CONTEXTUALIZING THE LAW: SENTENCING DECISIONS OF CHILD SEXUAL
ASSAULT CASES OF DALLAS COUNTY, 1999-2005

Megan Greening, B.A.

Thesis Prepared for the Degree of

MASTER OF ARTS

UNIVERSITY OF NORTH TEXAS
December 2006

APPROVED:

Kimi Lynn King, Major Professor
James Meernik, Minor Professor and Chair of the
Department of Political Science
Corey Ditslear, Committee Member
Sandra L. Terrell, Dean of the Robert B. Toulouse
School of Graduate Studies

The incidence of sexual assault inundates the courts with many cases each year. Given the unique nature of the crime, judges and juries are faced with an array of different scenarios to which they are required to make fair, justifiable and consistent decisions. I examine child sexual assault cases of Dallas County 1999-2005, I look at both legal and extralegal factors including case characteristics, institutional characteristics and characteristics of the defendants and the victims. First, I examine the impact of the independent variables on sentence length using regression analysis to determine influences on sentencing for judges and juries. Second, I examine the same factors using Probit analysis to determine which characteristics make a life sentence more probable for those decision-makers.
ACKNOWLEDGEMENTS

I would like to thank Ed Engebretsen, Lori Primm & Herb White at the Dallas County Courthouse Felonies Records department for their persistent assistance in the ordering and gathering of the case files. I would also like to thank the Dallas County judges in who took the time out of their busy schedules to allow me to interview them. Confidentially was ensured so the names of the judges must be withheld. Finally, I would like to acknowledge Dr. Kimi Lynn King for her invaluable guidance with the collection of the data necessary for this project.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I.  INTRODUCTION TO STUDY OF TRIAL COURTS AND SEXUAL ASSAULT</strong></td>
<td>1</td>
</tr>
<tr>
<td>A.  Sexual Assault in the United States and the Courts</td>
<td>1</td>
</tr>
<tr>
<td>B.  The Importance of Studying Trial Court Outcomes</td>
<td>3</td>
</tr>
<tr>
<td>C.  Thesis Structure</td>
<td>5</td>
</tr>
<tr>
<td><strong>II.  STUDYING TRIAL COURT SENTENCING OUTCOMES</strong></td>
<td>7</td>
</tr>
<tr>
<td>A.  Lack of Research on Trial Courts</td>
<td>7</td>
</tr>
<tr>
<td>B.  Trial Court Decision Making</td>
<td>9</td>
</tr>
<tr>
<td>C.  Sentencing</td>
<td>17</td>
</tr>
<tr>
<td>D.  Texas Sex Assault Laws and Sentencing Decisions</td>
<td>21</td>
</tr>
<tr>
<td><strong>III.  THEORY AND HYPOTHESES</strong></td>
<td>27</td>
</tr>
<tr>
<td>A.  Relevance of Neo-Institutionalism for this Research</td>
<td>27</td>
</tr>
<tr>
<td>B.  Theory of Decisional Outcomes</td>
<td>28</td>
</tr>
<tr>
<td>C.  Dependent Variable: Sentence Severity</td>
<td>29</td>
</tr>
<tr>
<td>D.  Decision-Maker Characteristics</td>
<td>30</td>
</tr>
<tr>
<td>E.  Case Characteristics</td>
<td>35</td>
</tr>
<tr>
<td>F.  Control Variables</td>
<td>47</td>
</tr>
<tr>
<td><strong>IV.  DATA AND ANALYSIS</strong></td>
<td>50</td>
</tr>
<tr>
<td>A.  Data Collection</td>
<td>50</td>
</tr>
<tr>
<td>B.  Operationalization</td>
<td>52</td>
</tr>
<tr>
<td>C.  Examining Factors of Sentence Length (Regression Analysis)</td>
<td>58</td>
</tr>
<tr>
<td>D.  Examining Factors of Life Sentences (Probit Analysis)</td>
<td>72</td>
</tr>
<tr>
<td><strong>V.  DISCUSSION AND CONCLUSIONS</strong></td>
<td>83</td>
</tr>
<tr>
<td>A.  Conclusions and Discussions</td>
<td>83</td>
</tr>
</tbody>
</table>
B. Future Research .......................................................................................... 86

Appendix

A. TEXAS SEX ASSAULT AND FELONY PUNISHMENT LAWS.................. 89
B. LIST OF CASES.......................................................................................... 98
C. JUDGES AND PARTISANSHIPS ................................................................. 123
D. CODING APPENDIX ................................................................................. 125
E. SAMPLE CODE SHEET ............................................................................ 128
F. AGGREGATE REGRESSION FOR SENTENCE SEVERITY IN NON-
AGGRAVATED CASES .................................................................................. 130

REFERENCES .............................................................................................. 132
| 1. | Variable Summary Statistics for Aggravated Sexual Assault | 57 |
| 2. | Aggregate Regression of Sentence Severity in Aggravated Sexual Assault Cases | 58 |
| 3. | Regression of Sentence Severity for Aggravated Sexual Assault by Decision-Maker | 65 |
| 4. | Aggregate Probit of Life in Aggravated Sexual Assault Cases | 73 |
| 5. | Probit of Life Sentences for Aggravated Sexual Assault by Decision-Maker | 78 |
CHAPTER I

INTRODUCTION TO TRIAL COURTS AND SEXUAL ASSAULT

A. Sexual Assault in the United States and the Courts

The incidence of sexual assault is a national epidemic with estimates that a sexual assault occurs every two minutes in the United States.\(^1\) More than half of these sexual assaults are against children with 22% of all assaults occurring to victims under the age of twelve (U.S. Department of Justice 1998). Studies indicate that the crime of sexual assault will be committed against one in four women throughout their lifetime. Additionally, 10% of all sexual assaults that are committed are against males (Rape, Abuse and Incest National Network 2006). Each year in Texas alone, it has been suggested that more than 250,000 children are sexually assaulted, a majority of them by family members or close acquaintances and that approximately 13% of all adult Texans have been sexually assaulted at one time in their life (Busch, Bell, DiNitto, and Neff 2003).

According to statistics, only about a third of sexual assaults are executed by strangers, despite its perception as the most frequent rape scenario. Forty-seven percent of all assaults committed are by acquaintances, 17% by an intimate such as a father or husband, and 3% by other relatives. The number of intimate rapes is even higher in instances of sexual assault against children; however, exact numbers are not known (Rape, Abuse and Incest National Network 2006). Furthermore, occurrences of sex assault affect individuals of all ages, socio-economic statuses, and racial and ethnic groups (Busch, Bell, DiNitto, and Neff 2003).

\(^1\) The term sexual assault refers to all sexually based crimes committed against an individual not just rape.
Sexual assault is perhaps the most underreported crime with estimates that only between 18-32% are ever reported to law enforcement (Busch, Bell, DiNitto, and Neff 2003). Furthermore, of the reported assaults, males are the least likely to report that an incident has happened to them (Rape, Abuse and Incest National Network 2006). The number of unreported sexual assaults may be even higher but there is no way to ever know given the secrecy that frequently surrounds sexual violence.

As the numbers indicate, the incidence of sexual assault infringes upon nearly everyone’s life at some point in time and inundates the courts with a plethora of cases each year. Judges and juries are faced with a vast array of different scenarios to which they are required to make fair, justifiable and consistent sentencing decisions. Exactly how do judges and jurors go about making such decisions? Which factors in particular influence those decisions when rendering judgment upon the accused of sexual violence?

