

ABSTRACT

Title of Thesis: THE EFFECTS OF GENDER ON PHYSICAL
CHILD ABUSE AND NEGLECT
SENTENCING IN MARYLAND CIRCUIT
COURTS

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Researchers have identified child abuse as a major social problem in the United States, yet research on physical child abuse and neglect sentencing is limited. Prior to this study, sentencing research has mostly overlooked physical child abuse and neglect as a distinct crime. As physical child abuse and neglect are so contrary to traditional notions of femininity, studying the effects of gender on sentencing for these narrowly defined crimes presents an opportunity to focus on females as countertypes. The findings here imply that the effects of being female (a countertype) increases for the most serious crime, first degree child abuse, in both the decision to incarcerate and on the sentence length.

THE EFFECTS OF GENDER ON PHYSICAL CHILD ABUSE AND NEGLECT
SENTENCING IN MARYLAND CIRCUIT COURTS

by

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Chapter 1: Introduction

For decades, criminologists have studied judges' sentencing decisions and attempted to provide a rationale for why judges sentence certain offenders differently. Many of these studies have focused on whether different genders receive different sentences (Embry & Lyons, Jr., 2012; Curry, Lee, & Rodriguez, 2004; Albonette, 1991; Benson & Walker, 1988; Daly, 1987; Harris, 1977; Bickle & Peterson, 1991). While these studies typically find that, when traditional crimes are considered, females are sentenced more leniently than males and white females are sentenced more leniently than black female or black male offenders; there is little research looking at sentencing decisions in physical child abuse and neglect cases.

While females typically commit fewer crimes than males, studies have shown that “offenders who were female . . . or white were overrepresented [relative to male and non-white offenders] in [child] neglect cases” (Pittman & Lee, 2004, p. 151). Pittman & Lee 's (2004) sample indicated that male offenders were more likely to engage in physical child abuse (relative to women). However, more recently, the 2015 Child Maltreatment publication the Children's Bureau of the Administration on Children, Youth and Families found that females represented approximately 54% of physical child abuse perpetrators (2015). This report further indicated that almost half of female offenders (48.7%) were white (Children's Bureau, 2015).

Such patterns are contrary to prior research on the gender gap in criminal offending (Kruttschnitt, 2013; Schwartz & Steffensmeier, 2015; Steffensmeier & Allen, 1996). Throughout history and across societies, females have typically committed fewer crimes than males (Schwartz & Steffensmeier, 2015, p. 231). However, this is not true across all types of crime (Schwartz & Steffensmeier, 2015; Lauritsen, Heimer, & Lynch, 2009) and, as research shows,

the gender gap has narrowed over time, especially for minor offenses and certain property crimes (Schwartz & Steffensmeier, 2015; Steffensmeier & Allen, 1996).

Prosecutions of physical child abuse cases rose steadily through the 1980's and the 1990's (Cross, Walsh, Monique, & Jones, 2003). Studies show that prosecutors prosecuted physical child abuse in the same manner as other criminal offenses, but these cases resulted in incarceration rates that were lower than other criminal offenses (Cross, et al., 2003). While the incarceration rate was approximately 66% for all felony cases, with violent offenses being incarcerated 73% of the time, felony child abuse cases (both physical and sexual) saw an average incarceration rate of 54% (Cross, et al. 2003).

Child abuse has been identified as a “major social problem in the United States,” yet research on child abuse sentencing is limited (Sigler & Johnson, 2004, p. 81). Prior research examined conviction rates (Cross, et al. 2003), psychological characteristics of males and females convicted of physical child abuse (Pittman & Lee, 2004), and gender differences in sentences for males and females convicted of *child sex offenses* (Embry & Lyons, Jr., 2012). Little research exists on whether sentencing disparities exist between male and female offenders convicted of *physical child abuse and neglect*. Physical child abuse and neglect sentencing outcomes are particularly interesting, as offending trends for physical child abuse appear to be contrary to many other offending trends in criminology.

In the context of physical child abuse and neglect, there is an interesting phenomenon in which there are rising rates of reported physical child abuse cases with large numbers of females as the perpetrators of these crimes. Additionally, recent studies suggest that the effects of gender on sentencing may be dwindling (Bontrager, Barrick, & Stupi, 2013; Daly & Bordt, 1995). Physical child abuse and neglect is a particularly germane crime to study potential sentencing

disparities as the larger percentage of female offenders allows for a greater comparison between male and female sentences.

This paper relied on Harris's Functional Theory of Deviant Typescripts (1997) and Steffenmeier's Focal Concerns Theory (1998) to predict whether Maryland's criminal justice system sentences male and female offenders similarly for physical child abuse and neglect, whether judges sentence female offenders more leniently, or whether female offenders receive harsher sentences than males for instances of physical child abuse and neglect.

Chapter 2: Literature Review

Research shows that the criminal justice system treats male and female offenders differently with males typically receiving harsher sentences than females for similar offenses (Embry & Lyons, Jr., 2012; Curry, Lee, & Rodriguez, 2004; Albonette, 1991; Benson & Walker, 1988; Daly, 1987; Harris, 1977; Bickle & Peterson, 1991). When modeling on the main effects of gender, race, and age on all individuals sentenced in Pennsylvania from 2003 to 2010, one study found that gender had a larger effect than either race or age on sentencing and that females, when compared to males, were less likely to receive a sentence including a term of incarceration (Steffensmeier, Ulmer, & Painter-Davis, 2016). Some research notes that leniency during sentencing is most often seen at the decision to imprison (the in/out decision) (Britton, 2011; Curry, Lee, & Rodriguez, 2004; Steffensmeier, et al. 1993) but that once the sentencing judge makes the determination to incarcerate an individual, females no longer receive leniency from the sentencing judge (Britton, 2011; Curry, Lee, & Rodriguez, 2004)

Daly and Bordt (1995) reviewed 50 studies (published prior to 1990) to evaluate gender effects on sentencing. Of the 50 studies reviewed, 52% found gender effects on sentencing (with 24% finding no gender effects and the remaining 24% finding mixed effects) (Daly & Bordt, 1995). When removing studies that did not control for the defendant's prior records, Daly and Bordt (1995) found that 45% of studies still found gender effects on sentencing (with 26% of the studies finding no effect and the remaining 29% finding mixed effects) (Daly & Bordt, 1995, p. 158). When weighting the studies by quality, the authors still found that "close to 60 percent of outcomes show sex effects favoring women" (Daly & Bordt, 1995, p. 145). This study further noted that gender effects were more prevalent in the decision to incarcerate in urban jurisdictions and for felony sentences (Daly & Bordt, 1995).

In a more recent meta-analysis of studies on the effects of gender on sentencing, Bontrager, Barrick, and Stupi (2013) also found that females are sentenced more leniently than males. Specifically, this study determined that in 65% of the studies reviewed females were less likely to be incarcerated relative to similarly situated males (Bontrager, Barrick, & Stupi, 2013). However, this study also noted that sentencing disparities between female and male offender is diminishing. During the 1980's "83% of the estimates indicate that women received a significantly shorter sentence than men, but that figure dropped to 50% between 2000 and 2006" (Bontrager, Barrick, & Stupi, 2013, p. 366; Daly & Bordt, 1995). Bontrager, et al. (2013) determined that "[t]he effects of gender on sentencing . . . vary by the four different sentencing measures: the in/out decision, sentence length, sentence severity, and sentencing departures" (Bontrager, Barrick, & Stupi, 2013, p. 362).

Studies reviewing the effects of gender in states with sentencing guidelines have also produced mixed results (Steffensmeier, Ulmer, & Kramer, 1998; Blackwell, Holleran, & Finn, 2008). Koons-Witt (2002), using Minnesota data, examined the relationship between gender and incarceration before and after the introduction of sentencing guidelines and concluded that gender, on its own, did not influence sentencing decisions at either timeframe. Koons-Witt (2002) noted that gender effected sentencing decision only when the female defendant had dependent children. Blackwell, et al. (2008), recreated Koons-Witt's 2002 study in Pennsylvania, specifically noting the importance of examining jurisdictions with different sentencing guidelines. This study reached the opposite conclusion, noting that their "results did not support the assertions that sentencing guidelines reduce sex disparities" (Blackwell, Holleran, & Finn, 2008, p. 409). They further note that as sentencing guidelines vary state-by-state, general statements about the effects of gender on sentencing after the introduction of sentencing

guidelines may not be appropriate (Blackwell, Holleran, & Finn, 2008). Doerner and Demuth (2010), examined the effects of gender on sentencing outcomes using federal sentencing guidelines and concluded that that females, as compared to males, were less likely to be incarcerated and, when incarcerated, they received shorter sentences. None of these studies specifically examined whether these patterns continued for physical child abuse and neglect.

Studies have also shown that not all women equally receive said leniency during the judge's decision to incarcerate (Steffensmeier, Ulmer, & Kramer, 1998; Steffensmeier & Demuth, 2006; Spohn, Welch, & Gruhl, 1985). Just as studies have noted that the notion of chivalry does not extend to black females during police stops the same way it extends to white females (Visher, 1983), studies also show that leniency during sentencing does not extend to black females the same way it extends to white females (Britton, 2011; Steffensmeier, Ulmer, & Kramer, 1998; Bickle & Peterson, 1997; Spohn, Welch, & Gruhl, 1985). Britton (2011) notes that black women were three times as likely to be incarcerated as white women. Using South Carolina Sentencing Data, Koons-Witt, et al. (2012), determined that black females had a slightly higher probability, over white females, of being sentenced to a term of incarceration. This study suggested that there might be two reasons for this occurrence. First, black females do not benefit from the leniency white females receive in South Carolina courts (Koons-Witt, Sevigny, Burrow, & Hester, 2012, p. 316). Second, South Carolina judges view black females as more dangerous than white females (Koons-Witt, Sevigny, Burrow, & Hester, 2012, p. 316).

Scholars provide a variety of rationale for why females, as compared to males, are sentenced more leniently. These include, but not limited to: notions of familial justice (which assumes that leniency for females reflects the state's concern with ensuring the availability of caretakers and intact families) (Daly, 1987); social control theories (viewing females as more

socially bonded, and thus, more easily deterred from committing crimes) (Kruttschnit, 1982); selective chivalry within the criminal justice system (Rodriguez, et al, 2006); and the idea that women are simply less culpable for their criminal behavior (Philips and DeFluer, 1982). Harris's Functional Theory of Deviant Typescripts (1977) and Focal Concerns Theory (Steffensmeier, 1980) both focus the effects of gender within the criminal justice system. These two theories use different concepts to explain sentencing disparities between males and females and they differ in their conclusions. Specifically, deviant typescripts would expect, in certain circumstances, judges to sentence some female offenders harsher than male offenders; while Focal Concerns theory would expect judges to generally sentence all female offenders less harshly than male offenders (Steffensmeier, 1998; Steffensmeier, 1980; Harris, 1977).

Functional Theory of Deviant Typescripts

Harris's functional theory of deviant typescripts (1977) theorizes that society, based on ascribed characteristics (for example, gender or race), assigns people to certain "types." The "types" include "socially approved 'scripts' of behaviors that all similarly defined persons are expected to follow" (Sealock and Simpson 2006, 430). These scripts are functional in that they help individuals manage in the world around them by indicating both how they should respond in a certain situation and how others respond to them (Sealock & Simpson, 2006; Harris, 1977). These typescripts inform individuals as to which types of behavior are "likely, possible, unlikely and impossible" (Harris 1977, 11). For example, society typically views males as the breadwinners and females as the homemakers and caretakers. While, in 2018, the view of

females as caregivers may seem outdated, women are more likely than men to be in the role of a child's caregiver and society still views women as primary caregivers.¹

Harris asserts that society supports gender typescripts to maintain the current balance of power (1977, 11). Both at the time of Harris's writing and in modern society, social power rests in the hands of white males (Sealock and Simpson, 2006; Harris, 1977). As the goal of typescripts is to maintain the white male power structure, those who are assigned deviant typescripts "must not threaten the institutional hegemony of the socially dominant" (Harris 1977, 13). Society assigns black males and members of lower socioeconomic status deviant typescripts because imprisoning these individuals does not constitute a threat to white male power. Contrary to this, imprisoning a white female could potentially upset the balance of power. In Harris's theory, when white females are imprisoned, there is a void left in the homes of white males as the female script includes caring for children and maintaining the home (Harris, 1977). In this scenario the white women would either need to be replaced by hiring a replacement or by males leaving the workforce (Harris 1977, 13).²

¹ While views are shifting since the time Harris (1977) first theorized about typescripts, a 2013 PEW Resource Center report indicated that, as of 2013, a full third of adults believe that it is best for a mother to stay home with children and not work (Pew Research Center, 2013). Additionally, "among all adults, only 12% say it's best for mothers of young children to work full time" (Pew Research Center, 2013, p. 16). The PEW Resource Center further noted that in households with children under 18, women, including working mothers, typically spend 6.5 more hours on childcare and 8.2 more hours on housework, relative to men, per week (Pew Research Center, 2013). Using the Australian Time Use Survey, several studies have determined that women spend significantly more time in childcare activities than males. A 2006 study determined that women spend twice the amount of time as men, in similar circumstances, on childcare and that fathers, in two parent families, are not often alone with their children (Craig, 2006). Data from the American Time Use Survey confirms that working mothers spend more time than working fathers in both childcare and house work (Bureau of Labor Statistics, 2015; Bureau of Labor Statistics, 2008).

Women are also much more likely than men to work in childcare. The 2015 ACS PUMS 1-year estimates indicate that 92.2% of childcare workers were females and 70% of childcare workers were white (Data USA, n.d.). The U.S. Department of Labor, in 2015, indicated that women comprised 94.4% of childcare workers and 97.5% of preschool and kindergarten teachers (Rocheleau, 2017).

² Similar to Daly's families model of justice decision making (1987), typescripts assumes that without one of these options, there would be a break-down in the nuclear family structure – a dysfunctional outcome (Harris, 1977).

Either of the aforementioned options could cause white males to lose economic power. Despite the obvious threat to the black family structure, Harris notes that the imprisonment of black males does not threaten the power of white males because white males do not need to fill roles left vacant by black males (Harris 1977, 13). Therefore, society assigns deviant typescripts to black males. This difference between the roles of white females and black females shows the importance of not only gender, but of race, on an individual's typescript.

Hill, et al. (1985) expanded on Harris's Functional Theory of Deviant Typescripts (1977) to highlight how deviant typescripts influences decision-making actors across different stages within systems, including the criminal justice system. Hill, et al. (1985) theorized that "although females and whites are less likely to have contact with, or be forwarded by, the gate-keeping police, once beyond the early filters [female and whites] become increasing liable compared to their respective male and black counterparts" (157). As the criminal justice system processes females further along, their status begins to work against them. Specifically, they stand out as "countertypes" and become worthy of greater scrutiny. During the various stages of the criminal justice system (such as arrest, charging, or sentencing) different actors are involved in decision-making. They often make these decisions quickly and with limited information (Albonetti, 1991; Hill, et al. 1985). Under these circumstances, they use previous experiences, biases, and heuristics to "simplify the decision process" (Albonetti, 1991; Hill, et al. 1985, 148).

