentence length, both legal and extra-legal control variables were included. The extra-legal variables were comprised of incident, victim, and offender characteristics. Controlling for the effects of other variables helps to prevent a spurious relationship (Kraska and Neuman 2008). A spurious relationship is the false presumption that two variables are correlated when in actuality the correlation between the variables is due to a third variable not included in the examination (Kraska and Neuman 2008). For example, in this study, only two females were convicted of first-degree murder compared to 77 males who were convicted of first-degree murder. If the seriousness of conviction was not controlled for, it might have appeared that males received longer sentences compared to females. However, this would have been a spurious relationship because the seriousness of their relative convictions would have actually been what led to the differential sentences.

### *Legal Characteristics*

In this study, five legal variables are included as controls: (1) mode of conviction, (2) seriousness of the offence, (3) number of victims, (4) role of the offender, and (5) offender's prior criminal record. These variables are discussed separately below.

*Mode of Conviction:* Mode of conviction has been reported to have an effect on sentence severity. Mode of conviction represents the decision an offender makes to either plead guilty or go to trial (Dawson 2004b; Franklin and Fearn 2008). The mode of conviction is seen as an indicator of sentence severity because; offenders who plead guilty versus offenders who go to a trial are often given shorter sentences (Figueira-McDonough 1985; Franklin and Fearn 2008). For the purposes of this study, going to trial was coded 1 and guilty plea was coded 0. In this sample, offenders opted for a trial in 45 percent of the cases.

*Seriousness of the Offence:* Many scholars have argued the seriousness of the offence is important to control for (Crew 1991; Curry 2010; Daly and Bordt 1995; Franklin and Fearn 2008; Kruttschnitt 1980/81; Kruttschnitt and Green 1984; Spohn et al. 1985; Steffensmeier et al. 1993,1998; Wooldredge 1998). For murder cases, judges must use the mandatory minimums from the Canadian Criminal Code when deciding on sentence length. For example, if an offender is convicted of first-degree murder, they are not eligible for parole for 25 years (S.235 CCC). Since the conviction dictates the length of sentence an offender can receive, offenders who are convicted of more severe crimes will likely receive longer sentences. In this study, the seriousness of the offence was operationalized using a dichotomous measure distinguishing a murder conviction (coded 1) from other convictions (coded 0). Offenders in the 'other conviction' category were convicted of manslaughter, attempted homicide, robbery, aggravated assault, or accessory after the fact. In this sample, 40 percent of offenders were convicted of murder.

*Multiple Victims:* Research on sentencing outcomes has documented the effect of multiple victims on sentence length. Homicide offenders convicted of murdering multiple

victims may be viewed as more blameworthy and given longer sentences as a result (Steffensmeier et al. 1993). Some studies remove cases with multiple victims in order to avoid ambiguities in their findings (Baumer et al. 2000); however, in this study, multiple victim cases were included as a control. Cases with multiple victims were coded as 1 and cases with a single victim were coded as 0. In this sample, only four percent of cases involved multiple victims.

*Role of the Offender:* An offender's involvement in a crime has been theorized to influence their level of blameworthiness which can subsequently affect sentence length (Steffensmeier et al. 1993; Steffensmeier et al. 1995). If an offender is the instigator of a crime, the judiciary may view them as more blameworthy and sentence them to a longer period of incarceration when compared to an offender who was deemed a follower. Offenders who were the primary offender were coded as 1 and offenders who were not a primary offender were coded as 0. In this dataset, 86 percent of offenders were described as the primary offender.

*Prior Criminal Record:* Since the early 1980s, an offender's prior criminal record has been seen as a key factor in sentencing studies (Albonetti 1991; Bickle and Peterson 1991; Curry et al. 2004; Curry 2010; Dawson 2004b; Franklin and Fearn 2008; Nooruddin 2007; Steffensmeier 1980; Steffensmeier et al. 1993,1998; Wooldredge 1998; Ulmer and Kramer 1996). Offenders with criminal records often receive longer sentences because they are seen as more culpable and more likely to reoffend can receive (Curry et al. 2006; Franklin and Fearn 2008; Spohn and Welch 1987; Steffensmeier et al. 1993). Gruhl and Welch (1984) argued that an offender's prior criminal record affects the severity of sentence and, therefore, studies that neglect to control for an offender's prior

criminal record cannot isolate the effect of gender on sentence length. Other scholars argued that one must not only control for prior record, but they must also control for the seriousness of the offender's criminal record (e.g. violent convictions that resulted in incarceration vs. non-violent convictions that resulted in other types of sentences) (Spohn and Welch 1987; Steffensmeier et al. 1993). This study used three dummy variables to control for the seriousness of an offender's prior criminal record. The variable, following Spohn and Welch (1987), was broken down into violent criminal record (1,0), non-violent criminal record (1,0) and no criminal record (1,0). Offenders with no criminal records were the reference category. Of the offenders convicted, 16 percent had a violent criminal record, 46 percent had non-violent criminal record, and 26 percent did not have a criminal record.

### *Incident Characteristics*

Incident characteristics are the first group of extra-legal control variables used in this study. Three characteristics of the incident were controlled for: the year the case entered the court, the victim/accused relationship and gun homicides.

*The Year the Case Entered the Court:* The year the case entered the court may affect the sentence length of an offender because public policies and societal expectations change and can influence sentencing. This variable has been theorized to have an effect on women's sentences. For example, Boritch (1997:153) argued that gendered sentencing trends will change "as differences in perceptions of sex roles decline," and "as women achieve greater equality in the political, economic, and social spheres." Many studies have not been able to effectively study the effect of social changes on sentencing

outcomes because their datasets span only a few years. The dataset used in the current study allowed for the examination of the effect of gender over a period of 28 years. The year was treated as a continuous variable.

*Victim-Offender Relationship:* More recently, the relationship between the victim and offender has received attention in the sentencing literature. Using homicide statistics, Nooruddin (2007) determined that female defendants who were charged with killing their intimate partners were more likely to be convicted and severely punished than males similarly convicted of killing their intimate partners. In a Canadian study, Dawson (2006:1443) compared the killing of intimates to non-intimates and found that defendants convicted of killing their intimate partners were more likely to receive shorter sentences than those who killed non-intimates. The current study controls for the effect of victim-offender relationship using four categories: intimate partner, friend/acquaintance, family member, and stranger. Intimate partner homicides accounted for 22 percent of the sample, killing a friend or acquaintance accounted for 43 percent of homicides, killing a family member accounted for eight percent of the sample, and killing a stranger accounted for 23 percent of the homicides. The cases were included in the family member category if the victim was a child (including a step-child or a foster child), a parent (including a step-parent, a foster parent, or a common-law parent), a sibling, or other kin (including common-law other kin). Information was missing in four percent of the cases; however, due to the small number, all missing cases were coded as 0.<sup>14</sup> The category ‘strangers’ was used as the reference category.

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<sup>14</sup> In order to maintain statistical strength the missing victim-offender relationship cases remained in the OLS model. Since the majority of missing victim-offender relationships are usually stranger homicides (Regoeczi and Riedel 2003), the missing victim-offender relationship by coding them 0 means they were

*Gun Homicides:* The method of the homicide has been of interest in U.S. sentencing literature. Loftin and McDowall (1983) found that when a gun was used, the accused received a more severe sentence. In contrast, another study found that firearm homicides have no statistical significant on sentence length (Franklin and Fearn 2008). This study controls for the method of the homicide, gun homicides were coded as 1 while all other methods of homicide were coded as 0. A gun was used in 24 percent of the cases.

#### *Victim and Offender Characteristics*

The last two groups of extra-legal control variables are the offender and victim characteristics. In this study, the race/ethnicity, age, marital status and employment status of the victim and offender were used as controls.

*Race/Ethnicity:* The effect of race/ethnicity has been widely studied in U.S literature. Many studies have found that when the offender was not white and/or he/she killed a white victim, the offender was more likely to receive a harsher sentence (Curry 2010; Glaeser and Sacerdote 2000; Holcomb et al. 2004; Nooruddin 2007; Spohn et al. 1985; Steffensmeier et al. 1998; Steffensmeier and Demuth 2000). Race/ethnicity is not often included in Canadian studies; however, this study was able to access information about the offender's race/ethnicity.<sup>15</sup> White offenders were coded as 1 and non-white offenders were coded as 0. Individuals coded as white were recorded in Dawson's

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included in the reference category of 'stranger' homicides. Other studies only created a dummy variable when over 10 percent of cases were missing (Dawson and Dinovitzer 2006).

<sup>15</sup> While this study is able to control for race/ethnicity, the categories of non-white and white are complex and contested terms in Canada (Roberts and Doob 1997). It is unknown to the research how the race/ethnicity of the offender was collected by police. Which means that while an offender may have been part of a specific ethnic group their physical appearance may not reflect their ethnic category, thus there may be recording bias based on whether or not an offender was a visible minority (Roberts and Doob 1997).

(2004a/b) dataset as being from the following race/ethnic backgrounds: Caucasian, British Isles/Irish, Scandinavian or Jewish. All other race/ethnic backgrounds were considered non-white. In this study, 51 percent of the offenders were white and 53 percent of the victims were white.

*Age:* Age is another variable that was included in this study. Some scholars have discovered a relationship between the age of an offender and the severity of an offender's sentence (Steffensmeier et al. 1995; Steffensmeier et al. 1998). For example, Steffensmeier et al. (1995) investigated the role of age in predicting sentence severity and found that young offenders (under 20) and older offenders (over 30) received more lenient sentences while adult offenders (21-29) received the most severe sentences (see also Demuth and Steffensmeier 2004; Steffensmeier et al. 1998). In this study, the age of the offender and the age of the victim were included as continuous control variables. The mean age for offenders was 30 years and, for victims, 35 years.

*Marital Status:* Familial characteristics such as marital status have been studied by Kruttschnitt (1980/81) and Daly (1987; 1989). They found that women with a family and/or a husband were more likely to receive shorter sentences than non-familied women and men, and familied men (Kruttschnitt 1980/81 and Daly 1987). The current study controlled for both the offender's and the victim's marital status. Married offenders were coded 1 and not married coded 0. Married victims or offenders are defined as any couple who were married and living together, married but separated due to marital problems or due to work or immigration reasons, common law and living together for more than one month. In the study, 38 percent of victims and about 37 percent of offenders were married.

*Employment Status:* The employment status of the offender has been found to affect sentencing outcomes (Kruttschnitt 1982; Nagel and Hagan 1983; Spohn et al. 1981/82). When an offender is unemployed, some studies have shown that they were more likely to go to jail and to receive a longer sentence (Bickle and Peterson 1991; Chiricos and Bale 1991; Spohn et al. 1981/82). This study controlled for the effect of both the victim's and the offender's employment status on sentence length. An offender was considered employed if they were working legally full or part-time either outside or from the home. If an offender or victim was employed they were coded as 1, if they were not employed then they were coded as 0. In this study, 35 percent of victims and 26 percent of offenders were employed.

#### *Analytic Procedures*

Since the dependent variable, sentence length, was a continuous measure, OLS regression was the most appropriate model for dealing with a variable that has many outcomes (Lewis-Beck et al. 2004). Other studies have used OLS regressions to interpret the effect that different case characteristics have on sentence length (Curry et al. 2004; Franklin and Fearn 2008). The purpose of an OLS regression is to minimize the sum of squares of the residuals. Since few correlations in the social sciences create perfect linear relationships, OLS regression chooses the line of best fit, also known as a prediction equation ( $y(\text{predicted})=bx+a$ ), to interpret the relationship between variables. However, the prediction is never exact and the difference between the observed point (in the dataset) and the predicted point created by the prediction equation is called the residual ( $y-y \text{ predicted}=\text{residual}$ ). OLS regression attempts to make the sum of squares of the

residual the smallest possible number (Lewis-Beck et al. 2004: 775). When the least-squares prediction equation is calculated, it estimates the strength and relationship between the variables. The relationship between the variables is explained by the slope (b). The slope represents the response of the dependent variable when the independent variable increases or decreases by one unit. OLS regression is appropriate to use with the dependent variable sentence length because logistic regressions is only used with a dichotomous dependent variable (Fox 1947).

This study used two different OLS models to evaluate the effect of gender on sentence length. The first model examined separately the effect of the offender's gender and the victim's gender on sentence length while controlling for relevant legal and extra-legal characteristics. The second model focused on the effect of the victim and offender gender combinations on sentence length, again controlling for relevant legal and extra-legal characteristics.

It is also important to note that this study did not control for sample selection bias. Sampling selection bias occurs in sentencing studies that do not take into account the attrition of accused at various stages of the criminal justice process in their multivariate models. However, the female sample size was too small to use a corrective model for sampling bias with any confidence. Instead, this study controlled for decisions at earlier stages of the criminal justice system, including mode and type of conviction to help control for the effects of prior decisions.

