

ABSTRACT

Title of thesis: VICTIM PARTICIPATION: DOES IT IMPACT SENTENCING DEPARTURES?

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Prior analyses of sentencing practices find that victim characteristics affect sentencing decisions. Yet, the impact of victim *participation* on sentencing departures has largely been ignored in research on victim involvement in the punishment process. The present study examines this important, although rarely empirically tested, aspect of sentencing. Using data from the Maryland State Commission on Criminal Sentencing Policy, this study examines the impact of multiple forms of victim participation on sentencing departures in the context of both person and property offenses. Given that victim characteristics are known to influence sentencing, the study also investigates whether victim vulnerability moderates the relationship between victim participation and departure decisions. Findings support that victim participation influences sentencing decisions for both offense types, demonstrating that sentences are more severe, on average, when victim participation significantly affects departures. Findings for the interaction between victim participation and vulnerability, however, are less clear, which raises questions about whether certain victims' participation influences decision-making differently.

VICTIM PARTICIPATION: DOES IT IMPACT SENTENCING DEPARTURES?

by

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CHAPTER 1: INTRODUCTION

The United States' criminal legal system contends "crimes against the individual are crimes against the State" (Bureau of Justice Statistics, 2021, para. 6). This philosophy excludes victims from participating in court processes, aside from testifying as witnesses (Hellerstein, 1989; Englebrecht, 2011). In response to victims' exclusion, the modern victim's rights movement was established to advocate for crime victims' greater participation and voice (Englebrecht, 2011; Erez and Tontodonato, 1990, 1992). The call for victims' rights is seemingly uncontroversial, as "Who could be anti-victim?" (Hellerstein, 1989, p. 395). However, this issue has sparked much debate in legal scholarship.

The main argument against victim participation is that "criminal justice will be degraded into a system of private vengeance" (O'Hear, 2007, p. 326). Opponents claim victim participation emphasizes retribution, as victims' suffering will be used to rationalize punitive measures against defendants (Englebrecht, 2012). The American Bar Association (1981) upheld this assumption, concluding that the use of victim impact statements (VISs) would likely result in harsher sentences, on average. Additionally, victim participation is alleged as reprisal against defendants, in that it is said to reduce uniformity and introduce arbitrariness in sentencing (Davis & Mulford, 2008). This was expressed in the Court's decision in *Booth v. Maryland* (1987), which stated that VISs introduce an impermissible risk that capital sentencing will be shaped by arbitrary factors. Ultimately, these oppositions reflect the criminal legal system's historic concern with protecting the constitutional rights of the defendant, which are argued as necessarily superior to the rights of victims (Black, 1994; Hellerstein, 1989).

Academics in favor of integrating victim participation into punishment processes assert that it improves the accuracy and proportionality of sentencing, rather than escalates punitiveness

(Erez & Tontodonato, 1990). These scholars argue victim participation informs assessments of offense severity, resulting in punishments that more accurately reflect harm caused (Edwards, 2001). Further, advocates focus on the potential for victim participation to reduce secondary victimization, or further harm generated from treatment by the criminal legal system (Edwards, 2001; Englebrecht & Chavez, 2014; Erez and Tontodonato, 1992; Roberts & Erez, 2004; Sims et al., 2006; Wemmers, 2008). Victim participation is argued to provide a therapeutic experience by allowing victims to voice a narrative about their victimization and its impacts (Englebrecht & Chavez, 2014). Beyond lessening secondary victimization, the opportunity to emote is alleged to contribute to victims' recovery, as it may have cathartic value (Edwards, 2001). Additionally, responsiveness to victims' concerns is suggested to generate greater cooperation from victims (Erez and Tontodonato, 1992; McLeod, 1986). Therefore, scholars in favor of victim participation argue integration creates a more ethical experience for victims, which leads to a more efficient system.

In response to advocates, opponents of victim participation assert it has “become a cliché that the victim was the forgotten man of the criminal justice system, that his treatment by the system was second victimization” (Black, 1994, p. 225). These academics maintain that offenders are punished “for reasons unrelated to the immediate interests of victims” (Black, 1994, p. 240). Thus, victims' needs are not a structural concern of the criminal legal system (Englebrecht & Chavez, 2014). In consequence, participation may further harm victims (Edwards, 2004; Englebrecht & Chavez, 2014; Greene, 1999). Victims may feel burdened by the responsibility to make punishment decisions (Reeves, 1984). Additionally, victims may face negative psychological effects if the expectation that their participation will influence sentencing outcomes is not met. Several studies reveal that victim participation is highly regulated by courts,

and court actors generally resist incorporating VISs into their work routines (Englebrecht, 2012; Englebrecht & Chavez, 2014; Erez & Laster, 1999; Erez & Rogers, 1999; Lens et al., 2019).

Therefore, the therapeutic benefits of victim participation may be compromised because victims retain limited control over the impact of their participation (Lens et al., 2019).

Despite decades of controversy surrounding the integration of victim participation into punishment processes, empirical research has yet to investigate important aspects of this debate. In particular, limited research has examined the impact of victim participation on sentencing severity. The only form of victim participation that has received adequate empirical attention is VISs. However, the findings for this are mixed (Englebrecht & Chavez, 2014). While some research finds that VISs increase sentencing severity (Luginbuhl & Burkhead, 1995; Paternoster & Deise, 2011), other studies report no effect (Davis & Smith, 1994; Eisenberg et al., 2003; Erez & Laster, 1999) or a negligible impact (Erez & Rogers, 1999; Erez & Tontodonato, 1990). Further, experimental studies that find VISs increase severity suggest variables related to level of emotional content within the VIS or the author of the VIS moderate the impact on punishment severity (McGowan & Myers, 2004; Nadler & Rose, 2003).

The focus on VISs in empirical research is unsurprising, as they are the most prominent form of victim participation in sentencing (Davis & Mulford, 2008; Greene, 1999; O’Hear, 2007). However, this oversimplifies the realities of victim participation. Oftentimes, victims fail to engage their opportunity to deliver a VIS, as many victims are unclear of their rights, confused by court processes, or find VISs emotionally overwhelming to complete (Jones, 2011). Additionally, the right to deliver a VIS may be merely symbolic (Black, 1994; Davis & Mulford, 2008; Hellerstein, 1989; O’Hear, 2007). Approximately 90 to 95 percent of federal and state court cases are resolved through plea bargaining (Devers, 2011). In these cases, “the actual

sentence imposed is often effectively preordained, or at least substantially shaped, by the terms of a plea agreement” (O’Hear, 2007, p. 323). In consequence, victims are denied the opportunity to actively participate in sentencing processes. Further, when victims are afforded the opportunity to deliver a VIS, some research suggests that court actors are reluctant to incorporate VISs into their decision-making (Davis & Smith, 1994; Englebrecht, 2011; Erez & Rogers, 1999; O’Hear, 2007).

Victim participation, however, is much broader than the use of VISs. For example, one important form of participation is victim presence at trials and sentencing. Ultimately, presence at sentencing may be the most realistic form of participation for victims. Despite this, little is known about how it shapes punishment. While present at sentencing, victims may have the opportunity to convey their sentencing opinions to court actors (Erez & Tontodonato, 1990; Hellerstein, 1989). Additionally, victims’ emotional states during trials and sentencing may affect the decision-making of judges and jury members, as negative emotional states can influence perceptions of harm (Bergman Blix, 2021; Erez & Tontodonato, 1990). Thus, victim presence at sentencing has the potential to impact punishment through multiple outlets, though virtually no empirical research examines this relationship.

Another limitation of existing research on the impact of victim participation on sentencing is the overwhelming attention to victims of violent crime (Ulmer, 2012), often for specific crime types like homicide (Gillespie et al., 2014; Richards et al., 2016; Williams & Holcomb, 2004; Williams et al., 2007; Zaykowski et al., 2014). This may result from the assumption that victims of violent crime face greater suffering compared to victims of nonviolent crime. However, several studies suggest that both victims of nonviolent and violent crimes experience suffering (Green & Pomeroy, 2007; Kilpatrick et al., 1985; Lurigio, 1987;

Markestyen, 1992; Sims et al., 2006). Thus, if victims' suffering is used to rationalize harsher sentencing, there is reason to investigate the impact of victim participation on sentencing outcomes for both violent and property crimes.

Research on victim participation has also been limited by its general failure to consider the role of individual victim characteristics. This is somewhat surprising given that a large body of research suggests victim characteristics impact punishment. Some scholarship finds that certain victim characteristics can mitigate or aggravate assessments of offense severity (Curry 2010; Curry et al., 2004; Franklin & Fearn, 2008; Paternoster & Brame, 2008; Spohn & Spears, 1996). Additionally, although relatively rare, some sentencing guidelines systems incorporate victim characteristics directly into their severity rankings (Ulmer, 2012). Thus, it is logical to ask whether the impact of victim participation on sentencing outcomes might be affected by individual victim characteristics.

Finally, the vast majority of research on victim impacts in punishment has focused on general measures of sentencing severity, such as incarceration or sentence lengths (Curry, 2010; Curry et al., 2004, Hilinski-Rosick et al., 2014; Kingsnorth et al., 1999; Spohn & Spears, 1996). The assumption is that variation in sentence severity reflects judicial deliberation of victim factors. In many jurisdictions, though, judges' decisions are substantially constrained by sentencing guidelines, which provide recommended sentence ranges in each case (BJA, n.d.; Frase & Mitchell, 2018; Mitchell, 2017). In order to truly capture the use of judicial discretion in factoring victim considerations into sentencing, then, it is useful to examine situations where judges deviate from the formal guidelines recommendations. These "departure" sentences are an especially valuable outcome for investigating the role that judicial discretion plays in the consideration of victim impacts in sentencing. Sentencing departures occur when judges decide

case circumstances are unique enough to warrant atypical sentences, and victim participation may be an important factor in identifying atypical cases. Thus, sentencing departures have the potential to illuminate the impact victim participation has on punishment decisions. Additionally, to fully capture victims' impact under guidelines systems, a continuous measure of departure is examined. By assessing deviations from the presumptive measure, the current study broadens its reach to sentencing within and outside guidelines.

The present study takes important steps to address key limitations in existing research on victim participation and punishment. First, in contrast to prior work that has narrowly focused on victim impact statements, the current study asks whether multiple forms of victim participation, including victim presence at sentencing, written preparation of a VIS, and the request for an oral VIS, impact punishment. The examination of multiple forms of victim participation is an important contribution to existing literature. Oftentimes, victims are not able to engage their right to deliver a VIS. Thus, presence at sentencing may be the most common form of victim participation. As a result, it is important to generate information on whether presence at sentencing shapes punishment outcomes.

Second, whereas prior work on victim influences in punishment has been limited to traditional sentencing outcomes, such as incarceration and sentence length, the current work expands the range of sentencing decisions examined by focusing on departures from sentencing guidelines. The focus on departures is important because, in many states, judicial discretion regarding incarceration and sentence length is restricted by sentencing guidelines recommendations. Thus, guidelines departures can offer superior insight into judicial decision-making, as they capture instances where judges exercise their own discretion to deviate from recommended sentences.

Finally, the current study also analyzes a broader scope of victim-involved crimes, including both person and property offenses. Although the focus on violent crime in prior work is understandable, it is also important to recognize that victims may play a key role in shaping punishment outcomes for property crimes. Ultimately, the present study aims to advance existing work on the role of victims in the punishment process by expanding the narrow focus of prior work to include other forms of victim participation, by broadening the range of punishment outcomes to examine judges' discretionary decisions to depart from guidelines sentences, and by considering the role that victim participation plays for both violent and property offenses.

The current research is important because it holds the potential to advance existing work on the role of victims in the punishment process, while also informing ongoing policy debates about victim participation in sentencing. Whereas legal scholars who oppose victim integration argue it can introduce arbitrariness into sentencing, supporters claim victim participation offers an important opportunity to tailor punishments to the individual circumstances of the victim and the case. Empirically analyzing the role that victim participation plays in departures from sentencing guidelines offers a valuable opportunity for evaluating these arguments and for advancing our limited understanding of the way victim participation impacts punishment.

CHAPTER 2: LITERATURE REVIEW

To frame the current investigation, this chapter reviews existing literature on victim participation in punishment and prior work on judicial guidelines departures. In terms of victim participation, most research focuses on the demographic characteristics of the victim involved, rather than their actual participation in punishment processes. When research does examine victim participation, the broader picture of victim participation is usually limited to the use of VISs. Research that investigates other forms of participation remains extremely rare. By contrast, substantial literature has emerged investigating the determinants of discretionary guidelines departures. Most of this research, though, examines sentencing disparities, with a specific focus on extralegal factors related to the defendant. Very little prior work considers the role of victim characteristics in guidelines departures.

Research on Victim Participation

Victims are often referred to as the “forgotten persons” of the criminal justice system (Erez & Tontodonato, 1990). Beginning in the 1970s, the victim’s rights movement led to renewed interest in victim issues. At the time, a primary concern of the victim’s rights movement was to generate opportunities for victims’ greater voice. This concern stemmed from the discovery of secondary victimization, or “the wounds suffered by crime victims when they come in contact with the criminal justice system as complainants or witnesses” (Erez and Tontodonato, 1990, p. 452). In response, legislative action was taken to alleviate victims’ suffering from both the crime and involvement in legal processes.

In order to assess effective solutions to victims’ alienation from the system, several researchers investigated victims’ concerns and attitudes regarding legal processes (Forst & Hemon, 1985; Hagan, 1982; Kelly, 1984a, 1984b; Knudten et al., 1976; Shapland et al., 1985).

They consistently found victim frustration with exclusion from the system, particularly with their lack of participation in decision-making processes. Thus, it was determined that victims' suffering may be alleviated if they had some opportunity for control or representation (Tyler, 1988). In consequence, researchers suggested victims' satisfaction may increase with the opportunity to present their cases and the personal consequences of the crime (Kelly, 1984a, 1984b).

The primary legal response to these findings took the form of a VIS. VISs are made by the victim and directed to the judge for consideration in the sentencing phase. Generally, VISs convey the physical, mental, or financial impact of the crime in addition to victims' opinions about the crime and offender (Erez and Tontodonato, 1992; Garland, 2001; Greene, 1999). Today, all states allow victims of noncapital cases the ability to submit and, sometimes, voice a VIS during the sentencing phase (Johnson & Morgan, 2008). Because VISs have received significant legal attention, it is unsurprising that most research on victim participation limits its focus to VISs. As elaborated below, a substantial body of research has investigated the impact of VISs on decision-making in sentencing.

Victim Impact Statements

Research on VISs typically examines their impact on sentencing outcomes. Despite legal support for VISs, opponents argue VISs can result in harsher sentencing, on average. In response, research on VISs has attempted to evaluate the claim that VISs lead to greater punitiveness. To investigate this, most studies subject mock jurors to hypothetical vignettes using experimental methods (Luginbuhl & Burkhead, 1995; Myers et al., 2002; Paternoster & Deise, 2011). Less work examines actual punitive decision-making for a variety of court actors, including judges, prosecutors, and jurors (Davis & Smith, 1994; Eisenberg et al., 2003; Erez &

Laster, 1999). Additionally, some research on VISs investigates variables that moderate the impact of VISs on punishment, like the identity of the victim (McGowan & Myers, 2004; Nadler & Rose, 2003), though this type of work is extremely rare.

Much of the literature has used mock juries in capital cases to study VISs. In an early study, Luginbuhl and Burkhead (1995) found exposure to a VIS significantly increased votes for death over life imprisonment. Additionally, they found exposure to VISs had the strongest effect on participants who already supported the death penalty. Thus, their study provided some support for the concern that VISs result in greater punitiveness, though it is important to emphasize that this study was limited to hypothetical death penalty cases. Similar to Luginbuhl and Burkhead (1995), Myers et al. (2002) examined the impact of VISs on sentencing judgements of mock jurors and found they influenced sentencing judgments. They concluded that participants' harsher sentencing judgments reflected responses to content related to victim harm. Ultimately, these authors warned that the influence of VISs may have serious implications for defendants charged with capital crimes.

Later work by Paternoster and Deise (2011) also investigated the impact of VISs on death-eligible mock jurors' capital decision-making, using a randomized controlled experiment. These authors found that viewing a VIS substantially increased the odds of selecting the death penalty. Specifically, they found participants who viewed a VIS were more likely to feel sympathy and empathy toward the victim and have favorable perceptions of the victim and their family. Further, they suggested positive feelings toward the victim and their family mediated the effect of viewing a VIS on the imposition of death. Ultimately, the authors suggested evidence related to VISs is "highly inflammatory" (Paternoster & Deise, 2011, p. 156).

In addition to work on capital sentencing, research has used mock juries to study other crime types. Nadler and Rose (2003), for example, examined the impact of VISs on mock jurors' sentencing judgements for burglary and robbery cases. Like other mock juror studies, they found VISs influenced sentencing judgments. Specifically, they found participants were more likely to seek longer prison terms when the emotional content of the VIS was high. They argued emotional harm relayed in VISs can serve as a heuristic for inferring unknowable facts related to a case (Nadler & Rose, 2003), leading them to conclude that VISs should be limited in scope to reduce arbitrariness in sentencing.