The use of sexual assault cases for this research serves two distinct purposes. First, it is an avenue through which to study trial court decision-making and expand the limited research on state trial courts. Second, it is an important policy area of interest in its own right. From this research I am able to determine, not only how trial court judges and juries make sentencing decisions, but also I am able to show the political implications on sexual assault of these decisional outcomes.

Given the unique and personal nature of sexual assault as a crime, there may be further potential influences surrounding the characteristics of the victim and the defendant. These characteristics may not be generalizable or significant to other crime categories but may be highly significant for outcomes in cases of sexual assault. This raises yet even more questions. Inquiries into the behavior of the victim at the time of the offense are most clearly
raised in sexual assault cases (Spears and Spohn 1997). Does the age at which the assault occurs influence the perceived responsibility or the reliability of the victim, or is the assault of all children seen as equally horrendous as measured by sentence severity? To what extent does the relationship of the victim to his or her perpetrator influence the decision-maker? Do women judges, given their distinctive understanding of sexual violence, have different sentencing practices than their male counterparts? Finally, is justice blind to victim gender and defendant race or are there discrepancies outside the statutory limitations that play out in the courtroom?

The answers to these questions may have some important policy implications to not only those convicted of sexual assault but also the victims of the assault. Sentencing decisions may influence the ways in which sexually violent crimes are seen by attorneys, judges, the legal community, the social work community and by society in general. This thesis examines such questions and specifically looks at the legal and extra-legal factors of decision-making that play a role in sentencing in child sexual assault cases in Dallas County, Texas from 1999-2005. In doing so, I expand the research on state trial courts and show that it is not only the legal or the attitudinal factors that influence sentence severity as some research suggests but rather a much more complicated intertwining of legal, attitudinal and institutional forces. Additionally, I illustrate the difference between the influences on judge and jury decisions. Finally, I am able to illustrate the political implications of trial courts specifically on the treatment of sexual assault.

B. Importance of Studying Trial Court Outcomes

While most judicial scholars focus on the appellate courts, specifically the United States Supreme Court, and the federal district courts, little literature exists in political science on state
trial court decision making. Its examination, however, is quite important because despite the difficulty of obtaining appropriate data and the perception that trial courts merely find facts, trial court decisions can and do have important policy implications (Sarat 1977). This is particularly true in sexual assault sentencing decisions. Furthermore, it is impossible to learn about the treatment of sexual assault as a specific policy area by examining sexual assault cases at the appellate level. Decisions are very rarely overturned and appellate courts deal with questions of law not questions of fact (Murphy, Pritchett, Epstein and Knight 2006).

Trial courts serve many purposes of which potentially have significant political implications for the law. First, state trial courts essentially implement legislative policies. Through the decisions and sentences handed down, state trial courts apply the laws and determine the extent to which those laws are significant and worthy of punishment (Rowland and Carp 1996). Second, sentencing decisions implicate sentencing goals and send a message to the community about certain policy areas, such as sexual assault, and how the court system deals with those areas (Spohn 2002). Finally, in looking at state trial courts whether there is discrimination or disparity in sentencing is revealed, thus indicating the fairness and equality of the state trial court system (Spohn 2002). All of these are important contributions of state trial courts that need to be studied more extensively.

Furthermore, state trial courts are fundamentally different from both federal trial courts and appellate courts and deserve examination in their own right. Given these differences, theories of judicial decision-making cannot be applied wholesale to understand state trial courts. While theories of decision-making for state trial courts have begun to emerge from other theories of judicial decision-making, they have yet to be thoroughly tested. Additionally, with the study of state trial courts questions must be addressed about the difference in decision-makers and
whether judges and juries sentence differently. This alone may have important implications for defendants, victims and the state trial court system as a whole.

C. Thesis Structure

To examine the questions raised above, the remainder of study proceeds as follows. Chapter II focuses on the importance of studying state trial court decision-making. I emphasize the critical need for research specifically on state trial courts and note the inherent differences of state trial courts from both the federal trial courts and the appellate courts. I then discuss the contending theories of trial court decision-making with a focus on the superiority of the neo-institutional approach for the study of state trial courts. After the broad discussion of state trial court decision-making, Chapter II narrows in on the sentencing aspect of trial court outcomes and the policy implications of sentencing. Finally, Chapter II introduces the importance of studying sexual assault sentencing decisions and discusses previous research on sexual assault in the criminal justice system. Furthermore, I present the necessary background information on sexual assault law reforms in Texas and the statutory legal structure under which the empirical analysis is based.

In Chapter III, drawing heavily from the neo-institutional approach of decision-making I introduce my theory of decisional outcomes. Additionally, I offer several testable hypotheses based on both legal and extra-legal factors including decision-maker characteristics, case characteristics, victim and defendant characteristics and the important control variables necessary to make the overall results valid.

In Chapter IV, using sentencing decisions of child sexual assault cases from Dallas County, Texas from 1999-2005, I test my hypotheses using both regression and probit analyses for the dependent variables of sentence length and life sentences respectively. I run separate
analyses aggravated sexual assault and non-aggravated sexual assault in addition to separate analysis of jury and judge decisions in order to most clearly determine the factors of sentencing for different decision-makers. Finally, in Chapter V I draw conclusions from the results and make suggestions for future research.
CHAPTER II

STUDYING TRIAL COURT SENTENCING OUTCOMES

A. Lack of Research on Trial Courts

Research on decision-making in the state trial courts is limited. Judicial scholarly endeavors have remained primarily on the higher appellate courts, and even more specifically on the United States Supreme Court (Segal and Spaeth 2002). Several different explanations have been offered as to why such a large sector of the American court system has been largely excluded from judicial politics research. First, the appellate courts are faced with important policy decisions that may affect a substantial portion of the population, whereas trial courts do not appear on the surface to delve into policy considerations. As mere triers of fact, most do not view trial court decisions as relevant beyond those involved with case at hand. Cumulatively, however, these decisions are relevant to a wide array of individuals. Decisions made at the trial court level have important political implications, though it is much more discrete and not so readily apparent in any given decision (Sarat 1977).

Second, information on the judges and their actions at the trial court level are more difficult to measure, and the data are not as readily available given that trial court decisions are rarely published (Sarat 1977; Carp, Stidham and Manning 2004; Rowland and Carp 1996). Additionally, trial judges perform a more varied array of tasks than do appellate judges making it hard to discern which is the most important and worthy of examination (Sarat 1977). Despite these limitations, however, state trial courts are an important area that must be expanded within judicial decision-making literature.
Finally, it is important to recognize that it is essential to isolate types of cases by substantive area given that the type of underlying issue may make a difference (Carp and Rowland 1983). Civil cases are different than constitutional cases which are different than criminal cases. The same is true for the types of cases within these areas (Ringquist and Emmert 1999). Rowland and Carp (1996) found that case decisions frequently rely of different factors depending upon which issue dimension is being analyzed. Therefore, each type of law needs to be examined in its own right as does each type of court in the judicial system.