### *Missing Data Procedures*

This study used alternative statistical procedures to account for missing data for some of the cases. Properly dealing with missing cases helped to maintain a robust sample and also helped to ensure statistical strength. The creation of a dummy variable for the missing data ensured the inclusion of all cases in the study and assessed whether or not data were missing randomly (Orme and Reis 1991). Dummy variables were used for seven of the control variables that were missing information in over five percent of their cases: offender's prior criminal record, offender's and victim's marital status, employment status and race/ethnicity (see Table 2 and 3). Dawson and Dinovitzer (2001) created a dummy variable when ten percent of cases were missing; however, since there were few female cases in this analysis, it was important to ensure minimal female cases were lost due to missing data. The cases for the dummy variables were coded 0 if the data were present and 1 if the data were missing. The dummy variables were then added in to the OLS regression models in order to determine if the data were missing randomly. As long as the dummy variable for the missing cases was not significantly related to the dependent variable (sentence length), the cases were assumed to be missing at random and, thus, the variables were assumed to be stable.

### **Exploratory Analysis: Deep-Sample Method**

A deep-sample analysis was used to complement the large-scale quantitative analysis. Daly (1994:vii) asserted that "insufficient attention is given to the circumstances and histories" of offenders when using a large-scale quantitative analysis. For example, the quantitative data analysis utilized in this study was not able to control for the presence

of dependents/children or prior abuse and their effects on sentence length. In order to obtain some additional information about sentencing decisions and to provide some preliminary results about these gendered factors that might have affected sentencing outcomes, this study replicated Daly's (1994) and Dawson's (2006) deep-sample exploratory method. The deep-sample qualitative method allows a researcher to gather more detail about the social histories of the offenders and circumstances surrounding the event (Daly 1994; Dawson 2006).

### *Matching the Offenders*

To replicate Daly's (1994) and Dawson's (2006) deep-sample method, this study matched male and female homicide cases based on a number of relevant characteristics. In Daly's (1994) study, male and female offenders were matched according to offence severity. However, Dawson's (2006) replication of the deep-sample method matched offenders on the following characteristics: gender, mode of conviction, and time period. In addition she attempted to match based on an offender's prior criminal record, and age. This study replicated the majority of the matched categories of Dawson's (2006) study on intimate partners. Matching based on relevant legal and extra-legal variables increases the validity and reliability of findings because the cases are more comparable and, thus, one should be able to more reliably infer that the difference in sentence is due to another factor.

As shown in Table 4, this study matched cases based on the following variables: charge at arrest, conviction, year (within a ten-year range), mode of conviction, prior criminal record (whether the case had no violent criminal record, non-violent criminal record, or a violent criminal record), age of offender and age of victim, victim-offender

relationship, and gender of victim.<sup>16</sup> If the victim and offender had an intimate relationship then gender of the victim was opposite.<sup>17</sup> If cases had unique characteristics for which there were too few similar cases to compare, they were removed from the analysis. For example, there were not enough young offenders or offenders who murdered multiple victims to compare these two groups. In addition, cases were removed from the analysis if they occurred before 1980. Initially, these earlier cases were kept in the qualitative analyses; however, no additional information could be found in the online databases to supplement the cases.

It is also important to note that the majority of matched pairs were intimate partners. This means that the exploratory qualitative analysis largely compared males who killed females to females who killed males. The large number of intimates stemmed from the fact that female homicide offenders in the study most often killed male partners. Since there were fewer women in the dataset than men and since the female offenders were less likely to commit (non-intimate partner homicides), the female offenders were organized first and then matched with male offenders to the different types of female homicides.

The matching process resulted in 15 matched pairs. Table 4 provides an overview of the 15 pairs of cases and the nine characteristics on which the offenders were matched. The purpose of Table 4 is to show the similarities and/or differences between the male and female cases and to introduce the 15 matched pairs. In order to ensure confidentiality,

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<sup>16</sup> The ages of the victims were matched for both cases and the ages of the offenders were matched for both cases within a range of 10 years. However, there were a few pairs where the difference in the age of the victim spans more than 10 years (See pair 1,2, and 11).

<sup>17</sup> Unless the case involved a same-sex relationship in which case the gender of victim remained the same as the matched offender.

**TABLE 4. Qualitative Matched Female-Male Pairs, Toronto, Ontario, 1974-2002 (N=15).**

Match Pair of Cases Identifier	Pseudonyms for Offenders (F/M)	Charge at Arrest	Conviction	Year Case Entered Court (Range)	Mode of Conviction	Prior Criminal Record	Age of Female Offender	Age of Male Offender	Age of Female Offender's Victim	Age of Male Offender's Victim	Victim-Offender Relationship	Gender of Victim (N/A if Intimate Relationship)
1	Natasha/Will	2 <sup>nd</sup> Degree	Manslaughter	1990-2000	Guilty Plea	Violent	44	44	38	64	Intimate	N/A
2	Jackie/Mark	2 <sup>nd</sup> Degree	Manslaughter	1990-2000	Guilty Plea	Some	19	28	32	19	Intimate	N/A
3	Whitney/Dan	2 <sup>nd</sup> Degree	Manslaughter	1980-1990	Guilty Plea	Some	30	37	34	34	Intimate	N/A
4	Katie/Ben	2 <sup>nd</sup> Degree	Manslaughter	1990-2000	Guilty Plea	None	40	59	51	57	Intimate	N/A
5	Laura/Paul	2 <sup>nd</sup> Degree	Manslaughter	1985-1995	Guilty Plea	None	29	29	30	23	Intimate	N/A
6	Pam/Colin	2 <sup>nd</sup> Degree	Manslaughter	1990-2000	Guilty Plea	None	26	26	3	5	Family	Female
7	Sara/Chris	2 <sup>nd</sup> Degree	Manslaughter	1990-2000	Trial	Some	19	18	25	20	Acquaintance	Male
8	Kara/Jacob	2 <sup>nd</sup> Degree	Manslaughter	1990-2000	Guilty Plea	None	27	28	32	30	Strangers	Male
9	Jodie/Josh	2 <sup>nd</sup> Degree	Manslaughter	1980-1990	Guilty Plea	Some	23	28	25	21	Intimate	N/A
10	Janice/Kevin	1 <sup>st</sup> Degree	Manslaughter	1980-1990	Guilty Plea	None	27	35	27	30	Intimate	N/A
11	Kim/Peter	Manslaughter	Manslaughter	1990-2000	Guilty Plea	Some	20	28	61	22	Stranger	Male
12	Liz/Steve	2 <sup>nd</sup> Degree	Manslaughter	1985-1995	Guilty Plea	Some	23	18	1	1	Family	Opposite F/F, M/M
13	Ashley/Dave	1 <sup>st</sup> Degree	2 <sup>nd</sup> Degree	1980-1990	Guilty Plea	None	24	27	26	19	Intimate	N/A
14	Megan/Nick	1 <sup>st</sup> Degree	2 <sup>nd</sup> Degree	1980-1990	Trial	Some	25	25	23	26	Friends	Male
15	Danielle/Alex	1 <sup>st</sup> Degree	2 <sup>nd</sup> Degree	1985-1995	Guilty Plea	Some	34	44	34	35	Friends	Female

the offenders were given pseudonyms. The next section describes where the data was collected.

### *Mix of Inductive and Deductive Research*

This exploratory qualitative deep-sample analysis primarily used an inductive approach while researching new factors that might affect sentence severity. When using an inductive approach, a researcher first reads about or experiences social phenomena and then uses the information to create new ways of theorizing about the phenomenon, rather than having “pre-existing” themes driving the analysis (Braun and Clarke 2006). For example, in this study, an inductive approach was used because the researcher first read the newspaper articles about the offenders and then used that knowledge to hypothesize other potential factors that could have affected sentence outcomes. Compared to an inductive analysis, when a researcher relies on abstract or theoretical ideas to drive their research, it is called deductive research. Deductive research “begins with abstract concepts and theoretical relationships and works toward more concrete empirical evidence” (Kraska and Neuman 2008:96). While this study was not completed with a set of pre-selected themes, gendered pathways to crime were researched (Daly 1994) and this pre-existing knowledge was utilized while completing the analysis. However, Braun and Clarke (2006:83) remind researchers that it is impossible to free oneself of “theoretical and epistemological commitments, and data are not coded in an epistemological vacuum.” Overall, during this analysis the researcher tried to remain unbiased and allow the data found to direct the creation of themes. The next section describes the sources for the data and how the data was collected.

### *Collection of Data*

Newspaper articles found in *Canadian Newsstand* and case summaries in *Quick Law* were used to explore further reasons why women might receive different sentences when compared to men. *Quick Law* is a “widely used online depository of Canadian legal cases” frequently used by scholars and lawyers (Crocker 2005:202). Toronto newspaper articles found on *Canadian Newsstand* were also used to collect additional information for the exploratory analysis. Compared to the *Quick Law* depository, newspaper archives have an extensive amount of information on a larger number of cases. The information on *Canadian Newsstand* is easily accessible and it allows one to search all Canadian newspapers for information about particular offenders or victims.

It is important to highlight the potential reporting biases of *Quick Law* case summaries and newspaper articles. Crocker (2005) used *Quick Law* case summaries and highlighted the main biases. Mainly, she claimed that it is unknown how the sources were chosen and that the “editorial filter” choosing the cases could have been biased (Crocker 2005: 202). Similarly, newspaper articles also have reporting biases; rather than focusing primarily on reporting facts, newspaper articles also (1) direct readers opinion and/or (2) create a “memorable story” (Mullainathan and Shleifer 2002:2). When the focus is not only on relaying facts, important details could be omitted or written in a way that distorts the truth. Despite the biases in the newspaper and in *Quick Law* case summaries, the information gained from these sources can, nevertheless, provide relevant and important information to consider. Arguably, while there were risks to using these articles to create narratives, if the information was recorded incorrectly, there was a greater potential loss if relevant information in these articles was ignored. The additional information derived

from these articles provided more contexts to the criminal events that were not included in the large-scale quantitative analysis (Daly 1994).

### *Thematic Analysis*

Once the articles and case summaries were gathered for the 15 pairs of cases in the deep-sample, a thematic analysis was completed (Braun and Clarke 2006). A thematic analysis “is a method for identifying analyzing and reporting patterns (themes) within data” (Braun and Clarke 2006:79). This study replicated Braun and Clarke’s (2006) six-step process to completing a thematic analysis (see Table 11: Phases of a Thematic Analysis in Appendix). The first stage required a thorough reading and rereading of all the *Quick Law* case summaries and *Canadian Newsstand* articles. Stage two initiated the organization of the coding schema. Codes were created and written beside quotes and phrases in the case summaries and articles that represented concepts that were repeated throughout multiple cases (eg. C/D was code for children/dependents, PA was code for prior abuse). The third step involved the organization of the coding into main themes. During this stage a table was created that outlined the differences in sentences between the offenders and outlined the major themes (see Table 10). Themes were created to explain the different sentences imposed on male and female offenders (e.g. histories of abuse or familial paternalism). Table 10, which outlined the themes and their relationship to sentence length, will be discussed more in Chapter Five. The fourth step, as outlined by Braun and Clarke (2006), was to review the main themes and make sure they successfully answered the qualitative research question. Cases that were unable to fit into either theme because unique characteristics confounded the deep-sample analysis were

removed. These unique cases were discussed in the appendix (Pair 14 and 15). The fifth step required a clear title and definition of each of the themes, familial paternalism and evidence of prior abuse. Finally, the last step was the write up of the report and connecting the two themes to prior literature.

### **Quantitative and Qualitative Research Design Strengths and Limitations**

This section highlights the strength and limitations of the methodology used in this study. The first strength of the study was its' use of secondary data. More specifically, as a graduate student, it was important to have a project that was manageable within a two-year period, since funding was only be provided for that particular time frame. The collection of 28 years of data would have required many years of research and a substantial amount of funding as well as access to confidential data. Using secondary data allows a large-scale quantitative analysis to be completed in a timely manner.

In addition using secondary statistics, there were also benefits to using homicide statistics. First, homicide statistics are perceived as one of the more reliable and valid sources of crime information for at least three reasons (Dawson 2004a). Second, homicide is defined similarly throughout different geographical locations and time. Third, homicide cases are less likely to fall into the “dark figure” of crime which includes unreported crimes, unknown crimes and victimless crimes (Biderman and Reiss 1967). Fourth, homicides are usually reported and offenders sentenced because they are more likely to be thoroughly investigated and reported. The ability to have reliable statistics that accurately measure homicide is useful in secondary data analyses.

Another strength of this study's methodology was the use of both the quantitative and the deep-sample analysis. The quantitative analysis was able to describe gender and sentencing patterns on a wider scale while the deep-sample exploratory qualitative analysis examined other gender-related reasoning behind different sentences. As well, the deep-sample analysis was important for feminists who argue that large-scale analyses support an equality approach in order to highlight potential injustices in equal sentences. The deeper examination into female and male offender histories and situations allowed for a better assessment of sentence appropriateness in Canada.

Despite the benefits of using secondary statistics along with a deep-sample analysis, there were also limitations. The first limitation stemmed from the fact that this study focused only on homicide cases. Some studies have found that women only receive preferential treatment when the crime is "feminine" (e.g. theft and drug offending). For example, Curry et al. (2006:334) found that "the odds of incarceration were more than two times higher for men compared to women for property and drug crimes, but no gender differences in incarceration are found for violent offences." Since this study only utilized homicide data, perhaps different findings would be found when using other crime statistics.

The second limitation was the inability to generalize the findings to Ontario or to Canada since the data were collected from one, large urban jurisdiction, Toronto. However, during the past decade, Toronto accounted for approximately one-third of all homicides in the province of Ontario and one-tenth of homicides in Canada (Dawson 2004a). Thus, the Toronto homicide database is large enough that some of the patterns found in this study could reflect the patterns at the provincial or national level.