Other literature has used real court actors in capital cases to research VISs. Eisenberg et al. (2003) investigated the impact of VISs on the decision-making of jurors who actually served on a capital jury. This work failed to detect an effect of VISs on sentencing outcomes. It is unsurprising that their findings contradict those of mock juror studies, as jurors who previously sat in cases and mock jurors face very different decision-making realities. Ultimately, Eisenberg et al. (2003) conclude that their findings are consistent with prior work that suggests jurors' decision-making primarily relies on facts, rather than secondary factors like victim behavior.

Additionally, research has used real court actors to examine other crime types. Early work by Davis and Smith (1994) directly addressed the concern that VISs result in harsher sentences for robbery, nonsexual assault, and burglary cases. They found VISs "do not place defendants in jeopardy" by resulting in harsher sentences, and VISs "did not produce sentencing decisions that reflected more clearly the effects of crime on victims" (Davis & Smith, 1994, pp.466-467). Thus, they found no support for the hypothesis that VISs lead to greater punitiveness. Further, they argued their findings reflect judges' and prosecutors' hesitancy to incorporate VISs into their decision-making.

Similar to Davis and Smith (1994), Erez and Laster (1999) explored the impact of VISs on felony punishment and also found they had little influence on court outcomes. Using interview data, they argued that their findings indicate legal professionals' resistance toward incorporating VISs into their decision-making. Specifically, they found even legal professionals who were sympathetic to victim reforms were more likely to conform to organizational demands and the need to sustain effective working relationships than to pursue reform agendas. Thus, they concluded "single-issue reforms that ignore the context in which they are likely to be implemented are doomed to fail" (Erez & Laster, 1999, p. 550).

Some work has also considered individual factors that may condition the effects of VISs on sentencing. For example, McGowan and Myers (2004) explored whether the author of the VIS had any impact on mock jurors' sentencing decisions in a hypothetical murder trial. They found a bystanders' VIS was more likely than a family member's statement to lead to harsher sentencing judgments. The authors argued participants were more sensitive to the unexpected grief of the bystander, compared to the assumed impact on family. Thus, the authors claimed their study partially addressed concerns of legal commentators regarding who should be allowed to provide VISs. Ultimately, bystanders' VISs were concluded to "have no less an impact on final sentencing judgments," compared to close relatives (McGowan & Myers, 2004, p. 369).

Overall, research on VISs presents mixed findings. While some studies suggest VISs lead to harsher sentencing (Luginbuhl & Burkhead, 1995; Myers et al., 2002; Paternoster & Deise, 2011), others conclude VISs have no impact on sentencing outcomes (Davis & Smith, 1994; Eisenberg et al., 2003; Erez & Laster, 1999). This inconsistency may be due to the participants sampled. Generally, studies of mock jurors find that VISs result in greater punitiveness, whereas studies of real court actors' sentencing decisions tend to find null effects. The latter often

conclude that VISs lack impact because court actors resist incorporating them into their decision-making (Davis & Smith, 1994; Erez & Laster, 1999). Although mock juror studies can provide valuable information, it is reasonable to assume studies that assess the decisions of actual court actors provide more accurate information. Therefore, the current study assesses the impact of victim participation on actual sentencing decisions made by judges.

Additionally, prior research on VISs is limited by its failure to consider victim characteristics. This is somewhat surprising given that a wealth of research finds victim characteristics affect sentencing outcomes (Curry 2010; Curry et al., 2004; Franklin & Fearn, 2008; Paternoster & Brame, 2008; Spohn & Spears, 1996). Generally, this literature reveals that certain victim characteristics can impact assessments of offense severity. Overall, research suggests defendants who victimize White individuals, women, and youth receive harsher punishments, as they are perceived as more blameworthy than defendants who victimize minorities, men, and adults (Curry, 2004; Hilinski-Rosick et al., 2014; Williams & Holcomb, 2004). Thus, it is logical to question whether victim characteristics moderate the impact of VISs on sentencing outcomes. The current study addresses this limitation by investigating whether vulnerable victim status moderates the impact of victim participation on sentencing departures.

Another limitation of research on VISs is its narrow focus on violent crime, particularly the assessment of punishment outcomes in capital trials (Eisenberg et al., 2003; Luginbuhl & Burkhead, 1995; Myers et al., 2002; Paternoster & Deise, 2011). Considering that a defendant's life is at stake in these cases, it is unsurprising that research has concentrated on the implications of VISs in capital sentencing decisions. However, capital cases are rare, and most victims who have contact with the legal system are involved in lesser serious violent crime or property crime. Surprisingly, little research on VISs has examined noncapital cases, and even less work

considers property crime, though research has documented victims of less serious crime also experience suffering (Green & Pomeroy, 2007; Kilpatrick et al., 1985; Lurigio, 1987; Markestyen, 1992; Sims et al., 2006). VISs in these cases can be used to convey the financial impacts of crime in addition to physical and emotional suffering (Erez and Tontodonato, 1992). Thus, there is reason to believe that VISs may impact sentencing outcomes for both noncapital violent crimes and property crimes. The current study addresses this limitation by investigating the impact of written and oral VISs on sentencing departure for both violent and property crime.

Research on VISs also denies important realities of victim participation. In practice, the ability of victims to exercise their right to deliver a VIS is often limited (Jones, 2011). Further, the opportunity to deliver a VIS is impacted by the criminal legal system's dependency on plea bargaining. In cases resolved through plea bargaining, victims may be denied the opportunity for meaningful participation, as the sentence is often included as part of the plea agreement (O'Hear, 2007). Considering these restrictions, one of the only options for victim input, and perhaps the most common form of victim participation, may be victims' presence at trials and sentencing. As such, it is surprising that research rarely investigates the impact of victim presence at sentencing. The current study addresses this shortcoming by examining multiple forms of victim participation, including written VISs, oral VISs, and victim presence at sentencing. Only three known studies, discussed below, consider other forms of victim participation besides VISs.

Other Forms of Victim Participation

A small number of victim participation studies have examined other forms of participation, such as contact with court actors, requests for particular sentences, presence at sentencing, or use of victim resources (Erez & Tontodonato, 1990; Haynes, 2011; Myers, 1979). These studies have examined the impact of victim participation on common sentencing

outcomes, including incarceration and sentence length. A few studies also address victim characteristics in addition to victim participation (Erez & Tontodonato, 1990; Myers, 1979).

For example, early work by Myers (1979) explored the impact of victim characteristics and behavior on sentencing outcomes for a sample of defendants charged with felonies in Marion County, Indiana. To assess participatory behavior, they examined levels of contact with court actors. Myers (1979) argued judges and jurors have the most extensive and direct contact with victims at trial, while probation officers' contact with victims is extremely limited. They found extensive and direct contact with victims did not guarantee that officials would factor victim characteristics, such as gender, into their decision-making. Thus, although victim characteristics influenced sentencing outcomes, their influence was not dependent on victim contact. Further, Myers (1979) concluded court actors primarily rely on legal factors in decision-making.

In a later study, Erez and Tontodonato (1990) examined the effect of victim participation on sentencing outcomes for 500 felony cases prosecuted in Ohio. They used logistic regression to analyze the decision to incarcerate and linear regression for sentence length. In terms of the decision to incarcerate, they found filing a VIS was associated with a greater likelihood of incarceration. Additionally, they found victim requests for particular sentences did not influence the decision to incarcerate. For sentence length, they found longer sentences were awarded when victims were present in court. Further, they found cases with vulnerable victims and victims unknown to the defendant received longer sentences. For both the decision to incarcerate and sentence length, they found oral VISs had no impact on sentencing outcomes. Like previous authors, they argued victim's rights are "primarily symbolic," as judges rarely incorporate oral VISs into their decision-making (Erez & Tontodonato, 1990, p. 470). They also argued against the claim that VISs result in undue punitiveness, suggesting the harm discussed in VISs provides

for more accurate assessments of offense severity. Thus, they concluded VISs “can hardly be considered a vehicle for vindictiveness or support for conservative efforts for harsher punishment” (Erez & Tontodonato, 1990, p. 470).

Most recently, Haynes (2011) used regression analyses and multilevel modeling techniques to investigate the impact of community and victim-related contextual factors on sentencing outcomes in Pennsylvania. Victim-related contextual factors included victim resources, county-level indicators of justice, and victim participation. Haynes (2011) measured victim participation with two variables, including the average number of Crime Victim Compensation forms filed per 100,000 individuals and the average number of victims, witnesses, and other individuals served by programs funded by state grants. They found victim participation did not significantly impact sentence length. However, in counties where victim resources and county-level indicators of justice were greater, they found victim participation was more likely and sentences were longer. Thus, Haynes’ (2011) study provided insight on the impact of victim resources and county-level indicators of justice on victim participation.

Despite the contributions of these studies, there is relatively little research on the impact of victim participation on sentencing outcomes, and existing work remains limited in key ways. Myers (1979), for example, treated victim participation as a moderator in order to better understand the impact of victim characteristics in sentencing. Erez and Tontodonato (1990) examined the role of victim participation measures on sentencing, but only for incarceration and sentence length, and Haynes (2011) focused on victim-related contextual factors and examined victim participation as an outcome variable. In order to advance prior research in this area, the current study aims to assess the impact of victim participation on judicial sentencing departures in a state with sentencing guidelines. Because departure sentences represent the formal exercise

of judicial discretion to deviate from prescribed sentences, this outcome is particularly valuable for studying the unique impact that victim participation might have in the punishment process.

Lastly, prior work has yet to fully consider how the impact of victim participation in sentencing might be conditioned by individual victim characteristics. Erez and Tontodonato (1990) examined separate indicators for victim characteristics and victim participation without considering their interaction. The current study addresses this issue by investigating whether the impact of victim participation on sentencing departures might depend on vulnerable victim status. It is somewhat surprising that prior work has yet to address this given that a substantial body of research, detailed below, finds that victim characteristics often impact sentencing outcomes.

Research on Victim Characteristics

Most prior studies of victim characteristics examine victim race (Curry, 2010; Hilinski-Rosick et al., 2014; Spohn & Spears, 1996; Stauffer et al., 2006; Williams & Holcomb, 2004; Zaykowski et al., 2014) or gender (Curry et al., 2004; Gillespie et al., 2014; Hilinski-Rosick et al., 2014; Richards et al., 2016; Stauffer et al., 2006; Williams & Holcomb, 2004; Williams et al., 2007). Generally, researchers are interested in whether these demographic characteristics impact sentencing decisions, such as incarceration or sentence length. For the most part, this research has focused narrowly on specific offenses, especially capital crimes (Gillespie et al., 2004; Richards et al., 2016; Stauffer et al., 2006; Williams & Holcomb, 2004; Williams et al., 2007; Zaykowski et al., 2014) or sex-related crimes (Hilinski-Rosick et al., 2014; Kingsnorth et al., 1999; Spohn & Spears, 1996).

Much of the literature on victim characteristics focuses on capital sentencing decisions. Several studies find that homicides with White female victims are significantly more likely to

result in a death sentence, compared to homicides of other victim gender-race combinations (Gillespie et al., 2014; Richards et al., 2016; Williams & Holcomb, 2004; Williams et al., 2007; Zaykowski et al., 2014). Most of these studies conclude that this “White female effect” is due to the sexual nature of female victimization, as female victim cases disproportionately benefit from aggravating legal variables, including victim rape (Gillespie et al., 2014; Richards et al., 2016; Williams et al., 2007). However, other studies suggest White female victims are perceived as more valuable to society, which leads to harsher punishment for the defendants who kill them (Williams & Holcomb, 2004; Zaykowski et al., 2014). Although the “White female effect” is largely supported by research, other work finds no effect of victim race or gender interactions (Stauffer et al., 2006). Further, a few studies have considered victim conduct and victim-defendant relationship. According to these studies, a death sentence is more likely when victims engaged in legitimate, prosocial behavior (Gillespie et al., 2014; Zaykowski et al., 2014) and when the victim and offender were acquaintances (Gillespie et al., 2014).

Additional research has studied the impact of victim characteristics on non-capital violent crimes. These studies provide mixed results for the impact of victim gender and race/ethnicity. In terms of gender, most studies find cases with female victims receive harsher punishment (Curry et al., 2004; Curry, 2010). However, some research finds no gender effect (Hilinski-Rosick et al., 2014). For race/ethnicity, some studies suggest cases with minority victims receive harsher punishment (Spohn & Spears, 1996; Curry, 2010), while others find greater leniency (Curry, 2010). Assessing age, some work finds victimization of younger individuals results in harsher punishment (Hilinski-Rosick et al., 2014). Additionally, some research has addressed victim conduct and victim-defendant relationship, finding that victims’ antisocial behavior and prior relationship results in greater leniency (Kingsnorth et al., 1999).

Overall, studies of victim race/ethnicity and sentencing outcomes present inconsistent results. Most research that examines victim race finds cases with minority victims are sentenced more leniently (Curry, 2010; Williams & Holcomb, 2004; Williams et al., 2007; Zaykowski et al., 2014). However, some studies find cases with minority victims are sentenced more harshly (Curry, 2010; Spohn & Spears, 1996), or they find no effect of race (Stauffer et al., 2006). In contrast, the existence of a “female victim effect” has been well-established (Curry et al., 2004; Curry, 2010; Gillespie et al., 2014; Richards et al., 2016; Williams & Holcomb, 2004; Williams et al., 2007; Zaykowski et al., 2014). Despite support for the “female victim effect,” several studies suggest this is largely due to the gendered nature of sexual victimization (Gillespie et al., 2014; Richards et al., 2016; Williams et al., 2007).

Ultimately, research on victim characteristics is limited by its focus on extralegal factors, like race and gender. The “female victim effect” is a key example. Studies of victim gender that do not consider related legal factors, like aggravating circumstances, may overemphasize the role of gender. This is because legal characteristics can differ for crimes that involve different types of victims and/or different offender-victim combinations (Sudnow, 1965). Thus, victim-related legal factors may be equally important to consider when investigating the impact of victim characteristics on sentencing outcomes. The current study addresses this shortcoming by examining legally relevant victim characteristics, like victim vulnerability.

Another limitation of research on victim characteristics is its narrow focus on homicide cases and other violent crimes. This may result from the perception that violent victimization is more serious than property victimization and, thus, is more deserving of empirical attention. However, considering substantial research has found that victim characteristics influence sentencing for violent crime (Gillespie et al., 2004; Hilinski-Rosick et al., 2014; Kingsnorth et

al., 1999; Richards et al., 2016; Spohn & Spears, 1996; Stauffer et al., 2006; Williams & Holcomb, 2004; Williams et al., 2007; Zaykowski et al., 2014), it is reasonable to ask whether victim characteristics impact sentencing decisions for other offenses, like property crimes. The present research addresses this limitation by examining whether victim characteristics condition the impact of victim participation on sentencing departure for both violent and property crimes.

Additionally, research on victim characteristics is limited by its narrow focus on only incarceration and sentence length decisions to capture sentencing severity. The assumption is that variation in these decisions reflects judicial consideration of victim characteristics. However, in many jurisdictions, judicial decision-making is constrained by sentencing guidelines, which supply recommended sentence ranges for incarceration and sentence length. To effectively assess judicial deliberation of victim characteristics, then, it is useful to examine cases where judges depart from formal guidelines recommendations. Therefore, guidelines departures are an especially valuable outcome for investigating the impact of victim characteristics on sentencing. The current study addresses this limitation by using guidelines departure as its outcome variable. Considerable prior research has examined guidelines departure as a measure of sentencing severity, but little of this work considers how victim factors may shape punishment.

Research on Sentencing Guidelines Departures

The current study focuses on the potential for victim participation and characteristics to influence guidelines departure decisions. Departures offer an interesting outcome for this study, as sentencing guidelines reform arose around the same time as the modern victim's rights movement. In some ways, these reforms stand in opposition to each other. While sentencing guidelines are meant to achieve uniformity and neutrality in sentencing, victim's rights reforms advocate for special consideration of victim's voice. Ultimately, the current study aims to

investigate whether victim participation shapes sentencing by examining how victim factors impact the likelihood of departure.

Historical Rise of Sentencing Guidelines

The late 1970s can be characterized by a movement toward sentencing guidelines systems, which emphasize the goals of rational and consistent sentencing to ensure uniformity and proportionality (Bureau of Justice Assistance (BJA), n.d.; Frase & Mitchell; 2018; Mitchell, 2017). This movement developed in response to concerns about indeterminate sentencing (BJA, n.d.; Frase & Mitchell, 2018). Prior to the development of sentencing guidelines, all states used indeterminate sentencing systems (Frase & Mitchell, 2018). Under indeterminate sentencing, high maximum sentences were established, and judges had near complete discretion to impose sentences up to the statutory maximum. In consequence, sentences for similarly situated defendants varied greatly (Frase & Mitchell, 2018). Thus, criticism of unwarranted sentencing disparity, coupled with rising crime rates, led to calls for structured sentencing (BJA, n.d.).

Sentencing guidelines systems were adopted by many states and the federal government to structure sentencing (Frase & Mitchell, 2018; National Center for State Courts, 2008). Though each system defines specific goals, sentencing guidelines systems typically aim to develop rational and consistent sentencing standards, promote proportionality and uniformity in sentencing, and ensure public safety (Frase & Mitchell, 2018). The earliest state guidelines systems were presumptive, meaning sentences recommended by guidelines are presumed to be appropriate, and judges are expected to follow them unless they document reasons for departure (Seghetti, 2009). Other state guidelines systems are voluntary or advisory, meaning judges have to reference the sentences recommended by the guidelines but are not required to follow them (Seghetti, 2009).