Typescripts become the "heuristic that guides the processor in making likelihood and utility estimates" (Hill, et al. 1985, 149). Utility estimates are associated with the outcome of the decision-makers' action. Hill, et al. (1986) assumed that rational actors consider both the utility and disutility in their decision-making process and that decision-makers "seek to maximize subjective utility or to minimalize subjective disutility" (Sealock and Simpson, 1998 p.432).

Simply put, decision-makers want to maximize the positive outcomes (such as increasing public safety) and minimize negative outcomes (such as failing to increase public safety by not imprisoning an individual who reoffends) (Hill, et al., 1986, 143).

Typescripts not only provide individuals with socially expected behaviors, they also define socially appropriate deviant behavior (Sealock & Simpson, 2006). As related to criminal offending, society views males as more aggressive and, thus, more likely to engage in violent crimes (Sealock & Simpson, 2006; Hill, Harris, & Miller, 1985). On the other hand, society views white females as nurturing caregivers who are unlikely to engage in violent crimes (Hill, et al., 1986).

For every type, there is also a countertype (an individual who does not conform to his or her given type). The ultimate countertype for criminal behavior is a white female of higher socioeconomic status (Hill, et al. 1985). As a case progresses through the criminal justice system and moves towards sentencing (after either a guilty plea or a finding of guilt), “processors use the same rules for processing types and counter-types but the objective criteria upon which evaluations are based are adjusted” (Hill, et al. 1985, 149). Depending on the stage of a criminal proceeding, the use of types and counter-types will have different effects on decision-makers. During the early stages of a criminal matter, decision-makers are more likely to “forward” (continue to move the case through) a criminal (or deviant) type but “underestimate” (divert) counter-types (Hill, et al. 1985, 150). However, as the individual progresses further into the criminal justice process and arrives at sentencing, decision-makers may “overestimate” counter-types (Hill, et al. 1985, 150).

As an example, if a white female offender were reported to the police for potential violent criminal activity, the arresting police officer may be more hesitant to make the arrest (as

these actions does not fit into the female type). However, by the time she reaches sentencing, the judge may look at the same female, and based on the overestimated countertype, believe that she must be truly bad and deserving of a harsh sentence: “What is *she* doing here?” (Sealock and Simpson, 2006; Hill, et al. 1986, 150).

Focal Concerns

A contrasting theory, Focal Concerns, proposed by Steffensmeier (1980), originated as a way to explain why judges sentenced female offenders more leniently than males. Focal Concerns theory expands upon Albonetti’s (1991) bounded rationality theory, which theorizes that as judges frequently lack the information necessary to make rational decisions, they use past experiences and stereotypes as “perceptual short hands” in sentencing decisions. While Harris (1977) initially focused on the variance in crime between genders, Steffensmeier (1980) focused on the criminal justice system’s reaction to gender, specifically on disparities in sentencing decisions (Hartley, Maddan, & Spohn, 2007). Focal Concerns theory has become the “dominant theoretical framework used to explain disparities in judges’ sentencing decisions” (Hartley, Maddan, & Spohn, 2007, p. 58; Steffensmeier, Ulmer, & Kramer, 1998; Steffensmeier D. J., 1980).

The primary focus of Focal Concerns theory is the limited amount of time that judges have during their decision-making, including sentencing decisions (Steffensmeier, et al. 1998). As such, judges use three focal concerns to assist in their decision-making: (1) the offender’s blameworthiness or culpability, (2) the need to protect the community from the offender, and (3) practical constraints and consequences (Steffensmeier et al. 1998, 766-767). Judges also develop “perceptual shorthand” based upon their previous experiences. This perceptual shorthand is the

way by which judges use extralegal factors, such as race and gender, in their decision-making processes (Steffensmeier, et al. 1998).

Blameworthiness, or culpability of the offender, focuses on the seriousness of the offense (Steffensmeier, Ulmer, & Kramer, 1998). Steffensmeier, et al. indicate that this focal concern is “associated with the ‘just desserts’ or retributive philosophy of punishment, including the view that the punishment fit the crime” (Steffensmeier, Ulmer, & Kramer, 1998, p. 766; Steffensmeier, Ulmer, & Painter-Davis, 2016), whereby judges view offenders as being deserving of the punishment based upon their actions. In addition to the seriousness of the offense, judges also typically consider the offender’s criminal history, their role in the offense, and whether the individual is being sentenced for more than one offense (Hartley, Maddan, & Spohn, 2007; Steffensmeier, Ulmer, & Kramer, 1998).

Historically, female offenders are seen as less likely to commit serious offenses, less likely to commit violent offenses, as having less interaction with the criminal justice system (as compared to men). Females are typically viewed as having lower amounts of blameworthiness (Doerner & Demuth, 2010; Hartley, Maddan, & Spohn, 2007, p. 60; Spohn, 2002).

Community protection focuses on the need to “incapacitate and/or deter offenders” to prevent the defendant from engaging in future criminal activity (Hartley, Maddan, & Spohn, 2007; Steffensmeier, Ulmer, & Kramer, 1998). Judges, during sentencing, attempt to “predict the future” by examining the offender’s criminal history to determine if they will recidivate and pose a future threat to the community (Steffensmeier, Ulmer, & Kramer, 1998). The defendant’s prior criminal records and prior parole or probation violations relate to the protection of the community (Hartley, Maddan, & Spohn, 2007; Spohn & Beichner, 2000; Steffensmeier et al., 1993). Courts typically treat female offenders as being a lower threat of recidivating than males

(Doerner & Demuth, 2010; Spohn, 2002). Additionally, females are seen as less of a danger to the community as they typically have less serious criminal histories (Doerner & Demuth, 2010; Spohn, 2002).

Practical constraints and consequences refers to the organizational workings and relationships between courtroom actors to “ensur[e] the stable flow of cases, and being sensitive to local and state correctional crowding and resources” (Steffensmeier, Ulmer, & Kramer, 1998, p. 767). When considering practical constraints and consequences under Focal Concern theory, Steffenmeier, et al (1998) indicates that judges consider the flow of cases through the courtroom and the relationship between attorneys, as well as the offender’s health and “ability to do to time” (Hartley, Maddan, & Spohn, 2007; Steffensmeier, Ulmer, & Kramer, 1998, p. 767). Hartly, et al. (2007) suggest that practical constraints and consequences can be modeled using the type of disposition, whether there was a downward departure in the sentencing guidelines, whether the offender accepted responsibility, the offender’s pretrial status, and whether the offender had dependents (66). Researchers typically suggest that the criminal justice system views young minorities as being better able to cope with the stressors of incarceration (Doerner & Demuth, 2010). Further, as Daly (1987) noted, judges are less likely to incarcerate females because this could cause a fracture in the family system (Doerner & Demuth, 2010; Steffensmeier, Ulmer, & Kramer, 1998). As women are typically caregivers for children, incarcerating women with children could lead to increased costs for the state, by requiring the state to provide for their children (Koons-Witt, Sevigny, Burrow, & Hester, 2012).

The above focal concerns do not directly explain why factors such as race and gender frequently appear statistically significant in sentencing studies (Hartley, Maddan, & Spohn, 2007, p. 60). Steffensmeier et al. (1998) opined that during sentencing, judges use “perceptual

shorthand” to inform sentencing when there is missing information. When judges do not have complete information, they use previous experiences as a guide for sentencing decisions (Hartley, Maddan, & Spohn, 2007; Albonetti, 1991). These previous experiences can include stereotypes and prejudices, which allow for extralegal factors, such as gender, age, and race, to factor into sentencing decisions (Hartley, Maddan, & Spohn, 2007; Steffensmeier, Ulmer, & Kramer, 1998). Steffensmeier, et al. (2016) note that scripts may also factor into sentencing decisions in that “certain demographic groups [are] more or less crime prone (e.g., young black males vs. older white females)” (Steffensmeier, Ulmer, & Painter-Davis, 2016, p. 6).

Steffensmeier, et al. (1998) conclude that young, black males receive the harshest punishment because their criminal records are considered more serious; judges “[are] reluctant to send white offenders to state prisons;” they are considered more blameworthy (as compared to older offenders or female offenders); and they are “seen as lacking social bonds thought to insulate individuals from future criminal involvement” (178-787). Using Focal Concerns as a theoretical base, judges are less likely to consider females to be blameworthy or a danger to their community (Doerner & Demuth, 2010; Spohn, 2002) and may be less likely to imprison a female offender as this would effect family structures (Daly, 1987).

Empirical Tests

There are two striking differences between Harris’s Functional Theory of Deviant Typescripts and Steffenmeier’s Focal Concerns theory. The first difference relates to how decision-makers use perceptual short hand and typescripts within the confines of the criminal justice system. Typescripts is a dynamic theory, predicting potential changes in processing decisions by gender (and race) depending on the stage of the justice system. Focal Concerns

predicts outcomes only at sentencing. Second is the volume of research. While few studies consider or test typescripts in sentencing, numerous studies have tested Focal Concerns.

Focal Concerns assumes that the decision-makers rely on certain perceptions during sentencing (Steffensmeier, Ulmer, & Kramer, 1998). However, the influence of typescripts changes throughout the criminal justice process (Hill, Harris, & Miller, 1985). Decision-makers may either underestimate or overestimate types and countertypes based upon their roles (Hill, Harris, & Miller, 1985). For example, a police officer may underestimate a female offender in their decision to arrest, while a sentencing judge may overestimate the countertype in a sentencing decision (Harris, 1993 and Best and Luckenbill, 1990)

Research supporting Harris's Functional Theory of Deviant Typescripts is mixed. Studies likely produced mixed results due to the way in which they were structured. For example, Sealock and Simpson (2006) found limited support for the idea that decision-makers (in this study, police officers) treat countertypes with more leniency at the beginning of a criminal proceeding (during an arrest of a juvenile). In this study, Sealock and Simpson (2006) attempted to gender-type a variety of crimes to determine if Harris's Functional Theory of Deviant Typescripts applied to juvenile arrests. By gender-typing each specific crime in order to determine countertype status, Sealock and Simpson (2006) may have confounded their results. For example, while their results show limited support for the theory, the authors acknowledged that what they defined as "female type crimes" may "actually [be] connected more closely to economic than to gender-related factors" (Sealock and Simpson 2006, 454).

Scholars have widely researched, modeled, and tested Focal Concerns theory. Numerous studies conclude that the most important variables are the seriousness of the crime and the offender's criminal history (Doerner & Demuth, 2010; Hartley, Maddan, & Spohn, 2007;

Steffensmeier, Ulmer, & Kramer, 1998). Studies using Focal Concerns as a theoretical framework also focus on extralegal factors that may play a role in the judge's decision-making process, such as age, race, or gender (Hartley, Maddan, & Spohn, 2007; Spohn, 2002; Steffensmeier, Ulmer, & Kramer, 1998). These studies are mostly consistent in their findings that gender is "consistently found in statistical sentencing studies" to provide an offender with more lenient sentences (Steffensmeier & Demuth, 2006, p. 243). While studies typically find that courts treat females offenders more leniently (than male offenders) at sentencing (Embry & Lyons, Jr., 2012; Curry, Lee, & Rodriguez, 2004; Albonette, 1991; Benson & Walker, 1988; Daly, 1987; Harris, 1977; Bickle & Peterson, 1991), this is not always the case for women of all races. Spohn et al. (1985) determined that while white women receive more lenient sentences, gender and race interacted in a way that typically saw black women not receiving the same leniency as white women (Spohn, Welch, & Gruhl, 1985; Steffensmeier & Demuth, 2006). Further Steffensmeier, Ulmer, and Kramer, using Pennsylvania Sentencing Data, found that black female defendants were sentenced more harshly than white female defendants, both in terms of the in/out decision and in sentence length (1998).

Steffensmeier and Demuth (2006), using State Court Processing Statistics, found that judges viewed women as less culpable, less dangerous, less likely to recidivate, and "as more essential for providing child care" (p. 247), and that "gender strongly influences sentencing across all within-race comparisons, but there [were] no differences in sentences received by white, black and Hispanic female defendants" (p. 257). Doerner and Demuth (2010), using United States Federal Sentencing Data also found that the odds of incarceration were 45% lower for females (when compared to males) and that females received sentences that were 25% shorter than males. However, this study also concluded that there were not statistically significant

differences between white females, black females, and Hispanic females sentences (Doerner & Demuth, 2010).

The above-mentioned studies used a wide range of criminal offenses and considered different parts of the criminal justice decision-making process when comparing the effects of legal and extralegal factors, notably the effects of gender and race, on sentencing (Doerner & Demuth, 2010; Steffensmeier & Demuth, 2006). The present study adds to sentencing literature by focuses on a narrowly defined crime, within one state, to determine whether gender disparities exist during sentencing, holding other factors constant. Using a narrowly defined offense allows this study to avoid conflating gender with other factors.

Hypotheses

Under Harris's theory, females should generally receive more leniency from the criminal justice system to "reflect[s] the interest of white males" (Bickle and Peterson 1991, 373; Harris, 1977). While society typically considers violence contrary to the feminine nature, women, who are typically the primary caregiver for children, may have more opportunity to engage in physical child abuse and neglect. Data provided by the Children's Bureau confirms that women make up the majority of individuals (54%) prosecuted for child abuse (Children's Bureau, 2015). Females, as caretakers, have more opportunity to commit physical child abuse and neglect. As such, the judge may see a female offender as a deviant typescript only for more serious cases of physical child abuse and neglect.

Based on Harris's Functional Theory of Deviant Typescripts (1977), female offenders who are convicted of lower level physical child abuse or neglect should be not be viewed as a countertype, while female offenders who commit more serious levels of child abuse should be viewed as a countertype (as serious violence goes against the typescript of females as nurturers

and caregivers). If this theory is supported, when sentencing female offenders for less serious cases of physical child abuse and neglect, judges should sentence female offenders, as types, more leniently than male offenders (both in terms of including a period of incarceration and in the length of incarceration). However, when sentencing more serious offenses, judges should view females as a countertype, and assuming they are, as countertypes, particularly bad, sentence them to incarceration at higher rates than males. Sentences should also be harsher for countertype white offenders than for black offenders as race is a script associated with criminality (Harris, 1977).

However, if Focal Concerns theory holds true, the opposite would occur. Judges should sentence males to incarceration at higher rates and with longer durations, when compared to female offenders, across all sentence lengths for physical child abuse and neglect. More specifically, black males should receive more sentences of incarceration with longer durations (Steffensmeier et al., 1998). Judge's "perceptual shorthand" should, under Focal Concerns theory, lead the sentencing judge to see the female offender as less blameworthy, less in need of the criminal justice's resources, and less dangerous to the community, and thus, would sentence the female offender to imprisonment less often and, if imprisoned, to shorter sentences (Embry & Lyons, Jr., 2012; Steffensmeier et al., 1998).

Based upon previous studies and the two theoretical frameworks listed above, the hypotheses for this study are as follows:

1. Consistent with typescripts, *ceteris paribus*, female defendants will be imprisoned more often than males (types) for serious cases of physical child abuse and neglect. When imprisoned, the effects of gender on sentence length will be greater for more serious cases of physical child abuse.

2. Consistent with typescripts, *ceteris paribus*, white defendants will be imprisoned more often than black defendants (types) for physical child abuse and neglect. When imprisoned, the white female defendants will receive longer terms of incarceration.
3. Consistent with Focal Concerns, *ceteris paribus*, female defendants will be less likely to be imprisoned than male defendants for all cases of physical child abuse and neglect and the effects of gender should not change across the seriousness of the physical child abuse and neglect (Steffensmeier, et al., 1998).
4. Consistent with Focal Concerns, *ceteris paribus*, white defendants will be less likely to be imprisoned than black defendants for all cases of physical child abuse and white defendants will receive shorter terms of incarceration (Steffensmeier, et al., 1998).