The third limitation involved the inability to account for bias that occurred in earlier stages of the criminal justice process. For example, police discretion during arrest and its effect on later decisions cannot be examined. Visher (1983) found evidence of chivalrous treatment in her study on police arrests because women who fit traditional feminine stereotypes were less likely to be arrested compared to men. While the current study did not control for discretion at arrest, it controlled for previous decisions such as guilty pleas to help address this limitation.

The fourth limitation was that the secondary data were limited to the information provided by Dawson (2004a/b). Since the data were collected for an alternative purpose some details that could have been pertinent to this study were not collected. For example, there is limited information in the dataset about offenders' experiences with prior abuse. The qualitative exploratory analysis helped to identify some alternative reasons for sentencing differences in addition to the ones explored in the quantitative analysis. The themes from the qualitative exploratory analysis should be included in a future analysis.

## **Chapter Five: Results**

### **Introduction**

The previous chapters summarized prior research on the relationship between gender and sentence severity. Dominated by U.S. studies, the literature on this topic indicated that female homicide offenders often received shorter sentences when compared to male offenders (Franklin and Fearn 2008). Further, the literature review showed that male offenders who killed females received the longest sentences when compared to other victim and offender gender combinations (Baumer et al. 2000; Curry et al. 2004; Curry 2010; Franklin and Fearn 2008; Glaeser and Sacerdote 2000). Since the majority of the sentencing literature originated in the U.S., it is important to assess whether gender has a similar effect on sentence length in other jurisdictions. Responding to this gap in the literature, this chapter provides the results from both the quantitative analysis and the deep-sample exploratory qualitative analysis of gender and sentencing in one Canadian jurisdiction.

First, the chapter discusses the findings from the bivariate, cross-tabular analyses. The bivariate analyses display the correlations between gender and relevant legal, incident, and offender and victim characteristics. These bivariate analyses investigated, using the chi square correlation measure, whether there were any preliminary correlations between gender, the dependent and the control variables. Three bivariate analyses were completed: the first examined the correlations between male and female offenders and the control variables; the second examined correlations between male and female victims and the control variables; the third examined correlations between the victim and offender gender combinations and the control variables. The second portion of the quantitative

section presents the findings from the multivariate analyses using an ordinary least squares (OLS) regression. The multivariate analyses isolated the effect of gender on sentence length by controlling for relevant legal and extra-legal variables. As discussed in the previous chapter, two OLS models were used to measure the effect of gender on sentence length. Model 1 measured the effect of offender and victim gender separately on sentence length. Model 2 examined the effect of the victim and offender gender combinations on sentence length. The final component of this chapter describes the findings of the deep-sample qualitative analysis.

### **Cross-Tabular Analysis**

Tables 5, 6, and 7 display the results from the cross-tabular analyses. These analyses compared and highlighted differences between male and female homicide offenders and victims. As shown in Table 5, 11 variables were correlated with the gender of the offender. With respect to the first key independent variable, female offenders on average received a sentence of 6 years compared to male offenders who on average received a sentence of ten years. Compared to male offenders, female offenders were more likely to kill a male victim. Eighty-five percent of females in the sample killed a male whereas 70 percent of males killed another male. Female and male offenders also differed based on legal variables. More specifically, female offenders compared to male offenders were less likely to go to trial (33% vs. 46%), less likely to receive a murder conviction (20% vs. 42%), more likely to be the primary offender (94% vs. 86%) and were less likely to have a prior criminal record (43% vs. 28%). Two case characteristics

**Table 5. Bivariate Relationships: Legal, Incident, Offender and Victim Characteristics by Gender of the Homicide Offender, Toronto, 1974-2002 (N=856)** <sup>18</sup>

Variable	Female Offender Percent % (N=80)	Male Offender Percent % (N=776)	X <sup>2</sup>	p
<i>Dependent Variable</i>				
Sentence Length (years)	5.7 years	9.8 years	N/A	.000***
<i>Independent Variable</i>				
Gender of Victim			7.897	.005**
Male Victim	85	70		
<i>Legal Characteristics</i>				
Mode of Conviction			5.653	.017*
Case goes to Trial	33	46		
Offender's Conviction			14.645	.000***
Murder Conviction	20	42		
Number of Victims			.709	.400
Multiple Victims	3	5		
Role of Accused			4.115	.042*
Primary Offender	94	86		
Criminal Record of Offender (N=755) <sup>19</sup>			6.278	.043*
Violent Criminal Record	14	19		
Non Violent Criminal Record	44	53		
No Criminal Record	43	28		
<i>Incident Characteristics</i>				
Year			.998	.318
1974-1987	56	50		
1988-2002	44	50		
Method of Homicide			14.879	.000***
Gun Homicide	6	26		
Victim Offender Relationship (N=826)			48.918	.000***
Intimate	45	20		
Friend or Acquaintance	24	47		
Family Member	20	7		
Stranger	11	26		
<i>Characteristics of Offender</i>				
Age (Years)	32.43	29.90	N/A	.045*
Race/Ethnicity (N=766)			.001	.977
White	57	57		
Marital Status (N=776)			8.624	.003**
Married	56	39		
Employment Status (N=722)			3.334	.068
Employed	21	32		
<i>Characteristics of Victim</i>				
Age (Years)	34.46	34.60	N/A	.936
Race/Ethnicity (N=772)			.088	.766
White	61	59		
Marital Status (N=786)			.593	.441
Married	46	41		
Employment Status (N=726)			4.399	.036*
Employed	29	43		

\* p ≤ .05    \*\*p ≤ .01    \*\*\*p ≤ .001

<sup>18</sup> Percentages may not add up due to rounding.

<sup>19</sup> The number of cases (N) for each variable might change depending on the existence of missing cases; see Table 3 for percentage missing.

were also correlated with gender. Male offenders were more likely to use a gun (26% vs. 6%) and more likely to kill a stranger (26% vs. 11%) or friend/acquaintance (24% vs. 47%) compared to females who were more likely to kill an intimate partner (45% vs. 20%) or a family member (20% vs. 7%). Lastly, there were also correlations between gender, and victim and offender characteristics. Female offenders were older than their male counterparts, more likely to be married (56% vs. 39%), and less likely to have killed someone who was employed (29% vs. 43%). The average age of female offenders in the study was about 32 years compared to the male offenders whose average age was about 30 years.

Table 6 presents the bivariate analysis between female and male victims, the dependent and control variables. There were 12 variables correlated with victim gender. With respect to the key dependent variable, victim gender was correlated with sentence length such that offenders who killed a female victim received on average a 12-year sentence whereas offenders who killed a male victim received on average an eight-year sentence. Legal variables were also correlated with victim gender. Cases with a female victim, compared to a male victim, were more likely to involve a male offender (95% vs. 89%), go to trial (53% vs. 42%), end in a murder conviction (56% vs. 34%), have multiple victims (7% vs. 3%), and have an offender with no criminal record (38% vs. 28%). Sixteen percent of female victims died from a gunshot wound whereas 27 percent of male victims died from a gunshot wound. Cases with a female victim involved an intimate partner 58 percent of the time compared to cases with a male victim that involved an intimate partner seven percent of the time. Cases with a male victim were more likely to involve a friend or acquaintance (57% vs. 16%) or a stranger (28% vs.

**TABLE 6. Bivariate Relationships: Legal, Incident, Offender and Victim Characteristics by Gender of the Homicide Victim, Toronto, 1974-2002 (N=856) <sup>20</sup>**

Variable	Female Victim Percent % (N=244)	Male Victim Percent % (N=612)	X <sup>2</sup>	p
<i>Dependent Variable</i>				
Sentence Length (years)	11.8 years	8.2 years	N/A	.000***
<i>Independent Variable</i>				
Gender of Offender			7.897	.005**
Male Offender	95	89		
<i>Legal Characteristics</i>				
Mode of Conviction			9.235	.002**
Case goes to Trial	53	42		
Offender's Conviction			35.443	.000***
Murder Conviction	56	34		
Number of Victims			7.700	.006**
Multiple Victims	7	3		
Role of Accused			18.190	.000***
Primary Offender	94	83		
Criminal Record of Offender (N=755) <sup>21</sup>			14.520	.001**
Violent Criminal Record	20	18		
Non Violent Criminal Record	42	56		
No Criminal Record	38	26		
<i>Incident Characteristics</i>				
Year			.420	.517
1974-1987	49	52		
1988-2002	51	48		
Method of Homicide			12.503	.000***
Gun Homicide	16	27		
Victim Offender Relationship (N=826)			277.136	.000***
Intimate	58	7		
Friend or Acquaintance	16	57		
Family Member	11	8		
Stranger	15	28		
<i>Characteristics of Offender</i>				
Age (Years)	34.46	28.41	N/A	.000***
Race/Ethnicity (N=766)			.395	.529
White	56	58		
Marital Status (N=776)			35.589	.000***
Married	57	67		
Employment Status (N=722)			53.841	.000***
Employed	50	22		
<i>Characteristics of Victim</i>				
Age (Years)	32.17	35.55	N/A	.004**
Race/Ethnicity (N=772)			2.901	.089
White	64	57		
Marital Status (N=786)			21.256	.000***
Married	54	36		
Employment Status (N=726)			.261	.610
Employed	43	41		

\* p ≤ .05    \*\*p ≤ .01    \*\*\*p ≤ .001

<sup>20</sup> Percentages may not add up due to rounding.

<sup>21</sup> The number of cases (N) for each variable might change depending on the existence of missing cases; see Table 3 for percentage missing.

15%). Cases with a female victim were also more likely to involve an older offender (34 vs. 28), less likely to involve a married offender (57% vs. 67%) and more likely to involve an offender who was employed (50% vs. 22%). Compared to male victims, female victims in the study were on average younger (32 years old vs. 36 years old) and were more likely to be married (54% vs. 36%).

Table 7 presents the bivariate analysis of the victim and offender gender combinations, the dependent and independent variables. The preliminary findings detected a significant relationship between the offender and victim gender combinations and sentence length. More specifically, males who killed females received the longest sentence (12 years), followed by males who killed males (9 years), females who killed females (8 years) and females who killed males (5 years).

With respect to legal factors, males who killed females were more likely to go to trial (54%), receive a murder conviction (56%), and to be the primary offender (95%) compared to the other victim and offender gender combinations. The preliminary results showed that females who killed females were more likely than the other combinations to kill multiple victims (8%). This result was based on 12 offenders. Females who killed males were less likely to have no prior criminal record when compared to the other victim and offender gender combinations (48%). Case characteristics were also correlated with the victim and offender gender combinations. Males who killed males were more likely to use a gun (29%) and were more likely to kill friends/acquaintances (62%) or strangers (30%). Females who killed males and males who killed females were more likely to kill intimate partners (53% and 61%, respectively) compared to females who killed females that were more likely to kill family members (50%). Finally characteristics of the offender and the victim were also correlated to the gender combinations. More

**TABLE 7. Bivariate Relationships: Legal, Incident, Offender and Victim Characteristics by Victim and Offender Gender Combinations, Toronto, 1974-2002 (N=856)<sup>22</sup>**

Variable	Female/Female Homicide Percent % (N=12)	Female/Male Homicide Percent % (N=68)	Male/Female Homicide Percent % (N=232)	Male/Male Homicide Percent % (N=544)	X <sup>2</sup>	p
<i>Dependent Variable</i>						
Sentence Length (years)	7.7 years	5.4 years	12.1 years	8.6 years	N/A	
<i>Legal Characteristics</i>						
Mode of Conviction					14.038	.003**
Case goes to Trial	33	32	54	43		
Offender's Conviction					47.072	.000***
Murder Conviction	50	15	56	36		
Number of Victims					8.222	.042*
Multiple Victims	8	2	7	3		
Role of Accused					28.465	.000***
Primary Offender	83	9	95	82		
Criminal Record of Offender (N=755) <sup>23</sup>					35.741	.000***
Violent Criminal Record	27	11	19	18		
Non Violent Criminal Record	64	40	41	58		
No Criminal Record	9	48	40	23		
<i>Incident Characteristics</i>						
Year					3.984	.263
1974-1987	33	60	50	51		
1988-2002	67	40	50	49		
Method of Homicide					30.453	.000***
Gun Homicide	0	7	16	29		
Victim Offender Relationship (N=826)					426.856	.000***
Intimate	0	53	61	14		
Friend or Acquaintance	33	22	15	62		
Family Member	50	15	9	7		
Stranger	17	10	15	30		
<i>Characteristics of Offender</i>						
Age (Years)	30.9	32.7	34.7	27.9	N/A	.000***
Race/Ethnicity (N=766)					3.391	.335
White	33	62	57	57		
Marital Status (N=776)					68.399	.000***
Married	18	62	58	29		
Employment Status (N=722)					61.752	.000***
Employed	10	23	52	22		
<i>Characteristics of Victim</i>						
Age (Years)	26.9	35.8	32.4	35.5	N/A	.156
Race/Ethnicity (N=772)					3.957	.266
White	55	62	64	57		
Marital Status (N=786)					40.022	.000***
Married	8	52	56	34		
Employment Status (N=726)					6.117	.106
Employed	11	32	44	42		

\* p ≤ .05    \*\*p ≤ .01    \*\*\*p ≤ .001

<sup>22</sup> Percentages may not add up due to rounding.