Under most guidelines systems, offense seriousness and criminal history are the primary determinants of recommended sentences (BJA, n.d.). Generally, measures of offense severity and criminal history are applied to a sentencing grid or assigned points on a worksheet, with the intersection of these scores determining the recommended sentencing range (Frase & Mitchell, 2018). Some states use a single grid to determine all sentencing decisions, whereas other states use multiple grids to differentiate sentencing ranges according to offense type (Mitchell, 2017). Depending on the state, guidelines systems may outline various choices for disposition, including incarceration, intermediate sanctions, probation, or other alternative sentences (Mitchell, 2017). Ultimately, guidelines systems intend to provide appropriate sentence recommendations for typical cases, which share similar scores of offense seriousness and criminal history (Frase & Mitchell, 2018). When cases are atypical, most sentencing guidelines systems allow judges to depart from recommended sentences (Frase & Mitchell, 2018). Through sentencing departures, judges may impose harsher or more lenient sentences than suggested by guidelines (Frase & Mitchell, 2018). Departures, however, are often regulated; for example, most states require reasons for departure be recorded in writing or subject departure decisions to appellate review (BJA, n.d.; Mitchell, 2017).

Over time, “sentencing guidelines have woven themselves into the fabric of American criminal justice” (Kramer & Ulmer, 2002, p. 897). Thus, it is no surprise research has investigated whether guidelines systems achieve uniformity and neutrality in sentencing (Moore & Miethe, 1986; Kramer & Steffensmeier, 1993; Kramer & Ulmer, 1996) To assess this, studies examine various facets of guidelines adherence. Sentencing departures are of particular interest, as researchers have long argued sentencing departures offer a “window of discretion” into judges’ decision-making (Cirillo, 1986). Though judges employ discretion when punishing

within guidelines, the main determinant of the sentence is the guidelines recommendation.

Therefore, departures are a useful way to capture independent discretion, as they are awarded in circumstances judges believe go outside codified recommendations. A large body of research, discussed below, has examined what influences sentencing departure.

Guidelines Departure Studies

Research on sentencing departures typically examines both legal factors, such as offense seriousness and criminal history, and extralegal factors, like defendant race/ethnicity, gender, and age (Engen et al., 2003; Griswold, 1987; Johnson, 2003; Johnson & Kurlychek, 2012; Kramer & Steffensmeier, 1993; Kramer & Ulmer, 1996, 2002; Lehmann et al., 2020; Moore & Miethe, 1986; Warren et al., 2020). Most studies examine whether individual disparity continues to persist under guidelines systems, with some work focusing on how unwarranted disparity varies by court context (Cole et al., 2021; Johnson, 2005; Kramer & Ulmer, 1996, 2002; Warren et al., 2020).

In one of the earliest departure studies, Moore and Miethe (1986) examined dispositional departures under Minnesota's felony guidelines system. They found legal and extralegal factors impacted the likelihood of receiving an aggravated or mitigated dispositional departure. Thus, they argued departure practices "continue to be at odds with the ideals of sentencing uniformity and neutrality" (Moore & Miethe, 1986, p. 273). In line with this, Kramer and Steffensmeier (1993) explored departures under Pennsylvania's guidelines system and found offense seriousness was the strongest predictor of departure, though they also found a small race effect. Still, they concluded guidelines systems appeared to be a policy success. Later, Kramer and Ulmer (1996) similarly found that offense seriousness and prior criminal history were the main predictors of departure under Pennsylvania's guidelines, though significant extralegal differences

were also found by race, gender, and mode of conviction. Thus, unlike Kramer and Steffensmeier (1993), they concluded departures “can differentially advantage some defendants over others on extralegal grounds” (Kramer & Ulmer, 1996, p. 101).

Later studies of Pennsylvania’s guidelines have refined these results. For example, Kramer and Ulmer (2002) examined the impact of extralegal factors and local court context on downward departure for serious violent offenders in Pennsylvania. They found the likelihood of downward departure was greater for defendants who were convicted of aggravated assault, pled guilty, were young Black women, and were sentenced in large urban courts. Conversely, they found defendants who were convicted by trial, were young Hispanic males, and were sentenced in small rural courts were less likely to receive downward departures. Overall, they concluded that downward departures represent local corrections to sentencing recommendations perceived as inappropriate by court actors. In related work, Cole et al. (2021) focused specifically on the use of departures for sexual offenses under Pennsylvania’s guidelines system. They found downward departures were more likely in large courts, whereas upward departures were less likely in small courts. Additionally, they found other contextual factors, like political competition, religious composition, and available jail space, also impacted judicial use of departure sentences. Overall, they concluded that departures not only indicate disagreement with sentencing guidelines but also with broader policy matters related to the treatment of sex offenders (Cole et al., 2021, p. 1698).

Other work by Johnson (2003) found that the likelihood of departure also depended on whether or not defendants pled guilty or went to trial. This research suggests the amount of departure discretion available to judges depends in part on whether or not a defendant enters into a plea agreement. Johnson (2005) also showed that departures were an important source of

contextual variation in punishment. This study demonstrated that defendants sentenced in large courts received substantial leniency with regard to both downward and upward departure and concluded that the impact of individual factors were often conditioned by contextual measures like court size, caseload pressure, and trial rates. Some support was also found for racial threat theory, as the presence of larger Hispanic populations significantly reduced the likelihood of downward departure and increased the likelihood of upward departure. Thus, the author argued there is an “intricate web of influences surrounding the judicial decision to deviate from presumptive guidelines” (Johnson, 2005, p. 790).

Studies in other states have largely substantiated early findings regarding predictors of guidelines departures. For example, Griswold (1987) investigated departures under Florida’s guidelines system and found extralegal factors influenced the use of departure, though they also concluded legal factors were the main predictors. More recent work by Warren et al. (2020) explored the effects of racial and ethnic threat on departures for female defendants in Florida. They found Black and Latino female defendants were significantly more likely to receive an upward departure in counties with relatively larger Black populations, though they did not find similar effects for Latino populations, leading them to conclude that “racial tensions and discrimination are far more entrenched for Blacks than for Latinos” (Warren et al., 2020, p. 82). Similarly, in Washington State, Engen et al. (2003) found male, minority, and younger defendants were less likely to receive alternative sentences below the standard guidelines range. These authors concluded that discretionary departures and structured sentencing alternatives “allow judges to reject the formal rationality of sentencing guidelines in certain cases” and that “these alternatives actually require consideration of the kinds of subjective criteria that are likely to produce sentencing disparities” (Engen et al., 2003, p. 125).

Other studies have investigated the use of guidelines departures for juvenile defendants. Johnson and Kurlychek (2012), for example, used propensity score matching and tobit regression to examine the impact of juvenile status on departures under Maryland and Pennsylvania guidelines systems. In both states, they found juvenile defendants were more likely to receive upward departures, and in Maryland, juvenile defendants were also less likely to receive downward departures. These authors concluded their findings provide “additional evidence that juvenile offenders experience more punitive outcomes with regard to departures from sentencing guidelines” (Johnson & Kurlychek, 2012, p. 557). Lehmann et al. (2020) also investigated the use of upward departures for juveniles under the Florida guidelines. In line with causal attributions and focal concerns theory, they found Black youth and male youth were more likely to receive upward departures, leading them to conclude that “additional efforts are needed to mitigate the harmful influence of this potential contributor to cumulative disadvantage” (Lehmann et al., 2020, p. 532).

Overall, research on sentencing departures supports the idea that both legal and extralegal factors impact the likelihood of departure. Several studies suggest legal factors have the greatest effects (Griswold, 1987; Kramer & Steffensmeier, 1993; Kramer & Ulmer, 1996); however, most research also acknowledges a significant impact of extralegal factors (Engen et al., 2003; Griswold, 1987; Johnson, 2003; Kramer & Steffensmeier, 1993; Kramer & Ulmer, 1996, 2002; Lehmann et al., 2020; Moore & Miethe, 1986). In terms of defendant race and ethnicity, there are some inconsistencies, with some studies claiming race and ethnicity play a significant role (Engen et al., 2003; Kramer & Ulmer, 1996, 2002; Lehmann et al., 2020; Moore & Miethe, 1986), whereas others report a negligible impact (Kramer & Steffensmeier, 1993). Additionally, departure studies suggest the impact of legal and extralegal factors are often influenced by local

court contexts (Cole et al., 2021; Johnson, 2005; Kramer & Ulmer, 2002; Warren et al., 2020).

Ultimately, the body of evidence suggests departures are often used to circumvent formal recommendations when there is a mismatch between guidelines and court actors' decision-making (Cole et al., 2021; Engen et al., 2003; Kramer & Ulmer, 2002; Moore & Miethe, 1986).

Departure research, however, is limited, in that it rarely assesses victim factors. Studies of sentencing departures are primarily concerned with legal and extralegal variables related to the defendant (Engen et al., 2003; Griswold, 1987; Johnson, 2003; Kramer & Steffensmeier, 1993; Kramer & Ulmer, 1996, 2002; Lehmann et al., 2020; Moore & Miethe, 1986). Research on other sentencing outcomes, such as incarceration or sentence length, has established that victim factors influence sentencing decisions (Curry, 2010; Gillespie et al., 2014; Williams & Holcomb, 2004; Richards et al., 2016; Spohn & Spears, 1996; Williams et al., 2007; Zaykowski et al., 2014). Thus, there is reason to assume victim-related variables could also influence sentencing departures. The current study addresses this issue by examining the impact of victim participation and victim characteristics using two measures of departures.

Summary

Prior work on victim participation, victim characteristics, and sentencing departures has significantly advanced our understanding of sentencing processes, but this work remains limited in key ways. Research on victim participation has focused narrowly on the impact of VISs without incorporating other important forms of victim participation, like presence at sentencing. Moreover, limited work on victim participation considers the role of victim characteristics, despite substantial research suggesting they influence sentencing. Both studies of victim participation and victim characteristics have also been constrained by their narrow focus on violent crime, even though victims of property crime may also suffer from their victimization.

Additionally, prior research has focused narrowly on incarceration and sentence length as measures of sentencing severity, but because many states operate under sentencing guidelines systems that provide specific sentence ranges, it may be more useful to examine situations where judges consider victim information when departing from standard sentencing recommendations. The present research aims to address the shortcomings of prior work by examining the impact of multiple forms of victim participation, by considering how these influences might be moderated by both victim characteristics and type of crime, and by examining sentencing departures as a key decision in which judges exercise their individual discretion in deciding punishment.

CHAPTER 3: THEORY AND HYPOTHESES

Generally, court theories of decision-making can be divided into structural organizational and social psychological approaches. Structural organizational theories emphasize the role of systemic factors in decision-making. In organizations, like courts, organizational structure and the agency of organizational actors interact (Giddens, 1984). Choices made by court actors are, in part, determined by court norms and the context in which the court is situated. In consequence, court norms, rules, and context gain legitimacy as court actors engage with them. This results in a dual relationship, whereby court structure shapes court actors' behavior as court structures are also reproduced by court actors' choices over time (Giddens, 1991).

Alternatively, social psychological approaches emphasize the influence of beliefs, attitudes, cognitive processes, emotions, and cultural forces on court actors' rational decision-making (Langevoort, 1998). Such influences may be actively or unconsciously processed (Olaborede & Meintjes-van der Walt, 2020). Ultimately, this perspective suggests fully rational decisions require complete information, which decision-makers rarely possess (Albonetti, 1991). Thus, court actors use heuristics to make complex legal decisions under conditions of uncertainty (Albonetti, 1991; Bradley, 2018; Saks & Kidd, 1980). Decisions, then, are partially made on the "basis of past experience, stereotypes, prejudices, and highly particularized views of present stimuli" (Clegg & Dunkerley, 1980, p. 265).

The theoretical framework of the current study combines structural organizational and social psychological approaches to court actor decision-making by grounding them in symbolic interactionism and the focal concerns perspective. The rest of the chapter develops these perspectives, along with prior research, to inform several hypotheses regarding the impact of victim participation on sentencing departures.

Symbolic Interactionism

Symbolic interactionism argues that individuals act and make decisions based on their understanding of a situation, and their understanding is generated from the interaction itself, rather than objective truth. Therefore, meaning-making occurs through an individual's internal interpretation of their own actions in relation to others' behavior (Weber, 1978). This proposed link between interaction and interpretation implies that meaning-making is dynamic, in that it may change depending on what occurs in each situation (Blumer, 1969). Further, interactionist theory "allows actors to harbor all kinds of cognitive biases and heuristic modes of understanding the social world, making room for actors to choose their lines of action based on dubious or even false beliefs" (Azarian, 2021, p. 533). Thus, the process of dynamic understanding integrates cognitive processes with heuristics, which are influenced by social psychological factors like beliefs and emotions.

In terms of cognitive processes, social interaction builds on an implicit agreement about how to interpret a given situation. This agreement regulates social action, in that certain behaviors are viewed as acceptable (Rawls, 1987). Thus, symbolic interactionism acknowledges that situations do not occur in a vacuum. Individuals enter interactions with expectations that frame their understanding. Expectational frames, then, orient individuals' social action. Additionally, interactionist theory argues expectations also relate to institutional frames. Court is an example of this, as "court procedure builds on elaborate rules, and the participating legal professionals know what is expected of them and how the ritual will evolve" (Bergman Blix, 2021, p. 7).

Further, cognitive processing involves the use of heuristics. Heuristics often rely on beliefs, attitudes, and emotions to inform decision-making in circumstances of incomplete

information (Langevoort, 1998). The constant need for individuals to adapt and change their interpretations of a situation is partially dependent on how these factors emerge in, are reciprocated within, and shaped by interactions (Hochschild, 1990). Stereotyping, for instance, is a cognitive process that involves associating beliefs with a particular category of people. Despite its frequent inaccuracy, stereotyping serves as a heuristic by allowing for quick processing of information (Bradley, 2018). Regardless of whether a stereotype is accurate, it can influence an individual's understanding of an interaction and, thus, orient their behavior.

Ultimately, symbolic interactionism incorporates both structural organizational and social psychological perspectives. Like structural organizational theory, symbolic interactionism explains that court actors behave and make decisions based on expectations derived from the organizational framing of court processes. In court, an implicit understanding of how to interpret the unfolding situation informs decision-making. Thus, court structure enables court actors' social action, while court actors' actions in response to their interpretations of court interactions reproduces the court structure. Like social psychological perspectives, symbolic interactionism suggests that court actors' perceptions during both formal and informal interactions affect court actors' interpretations of information. Beliefs or emotion may orient court actors' attributions of responsibility and blame, which can subsequently affect punishment severity (Feigenson, 2016). For example, victims' exchange of information with court actors, by being emotional while present at sentencing or by communicating harm through VISs, may influence court actors' decision-making (Weisman, 2016; Wessel et al., 2006). Further, victims' presence at trial reveals their demographic characteristics, which may influence how court actors interpret a case.

Overall, symbolic interactionist theory asserts that individuals make decisions based on their relative understanding of a situation, and that this understanding itself is shaped through

repeated social interactions rather than objective truths. Thus, understanding is influenced by cognitive biases and heuristics. This relates directly to the focal concerns perspective, which specifies how judges and other court actors make sentencing decisions under conditions of uncertainty. As detailed below, the focal concerns framework aids in court decision-making by outlining several factors that contribute to criminal justice outcomes (Ishoy, 2015).

The Focal Concerns Perspective

The focal concerns perspective argues that judges and other court actors make sentencing decisions based on three focal concerns that include blameworthiness, community protection, and practical implications (Steffensmeier et al., 1993; Steffensmeier et al., 1998). The first focal concern, blameworthiness, refers to assessment of offender culpability and degree of victim injury. This focal concern is reflected in law, in that punishment increases as culpability and degree of harm increase. The proposition of blameworthiness as a focal concern is also upheld by sentencing research, which routinely finds that offense severity is among the primary determinants of sentencing. Thus, blameworthiness is associated with the just deserts philosophy, which requires punishment to fit the crime. Additionally, criminal history, prior victimization, and the offender's role in the crime may aggravate or mitigate perceptions of blameworthiness (Steffensmeier et al., 1998). Victim factors, such as characteristics and conduct, also influence assessments of blameworthiness (Myers, 1979; Ulmer, 2012). For example, the "female victim effect" has been linked to blameworthiness, as offenders "who murder women may be perceived as more dangerous and morally blameworthy than defendants who kill men" (Williams et al., 2007, p. 870). Furthermore, victim conduct may influence assessments of blameworthiness, as victims' actions may have contributed to victimization in ways that impact perceptions of "deserving" and "undeserving" victims (Williams & Holcomb, 2004).