This chapter examines the previous research that does exist on trial courts from the political science, criminal justice, law, and sociology literature. Specifically, I focus on the significance of examining state trial court decisions as distinct from federal trial and appellate courts, while emphasizing important factors such as jury versus judicial decision-making and elected versus appointed judges. I then present several theories of judicial decision making that are implemented in state trial court research and suggest that the neo-institutional approach is the superior approach to such studies.

In the following section, I take a specific focus on the sentencing aspect of state trial court judicial decision-making and discuss the policy considerations and the goals of sentencing with a particular emphasis on sexual assault cases in these areas. Finally, I present an overview of sexual assault in the trial courts and sentencing decisions, and I discuss the necessary information on Texas sexual assault law reform and the legal structure of Texas laws relevant to this research.
B. Trial Court Decision-Making

1. State versus Federal Courts

State trial courts are not nearly as extensively studied as are the federal trial courts (Sarat 1977). State opinions are less frequently published, and thus even more difficult to obtain. Although both federal district courts and state trial courts are both courts of first instance, they are significantly different and must be examined separately. Research on the federal district courts may have some applicability but ultimately it cannot be a substitute for research on state trial courts.

Federal district courts deal with a fundamentally different set of cases. First, the jurisdiction of the federal courts is over federal matters, while the jurisdiction of the state courts is over state matters. Given that the issue area under examination can be of significance (Rowland and Carp 1996), looking at state courts could reveal fundamentally different behavior than looking at federal district courts. Also, the institutional constraints and rules and norms differ between federal district courts and state courts, including jury sentencing practices.

Finally, federal district judges are afforded lifetime appointment, whereas state trial judges are only elected or appointed for a period of time. This means that federal district judges do not have to face the same pressures as state trial judges to follow public opinion. Although the constraints of public opinion can never be fully avoided, the job stability of the federal judges does not depend upon following the whims of the public (Carp, Stidham and Manning 2004).

a. Elected versus Appointed Judges

It is also important to take into account the differences associated between elected and appointed judges. Judicial selection is open to much controversy within American politics (Cheek and Champagne 2003). On one hand, the election of judges is closer to the democratic
process, and frequent elections hold the judges accountable for their actions. On the other hand, however, judicial elections make it more difficult to reach the ideal of an “independent and impartial judiciary” (Cheek and Champagne 2003, 1359). Thus, the way in which judges ascend to the bench has important implications for the decision-making process. Depending upon the practices of the states, judges are chosen either by the electorate in partisan or non-partisan election or are appointed by another elected group such as the governor or the legislator. Texas is one of eight states that choose their district judges via partisan elections (Murphy, Pritchett, Epstein, and Knight 2006).

By having partisan elections, judges must take reelection into consideration and therefore their decisions may be based on whether or not they feel the public will approve. In partisan elections particularly, ideology may begin to play a more significant role in outcomes (Nagel 1961). Furthermore, judges that are elected are accountable to the people and therefore the decisions handed down may better reflect the views of society as opposed to the specific views of the individual judges. Appointed judges, particularly federal judges who are appointed for life, are not held to the same accountability and therefore are able to more freely express their viewpoints in the decisions that they hand down (Carp, Stidham and Manning 2004). Only by looking at state trial courts is it possible to test the differences between elected and appointed judges.

b. Jury versus Judge Outcomes

Another noteworthy consideration when examining trial court judicial decision-making is who makes the sentencing decision – a judge or a jury. Texas is one of only six states to allow defendants to opt for sentencing by a jury in felony cases¹ (King and Noble 2004). Many,

---
¹ The other five states are Oklahoma, Kentucky, Virginia, Arkansas, and Missouri. In the other forty-four states, juries convict in felony cases but the judge determines the sentence (King and Noble 2004).
particularly academics, are opponents of jury sentencing based on an assumption that their
decisions are both uninformed and much harsher than those rendered by judges (Lanni 1999; Hoffman 2003). This criticism “generally focuses on issues of disparity, inadequate sentencing information, compromise verdicts, and lack of [legal] expertise, and it typically consists of impressionistic arguments based on anecdotal evidence rather than scientific data” (Lanni 1999, 1788). Others, however, contend that jury sentencing is much closer to the democratic practice and allows society to determine the relative weight of certain crimes and that it should be instituted in all states (Iontcheva 2003).

Individual jurors make decisions not unlike that of a judge in many ways. They are influenced by many of the same factors such as personal background, victim and defendant characteristics and case facts (Visher 1987, 2). Juries have been found to be influenced by attitude towards punishment, case characteristics and defendant characteristics in addition to demographic factors. These influences, however, may manifest themselves differently than they do for judges in that certain factors may have more or less influence on the different decision-makers (Visher 1987; Carp, Stidham and Manning 2004).

Most assume, including practitioners, that juries mete out more severe sentences than judges. Several studies have examined the potential sentencing effect of opting for a jury trial versus a bench trial (Kingsnorth, MacIntosh, and Wentworth 1999; Lanni 1999; Myers, et. al 1999; Visher 1987; Hoffman 2003) and have resulted in inconclusive findings. Despite the overwhelmingly common belief that juries punish more harshly some studies indicate that juries are actually more lenient (Smith and Stevens 1984) and others that there is no difference at all (Lanni 1999).
The assumption that jurors sentence more harshly may be a result of factors embedded in the system. Jurors are unable to impose alternative punishments such as probation, rehabilitative services or to suspend sentences (King and Noble 2004). Furthermore, the courtroom efficiency associated with conducting a bench trial\(^2\) may incline judges to provide some sort of sentencing discount making it look as though jurors sentence more severely based on the facts of the case (King, Soule, Steen, and Weidner 2005).

Until scholars can more clearly determine whether differences between jury and judge sentencing exist, and if so what those differences are, it is essential to examine the potential for differences in punishment severity in non-capital cases.

2. Trial versus Appellate Decision-Making

Most judicial decision-making research focuses on appellate court decision-making, which to a large extent is inapplicable at the trial court level (Sarat 1977). Although both trial courts and appellate courts follow the doctrine of precedent, also known as stare decisis, decision-making at the trial court level is fundamentally different than decision-making at the appellate level (Carp, Manning and Stidham 2004). First, trial court judges and appellate court judges face considerably different judicial functions. Trial court judges are judges of first instance. They are required to establish the facts in a case, rule on guilt or innocence, and quickly rule on motions and objections by the attorneys at trial.\(^3\) Appellate court judges, on the other hand, generally accept the fact finding of the lower courts and rule on more procedural and legal matters related to the case (Schultz 2001; Baum 1997).

---

\(^2\) As opposed to a jury trial were a lot of time is focused on finding acceptable juries to both parties and writing instructions to the jury that may not understand or know the law.

\(^3\) These tasks include but are not limited to whether to set bail, how to respond to an attorney’s objection at trial, and whether or not evidence is admissible.
Second, trial judges and appellate judges face considerably different pressures. Appellate court judges do not face the time constraints felt by trial court judges and are rarely required to make instant rulings. Appellate decisions are frequently deliberated over for a much greater period of time before the issue presented has been resolved, time that is not afforded at the trial level. Furthermore, appellate decisions almost always result in a written opinion whereas trial court decisions rarely result in published written opinions (Schultz 2001). Finally, appellate judges do not hear witness testimony and are “removed from the drama and confrontations of the trial courtroom” (Carp, Stidham and Manning 2004, 282).