<sup>23</sup> The number of cases (N) for each variable might change depending on the existence of missing cases; see Table 3 for percentage missing.

specifically, males who killed males were more likely to be younger (28 years old) than the other victim and offender gender combinations. Females who killed females were more likely to be married (62%) and males who killed females were more likely to be employed (52%) compared to the other offender and victim gender combinations. Males who killed females were also more likely to kill female victims who were married (56%) compared to the other combinations.

These findings present an overview of the key differences between male and female homicide offenders and victims. The findings highlight important gender differences in homicide cases that may affect sentence length. For example, since female offenders were more likely to plead guilty and guilty pleas were more likely to end in a reduced sentence, it was important to control for this variable in the OLS regressions in order to isolate the contribution of gender to differential sentencing outcomes. The multivariate findings are discussed below.

### **Multivariate Analysis**

#### *Model 1 – The Effect of Offender and Victim Gender on Sentence Length*

Table 8 presents the findings from Model 1 that examined the separate effects of offender and victim gender on sentence length, while controlling for theoretically-relevant legal and extra-legal variables such as, incident, victim, and offender characteristics. With respect to the focal variable, the gender of the offender was *not* significantly associated with sentence length. However, the gender of the victim was significantly associated with sentence length. The findings from Model 1 did not support Hypothesis 1 that female homicide offenders would receive a shorter sentence when

**TABLE 8. Multivariate Results: Gender and Control Variables Predicting Sentence Length, Toronto, 1974-2002 (N=856)**

<b>Variable</b>	<b>b</b>	<b>Beta</b>
<i>Independent Variable</i>		
Male Offender (1,0)	.473	.020
Male Victim (1,0)	-2.247***	-.146
<i>Legal Characteristics</i>		
Case goes to Trial	2.042***	.147
Murder Conviction	8.046***	.569
Multiple Victims	2.742***	.080
Primary Offender	-.661	-.033
Violent Criminal Record	1.424**	.075
Non Violent Criminal Record	.370	.027
No Criminal Record	X	X
Criminal Record Missing	.905	.042
<i>Case Characteristics</i>		
Year (Continuous Measure)	.089**	.094
Gun Homicide	.443	.027
Intimate Relationship	-1.877**	-.111
Friend or Acquaintance	-1.126**	-.081
Family Member	-3.168***	-.126
Stranger	X	X
<i>Characteristics of Offender</i>		
Age (Continuous Measure)	.009	.014
White	.504	.036
Race/Ethnicity Missing	-.906	-.040
Married	-.043	-.003
Marital Status Missing	-.111	-.004
Employed	-.715*	-.045
Employment Status Missing	.784	.041
<i>Characteristics of Victim</i>		
Age (Continuous Measure)	-.008	-.017
White	.310	.022
Race/Ethnicity Missing	.012	.001
Married	-.490	-.034
Marital Status Missing	-.845	-.033
Employed	1.167**	.080
Employment Status Missing	-.193	-.010
R Square	.612	
Adjusted R Square	.599	
* p ≤ .05    **p ≤ .01    ***p ≤ .001		

compared to male offenders. While the data showed no support for the first hypothesis, there was support for Hypothesis 2 which predicted that offenders who killed females would receive a longer sentence. Specifically, offenders convicted of homicides where the victim was male received on average two years less than offenders convicted in cases where the victim was female.

Model 1 also indicated that multiple legal variables were significant. More specifically, trial cases, cases with murder convictions and cases with multiple victims received longer sentences and offenders with no prior criminal record received shorter sentences. Aside from the legal variables, incident characteristic variables also had an effect on sentence length. The year the case entered court affected sentence length. More recent cases received significantly longer sentences than earlier cases. Compared to the sentence imposed for stranger homicides, the killing of family members received about three years less, the killing of intimate partners received about two years less, and the killing of friends/acquaintances received about one year less. Offenders who were employed received shorter sentences than unemployed offenders and cases with employed victims received longer sentences than cases with unemployed victims.

*Model 2 – The Effect of the Victim and Offender Gender Combinations on Sentence Length*

Table 9 displays the results of the effect of the victim and offender gender combinations on sentence length while controlling for legal, incident, offender, and

**TABLE 9. Multivariate Results: Victim and Offender Gender Combinations and Control Variables Predicting Sentence Length, Toronto, 1974-2002 (N=856)**

<b>Variable</b>	<b>b</b>	<b>Beta</b>
<i>Independent Variable</i>		
Male/Male Homicides	X	X
Male/Female Homicides	2.783**	.179
Female/Male and Female/Female Homicides	.134	.006
<i>Legal Characteristics</i>		
Case goes to Trial	1.998***	.143
Murder Conviction	8.038***	.568
Multiple Victims	2.735***	.080
Primary Offender	-.712	-.035
Violent Criminal Record	1.463**	.077
Non Violent Criminal Record	.427	.031
No Criminal Record	X	X
Criminal Record Missing	.897	.042
<i>Case Characteristics</i>		
Year (Continuous Measure)	.090**	.096
Gun Homicide	.459	.028
Intimate Relationship	-2.264***	-.134
Friend or Acquaintance	-1.095**	-.078
Family Member	-3.128***	-.124
Stranger	X	X
<i>Characteristics of Offender</i>		
Age (Continuous Measure)	.008	.012
White	.476	.034
Race/Ethnicity Missing	-.955	-.042
Married	-.061	-.004
Marital Status Missing	-.063	-.002
Employed	-.749	-.047
Employment Status Missing	.734	.038
<i>Characteristics of Victim</i>		
Age (Continuous Measure)	-.006	-.014
White	.276	.020
Race/Ethnicity Missing	.015	.001
Married	-.516	-.036
Marital Status Missing	-.850	-.034
Employed	1.172**	.081
Employment Status Missing	-.088	-.005
R Square	.616	
Adjusted R Square	.603	

\* p ≤ .05    \*\*p ≤ .01    \*\*\*p ≤ .001

victim variables.<sup>24</sup> In Model 2, male offenders who were convicted of killing females received the longest sentence by almost three years compared to male offenders who killed male victims. The findings from Model 2 supported the third hypothesis of this study. Hypothesis 3 predicted that males who murdered females would receive the longest sentences compared to the other combinations of victim and offender gender. The control variables in Model 2 remained consistent with the strength and significance of the control variables in Model 1, except for offender's employment status. The offender's employment status had no significant effect on sentence length in Model 2. The implications of the findings will be explored further in the discussion and conclusion chapter, following the results of the deep-sample exploratory qualitative results.

### **Deep-Sample Exploratory Qualitative Analysis**

The multivariate analyses above controlled for many theoretically-driven variables; however, they were not able to control for other potentially-important variables that may also affect the role played by gender on sentence length. The second half of this chapter engages in an exploratory, deep-sample analysis of 15 matched pairs of cases (15 female homicide offenders and 15 male homicide offenders).<sup>25</sup> The purpose of exploratory analyses in criminology is “to uncover new and potentially important crime and justice phenomena and to formulate more precise questions that future research can answer” (Kraska and Neuman 2008:26). Similarly, the purpose of this exploratory analysis was twofold. First, the analysis examined potential reasons the matched male and female offenders may have received different sentences. Second, the analysis used

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<sup>24</sup> Offender and victim gender were removed from Model 2 to avoid multicollinearity

<sup>25</sup> The cases are matched based on relevant legal and extra-legal variables (See Methods Section Table 4). Only additional information gleaned from the articles will be discussed.

these identified reasons about why offenders may have received disparate sentences to hypothesize about variables that could affect gender and sentence length in future Canadian sentencing analyses. This exploratory analysis is valuable for future Canadian studies in order to more fully specify the multivariate models by including important and relevant gendered variables.

Table 10 shows the 15 matched male and female offenders, their sentences and the sentence differences. Of the 15 matched pairs in this deep-sample analysis, females received shorter sentences in 11 of the pairwise comparisons, males received shorter sentences in two of the pairs and there was no sentence difference in two of the pairs.<sup>26</sup> Table 10 revealed different results from the quantitative analysis that found gender had no significant effect on sentence length. The majority of female offenders in the deep-sample analysis appeared to receive shorter sentences than men. However, it is important to re-emphasize that the majority of matched pairs were intimate partners. This means that the exploratory qualitative analysis largely compared males who killed females to females who killed males. Thus, these findings are consistent with the second multivariate model where males received longer sentences when they killed females.

Given that there are different sentence outcomes in 13 of the matched pairs, the next portion of this deep-sample exploratory qualitative analysis provides evidence from the newspaper articles and *Quick Law* case summaries to advance the two major themes, histories of abuse and familial paternalism. One or both of these themes are recorded in the last column of Table 10 to signify the theme(s) attached to each matched pair.

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<sup>26</sup> While the difference in sentences are recorded in Table 10 and referred to for this analysis, it is not possible to test for significance due to the small sample size. Thus, all the pairs with different sentences were discussed, regardless of whether their sentence difference was significant.

**TABLE 10. Deep-Sample Analysis: Sentencing Differences of Matched Pairs and Potential Reasons for Differential Sentences, Toronto, 1974-2002 (N=15)**

Matched Pair Number	Pseudonyms for Offenders (F/M)	Cases Differ Based on:	Sentence for the Male (years)	Sentence for the Female (years)	Difference (M-F)	Receiver of Shorter Sentence	Potential Reasons for Different Sentences
1	Natasha/Will	Gender of Victim (Intimate)	9	2	7	Female	History of Abuse
2	Jackie/Mark	Gender of Victim (Intimate)	6	3.5	2.5	Female	History of Abuse
3	Whitney/Dan	Gender of Victim (Intimate)	5	2	3	Female	History of Abuse
4	Katie/Ben	Gender of Victim (Intimate)	12	5	7	Female	History of Abuse
5	Laura/Paul	Gender of Victim (Intimate)	12.5	1	11.5	Female	History of Abuse and Familial Paternalism
6	Pam/Colin	Gender of Victim (Family)	5	3.5	1.5	Female	History of Abuse and Familial Paternalism
7	Sara/Chris	N/A	2	0	2	Female	History of Abuse and Familial Paternalism
8	Kara/Jacob	N/A	7	5	2	Female	Familial Paternalism
9	Jodie/Josh	Gender of Victim (Intimate)	1.5	1	.5	Female	History of Abuse and Familial Paternalism
10	Janice/Kevin	Gender of Victim (Intimate)	10	10	0	No Difference	History of Abuse and Familial Paternalism
11	Kim/Peter	Victim Age	2	2	0	No Difference	Same Sentence, Similar Crime
12	Liz/Steve	N/A	2	3	-1	Male	Age
13	Ashley/Dave	Gender of Victim (Intimate)	13	10	3	Female	Gender
14	Megan/Nick	N/A	14	15	-1	Male	Outlier, Unexplainable Difference
15	Danielle/Alex	N/A	12	10	2	Female	Outlier, Unexplainable Difference

The first eight matched pairs in Table 10 include female offenders who received shorter sentences than their matched male offenders. Histories of abuse and/or familial paternalism are discussed as potential reasons for these shorter sentences. In Pairs 9 and 10, male offenders received a similar sentence to their matched female offenders and familial paternalism is discussed as a potential explanation for why this might be the case. In Pair 11, both offenders had similar histories, committed similar crimes and received the same sentence. The last four pairs did not appear to fit into either of the themes identified. The articles for Pairs 12 and 13 provided information that suggested potentially age or gender could be the reason behind the differential sentences. However, Pair 14 and 15 had very different homicide situations which allowed for too many alternative factors that could have affected sentencing. A synopsis of these two can be found in the appendix but will not be discussed in this section.

#### *Histories of Abuse: Females Receiving Shorter Sentences*

The most prevalent issue when reading all of the articles and case summaries were the descriptions of prior abuse. In nine of the pairs, the female offenders experienced years of abuse and in three of the pairs the male offenders initiated years of abuse prior to homicide event. In many of the cases the judges appeared to consider the offenders' prior victimization in pronouncing shorter sentences for the female offenders and longer sentences for the male offenders. It is important to remember this specific sample of cases contains primarily intimate partner homicides and, as a result, there may be a higher prevalence of prior abuse than cases of non-intimate partner homicides. However, in this 28-year sample, a large portion of homicides are committed by intimates

(22%, see Table 3), making this theme potentially relevant in future gendered quantitative analyses especially given this is the primary victim group targeted by female offenders (Crocker 1985; Dawson 2004b). The following matched pairs describe how prior histories of abuse could be used to explain why the female offenders received shorter sentences when compared to their matched male offenders.