Chapter 3: The Study and Methods

Philips and DeFleur (1982) speculate that women who deviate from traditional ideas of femininity may be viewed as being more culpable and “deserving of harsh treatment” (Phillips & DeFleur, 1982, p. 435). Leniency in sentencing “is given to women as long as they adhere to the traditional definitions of femininity and accepted cultural expectations of ‘womanhood’ such as docility and temperament” (Koons-Witt, Sevigny, Burrow, & Hester, 2012, p. 301). Drawing from Harris’s Functional Theory of Deviant Typescripts (1997) and Steffenmeier’s Focal Concern Theories (1998), this research assumes that physical child abuse and neglect are counter to the traditional view of femininity and the “cultural expectations of ‘womanhood’” (Koons-Witt, Sevigny, Burrow, & Hester, 2012, p. 301). This research also assumes that engaging in physical child abuse is more opportune for females, as females are typically the primary caregivers of children (Simpson & Elis, 1995).

Spohn and Beichner discussed the shortcomings of previous studies of gender difference in sentencing (2000). Frequent problems include not controlling for legal factors, such as crime seriousness and previous criminal records, “poor conceptual and operationalization of the dependent variables,” not considering the defendant’s familial status, using data from the 1960’s and 1970’s and failing to consider the interaction between race and gender (Spohn & Beicher, 2000, pp. 151-152; Steffensmeier et al., 1993). This study, while not addressing all of these potential problems, uses the most recent ten years of data (2006 to 2015) collected by the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) to examine individuals sentenced under Maryland’s physical child abuse and neglect laws between 2006 and 2015. Further, this study addresses the operationalization of the dependent variable by using recent data

and by including interactions of race and gender and a number of legal and extralegal factors as control variables (Spohn & Beicher, 2000)

Data

The present study uses case data collected from the Maryland State Commission on Criminal Sentencing Policy (MSCCSP). In 1983, the Maryland Judicial Conference voted to adopt and apply sentencing guidelines statewide (MSCCSP Annual report, iii). These voluntary guidelines apply to cases heard in Maryland's 24 circuit courts (MSCCSP Annual report, iii).³ The Maryland Sentencing Guidelines consist of three two-dimensional sentencing matrices (property offenses, drug offenses, and person offenses), each of which provides a suggested sentencing range based upon a calculated offender score and an offense score.

In 1999, the Maryland General Assembly created the MSCCSP to “oversee sentencing policy and to monitor the state’s voluntary sentencing guidelines” (MSCCSP Annual Report, iii). Among other responsibilities, the MSCCSP is responsible for collecting sentencing guideline worksheets and maintaining the sentencing guidelines database. Responsible parties⁴ complete worksheets, either paper worksheets or online through an automated system, and the MSCCSP maintains a database of all guidelines eligible cases sentenced in Maryland circuit courts

³ Maryland's Sentencing Guidelines do not require the submission of Sentencing Guideline Worksheets in the following cases: violations of public local laws, offenses that do not carry the possibility of incarceration, criminal nonsupport, criminal contempt, cases in which the defendant was found to be not criminally responsible, sentences for parole violations, reconsiderations for offenses that are not crimes of violence, reconsiderations for crimes of violence that did not result in a change to the active sentence, three-judge panel reviews that do not result in a change to the active sentence (MSCCSP Guideline's Manual 2012).

⁴ Sentencing guidelines worksheets are completed by a variety of parties, including, but not limited to, State's Attorneys, Parole and Probation Officers, and court clerks.

(MSCCSP Annual Report, iv).⁵ The MSSCP's database contains over 150 variables for each guidelines eligible case. These variables provide a wide range of information about the offender, the offense committed, and the specific sentence imposed. This level of information provides the ability to look both at the legal and extralegal characteristics that may be relevant during sentencing (Engen and Gainey 2000; Steffensmeier, Kramer and Streifel, 1993). For example, the collected data include the defendant's age, gender, the offense score, the offender score, the crimes for which the defendant was sentenced, offense date, the mode of conviction (whether by plea bargain or after a trial), whether the judge deviated from the sentencing guidelines, jurisdiction, and the defendant's representation. The data also includes specifics about the offense such as whether there was an injury and, if so, what type of injury (MSCCSP Guideline's Manual, 2012).

First degree physical child abuse, as defined by Section 3-601(b)(2) of the Maryland Criminal Law Article, states that “[a] parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor that (i) results in the death of the minor; or (ii) causes severe physical injury to the minor.” A conviction under this statute carries a felony sentence of imprisonment up to 25 years or 40 years if the injury results in death.⁶ Child abuse in the second degree, as defined by Section 3-601(d)(1) of the Maryland Criminal Law Article, states “(i) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor. (ii) A household member or family member may not cause abuse to a

⁵ If the worksheets are completed in the paper format, the MSCCSP staff and interns input the data from the worksheet into the database.

⁶ The statutory maximum sentence for child abuse which results in the death of the child increased to life imprisonment as of October 1, 2017. The present dataset does not include anyone sentenced on or after this date.

minor.” A conviction under this statute carries a felony sentence of imprisonment up to 15 years.

Child neglect as defined by Section 3-602.1 of the Maryland Criminal Law Article states “[a] parent, family member, household member, or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not neglect the minor.” A conviction under this statute carries a misdemeanor sentence of imprisonment up to five years, a fine up to \$5,000 or both.

Within the MSCCSP data, these offenses are “person offenses” (MSCCSP Guideline’s Manual 2012). The offense score for person offenses is calculated using the offense serious category (which the MSCCSP predetermines), victim injury, the presence of a weapon, and the vulnerability of the victim. The overall offender score is calculated using the defendant’s prior criminal history, juvenile delinquency, relationship to the criminal justice system at the time of case processing, and any prior adult parole or probation violations (MSCCSP Guideline’s Manual 2012). The person offense matrix provides a sentencing range for the judge to use during an offender’s sentencing. Depending on the offender and offense score, recommended sentences can range from probation to a life sentence (which the data categorizes as a 720-month sentence) (MSCCSP Guideline’s Manual, 2012) (see Appendix A).

Section 14-101 of the Criminal Law Article, Maryland codifies certain offenses as “crimes of violence.”⁷ Of the child physical abuse and neglect crimes being considered, only child abuse in the first degree is legally considered a “crime of violence” under Section 14-101 of Maryland’s Criminal Law Article.

⁷ While all cases of child abuses instinctively seem to be crimes of violence, only certain cases are legally defined as crimes of violence within these data.

This research attempts to determine whether gender influences judicial sentencing decisions in cases of physical child abuse and neglect. Given the hypotheses of this study, the MSCCSP data are particularly attractive. As previously mentioned, the large amount of data collected for each case allows the use of relevant controls which allows for a more precise model.

Measures for Physical Child Abuse and Neglect Crimes

The present study utilizes data collected on physical child abuse and neglect sentences in Maryland between 2006 and 2015, which allows the use of time variables to control for trends in sentencing. In using the ten most recent years of sentencing data, the present study seeks to provide “a more accurate account of the current sentencing practices” (Embry and Lyons 2012, 153). The previously collected MSCCSP data and the measures used are briefly discussed below.

Unit of Analysis

The unit of analysis is sentences in Maryland circuit courts under Maryland’s physical child abuse and neglect laws between 2006 and 2015, where physical child abuse or neglect was the controlling charge. The total number of sentences during this time is 660 ($n=660$). Of these, females represent 35.91% of the sentences ($f=237$).

Variables

All variables used in the analysis are listed in Table 1, separated by gender. The dependent variable of interest is length of sentence, which is comprised of only jail or prison time, time on home detention, and/or credit for time-served.⁸ The MSCCSP data record length of

⁸ There were no individuals given home detention when child abuse or neglect was the controlling charge. Facility information (whether an individual serves time in a local jail or a state prison) is only collected for paper

incarceration in months. As such, this is a continuous variable ranging from no term of imprisonment to 360 months. The mean term of imprisonment for all sentencing events is 40.52 months (with a standard deviation of 72.66 months). Females receiving a term of incarceration received a mean sentence of 31.59 months (with a standard deviation of 68.11 months). Males receiving a term of incarceration received a mean sentence of 45.54 months (with a standard deviation of 74.70 months).

As can be seen in Figure 1, the dependent variable, sentence length by individual sentence, has a positive skew. Figure 1 also shows that there are many sentences receiving a period of no incarceration. Specifically, 27.73% of sentences for which child abuse or neglect was the controlling change did not receive any term of incarceration. Of these, 21.52% are females. As such, these data are censored at zero. This will be further addressed in the plan of analysis.

Independent Variables

The primary independent variables of interest are gender and race, as recorded on the sentencing worksheets provided to the MSCSSP. The MSCCSP measures gender as either male or female (MSCCSP Guideline's Manual 2012). The variable *female* is a dichotomous variable where females are coded as "1" and males are coded as "0". Of the 660 sentencing observations, 237 were coded as female and 423 were coded as male.

worksheets. In these data, approximately 13% of both females and males were sentenced to terms in local prisons, while 10% of males and 5% of females were sentenced to a period of time (12-18 months) for which these data do not know the type of facility where the terms of imprisonment was served. As there are known differences between prisons and jails, the analysis will include a dummy variable where time served in jail will be "1" to account for any potential differences.

The MSCCSP Sentencing Worksheets provide nine options for the defendant's race⁹ and includes a separate variable for those of Hispanic origin. However, for individual sentencing events between 2006 and 2015, the defendants are predominately listed as white or black ($w=230$ and $b=367$, respectively). As such, this study will not be able to analyze any other races specifically and used dichotomous variables for both white and black.¹⁰ Prior studies have shown that there is an interaction between race and gender on criminal justice decision making (Sealock & Simpson, 2006; Steffensmeier, Ulmer, & Kramer, 1998). As such, this study will also consider the potential interactions of race and gender and its effects on the length of incarceration.

Additional Variables of Interest

To assess the effects of gender on sentencing outcomes, research must consider additional legal and extralegal factors (Engen and Gainey, 2000; Steffensmeier, Kramer and Streifel, 1993). Failing to do so "limits [the] ability to assess the effects of both legal and extralegal factors in sentencing and may lead to incorrect conclusions" (Engen and Gainey 2000, 1207).

Legal Factors

To operationalize the seriousness of the offenses, this study uses Maryland's narrowly defined criminal code. This study will examine the effects of race and gender for each of the previously mentioned criminal laws (child abuse in the first degree, child abuse in the second degree, and child neglect). Each of these offenses will be included in this study as a

⁹ Black, white, Hispanic, Asian, Native Hawaiian or Pacific Islander, American Indian or Alaskan Native, other, unidentifiable, and missing.

¹⁰ As these variables are highly correlated, including both into one model would result in multicollinearity. Thus, only one of these variables can be included as reference category.

dichotomous variable. Under Harris's Theory of Deviant Typescripts (1977), the seriousness of the offense may have a stronger effect on the sentence length if the defendant is female. As such, this study will include an interaction between gender and the three types of physical child abuse and neglect.¹¹

Of the 660 sentences for physical child abuse and neglect, where the physical child abuse and neglect were the controlling charge, 128 sentences (approximately 19%) were for child abuse in the first degree. Of these 128 sentences, 37 (approximately 29.8 %) were female defendants. Of the 660 sentences in these data, 475 sentences (71.97%) were for child abuse in the second degree. Of these 475 sentences, 157 (33.05%) were female defendants. Of the total sentences, only 57 sentences (9.64%) were for child neglect. However, of these 57 sentences, 43 (75.44%) were female defendants.

For person offenses, the overall offense score¹² is comprised of four components: the seriousness offense score; whether the offender used a weapon; whether the victim was injured; and whether the victim was considered vulnerable (Maryland State Commission on Criminal Sentencing Policy, 2016). The MSCCSP previously categorized all Maryland criminal offenses for which the defendant could receive a period of incarceration into seriousness categories based upon the nature of the crime and the punishment for the offense (MSCCSP Guideline's Manual, 2012; Bushway and Pielh, 2001). For "person offenses", this seriousness categories range from I to VII, with I being the most serious offense type and VII being the least serious offense type. (Maryland State Commission on Criminal Sentencing Policy, 2016). The MSCCPS worksheet

¹¹ Although the model will only contain two of the crime types, with the third crime type being the reference group.

¹² As to be expected, the offense score is highly correlated with the type of offense. However, the overall offense score does add additional elements. As such, the overall offense score will be included in one of the models to assure that these elements are accounted for within the analysis. This is more fully discussed in the Plan of Analysis section.

gives each seriousness category a seriousness offense score. The seriousness offenses score can be a score of one, three, five, eight or ten points (which is added to the overall offense score). For example, a crime with a seriousness category of V, VI, or VII receives a seriousness offenses score of one and a crime with a seriousness offense category of I receives a seriousness offense score of ten (for the complete sentencing worksheet, see Appendix B). The more seriousness crimes receive higher seriousness offense scores than the less seriousness crimes. For example, first degree child abuse is a seriousness category II and has a seriousness offense score of 8, while child neglect is a seriousness category VI and has a seriousness offense score of 1.

The overall offense score also accounts for whether a weapon was used during the commission of the crime by adding points to the offense score. If no weapon was used, there are no points added to the offense score, if a weapon other than a firearm was used one point is added to the offense score and if a firearm is used two points are added to the offense score.¹³ Victim injury can also add zero to two points to the overall offenses score. Where there is no injury to the victim, no points are added. When the victim receives non-permanent injuries one point is added to the overall offense score and when the offense results in a permanent injury to the victim or death of the victim, two points are added to the overall offense score.¹⁴ Victim vulnerability added an additional point when the victim was either under the age of 11 or had a mental or physical handicap.¹⁵

¹³ Defendants used weapons in 182 sentencing events (27.91% of all sentencing events) and of those using weapons, almost half (46.15%) were female offenders. Firearms were used in only two sentencing events, both of which were male offenders.

¹⁴ 15.11% of the sentencing events involved permanent injury or death, while 71.30% of the sentencing events involved non-permanent injury, and 13.59% involved no injury. For sentencing events involving permanent injuries or death, 45.45% were female offenders.

¹⁵ 75.19% of the sentencing events included vulnerable victims.

When considering potential disparities in sentences, previous studies typically use a dummy variable indicating whether a defendant was convicted of multiple counts (Johnson, 2014; Doerner & Demuth, 2010; Steffensmeier & Demuth, 2006). As the MSCCSP Sentencing Worksheet requires information for every count for which the defendant is sentenced (Maryland State Commission on Criminal Sentencing Policy, 2016), this study includes a continuous variable measuring the number of crimes that the offender was sentenced at the time of sentencing. When physical child abuse and neglect offenses were the controlling charge, these data indicate that 81.67% of sentences were for individuals sentenced for only one count. The average number of sentencing events, or charges for which the individual was sentenced, is 1.33 (with a standard deviation 1.32 sentencing events).