Third, judging at the trial level is primarily an individualist endeavor in contrast to the appellate level where the judges sit in varying numbers on a panel and come to decisions together (Carp, Stidham and Manning 2004). Judges at the trial level do not have to compromise with fellow judges in order to come a decision on issues, whereas there must be at least some agreement or compromise at the appellate level to reach decisions about a case.

Finally, while studies have found that the demographic, socioeconomic and background characteristics do not vary much between appellate and trial judges, with the greatest difference being in the educational background, the institutional differences are stark (Slotnick 1983). This therefore requires a more appropriate avenue through which to study trial court decision-making than is offered in the literature for appellate courts. In the sections that follow, I present several different theories of judicial decision-making appropriate to study of the state trial court level and suggest their contributions and limitations.

a. Legal (Black Letter) Theory

The first and most basic theory of trial court judicial decision-making is the black letter legal theory (Llewellyn 1931). Proponents of the legal theory suggest first and foremost that the
law matters. Any additional influences on the sentences that are handed down are legally relevant factors such as offense severity and the prior record of the defendant (Dixon 1995; Spohn 2002). Legal model theorists suggest that when the law and other legal characteristics are taken into account, sentence disparities for all other extra-legal factors become irrelevant and non-existent. They argue it is ultimately only the legal characteristics that play a role in the determination of sentences (Dixon 1995).

One of the main components of the legal theory is the idea of stare decisis or precedent. Generally, precedent is the process of following prior decisions. According to the doctrine of precedent, judges take prior decisions made in similar situations and apply that same rule of law to subsequent cases. The doctrine of precedent is intended to keep the application of laws predictable and personal biases and reasoning out of the decision-making process (Carp, Stidham and Manning 2004; Dixon 1995).

Legal theories are flawed, however. If judges actually followed the legal model precisely, sentencing decisions “would be largely mechanical, and all judicial outcomes would be predictable” (Carp, Stidham and Manning 2004, 288). Most previous research indicates that this is in fact not the case. Although legal variables are found to be consistently significant in determining in sentence outcomes, there has been a plethora of literature that suggests that other extra-legal variables are also significant in determining sentencing outcomes (Spohn 2002; Segal and Spaeth 2002; Woolredge 1998; Tate and Handberg 1991; Rowland and Carp 1996; Kingsnorth, MacIntosh, and Wentworth 1999). From this come several other judicial decision-making schools of thought. The most notable of these later theories are the attitudinal/behavioral approach and the neo-institutional approach (Carp, Stidham, and Manning 2004).
b. Attitudinal Theory

Beginning in the mid nineteen hundreds with the behavioral revolution, the attitudinal model became the dominant paradigm for studying judicial behavior. The attitudinal model posits that the judicial decision-making process is entirely influenced by attitudes and policy preferences of the judges and that the legal variables are irrelevant because of the flexibility of legal interpretation (Segal and Spaeth 2002). Specifically, the attitudinal theory contends that outcomes are influenced by role orientations, attitudes and partisanship of the judges (King, 1998). Decisions are theorized to be a direct product of an individual judge’s values, beliefs and preferences (Rowland and Carp 1996). Judicial attitudes on the goals of sentencing are also related the severity of sentences that are handed down (Frazier and Bock 1982). Legal factors are essentially discounted because it is argued that depending on how the law is looked at, judges can basically make any decisions they want by choosing which precedent to follow (Segal and Spaeth 2002).

While there is no denying that the attitudes of decision-makers play a significant role in determining trial court outcomes, the attitudinal model has shortcomings when applied to the study of state trial courts. First, “to say that a judge interpreting the Constitution is motivated by his consistent, belief driven preferences is very different from saying that a trial judge’s evaluations of evidence is motivated by these same preferences” (Rowland and Carp 1996, 147). So although attitudes can be significant, it is not the only or even the primary influence in trial court decision-making. Furthermore, legal factors simply cannot be ignored and by doing so attitudinal theories are severely limited. Other factors must also be taken into consideration including the law and institutional factors which is addressed by the final theory of judicial decision-making: neo-institutionalism.
c. Neo-Institutional Theory

The final approach to studying state trial court judicial decision-making is the neo-institutional approach. Neo-institutional theories emphasize “the interaction of individual preferences, case facts, and environmental forces with institutional rules and structures…As neo-institutionalism suggests, institutional arrangements serve to condition the effects of personal attributes, case characteristics and contextual variables on judicial choice and as such are critical determinants of the judicial vote” (Brace and Hall 1993, 917). It combines emphasis of legal and extra-legal influences from the legal and attitudinal perspectives and additionally includes the institutional structure of the courts (Dixon 1995; Brace and Hall 1993).

The institutional aspect of the neo-institutional theory brings in the rules and structure of the court system under analysis. This includes the institutional context and the internal and external rules, both formal and informal, which guide the judges in their decisions (Brace and Hall 1993).

To address all of the essential factors of decision-making, the neo-institutional theory of decision-making offers the most accurate and comprehensive of all the judicial decision-making theories (Dixon 1995; Brace and Hall 1993; Brace and Hall 1997). While both the legal and attitudinal theories of trial court judicial decision-making offer important and unique perspectives on the reasons that judges and juries decide cases, each of them alone is incomplete. Neo-institutional theory proves to be a superior approach for such studies in its inclusion of both legal and attitudinal factors in addition to the suggestion of the influence of institutional factors. Instead of emphasizing only one influencing factor and discounting all others, the neo-institutional approach allows us a clear and much more accurate picture of judicial decisions. It
allows for more complete models that offer a more encompassing explanation of decisional outcomes.

The inclusion of the institutional forces, rules and norms is particularly important in the study of trial court decision-making where the institutional context is highly significant. Neither the legal or attitudinal model account for institutional factors of how guilty pleas are to be dealt with, case workload, the electoral accountability of judges, or the differences associated with jury decision-making (Brace and Hall 1997). By including such important aspects of the trial court, neo-institutionalism offers the best and a more comprehensive avenue through which to study trial courts that is far superior to all other approaches.

C. Sentencing

Of all the possible areas of study within the state trial courts, sentencing is the most comprehensively examined. As one author noted, it is “perhaps the most dramatic and visible of all of the activities” that occur at the trial level (Sarat 1977, 369). Although judges participate in many activities and perform many different functions, it is the sentencing of convicted defendants that the most obvious and discretionary decision-making occurs (Sarat 1977). Additionally, sentencing decisions reflect the final outcomes of the trial courts, bring forth policy considerations, and reflect sentencing goals.

1. Policy Considerations of Sentencing

Although scholars generally discount the policy implications associated with trial court outcomes in comparison to the functions of the appellate courts, sentencing decisions can and do have important policy considerations. The three most important of these are the judicial role of legislative policy implementation, disparity and discrimination in sentencing, and the message that the sentences given send to the community.
a. Legislative Policy Implementation

Frequently, the function of the trial court decision-makers is perceived as nothing more than the determination of facts (Sarat 1977). This viewpoint is highly misguided, however, as trial courts also play an important role in the formulation of policies (Rowland and Carp 1996).

When judges hear cases of first impression, they establish precedent, and in a common-law system this is the essence of policy formation. When opinions are codified and published, they become the rules of the litigation process. When trial judges apply general statutes to individual cases, they implement legislative policies…Indeed, absent clear legal guidelines, judges may actually create policy in the process of implementing vague legal guidelines and fitting the interpreted facts of an instant dispute to the interstices of extant law (Rowland and Carp, 1996; 4).