The second focal concern, protection of the community, focuses on incapacitation of the offender and the need to deter crime. This focal concern, in particular, is congruent with Albonetti's (1991) concept of bounded rationality. Under bounded rationality, court actors are forced to make consequential decisions with insufficient information, which results in uncertainty. To reduce their uncertainty, Albonetti (1991) suggested court actors rely on attributions about risk of recidivism or rehabilitation potential. The focal concerns perspective aligns with Albonetti's perspective, arguing that judges are tasked with protecting the community under conditions of high uncertainty about offenders' prospective behavior (Steffensmeier et al., 1998). Thus, judges must predict future dangerousness using attributions based on the nature of the crime, offender criminal history, facts of the offense like use of a weapon, and offender characteristics such as education, employment, or substance dependency (Steffensmeier et al., 1998). Further, victim characteristics factor into protection of the community. Sentencing decisions reflect "the need to protect especially valued members of society" (Curry, 2010, p. 454), and vulnerable individuals with risk factors "that may place them at greater risk of future harm" (Storey & Strand, 2017, p 126). Therefore, offenders who victimize "valuable" or "vulnerable" individuals may face greater odds of incapacitation.

The third focal concern, practical constraints, covers both organizational and individual concerns. Organizational concerns may include the facilitation of caseload flow, sensitivity to overcrowding and correctional resources, and maintenance of working relationships among court actors. In terms of individual concerns, judges may assess the offender's "ability to do time" (Steffensmeier et al., 1998). Assessment of this ability may include judgments about special needs, health problems, and disruption to the family for children and other family members (Steffensmeier et al., 1998). This focal concern also relates to victims, as offenders who

victimize certain individuals “may be viewed as creating additional hardships for families, the community, and the state” (Williams et al., 2007, p. 870). For instance, victimizing a vulnerable individual, who may have been previously physically handicapped or elderly, might be more consequential for healthcare needs and family support.

Importantly, the focal concerns perspective acknowledges that assessments of focal concerns are complex, especially since judges do not operate with complete information on cases or defendants. Due to these factors, it is argued that judges develop a “perceptual shorthand” to make sentencing decisions in the context of high uncertainty (Steffensmeier et al., 1998, p. 767). The focal concerns perspective asserts that judges are not exempt from societal stereotypes. Racial, age, and gender attributions interplay with focal concerns to influence judicial decision-making, as membership in certain social groups is associated with being dangerous or crime prone (Steffensmeier et al., 1998). Thus, assessments of focal concerns are partially dependent on status-linked attributions and stereotypes (Kramer & Ulmer, 2009). Additionally, the focal concerns perspective argues these status-linked attributions may become informal norms that serve to reduce uncertainty in sentencing (Steffensmeier et al., 1998). However, the perspective maintains legally relevant factors primarily shape assessments of focal concerns.

Ultimately, the focal concerns perspective includes both structural organizational and social psychological approaches. Regarding the structural organizational perspective, judges’ sentencing decisions are influenced by court norms and rules. This is reflected by the fact that focal concerns are associated with legally relevant factors and organizational constraints. Additionally, the dual relationship described in structural organizational approaches is noted by the focal concerns perspective. Structural norms influence judges’ decision-making, while judges reproduce informal court norms by routinely considering status-linked attributions in their

decision-making. The social psychological perspective is also reflected in focal concerns theory, as it assumes that judges face uncertainty when processing information related to focal concerns. Thus, this perspective suggests focal concerns are used as a decision-making tool when making sentencing decisions without complete information (Ishoy, 2015). Further, focal concerns theory acknowledges that social psychological factors, like beliefs, values, emotions, and norms interplay with focal concerns to influence decision-making.

Hypotheses

Symbolic interactionism and focal concerns theory inform the current study's hypotheses. Symbolic interactionism suggests interactions orient behavior and decision-making. Victim participation, including presence at sentencing, preparation of a written VIS, and request for an oral VIS, represent key interactions between victims and court actors. Victim participation, then, has the potential to alter court actors' interpretations of a case. Although court actors approach cases with expectational frames, which leads to routine processing of cases, social psychological influences from victim participation can shape court actors' understanding of the situation. Victims, during their interactions with court actors, present mitigating or aggravating information. This communication can be implicit or explicit. While victims' emotional states during sentencing processes indirectly convey harm from their victimization, victims' statements directly express harm (Weisman, 2016; Wessel et al., 2006). Both have the potential to impact court actors' decision-making, including their assessments of focal concerns (Feigenson, 2016).

Although the perspective traditionally focuses on defendant and victim characteristics (Steffensmeier et al., 1993; Steffensmeier et al., 1998; Williams et al., 2007), focal concerns theory can be applied to victim participation. Court actors' assessment of focal concerns are made with a high level of uncertainty (Steffensmeier et al., 1998). Thus, victim participation can

influence assessments of focal concerns by providing first-hand information to court actors, which aids in reducing their uncertainty. The first focal concern, blameworthiness, evaluates the degree of victim injury. Written and oral VISs inform court actors' assessments of blameworthiness, as they are used to communicate harm. Further, presence at sentencing can impact assessments of blameworthiness, as victims' emotional states convey an impact of crime (Weisman, 2016; Wessel et al., 2006). The second focal concern, protection of the community, also considers information relayed in written and oral VISs, such as the nature of the crime or use of a weapon. Additionally, the third focal concern, practical constraints, assesses unique hardships resulting from victimization, which is often conveyed in written and oral VISs. Thus, victim participation provides key information for court actors' evaluations of focal concerns.

Ultimately, symbolic interactionism suggests victim participation alters the dynamic process of meaning-making, in that interaction between victims and court actors presents information atypical to the expectational frames court actors use to orient routine case processing. In consequence, social psychological influences from victim participation can lead court actors to interpret cases as irregular, which may result in guidelines departures. Further, victim participation can influence court actors' assessments of focal concerns by providing additional information, which reduces uncertainty in decision-making. Generally, information presented through victim participation is assumed to be retributive. However, victims may also seek leniency through participation (Dancig-Rosenberg & Pugach, 2012). Therefore, depending on the information conveyed through victim participation, assessments of focal concerns can be oriented toward leniency or severity in sentencing. In line with this, competing hypotheses about whether victim participation results in harsher or more lenient punishment are tested.

Hypothesis 1: Sentences will be more severe when victims participate in sentencing processes.

Hypothesis 2: Sentences will be less severe when victims participate in sentencing processes.

Further, because prior research has focused almost exclusively on violent crime, very little is known about how victim participation might differentially shape punishment outcomes for violent and property crimes. Notably, property offenses are far more numerous than violent crimes and also frequently involve known victims. Situations where victims participate in sentencing hearings for property crime may be particularly severe or heinous, which suggests victim participation in these cases may be just as likely to impact sentencing. However, because violent crimes tend to generate the most public concern (Kramer & Ulmer, 2002), it could also be the case that victim factors matter most for person-involved crime. This is an empirical question that remains untested, but because there are theoretical reasons to believe victim participation will matter for both person and property offenses, the following prediction is tested.

Hypothesis 3: Victim participation will be related to sentencing outcomes for both person and property offenses.

If victim participation impacts the use of departure, this relationship is likely moderated by victim characteristics. According to symbolic interactionism, actors' understandings of situations are partially influenced by cognitive biases and heuristics. Therefore, actors make decisions based on their subjective interpretation of a situation. Applied to legal settings, "risk and blame are socially constructed concepts readily decoupled from any form of objective rationality" (Langevoort, 1998, p. 1525). As a result, court actors' assessments of risk, blame, and other legal factors are influenced by social biases. Victim characteristics, like vulnerability,

are often used to construct judgments of risk and blame (Curry, 2010; Williams et al., 2007). Generally, vulnerability applies to victims “unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct” (United States Sentencing Commission, 2021, p. 346). Thus, it is likely that certain victims’ participation will have greater influence on judicial use of departures.

Further, focal concerns theory outlines a heuristics tool for court actors to construct judgments of risk and blame. Assessments of focal concerns are influenced by victim characteristics (Curry, 2010; Williams et al., 2007). Specifically, protection of the community considers the need to protect certain members of society. Therefore, defendants may be perceived as more blameworthy or higher risk if they victimize an individual with special vulnerability. In these cases, leniency in sentencing may be especially unlikely, whereas severity is more common (Johnson et al., 2008). The following hypothesis predicts sentencing decisions will depend on specific characteristics of the victims involved:

Hypothesis 4: Sentences will be more severe when vulnerable victims participate in sentencing processes.

CHAPTER 4: DATA AND METHODOLOGY

To test the aforementioned hypotheses, a series of regression-based statistical models are estimated using data from the Maryland State Commission on Criminal Sentencing Policy (MSCCSP). This chapter first describes Maryland's sentencing guidelines. It then details the data and measures used in the present study, before describing the analytic techniques.

Maryland Sentencing Guidelines

Formally adopted on July 1, 1983, Maryland's sentencing guidelines system was implemented to reduce unwarranted disparity while preserving judicial discretion, set forth explicit sentencing policy subject to review and change, supply information for new or rotating judges, and increase visibility and public understanding of sentencing processes (MSCCSP, 2023). Maryland's system is voluntary, thus adherence to guidelines is not mandatory. However, judges are required by Criminal Procedure Article, §6-216, Annotated Code of Maryland to consider guidelines recommendations when deciding a sentence (Department of Legislative Services, 2014). Further, when judges do not adhere to guidelines, the Code of Maryland Regulations (COMAR) mandates judges to document their reasoning for departure (Department of Legislative Services, 2014). Maryland's system is also descriptive, meaning guidelines are based on analysis of historical sentencing practices, survey responses from trial judges, and input from other criminal justice actors (MSCCSP, 2023).

Maryland's sentencing guidelines primarily cover felony cases prosecuted in circuit courts. However, guidelines may apply to certain misdemeanors if they are tried in circuit courts

and are punishable by at least three years of confinement or a \$2,500 fine.¹ For cases covered by guidelines, sentencing recommendations are determined by an offense and offender score. For person offenses, the offense score reflects the offense seriousness, victim's mental and physical injury, presence of a weapon, and special vulnerability of the victim (Department of Legislative Services, 2014). For property and drug offenses, the offense score is solely determined by the offense seriousness category. For all offenses, the offender score reflects the offender's juvenile history, adult criminal record, prior adult parole or probation violations, and involvement with the criminal justice system during the offense (Department of Legislative Services, 2014). The intersection of both scores corresponds to a recommendation for incarceration and sentence length (see Figures A1 and A2 for the Maryland sentencing guidelines matrices).

Data

The current study uses the MSCCSP database, which contains data extracted from sentencing guidelines worksheets submitted to the MSCCSP. The database offers several advantages. Most importantly, information about victim participation is collected, which is relatively uncommon for sentencing data. However, the MSCCSP collects such information to increase public understanding of victim's rights in sentencing processes (MSCCSP, 2012). Specifically, victim presence at sentencing is measured, offering the ability to assess this understudied form of participation. Furthermore, key legal and extralegal variables related to sentencing outcomes are included.

¹ Several matters handled in circuit courts are excluded from guidelines coverage. These include prayers for a jury trial from district court, unless a pre-sentence investigation (PSI) is ordered; appeals from district court, unless a PSI is ordered; crimes that are not punishable by incarceration; violations of municipal ordinances and public local laws; sentencing hearings for probation violations; criminal contempt and criminal nonsupport; cases adjudicated in juvenile court; cases in which the defendant was found not criminally responsible (NCR); reconsiderations for nonviolent offenses and for violent offenses if there is not an adjustment to the active sentence; and three-judge panel reviews, if there is not an adjustment to the active sentence (MSCCSP, 2023).

Some relevant information, however, is not included. Victim demographics, like race, sex, and age, and defendant factors, like employment, education, and juvenile record, are not provided. Moreover, data on key victim information is incomplete, as “victim-related items are often left blank on the worksheet” (MSCCSP, 2017, p.66). Additionally, the restriction to cases disposed of in circuit court is a potential shortcoming. Although this is beneficial for the study of departures, since more serious cases are represented, property crimes may be underrepresented as they tend to be less serious.

Sentencing events in the calendar years 2010 to 2019 were selected for analysis, resulting in an initial sample of 146,345 events. Following several restrictions, separate samples were generated for different outcome variables. First, the sample was restricted to single-count cases, resulting in 68,792 events. Single-count cases allow for the most direct comparison of outcomes by offense type, since multiple-count offenses can consist of several offense types (MSCCSP, 2014). Next, drug offenses were excluded, as they are typically victimless (MSCCSP, 2023; Reiter, 2007). This further reduced the sample to 42,797 events. Although less common, certain person and property offenses are also victimless. For example, weapon offenses, such as carrying or transporting a firearm, may not involve a corresponding offense against a person (Najaka, 2023). Thus, the sample was limited to offenses involving victims, resulting in 33,870 events. To remove victimless offenses, a new dummy variable for victim involvement was generated using all victim’s rights variables in the database. Lastly, the sample was limited by disposition for each outcome. For models examining categorical departure outcomes, all MSCCSP binding plea agreements and probation revocations were removed from the sample, as neither are eligible for guidelines departures. This reduced the sample to 21,332 events, including 16,287 person and 5,045 property offenses. For models investigating overall deviations from the presumptive

sentence, only probation revocations were eliminated to retain a focus on all available sentencing decisions. This resulted in a sample of 33,867 sentencing events, including 26,830 person and 7,037 property offenses.

Beyond the initial restrictions, the samples were limited to suit various regression-based models. For the departure type models, four samples were generated according to offense type and departure eligibility. Determining eligibility is necessary, as upward departures are not possible in cases where the upper guidelines bound is life, and downward departures are not possible in cases where the lower guidelines bound is no incarceration. Thus, cases with upper bounds of life were excluded from upward departure analyses, and cases with lower bounds of no incarceration were excluded from downward departure analyses. Additionally, it was necessary to remove a small number of cases for missingness on other requisite variables.² As a result, the final departures samples were limited to 15,373 sentencing events for upward-eligible person offenses, 9,727 events for downward-eligible person offenses, 4,909 events for upward-eligible property offenses, and 3,205 events for downward-eligible property offenses. For samples involving deviations from the recommended presumptive guidelines sentence, two samples were generated, one for person and one for property offenses. Again, a small number of

² Small numbers of cases with missing values for central variables were removed. For the upward-eligible person sample, cases missing data on guidelines compliance (n=11), vulnerability (n=245), injury (n=160), weapon (n=201), prior adult record (n=145), relationship to CJS (n=189), adult violations (n=224), defendant race (n=3), defendant sex (n=190), and defendant age (n=30) were dropped. For the downward-eligible person sample, cases missing data on guidelines compliance (n=20), vulnerability (n=176), injury (n=116), weapon (n=140), prior adult record (n=96), relationship to CJS (n=122), adult violations (n=143), midpoint (n=31), defendant race (n=2), defendant sex (n=117), and defendant age (n=11) were dropped. For the upward-eligible property sample, cases missing data on guidelines compliance (n=2), prior adult record (n=48), relationship to CJS (n=69), adult violations (n=79), defendant race (n=1), defendant sex (n=36), and defendant age (n=5) were dropped. For the downward-eligible property sample, cases missing data on guidelines compliance (n=2), prior adult record (n=21), relationship to CJS (n=39), adult violations (n=43), midpoint (n=4), defendant sex (n=29), and defendant age (n=3) were dropped.

cases were removed for missingness on necessary variables,³ resulting in final samples of 24,112 sentencing events for person offenses and 6,709 events for property cases.

Variables

Dependent Variables

The current study examines sentencing departures under Maryland's sentencing guidelines system in two ways. Like prior work (Engen et al., 2003; Griswold, 1987; Johnson, 2003; Kramer & Steffensmeier, 1993), departures are measured categorically, assessing whether sentencing events result in upward departures, downward departures, or standard sentences. Additionally, departures are measured continuously since important sentencing variation can occur within guidelines cells. Thus, deviations from presumptive sentences are examined as the percent change above or below the recommended guidelines midpoint.⁴ This allows for cases disposed of by MSCCSP binding plea agreement to be included in the analysis, which is significant because these sentences are always considered guidelines compliant (MSCCSP, 2023). Many sentencing events are disposed of by MSCCSP plea agreement, and the use of a continuous departure measure allows these cases to be retained in the analyses.

Independent Variables

The main independent variables of interest include victim presence at sentencing, preparation of a written VIS, and request for an oral VIS. These variables are coded categorically, indicating participation, no participation, and missing values. No participation is

³ Small numbers of cases with missing values for central variables were removed. For the person sample, cases missing data on guidelines recommendation (n=61), vulnerability (n=483), injury (n=302), weapon (n=361), prior adult record (n=323), relationship to CJS (n=379), adult violations (n=467), midpoint (n=56), defendant race (n=4), defendant sex (n=317), and defendant age (n=61) were dropped. For the property sample, cases missing data on guidelines recommendation (n=10), prior adult record (n=86), relationship to CJS (n=122), adult violations (n=142), defendant race (n=2), defendant sex (n=53), and defendant age (n=7) were dropped.

⁴ Percent change values are calculated at the total deviation from the guidelines midpoint, divided by the guidelines midpoint. For example, if the recommended sentence is 100 months and the defendant receives 110 months, this equates to a 10% upward deviation $((110-100)/100 = .10$ or 10%).

used as the reference category. Further, using victim participation dummies, an index was created to capture victim participation. An additive index was chosen since forms of victim participation cannot be ranked. Victims may not be able to participate in all ways for various reasons (Jones, 2011), therefore each form is weighted equally.