This study also controls for the offenders' prior criminal record using a four-category ordinal scale, between "0" and "5", ranging from no criminal history to major criminal history.¹⁶ A score of "0" indicates that the defendant had no prior criminal record.¹⁷ A score of "1" indicates a minor criminal history, a score of "3" indicates a moderate criminal history and a score of "5" is associated with a major criminal history (Maryland State Commission on Criminal Sentencing Policy, 2016). The defendant's criminal history score is based upon the number of prior convictions and the seriousness levels of said convictions (Maryland State Commission on Criminal Sentencing Policy, 2016). The average prior criminal record score for

¹⁶ The MSCCSP sentencing matrix uses the defendant's overall offender score to calculate the guideline range. The offender score is comprised of the defendant's relationship to the criminal justice system when the offense for which they are being sentenced occurred, a score for their prior criminal record, a score for their juvenile delinquency, if needed, and a score for the prior adult parole and probation violations. As information relating to juvenile delinquency is confidential, the entire offender score cannot be obtained from this data (Maryland State Commission on Criminal Sentencing Policy, 2016). However, this study does include all other aspects of the offender score.

¹⁷ An offender can also receive a score of "0" if their criminal history contains only expungements, violations of local laws or infractions, marijuana possession, non-incarcerable traffic infractions, or convictions for offenses that are no longer considered criminal (Maryland State Commission on Criminal Sentencing Policy, 2016)

all physical child abuse sentencing events is 1.12 (with a standard deviation of 1.56). For female offenders, the average prior criminal record score was 0.75 (with a standard deviation of 1.27). For male offenders, the average prior criminal record score was 1.34 (with a standard deviation of 1.67). Overall, 51% of all sentencing events involved individuals with no prior criminal records and 60.59 % of females did not have a prior criminal record before these sentencing events.

Prior parole or probation violations will be included in the model as a dichotomous variable (where “1” indicates prior violations and “0” indicates no prior violations). As many of the sentencing events include individuals who had either no prior criminal record or minor criminal records, it is not surprising that there are relatively few sentencing events that included prior parole or probation violations. Additional independent variables included in this study account for whether the defendant was under court supervision or was on parole or probation at the time the physical child abuse or neglect case began (as a dichotomous variable, where “1” indicates that the defendant was under court supervision on parole and/or probation at the time of the physical child abuse or neglect case; and “0” indicates that the defendant was not under court supervision and/or was not on parole or probation).

The type of sentencing will also be included as a dichotomous variable representing whether the offender went to trial or was sentenced as a result of a plea bargain (where “1” represents a plea bargain). A large portion of the sentencing events, 91.79%, resulted from plea bargains.

Extra Legal Factors

Steffensmeier, et al. (1998) indicated that age might influence sentencing decisions in that younger male offenders are seen as being more capable of serving time. In determining the

role of age in sentencing, Steffensmier, et al. (1995) found that age was not linearly related to sentencing, but rather, suggested that “the age-sentencing relationship [is] best depicted by an inverted U-shape, with offenders over 50 and under 21 receiving the least severe sentences” (p. 77). To account for this relationship with sentencing, the models will utilize an age categorization as described by Steffensmeier, et al. (1998). The model will include dummy variables for individuals under 21 and individuals over 50 (leaving individuals between 21 and 50 as a reference group). Only 5.05% of the individuals sentenced were under the age of 21 and an additional 8.10% of individuals were over the age of fifty.

To observe whether any changes exist over time and to control for any trends over time, the model will also include a series of dummy variables representing the sentencing year. This will also account for a change in the laws which took place in 2012. The statutory maximum sentence for certain Maryland child abuse laws increased for offenses that occurred on or after October 1, 2012.¹⁸ Approximately 35% of the cases were sentenced after October 1, 2012.

Previous studies indicate the location of the crime may also impact sentencing, specifically whether the crime was committed in a rural or urban area (Steffensmeier et al., 1993; Benson and Walker 1998). The MSCCSP data include the county in which the defendant was sentenced.¹⁹ Section 2-207 of Maryland’s State Finance and Procurement Code defines rural counties in Maryland. The following counties are, by legal definition, considered rural counties: Allegany, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Kent, Queen Anne’s, St. Mary’s, Somerset, Talbot, Washington, Wicomico and Worcester. This

¹⁸ Though beyond the scope of this paper, *ex post facto* clauses in both the United States Constitution and Article 17 of the Maryland Declaration of Rights state that a defendant cannot receive a punishment harsher than the punishments in effect at the time he or she committed the crime.

¹⁹ Maryland’s 24 jurisdictions consist of its 23 individual counties and Baltimore City (as its own jurisdiction).

study does not include an urban/rural distinction in the models, as upon further investigation, the urban/rural distinction is collinear with the race variable. Approximately 74% of individuals sentenced in urban jurisdictions were black and approximately 72% of individuals sentenced in rural jurisdictions were white.²⁰

If the offender had a private attorney representing him or her in the sentencing event (as opposed to a public defendant, a court appointed attorney or represented themselves), they are coded as “1.” Individuals without a private attorney are coded as “0.” Less than half (42.45%) of sentencing events had private representation. Of those with private representation, only 34.18% were females.

Zatz (2000) noted the importance of socio-economic status on sentencing, but also that the “courts generally do not collect good economic indicators” (p. 511). Previous studies have made assumptions concerning the socio-economic status of defendants using race, but this is obviously not an accurate measurement (Zatz, 2000). Here, the use of a private attorney can represent individuals who were of higher socio-economic status than those who were represented by either a public defendant or by a court appointed attorney.²¹

A few of the independent variables were missing observations. However, the only variables missing a substantial amount of observations were two dummy variables representing whether the defendant had a private defense attorney and whether the defendant took a plea deal. However, to be assured that this is not biasing the model, additional dummy variables

²⁰ There were high levels of correlation between the race and the *urban* variables. Additionally, a post-regression F-Test indicated that race variables and urban variables were not jointly significant. Based on theories used in this study, I chose to exclude the urban variable and keep the variable based on race. As such, this study cannot make any comparisons between urban and rural jurisdictions and this may be a limitation on the study.

²¹ These data do include a variable indicating whether the court deemed the defendant indigent, but unfortunately, data were missing for 65 % of the sentencing offenses.

representing this missing data were added to the model (Eide & Showalter, 1998; Simpson & Elis, 1995).²²

Plan of Analysis

This study uses the above narrowly defined crimes and a variety of models to determine if Maryland circuit court judges “overestimate” countertypes towards the end of criminal proceedings (Hill, et al. 1986) or if judges in Maryland rely on a “perceptual shorthand” (Steffensmeier, Ulmer, & Kramer, 1998) when sentencing offenders for physical child abuse and neglect in Maryland’s circuit courts. A number of models were run to determine whether any potential disparities exist in Maryland circuit court judges’ sentencing decisions for physical child abuse and neglect cases.

Previous studies have viewed sentencing outcomes as a result of a two-tiered process: first, the decision to incarcerate the defendant for any length of time (the in/out decision); second, the incarceration length decision (Freiburger and Hiliniski-Rosicks, 2013, Spohn, 2002, Steffensmeier et al., 1993). However, when judges rely on sentencing guidelines, as they do in Maryland circuit courts, sentencing may be a one-step process (Bushway & Piehl, 2001). As such, this study uses a Tobit regression for a multivariate analysis (Tobin, 1958). As previously mentioned, the dependent variable, sentence length, is not normally distributed. As 27.73% of the sample did not receive a term of incarceration and these data are left-censored. The use of a multivariate Tobit regression “is statistically necessary to control for bias due to left censoring” (Albonetti C. A., 1997, p. 799). A traditional Ordinary Least Squares (OLS) regression is not appropriate for this study, as it will yield biased estimates (Long, 1997). Further, running a

multivariate OLS regression only for the uncensored sentences (sentences with at least one day of incarceration), which is a method that has been employed in the past, would result in biased parameters (Kurlychek & Johnson, 2004; Bushway & Piehl, 2001; Long, 1997).

Studies have suggested that using a multivariate Tobit regression is “a superior alternative” for analyzing skewed sentencing data (Kurlychek & Johnson, 2004, p. 497; Bushway & Piehl, 2001). A Tobit analysis is particularly attractive because the model includes all the data while allowing for censoring at a certain threshold (here, the threshold will be no period of incarceration)²³ (Kurlychek & Johnson, 2004; Bushway, Johnson, & Slocum, 2007; Long, 1997; Tobin, 1958). The Tobit model’s coefficients “relate directly to the unobserved latent variable, y^* ” (Breen, 1996, p. 28). Tobit models use a maximum likelihood approach to estimate coefficient which can be interpreted as the effects of the predictors on the latent variable, y^* (Breen, 1996). This underlying latent variable “represents the effects of the independent variables on the probability of receiving sentence of incarceration, as well as the length of confinement for those receiving an incarceration sentence” (Kurlychek & Johnson, 2004, pp. 497-498).²⁴

The Tobit model assumes the same variables that effect the sentence length also effect the

²³ As these data are censored at the lower bound (where the sentence did not include a period of incarceration), the model is as follows:

$$Y_{ii}^* = X_i\beta + \epsilon_i$$

$$Y_{ii} = Y_{ii}^* \text{ if } Y_{ii}^* > 0$$

$$Y_{ii} = 0 \text{ if } Y_{ii}^* \leq 0 \text{ (Winship \& Mare, 1992, p. 335).}$$

Where Y_{ii} is the observed Y (the dependent variable), Y_{ii}^* is the unobserved latent variable term, β is the vector of coefficients associated with the dependent variable and ϵ_i is the error term (Winship & Mare, 1992, p. 335).

²⁴ The Tobit model assumes that the underlying latent variable, y^* , has a normal distribution (Long, 1997). While the observed variable is not required to have a normal distribution, this is a limitation to the Tobit model, as the latent variable’s distribution cannot be tested (Bushway & Piehl, 2001).

likelihood of being censored (Bushway & Piehl, 2001; Long, 1997). Thus, using a multivariate Tobit model allows this study to determine the probability of receiving a sentence that includes a period of incarceration (the probability of being uncensored) and the effects of the independent variables for sentences containing a period of incarceration (Kurlychek & Johnson, 2004; Long, 1997; Breen, 1996).

This study runs a series of models to determine whether the effects of gender and race vary throughout the three types of crimes presented in this study. The first model is a Tobit regression using only the main effects of gender, race, and the type of crime on the sentence length. The second model is a Tobit regression including the legal and extra-legal control variables. The third model includes interactions between race and gender along with interactions between gender and the type of crimes. As the correlation is high between the type of offense and the overall offense score, these models do not initially include the overall offense score. However, a fourth model adds the overall offenses score to assure that offense score is also held constant, the additional factors considered by the offense score are held constant, and that the results of the third model are robust.

Figure 2, a boxplot of physical child abuse sentence lengths, indicates that the medians for males and female sentence lengths differ. While the median sentence length for females are shorter than males, Figure 2 indicates that there may be more female outliers at the higher end of sentence length for physical child abuse and neglect. By comparing the sentence lengths of females and males for the three individual crimes in this study, this becomes more obvious. Figure 3 contains three boxplots, one for each of the three offenses being studied here. As can be seen, for child neglect sentences, the median sentence for females is lower than the median sentence for males. However, there are still more outliers for females. For second degree child

abuse, while the median male sentence is still higher, the medians for female and male sentences are more similar. For first degree child abuse, the median sentence for females is larger than the median sentence for males. This may be because judges are viewing females sentenced for more serious offense as a deviant typescript and sentencing them more harshly than similarly situated male offenders (Hill, Harris, & Miller, 1985).

Chapter 4: Results

Bivariate Comparison

There are statistically significant differences in the mean sentence length for females and males (see Table 1a). Females receive, on average, a period of incarceration of 31.59 months (with a standard deviation of 68.11 months), while males receive, on average, a sentence length of 45.54 months (with a standard deviation of 74.70 months). For first degree child abuse, the mean sentence for males is 122.79 months (with a standard deviation of 11.99 months) while the mean sentence for females is 139.15 months (with a standard deviation of 18.64 months). However, in a bivariate comparison, there is not a statistically significant difference between these two. There is statistically significant difference, in a bivariate comparison, for both second degree child and child neglect, with males have higher average sentences than females for both (see Table 1a).

There are also statistically significant differences in additional legal factors. For example, there are differences in the mean seriousness offense score and the prior record for female and males (with males having higher means in both), which are two legal factors determining the recommended sentence. There are also statistically significant differences in the probability of previous violations of parole or probation and whether the offender was under supervision at the time of the offense for which the individual is being sentenced (with males, again, having a higher probability of both). (See Table 1a).

There are also statistically significant differences in the means of certain variables between white and black offenders, but not for sentence length (see Table 1b). There were statistically significantly differences in the sentences for child abuse in the second degree for black and white offenders (with white offenders receiving higher sentences) and whether the

defendant took a plea bargain (with white offenders being less likely to take a plea) (see Table 1b).

These descriptive statistics seem to provide initial confirmation for the second hypothesis, that, consistent with Focal Concerns theory, female defendants will receive leniency at sentencing for physical child abuse and neglect. During sentencing, judges may perceive male offenders as being more of a danger to the community due to their longer criminal records and high probability for violations of parole or probation.

The Main Effects of Gender, Race, and Crime Type

Model 1, presented in Tables 2 to 4, is the initial Tobit model for the main effects of gender, race, and the crime type on sentencing. For all models, second degree child abuse is the reference category. While this model does not control for relevant legal factors, extralegal factors, or the interactions between gender and the crime type and gender and race, the initial model shows that in the underlying latent variable, being white is associated with an increase in the probability of being incarcerated and with an increase in sentence length, with marginal significance. However, being female is associated with a decrease in the probability of being incarcerated and in sentence length for the sample average. For this model, the predicted probability of being uncensored at the sample average is 0.63.²⁵ Being female, as opposed to

²⁵ To determine the marginal effects of the variables on the sentence length at the sample average, I used the predicted probability of being uncensored at the sample average:

$$\beta_j * \Phi\left(\frac{\bar{x}_i \beta}{\sigma}\right)$$

Therefore, the marginal effects of the models were determined as follows:

$$\widehat{\beta}_{tobit} = \beta_j * \Phi\left(\frac{\bar{x}_i \beta}{\sigma}\right) = \frac{\partial(E[y_i | \mathbf{x}_i])}{\partial x_j}$$

male, decreases the predicted probability of receiving a term of incarceration at the sample average by 9% and is associated with a decrease in the length of sentence by 10.53 months. Being white, as opposed to not white, increases the predicted probability of receiving a term of incarceration at the sample average by 6% and is associated with an increase in sentence length by 6.92 months. As expected, being sentenced for first degree child abuse is associated with an increase in the predicted probability of receiving a term of incarceration and an increase in the overall sentence length when compared to those being sentenced for second degree child abuse, at the sample average. Similarly, being sentenced for child neglect, when compared to being sentenced for second degree child abuse, is associated with a decrease in the predicted probability of receiving a term of incarceration and a decreased sentence length.

Effects of Legal and Extralegal Factors

Model 2, also presented in Tables 2 to 4, controls for both legal and extra-legal variables that are likely contributing to the sentencing outcomes. In Model 2, the predicted probability of being uncensored (or receiving a period of incarceration) at the sample average increases to 0.64. As expected, all of the legal variables are statistically significant in both the probably of receiving a period of incarceration and in the length of sentence (as well as in the underlying latent variable) in the expected direction.²⁶ This is consistent with prior studies, which indicate that individuals with more serious prior offending typically receive longer terms of incarceration (Kurlychek & Johnson, 2004; Steffensmeier, Ulmer, & Kramer, 1998).