In other words, in making sentence determinations for individuals that are found to have broken the law, trial judges are putting those laws into action. In doing so, judges create precedent for how future cases and punishments are to be determined. This is particularly important when laws are substantively vague and offer a wide array of sentencing options. When different sets of facts are brought to the courts under the same laws, judges must make decisions as to the severity of those specific facts and what outcome is appropriate, therefore creating precedent for how other similarly situated cases are to be treated. Through implementing policies and creating this precedent, the vague laws gain substance and context through the courts and thus work to formulate policy (Rowland and Carp 1996; Murphy, Pritchett, Epstein, and Knight 2006).

b. Disparity in Sentencing

Implementing legislative policies through precedent, however, is only one way in which state trial courts have political implications. In felony cases, such as sexual offenses, judges and jurors are afforded wide discretion to determine the amount of time the defendant is to serve within the statutory limitations which can range from two years to 99 years depending on the
degree of the felony. For example, in aggravated sexual assault cases in Texas, sentences by law are to range from five to 99 years or life thus allowing for a large variation in sentences for the same crime. With this discretion, sentences are expected to be disparate however they should not be discriminatory.

Many scholars dispute the idea that there is discrimination in the sentencing of criminal defendants but rather argue that sentences are disparate as a consequence of reality (Spohn, 2002). For example, one view of the disproportionate number of African-Americans within the United States prison system suggests that minorities are simply committing a higher number of crimes which are more severe in nature. If this is true, then the higher rates of conviction are a result of prior criminal record, a legally relevant cause for harsher punishment (Walker, Spohn and DeLone 2000). Alternatively, others contend that there is discrimination in sentencing resulting in more severe sentences for individuals based on legally irrelevant factors such as race or social class status (Spohn 2002).

There is an important distinction between disparity and discrimination in sentencing. Disparity in sentencing is inevitable occurring across jurisdictions, within jurisdictions, and across judges depending upon the judicial goals and the weight attached to legally relevant factors (Spohn 2002). Discrimination in sentencing, however, has important political implications because individuals are supposed to be protected from discrimination based on race and gender (Spohn 2002). If these protections are being violated, the fairness and the constitutionality of the system are compromised. Furthermore, sentences are supposed to be based on the law, not on legally irrelevant defendant characteristics.

---

4 First degree felonies, which include aggravated sexual assault, have a minimum sentence of five years and a maximum sentence of 99 years or life. Second degree felonies, on the other hand which include sexual assault and indecency with a child, require a minimum sentence of two years and a maximum sentence of 20 years. (§12.32, §12.33, and §12.34 of the Texas Penal Code).
The two most studied areas of criminal sentence discrimination are race and gender of the defendant; however, studies have also looked at employment status (Walker, Spohn, DeLone 2000), familial status (Spohn 2002), and age (Spohn 1999) as other forms of sentence discrimination (Spohn and Holleran 2000).

In sexual assault cases, there is a potential for both disparity and discrimination in sentencing. First, like all criminal cases, there is the potential for racial and gender discrimination in sentencing outcomes. Additionally, sentence differences may exist depending on the victim’s sexual history, the gender of the victim, and the prior relationship between the victim and the defendant, all of which should be legally irrelevant case characteristics because they have nothing to do with the law as set forth in the Texas Penal Code (Bryden 2000; Daly 1987; Dawson 2004; Hollander 2003; Horney and Spohn 1996; Pugh 1983).

c. Message to the Community

The examination of sentencing outcomes is also important in that the sentences handed down to the convicted are in essence sending a message to the community about what is unacceptable and what is more tolerable behavior. If judges and juries hand down more lenient sentences for a given crime, they are in essence saying that the crime is unworthy of harsh punishment. Conversely, if judges and juries consistently hand down severe punishments for a given crime, it may serve as a deterrent by sending the message that it is a crime that should and will be punished (Spohn 2002; Branham 2005).

Deterrence is a commonly stated goal of sentencing and is a preventative goal of punishment. It can be either specific or general in nature. Specific deterrence refers to the individual being punished and whether the punishment deters him or her specifically from committing future acts. General deterrence refers to whether individual punishments deter others
from committing the same act after seeing the individual undergo punishment. If judges and juries are consistently handing down severe punishments for certain crimes it sends a very strong message to the community about willingness of the court system to punish the activity. Thus, it is much more likely to have a deterring effect upon society whereas consistent leniency in sentencing may have the opposite effect (Spohn 2002; Branham 2005). Therefore, again, it is important to study trial court sentencing outcomes.

D. Texas Sex Assault Laws & Sentencing Decisions

1. Overview of Sex Assault and Trial Courts

The study of sexual assault for this research serves two purposes. First, sexual assault cases are used as an avenue through which to study state trial court decision-making and sentencing outcomes. While this is an important contribution to literature on trial court decision-making, the examination of sexual assault cases is also an important policy area of interest in its own right. I determine not only how trial court judges and juries make sentencing decisions but I am also able to show the political implications of these decisional outcomes on sexual assault jurisprudence.

Sexual assault cases inundate the courts each year and present judges and juries with a wide range of issues to rule on. While a vast array of research has begun to look at the prosecution of sexual assault, most research centers on under what circumstances sex assault cases are prosecuted and the processing of such cases (Frazier and Haney 1996; Kingsnorth, MacIntosh and Wentworth 1999; Spears and Spohn 1997). Additionally, research has looked at the relationship between victims and their perpetrators; although, this has tended to focus only on intimate versus stranger results and have not distinguished among the specific
relationship categories (Hollifield 2003). Finally, several studies examine the perceived responsibility of victims of sexual assault (Bourgue 1994; Pugh 1983).

In addition to these more extra-legal models of sexual assault decision-making, there has been a plethora of literature looking at the impact of women judges in sexual assault cases (Gruhl, Spohn and Welch 1981; Steffenmeir and Herbert 1999; Spohn 1990). These studies however do not take sexual assault cases as their primary focus, and for those that do, they fail to account for important control variables such as prior criminal records.

Research on the sexual assaults of children is specifically lacking in the literature. That which does exist focuses on the differences between cases of adult victims and cases of children victims (Spears and Spohn 1997; Spohn 1994). While the distinction is important, extensive analyses must be done. Studies must look not only to the differences between adults and children sexual assault, but specifically on how sentencing decisions are made in child sexual assault cases.

Research has yet to systematically examine the sentencing decisions in sexual assault cases. The previous research of sentencing decisions in sexual assault cases that does exist only examines adult cases and many fail to control for prior convictions (Steffenmeir and Herbert 1999; Spohn 1990). My model addresses these holes and deficiencies within the literature. First, however, it is essential to understand recent rape law reforms and the current legal and statutory structure of Texas sexual assault laws.

2. Texas Rape Law Reform

Throughout the last thirty years or so, rape laws throughout the country faced a period of mass reform. Reforms began in the early 1970’s as a response to the growing disapproval of traditional rape law (Spohn 1999). Generally the goal of such reforms was “to treat rape like
other violent crimes by focusing on the unlawful acts of the offender rather than on the character and behavior of the victim” (Spohn and Horney 1993, 384). Since the movement for reform began, Texas, like most states, has reformed its rape laws.