*Pair 1- Natasha and Will:* In Pair 1, both Natasha and Will experienced prior abuse at some point in their lives. Natasha fatally beat and strangled her long-time abusive boyfriend after an evening of drinking (*Toronto Star* 1997). Natasha and her intimate partner were described as being in a “mutually abusive domestic relationship that was fueled by alcohol and drug abuse...police had been called to the couple’s home at least 39 times in response to complaints of violence” (*Toronto Star* 1997). The article claimed that Natasha killed her abusive boyfriend while he was “virtually comatose” and unable to defend himself (*Toronto Star* 1997). The judge who heard Natasha’s case told her the sentence she received “was a lenient one” and she was advised to “take advantage of it” (*Toronto Star* 1997). The paired male offender, Will, was diagnosed with schizophrenia and alcoholism and he was “physically abused by his alcoholic father when he was growing up” (*Toronto Star* 1996). On the evening of the killing, Will met his girlfriend and they purchased a bottle of brandy. They consumed almost the entire bottle together and had consensual sex. Shortly after, Will slashed his girlfriend’s throat with a broken drinking glass. In court, he claimed he did not remember why or how he killed her. The judge presiding described Will as a “career alcoholic, a man with borderline intelligence who seemed unable to rehabilitate himself” (*The Globe and Mail* 1996). While Natasha was given a second chance according to the presiding judge in her case,

the judge in Will's case was less lenient and more critical of Will's inability to make lifestyle changes. Natasha's sentence was seven years shorter than Will's. While both of these offenders experience prior abuse, their victims were very different. Natasha killed her abusive boyfriend, whereas Will was charged with killing a non-abusive female partner. In this case the judiciary may have given Natasha a shorter sentence because of the abuse she suffered leading up to the homicide event. The judge who heard Natasha's case appeared to be inclined to give a second chance to an abused woman, compared to the judge in Will's case who seemed to blame Will for being unable to rehabilitate himself.

The next three pairs compare female offenders who were chronically abused to male offenders who were chronic abusers. The female offenders in these three cases killed their abusive-male intimate partners in order to put an end to years of violence. In comparison, the male offenders killed their female intimate partners after being the initiator of violence for many years. In other words, the females were killed by their male intimates as a final lethal act of violence, whereas the males were killed by their female intimates as a form of violent resistance. In all three of these cases the female offenders received a shorter sentence.

*Pair 2 - Jackie and Mark:* Jackie was convicted of manslaughter for stabbing her boyfriend to death during a domestic dispute (*Toronto Star* 1996). The incident was preceded by alcohol and prescription drug consumption and a disagreement at a licensed establishment. The disagreement continued at their home and escalated to physical violence. Jackie's boyfriend "whipped" a beer bottle at her and then threatened to harm her with an electric fan (*Toronto Star* 1996). In response, Jackie picked up a knife and

stabbed him twice resulting in his death (*Toronto Star* 1996). During her trial, Jackie stated that she “didn’t mean for [her boyfriend] to die” (*Toronto Star* 1996). Her defence lawyer said “she only acted to stop him from hurting her” (*Toronto Star* 1996). Mark, the male offender, was also convicted of manslaughter after he “stomped” on his girlfriend’s head, killing her in what was described as a “sexually-jealous rage” (*Quick Law* 1995). The presiding judge stated that the offender’s behaviour was “the ultimate form of domestic assault” (*Toronto Star* 1995). Mark killed his girlfriend under the suspicion she was being unfaithful without any evidence to support his belief (*Toronto Star* 1995). Jackie protected herself during a physical argument, whereas Mark killed because he assumed his girlfriend was unfaithful. Jackie may have received a shorter sentence because she was a victim of abuse and she did not instigate the violence that preceded the homicide.

*Pair 3 - Whitney and Dan:* Whitney was described as a battered wife who was constantly being threatened and beaten at the hands of her husband (*Toronto Star* 1986). Whitney stabbed her husband to death when he threatened to hurt her during a domestic dispute. She had experienced years of abuse, in both foster care and in her adult relationships (*Toronto Star* 1986). In 1986, the *Toronto Star* reported that Whitney “came from a broken home and lived in a number of foster homes. She ha[d] limited education and jobs skills, ha[d] no roots in the community, abuse[d] alcohol and has had physical abuse heaped on her for years.” The judge presiding at Whitney’s trial stated that he was “satisfied that specific deterrence [was] not necessary in this case” and also that he felt “it was not likely she [would] not cause society any trouble” (*Toronto Star* 1987). Whitney’s sentence was three years shorter than Dan’s.

Dan was a chronically abusive male who frequently physically and emotionally frightened his girlfriend. A neighbour of the victim claimed that “she was always being beaten” and that he had “seen her in the hall crying” (*Toronto Star* 1990). Dan “slaughtered” his girlfriend with an axe on the street in broad daylight as she was trying to leave for work (*Toronto Star* 1990). The *Toronto Star* (1991) did not reflect any childhood abuse, but the article did suggest that Dan was a perpetrator of violence when he drank alcohol (*Toronto Star* 1991). Whitney and Dan cases provided some additional evidence to support the notion that the victimization of women may influence sentencing outcomes. However, while Whitney did receive a shorter sentence, the difference was only by three years. The judge was quoted as saying “it was a violent domestic relationship where both parties have to, in some part, share the blame. Her involvement to some extent compounded the problem although the deceased shoulders a good part of the blame” (*Toronto Star* 1986). It may have been this reasoning that led to Whitney’s sentence being only three years less than Dan, who was both a killer and the perpetrator of years of violence.

*Pair 4 - Katie and Ben:* Katie pled guilty to manslaughter after she pushed her chronically abusive intimate partner off their apartment balcony to his death. Katie was described as a mother and a long-time alcoholic whose childhood and early intimate relationships were all plagued with sexual and physical abuse (*Toronto Star* 1987). Katie received a sentence that was seven years less than Ben’s sentence. Ben, a father and grandfather, bludgeoned his wife to death. He was known to have accused his wife of stealing money and of threatening her (*Toronto Star* 1992). Ben’s defence lawyer argued that Ben killed his wife because he lost his sense of “self-worth when he was injured on

the job” (*Toronto Star* 1992). Ben claimed that when his wife began giving him an allowance of \$20 a week “he came to consider himself ‘a zero’ or ‘a puppet’” (*Toronto Star* 1992). However, The *Toronto Star* (1992) also reported that Ben had threatened to kill his wife on many previous occasions. Katie’s previous experiences with abuse appeared to provide some evidence as to why she may have received a shorter sentence compared to Ben who killed because he felt emasculated after losing his job.

In all three of these pairs, the female offenders may have received shorter sentences because of their victimization during their childhood and/or during their intimate relationships. Alternatively, the articles provide some evidence to suggest that the male offenders may have received longer sentences because they were perpetrators of intimate partner violence leading up to the homicide.

#### *Familial Paternalism and/or Histories of Abuse: Females Receiving Shorter Sentences*

In the next four cases, thematic evidence of familial paternalism and histories of abuse is used explain why females may have received shorter sentences compared to their matched male offender. The theme history of abuse was also evident in three of the next four pairs. Due to the overlapping themes in three of the following cases, this section discusses potential evidence for women receiving shorter sentence due to both familial paternalism and histories of abuse. Some of the offenders in the pairs above (Pairs 1-4) were described as having children, but there was not enough information about them to suggest that the child’s presence had an effect on sentence outcomes. It is difficult to differentiate why a disparate sentence between the matched offenders occurred when the

two themes are both present, but since it is an exploratory analysis, both are highlighted as having the potential to affect sentence severity in Canada.

*Pair 5 - Laura and Paul:* The articles about Laura and Paul provided additional evidence that the court may have imposed shorter sentences on female offenders who experienced prior abuse. Laura stabbed and killed her abusive boyfriend during a violent domestic dispute over a previous boyfriend (*Toronto Star* 1991). The *Toronto Star* (1991) described Laura as a frequent victim of abuse by her boyfriend. It was reported that he “slammed her head on the floor, dragged her by the hair and kicked her in the stomach” (*Toronto Star* 1991). According to Laura, her boyfriend often described her as being “worse than a pig” (*The Vancouver Sun* 1991). Laura had sought psychiatric treatment to help her cope with the verbal and physical abuse. The presiding judge felt that Laura was a victim of battered wife syndrome (*Toronto Star* 1991). The judge also felt that she was “not a violent person and [was] no danger to the public (*Toronto Star* 1991).

Laura’s matched male offender, Paul, killed his intimate partner by stabbing her 30 times with a knife. After he killed his partner, he then tried to commit suicide by drinking bleach (*The Standard* 1999). The couple’s “five-year-old son witnessed” the stabbing of his mother by his father (*The Standard* 1999). The mother was described as “an all-round good person” (*The Standard* 1999). Paul’s sentence was about 12 years longer than Laura’s. Laura potentially received a shorter sentence due to her history of victimization. It is also possible that Paul’s sentence was longer because he killed his “good” wife in front of his child. His behaviour could be seen as harming his family. First, it harmed his family because he killed his “good” wife and left his children to grow up without a mother. Second, he harmed his son when he forced the child witness the

murder. This case provided some evidence for the familial paternalism theme. Paul harmed his family and he received a longer sentence. Additionally, Laura may have also received a shorter sentence because of the prior physical and verbal abuse she suffered.

*Pair 6 - Pam and Colin:* In this pair, the female offender (Pam) received a shorter sentence of about 2 years compared to the male offender (Colin). Pam and Colin were both convicted of killing their child. Prior to killing her son, Pam experienced years of abuse by her former husband. Her defence lawyer argued that Pam was suffering from depression and that she had “lost the ability to think straight” (*Toronto Star* 2002). Colin had no past history of abuse. His crime was considered to be the result of a loss of control after he became “depressed over losing his job” (*The Standard* 1997). His daughter died as a direct result of him “spanking” her with a plumber’s pipe. While these two circumstances both involved a child victim, the offenders were portrayed as depressed for two different reasons - Pam because of her prior abuse and Colin because of his job loss. Pam’s shorter sentence could have been due to the reports of past abuse by her husband.

This pair also provided some evidence for the theme familial paternalism. The presiding judge in Colin’s case claimed that his crime was “an outrageous abuse of a position of trust and authority” and “the person [his daughter] should have been able to look to for help and protection suddenly became a predator” (*The Standard* 1997). The detective on the case claimed that he could not think of a more “heinous crime than killing your own child” (*The Standard* 1997). The newspaper article seemed to reflect the courts condemnation of Colin’s behaviour (*The Standard* 1997). Similarly, in Pam’s case the presiding judge claimed that it was the “courts responsibility to protect vulnerable children” (*The Calgary Herald* 1998). The Ontario Courts according to the articles

appeared to take the protection of children seriously and denounced both Colin's and Pam's crimes, yet Pam received a sentence that was about two years shorter than the sentence handed down to Colin. When comparing these two offenders, it is hard to decipher whether or not Colin received a slightly longer sentence because he had not protected his daughter or if Pam received a shorter sentence because of her long history of prior abuse. Regardless, this case emphasized the potential importance of both themes: history of abuse and familial paternalism.

*Pair 7- Sara and Chris:* Sara was reported as being a sex trade worker who killed a customer when he attempted to rape her, breaching their verbal agreement of oral sex (*Toronto Star* 1991). Sara was not sentenced for her offence. She had a long history of sexual victimization that reportedly began at the age of seven when she was gang raped by her stepfather's "biker" (motorcycle) friends (*Toronto Star* 1991). In court the judge was quoted as saying, "most little girls learn how to make muffins and cookies from their mothers. In this case, your mother taught you prostitution... a penitentiary term would [not] serve any useful purpose" (*The Globe and Mail* 1991). Sara stated that she "was scared because she had been raped so many times in [her] life" (*Toronto Star* 1991). The judge's decision to not hand down a carceral sentence could be seen as offering Sara a second chance from her tumultuous past (*The Spectator* 1992). Chris, Sara's matched male offender, received a two-year sentence after killing an acquaintance in a McDonald's parking lot. Chris and his friends got into a heated argument about someone's girlfriend when Chris stabbed the victim (*Toronto Star* 1990). The articles describing Chris' crime make no mention of prior abuse, mental illness or substance

abuse. When comparing these two offenders, Sara could have received a shorter sentence because of the judges' awareness of her prior abuse and her actions of self-defence.

These articles also provided some support for familial paternalism. Sara was pregnant with her second child when she was attacked and she claims "she was defending herself and her unborn son when [her customer] attacked and raped her" (*Toronto Star* 1991). Perhaps the judge did not give Sara a carceral sentence because she killed in order to protect her unborn child. The judge claimed that Sarah needed a lot of "professional help to learn how to look after herself and her baby" (*Globe and Mail* 1991). Sara was released from custody when an older woman offered to give her a place to live and to raise her children (*Globe and Mail* 1991). These two matched offenders were charged and convicted similarly, yet Sara received a shorter sentence by two years. The articles provided some evidence that Sara may have received a shorter sentence because she had suffered prior abuse and was acting in self-defence and/or because she was a pregnant mother protecting her unborn child.

*Pair 8 - Kara and Jacob:* Kara and Jacob both committed very similar crimes yet Kara's sentence was two years shorter than Jacob's. Before the offence, both offenders were out at a bar drinking with some friends. Kara and Jacob both got into an argument with a male stranger and then proceeded to stab him. Kara reportedly killed the man because she felt he was wasting bar space by putting his plastic bags on a stool (*Quick Law* 1997). Kara followed the man out of the bar and grabbed a knife off a table as she left. She stabbed the victim once and then fled. The man died in a pool of blood from the single stab wound. Similarly, Jacob got into an argument and stabbed a stranger with whom he had been drinking. Jacob stabbed the stranger once with a military knife he

frequently carried (*Quick Law* 1995). Jacob reportedly had a good work history, lived with some male friends and he did not have any children (*Quick Law* 1995). Kara was unemployed and lived alone with her six-year-old son. While the articles did not provide explicit detail as to the judicial reasoning behind the sentencing decisions, it is interesting that two similar cases resulted in different sentences. According to the information gained from the articles, there appeared to be one major difference between the male and female offender. The female was a single mother and male offender had no children. This case provided some preliminary evidence for women receiving shorter sentences when they have children.