²⁶ The effects of whether the term of incarceration was served in a local jail was not statistically significant.

For example, a one point increase in the defendant's prior record score is associated with an increase of 5.80 in the underlying latent variable. At the sample average, a one point increase in the defendant's prior record score is associated with a 3% increase in the probability of receiving a sentence which includes a period of incarceration and 3.71 month increase on the sentence length. Additionally, individuals who previously violated parole or probation have an increased increases the predicted probability of receiving a term of incarceration at the sample average by 10% and is associated with an increase in sentence length by 11.50 months, when compared to individuals who do not have a prior violation of parole or probation. For complete results, see Tables 2-4.

Contrary to prior findings (Steffensmeier, Ulmer, & Kramer, 1998), the effect of being under 21 is not statistically different than the reference group (here, individuals between the ages of 22 and 49) for either the decision to incarcerate or the length of sentence. Additionally, being over the age of 50, at the sample average, is associated with an increased probability of receiving a period of incarceration and with a longer period of incarceration.

Once legal and extralegal factors are controlled for in the model, the effects of being female or being white disappear. While being female is still associated with a decreased predicted probability of receiving a term of incarceration at the sample average and a decreased term of incarceration, this is no longer statistically significant. Being white is still associated with an increased predicted probability of receiving a term of incarceration and in an increased period of incarceration, but is no longer statistically significant.

As expected, the type of crime remains significant in the expected directions. When compared to second degree child abuse, being sentenced for first degree child abuse is associated with an increased predicted probability of receiving a term of incarceration by 47% and an

increased period of incarceration by 78.72 months. Being sentenced for child neglect, as compared to second degree child abuse is associated with a decreased predicted probability of receiving a term of incarceration by 20% and a decreased period of incarceration.

Fully Specified Model with Interactions

Model 3, presented in Tables 2 to 4, represents the fully specified model, including the interactions between gender and crime type and gender and race as well as the legal and extralegal control variables. In Model 3, the predicted probability of being uncensored at the sample average remains at 0.64. As expected, most of the legal variables are still statistically significant in both the probably of receiving a period of incarceration and in the length of sentence (as well as in the underlying latent variable) in the expected direction. Table 3 provides the predicated probability of being uncensored at the sample average for the remaining legal variables and Table 4 provides each variables' marginal effects on sentence length at the sample average.

Adding the interactions between gender and the crime type results in gender becoming marginally significant in the length of incarceration. Gender, on its own, is still associated with a decrease in the underlying latent variable and a decrease in the predicted probability of receiving a period of incarceration at the sample average (by 5%) and a decrease in sentence length at the sample average (by 9.728 months). However, the interaction between female and the crime type is statistically significant and in the direction predicted by Harris's Theory of Deviant Typescripts (1977). At the sample average, females convicted of first degree child abuse have an increased predicted probability of incarceration (by 2%) and an increased period of incarceration (by 28.21 months). The interaction term between gender and child neglect is not statistically significant in this model but it is in the direction predicted by Harris (1977). It appears that

females receive leniency for the less serious crime of child neglect when compared with second degree child abuse and that they receive harsher sentences than males for first degree child abuse.

In Model 4, also presented in Tables 2 to 4, the predicted probability of being uncensored at the sample average increase to .66. The introduction of the overall offense score, which accounts for elements of the crime such as whether a weapon was used, the injury to the victim and the victim's vulnerability, does not alter the direction of any of the variables' effects. When controlling for the overall offense score, the effects of being sentenced for first degree child abuse decrease dramatically at the sample average. For example, the length of incarceration at the sample average for individuals sentenced for first degree child abuse decrease from 70.16 months in Model 3 to 23.84 months in Model 4. The overall seriousness offense score is associated with an increase in the sentence length of 11.66 months for each point.

Interestingly, the effects of the interaction between gender and the offense type do not decrease as dramatically. As can be seen in Table 4, being female and sentenced for first degree child abuse in Model 3 result in an increased sentence of 28.31 months, at the sample average. Once the overall offense score is controlled for, being female and sentenced for first degree child abuse in Model 3 result in an increased sentence of 20.71 months, at the sample average. Even when the overall offenses score is controlled for, females receive leniency for the less serious crime of child neglect when compared with second degree child abuse and that they receive harsher sentences than males for first degree child abuse.

Contrary to prior findings (Steffensmeier, Ulmer, & Kramer, 1998), the effect of being under 21 are still not statistically different than the reference group (here, individuals between the ages of 22 and 49) for either the decision to incarcerate or the length of sentence and being

over the age of 50, at the sample average, is associated with an increased probability of being uncensored and with an increased period of incarceration.

The fully specified models also included dummy variables for every year except 2015 (which was the reference year). None of the years were statistically significant in either the predicted probability of being uncensored or on the marginal effects on sentence length. This indicates that there is not a change in the sentence trends for physical child abuse and neglect over this time span.

The addition of the overall offense score slightly increases the effects of being female on the underlying latent variable. However, as illustrated by Tables 2 to 4, even with the addition of additional of the overall offense score, the predicted marginal effects on sentence length for a female at the sample average become higher than males for first degree child abuse.

Overall these models indicate that the effects of being female (a countertype) increases for the most serious crime, first degree child abuse, in both the decision to incarcerate and on the sentence length. These models also show that even when legal and extralegal variables are accounted for, females receive leniency only for lower levels of physical child abuse and neglect. For the most serious cases of physical child abuse, here first degree child abuse, females receive, on average, higher probabilities of a term of incarceration and longer periods of incarceration sentences than males. These findings are contrary to many findings in sentencing research.

These models appear to support Hypothesis 1 and 2, in which consistent with typescripts, *ceteris paribus*, female defendants will be imprisoned more often than males (types) for serious cases of physical child abuse and neglect. When imprisoned, the effects of gender on sentence length will be larger for cases of higher seriousness categories. This contradicts Hypothesis 3 and 4 that, consistent with Focal Concerns theory, *ceteris paribus*, female defendants would receive

leniency, as compared to males, both in the decision to sentence to any period of incarceration and in the sentence length. These findings remain even when controlling for legal and extralegal factors and the overall offenses score.

To ensure the robustness of these findings, a standard OLS regression model were also run. The full results can be found in Appendix C. As expected, the OLS coefficients are biased towards zero, meaning that most of the variable coefficients are closer to zero than the Tobit model coefficients. As previously discussed, the OLS model is biased and inefficient given the right censoring in these data, in that the OLS estimates are smaller than the true estimates. As such, the Tobit models presented here provide more efficient coefficients.

Chapter 5: Discussion and Conclusion

This study focused on possible gender disparities in Maryland circuit courts for child abuse and neglect sentences and whether judges sentence individuals consistent with Harris's Theory of Deviant Typescripts (1977) or Focal Concerns theory. Interestingly, the analyses show some support for each theory. As predicted in Hypothesis 1, gender disparities exist in sentencing, but patterns shift as the physical child abuse and neglect crimes become more seriousness. For the lowest level of crime, child neglect, holding other factors constant, females appear to receive leniency at sentencing when compared to males, both in the decision to incarcerate and in the period of incarceration. However, this effect is not statistically significant. Comparatively, for the most serious child abuse sentencing, first degree child abuse, holding other factors constant, females are more likely to receive a term of incarceration and receive longer periods of incarceration than males. This effect is statistically significant. This suggests that judges in Maryland are sentencing consistent with typescripts and females (as countertypes) are more likely than males to receive a term of imprisonment for more serious cases of child abuse and neglect and that the liability effect of being female would increase as the seriousness offense score increases.

Hypothesis 2 predicted that gender and race would interact to produce harsher sentences for white females (as countertypes) compared to black females. From the descriptive statistics, it was evident that sentence length was not statistically significant between individuals who were white and individuals who were black. In these models, once the legal and extralegal variables were controlled for, race was insignificant as was the interaction between race and gender. It appears, at least for these models, that Maryland judges overestimate the female countertype, and not a race countertype when sentencing for physical child abuse and neglect. These results are

inconsistent with both Harris's Theory of Deviant Typescripts (1977) and Focal Concerns theory.

Hypotheses 3 and 4, drawn from Focal Concerns theory, specified that the effects of being female or white would not vary over seriousness offense types and that each would be associated with leniency during sentencing. While results do not support leniency towards females across crime types, other variables in the models consistent with Focal Concerns theory, are statistically significant. For example, the blameworthiness of the defendant (as indicated by high seriousness offense scores and crimes of violence) are both associated with a higher likelihood of being incarcerated and a longer sentence. Additionally, criminal history and prior violations of parole and probation, which are related to protection of the community, are also associated with a higher likelihood of being incarcerated and longer sentences.

However, the variables associated with judicial perceptual shorthand (age, race, and gender) did not operate as predicted by Focal Concerns theory. Females were sentenced more harshly for first degree child abuse, race was insignificant in these models, and age (being under 21 and being over 50) did not lower the risk of receiving a term of incarceration or increased sentence length, at the sample average. Conversely, being over 50 increased the risk of both.

Sensitivity Analysis

Some findings in this study are contrary to prior sentencing research results (Steffensmeier, Ulmer, & Painter-Davis, 2016; Curry, Lee, & Rodriguez, 2004; Ulmer & Johnson, 2004; Steffensmeier, Ulmer, & Kramer, 1998). As previously mentioned, trends in child abuse offenses differ from other trends in criminal justice in that child abuse prosecution rates are rising and females comprise a large percentage of individuals prosecuted for child abuse

(Cross, Walsh, Monique, & Jones, 2003). To assess whether findings from this study are unique to cases of child abuse and neglect, I also conducted a similar analysis using larceny offenses.

Simpson and Elis (1995) note that females are involved in certain types of crimes (i.e. theft crimes and status offenses) more often because they have more opportunity to be involved in these crimes (p. 69). Larceny crimes are a good comparison group²⁷ because, similar to females having more opportunity to commit physical child abuse and neglect, lower level theft offenses are also considered more opportune for females, as they are more likely to have more opportunity to engage in theft crimes (Simpson & Elis, 1995). Additionally, lower level theft crimes such as shop-lifting are traditionally considered “female-type” offenses while mid-level theft offenses are seen as being gender neutral (Sealock and Simpson, 1998; Steffensmeier & Allen, 1996) and more serious theft charges shift from a gender-neutral crime to a masculine type crime (Sealock and Simpson, 1998).

Further, Steffensmeier and Allen (1996) note that, as of 1990, female arrests for “minor property crimes” made up 28% of all female arrests in Federal Bureau of Investigation (FBI) arrest data (p. 462). Similar to the increase in physical child abuse prosecutions, the proportion of female arrests for minor property crimes also rose in recent decades (Steffensmeier & Allen, 1996). In 1960, females comprised approximately 15% to 17% of arrests for minor property crimes. By 1990, this number “jumped to between 30% and 43% (Steffensmeier & Allen, 1996 p. 463). The FBI’s report indicate that between 2006 and 2015, female arrest rates for larceny-theft

²⁷ Larceny crimes are not a perfect comparison. However, no crime is a perfect comparison. This additional analysis was simply completed to assess whether there was something unique about the way in which judges sentence females for physical child abuse and neglect offenses. Future studies could extend this to other specific crime types to further analyze potential gender disparities.

offenses increased by 25.9% (Federal Bureau of Investigations, 2015).²⁸ These similarities between physical child abuse and theft crimes in terms of female opportunity and participation makes theft crimes a good comparison group to determine whether Harris's Theory of Deviant Typescripts (1977) or typescripts or Focal Concerns theory guide judges' sentencing decisions.²⁹

Appendix D contains the full results for this analysis, but the results were consistent with Simpson and Elis's (1995) expectations. Simpson and Elis (1995) predicted that "[t]he social reproduction of notions of masculinity and femininity (including beliefs about what is acceptable and unacceptable conduct), which are embedded in conceptions of family and work life, should exert greater influence over female involvement in violence than property offending-where certain types of crime, say theft, are more scripted (and opportune) for females" (p. 69). Sentences for larceny offenses did not reveal the same gender patterns as those for physical child abuse and neglect. For larceny offenses, being female, while not statistically significant, was associated with a decrease in the underlying latent variable.

There are two possible explanations for this, one methodological and one conceptual. First, there are many more sentencing events for larceny, increasing statistical power and perhaps, greater accuracy. Future research could explore the effects of gender across seriousness using different offense types and across varied location. By limiting this study to Maryland circuit courts and to child abuse and neglect, this study cannot generalize to other locations or other crime types. As opposed to looking at broad categorization of types of crimes, it may be interesting to look at specific, narrowly defined statutes to determine if there are certain offenses

²⁸ The FBI's Uniform Crime Reporting "defines larceny-theft as the unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another" (FBI, 2015).

²⁹ Physical child abuse are person offenses under the MSCCSP matrices, while larceny offenses are property offenses. As such, there are separate grids for the offenses, which is further discussed in Appendix D.

for which females receive harsher sentences and whether these disparities relate to crimes which go against traditional ideas of femininity.

Second, and I believe worthy of further explorations, is the idea that there may be something different about the way in which physical child abuse and neglect cases are sentenced and the way in which judges, and perhaps society as a whole, hold women accountable for child abuse. Society has made great advancements in gender equality since the writing of Harris's Typewritten Theory (1977), but recent surveys still show that women spend more time engaging in childcare and that society still views women as caregivers (Pew Research Center, 2013). Thus, when women harm children who symbolically are entrusted to their care, they may be seen as violating traditional normative standards as women and as offenders (i.e., double deviant). In Maryland circuit courts, the criminal justice system seems to view women in a harsher light for more serious cases of physical child abuse and neglect.

Future Research

In addition to expanding this study to other crimes and locations, researchers could link criminal court records and family court records to determine whether there are additional collateral consequences for females, as compared to males, sentenced for countertype offenses, especially relating to their children. For example, are women more likely to have parental rights terminated than males in instances of child abuse and neglect? Future studies could also examine potential disparities in the way in which courts ordered and enforced visitation for males and females convicted of physical child abuse. Are courts more willing to terminate parental rights or to decline visitation to females who have been convicted of child abuse, as compared to males?

Linking to family court records to determine if women are more likely to lose parental rights can also extend beyond convictions for physical child abuse and neglect. More generally,

studies should determine whether disparities exist between incarcerated fathers and incarcerated mothers both for termination of parental rights and in enforced visitation. This may vary by location or by the crime for which the incarcerated parent was convicted. Either way, it would be interesting to determine whether the criminal justice system and the family court systems differentiate between incarcerated mothers and incarcerated fathers.

Limitations

There are several shortcomings to these data and to this study. Certain variables that previous studies found to be relevant in sentencing decisions are missing. Thus, this study may suffer from omitted variable bias. For example, these data do not address the defendant's family status (Daly, 1987), the defendant's employment history, or the offender's relationship to the victim (beyond the fact that the defendant was either a parent, family member, household member, or an individual who has temporary responsibility for the child)³⁰ (Spohn, 2002). I was also unable to compare races beyond white and black offenders. Other studies have shown that there may also be potential sentencing disparities for Hispanic offenders (Doerner & Demuth, 2010). A more fulsome breakdown of race and ethnicity might decrease the effects of gender within the presented models.