Additionally, special victim vulnerability is assessed. A victim is considered vulnerable if they are under 11 years old, 65 years or older, or had temporary or permanent mental or physical disability (MSCCSP, 2023). Under this definition, examples of mental or physical limitations include but are not limited to intoxication, pregnancy, and sleep. The vulnerability variable is limited, in that the type of vulnerability is not specified. Instead, vulnerability is measured as a dummy variable, with zero indicating not vulnerable. Thus, the current study is unable to examine whether the type of vulnerability matters. Still, the present study investigates whether vulnerability moderates the impact of victim participation on sentencing outcomes.

Control Variables

Several legal variables are included as controls. For sentencing models under guidelines systems, the inclusion of the presumptive sentence, its determinants, or both as controls has been contested (Engen & Gainey, 2000; Ulmer, 2000). Some claim the best-fitting models use the presumptive sentence measured as the guidelines midpoint (Engen & Gainey, 2000). Others caution that dropping the determinants risks leaving out important effects, as variables like offense severity “have a very real qualitative meaning to court community actors—above and beyond the role they play in establishing presumptive sentence recommendations in a guidelines grid” (Ulmer, 2000, p.1,240). Further, the use of both the presumptive sentence and its determinants has been questioned due to the potential for multicollinearity (Ulmer, 2000). To

determine the best method for the present study, variance inflation factors (VIFs) were calculated. Table A1 demonstrates no problematic collinearity, as all VIFs were less than four (Pennsylvania State University, 2018) (see Appendix). Thus, to retain the unique effects of both the presumptive sentence and its determinants, the present study controls for both.⁵

Following prior work (Bushway et al., 2012; Engen & Gainey, 2000), the presumptive sentence is measured as the midpoint of the recommended guidelines range in months. The presumptive sentence reflects several determinants, which comprise the offense and offender scores. For person offenses, the presumptive sentence is determined by the intersection of the offense and offender scores. Whereas for property offenses, the presumptive sentence is determined by the intersection of the offense seriousness and offender score. The offense score includes offense seriousness, victim vulnerability, victim injury, and weapon presence. Offense seriousness is measured continuously, ranging from one to seven, so that one is least serious. For property offenses, offense seriousness is scored up to six. Victim vulnerability, discussed above as an independent variable, is also analyzed as a control due to its impact on the offense score. Victim injury is measured categorically, indicating whether the victim sustained no injury, non-permanent injury, or permanent injury or death. Lastly, weapon presence is measured categorically, indicating whether there was no weapon, a weapon other than a firearm, or a firearm or explosive. Alternatively, the offender score includes the defendant's relationship to the criminal justice system at the time of the offense, prior adult record, adult parole or probation violations, and juvenile history. Relationship to the criminal justice system is measured as a dummy variable, with zero representing none or pending cases and one representing court or

⁵ Because the presumptive sentence and its determinants are naturally related, models were re-estimated without a measure for the presumptive sentence (see Table A2 in Appendix). Findings are similar between models with and without a presumptive measure.

other criminal supervision. Prior adult record is measured categorically, indicating whether the defendant had no, minor, moderate, or major criminal history. Lastly, prior adult violations is measured as a dummy, with one representing prior adult parole or probation violations and zero representing no prior violations. Importantly, the current study does not have access to variables for juvenile delinquency, as the MSCCSP restricts certain variables from public use to maintain confidentiality.

In addition to legal variables, extralegal variables are included as controls. Prior work finds defendant factors (Engen et al., 2003; Johnson, 2003; Kramer & Steffensmeier, 1993), case processing variables (Cohen, 2014; Hartley et al., 2010; Johnson, 2003), and court context (Johnson, 2006; Ulmer and Johnson, 2004) impact sentencing outcomes. To account for defendant factors, race/ethnicity, sex, and age at sentencing are used. Defendant race/ethnicity is measured categorically, indicating whether the defendant is Black, White, Hispanic, or other, which includes Asian, Native American/Pacific Islander, American Indian/Alaskan Native, unidentifiable, and missing race. Defendant sex is measured as a dummy, with zero indicating female and one indicating male. Defendant age at sentencing is measured continuously in years. Several case processing variables are used, including preparation of a pre-sentence investigation report (PSI), representation, and disposition. PSI is measured as a dummy, with zero indicating no known PSI. Representation is measured categorically, indicating whether the defendant's representation was private, a public defender, or other, which includes court-appointed and self-representation. Disposition is measured categorically, indicating whether a case was resolved through an MSCCSP binding plea agreement, other plea agreement, plea with no agreement, bench trial, jury trial, or unknown disposition. For departure type analyses, cases disposed of through MSCCSP binding plea agreements are excluded, because they are always considered

conforming sentences. Finally, circuit is included to control for court context. Circuit one contains Dorchester, Somerset, Wicomico, and Worcester County; circuit two contains Caroline, Cecil, Kent, Queen Anne's, and Talbot County; circuit three contains Baltimore and Harford County; circuit four contains Allegany, Garrett, and Washington County; circuit five contains Anne Arundel, Carroll, and Howard County; circuit six contains Frederick and Montgomery County; circuit seven contains Calvert, Charles, Prince George's, and St. Mary's County; and circuit eight contains Baltimore City.

Methods

Missingness

As discussed above, victim participation data is incomplete. Three techniques to deal with this missingness, including listwise deletion, mode imputation, and dummy variable adjustment, were evaluated for the present study. Listwise deletion was not selected, as up to 64% of values are missing for some variables in some samples. Missing data are not missing completely at random (MCAR), as shown by Little's MCAR tests (see Table A3). Thus, in addition to increasing the potential for type II error (Allison, 2014), listwise deletion reduces sample representativeness. Likewise, mode imputation was not selected. Comparisons of missing and non-missing data show similarities (see Table A4), suggesting that missing data includes sentencing events with and without victim participation. Therefore, mode imputation likely underestimates victim participation. Although inclusion of dummy variables to capture missing cases can also introduce bias under some circumstances (Allison, 2022), it is preferable to listwise deletion or mode substitution. Importantly, results from Table A5 demonstrate that the current findings are not sensitive to the type of adjustment used to address missingness, as results are relatively stable across techniques (see Table A5). Additional research employing more

sophisticated data replacement techniques, such as multiple imputation, is recommended to replicate the current findings in future work.

Analytic Techniques

The present study examines the direct and conditional effects of victim variables on sentencing outcomes under guidelines systems. To this end, several analyses are required. For models of sentencing departure, multinomial logistic regression is used. Although previous studies of departure have used logistic regression (Engen et al., 2003; Kramer & Ulmer, 2002; Lehmann et al., 2020), this method does not separate upward and downward departures from standard sentences, potentially confounding one type of departure with standard sentences (Johnson, 2003). As such, multinomial regression is preferred since it clearly distinguishes both types of departures from standard sentences. Results from multinomial regression analyses are interpreted in terms of the relative risk of receiving an upward departure compared to a standard sentence for all upward-eligible events, and the relative risk of receiving a downward departure compared to a standard sentence for all downward-eligible events. For models examining continuous measures of the magnitude of the sentencing deviation, linear regression is used. For these models, results represent the percent a sentence deviates from the presumptive sentence.

CHAPTER 5: FINDINGS

Chapter 5 begins with a review of descriptive statistics across samples. It then discusses the direct effects of victim participation on upward departures, downward departures, and deviations from the presumptive sentence. Finally, models are estimated to evaluate the interaction between victim vulnerability and participation.

Descriptive Statistics

Departure Type Samples for Person Offenses

Table 1 provides descriptive statistics of departure samples by offense type and departure eligibility. For upward-eligible person offenses, 66% of sentencing events resulted in standard sentences, 28% resulted in downward departures, and 7% resulted in upward departures. This reflects the goals of sentencing guidelines systems, which suggest uniformity and proportionality is achieved when most cases are sentenced within guidelines. Further, prior work that finds upward departures are rare is upheld (Johnson et al., 2008). Whereas, for downward-eligible person offenses, 50% of sentencing events resulted in standard sentences, 44% resulted in downward departures, and 6% resulted in upward departures. This may reflect judges' tendency to depart from guidelines recommendations when they are viewed as inappropriately harsh (Cole et al., 2021; Engen et al., 2003; Kramer & Ulmer, 2002; Moore & Miethe, 1986), since downward-eligible samples contain relatively more serious offenses. For upward-eligible person offenses, 14% of victims were present at sentencing, 6% prepared a written VIS, and 7% requested an oral VIS. For downward-eligible person offenses, 15% of victims were present at sentencing, 7% prepared a written VIS, and 8% requested an oral VIS. Thus, results support that presence at sentencing is the most common form of participation. In both samples, the modal offense severity score was a three on the seven-point scale. For upward-eligible person offenses,

most defendants had no prior adult record, and the model defendant was Black, male, and 32 years old. The model defendant was also Black, male, and 32 years old for downward-eligible person offenses, but most defendants had a moderate prior record.

Departure Type Samples for Property Offenses

For upward-eligible property offenses, 64% of sentencing events resulted in standard sentences, 31% resulted in downward departures, and 4% resulted in upward departures. Thus, upward departures are relatively rare for both offense types. Whereas for downward-eligible property offenses, 50% of sentencing events resulted in standard sentences, 47% resulted in downward departures, and 3% resulted in upward departures. Regarding victim participation, 22% of victims were present at sentencing, 11% prepared a written VIS, and 12% requested an oral VIS for upward-eligible property offenses. For downward-eligible property offenses, 21% of victims were present at sentencing, 12% prepared a written VIS, and 13% requested an oral VIS. This supports the relevance of examining victim participation for both offense types, as findings indicate greater participation for property offenses. For upward eligible-property offenses, the modal offense severity score was a one or five on the six-point scale. Similarly, for downward-eligible property offenses, the modal offense severity score was a five. Further, for upward-eligible property offenses, most defendants had no prior adult record, and the model defendant was White, male, and 31 years old. Whereas, for downward eligible person offenses, most defendants had a major prior adult record, and the model defendant was White, male, and 32 years old.

Deviations from the Presumptive Sentence

In the interest of space and presentation, descriptive statistics for deviations from the presumptive sentence are relegated to the Appendix (see Table A6), but overall descriptive

patterns for the continuous measures are similar to categorical measures. For person offenses, sentences deviated an average of 21% below the presumptive sentence. Whereas for property offenses, sentences deviated an average of 17% below the presumptive sentence.

Findings

Direct Effects of Victim Participation on Upward Departures

Table 2 compares multinomial models of upward departures by offense type. Results provide support for Hypothesis 1, which predicted greater severity when victims participate in sentencing processes. When a written VIS was prepared, the relative risk of receiving an upward departure was 77% greater for person offenses and 66% greater for property offenses.

Additionally, when an oral VIS was requested, the relative risk of receiving an upward departure was more than 3 times greater for property offenses. Thus, upward departures were more likely when victims participated using VISs.

For both offense types, presence at sentencing was not significant. Since most victims who give VISs are present at sentencing, it is likely that VIS effects partially incorporate the impact of presence at sentencing.⁶ Although the direction of the oral VIS effect was consistent across offense types, it was only statistically significant for property offenses. Perceptions related to offense type might explain this result. Prior work has found that grief conveyed through VISs is more impactful when unexpected (McGowan & Myers, 2004). Thus, harm expressed during oral VISs for property offenses may be more powerful, as person offenses are generally viewed as more serious and more harmful. Another potential explanation relates to the additional controls in models for person offenses, including vulnerability, weapon, and injury. These

⁶ To test whether presence at sentencing was significant without VIS variables, models without VIS variables were estimated (see Table A7 in Appendix). For models of upward departures and deviations, presence at sentencing was significant in these alternative specifications.

variables may partially explain the oral VIS effect by accounting for common subjects of oral VISs.

Additional findings conform with expectations and prior results. Prior work finds judges less likely to sentence above guidelines when recommended sentences are especially long (Kramer & Ulmer, 2002; Moore & Miethe, 1986). This is reflected in Table 2, as effects for variables capturing severity, including seriousness, vulnerability, weapon, injury, and prior record, demonstrate significantly less odds of receiving an upward departure as severity increases. Although less expected, findings for defendant race are also supported by prior work (Engen et al., 2003). The current study finds Black defendants less likely to receive upward departures, relative to White defendants. Although Black defendants are generally viewed as more blameworthy (Kramer & Ulmer, 2009; Steffensmeier et al., 1998), some work suggests Black defendants receive less punishment because court actors use more lenient criteria when screening their cases (Spohn & Spear, 1996). Further, large effects for trial conviction are consistent with prior work on a “trial penalty” (Johnson, 2019).

Direct Effects of Victim Participation on Downward Departures

Table 3 compares multinomial models of downward departures by offense types. Results contradict hypothesis 2, which predicted greater leniency when victims participate in sentencing processes. When a written VIS was prepared, the relative risk of receiving a downward departure was 22% lower for person offenses and 48% lower for property offenses. Additionally, when an oral VIS was prepared, the relative risk of receiving a downward departure was 21% lower for person offenses. Thus, downward departures were less likely when victims participated using VISs.

Notably, significant effects for oral VISs differed by offense type across departure models. For person offenses, oral VISs significantly impacted the likelihood of downward departure but did not impact upward departure. This inconsistency may reflect prior findings that judges tend to disagree with the punitiveness of sentences associated with greater severity or extensive prior records (Kramer & Ulmer, 2002; Moore & Miethe, 1986), but mostly agree with recommendations for serious person offenses with lower severity and lesser prior records (Kramer & Ulmer, 2002). Thus, oral VISs are unlikely to impact decision-making for upward departures, as judges already view recommendations as too harsh for particularly severe person offenses. Whereas the reduced likelihood of downward departure aligns with prior results of compliance.

Further, findings for control variables align with prior work. Judges' tendency to correct inappropriately severe sentences is reflected, as effects for seriousness and prior record indicate greater odds of receiving a downward departure as scores increase. Conversely, judges' tendency to accept guidelines recommendations for relatively less serious person offenses is also reflected, as effects for other measures of severity, including vulnerability, weapon, and injury, indicate less odds of receiving a downward departure as scores increase. Additionally, results support the chivalry hypothesis (Grabe et al., 2006; Farnworth & Teske, 1995; Pearson, 1997), as female defendants had greater odds of receiving a downward departure. Results are also congruent with a trial penalty (Johnson, 2019), as the odds of downward departure decreased with jury trial conviction.

Direct Effects of Victim Participation on Deviations from the Presumptive Sentence

Table 4 reports linear models of sentencing deviations for person and property offenses. Consistent with the analysis of departure type outcomes, these results support hypothesis 1,

which predicted greater severity in sentencing, and contradict hypothesis 2, which predicted increased leniency when victims participate in sentencing. When victims were present at sentencing, sentences deviated an average of 24% above the presumptive sentence for property offenses. Further, when written VISs were prepared, sentences deviated an average of 43% above the presumptive sentence for person offenses and 23% above the presumptive sentence for property offenses. Additionally, when oral VIS were requested, sentences deviated an average of 11% above the presumptive sentence for person offenses and 33% above the presumptive sentence for property offenses. Thus, sentencing deviations were consistently greater, and above recommended sentence midpoints, when victims participated in the punishment process.

Results for controls compare with prior findings. Again, results reflect judicial corrections to guidelines considered disproportionate (Kramer & Ulmer, 2002), as effects for variables capturing severity, including seriousness, vulnerability, weapon, injury, and prior record, demonstrate significantly greater deviation below the presumptive sentence as severity increases. Results also align with the chivalry hypothesis (Grabe et al., 2006; Farnworth & Teske, 1995; Pearson, 1997), as sentences deviated greater below the presumptive sentence when the defendant was female. Lastly, results for person offenses demonstrate large effects for trial conviction, further supporting findings of a trial penalty (Johnson, 2019).

In addition to examining the main effects of victim participation on sentencing, hypothesis 3 also anticipated that the impact of victim participation would be consistent for both person and property offenses. Results provide partial support, as significant effects for victim participation led to greater severity in sentencing for both person and property offenses. Specifically, written VISs led to significantly harsher sentences across models. Significant effects for presence at sentencing and oral VISs, however, varied inconsistently by offense type.

Ultimately, significant effects for victim participation were more consistent for property offenses. This suggests victim participation may be more impactful for property offenses, though it is important to note the magnitudes of significant effects were often greater for person offenses.

Direct Effects of Victim Participation Index

In the interest of space, additional analysis of the victim participation index is reserved for the Appendix (see Table A8). However, findings support a general pattern of greater severity from victim participation. For both offense types, upward departures were more likely and deviation above the presumptive measure was greater when victims participated in two or more ways. Additionally, for person offenses, downward departures were less likely when victims participated in three ways.

Interaction Effects of Vulnerability on Victim Participation

Lastly, the final hypothesis that victim participation effects are amplified when cases involve vulnerable victims is investigated. Table 5 reports summary results for models testing interactions between victim vulnerability and different participation measures across outcomes. These results are only examined for person offenses because property offenses do not include vulnerable victim enhancements. Mixed support is provided for hypothesis 4, which predicted greater severity when vulnerable victims participate in sentencing processes. Sentences deviated an average of 54% more below the presumptive sentence when vulnerable victims were present at sentencing, relative to when standard victims were present. However, sentences deviated an average of 113% more above the presumptive sentence when vulnerable victims requested oral VISs, relative to when standard victims requested oral VISs. Thus, sentences were both more lenient and severe when vulnerable victims participated.