#### *Familial Paternalism: Males Receiving Similar Sentences*

These next two matched pairs provided some evidence that suggested the males received shorter sentences because their actions were seen as protecting their families. In both of these cases, the males received the same or almost the same sentences as female offenders who killed their abusive intimate partners. These cases provided preliminary evidence that “good” fathers who provide emotional and monetary support are afforded sympathy from the courts.

*Pair 9 - Jodie and Josh:* Josh and Jodie both received similar sentences after killing their intimate partners. Josh killed his wife and received a sentence that was six months longer than Jodie who killed her chronically abusive husband. Josh accused his wife of being a prostitute after she aborted a child conceived by another man. In response to Josh’s accusations, his wife attacked him and Josh responded by stabbing her four times. The judge noted that Josh’s wife had no interest in their children and that she was

rarely home (*Toronto Star* 1986). Josh told the court that his wife was unfaithful and that she was probably a prostitute (*Toronto Star* 1986). The description of Josh by the judge and expert witnesses portrayed him as a good father who deserved sympathy (*Toronto Star* 1986). For example, the psychiatric report quoted in the article claimed that Josh “seldom lost his temper and was a trusting person” (*Toronto Star* 1986). Jodie, Josh’s paired female offender, only received six months less when she killed her abusive husband. Jodie, the mother of two, was afraid of her estranged husband because she was frequently “used as a punching bag when [her husband] was drunk” and on many occasions he broke into her house and assaulted her (*Toronto Star* 1986). Jodie knew that her husband was eventually going to kill her because “he was obsessed” with her (*Toronto Star* 1986). She often kept knives under her bed while she slept (*Toronto Star* 1986). Jodie killed her estranged husband when he arrived at her home uninvited and attacked her in his “drunken rage” (*Toronto Star* 1986). The presiding judge claimed Jodie posed little threat to society but he suggested, “there must be some jail time to show the public’s abhorrence for such acts” (*Toronto Star* 1986). The judge also pointed out that Jodie had rejected police assistance. The quotes used in these two newspaper articles framed these two homicides differently. Josh appeared to receive more sympathy for killing his neglectful wife compared to Jodie, a mother, who had been terrorized and abused for many years.

*Pair 10 - Janice and Kevin:* The articles and case summaries that discussed Janice’s and Kevin’s homicides also provided some support for familial paternalism. Kevin, killed his estranged wife when she neglected their children. Kevin claimed, “I told her the kids (aged 2 to 11) were suffering; I cried to her; I plead with her...the kids were

only eating bread and water...I love my kids so much I could not see them suffer” (*Toronto Star* 1985). The judge spoke to Kevin during the trial and said “one cannot help but feel compassion and sympathy for you. I think you did try to do your best to keep your family and your wife together as a family unit...and I would hope that in your interests that some arrangements can be made for your family to be kept together because it is very obvious you have a great love for them” (*Quick Law* 1985). The presiding judge appeared to be sympathetic that Kevin killed his wife to protect his children. This sympathy towards Kevin’s situation may have influenced sentencing. Janice received the same sentence as Kevin despite suffering years of abuse by her husband. Janice’s husband constantly demanded sex from her and threatened to send her back to China if she did not comply with his demands. Janice told one of her close friends that she would be happier if he were dead (*Toronto Star* 1989).

The findings from the first ten cases of this exploratory analysis highlighted two themes that could be important in future Canadian sentencing studies. More specifically, this small sample of offenders provided evidence for a potential relationship between female offenders’ shorter sentences, prior abuse and/or familial paternalism. As well, male offenders who were long-time abusers of their intimate partners appeared to receive longer sentences compared to their matched female offenders who were not abusers. Finally, the presiding judges appeared to view the male offenders more sympathetically when they were trying to protect their families.

### *Other Potential Themes*

The next three pairs did not appear to fit into the history of abuse or familial paternalism theme. All three pairs are described below.

*Pair 11 - Kim and Peter:* Kim and Peter received the same sentence length. Kim was a prostitute who pushed a male stranger to the ground while he was leaving a bar. The victim hit his head and died later in the hospital. Before fleeing the scene, Kim robbed the male victim and stole a subway ticket and \$2.50 (*Toronto Star* 1994). Kim's matched male offender, Peter, got into a quarrel and punched a male stranger who fell over and struck his head (*Toronto Star* 1990). The male victim was taken to the hospital where he died the next day from the head injury. While there was limited information about this pair, their crimes seemed strikingly similar and deserving of the same sentence.

*Pair 12 - Liz and Steve:* Steve received a shorter sentence for killing his child when compared to Liz, a mother who killed her stepchild. The newspapers reported that Steve was a teenage father who beat his baby to death. Steve was 16 when the child was born and the mother was 13 (*Toronto Star* 1994). The judge claimed he "gave [Steve] the benefit of the doubt and attributed this for the most part to [his] youth and lack of maturity" (*Quick Law* 1994). This case does not fit in with the other themes, but it does appear that the judge considered Steve's age in pronouncing a more lenient sentence. The judge also seemed to be concerned about Steve's inability to control his anger and impulsive behaviour. Steve was encouraged by the judge to get help before the symptoms "develop[ed] into a full blown antisocial personality disorder" (*Quick Law* 1994). Liz, the matched female offender, killed her criminally-inclined boyfriend's daughter (*Toronto Star* 1989). Liz was 23 years of age and had three children of her own in addition to the

responsibility of caring for her estranged boyfriend's daughter. Her boyfriend "face[d] a series of robbery charges, five counts of using a firearm in the commission of a crime, and one each of possession of a dangerous weapon, a prohibited weapon and a stolen car" (*Toronto Star* 1989). The judge stated that Liz seemed like a really good mother who cared a lot about her children. She was in the article as a "loving, attentive parent, concerned for the welfare of her own three children" (*Toronto Star* 1991). According to the additional information provided by the newspaper articles, it seemed that Steve, the 18-year old offender, might have received a shorter sentence than Liz, a 23-year old mother of three, because the presiding judge in Steve's case attributed his actions to immaturity.

*Pair 13 - Ashley and Dave:* This final pair compared Ashley and Dave, a female and male offender who were both controlling and abusive towards their intimate partners. In an attempt to get her ex-boyfriend back, Ashley tranquilized and attempted to rape her ex-boyfriend. She believed that getting pregnant would force him to stay in the relationship. When Ashley's plan failed she stabbed and kill him (*Toronto Star* 1992). Dave was involved in a similar situation. He stabbed his girlfriend multiple times after she ended their relationship. He claimed that he "didn't want anyone else to have her" (*Toronto Star* 1987). While the description of Ashley's crime made her seem more blameworthy because she planned to tranquilize and sexually assault her ex-boyfriend, she received the shorter sentence. Gender could be one potential explanation for the difference in sentences. Ashley compared to Dave may have been viewed by the judges as less likely to reoffend because of gendered stereotypes about female behaviour and

criminality. However, there could also be an explanation beyond offender gender that was not reported in the newspaper articles.

Overall, the exploratory qualitative analysis highlighted potential gendered factors that may alter sentence length. The two main themes highlighted in this section were histories of abuse and familial paternalism. Nine of the cases provided evidence that female offenders received shorter sentences because of prior abuse suffered by intimate partners. As well, there was evidence in three of the matched pairs that men may have received longer sentences when they had a history of abusing their wives. Other matched pairs provided some evidence for familial paternalism. Specifically, male offenders who were seen as harming their family received longer sentences than their matched female offenders. Males also appeared to receive more sympathy when they killed to protect their children.

## **Conclusion**

This chapter highlighted the results from both the quantitative and exploratory deep-sample analyses. The quantitative results discussed the statistically-significant factors that affect homicide sentencing decisions over a period of 28 years in Canada. The deep-sample analysis explored other relevant factors that could be important in the future when analyzing gendered sentencing patterns in a Canadian context. The significance of the quantitative findings and the deep-sample exploratory qualitative findings are discussed in the next chapter.

## **Chapter Six: Discussion and Conclusion**

### **Introduction**

In this final chapter, the relevance of this study's findings about the relationship between gender and sentence length are summarized and discussed. This chapter begins by reviewing the goals of the current study's research. Next, this chapter discusses the findings and provides connections between prior research and the current study. Finally, potential theoretical and policy implications of the results are discussed, before concluding with limitations and recommendations for future research.

### **Gender and Sentence Length**

Despite the vast literature produced on gender and sentencing outcomes, there has been very little reported on the effect of gender on sentence severity outside of the United States. Moreover, compared to the effect of offender characteristics on sentencing outcomes, research has been sparse on the effect of victim characteristics or the effect of offender and victim characteristics in a multi-year study. Thus, the primary goal of this study was to determine whether or not there were gendered sentencing patterns in one, large urban Canadian jurisdiction. This study utilized both a quantitative analysis of 28-years of homicide data and an exploratory deep-sample qualitative analysis that compared a sample of 15 matched pairs of male and female offenders. The quantitative analysis examined gendered patterns by asking the following questions: Do female homicide offenders receive shorter sentences compared to male homicide offenders? Do offenders who murder female victims receive longer sentences than offenders who murder male victims? What offender and victim gender combination receives the longest

sentence? The deep-sample exploratory qualitative analysis examined whether there were other gendered reasons to explain differences in sentences between the male and female offenders.

### **Male and Female Offenders Sentenced Similarly**

This study hypothesized [Hypothesis 1] that female offenders would receive shorter sentences than male offenders because the largest body of sentencing literature supported this finding (Auerhahn 2007; Dawson 2004a,2004b, Franklin and Fearn 2008; Huang et al. 1996; Steffensmeier and Demuth 2006). While the current study's findings did not appear to be consistent with the majority of prior research, they are in line with a smaller group of studies that also discovered that the offender's gender had no effect on sentence severity (Crew 1991; Koons-witt 2002; Steffensmeier et al. 1993; Rapaport 1991). The lack of significance of an offender's gender on sentence length could be interpreted in three ways.<sup>27</sup> First, the fact that gender was not a significant predictor could be attributed to differing analytic strategies and control variables used in prior research. Second, the insignificant finding could provide some evidence for Kruttschnitt (1980/81) and Daly's (1994) alternative gendered theories of sentencing. Lastly, the insignificant finding could be seen as troubling to some feminists who understand gendered differences in homicidal events and who promote substantive equality in the criminal justice system. These three points are discussed in more detail below.

First, the absence of an effect of gender on sentence length in this study might be attributed to the analytic strategy employed. This study used a multivariate analysis that

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<sup>27</sup> Another reason for the lack of significance of offender gender could be due to the small female sample size. The small female sample size will be discussed in more detail later in this chapter (see limitations and future research).

controlled for many important legal and extra-legal factors. It has been argued that when proper legal controls are included, the effect of an offender's gender becomes negligible (Steffensmeier et al. 1993). Supporting this argument, the bivariate results in the current study showed that, while females were more likely to plead guilty, they were less likely than male offenders (1) to be convicted of murder, (2) to have a violent or any criminal record, or (3) to kill multiple victims (see Table 5 for review). A murder conviction and the existence of a prior violent criminal record were correlated with increases in sentence length, whereas a guilty plea was correlated with a decrease in sentence length.

Therefore, the failure to control for these variables could have produced misleading results about the significant effect of gender on sentence length.

Since the 1980s, most studies have controlled for prior criminal record, offence severity, and mode of conviction. Yet a number of studies have still found female offenders received shorter sentences when compared to male offenders for violent crimes (Franklin and Fearn 2008; Curry et al. 2004). In these studies, there has tended to be inconsistency when measuring prior criminal record. Spohn and Welch (1987) and Steffensmeier et al. (1993) found that studies often use inadequate measures for prior criminal record such as a dichotomous variable that distinguishes between a prior felony arrest/conviction and no prior felony arrest/conviction. In their study, Spohn and Welch (1987) found that previous incarceration had a greater effect on sentence length when compared to the measure of prior conviction or prior arrest. They encouraged future scholars to find a more appropriate measure for an offender's criminal history that appropriately measured the seriousness of prior offences (Spohn and Welch 1987).

With the above criticism in mind, it is important to note that many of the more recent analyses used a dichotomous measure for prior criminal record (prior felony conviction versus no prior felony conviction) and these studies discovered that an offender's gender had an effect on sentence length for violent and homicide crimes (Curry et al. 2006; Curry 2010; Franklin and Fearn 2008; Spohn and Spears 1997). In contrast, this study used a three-category control variable to capture the seriousness of the offender's prior criminal record (no criminal record, non-violent criminal record, and violent criminal record) and found no effect for offender gender on sentence length.

Future research needs to take a closer look at the effect an offender's prior criminal record has on sentencing decisions when comparing gendered outcomes. In general, the sentencing literature is vast and varied; using different crimes, measurements of controls, locations and time periods makes comparisons across jurisdictions difficult. Daly and Bordt (1995) provided an analysis and overview of most gender and sentencing literature published through to the mid 1990s. There is a need for a more recent analysis to include studies that have focused on homicide, violent crimes and gender in order to underscore important control variables and methods (see Curry et al. 2004,2006; Franklin and Fearn 2008; Spohn and Spears 1997; Williams et al.2004, 2007). Future efforts should synthesize the different methods and controls used in these more recent studies so that comparisons can be made across time periods and geographical locations.