However, the biggest limitation to this study is the potential for selection bias (Johnson, 2014; Bushway, Johnson, & Slocum, 2007; Berk, 1983). Previous studies corrected for this using the Heckman Two-Step Correction (Johnson, 2014; Bushway, Johnson, & Slocum, 2007). This could not be run with these data as no variable could be used as a plausible exclusion restriction

³⁰ Section 3-601 of the Maryland Criminal Law Article defines family member as "a relative of a minor by blood, adoption, or marriage" and household members as "a person who lives with or is a regular presence in a home of a minor at the time of the alleged abuse."

(Bushway, Johnson, & Slocum, 2007), i.e., a variable that logically “affect[s] the selection process but not the substantive equation” (Bushway, Johnson, & Slocum, 2007, p. 153). Rather than incorrectly address selection bias by including the Mills Inverse Ratio with no proper exclusion restrictions (Bushway, Johnson, & Slocum, 2007), it is assumed that selection bias may be a problem with these analyses.

Related to selection, this study is unable to account for any case processing decisions made prior to sentencing, such as the decision to arrest, the decision to charge the defendant, the initial charging decision, or the decision to offer the defendant a plea bargain (Steffensmeier et al., 1993). This limitation severely restricts the dynamic portion of Harris’s theory (1977). Under Harris’s theory (1977), decision makers would have underestimated female countertypes during the beginning phases of the criminal justice system. As such, many cases filtered out of the criminal justice system at various stages, but especially early in the process, could very well include serious instances of physical child abuse and neglect. Evidence of dropping or diverting these cases would strengthen the test of Harris’s prediction of how countertypes are processed throughout the criminal justice system.

Future studies could certainly examine decisions made at various points in the criminal justice system for physical child abuse and neglect. The main hypothesis of this research focuses solely on the judge’s decision at sentencing and determining whether Maryland circuit court judges sentence male and female offenders differently for physical child abuse and neglect using Hill et al.’s (1986) expansion on Harris’ theory (1977) (which assumes that the overestimated countertypes influence the judge’s sentencing decisions) and Steffenmeier’s Focal Concerns theory (which would assume that the judge would see females offenders as less blameworthy).

Conclusion

Researchers have identified child abuse as a “major social problem in the United States,” yet research on physical child abuse and neglect sentencing is limited (Sigler & Johnson, 2004, p. 81). Prior to this study, sentencing research has mostly overlooked physical child abuse and neglect as a distinct crime. As physical child abuse and neglect are so contrary to traditional notions of femininity, studying the effects of gender on sentencing for these narrowly defined crimes presents an opportunity to focus on females as countertypes. Even in today’s society, females are viewed as caretakers and nurturers and it appears that, during sentencing, violating these roles causes Maryland judges to view females as particularly bad.

The findings in this study highlight the need to continue studying gender disparities in sentencing and to expand research into the collateral consequences of incarcerated females, particularly incarcerated mothers. Despite its lack of recent testing, Harris’s theory continues to provide insight into gender disparities during sentencing. Though not without limitations, this study shows that Harris’s theory remains relevant and, that by focusing solely on Focal Concerns theory, sentencing research may be oversimplifying the effects of gender on sentencing, particularly for crimes which go against traditional ideas of femininity.

Table and Figures

Figure 1: Distribution of sentence length for all sentencing events

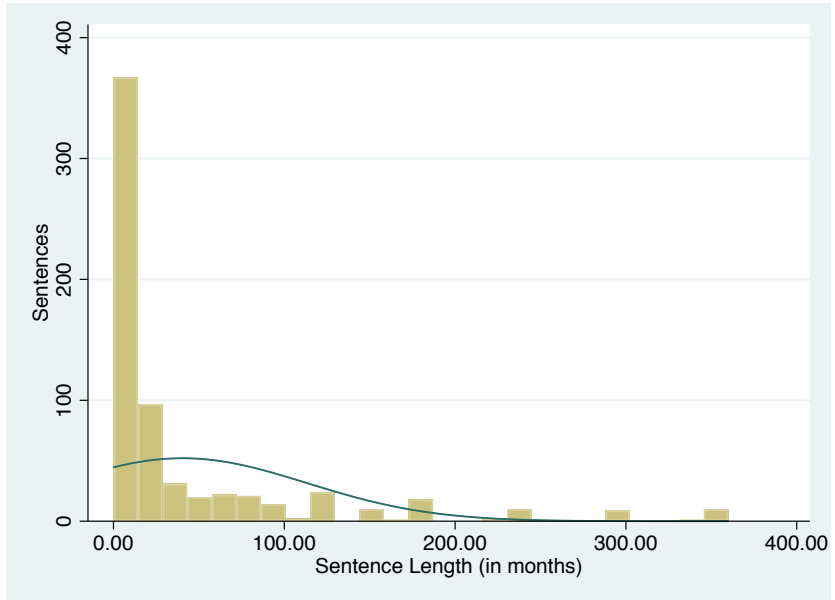


Figure 1: Distribution of all incarceration lengths all sentences in Maryland circuit courts for child abuse and neglect between 2006 and 2015.

Figure 2: Boxplot for all physical child abuse and neglect sentencing events

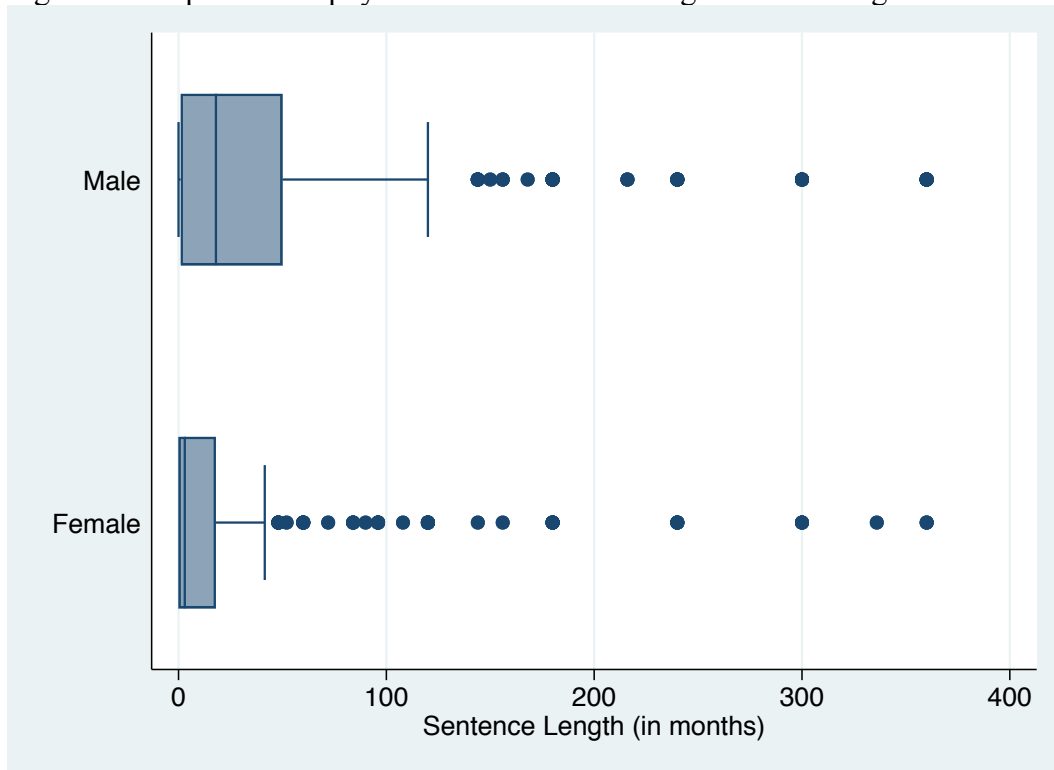


Figure 2: Distribution of male and female sentencing events sentenced in Maryland circuit courts for child abuse and neglect between 2006 and 2015.

Figure 3: Boxplot for physical child abuse and neglect sentencing events, by crime

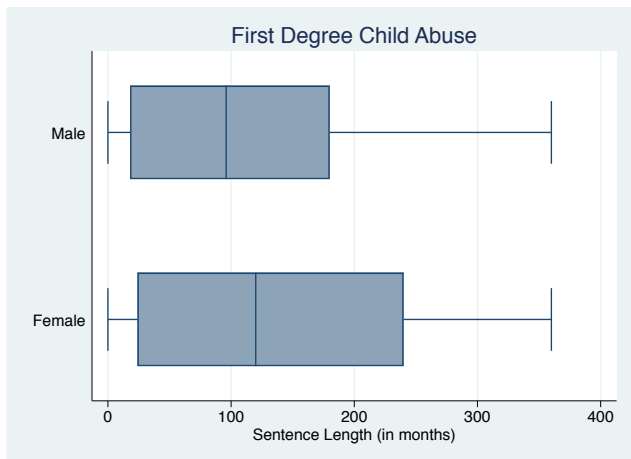
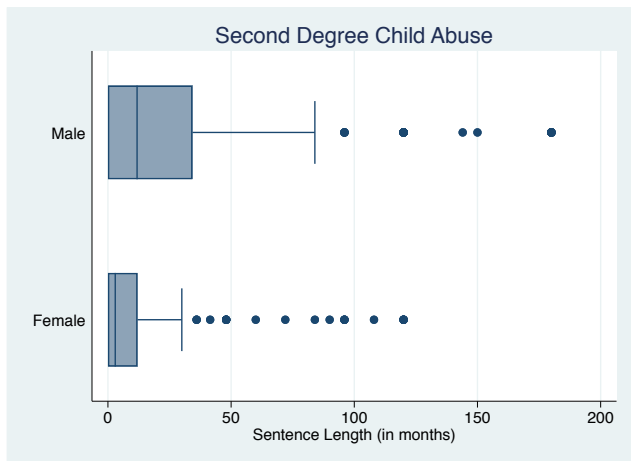
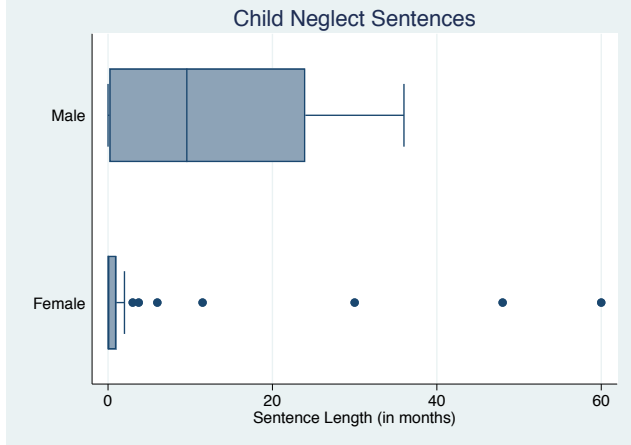


Table 1a: Variable descriptive statistics for child physical abuse and neglect sentences

Variable	Observations	Overall Mean	Female Mean	Male Mean	Minimum Value	Maximum Value
Sentence Length (in months)*	659	40.52 (72.66)	31.59 (68.11)	45.54 (74.70)	0	360
Sentence Length for Neglect*	57	5.86 (1.68)	3.94 (1.87)	11.75 (3.37)	0	60
Sentence Length for Second Degree Child Abuse*	474	21.20 (1.64)	13.82 (2.16)	24.86 (2.18)	0	180
Sentence Length for First Degree Child Abuse	128	127.52 (22.25)	139.15 (18.64)	122.79 (11.99)	0	360
Female	660	.36 (.48)			0	1
White	660	.35 (.48)	.32 (.47)	.36 (.48)	0	1
Age (at time of sentencing)	654	33.28 (10.41)	32.31 (9.00)	33.83 (11.09)	14.17	78.58
Total Charges	660	1.33 (1.32)	1.24 (.68)	1.37 (1.57)	1	27
Offense Score*	655	5.78 (.09)	5.50 (.15)	5.94 (.11)	1	13
Prior Record Score*	653	1.12 (1.56)	.75 (1.27)	1.34 (1.67)	0	5
Previous Violations of Parole*	648	.16 (.37)	.11 (.31)	.19 (.39)	0	1
Under Supervision at time of sentencing*	652	.13 (.34)	.07 (.27)	.16 (.37)	0	1
Private Defense Attorney*	607	.46 (.50)	.38 (.49)	.51 (.50)	0	1
Plea Deal	524	.92 (.27)	.92 (.27)	.91 (.28)	0	1

***Statistically significant difference between female and male sample ($p < .05$)**

Table 1b: Variable descriptive statistics for child physical abuse and neglect sentences

<i>Variable</i>	<i>Observations</i>	<i>Overall Mean</i>	<i>White Mean</i>	<i>Black Mean</i>	<i>Minimum Value</i>	<i>Maximum Value</i>
<i>Sentence Length (in months)</i>	659	40.52 (72.66)	44.71 (71.94)	38.28 (73.02)	0	360
<i>Sentence Length for Neglect</i>	57	5.86 (1.68)	5.57 (11.64)	6.20 (14.11)	0	60
<i>Sentence Length for Second Degree Child Abuse*</i>	474	21.20 (1.64)	31.38 (43.45)	16.44 (30.30)	0	180
<i>Sentence Length for First Degree Child Abuse</i>	128	127.52 (22.25)	116.09 (113.93)	133.93 (114.06)	0	360
<i>Female</i>	660	.36 (.48)	.33 (.47)	.37 (.48)	0	1
<i>White</i>	660	.35 (.48)			0	1
<i>Age (at time of sentencing)</i>	654	33.28 (10.41)	34.13 (12.03)	32.82 (9.39)	14.17	78.58
<i>Total Charges</i>	660	1.33 (1.32)	1.41 (.97)	1.28 (1.47)	1	27
<i>Offense Score</i>	655	5.78 (.09)	5.59 (2.43)	5.89 (2.33)	1	13
<i>Prior Record Score</i>	653	1.12 (1.56)	.97 (1.44)	1.20 (1.62)	0	5
<i>Previous Violations of Parole</i>	648	.16 (.37)	.15 (.35)	.17 (.37)	0	1
<i>Under Supervision at time of sentencing</i>	652	.13 (.34)	.11 (.31)	.14 (.35)	0	1
<i>Private Defense Attorney</i>	607	.46 (.50)	.48 (.48)	.45 (.47)	0	1
<i>Plea Deal*</i>	524	.92 (.27)	.86 (.32)	.95 (.19)	0	1

**Statistically significant difference between white and black sample (p<.05)*

Table 2: Tobit Regression: variable effects on the underlying latent variable (n=638) (with offense score as a scale)