In 1975, Texas instituted the first of a series of reforms known as the rape shield laws (Spohn and Horney 1992). Rape shield laws are specifically designed to protect victims from the revealing of their sexual histories in the courtroom to avoid prejudicial rulings that implicate the victim as the responsible party (Anderson 2002). With the rape shield law in Texas, before any information of this nature can be brought into the courtroom as evidence, an in camera hearing is required to “ensure that the prejudicial nature does not outweigh the probative value” (Spohn and Horney 1992, 43).

For Texas, perhaps the beginning of the most significant of the rape law reforms came in September of 1983. Definitional and categorical changes occurred changing the laws from rape, aggravated rape, sexual abuse, and aggravated sexual abuse to sexual assault and aggravated sexual assault. Sexual assault was defined beyond rape to include more than just vaginal penetration. Additionally, the emphasis moved from the resistance of the victim to the non-consent of the victim (Spohn and Horney 1992; Spohn 1999). Previous penal code required that victims resist to the best of their ability not simply to deny consent to the defendant (Spohn and Horney 1992).

Since 1983, the Texas statute has been amended seven times. In 1987, the language was changed to include male victims because previously the laws had been female oriented. Additional changes included force substitutes in 1993, the administration of drugs in 1999, and the automatic increase to an aggravated offense if victim is older than 64 in 1995 (Hollander 2003). With these reforms came the current Texas Statutes on sexual assault.
3. Statutory Structure of Texas Law

Several aspects of the legal structure of Texas and the laws on sexual violence are important to know in order to understand sentencing decisions in sexual assault cases. First, the Texas Penal Code includes three separate felony offenses of sexual violence that involve some sort of sexual action without consent. These include indecency with a child, sexual assault and aggravated sexual assault (Tx. Penal Codes § 21.11, § 21.011, and § 21.21 respectively). Furthermore, these offenses fall under felonies of first, second and third degree. Aggravated sexual assault is a first degree felony punishable for five to 99 years or life. Sexual assault is a second degree felony punishable for two to twenty years. Finally, indecency with a child can be a second or third degree felony depending upon the circumstances, although it is usually a second degree felony. In instances where it is a second degree felony it is punishable under the same guidelines as sexual assault whereas in instances where it is a third degree felony it is punishable for two to ten years.

Indecency with a child occurs when a person “(1) engages in sexual contact with the child or causes the child to engage in sexual contact; or (2) with the intent to arouse or gratify the sexual desire of any person; (A) exposes the person’s anus or any part of the person’s genitals, knowing the child is present; or (B) causes the child to expose the child’s anus or any part of the child’s genitals” (Tx. Penal Codes § 21.11). For indecency with a child, a child is anyone younger than the age of seventeen that is not the spouse of the other person.

Sexual assault is defined as the penetration of the anus, the sexual organ, or the mouth without a person’s consent. Consent can never be given by a child under the age of seventeen. Furthermore, the act is considered without an individual’s consent if he or she is compelled by

---

5 See Appendix A for the text of the laws.
6 Sentencing guidelines for varying degrees of felonies are found in Tx. Penal Codes § 12.32, § 12.33, and § 12.34. See Appendix A.
use of force or violence, threatened of force or violence, of if the individual is unable to resist physically or mentally (Tx. Penal Codes § 21.011).

For the first time in 1983, Texas passed the law distinguishing sexual assault from aggravated sexual assault. Aggravated sexual assault, a higher crime than sexual assault, is defined as sexual assault that occurs in addition to some aggravating factor, generally a use of force. The crime of sexual assault is elevated to aggravated sexual assault under several circumstances. First, a sexual assault is considered aggravated if the perpetrator’s words or actions cause fear of death in the victim, “serious bodily injury or kidnapping.” Further instances in which sexual assault is considered aggravated include the showing or use of a deadly weapon or the use of drugs to facilitate the activity.

Second, the law statutory distinguishes sexual assault from aggravated sexual assault based solely on the age or the ability of a victim to resist. Aggravated sexual assault includes any sexual assault against children under the age of 14, against any elderly person over the age of 64, or against those debilitated and unable to resist the offender. In these instances force need not be proven (Hollander 2003). If the victim is under the age of 14 and over the age of 64, the assault automatically becomes an aggravated offense and therefore a first degree felony offense. This protects both the youngest and oldest of potential victims by statutorily suggesting that an assault against these age groups is inherently worse and is therefore legally more severe.

Finally, statutory rape laws outlaw sexual activity with any person under the age of 17 who is not within three years of age of the other individual. Any sexual activity with a child under the age of 14, regardless of age differentials, is deemed unlawful (Lewin Group 2004).

It is in the post reform period of sexual assault laws in Texas and within the statutory structure of the laws just discussed that this research now turns. In the next chapter, I present a
theoretical model of sentencing outcomes in sexual assault cases for Dallas County from 1999-2005 along with several testable hypotheses.
CHAPTER III
THEORY AND HYPOTHESES

In this chapter, I draw from the previously discussed trial court theories of judicial decision-making and present my theoretical model. After discussing the relevance of neo-institutional theory, I develop a theory of decisional outcomes based on such an approach. Following the theory, I present the dependent variable of the study and several testable hypotheses that I suggest explain the factors of sentencing in sexual assault cases in Dallas County, Texas from 1999-2005.

A. Relevance of Neo-Institutionalism for this Research

The neo-institutional approach to judicial decision making is important in the study of sexual assault sentencing decisions in that it draws in factors including legal, attitudinal and institutional characteristics. Legally relevant factors are always a salient consideration in any type of criminal case. Whether the decision maker is a judge or juror, sentences have a legal basis in whether the crime is aggravated or non-aggravated, how many prior convictions the defendant has, how many counts the defendant is convicted of in connection to the crime, and the minimum and maximum sentences possible under the statutory framework (Frazier and Bock 1982).

Attitudinal considerations are also significant in sexual assault cases. Most individuals view sex offenders quite negatively. This is especially true considering almost all individuals either know or are a victim of sexual assault. Therefore, attitudes toward the crime, the defendant and the victim all potentially play an important attitudinal role in decision-making. This may
even be more relevant for sex assault cases than any other crime because decision-makers are going to sentence offenders based on previously conceived notions of sex crimes including whether victims are reliable or blameworthy for the act. Attitudes towards what constitutes a more punishable offense based on gender, age and relationship are also important to consider in sentencing outcomes.

Finally, neo-institutionalism takes into account the institutional factors that are important including how guilty pleas are dealt with and who is making the sentencing decision (i.e. judge or jury). Negotiated plea bargains implicate an informal rule in trial court sentencing – judges usually accept the bargain offered by the prosecutor and these bargains tend to imply more lenient sentences. Jury sentencing is another institutional factor that judges have no control over. If the jury sentences the defendant, there is little the judge can do to alter that decision. The rules of the institution have given that responsibility to the jurors when a defendant opts for a jury trial over a bench trial.