Conflicting findings are likely the result of data limitations. Very few vulnerable victims in the database were present at sentencing or requested oral VISs. This amount is restricted further for departure analyses, likely explaining the null results. Additionally, inconsistent results may be a product of variation among different types of vulnerable victims. However, this cannot be distinguished by the current study. Ultimately, then, interaction effects of vulnerability on victim participation need further examination using larger datasets that distinguish vulnerability type.

Summary

Using regression-based analyses, the current study examined direct effects for multiple forms of victim participation and a victim participation index on upward departures, downward departures, and deviations from the presumptive sentences. Findings generally suggest victim participation leads to greater severity in sentencing, although significant effects for victim participation were somewhat inconsistent. Further, results demonstrate greater severity when victims participate in multiple ways. Thus, findings indicate that victim participation is used to rationalize punitiveness. Interaction effects of vulnerability on victim participation were also examined across outcomes. Findings for interaction effects are less telling, given their contradictory nature. As mentioned, future work that resolves current data limitations is required to understand the way vulnerability conditions victim participation.

CHAPTER 6: CONCLUSION

According to victim's rights advocates, greater participation gives victims a voice in court processes, reducing secondary victimization (Englebrecht & Chavez, 2014; Robert & Erez, 2004). Thus, the purpose of participation was never to alter sentencing outcomes (Robert & Erez, 2004). However, legal scholars argue such participation unduly impacts sentencing, leading to greater severity (Black, 1994; Davis & Mulford, 2008; Hellerstein, 1989). Court theories, including structural organizational and social psychological perspectives, support that participation can impact sentencing. These suggest victim participation can alter decision-making by introducing information atypical to routine case processing. In contrast to legal scholars, court theories imply a bidirectional relationship, such that victim participation can orient decision-making toward leniency or severity depending on the information presented. The present study sought to investigate these propositions by examining victim participation effects on sentencing outcomes, including departures and sentencing deviations. Findings provide partial support for some but not all of the theoretical hypotheses and for select legal scholars' concerns.

Summary of Findings

Table 6 summarizes support for study hypotheses. Overall, mixed support is provided for hypothesis 1, which predicted greater severity when victims participate in sentencing processes. Across models, sentences were more severe when written VISs were prepared. Further, presence at sentencing and oral VISs also led to significantly greater severity in sentencing. However, significant effects for these variables were less consistent across models. Conversely, no support is provided for hypothesis 2, which predicted greater leniency when victims participate in sentencing processes. All models with significant victim influences suggested victim

participation results in harsher rather than more lenient decisions. Thus, results suggest victim participation generally has a punitive impact.

Additionally, supplemental findings (see Table A8) examining an overall index for victim participation support the conclusion of increased punitiveness (see Appendix). Upward departures were more likely and deviations above the presumptive sentence were larger when victims participated in multiple ways. Additionally, downward departures for person offenses were less likely when victims participated in multiple ways. Thus, although theory suggests victim participation can orient decision-making toward leniency, this expectation is not supported by the current results.

Hypothesis 3 predicted that victim participation would matter for both person and property offenses. Results support this prediction, however significant effects for victim participation were inconsistent across offense types. Across models, written VISs led to greater punitiveness. For property offenses, however, effects for presence at sentencing and oral VISs were more often significant. Yet, magnitudes for significant effects were often larger for person offenses.

Further, mixed and inconsistent support was provided for hypothesis 4, which predicted greater severity when vulnerable victims participate in sentencing processes. Sentences deviated below the presumptive midpoint more when vulnerable victims were present at sentencing, relative to standard victims, but sentences deviated above the presumptive sentence more when vulnerable victims requested oral VISs, relative to standard victims. Again, this is likely a result of data limitations. Small numbers of vulnerable victim participation, coupled with the inability to determine vulnerability type, hinder the present study's analysis of interactions between victim participation and vulnerability.

Notably, significant effects for victim participation variables were less consistent when examining categorical departures, compared to deviations from the presumptive sentence recommendations. This likely reflects two different empirical processes. First, there is likely to be variation within guidelines recommended ranges that goes uncaptured by categorical departure indicators. Second, under the Maryland Guidelines, all MSCCSP plea agreements are automatically scored as conforming sentences. In contrast to the categorical departure variables, the linear deviation measure captures variation that occurs in these types of plea cases. This suggests that future research should consider utilizing departure deviation measures in concert or in lieu of categorical departure indicators. It is also possible that some of the observed variation is due to differences in sample sizes across the two types of model specification, which may result in differential statistical power. As such, future research is needed to replicate the current findings.

Limitations

Although the current study offers important advancement over prior work on victim participation in sentencing, it is not without limitations. The MSCCSP data offer the unique advantage of reporting victim participation, but it is subject to problems commonly associated with administrative data. Often data on victim information is incomplete. First, relevant victim characteristics, like victim gender and race, are excluded. Prior sentencing studies of victim characteristics report the significance of victim demographics (Curry 2010; Curry et al., 2004; Franklin & Fearn, 2008; Paternoster & Brame, 2008; Spohn & Spears, 1996). Future work is therefore needed to investigate how individual victim demographics might impact the role of victim participation in sentencing. Next, although victim participation factors are captured in the data, they often contain high amounts of missingness. Court actors often fail to complete victim-

related items on guidelines worksheets (MSCCSP, 2017), indicating a resistance to incorporating victim participation into workplace routines. This is problematic for the current study because as in all research, missingness can introduce bias.

Additionally, the inability to distinguish among different types of victim vulnerability limits the current study's evaluation of this factor. The present study predicts greater severity when vulnerable victims participate, assuming vulnerability enhances perceptions of defendant blameworthiness (Curry, 2010; Storey & Strand, 2017; Williams et al., 2007). However, some forms of vulnerability, like intoxication, may lead to negative perceptions of the victim, potentially lessening assessments of blameworthiness (Myers, 1979; Ulmer, 2012; Williams et al., 2007). This is reflected in the current study, as direct effects of vulnerability across outcomes suggest events are sometimes sentenced more leniently when the victim is vulnerable (see Tables 2 and 3). Thus, without more information on the type of victim vulnerability, the ability to understand the influence of this important factor is limited in the present study.

Despite its limitations, the current study contributes to limited prior work examining victim participation in sentencing. Previous studies of victim factors generally limit their analyses to victim demographics, focus exclusively on person offenses, and only investigate disparity in sentence lengths or incarceration decisions (Curry 2010; Curry et al., 2004; Franklin & Fearn, 2008; Paternoster & Brame, 2008; Spohn & Spears, 1996). Though important, this work fails to capture the full extent of victims' impact. The present study provides a broader view by extending prior work in three key ways. First, it assesses victim *participation* in addition to victim characteristics. Findings support the need to examine these understudied variables, as victim participation and vulnerability often influence sentencing outcomes. Second, the impact of victim participation is examined for both person and property offenses, challenging the

assumption that person crimes are more deserving of empirical attention. Findings suggest victim participation matters for both offense types, supporting the need to examine victim-related variables in the context of property crime as well. Lastly, the present study examines sentencing departures in addition to deviations from the presumptive sentences. Focusing on departures from standard sentencing ranges is important because this represents a primary mechanism through which judges can utilize their sentencing discretion to shape punishment.

Future Research

Although the current study finds victim participation often impacts sentencing outcomes, the effects are inconsistent across departure models. Chapter 5 discusses potential explanations for these results. However, future research is required to fully evaluate these inconsistencies. Specifically, qualitative research is necessary to uncover how court actors weigh information presented through victim participation during decision-making. Such information would also be useful for determining whether greater severity represents a proportional or retributive response to victim participation, as prior work has argued harsher sentences reflect greater knowledge of harm (Erez & Tontodonato, 1990). This is an important distinction for legal scholars' argument against victim participation and for policy implications. If victim participation improves accuracy in determining proportional sentences, it cannot be argued that victims should not participate due to unjust impacts for defendants.

Additionally, examining alternative outcomes is a valuable pursuit for future research. Victim participation was initially implemented to improve victims' experiences with the criminal legal system, so it is important to assess whether participation results in greater victim satisfaction. Existing work provides mixed findings on whether victim participation alleviates victims' suffering (Englebrecht, 2012). While some find participation increases victim's feelings

of satisfaction and justice (Jordan, 2001; Orth, 2002), others report participation further exacerbates feelings of victimization (Barnes, 2002, Van Ness & Strong, 2002). The potential for further victim injury is a serious consequence of participation. Thus, future research is necessary to better understand the how victim recovery can be successfully facilitated through participation. Further, future research should examine restitution for property offenses. Considering the nature of the offense, victims of property crime likely participate in sentencing processes to receive greater restitution. Thus, using restitution as an indicator of severity is another way to understand the impact of victim participation for property offenses.

Lastly, future work should investigate what influences a victim's decision to participate. Prior work has suggested geographical variation in victim services impacts victim participation (Haynes, 2011). Various other factors, such as relationship to the defendant, likely also impact the decision to participate. This is an important avenue for future research, as these factors may also be relevant for understanding why some victims participate for leniency, as opposed to severity.

Conclusion

Victims are often described as “forgotten” by the criminal justice system since they have no formal stake in sentencing processes. Although victims' interests are represented by the State, opportunities for their participation hold the potential to impact punishment. Victim participation has the ability to inform assessments of offense severity, which is a main determinant of sentencing. Thus, it is surprising that criminal justice research has generally “forgotten” victim participation too. The current study highlights the need to examine victim participation by demonstrating that it affects sentencing decisions for person and property crimes. In addition to showing that victim participation matters, assessing victim participation in the context of

property offenses is an important contribution. Victims of property offenses are especially “forgotten,” as their suffering is rarely given empirical attention. Ultimately, findings suggest that victim participation, particularly VISs, result in greater sentencing severity for both offense types. Thus, although victim participation is not always retributive, its impact is primarily punitive.

Despite a generally punitive impact, victim participation is not necessarily a source of unfairness. Some scholars argue victim participation provides court decision-makers with greater information, resulting in sentences that more accurately reflect harm (Erez & Tontodonato, 1990). Thus, victim participation can improve judges’ ability to determine proportional sentences. Additionally, victim participation can improve the legal system’s ability to provide justice for victims, as victims are offered the potentially therapeutic opportunity to be heard within sentencing processes.

Tables

Table 1

Descriptive Statistics of Departure Samples

Variable	Person Offenses				Property Offenses			
	Upward Eligible		Downward Eligible		Upward Eligible		Downward Eligible	
	Mean	SD	Mean	SD	Mean	SD	Mean	SD
Dependent Variables								
Downward departures	.28	.45	.44	.50	.31	.46	.47	.50
Standard sentences	.66	.47	.50	.50	.64	.48	.50	.50
Upward departures	.07	.25	.06	.23	.04	.21	.03	.16
Independent Variables								
Presence at sentencing								
Not present	.25	.43	.25	.44	.59	.49	.60	.49
Present	.14	.35	.15	.35	.22	.41	.21	.41
Missing	.61	.49	.60	.49	.19	.40	.19	.39
Written VIS								
Not prepared	.30	.46	.30	.46	.65	.48	.65	.48
Prepared	.06	.24	.07	.25	.11	.31	.12	.32
Missing	.63	.48	.63	.48	.24	.43	.24	.42
Oral VIS								
Not requested	.29	.45	.28	.45	.62	.49	.62	.49
Requested	.07	.26	.08	.27	.12	.33	.13	.33
Missing	.64	.48	.63	.48	.26	.44	.25	.43
VP Index								
0	.21	.40	.20	.40	.49	.50	.49	.50
1	.08	.26	.08	.26	.13	.33	.12	.33
2	.04	.20	.04	.21	.07	.25	.07	.25
3	.02	.14	.02	.15	.03	.17	.03	.18
Missing	.66	.47	.65	.48	.28	.45	.28	.45
Control Variables								
<i>Offense Score</i>								
Seriousness								
1	.10	.30	.05	.22	.26	.44	.21	.40
2	.11	.31	.10	.30	.03	.16	.02	.14
3	.38	.48	.27	.44	.20	.40	.17	.37
4	.18	.39	.21	.40	.25	.43	.28	.45
5	.16	.37	.26	.44	.26	.44	.31	.46
6	.06	.24	.10	.30	.01	.08	.01	.09
7	.00	.07	.02	.15	—	—	—	—
Vulnerability	.10	.29	.09	.29	—	—	—	—
Injury								
No injury	.59	.49	.56	.50	—	—	—	—
Non-permanent	.34	.47	.33	.47	—	—	—	—
Permanent, death	.07	.26	.11	.31	—	—	—	—
Weapon								
No weapon	.49	.50	.43	.49	—	—	—	—
Weapon	.26	.44	.3	.46	—	—	—	—
Firearm, explosive	.26	.44	.27	.44	—	—	—	—
<i>Offender Score</i>								
Adult record								

None	.38	.49	.22	.42	.29	.45	.05	.22
Minor	.25	.43	.19	.39	.27	.44	.27	.45
Moderate	.19	.40	.31	.46	.21	.41	.32	.47
Major	.17	.38	.28	.45	.23	.42	.36	.48
Relationship to CJS	.23	.42	.34	.47	.29	.45	.44	.50
Adult violations	.23	.42	.35	.48	.30	.46	.46	.50
<i>Defendant Factors</i>								
Race								
White	.35	.48	.32	.46	.58	.49	.60	.49
Black	.54	.50	.59	.49	.35	.48	.34	.47
Hispanic	.02	.15	.02	.14	.01	.11	.01	.11
Other	.08	.28	.07	.26	.06	.23	.06	.23
Sex								
Male	.89	.31	.92	.27	.82	.38	.89	.31
Female	.11	.31	.08	.27	.18	.38	.11	.31
Age at sentencing	32.03	12.09	32.33	11.81	31.43	11.03	32.44	10.65
<i>Case Processing</i>								
Midpoint	45.97	54.59	77.91	92.72	36.77	46.90	53.85	50.16
PSI	.20	.40	.24	.43	.10	.30	.11	.31
Disposition								
Plea agreement	.55	.50	.52	.50	.73	.44	.73	.45
Plea, no agreement	.14	.35	.14	.35	.12	.33	.12	.32
Court trial	.02	.15	.02	.16	.01	.10	.01	.11
Jury trial	.05	.22	.07	.25	.02	.14	.02	.15
Unknown	.24	.42	.25	.43	.12	.32	.12	.33
Representation								
Private	.41	.49	.35	.48	.31	.46	.24	.43
Public	.49	.50	.54	.50	.64	.48	.71	.45
Other	.10	.30	.11	.32	.06	.23	.05	.22
<i>Court Context</i>								
Circuit								
1	.12	.32	.11	.31	.13	.34	.13	.34
2	.05	.21	.05	.22	.06	.25	.07	.25
3	.23	.42	.22	.42	.17	.38	.17	.38
4	.07	.25	.07	.25	.02	.15	.02	.15
5	.24	.43	.22	.41	.40	.49	.41	.49
6	.03	.18	.03	.18	.06	.23	.05	.22
7	.13	.34	.13	.34	.09	.28	.09	.28
8	.13	.33	.17	.37	.06	.23	.06	.24
N	15,373		9,727		4,909		3,205	

Table 2***Multinomial Logistic Regression: Upward Departure vs. Standard Sentence***

Variable	Person Offenses		Property Offenses	
	rrr	SE	rrr	SE
Constant	0.18***	0.04	0.27***	0.09
<i>Victim Participation</i>				
Presence at sentencing	1.08	0.14	1.28	0.28
Written VIS	1.77***	0.24	1.66*	0.37
Oral VIS	1.24	0.18	3.31***	0.77
<i>Offense Score</i>				
Seriousness	1.01	0.04	0.85*	0.05
Vulnerability	0.74**	0.08	—	—
<i>Injury</i>				
Non-permanent	0.56***	0.05	—	—
Permanent, death	1.10	0.14	—	—
<i>Weapon</i>				
Weapon	0.51***	0.05	—	—
Firearm, explosive	0.30***	0.04	—	—
<i>Offender Score</i>				
<i>Adult record</i>				
Minor	1.20*	0.11	0.81	0.15
Moderate	0.85	0.11	0.57	0.17
Major	0.68*	0.11	0.26**	0.13
Relationship to CJS	0.85	0.08	1.35	0.29
Adult violations	0.97	0.11	0.71	0.19
<i>Defendant Factors</i>				
<i>Race</i>				
Black	0.78**	0.06	1.17	0.20
Hispanic	0.99	0.20	1.37	0.74
Other	0.88	0.12	0.77	0.31
Female	0.78*	0.10	0.75	0.14
Age at sentencing	1.00	0.00	1.00	0.01
<i>Case Processing</i>				
Midpoint	1.00**	0.00	0.99	0.01
PSI	1.87***	0.18	1.42	0.35
<i>Disposition</i>				
Plea, no agreement	1.26*	0.14	1.72*	0.40
Court trial	1.31	0.29	6.09***	2.76
Jury trial	3.63***	0.44	4.27***	1.53
Unknown	1.13	0.12	1.58	0.41
<i>Representation</i>				
Public	1.31***	0.10	0.97	0.16
Other	1.14	0.16	0.64	0.27
<i>Court Context</i>				
Circuit fixed effects	—	—	—	—
N	15,373		4,909	

*** p<0.001, ** p<0.01, * p<0.05

Note. Circuit dummies were excluded in the interest of presentation. See Table 1B in Appendix B for full results.