	<i>Model 1</i>		<i>Model 2</i>		<i>Model 3</i>		<i>Model 4</i>	
	Coef	SE	Coef	SE	Coef	SE	Coef	SE
<i>Female</i>	-16.72**	6.12	-7.69	6.22	-15.16+	8.31	-16.93*	7.74
<i>White</i>	10.99+	6.31	8.89	6.02	9.03	7.23	10.51	6.71
<i>Child Neglect</i>	-35.24**	12.35	-33.08**	12.18	-21.33	20.25	22.22	19.32
<i>1st Degree Child Abuse</i>	122.51**	7.37	123.00**	7.02	109.63**	8.32	36.12**	11.05
<i>Total Charges</i>			7.27**	2.07	7.07**	2.06	6.26**	1.90
<i>Prior Record Score</i>			5.80**	2.24	5.16*	2.25	5.66**	2.08
<i>Previous Violations of Parole</i>			17.97*	8.83	19.91*	8.81	21.66**	8.18
<i>Under Supervision at time of sentencing</i>			27.66**	8.48	28.66**	8.46	28.69**	7.86
<i>Plea Deal</i>			-38.89**	11.44	-40.99**	11.50	38.17**	10.63
<i>Being under 21</i>			-.37	13.19	-1.34	13.22	-3.30	12.22
<i>Being over 50</i>			18.99+	10.10	19.72*	10.08	20.64*	9.33
<i>Private</i>			-15.58**	6.05	-15.95**	6.03	-12.54*	5.60
<i>Female*White</i>					-5.16	12.81	.09	11.90
<i>Female*Neglect</i>					-11.28	24.42	-4.62	22.64
<i>Female*1st Degree</i>					44.23**	14.98	31.39*	13.92
<i>Offense Score</i>							17.66**	1.92
<i>Log likelihood value</i>	-2756.74		-2694.74		-2689.63		-	2629.50
<i>Pseudo R²</i>	.05		.07		.07		.08	

** $p < .01$ * $p < .05$ + $p < .10$; all tests are two-tailed

Table 3: Tobit Regression: marginal effects on the probability of being uncensored at the sample average (n=638)

	<i>Model 1</i>		<i>Model 2</i>		<i>Model 3</i>		<i>Model 4</i>	
	Dy/Dx	SE	Dy/Dx	SE	Dy/Dx	SE	Dy/Dx	SE
<i>Female</i>	-.09**	.03	-.05	.04	-.05	.04	-.07+	.04
<i>White</i>	.06+	.03	.05	.03	.04	.03	.06+	.03
<i>Child Neglect</i>	-.19**	.07	-.20**	.07	-.15+	.09	.12	.07
<i>1st Degree Child Abuse</i>	.45**	.02	.47**	.02	.47**	.02	.25**	.05
<i>Total Charges</i>			.04**	.01	.04**	.01	.04**	.01
<i>Prior Record Score</i>			.03**	.01	.03*	.01	.03**	.01
<i>Previous Violations of Parole</i>			.10*	.04	.11*	.05	.13**	.05
<i>Under Supervision at time of sentencing</i>			.15**	.04	.16**	.05	.18**	.05
<i>Plea Deal</i>			-.22**	.06	-.24**	.06	-.23**	.07
<i>Private Attorney</i>			-.09**	.03	-.09**	.03	-.08*	.03
<i>Being under 21</i>			.00	.07	.00	.07	-.02	.07
<i>Being over 50</i>			.10*	.05	.11*	.06	.13*	.06
<i>Female*White</i>					-.07	.06	-.07	.06
<i>Female*Neglect</i>					-.12	.14	-.08	.11
<i>Female*1st Degree</i>					.02*	.01	.05	.04
<i>Offense Score</i>								

** $p < .01$ * $p < .05$ + $p < .10$; all tests are two-tailed

Table 4: Tobit Regression: marginal effects on sentence length at the sample average (n=638)

	<i>Model 1</i>	<i>Model 2</i>	<i>Model 3</i>	<i>Model 4</i>
	$\frac{\partial(E[y_i x_i])}{\partial x_j}$	$\frac{\partial(E[y_i x_i])}{\partial x_j}$	$\frac{\partial(E[y_i x_i])}{\partial x_j}$	$\frac{\partial(E[y_i x_i])}{\partial x_j}$
<i>Female</i>	-10.53**	-5.09	-9.72+	-11.17*
<i>White</i>	6.92+	5.69	5.77	6.94
<i>Child Neglect</i>	-22.20**	-21.17**	-13.65	14.67
<i>1st Degree Child Abuse</i>	77.18**	78.72**	70.16**	23.84**
<i>Total Charges</i>		4.59**	4.52**	4.13
<i>Prior Record Score</i>		3.71**	3.30**	3.74**
<i>Previous Violations of Parole</i>		11.50*	12.74**	14.30**
<i>Under Supervision at time of sentencing</i>		17.70**	18.34**	18.94**
<i>Plea Deal</i>		-24.57**	-26.23**	-25.19**
<i>Private Attorney</i>		-9.97**	-10.21	-8.28*
<i>Being under 21</i>		-24	-86	-2.18
<i>Being over 50</i>		12.15+	12.62*	13.62*
<i>Female*White</i>			-3.30	.06
<i>Female*Neglect</i>			-7.22	-3.06
<i>Female*1st Degree</i>			28.31**	20.72*
<i>Offense Score</i>				11.66**

** $p < .01$ * $p < .05$ + $p < .10$; all tests are two-tailed

Appendices

Appendix A: Sentencing Matrix for Offenses Against Persons

<i>Offender Score</i>								
<i>Offense Score</i>	0	1	2	3	4	5	6	7 or more
1	P	P	P-3M	3M-1Y	3M-18M	3M-2Y	6M-2Y	1Y-3Y
2	P-6M	P-1Y	P-18M	3M-2Y	6M-3Y	1Y-5Y	18M-5Y	3Y-8Y
3	P-2Y	P-2Y	6M-3Y	1Y-5Y	2Y-5Y	3Y-7Y	4Y-8Y	5Y-10Y
4	P-3Y	6M-4Y	1Y-5Y	2Y-5Y	3Y-7Y	4Y-8Y	5Y-10Y	5Y-12Y
5	3M-4Y	6M-5Y	1Y-6Y	2Y-7Y	3Y-8Y	4Y-10Y	6Y-12Y	8Y-15Y
6	1Y-6Y	2Y-7Y	3Y-8Y	4Y-9Y	5Y-10Y	7Y-12Y	8Y-13Y	10Y-20Y
7	3Y-8Y	4Y-9Y	5Y-10Y	6Y-12Y	7Y-13Y	9Y-14Y	10Y-15Y	12Y-20Y
8	4Y-9Y	5Y-10Y	5Y-12Y	7Y-13Y	8Y-15Y	10Y-18Y	12Y-20Y	15Y-25Y
9	5Y-10Y	7Y-13Y	8Y-15Y	10Y-15Y	12Y-18Y	15-25Y	18Y-30Y	20Y-30Y
10	10Y-18Y	10Y-21Y	12Y-25Y	15Y-25Y	15Y-30Y	18Y-30Y	20Y-35Y	20Y-L
11	12Y-20Y	15Y-25Y	18Y-25Y	20Y-30Y	20Y-30Y	25Y-35Y	25Y-40Y	25Y-L
12	15Y-25Y	18Y-25Y	18Y-30Y	20Y-35Y	20Y-35Y	25Y-40Y	25Y-L	25Y-L
13	20Y-30Y	25Y-35Y	25Y-40Y	25Y-L	25Y-L	30Y-L	L	L
14	20Y-L	25Y-L	28Y-L	30Y-L	L	L	L	L
15	25Y-L	30Y-L	35Y-L	L	L	L	L	L

P=Probation, M=Months, Y=Years, L=Life

Appendix B: MSCCSP's Sentencing Worksheet

MARYLAND SENTENCING GUIDELINES WORKSHEET		OFFENDER NAME - Last, First, Middle				SID#		SEX ___ M ___ F		BIRTHDATE		JURISDICTION			
PSI ___ Yes ___ No		DATE OF OFFENSE		DATE OF SENTENCING		DISPOSITION TYPE ___ ABA plea agreement ___ Jury trial ___ Non-ABA plea agreement ___ Reconsideration ___ Plea, no agreement ___ Review ___ Court trial				REPRESENTATION ___ Private ___ Public Defender ___ Court Appointed ___ Self		ETHNICITY Hispanic/Latino Origin ___ Yes ___ No Victim Court Costs Imposed Yes ___ No ___		RACE ___ Unidentifiable ___ Black ___ Asian ___ White ___ Other ___ Native Hawaiian/Pacific Islander ___ American Indian/Alaskan Native	
AT THIS SENTENCING, NUMBER OF:		CONVICTED OFFENSES		CRIMINAL EVENTS		WORKSHEET # ___ OF ___		CRIMINAL EVENT # ___							
CONVICTED OFFENSE TITLE						I-VII	CJIS CODE	MD CODE, ART, & SECTION		STAT. MAX	MAND. MIN	CASE #/DOCKET #			
1 st Convicted Offense															
2 nd Convicted Offense															
3 rd Convicted Offense															
OFFENSE SCORE(S) - Offense Against a Person Only				OFFENDER SCORE		GUIDELINES RANGE	ACTUAL SENTENCE - Imposed, Suspended, Time Served, Probation, Restitution, Fine, Corrections Options Programs (Drug Treatment Court, Home Detention, Etc.)								
A. Seriousness Category 1 st Off 2 nd Off 3 rd Off 1 1 1 = V - VII 3 3 3 = IV 5 5 5 = III 8 8 8 = II 10 10 10 = I				A. Relationship to CJS When Instant Offense Occurred 0 = None or Pending Cases 1 = Court or Other Criminal Justice Supervision		1st Con. Off. _____ TO _____	1st Convicted Offense For Theft, Fraud, and Related Crimes, please indicate: <input type="checkbox"/> Economic loss \$ _____; <input type="checkbox"/> Unknown Amount Subsequent Offender Filed ___ Yes ___ No Restitution Requested ___ Yes ___ No Subsequent Offender Proven ___ Yes ___ No Restitution Proven ___ Yes ___ No								
B. Victim Injury 1 st Off 2 nd Off 3 rd Off 0 0 0 = No Injury 1 1 1 = Injury, Non-Permanent 2 2 2 = Permanent Injury or Death				B. Juvenile Delinquency 0 = 23 years or older or crime-free for 5 years or no more than 1 finding of a delinquent act 1 = Under 23 years old and: 2 or more findings of a delinquent act or 1 commitment 2 = Under 23 years and committed 2 or more times		2nd Con. Off. _____ TO _____	2nd Convicted Offense For Theft, Fraud, and Related Crimes, please indicate: <input type="checkbox"/> Economic loss \$ _____; <input type="checkbox"/> Unknown Amount Subsequent Offender Filed ___ Yes ___ No Restitution Requested ___ Yes ___ No Subsequent Offender Proven ___ Yes ___ No Restitution Proven ___ Yes ___ No								
C. Weapon Presence 1 st Off 2 nd Off 3 rd Off 0 0 0 = No Weapon 1 1 1 = Weapon Other Than Firearm 2 2 2 = Firearm or Explosive				C. Prior Adult Criminal Record 0 = None 3 = Moderate 1 = Minor 5 = Major		3rd Con. Off. _____ TO _____	3rd Convicted Offense For Theft, Fraud, and Related Crimes, please indicate: <input type="checkbox"/> Economic loss \$ _____; <input type="checkbox"/> Unknown Amount Subsequent Offender Filed ___ Yes ___ No Restitution Requested ___ Yes ___ No Subsequent Offender Proven ___ Yes ___ No Restitution Proven ___ Yes ___ No								
D. Special Victim Vulnerability 1 st Off 2 nd Off 3 rd Off 0 0 0 = No 1 1 1 = Yes				D. Prior Adult Parole/Prob Violation 0 = No 1 = Yes			Was the offender sentenced to a Corrections Options program under Commission criteria? Drug Court ___ Yes ___ No Other ___ Yes ___ No								
OFFENSE SCORE(S)				OFFENDER SCORE		Overall Guidelines Range									
VICTIM INFORMATION Victim ___ Yes ___ No Victim Non-participation ___ Yes ___ No Victim Notification Form ___ Yes ___ No Victim Notified Plea ___ Yes ___ No Victim Notified Date ___ Yes ___ No Victim Present ___ Yes ___ No Written VIS ___ Yes ___ No Oral VIS ___ Yes ___ No No Contact Requested ___ Yes ___ No No Contact Ordered ___ Yes ___ No				SENTENCE DEPARTURE INFORMATION If the actual sentence departs from the guidelines range, please indicate the Court's reason(s) using the numerical code(s) on the list of common departure factors in the manual, if applicable. <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Departure Code 9 or 18 (Please Explain):		Multiple Courts Only _____ TO _____	Additional Information or Institutional/Parole Recommendation _____ _____ _____ Parole Notification ___ Yes ___ No								
						50% of Sentence Announced for COVs	Worksheet Completed By _____ Title _____ Sentencing Judge (Please Print) _____ Sentencing Judge's Signature _____								

COPIES: White - Judge; Blue - Sentencing Commission; Green - Attach to Commitment or Probation Order; Yellow - File; Pink - Prosecution; Gold - Defense

4/2013 (1.8)

Appendix C: Results from OLS

	Coef	SE	Coef	SE
<i>Female</i>	-6.42	5.92	-16.93*	7.74
<i>White</i>	7.29	5.44	10.51	6.71
<i>Child Neglect</i>	17.46	15.61	22.22	19.32
<i>1st Degree Child Abuse</i>	29.30**	9.10	36.12**	11.05
<i>Total Charges</i>	5.58**	1.58	6.26**	1.90
<i>Prior Record Score</i>	3.55*	1.67	5.66**	2.08
<i>Previous Violations of Parole</i>	16.33*	6.72	21.66**	8.18
<i>Under Supervision at time of sentencing</i>	23.07**	6.48	28.69**	7.86
<i>Plea Deal</i>	-30.51**	8.92	-38.17**	10.63
<i>Private Attorney</i>	-6.44	4.42	-3.30	12.22
<i>Being under 21</i>	-7.63	9.65	20.64*	9.33
<i>Being over 50</i>	10.05	7.60	-12.54*	5.60
<i>Female*White</i>	-3.89	9.30	.09	11.90
<i>Female*Neglect</i>	17.93	15.61	-4.62	22.64
<i>Female*1st Degree</i>	18.72+	11.50	31.39*	13.92
<i>Offense Score</i>	15.87**	1.58	17.66**	1.92
<i>Log likelihood value</i>			-2629.50	
<i>Adjusted R²/Psuedo R²</i>	.52		.08	
$\hat{\sigma}$				
n	638		638	

Appendix D: Comparison with Larceny

The analysis of theft offenses was conducted in the same manner as the analysis of the child physical abuse, using the same models, and as many of the the same legal and extra-legal variables as possible.³¹ By using theft offenses as a comparasion, this study will be more likely to determine whether the way in which Maryland circuit courts sentence individuals for physical child abuse and neglect is distinct.

The biggest difference between physical child abuse and theft offenses is the general categorizations as either “person offenses” or “property offenses” (Maryland State Commission on Criminal Sentencing Policy, 2015). For property crimes, offense scores are not calculated. Each crime has an assigned offense seriousness category (ranging from one to seven, with seven being the least severe crime and one being the most severe crime), and this is the score used in the property crimes sentencing matrix (MSCCSP, 2015). The mean offense seriousness category for theft crimes was 5.39 (with a standard deviation of 1.26). As theft offenses are a property offenses, there are a few independent variables used in the models pertaining to child abuse and neglect that will not be used in the models for theft crimes (such as whether

³¹ As theft crimes are property crimes and physical child abuse are person crimes, there are slightly different data collected. Unlike physical child abuse and neglect crimes, where there were only three specific crimes being discussed, there are 15 different larceny offenses within this analysis. This is due to the way in which the law categories larceny offenses. Rather than present a model which interacts all 15 crimes with gender, the analysis presented in the following table presents gender interacted with felony offenses. I did run a model interacting female with each individual crime type, and none of the interactions were statistically significant.

a weapon was used, whether there was injury to the victim or whether the victim was considered vulnerable).