Second, this study found some preliminary support for alternative gendered sentencing theories. More specifically, given the lack of support for the role of offender gender in sentencing, the findings from this study provide little support for the two gendered theories described in Chapter Two, the chivalry/paternalism hypothesis and the

evil woman hypothesis. Both theories hypothesize that an offender's gender would have an effect on sentence length. However, Daly (1994) and Kruttschnitt (1980/81) both theorize that not all women receive shorter sentences than men. Instead differences may arise due to gendered familial characteristics. For example, as discussed in Chapter Two, Kruttschnitt (1980/81:247) argues that "women's various social characteristics" would be better predictors of sentencing outcomes. Her analysis found that females who were employed and more socially-integrated often received more lenience. While this current study did not examine the combined effect of gender and employment status on sentence outcomes, results showed that employed offenders received a shorter sentence than unemployed offenders (see Table 8). As well, the qualitative results provided some preliminary support for the role of familial paternalism on sentencing decisions, suggesting mothers and/or 'emotionally supportive' fathers may receive shorter sentences compared to offenders without dependents. Given these findings and the limited attention to date on the role played by these variables in sentencing decisions, more research should be conducted to analyze the relative explanatory power of these variables and their potential contribution to gendered theoretical perspectives.

Third, the finding that female and male homicide offenders did not receive significantly different sentences may be disconcerting to some feminists. It was argued in Chapter One that some women should be treated differently in the criminal justice system because male and female offenders often have differing social and historical backgrounds. Females, and especially female offenders, experience higher rates of physical, sexual, and mental abuse compared to males and male offenders (Chesney-Lind 2004; Daly 1992; Silvestri and Crowther-Downey 2008). In this study, 45 percent of

female offenders killed an intimate partner compared to 55 percent of female offenders who killed a family member, friend, acquaintance or stranger. As well, many of the women who killed an intimate partner faced years of physical and emotional abuse, as reported in nine of the 15 matched pairs in the deep-sample analysis. Despite data showing that males and females commit crimes for different reasons some still believe that different sentences for men and women “underscores and institutionalizes messages about traditional feminine gender roles that characterize women as childlike and helpless” (Franklin and Fearn 2008:286). Further, some argue this traditional way of sentencing could damage progress made by the women’s movement (Franklin and Fearn 2008). However, these criticisms ignore the real issue. Forell and Matthews (2000:xxi) reply to these criticisms by saying “we do not believe that men and women are different in the sense that women are fragile, needing special protection in order to be equal. Rather, recognition of women’s viewpoints and experience in areas where women are primarily on the receiving end of violence aids in achieving equality.” In other words, there may be times when women need to be treated differently in the criminal justice system, not to undermine feminine strength, but to expose the injustices women face at the hands of men. This study suggests that this may be occurring in Canada, but future research is required to investigate this further.

### **The Female-Victim Effect**

Consistent with prior research and in support of Hypothesis 2, this study found that offenders who killed females received longer sentences than offenders who killed males (Curry et al. 2004; Curry 2010; Franklin and Fearn 2008; Glaeser and Sacerdote

2000; Williams et al. 2004; 2007). Until recently, the majority of sentencing studies did not control for victim gender. However, the current study's findings underscore the importance of controlling and measuring for victim gender in future research (Curry et al. 2004; Ulmer 2012). In addition, the results from this study indicated victim and offender gender combinations were associated with sentence length. This finding is also consistent with prior research (Curry et al. 2004; Curry 2010; Franklin and Fearn 2008). More specifically, men who killed women received the harshest sentences compared to any other gender combination. These results appeared to provide some partial support for the chivalry/paternalism hypothesis, but not in the traditional way. Typically, this hypothesis predicts that female offenders will receive shorter sentences than male offenders. However, this study appeared to support the argument by Curry et al. (2004) that men receive longer sentences when they kill females because the males are seen as doubly deviant; that is, they have not only disregarded their chivalrous duty to protect women, but they also initiated the violence.

However, a better explanation of these findings might be found by drawing from blameworthiness attribution theory used in Chapter Two. Recall that Baumer et al. (2000) uses the blameworthiness attribution theory to explain why offenders may receive shorter sentences when some of the blame is attributed to their victims. More specifically, male victims can sometimes be seen as more blameworthy because they are typically more involved in crime than female offenders. In this sample, male offenders accounted for 91 percent of those sentenced and convicted. Female offenders accounted for nine percent. Due to males' higher involvement in criminal activities they may be seen as more

blameworthy for their own deaths when killed by a woman, thus eliciting a shorter sentence for the female homicide offender.

The relevance of victim gender and the offender and victim gender combinations also has implications for the criminal justice system. Curry et al. (2004) argued that finding disparities based on extra-legal characteristics such as gender, undermines the values of equality and fairness of the criminal justice system. They suggested that longer sentences given to offenders who victimize females existed because of gender stereotypes and they recommended that the judiciary needed to reduce discretion in the future (Curry et al. 2004: 338). In contrast to Curry et al. (2004), others would argue that sentencing differences based on gender are positive because they demonstrate how serious violence against women is perceived in courts. Davis and Smith (1995) argued that during the 1970s, domestic violence assailants were not being prosecuted or sentenced as severely as other criminals. In contrast, the findings from this study suggested that cases with female victims resulted in the offender receiving longer sentences. Further of the 244 female victims, male offenders killed 95 percent of them. These findings may be reassuring to some feminists who fought and continue to fight to reconstruct the invisibility of domestic abuse as a deviant public issue (Hilton 1988). Perhaps this increased awareness in recent years regarding violence against women has influenced Canadian courts. This was also seen in Dawson's (2004b) analysis of the effect of intimacy on sentencing over time. Overall, future research should be mindful of these significant findings and make sure to control for victim gender as well as offender gender.

## **Potential Gendered Reasons for Sentencing Differences**

There were two purposes of the exploratory deep-sample qualitative analysis: (1) to collect additional information for the pairs of cases from the newspaper articles and *Quick Law* case summaries which might explain why female offenders received primarily shorter sentences compared to their matched male offender; and, (2) to identify other gendered factors that could be important to measure quantitatively in future Canadian studies. Of the 15 pairs in the exploratory analysis, women received shorter sentences in eleven of the pairs. These findings appear to contradict the quantitative findings that showed no difference in sentence length by offender gender. However, the majority of the cases analyzed in the deep-sample exploratory analysis were intimate partner homicide, which means the qualitative analysis primarily compared female offenders who killed males to male offenders who killed females. In other words, the deep-sample exploratory qualitative findings were consistent with quantitative findings that found males who killed females received longer sentences than any other victim and offender gender combination.

With an exploratory analysis, concrete policy implications and findings are not possible, but the goal is to provide potential avenues for future research. Specifically, the deep-sample exploratory qualitative results section highlighted two potential themes for future research. Women in the deep-sample sample appeared to receive shorter sentences because of their reported experiences of prior abuse and when they had children compared to their matched male offender. Male offenders in the sample appeared to receive longer sentences when they killed an intimate partner who they had abused for years before the homicide. As well, the male offenders only appeared to receive a similar

sentence to their matched female offender when the male offender was seen as protecting his family. These preliminary findings are discussed below.

The deep-sample exploratory qualitative findings provided some support for prior research that has similarly hypothesized female offenders who experienced higher levels of abuse during their lifetime are more likely to receive shorter sentences (Daly 1994; Jeffries 2001). Daly (1994) suggested that the blurred boundaries between female victims and offenders often result in female offenders being seen as less blameworthy when they commit crimes. Due to male and female offenders' historically different experiences with prior abuse, female offenders may often justifiably receive shorter sentences, depending on the context of their crimes, when compared to their matched male offenders who have not experienced similar prior abuse. Due to the preliminary findings of this study and other qualitative studies (Daly 1994; Jeffries 2001), the relationship between prior abuse and gender needs to be explored in more detail in future quantitative sentencing analyses in order to detect if abused women are handed down shorter sentences compared to male offenders.

The preliminary finding that women may have received shorter sentences because of their role as the primary caregiver is consistent with Daly's (1994) familial paternalism findings. For example, two of the female offenders in the qualitative deep-sample sample had children compared to their male offender who did not and it is possible that their shorter sentences could be due to the fact the judges may have been more concerned about the maintenance of their families when deciding sentences (see Pair 7 and Pair 8). These results are related to Daly's (1987a:18) findings which suggested that judges are

more concerned about the “social costs of punishment” and how removing the primary caretaker from the home would affect the children.

Somewhat different to Daly’s (1987a/b;1994) findings that mothers were treated with more lenience in the criminal justice system, Bickle and Peterson (1991) found that male and female offenders’ sentences differed based on whether the offender occupied a central support role in the family and whether they properly carried out familial responsibilities. The exploratory qualitative analysis in this study provided some support for Bickle and Peterson’s (1991) findings to the extent that only fathers seen as protecting the family received shorter sentences, whereas male offenders seen as harming their children received longer sentences. For example in Pair 2, the judge told the male offender that he felt “compassion and sympathy” because he was trying to keep his family together even when he killed his neglectful wife (*Quick Law* 1985). In contrast, one father received a longer sentence compared to his matched female offender when they both killed their children (Pair 7). The judge stated that the father’s crime was “an outrageous abuse of a position of trust and authority” and “the person [his daughter] should have been able to look to for help and protection suddenly became a predator” (*The Standard* 1997). In circumstances where the male offender was seen to have not properly carried out familial responsibilities, the offender received a longer sentence than their matched female offender.

There are some challenges to analyzing the effect of familial characteristics on sentence length, however there are no recognized standard measures for familial status. Before creating another quantitative study about familial characteristics, scholars need to properly define familial roles and how to properly operationalize the concept. Compared

to Koon-Witt (2002) who examined the presence of children and their effect on sentence length, this study would encourage researchers to find a more complex way of measuring familial responsibilities. For example, Bickle and Peterson's (1991) quantitative analysis provided a deeper analysis of familial responsibilities because they differentiated between the types of support that parents provided (emotional vs. monetary). Overall, results from this deep-sample exploratory qualitative analysis suggest that familial paternalism needs to be explored using both a quantitative and a qualitative analysis in Canada.

### **Implications of Key Findings**

A major contribution of this study is that it provides a Canadian perspective to the gender and sentencing debate. Without a systematic analysis of the effect of gender on sentencing in Canada, it is challenging to assess the fairness and just application of Canadian laws. The findings from this study can contribute to both theoretical and policy implications. First, this section discusses the importance of reassessing the main gendered theoretical perspective used in sentencing analyses, the chivalry/paternalism hypothesis. Then this section explores policy recommendations that emerged from the quantitative and the exploratory qualitative analysis.

#### *Theoretical Implications*

Following previous scholars, this study identified six theories to predict how gender would affect sentence length. The earliest theory, the chivalry hypothesis, was introduced by Pollak (1950) to explain how gender had an effect on sentencing outcomes. While the chivalry/paternalism theory appears to be old-fashioned and dated, it is still

used in recent gender and sentencing analyses (Franklin and Fearn 2008; Curry et al. 2004; 2006; Jeffries 2001; Spohn and Spears 1997). While many of these recent studies have combined other theories to compliment the chivalry/paternalism hypothesis, as this study did, there is yet to be a theory that can properly replace it. Instead studies continue to assume that chivalry and paternalism are the reasons females compared to males receive shorter sentences (Franklin and Fearn 2008).

It is important to note that newer theories have emerged to predict the effect of extra-legal factors such as gender on sentencing outcomes. The newer theories, such as bounded rationality, focal concerns, blameworthiness attribution, and familial paternalism, are unsuccessful in explaining what gendered stereotypes could be affecting sentencing outcomes. In other words, despite the additional theories there is still a need for a gender specific theory because all the theories are complementary with the chivalry/paternalism hypothesis and each additional “explanation accounts for something the other leaves out” (Curry et al. 2004:336). For example, Steffensmeier et al.’s (1993) focal concern theory, Albonetti’s (1991) bounded rationality theory, and Baumer et al.’s (2000) blameworthiness attribution theory discuss *why* stereotypes are used leaving out the source of the stereotypes. Said differently, these theories are unable to answer what exactly it is about female offenders and cases with female victims that elicit a shorter or longer sentence (e.g. attitudes based traditional feminine gender roles or women’s experiences with abuse; but see Dawson 2006). While Daly (1987a/b) has completed a qualitative analysis that relied on judicial decision-making to create her familial paternalism theory, her theory is unable to provide a theoretical framework for sentencing analyses examining the effect of gender on decision-making without looking at familial

characteristics. Rather her theoretical perspective argues that it is the social cost of removing a mother that provides offenders with more lenient sentences.

Due to the lack of an appropriate gendered sentencing theory, this study, as well as other scholars, encourage an empirical reassessment of the potentially outdated chivalry/paternalism hypothesis in order to render a more thorough understanding of the effect gender has on criminal justice decision-making (Jeffries 2001; Curry et al. 2004). More specifically, devoting more attention to judges' perceptions of male and female offenders seems crucial to form a better understanding of why offender and victim gender affects sentencing outcomes. Daly (1994) emphasized the importance of qualitative analyses of judicial perceptions on extra-legal factors in order to better assess the root reasons for disparities in sentencing. This study's exploratory qualitative analysis similarly encourages a future qualitative evaluation of judicial decision-making. A future analysis should study the effect of not only judges' perceptions of gender but gendered factors such as prior victimization, familial statuses and their effects on sentencing decisions.