Table 3***Multinomial Logistic Regression: Downward Departure vs. Standard Sentence***

Variable	Person Offenses		Property Offenses	
	rrr	SE	rrr	SE
Constant	0.44***	0.08	1.31	0.38
<i>Victim Participation</i>				
Presence at sentencing	1.03	0.09	0.94	0.11
Written VIS	0.78*	0.08	0.52***	0.08
Oral VIS	0.79*	0.09	1.33	0.20
<i>Offense Score</i>				
Seriousness	0.90***	0.02	0.71***	0.03
Vulnerability	1.24*	0.11	—	—
<i>Injury</i>				
Non-permanent	1.24***	0.06	—	—
Permanent, death	0.72***	0.07	—	—
<i>Weapon</i>				
Weapon	1.40***	0.08	—	—
Firearm, explosive	1.74***	0.11	—	—
<i>Offender Score</i>				
<i>Adult record</i>				
Minor	0.82**	0.06	0.66*	0.12
Moderate	1.05	0.08	0.59**	0.11
Major	0.99	0.09	0.54**	0.12
Relationship to CJS	0.70***	0.04	0.80*	0.07
Adult violations	1.01	0.06	0.97	0.09
<i>Defendant Factors</i>				
<i>Race</i>				
Black	0.91	0.05	0.92	0.08
Hispanic	0.80	0.14	0.68	0.26
Other	0.72***	0.07	0.84	0.15
Female	1.76***	0.15	1.52***	0.19
Age at sentencing	1.01***	0.00	1.01*	0.00
<i>Case Processing</i>				
Midpoint	1.00***	0.00	1.01***	0.00
PSI	0.67***	0.05	0.74	0.12
<i>Disposition</i>				
Plea, no agreement	1.00	0.07	0.82	0.10
Court trial	1.00	0.15	1.08	0.45
Jury trial	0.25***	0.03	0.12***	0.05
Unknown	0.93	0.06	0.72*	0.09
<i>Representation</i>				
Public	0.79***	0.04	0.78**	0.07
Other	0.89	0.08	0.64*	0.13
<i>Court Context</i>				
Circuit fixed effects	—	—	—	—
N	9,727		3,205	

*** p<0.001, ** p<0.01, * p<0.05

Note. Circuit dummies were excluded in the interest of presentation. See Table 2B in Appendix B for full results.

Table 4***Linear Regression: Deviation from the Presumptive Sentence***

Variable	Person Offenses		Property Offenses	
	Coefficient	SE	Coefficient	SE
Constant	-1.37	6.86	177.24***	17.22
<i>Victim Participation</i>				
Presence at sentencing	5.18	3.59	23.57**	9.10
Written VIS	42.32***	4.89	22.95*	11.20
Oral VIS	11.26*	4.90	32.50**	11.70
<i>Offense Score</i>				
Seriousness	0.63	1.05	-24.44***	2.62
Vulnerability	-1.39	3.60	—	—
<i>Injury</i>				
Non-permanent	-11.84***	2.29	—	—
Permanent, death	-2.10	4.25	—	—
<i>Weapon</i>				
Weapon	-22.96***	2.50	—	—
Firearm, explosive	-31.25***	2.81	—	—
<i>Offender Score</i>				
<i>Adult record</i>				
Minor	-0.44	2.76	-46.25***	8.86
Moderate	-13.10***	3.11	-63.87***	10.13
Major	-10.38**	3.76	-88.13***	14.10
Relationship to CJS	14.03***	2.47	-18.69*	7.95
Adult violations	-3.64	2.72	-21.21*	8.66
<i>Defendant Factors</i>				
<i>Race</i>				
Black	4.35	2.47	-9.09	6.90
Hispanic	45.33***	7.23	-28.73	27.32
Other	6.63	4.06	12.93	13.19
Female	-24.89***	3.35	-34.40***	8.63
Age at sentencing	-0.08	0.09	-0.73*	0.31
<i>Case Processing</i>				
Midpoint	-0.08***	0.02	0.41**	0.13
PSI	32.61***	3.49	37.90**	12.66
<i>Disposition</i>				
MSCCSP plea agreement	8.87**	2.73	7.58	8.76
Plea, no agreement	3.22	3.98	27.43*	11.52
Court trial	70.24***	8.73	-28.32	37.66
Jury trial	85.47***	5.95	46.47	27.01
Unknown	6.00	3.44	5.52	11.91
<i>Representation</i>				
Public	7.34***	2.12	11.80	6.96
Other	2.73	4.16	0.14	15.58
<i>Court Context</i>				
Circuit fixed effects	—	—	—	—
N	24,112		6,709	

*** p<0.001, ** p<0.01, * p<0.05

Note. Circuit dummies were excluded in the interest of presentation. See Table 3B in Appendix B for full results.

Table 5***Interaction Effects of Vulnerability on Victim Participation for Person Offenses***

Variable	Upward Departure vs. Standard Sentence		Downward Departure vs. Standard Sentence		Deviation from Presumptive Sentence	
	rrr	SE	rrr	SE	Coefficient	SE
Present*vulnerable	0.67	0.24	0.99	0.27	-54.39***	10.87
Written VIS*vulnerable	1.26	0.42	1.21	0.36	7.07	12.34
Oral VIS*vulnerable	1.10	0.42	1.07	0.34	113.21***	13.28
N	15,373		9,727		24,112	

*** p<0.001, ** p<0.01, * p<0.05

Note. Only interaction effects were reported in the interest of presentation. See Table 4B in Appendix B for full results.

Table 6***Support for Hypotheses across Models***

Variable	Hypothesis 1	Hypothesis 2	Hypothesis 3	Hypothesis 4
<i>Person Offenses</i>				
Victim Presence	-	-	—	-
Written VIS	+	-	—	-
Oral VIS	-/+	-	—	-/+
<i>Property Offenses</i>				
Victim Presence	-/+	-	—	—
Written VIS	+	-	—	—
Oral VIS	+	-	—	—
<i>Both Offenses</i>				
Victim Presence	-/+	-	-/+	—
Written VIS	+	-	+	—
Oral VIS	-/+	-	-/+	—

Note. Support is represented by (+), mixed support is represented by (-/+), and no support is represented by (-).

Appendix A

Supplementary Tables and Figures

Table A1

Multicollinearity Tests

Variable	Person Offenses						Property Offenses					
	Upward Departures vs Standard Sentences		Downward Departures vs Standard Sentences		Deviation from Presumptive Sentence		Upward Departures vs Standard Sentences		Downward Departures vs Standard Sentences		Deviation from Presumptive Sentence	
	VIF	1/VIF	VIF	1/VIF	VIF	1/VIF	VIF	1/VIF	VIF	1/VIF	VIF	1/VIF
Presumptive <i>Offense Score</i>	3.34	0.30	2.42	0.41	2.49	0.40	3.63	0.28	3.94	0.25	3.66	0.27
Seriousness	2.48	0.40	2.29	0.44	1.99	0.50	1.55	0.65	2.23	0.45	1.54	0.65
Vulnerability	1.12	0.89	1.12	0.89	1.11	0.90	—	—	—	—	—	—
Injury	1.16	0.86	1.25	0.80	1.24	0.81	—	—	—	—	—	—
Weapon <i>Offender Score</i>	1.39	0.72	1.30	0.77	1.36	0.74	—	—	—	—	—	—
Adult record	2.07	0.48	1.79	0.56	1.85	0.54	2.64	0.38	2.50	0.40	2.62	0.38
Relationship to CJS	1.21	0.83	1.12	0.89	1.17	0.86	1.26	0.79	1.27	0.79	1.27	0.79
Adult violations	1.56	0.64	1.37	0.73	1.51	0.66	1.66	0.60	1.43	0.70	1.69	0.59
N	15,373		9,727		24,112		4,909		3,205		6,709	

VIF = Variance Inflation Factor (Max <10)

1/VIF = Tolerance (Min >.10)

Table A2

Comparisons of Models with and without a Presumptive Measure

Panel A				
Upward Departures vs. Standard Sentences				
Variable	With Presumptive		Without Presumptive	
	rrr	SE	rrr	SE
<i>Person Offenses</i>				
Presence at sentencing	1.08	0.14	1.07	0.14
Written VIS	1.77***	0.24	1.80***	0.24
Oral VIS	1.24	0.18	1.25	0.19
N	15,373		15,373	
<i>Property Offenses</i>				
Presence at sentencing	1.28	0.28	1.29	0.28
Written VIS	1.66*	0.37	1.65*	0.37
Oral VIS	3.31***	0.77	3.27***	0.76
N	4,909		4,909	
Panel B				
Downward Departures vs Standard Sentences				
Variable	With Presumptive		Without Presumptive	
	rrr	SE	rrr	SE
<i>Person Offenses</i>				
Presence at sentencing	1.03	0.09	1.03	0.16
Written VIS	0.78*	0.08	0.82	0.09
Oral VIS	0.79*	0.09	0.80*	0.09
N	9,727		9,732	
<i>Property Offenses</i>				
Presence at sentencing	0.94	0.11	0.93	0.11
Written VIS	0.52***	0.08	0.57***	0.08
Oral VIS	1.33	0.20	1.27	0.19
N	3,205		3,208	
Panel C				
Deviations from the Presumptive Sentence				
Variable	With Presumptive		Without Presumptive	
	Coefficient	SE	Coefficient	SE
<i>Person Offenses</i>				
Presence at sentencing	5.18	3.59	5.22	3.59
Written VIS	42.32***	4.89	41.29***	4.89
Oral VIS	11.26*	4.90	10.47*	4.90
N	24,112		24,112	
<i>Property Offenses</i>				
Presence at sentencing	23.57**	9.10	23.54*	9.11
Written VIS	22.95*	11.20	24.26*	11.20
Oral VIS	32.50**	11.70	32.36**	11.71
N	6,709		6,709	
Panel D				
Vulnerability Interaction Effects				
Variable	With Presumptive		Without Presumptive	
	Estimate	SE	Estimate	SE
<i>Upward Departures</i>				
Presence at sentencing	0.67	0.24	0.69	0.24
Written VIS	1.26	0.42	1.25	0.42
Oral VIS	1.10	0.42	1.11	0.43
N	15,373		15,373	
<i>Downward Departures</i>				
Presence at sentencing	0.99	0.27	0.99	0.27
Written VIS	1.21	0.36	1.20	0.36

Oral VIS	1.07	0.34	1.07	0.34
N	9,727		9,732	
<i>Deviations</i>				
Presence at sentencing	-54.39***	10.87	-54.96***	10.87
Written VIS	7.07	12.34	7.96	12.34
Oral VIS	113.21***	13.28	113.17***	13.29
N	24,112		24,112	

*** p<0.001, ** p<0.01, * p<0.05

Note. Only victim participation effects are reported in the interest of presentation.

Table A3***Little's MCAR Tests***

	<i>n</i>	chi-square	df	p-value
<hr/>				
Departures				
Person offenses	16,287	6,745.19	1,880	0.000
Property offenses	5,045	1,561.79	554	0.000
<hr/>				
Deviation				
Person offenses	26,830	16,084.77	2,719	0.000
Property offenses	7,037	2,607.14	707	0.000

Table A4

Comparisons of Missing and Non-Missing Data for Victim Participation

Panel A Upward Departures vs Standard Sentences												
Variable	Person Offenses						Property Offenses					
	Missing		Non-Missing		Difference		Missing		Non-Missing		Difference	
	Mean	SD	Mean	SD	t	p-value	Mean	SD	Mean	SD	t	p-value
Seriousness	3.20	1.39	3.70	1.23	23.00	0.00	3.19	1.53	3.26	1.54	1.23	0.22
Adult record	1.73	1.85	1.64	1.85	-3.03	0.00	1.98	1.89	2.08	1.95	1.32	0.19
Defendant race	1.66	0.90	1.63	0.85	-2.05	0.04	1.73	0.73	1.78	0.74	1.56	0.12
Defendant sex	0.90	0.30	0.88	0.32	3.48	0.00	0.82	0.38	0.82	0.38	0.31	0.76
Defendant age	31.99	12.01	32.08	12.20	0.47	0.64	31.53	11.10	31.41	11.01	-0.27	0.79
N	9,201		6,172				859		4,050			

Panel B Downward Departures vs Standard Sentences												
Variable	Person Offenses						Property Offenses					
	Missing		Non-Missing		Difference		Missing		Non-Missing		Difference	
	Mean	SD	Mean	SD	t	p-value	Mean	SD	Mean	SD	t	p-value
Seriousness	3.69	1.45	4.21	1.25	18.22	0.00	3.42	1.52	3.52	1.48	1.51	0.13
Adult record	2.58	1.89	2.40	1.93	-4.45	0.00	3.03	1.65	3.01	1.75	-0.22	0.82
Defendant race	1.60	0.88	1.54	0.80	-3.22	0.00	1.75	0.71	1.79	0.73	1.33	0.18
Defendant sex	0.93	0.26	0.92	0.28	1.99	0.05	0.87	0.33	0.89	0.31	-1.29	0.20
Defendant age	32.29	11.64	32.40	12.06	0.42	0.67	32.45	10.53	32.44	10.68	-0.03	0.98
N	5,742		3,985				535		2,670			

Panel C Deviation from the Presumptive Sentence												
Variable	Person Offenses						Property Offenses					
	Missing		Non-Missing		Difference		Missing		Non-Missing		Difference	
	Mean	SD	Mean	SD	t	p-value	Mean	SD	Mean	SD	t	p-value
Seriousness	3.26	1.41	3.96	1.23	40.10	0.00	3.25	1.52	3.38	1.51	2.63	0.01
Adult record	2.08	1.96	1.90	1.94	-6.84	0.00	2.01	1.89	2.21	1.98	3.22	0.00
Defendant race	1.55	0.89	1.53	0.85	-1.56	0.12	1.69	0.75	1.75	0.78	2.23	0.03
Defendant sex	0.92	0.28	0.88	0.32	-8.34	0.00	0.82	0.38	0.84	0.37	0.84	0.40
Defendant age	31.80	11.72	31.97	11.93	1.12	0.26	31.40	11.14	31.92	11.31	1.41	0.16
N	13,537		10,575				1,113		5,596			

Table A5***Comparison of Missing Strategies***

Panel A		Upward Departures vs. Standard Sentences					
Variable	Dummy Adjustment		Listwise Deletion		Mode Imputation		
	rrr	SE	rrr	SE	rrr	SE	
<i>Person Offenses</i>							
Presence at sentencing	1.08	0.14	1.18	0.17	1.24	0.14	
Written VIS	1.77***	0.24	1.84***	0.28	1.69***	0.20	
Oral VIS	1.24	0.18	1.26	0.20	1.28	0.17	
N	15,373		5,275		15,373		
<i>Property Offenses</i>							
Presence at sentencing	1.28	0.28	1.22	0.29	1.28	0.26	
Written VIS	1.66*	0.37	1.67*	0.40	1.64*	0.34	
Oral VIS	3.31***	0.77	3.30***	0.81	3.89***	0.83	
N	4,909		3,513		4,909		
Panel B		Downward Departures vs Standard Sentences					
Variable	Dummy Adjustment		Listwise Deletion		Mode Imputation		
	rrr	SE	rrr	SE	rrr	SE	
<i>Person Offenses</i>							
Presence at sentencing	1.03	0.09	1.06	0.11	0.99	0.08	
Written VIS	0.78*	0.08	0.78*	0.10	0.80*	0.08	
Oral VIS	0.79*	0.09	0.80	0.10	0.82*	0.08	
N	9,727		3,380		9,727		
<i>Property Offenses</i>							
Presence at sentencing	0.94	0.11	0.94	0.13	0.83	0.09	
Written VIS	0.52***	0.08	0.49***	0.08	0.57***	0.08	
Oral VIS	1.33	0.20	1.31	0.21	1.31	0.19	
N	3,205		2,309		3,205		
Panel C		Deviations from the Presumptive Sentence					
Variable	Dummy Adjustment		Listwise Deletion		Mode Imputation		
	Coefficient	SE	Coefficient	SE	Coefficient	SE	
<i>Person Offenses</i>							
Presence at sentencing	5.18	3.59	0.53	4.98	7.50*	3.24	
Written VIS	42.32***	4.89	43.44***	6.85	41.12***	4.61	
Oral VIS	11.26*	4.90	15.85*	6.57	12.77**	4.56	
N	24,112		9,099		24,112		
<i>Property Offenses</i>							
Presence at sentencing	23.57**	9.10	26.48**	9.18	26.61**	8.74	
Written VIS	22.95*	11.20	29.69**	11.01	24.45*	10.58	
Oral VIS	32.50**	11.70	29.94**	11.26	27.49*	11.04	
N	6,709		4,837		6,709		

*** p<0.001, ** p<0.01, * p<0.5

Note. Only victim participation effects are reported in the interest of presentation.