A Tobit regression was run on 5,795 larceny offenses sentenced between 2006 and 2015 in Maryland's circuit courts.³² As theft offenses are property crimes, the sentencing matrix uses only the offense score and the offender score. The crime is more serious as the offense score decreases (with offense scores of 1 being the most serious and offense scores of 7 being the least serious).

The Tobit model for larceny offenses contained the same legal relevant variables and extra-legal variables. Interestingly, being female or white was not statistically significant nor was the interactions between gender and race or the interaction between gender and felonies, in the underlying latent variable.³³ In this model, while not statistically significant, the interaction between being female and felony offenses was negative. Full results can be seen in the table below. For larceny crimes, there is not statistically significant effect for either gender or race when holding legal and extra-legal factors constant.

³² These were all single offense sentence events. However, when the same analysis was run using multiple offenses (and adding in variables to account for whether the crime was the controlling crime or a crime of violence), the results were similar. The main difference was that the effects of being female and white were statistically significant (but in the direction). It is also important to note that larceny offenses are not considered crimes of violence in Maryland. However, when multiple offenses were sentenced together, the larceny offense was a lesser included offense, sometimes for a crime of violence.

³³ As there were 18 different offenses under the larceny offense umbrella, I chose to present a simpler model, in which I interacted females with felony. I did conduct another analysis in which being female was interacted with each type of larceny offenses, none of which were statistically significant.

This is interesting, as it implies that there may be something different about the way in which Maryland circuit court judges sentence physical child abuse and neglect.

Table 5: Tobit Regression: variable effects on the underlying latent variable for property crimes (n=5,795)

	Coef	SE
<i>Female</i>	-.16	1.94
<i>White</i>	.09	.83
<i>Felony</i>	-.80	1.96
<i>Prior Record Score</i>	6.55**	.26
<i>Previous Violations of Parole</i>	7.12**	1.00
<i>Under Supervision at time of sentencing</i>	11.60**	.87
<i>Plea Deal</i>	.23**	.09
<i>Private Attorney</i>	-3.58**	.76
<i>Being under 21</i>	3.35**	1.13
<i>Being over 50</i>	1.66	1.22
<i>Jail Sentence</i>	4.34**	.84
<i>Female*White</i>	.87	1.66
<i>Female*Felony</i>	-2.09	1.89
<i>Offense Score</i>	-8.88**	.83
<i>Log likelihood value</i>	-19550.78	
<i>Pseudo R²</i>	.06	

** $p < .01$ * $p < .05$ + $p < .10$; all tests are two-tailed

Bibliography

- Albonette, C. (1991). An Integration of Theories to Explain Judicial Discretion. *Social Problems*, 38(2), 247-266.
- Albonetti, C. (1991). An Integration of Theories to Explain Judicial Discretion. *Social Problems*, 38(2), 247-266.
- Albonetti, C. A. (1997). Sentencing under the Federal Sentencing Guidelines: Effects of Defendant Characteristics. *Law & Society Review*, 789-822.
- Benson, M., & Walker, E. (1988). Sentencing the White Collar Offender. *American Sociological Review*, 53, 294-302.
- Berk, R. A. (1983). An Introduction to Sample Selection Bias in Sociological Data. *American Sociological Review*, 48, 368-398.
- Bernstein, I. N., Kick, E., Leung, J. T., & Schulz, B. (1977). Charge Reduction: An Intermediary Stage in the Process of Labeling Criminal Defendants. *Social Forces*, 56, 362-384.
- Best, J. & Luckenbill, D. (1990). Male Dominance and Female Criminality: A Test of Harris's Theory of Deviant Type-Scripts. *Sociological Inquiry*, 60, 71-86.
- Bickle, G., & Peterson, R. (1991). The Impact of Gender-Based Family Roles on Criminal Sentencing. *Social Problems*, 38(3), 372-394.
- Blackwell, B., Holleran, D., & Finn, M. (2008). The Impact of the Pennsylvania Sentencing Guidelines on Sex Differences in Sentencing. *Journal of Contemporary Criminal Justice*, 399-418.
- Bontrager, S., Barrick, K., & Stupi, E. (2013). Gender and Sentencing: A Meta-Analysis of Contemporary Research. *The Journal of Gender, Race & Justice*, 16, 349-372.
- Breen, R. (1996). *Regression Models Censored, Sample Selected, or Truncated Data*. Thousand Oaks, CA: SAGE Publications, Inc.
- Brennan, P. K. (2006). Sentencing Female Misdemeanants: An Examination of the Direct and Indirect Effects of Race/Ethnicity. *Justice Quarterly*, 23(1), 60-95.
- Britt, C. L. (2009). Modeling the Distribution of Sentence Length Decisions Under a Guidelines System: An Application of Quantile Regression Models. *Journal of Quantitative Criminology*, 25, 341-370.
- Britton, D. M. (2011). *The Gender of Crime*. Plymouth, U.K.: Rowman & Littlefield Publishers, Inc.
- Bureau of Labor Statistics. (2008). *Married Parents' Use of Time Survey*. United States Department of Labor.
- Bureau of Labor Statistics. (2015). *Care of Household Children*.

- Bushway, S. D., & Piehl, A. M. (2001). Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing. *Law & Society Review*, 35(4), 733-764.
- Bushway, S., Johnson, B. D., & Slocum, L. A. (2007). Is the Magic Still There? The Use of the Heckman Two-Step Correction for Selection Bias in Criminology. *Journal of Quantitative Criminology*, 23, 151-178.
- Children's Bureau. (2015). Child Maltreatment 2015.
- Craig, L. (2006). Does Father Care Mean Fathers Share? A Comparison of How Mothers and Fathers in Intact Families Spend Time with Children. *Gender and Society*, 20, 259-281.
- Cross, T. P., Walsh, W. A., Monique, S., & Jones, L. M. (2003, OCT). Prosecution of Child Abuse: A Meta-Analysis of Rates of Criminal Justice decisions. *Truama, Violence, & Abuse*, 4(4), 323-340.
- Crow, M. S., & Adrion, B. (2011). Focal Concerns and Police Use of Force: Examining the Factors ASSociated with Taser Use. *Police Quaterly*, 14(4), 366-387.
- Curry, T. R., Lee, G., & Rodriguez, S. (2004). Does Victim Gender Increase Sentence Severity? Further Explorations of Gender Dynamics and Sentencing Outcomes. *Crime Delinquency*, 50(3), 319-343.
- Daly, K., & Bordt, R. (1995). Sex Effects and Sentencing: A Review of the Statistical Literature. *Justice Quarterly*, 12, 141-175.
- Daly, K. (1987). Discrimination in the Criminal Courts: Family, Gender, and the Problem of Equal Treatment. *Social Forces*, 66(1), 152-175.
- Data USA. (n.d.). *Childcare Workers*. Retrieved March 16, 2018, from Data USA: www.datausa.io
- Doerner, J. K., & Demuth, S. (2010). The Independent and Joinh Effects of Race/Ethnicity, Gender and Age on Sentencing Outcomes in U.S. Federal Courts. *Justice Quaterly*, 27(1), 1-27.
- Eide, E., & Showalter, M. H. (1998). The Effect of School Quality on Student Performance: A Quantile Regression Approach. *Economics Letters*, 58, 345-350.
- Embry, R., & Lyons, Jr., P. M. (2012). Sex-Based Sentencing: Sentencing Discrepancies Between Male and Female Sex Offenders. *Feminist Criminology*, 7(2), 146-162.
- Engen, R. L., & Gainey, R. R. (2000). Modeling the Effects of Legally Relevant and Extralegal Factors Under Sentencing Guidelines: The Rules Have Changed. *Criminology*, 38(4), 1207-1230.
- Federal Bureau of Investigations. (2015). *Crime in the United States, 2015*. Retrieved from <https://ucr.fbi.gov/crime-in-the-u.s./2015/crime-in-the-u.s-2015/home>
- Frieburger, T. L., & Hilinkshi-Rosick, C. M. (2013). An Examination of the Interactions of Race and Gender Decisions Using a Trichotomous Dependent Variable. *Peer Reviewed Publication, Paper 12*.

- Harrington, M. P., & Spohn, C. (2007). Defining Sentence Type: Further Evidence Against Use of the Total Incarceration Variable. *Journal of Research in Crime and Delinquency*, 44(1), 23-44.
- Harris, A. R. (1977). Sex and Theories of Deviance: Towards a Functional Theory of Deviant Typescripts. *American Sociological Review*, 43, 1-16.
- Harris, A. R. (1993). Gender and Race in the Theory of Deviant Typescripts. *Sociological Inquiry*, 63, 166-201.
- Hartley, R. D., Maddan, S., & Spohn, C. C. (2007). concerning Conceptualization and Operationalization: Sentencing Data and the Focal Concerns Perspective - A Research Note. *The Southwest Journal of Criminal Justice*, 4(1), 58-78.
- Hill, G., Harris, A. R., & Miller, J. (1985). The Etiology of Bias Social Heuristics and Rational Decision Making in Deviance Processing. *Journal of Research in Crime and Delinquency*, 22(2), 135-162.
- Johnson, B. D. (2014). Judges on Trial: A reexamination of Judicial Race and Gender Effects Across Modes of Conviction. *Crime Justice Policy Review*, 25(2), 159-184.
- Klein, D. (1973). The Etiology of Female Crime: A Review of the Literature. *Issues in Criminology*, 34(2), 357-376.
- Koons-Witt, B. A., Sevigny, E. L., Burrow, J. D., & Hester, R. (2012). Gender and Sentencing Outcomes in South Carolina: Examining the Interactions With Race, Age, and Offense Type. *Criminal Justice Policy Review*, 25(3), 299-324.
- Kramer, J. H., & Steffensmeier, D. (1993). Race and Imprisonment Decisions. *The Sociological Quarterly*, 34(2), 357-376.
- Kruttschnitt, C. (2013). Gender and Crime. *The Annual Review of Sociology*, 39, 291-308.
- Kurlychek, M. C., & Johnson, B. D. (2004). The Juvenile Penalty: A Comparison of Juvenile and Young Adult Sentencing Outcomes in Criminal Court. *Criminology*, 42, 485-517.
- Lauritsen, J. L., Heimer, K., & Lynch, J. P. (2009). Trends in the Gender Gap in Violent Offending: New Evidence From the National Crime Victimization Survey. *Criminology*, 47(2), 361-399.
- Long, J. S. (1997). *Regression Models for Categorical and Limited Dependent Variables*. Thousand Oaks, CA: SAGE Publications, Inc.
- Maryland State Commission on Criminal Sentencing Policy. (2016, January). *Annual Report 2016*. Retrieved 2017
- Pew Research Center. (2013, March 14). *Modern Parenthood Roles of Moms and Dads Converge as They Balance Work and Family*. Retrieved March 16, 2018, from Pew Research : www.pewresearch.org
- Phillips, D. M., & DeFleur, L. B. (1982). Gender Ascription and the Stereotyping of Deviants. *Criminology*, 20(3), 431-448.

- Pittman, J. F., & Lee, C.-Y. S. (2004). Comparing Different Types of Child Abuse and Spouse Abuse Offenders. *Violence and Victims, 19*(2), 137-156.
- Rocheleau, M. (2017, March 7). The Percentage of Women and Men in each Profession. *Boston Globe*.
- Schwartz, J., & Steffensmeier, D. (2015). Can the Gender Gap in Offending be Explained? In P. W. Francis T. Cullen, *Sisters in Crime Revisited* (pp. 229-259). New York, NY: Oxford University Press.
- Sealock, M. D., & Simpson, S. S. (2006). Unraveling Bias in Arrest Decisions: The Role of Juvenile Offender Type-Scripts. *Justice Quarterly, 15*(3), 427-457.
- Sigler, R. T., & Johnson, I. M. (2004). Public Perceptions of Child Abuse. *Free Inquiry in Creative Sociology, 32*, 73-83.
- Simpson, S. S., & Elis, L. (1995). Doing Gender: Sorting Out the Caste and Crime Conundrum. *Criminology, 33*, 47-81.
- Spohn, C. (2002). *How do Judges Decide: The Search for Fairness and Justice in Punishment*. Thousand Oaks, CA: Sage.
- Spohn, C., & Beicher, D. (2000). Is Preferential Treatment of Female Offenders a Thing of the Past? A Multistate Study of Gender, Race and Imprisonment. *Criminal Justice Policy Review, 11*(2), 149-184.
- Spohn, C., & Spears, J. W. (1997). Gender and Case-Processing Decisions: A Comparison of Case Outcomes for Male and Female Defendants Charged with Violent Felonies. *Women & Criminal Justice, 8*, 29-59.
- Spohn, C., Welch, S., & Gruhl, J. (1985). Women Defendants in court: the interaction between sex and race in convicting and sentencing. *Social Science Quarterly, 22*, 178-185.
- Steffensmeier, D. J. (1980). Assessing the Impact of the Women's Movement on Sex-Based Differences in the Handling of Adult Criminal Defendants. *Crime and Delinquency, 433-357*.
- Steffensmeier, D. J. (1983). Organization Properties and Sex-Segregation in the Underworld: Building a Sociological Theory of Sex Differences in Crime. *Social Forces, 61*, 1010-1032.
- Steffensmeier, D., & Allen, E. (1996). Gender and Crime: Toward a Gendered Theory of Female Offending. *Annual Review of Sociology, 22*, 459-487.
- Steffensmeier, D., & Demuth, S. (2006). Does Gender Modify the Effects of Race-ethnicity on Criminal Sanctioning? Sentences for Male and Female White, Black and Hispanic Defendants. *Quantitative Criminology, 22*, 241-261.
- Steffensmeier, D., & Schwartz, J. (2009). Trends in Girls' Delinquency. In M. Zahn (Ed.), *The Delinquent Girl* (pp. 50-83). Philadelphia, PA: Temple University.

- Steffensmeier, D., Painter-Davis, N., & Ulmer, J. (2017). Intersectionality of Race, Ethnicity, Gender and Age on Criminal Punishment. *Sociological Perspectives*, 60(4), 810-833.
- Steffensmeier, D., Ulmer, J. T., & Painter-Davis, N. (2016). Intersectionality of Race, Ethnicity, Gender, and Age on Criminal Punishment. *Sociological Perspectives*, 1-24.
- Steffensmeier, D., Ulmer, J., & Kramer, J. (1998). The Interaction of Race, Gender and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black and Male. *Criminology*, 36(6), 763-797.
- Tobin, J. (1958). Estimation of Relationships for Limited Dependent Variables . *Econometrica*, 26, 24-36.
- Ulmer, J. T., & Johnson, B. (2004). Sentencing in Context: A Multilevel Analysis. *Criminology*, 137-178.
- Visher, C. (1983). Gender, Police Arrest Decisions, and Notions of Chivarly. *Criminology*, 21, 15-28.
- White, H. (1980). A Heteroscedasticity-Consistent Covariance Matrix and a Direct Test for Heteroscedasticity. *Econometrica*, 817-838.
- Winship, C., & Mare, R. D. (1992). Models for Sample Selection Bias. *Annual Review Sociology*, 18, 327-50.
- Zatz, M.S. (2000). *National Criminal Justice Reference Service*. Retrieved Feb. 15, 2018, from: Office of Justice Programs:
<https://www.ncjrs.gov/APP/Publications/abstract.aspx?ID=185536>.