### *Policy Implications*

Sentences and criminal court defences were created for and are still based on male criminality since the majority of crimes are committed by men (as displayed in this study: nine percent of homicides were committed by females and 91 percent were committed by males, see Table 3, see also Crocker 1985; Nagel and Johnson 1994; Wald 2001). This focus on male criminality creates male-centred criminal justice systems (Forell and Matthews 2000; Gillespie 1989). The problem with male-centred criminal justice systems

are that they view men as being the normal reasonable subject while women are ‘othered’ and marginalized (Allen 1987; Forell and Matthews 2000). Treating women according to a male standard silences the differences in male and female offending. While many of the studies in the U.S. cite more stringent sentencing guidelines to limit judicial discretion as a policy implication when differences arise based on extra-legal factors, such as gender, this study does not support limiting judicial discretion. Instead, this study argues for a substantive equality approach for homicide offenders because the circumstances surrounding homicides can vary significantly between men and women. In order to support a more substantive equality approach in the Canadian criminal justice system, there are two female-centred policy implications: the first is the effective use of Battered Woman Syndrome (BWS) and the second is the expansion of Ontario’s Domestic Violence Courts (DVC) to include cases of intimate partner homicide.<sup>28</sup> The last policy implication is educating the public and the courts about violence against women. This policy is pivotal for the success of both the BWS and DVC.

The BWS defence may help provide some female homicide offenders who killed their battered husbands with a more appropriate sentence length. The results from this study’s quantitative analysis found that the offender’s gender had no significant effect on sentence length and, of the 80 women sentenced, 36 of them killed an intimate partner. In the qualitative analysis, eight of 15 the pairs involved intimate partners and seven of the female offenders were reported as being abused by their intimate male partner. The

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<sup>28</sup> Lenore Walker (2000) coined the term BWS to describe the psychological impact of long-term violence on women. The defence was first used in Canada in 1990 in *R v. Lavallee* a woman who shot her husband while he was walking away during a party at their house (Shaffer 1997; Tang 2003). The initial success of BWS was due to the fact that traditional male centred definitions of self-defence could not be applied to scenarios where women killed when there was no immediate physical danger, instead the BWS was able to work as a defence to free battered women who felt frightened of their partner despite there being no physical violence in the moment.

findings from this study that the majority of women killed to protect themselves from an abusive intimate partner is consistent with prior research (Brown 1999). The BWS defence should be used to help battered women who kill their abusive intimate partners receive a more appropriate sentence; however, two decades after this defence was introduced, some scholars still argue it is not being used effectively for battered women who kill their abusive partners (Fernandez 2007; Schuller et al. 2004; Shaffer 1997). One of the major problems cited by other scholars regarding the demise of BWS is its inability to apply to all women (Fernandez 2007; Schuller et al. 2004; Shaffer 1997). More specifically, Fernandez (2007:246) claims that BWS “paints a one-dimensional picture of a battered woman so that when the ‘real woman’ appears in court, she is unable to match the stereotype and therefore it fails in her claim of self-defense.” In order to overcome this challenge, lawyers, judges, and court officials need to be more knowledgeable about battered women and understand that there is no single ‘legitimate’ battered woman. Aside from the psychological effects of BWS, criminal justice officials should be more aware of the social, emotional, physical, and economic barriers of leaving an abusive relationship. Educating court officials about the complexities of domestic violence would serve to undermine the myth that battered women can easily leave their abusive partners.

The second policy implication calls for an expansion of Ontario domestic violence courts to include cases with intimate partner homicides. Ontario’s first DVC opened in 1997 in Toronto (Dawson and Dinovitzer 2008). The court was modeled after a specialized court in San Diego, California (Dawson and Dinovitzer 2008). The purpose of the court was to provide specialized services to victims of domestic violence (through victim/witness assistance program, or VWAP) and to properly prosecute and hold abusers

accountable for their crimes (Dawson and Dinovitzer 2008). Most importantly, the criminal justice officials, in the first and subsequent DVC, were educated by “mandatory training in the social, psychological and legal issues often associated with domestic violence and sexual violence” (Dawson and Dinovitzer 2008: 124). With specialized training and additional victim programs for battered wives, the DVC could potentially become a more effective venue for dealing with intimate partner homicides. An analysis of a similar specialized family court in Winnipeg found that one of the most dramatic shifts that occurred when they adopted a specialized court was the change in sentencing patterns for domestic violence cases (Ursel and Hagyard 2008). Perpetrators of long-term domestic violence were finally being properly prosecuted and held accountable for their actions. A similar shift in prosecution is needed for intimate partner homicide cases. By moving domestic homicide cases to DVC, knowledgeable criminal justice officials should be better able to differentiate a chronically abused female homicide offender from a chronically abusive male homicide offender. A court that is better equipped and more knowledgeable about these kinds of crimes would be more successful in differentiating and holding the appropriate parties accountable for their crimes.

Most importantly, more education is needed to increase the general public’s knowledge about battered women. Flood and Pease (2006:125) claim there is a link between the public attitudes and responses to violence against women. When the public is unsupportive of differential sentences for men and women, the criminal justice system is less likely to give females shorter sentences when they kill their abusive intimate partners. In order to ensure appropriate sentences are given to battered women who kill, there needs to be more societal education about the complexities of intimate partner

violence. Increasing the public and court officials' understanding of the complexities of intimate partner abuse will dispel myths about IPV. For example, one myth is that women are to blame for the violence. Forell and Matthews (2000:162) argue that this belief is upheld by, not only society, but also by criminal justice institutions because they still focus on "Why *didn't* she leave?" and "Why *did* she leave, and provoke him so? when he kills her for escaping" (Forell and Matthews 2000: 162). Another myth, highlighted by Fernandez (2007:248), is that the law presumes it should be easy for a woman to leave an abusive situation. This narrow and naive understanding of domestic abuse undermines battered women's struggles and the challenges of leaving an abusive relationship. More specifically, the myth that it is easy to leave, or the myth that it is her fault, ignores the social, economic, and emotional challenges faced by these women. For example, where will she women stay when she leaves? How will she support her children? As well, there is the added fear the women will increase their risk of being harmed or killed if they leave, a fear that is often a reality for many battered women who try to escape (Johnson and Dawson 2011). Until the courts and the general public understand the complexities of intimate partner homicide and abuse, there will always be an inadequate level of support for battered women who kill.

### **Limitations and Future Research**

Given that this study is one of the first gender and sentencing analyses based in Canada there are still several unresolved questions. The limitations of both the quantitative and qualitative analyses are discussed below along with potential avenues for future research.

The first area of future research is to create a multi-city homicide dataset. The primary reason for expanding the data is due to the small female sample. Over the 28-year period in Toronto, only 80 female homicide offenders were convicted and sentenced. Perhaps part of the reason offender gender was insignificant was due to small female sample. Thus, by increasing the number of offenders in the sample it could produce different results. As well, the small sample size eliminated the possibility of statistically comparing gendered predictors of sentence severity with interaction effects. For example, Crew (1991) compared male and female offenders and found that employment status affected the sentence severity of women but not men. Unlike Crew (1991), this quantitative analysis was only able to examine gender as an independent variable. Thus, being able to examine interaction effects of male and female offenders will allow Canadian researchers to better understand gendered predictors of sentence severity.

Second, there is a need for more qualitative research to expand our knowledge about judges' reasoning behind sentencing decisions. One of the major shortcomings of sentencing research is that there is a lack of information about judicial reasoning (Steffensmeier et al. 1993; Dobbs 2004). Instead the majority of sentencing studies assumed that judges made decisions based on the factors that were significant in their quantitative analyses. In contrast, Daly (1987b;1989a;1994) completed multiple qualitative interviews and case analyses about the reasoning behind judicial decision-making. There is a need to replicate Daly's (1994) analysis of judicial decision-making in order to understand the reasoning behind homicide decisions in Canada. Additionally, a qualitative analysis would help to provide additional information about the applicability of the chivalry/paternalism hypothesis.

The third recommendation for future research stems from the inability for this study to examine other types of crime. This study focused solely on the effect of gender on homicide offenders' sentence lengths; however, future research should also assess the effect of gender on all types of crime. There have been mixed findings as to the effect of an offender's gender on sentencing outcomes for different types of crimes. For example, Huang et al. (1996) found that female offenders compared to male offenders were less likely to go to jail for homicide offences, but male and female offenders were sentenced similarly for non-violence offences (forgery, theft, and drug offences). In contrast, Curry et al. (2006) found that females convicted of property and drug offending were less likely to go to jail and more likely to receive a shorter sentence compared to male offenders, but that there was relatively no difference between male and female offenders' likelihood of going to jail for homicide. Future research in Canada should focus on the gendered differences in sentencing for all crimes and not just homicide crimes.

Lastly, there is a need to examine the effect of gender on multiple stages in the criminal justice system. This study included the mode of conviction in order to control for earlier criminal justice decision-making; however, future research should test the effect of gender throughout all stages: arrest, charge, bail, plea-bargaining, and conviction. This future analysis could detect potential stages in the Canadian Criminal Justice System that have greater gendered bias. For example, using Canadian data, Dawson (2004a) examined the effect of intimacy at multiple stages of the criminal justice system: initial prosecution charge, mode of conviction, verdict at trial, type of acquittal, overall conviction, severity of conviction, type of sentence, and length of sentence. In her multivariate analyses, intimacy was significant at multiple and different stages of

criminal justice decision-making. It would be interesting to do a study that focused primarily on the effect of gender on these different stages of the criminal justice system.

## **Conclusion**

Traditionally, sentencing studies were used to detect disparities in sentencing patterns. Any disparities in sentencing outcomes were seen as injustices and evidence of discriminatory practices in the law. Perhaps the results of this study, which found no difference between male and female offenders, could be viewed positively by those who believe disparate sentencing equates to discriminatory practices. However, as discussed, many scholars now question this traditional criminal justice equality model because similar sentences rarely mean equality for female offenders. Alternatively, this study showed that offenders who victimized females received longer sentences than cases with a male victim and males who killed females received the longest sentence compared to any other victim and offender gender combination. These findings encourage the denunciation of male violence against women, but more work is needed. Continued efforts are needed to change the way in which the criminal justice system and society views domestic violence and domestic homicide in order to create a more effective criminal justice system for battered wives. This study encourages future gendered research on the equal treatment of female and male offenders based on the exploratory qualitative analysis that provided preliminary evidence regarding the effect of prior abuse and familial characteristics.

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## Appendix

**TABLE 11. Phases of Thematic Analysis**

Phase	Description of the Process
1. Familiarising yourself with your data:	Transcribing data (if necessary), reading and re-reading the data, noting down initial ideas.
2. Generating initial codes:	Coding interesting features of the data in a systematic fashion across the entire dataset, collating data relevant to each code.
3. Searching for themes:	Collating codes into potential themes, gathering all data relevant to each potential theme.
4. Reviewing themes:	Checking if the themes work in relation to the coded extracts and the entire dataset.
5. Defining and naming themes:	Ongoing analysis to refine the specifics of each theme and the overall story of the analysis tells; generating clear definitions and names for each theme.
6. Producing the report:	The final opportunity for analysis. Selection of vivid, compelling extracts examples, final analysis of selected extracts, relating back on the analysis to the research question and literature, producing a scholarly report of the analysis.

### Pairs with Unique Circumstances

#### Pair 14: Megan and Nick

Megan, the female offender, was a male to female transsexual who killed her female friend. The article claimed that Megan and her friend were in an argument because Megan had attempted to steal drugs from her friend the victim. Megan's history was plagued with assault, foster homes, juvenile detention centres, and carceral sentences (*Toronto Star* 1991). Megan received a longer sentence than her paired male offender, Nick. Nick was a security guard and used his gun to kill a friend. The article suggested that having access to a gun made it easier for Nick to kill. Before the homicide Nick told his friends that "[he] had it with this idiot [the victim]. [he was] going to do him in" (*Toronto Star* 1991). Megan's sentence was one-year longer than Nick's. From the information provided, it is hard to know if Megan received a longer sentence due to her

being a transsexual, or because the context of the homicide surrounded a robbery of illegal substances. She also had a substantial record with the criminal justice system and criminal justice treatment programs. Perhaps the judiciary viewed her as more of a risk of reoffending since none of the past treatment helped.

#### Pair 15: Danielle and Alex

Danielle and Alex, committed very different homicides which made it difficult to compare their cases. Danielle killed a woman whom she and her girlfriend had sexual relations with. It was reported that Danielle and her girlfriend frequently abused the victim when they were together (*The Gazette* 1987). The judge in claimed that the girls killed the victim to “settle a long-standing grudge” (*The Gazette* 1987). Danielle’s matched male offender, Alex, was described in *The Spectator* (1992) as being “a disturbed man who beat a female friend to death with a hammer during a jealous rage.” Alex met his female drinking friend when they were both being treated in a psychiatric hospital. Alex had a history of mental illness yet he still received a longer sentence than Danielle. There was such a limited amount of information about both offenders it was too hard to hypothesize reasoning for the differences in their sentences.