B. Theory of Decisional Outcomes

Decisional outcomes in sexual assault cases, based on the neo-institutional approach are expected to rely on both legal and extra-legal factors in each case (Rowland and Carp 1996; Carp, Stidham and Manning 2004; Berstein, Kelly and Doyle 1977). I argue that both the legal framework and statutory structure of sexual assault law in Texas is highly influential for predicting sentence outcomes. That is, the law matters. The statutory structure also implicates previous sexual assault laws which no longer remain on the books, but which may have an effect because the attitude remains. Simply because the laws have evolved and changed does not mean that attitudes have evolved at the same time. These include prior laws on homosexuality and incestuous acts.
Additionally, I argue that decision-maker characteristics are important. Background characteristics of judges, such as race and gender, are expected to be significant for outcomes in sexual assault cases. Furthermore, other extra legal factors such as defendant and victim party statuses, which legally are irrelevant, are theorized to be significant regarding sentence severity, especially in the context of sexual assault decisions. Although extra-legal factors are likely to play a role in most criminal case decisions, sexual assault cases are unique in that certain extra-legal characteristics such as age, gender and relationship may define the seriousness of the offense to the decision-maker. Depending upon these characteristics, the exact same act may appear to be more or less horrendous and therefore more or less deserving of a severe punishment.

Finally, I argue that outcomes are based on particular extra-legal institutional factors such as how guilty pleas are to be dealt with and whether the defendant is sentenced by a judge or a jury. Whether it is the decision of one (i.e. judge) or the decision of a collective group (i.e jury) may influence sentence severity.

C. Dependent Variables: Sentence Severity

The dependent variable of this study is the severity or length of the sentence rendered upon the convicted. Sentences imposed upon the convicted are the final outcomes of the trial court process and indicate how serious crimes and case facts are deemed to be by the criminal court system, particularly by the judge or jury rendering the sentence. In essence, when sentences are delivered, it is the application of the law and the implementation of legislative polices, and these outcomes can have significant policy implications for society. The severity of the sentence in some cases and leniency in others indicates the court system’s response to different scenarios of criminal activity, regardless of whether the determining factors are legally relevant or not. I
suggest that certain characteristics lead to higher, and therefore more severe sentences, including life sentences, whereas other characteristics may result in more lenient sentences.

D. Independent Variables: Decision-Maker Characteristics

1. Jury

Although findings regarding differences in sentence length between judges and jurors have thus far been inconclusive when a spectrum of crimes are examined (Kingsnorth, MacIntosh, and Wentworth 1999; Lanni 1999; Myers, et. al 1999; Visher 1987; Hoffman 2003), who sentences the defendant may make a significant difference in the severity of outcomes in sexual assault cases. By focusing only on sexual assault cases, I expect that jurors do differ in their sentencing practices when compared to judges. Findings have indicated that jurors are more apt to question the blameworthiness of the victim in sexual assault cases and suggest that victims may have had a “contributory fault” surrounding the incident (Visher 1987). From this tendency, it can be expected that jurors sentence more leniently in this category of crime.

Another consideration when looking at jury decisions is that a jury sentence is a compromised decision between the jury members (Kingsnorth, MacIntosh, and Wentworth 1999). Any biases that an individual juror may have (i.e. racial bias, gender bias, etc.) that would cause him or her to desire a more severe sentence would likely be mitigated by other jurors that do not have such a bias, resulting in a lower sentence. Additionally, jurors are given the political freedom to sentence more leniently. While a judge must weigh his or her options in sentencing around whether or not a too lenient of a sentence would make him or her look “soft on crime” to the public, and therefore potentially hinder reelection, a jury does not have to make the same considerations. From this I propose the following hypothesis:

\[ H_1: \text{Jury sentences are more lenient than judge sentences in sexual assault cases, ceteris paribus.} \]
2. Judge

a. Gender

Studies illustrate that women have distinctive attitudes and behaviors from their male counterparts and the differences are represented in their political roles. In fact, advocates of increased gender parity rationalize that the different attitudes offered by women work to change policy, equating to a more equal representation of society’s interest in politics (Bratton and Ray 2002). Gilligan (1982) argues that based on different experiences that men and women face results in a different moral perspective - women are likely to bring a “different voice” into decision-making than their male counterparts. While numerous studies of women and the courts have examined the truth behind such a claim, results remain inconclusive.

Many studies of women in courts center on appellate level decision-making, although findings within these studies have been mostly indeterminate. Within appellate level research, the primary emphasis is placed on the theoretical argument of symbolic versus substantive representation and whether women on the bench advance women’s interests. The question at the center of this theoretical debate is whether women in political positions represent women in their policy interests because they are women or if they only are symbolically representing women through their presence in the political system (Marshall 1993; Segal 2000; Walker and Barrow 1985). Marshall (1993) and Segal (2000) concluded that women were mere tokens of their gender and that there were no statistically significant differences between men and women. In contrast, Walker and Barrow (1985) found that in certain issues women did make a significant difference but in the opposite
direction than expected, although on the whole they were not that much different than men. Like Walker and Barrow (1985), Songer, Davis and Haire (1994) concluded that gender in the court of appeals did play an important role in specific issue areas though not in all the areas or even just in women’s issue areas.

In other research, Gruhl, Spohn and Welch (1981) took a different approach to studying the policy impact of women in the courts and looked at trial judges and their decision-making instead of focusing on the elite judges of the federal courts. Their study looks at the behavioral aspects of the judges rather than ideology. Furthermore, the examination of the trial level over the appellate level shifts the dependent variable from policy outcomes to conviction and sentencing outcomes. They found that women trial judges were not as likely to find a defendant guilty. In the cases the defendant was found guilty, however, women judges were more apt to send the convicted to prison and fairly equal in sentence severity to male judges. Crime specific findings were quite inconsistent as well. For example, although women were more likely to convict for rape, when convicted, the sentences handed down were not as harsh as the sentences handed down by their male counterparts.

Steffenmier and Herbert (1999) did a similar study and found that where differences between the sexes exist, women judges are harsher in sentencing and most harsh toward repeat black offenders. Additionally, they found that women tended to take a more “contextualized” approach in sentencing by looking more closely at the characteristics of the defendants and prior criminal records. Rape cases were found to be equivalently serious by both men and women, and “when the crime is serious, a judge has less latitude in deciding whether the sentence will be served in prison or how long it will be” (1182).
Spohn (1990), also examined gender sentencing differentials, found that women trial judges were harsher in sex assault cases of the Detroit metro area, however she did not control for prior convictions. The number of prior convictions is an essential control when looking at sentencing outcomes (Welch and Spohn 1986; Spohn and Welch 1987) and without doing so the validity of the results must be questioned.

Although previous findings are inconsistent in their results, the voice of women is imperative to the prosecution of sexual violence for their viewpoints are beyond the reach of any man (Hoefgen 1999). While both men and women technically are able to understand accusations of sexual violence and the seriousness of the crime, there is a cross-cultural perspective shared by all women, including a more in depth understanding of the consequences of such actions. Women are much more frequently the victims of gender-related crimes and as a result they are able to “easily accept themselves as potential victims” (Campanaro 2001). This acceptance may lead women to view the crimes as more grave and therefore more deserving of retribution than would a male. Based on this I make the following hypothesis:

\[ H_2: \text{In cases where the sitting judge is a female, sentences rendered are lengthier than in cases where the sitting judge is a male, ceteris paribus.} \]

b. Race

Just as the gender of the judge may have an effect upon the sentencing decisions in sexual assault cases, so too might the race of the judge. The potential for specific effects of race on sexual assault cases are not nearly as distinct as they are for gender, as sexual violence does not discriminate on race as it does for gender. While women are more prone to understand sexual assault (given that higher numbers of women are assaulted each year as compared to men), sexual violence occurs across all races and ethnicities (Busch, Bell, DiNitto, and Neff 2003).
Regardless, the race of the judge may still have a discernable impact on the sentences rendered. Minority judges may be more likely to reduce the racism in sentencing decisions (Spohn 1990). Many studies indicate that minorities are given more severe sentences than non-minorities (Katz and Spohn 1995; Spohn and Holleran 2000; Spohn, Gruhl and Welch 1987) but minority judges may not fall prey to the same discriminatory practices. Welch, Combs and Gruhl (1988) suggested in their findings that it was black judges as opposed to white judges that favored their own race in deciding sentence severity when the convicted were incarcerated; however, white judges were more likely to incarcerate minority defendants than were their black judge counterparts.