Table A6***Descriptive Statistics for Deviation Samples***

Variable	Person Offenses		Property Offenses	
	Mean	SD	Mean	SD
Dependent Variable				
Deviation	-20.58	51.15	-16.98	40.16
Independent Variables				
Presence at sentencing				
Not present	.28	.45	.60	.49
Present	.15	.35	.21	.41
Missing	.57	.50	.19	.39
Written VIS				
Not prepared	.35	.48	.66	.47
Prepared	.06	.23	.10	.30
Missing	.60	.49	.24	.42
Oral VIS				
Not requested	.32	.47	.63	.48
Requested	.07	.25	.12	.32
Missing	.61	.49	.25	.43
VP Index				
0	.24	.43	.49	.50
1	.08	.27	.14	.34
2	.04	.20	.06	.25
3	.02	.13	.03	.16
Missing	.62	.48	.28	.45
Control Variables				
<i>Offense Score</i>				
Seriousness				
1	.08	.27	.23	.42
2	.12	.32	.03	.16
3	.34	.47	.19	.39
4	.19	.39	.26	.44
5	.19	.40	.28	.45
6	.07	.25	.01	.08
7	.01	.12	—	—
Vulnerability	.09	.29	—	—
Injury				
No injury	.58	.49	—	—
Non-permanent	.34	.47	—	—
Permanent, death	.08	.27	—	—
Weapon				
No weapon	.44	.50	—	—
Weapon	.27	.44	—	—
Firearm, explosive	.29	.46	—	—
<i>Offender Score</i>				

Adult record				
None	.34	.47	.28	.45
Minor	.22	.42	.25	.43
Moderate	.22	.41	.22	.41
Major	.23	.42	.26	.44
Relationship to CJS	.26	.44	.30	.46
Adult violations	.26	.44	.31	.46
<i>Defendant Factors</i>				
Race				
White	.27	.44	.52	.50
Black	.63	.48	.40	.49
Hispanic	.02	.14	.01	.11
Other	.08	.27	.06	.25
Sex				
Male	.90	.30	.83	.37
Female	.10	.30	.17	.37
Age at sentencing	31.88	11.82	31.83	11.28
<i>Case Processing</i>				
Midpoint	59.56	82.07	40.81	50.08
PSI	.14	.35	.08	.28
Disposition				
MSCCSP plea agreement	.39	.49	.28	.45
Plea agreement	.33	.47	.53	.50
Plea, no agreement	.09	.28	.09	.28
Court trial	.01	.11	.01	.08
Jury trial	.03	.18	.01	.12
Unknown	.14	.35	.09	.28
Representation				
Private	.40	.49	.31	.46
Public	.53	.50	.64	.48
Other	.08	.26	.05	.22
<i>Court Context</i>				
Circuit				
1	.08	.28	.11	.31
2	.03	.18	.05	.23
3	.17	.38	.16	.36
4	.04	.21	.02	.15
5	.17	.37	.32	.46
6	.03	.17	.05	.22
7	.13	.33	.13	.33
8	.34	.47	.17	.37
N	24,112		6,709	

Table A7***Comparisons of Models with and without VIS Variables***

Variable	Person Offenses			
	With VISs		Without VISs	
	Estimate	SE	Estimate	SE
<i>Upward Departures</i>				
Presence at sentencing	1.08	0.14	1.33**	0.14
N	15,373		15,373	
<i>Downward Departures</i>				
Presence at sentencing	1.03	0.09	0.89	0.07
N	9,727		9,727	
<i>Deviations</i>				
Presence at sentencing	5.18	3.59	14.39***	3.15
N	24,112		24,112	
Variable	Property Offenses			
	With VISs		Without VISs	
	Estimate	SE	Estimate	SE
<i>Upward Departures</i>				
Presence at sentencing	1.28	0.28	2.37***	0.39
N	4,909		4,909	
<i>Downward Departures</i>				
Presence at sentencing	0.94	0.11	0.90	0.09
N	3,205		3,205	
<i>Deviations</i>				
Presence at sentencing	23.57**	9.10	40.13***	7.85
N	6,709		6,709	

*** p<0.001, ** p<0.01, * p<0.05

Note. Only results for presence at sentencing are reported in the interest of presentation.

Table A8

Regressions for Victim Participation Index

Variable	Person Offenses						Property Offenses					
	Upward Departure vs Standard Sentence		Downward Departure vs Standard Sentence		Deviation from Presumptive Sentence		Upward Departure vs Standard Sentence		Downward Departure vs Standard Sentence		Deviation from Presumptive Sentence	
	rrr	SE	rrr	SE	Coefficient	SE	rrr	SE	rrr	SE	Coefficient	SE
VP Index												
1	1.06	0.16	0.97	0.09	-3.11	3.91	0.70	0.20	0.86	0.11	10.09	9.41
2	1.58**	0.25	0.88	0.10	58.43***	5.20	4.05***	0.91	0.90	0.15	63.27***	12.89
3	2.23***	0.42	0.54***	0.09	37.28***	7.73	5.69***	1.72	0.69	0.16	95.07***	19.23
N	15,373		9,727		24,112		4,909		3,205		6,709	

*** p<0.001, ** p<0.01, * p<0.05

Note. Only index results are reported in the interest of presentation.

Figure A1

Sentencing Matrix for Offenses Against Persons
(Revised 7/2001)

Offense Score	Offender Score							
	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

From *Guidelines Scoring Matrices*, by MSCCSP, 2001. (<https://msccsp.org/guidelines/matrices/>)

Figure A2

Sentencing Matrix for Property Offenses
(Revised 7/2001)

<i>Offender Score</i>								
<i>Offense Seriousness Category</i>	0	1	2	3	4	5	6	7 or more
VII	P-1M	P-3M	3M-9M	6M-1Y	9M-18M	1Y-2Y	1Y-3Y	3Y-5Y
VI	P-3M	P-6M	3M-1Y	6M-2Y	1Y-3Y	2Y-5Y	3Y-6Y	5Y-10Y
V	P-6M	P-1Y	3M-2Y	1Y-3Y	18M-5Y	3Y-7Y	4Y-8Y	8Y-15Y
IV	P-1Y	3M-2Y	6M-3Y	1Y-4Y	18M-7Y	3Y-8Y	5Y-12Y	10Y-20Y
III	P-2Y	6M-3Y	9M-5Y	1Y-5Y	2Y-8Y	3Y-10Y	7Y-15Y	15Y-30Y
II	2Y-5Y	3Y-7Y	5Y-8Y	5Y-10Y	8Y-15Y	10Y-18Y	12Y-20Y	15Y-40Y

P=Probation, M=Months, Y=Years

From *Guidelines Scoring Matrices*, by MSCCSP, 2001. (<https://msccsp.org/guidelines/matrices/>)

Appendix B

Extended Tables

Table B1

Multinomial Logistic Regression: Upward Departure vs. Standard Sentence (Extended)

Variable	Person Offenses		Property Offenses	
	rrr	SE	rrr	SE
Constant	0.18****	0.04	0.27****	0.09
<i>Victim Participation</i>				
Presence at sentencing	1.08	0.14	1.28	0.28
Written VIS	1.77****	0.24	1.66*	0.37
Oral VIS	1.24	0.18	3.31****	0.77
<i>Offense Score</i>				
Seriousness	1.01	0.04	0.85*	0.05
Vulnerability	0.74**	0.08	—	—
Injury				
Non-permanent	0.56****	0.05	—	—
Permanent, death	1.10	0.14	—	—
Weapon				
Weapon	0.51****	0.05	—	—
Firearm, explosive	0.30****	0.04	—	—
<i>Offender Score</i>				
Adult record				
Minor	1.20*	0.11	0.81	0.15
Moderate	0.85	0.11	0.57	0.17
Major	0.68*	0.11	0.26**	0.13
Relationship to CJS	0.85	0.08	1.35	0.29
Adult violations	0.97	0.11	0.71	0.19
<i>Defendant Factors</i>				
Race				
Black	0.78**	0.06	1.17	0.20
Hispanic	0.99	0.20	1.37	0.74
Other	0.88	0.12	0.77	0.31
Female	0.78*	0.10	0.75	0.14
Age at sentencing	1.00	0.00	1.00	0.01
<i>Case Processing</i>				
Midpoint	1.00**	0.00	0.99	0.01
PSI	1.87****	0.18	1.42	0.35
Disposition				
Plea, no agreement	1.26*	0.14	1.72*	0.40
Court trial	1.31	0.29	6.09****	2.76
Jury trial	3.63****	0.44	4.27****	1.53
Unknown	1.13	0.12	1.58	0.41
Representation				
Public	1.31****	0.10	0.97	0.16
Other	1.14	0.16	0.64	0.27

Court Context

Circuit				
2	0.35***	0.06	1.10	0.21
3	0.54***	0.06	2.34***	0.33
4	0.90	0.13	1.13	0.32
5	0.38***	0.04	2.65***	0.33
6	0.44***	0.08	1.43	0.27
7	0.35***	0.05	1.43	0.27
8	0.50***	0.07	2.91***	0.56
N	15,373		4,909	

*** p<0.001, ** p<0.01, * p<0.05

Table B2***Multinomial Logistic Regression: Downward Departure vs. Standard Sentence (Extended)***

Variable	Person Offenses		Property Offenses	
	rrr	SE	rrr	SE
Constant	0.44***	0.08	1.31	0.38
<i>Victim Participation</i>				
Presence at sentencing	1.03	0.09	0.94	0.11
Written VIS	0.78*	0.08	0.52***	0.08
Oral VIS	0.79*	0.09	1.33	0.20
<i>Offense Score</i>				
Seriousness	0.90***	0.02	0.71***	0.03
Vulnerability	1.24*	0.11	—	—
Injury				
Non-permanent	1.24***	0.06	—	—
Permanent, death	0.72***	0.07	—	—
Weapon				
Weapon	1.40***	0.08	—	—
Firearm, explosive	1.74***	0.11	—	—
<i>Offender Score</i>				
Adult record				
Minor	0.82**	0.06	0.66*	0.12
Moderate	1.05	0.08	0.59**	0.11
Major	0.99	0.09	0.54**	0.12
Relationship to CJS	0.70***	0.04	0.80*	0.07
Adult violations	1.01	0.06	0.97	0.09
<i>Defendant Factors</i>				
Race				
Black	0.91	0.05	0.92	0.08
Hispanic	0.80	0.14	0.68	0.26
Other	0.72***	0.07	0.84	0.15
Female	1.76***	0.15	1.52***	0.19
Age at sentencing	1.01***	0.00	1.01*	0.00
<i>Case Processing</i>				
Midpoint	1.00***	0.00	1.01***	0.00
PSI	0.67***	0.05	0.74	0.12
Disposition				
Plea, no agreement	1.00	0.07	0.82	0.10
Court trial	1.00	0.15	1.08	0.45
Jury trial	0.25***	0.03	0.12***	0.05
Unknown	0.93	0.06	0.72*	0.09
Representation				
Public	0.79***	0.04	0.78**	0.07
Other	0.89	0.08	0.64*	0.13
<i>Court Context</i>				
Circuit				
2	0.46**	0.11	1.13	0.23

3	0.77	0.12	2.62***	0.39
4	0.84	0.18	1.32	0.39
5	0.40***	0.07	3.02***	0.39
6	0.38***	0.11	1.60*	0.32
7	0.39***	0.07	1.43	0.28
8	0.66*	0.12	3.48***	0.71
N	9,727		3,205	

*** p<0.001, ** p<0.01, * p<0.05

Table B3***Linear Regression: Deviation from the Presumptive Sentence (Extended)***

Variable	Person Offenses		Property Offenses	
	Coefficient	SE	Coefficient	SE
Constant	-1.37	6.86	177.24***	17.22
<i>Victim Participation</i>				
Presence at sentencing	5.18	3.59	23.57**	9.10
Written VIS	42.32***	4.89	22.95*	11.20
Oral VIS	11.26*	4.90	32.50**	11.70
<i>Offense Score</i>				
Seriousness	0.63	1.05	-24.44***	2.62
Vulnerability	-1.39	3.60	—	—
Injury				
Non-permanent	-11.84***	2.29	—	—
Permanent, death	-2.10	4.25	—	—
Weapon				
Weapon	-22.96***	2.50	—	—
Firearm, explosive	-31.25***	2.81	—	—
<i>Offender Score</i>				
Adult record				
Minor	-0.44	2.76	-46.25***	8.86
Moderate	-13.10***	3.11	-63.87***	10.13
Major	-10.38**	3.76	-88.13***	14.10
Relationship to CJS	14.03***	2.47	-18.69*	7.95
Adult violations	-3.64	2.72	-21.21*	8.66
<i>Defendant Factors</i>				
Race				
Black	4.35	2.47	-9.09	6.90
Hispanic	45.33***	7.23	-28.73	27.32
Other	6.63	4.06	12.93	13.19
Female	-24.89***	3.35	-34.40***	8.63
Age at sentencing	-0.08	0.09	-0.73*	0.31
<i>Case Processing</i>				
Midpoint	-0.08***	0.02	0.41**	0.13
PSI	32.61***	3.49	37.90**	12.66
Disposition				
MSCCSP plea agreement	8.87**	2.73	7.58	8.76
Plea, no agreement	3.22	3.98	27.43*	11.52
Court trial	70.24***	8.73	-28.32	37.66
Jury trial	85.47***	5.95	46.47	27.01
Unknown	6.00	3.44	5.52	11.91
Representation				
Public	7.34***	2.12	11.80	6.96
Other	2.73	4.16	0.14	15.58
<i>Court Context</i>				
Circuit				

2	-16.99**	6.43	-73.37***	16.37
3	-16.39***	4.14	-75.88***	12.31
4	-0.68	6.00	-80.35***	22.84
5	-30.74***	4.15	-80.62***	11.01
6	-14.38*	6.54	-63.95***	16.41
7	-19.64***	4.67	-30.77*	14.03
8	-30.78***	4.09	-59.71***	13.62
N	24,112		6,709	

*** p<0.001, ** p<0.01, * p<0.05

Table B4***Interaction Effects of Vulnerability on Victim Participation (Extended)***

Variable	Upward Departure vs. Standard Sentence		Downward Departure vs Standard Sentence		Deviations from the Presumptive Measure	
	rrr	SE	rrr	SE	Coefficient	SE
Constant	0.18***	0.04	0.45***	0.08	-1.22	6.89
<i>Interactions</i>						
Presence*vulnerable	0.67	0.24	0.99	0.27	-54.39***	10.87
Written VIS*vulnerable	1.26	0.42	1.21	0.36	7.07	12.34
Oral VIS*vulnerable	1.10	0.42	1.07	0.34	113.21***	13.28
<i>Victim Participation</i>						
Presence at sentencing	1.14	0.16	1.03	0.10	12.46**	3.83
Written VIS	1.68***	0.25	0.76*	0.09	39.62***	5.42
Oral VIS	1.21	0.20	0.79*	0.09	-6.90	5.34
<i>Offense Score</i>						
Seriousness	1.01	0.04	0.90***	0.02	0.64	1.05
Vulnerability	0.71	0.17	1.01	0.17	-7.19	6.24
Injury						
Non-permanent	0.56***	0.05	1.25***	0.06	-11.50***	2.29
Permanent, death	1.10	0.14	0.71***	0.07	-1.15	4.25
Weapon						
Weapon	0.51***	0.05	1.40***	0.08	-23.06***	2.49
Firearm, explosive	0.30***	0.04	1.74***	0.11	-31.38***	2.81
<i>Offender Score</i>						
Adult record						
Minor	1.20*	0.11	0.82**	0.06	-0.75	2.76
Moderate	0.85	0.11	1.05	0.08	-12.76***	3.11
Major	0.68*	0.11	0.99	0.09	-10.42**	3.76
Relationship to CJS	0.85	0.08	0.70***	0.04	13.98***	2.47
Adult violations	0.97	0.11	1.01	0.06	-3.54	2.71
<i>Defendant Factors</i>						
Race						
Black	0.78**	0.06	0.91	0.05	4.46	2.47
Hispanic	0.98	0.20	0.80	0.14	45.17***	7.22
Other	0.88	0.12	0.72***	0.07	6.87	4.06
Female	0.78*	0.10	1.75***	0.15	-24.92***	3.35
Age at sentencing	1.00	0.00	1.01***	0.00	-0.08	0.09
<i>Case Processing</i>						
Midpoint	1.00**	0.00	1.00***	0.00	-0.08***	0.02
PSI	1.87***	0.18	0.67***	0.05	32.50***	3.49
Disposition						
MSCCSP plea agreement	—	—	—	—	8.76**	2.73
Plea, no agreement	1.26*	0.14	1.00	0.07	3.67	3.97
Court trial	1.32	0.30	1.00	0.15	70.34***	8.72

Jury trial	3.57***	0.43	0.25***	0.03	84.61***	5.95
Unknown	1.12	0.12	0.93	0.06	5.92	3.43
Representation						
Public	1.31***	0.10	0.79***	0.04	7.35***	2.12
Other	1.15	0.16	0.89	0.08	2.64	4.15
<i>Court Context</i>						
Circuit						
2	0.35***	0.06	1.45**	0.19	-17.22**	6.42
3	0.54***	0.06	2.45***	0.22	-16.63***	4.14
4	0.91	0.13	1.40**	0.17	-0.45	6.00
5	0.38***	0.04	2.42***	0.22	-30.70***	4.14
6	0.43***	0.08	1.67***	0.24	-14.59*	6.53
7	0.35***	0.05	1.18	0.13	-19.49***	4.67
8	0.51***	0.07	5.01***	0.48	-30.96***	4.09
N	15,373		9,727		24,112	

*** p<0.001, ** p<0.01, * p<0.05

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