Research has also found that a judge’s race influences attitudes and behavior leading to a variation in sentencing practices of significant value, although it was found to be not as predictive as other case or defendant characteristics (Uhlman 1978). Others, however, have found that there is no difference in sentencing based on the race or ethnicity of the judge (Spohn 1990, 1990a). On the whole, findings have been contradictory, and thus the issue of the impact of judge race on trial outcomes has yet to be resolved (Spohn 1990).

I expect that the race of the judge makes a difference, particularly in regards to the defendant race/judge race dyad. All else being equal, the minority judges are less inclined to impose harsher sentences upon minority defendants, as is frequently found in the criminal justice system. Furthermore, minorities tend to lean in a more liberal direction than their non-minority counterparts, and thus they may be inclined to offer more sympathy to criminal defendants who are overwhelmingly disadvantaged financially (Spohn 1990a).

\( H_3: \) Minority judges impose more lenient sentence on minorities than their non-minority counterparts, ceteris paribus.
E. Independent Variables: Case Characteristics

1. Guilty Pleas

The next case characteristic that is expected to have an effect on the sentence received is whether the defendant enters a plea of guilty or not guilty. When a defendant pleads guilty, it is generally with the expectation that he or she will receive a lower sentence, and for the most part, this belief has been found to be accurate (King, Soule, Steen and Weidner 2005). The authors, however, fail to distinguish between a plea of guilt generally, and a negotiated plea agreement specifically (King, Soule, Steen and Weidner 2005). There is an important distinction between the two types of guilty pleas, and thus they should be examined separately from one another. In one instance the prosecutor is offering a deal to the defendant, and in the other, the defendant is essentially throwing himself at the mercy of the court. Based on this distinction, I expect that each has an independent effect on sentence severity.

a. Negotiated Guilty Pleas

A negotiated guilty plea is a situation in which the prosecutors and the defendant reach negotiated terms regarding the outcome of a case where the defendant pleads to his or her guilt surrounding the crime and the prosecutor in return suggests a more lenient sentence than may have otherwise been received (Hollander-Blumoff 1997). Nationwide research indicates that the guilty plea brings forth the most lenient of sentences given the cost saving function it provides to the court. As one judge explained, “He takes some of my time, I take some of his” (King, Soule, Steen, and Weidner 2005, 963). The efficiency brought forth by plea bargaining is one of the greatest incentives for prosecutors to offer a plea bargain to the defendants, and in exchange for the promotion of the efficiency of the court, prosecutors allow for lower sentences. Even though
the use of plea bargains may offer lower sentences to each individual convicted, it frees up time so that more convictions are possible (Wright and Miller 2002).

In addition to the cost saving function, convictions following a negotiated guilty plea limit the amount of testimony heard by either a judge or jury. It is unnecessary to hear the testimony of victims and the details of the crimes committed. Such testimony may have an impact, which in turn may make the decision-makers view the defendant differently and give a higher sentence (King, Soule, Steen, and Weidner 2005).

Whether or not the two parties are able to come to an agreement depends on an array of factors. To begin, the defendant has to be willing to enter a plea of guilt and admit wrong doing. Second, both parties have to be able to come to agreeable terms. LaFree (1981) found that in sexual assault cases, guilty pleas were most likely to occur in instances where the defense had less evidence with which to produce a credible and effective defense. Conversely, the prosecution is less willing to make a bargain in instances where there case is the strongest given that they no longer face fears of acquittal (Hollander-Blumoff 1997). If the evidence against the defendant is weak, the prosecution would rather enter into a plea agreement of a lesser sentence than to take the chance that the defendant would be acquitted (Hollander-Blumoff 1997).

b. Non-Negotiated Guilty Pleas

So far the discussion has been about the potential for decreased sentences given a negotiated guilty plea. There is not a bargain struck, however, each time that a defendant pleads guilty. In many instances, defendants enter an open plea or a non-negotiated guilty plea. In this case, the defense and the prosecution either could not or would not come to agreeable terms during negotiation (Wright and Miller 2002). Either the defendant was unwilling to take the offer put on the table, or more likely the prosecution was unwilling to exchange a more lenient
sentence for a plea of guilt. For whatever reason, a bargain could not be struck. The defendant simply has admitted to his or her guilt and throws himself at the mercy of the court. In these instances, however, the judges may be inclined to sentence them as they would otherwise have, given a not-guilty plea.

From this, it is expected that negotiated guilty pleas produce a much lower sentence for an individual than would a bench trial or jury trial. It saves the court time and money and the defendants are “rewarded.” In cases where the defendant pleads guilty and an agreement is not established between the parties, it is expected to have a negligible impact upon the severity of the sentence. Based on the preceding discussion, I suggest the following two hypotheses:

**\( H_4 \):** In cases of negotiated plea agreements, the defendant receives a substantially lesser sentence, ceteris paribus.

**\( H_5 \):** In cases of non-negotiated plea agreements, the guilty plea has a negligible effect on the sentence received, ceteris paribus.

2. Victim/Defendant Characteristics

   a. Victim Defendant Proximity or Relationship

   The relationship between the victim of a sexual assault and the perpetrator of sexual assault has some potentially important implications for the process of adjudication and sentencing of such cases. Given the unique and personal nature of the crime of sexual assault, decision makers are required to take cues from the case facts in front of them in order to mete out sentences. Of these, I suggest that the relationship between the complainant and the defendant plays an important role in the determination of the sentence. Guided by preconceptions about sexual encounters within certain relationships, the court responds to such cues by determining some instances as more deserving of a harsher punishment than others.
Previous research regarding the relationship between the victims and their assailants has tended to focus on a categorical distinction between strangers and acquaintances. Findings indicate that there is a significant differential in the treatment of cases depending upon the prior relationship between the victim and the defendant. It is not uncommon that the only sexual assaults that are perceived as “real rapes” are those committed by strangers (Shotland and Goldstein 1983). In fact, in cases where the accused perpetrator is either an acquaintance or intimate partner, even the prosecutor has been found to be less likely to file charges, especially if there is any question regarding the behavior or character of the victim (Spohn and Holleran 2001; Breyden and Lengnick 1997). Consistently findings have indicated that stranger rapes are taken far more seriously by the authorities than in the instances where the victim knew his or her perpetrator (Spohn and Holleran 2001; LaFree 1981; Oberman 2000; Kingsnorth, MacIntosh, and Wentworth 1999).

For example, Frazier and Haney (1996) found that, in comparing stranger versus acquaintance rape cases, where the suspect was identifiable, strangers were more likely to be questioned regarding the issues and more likely to be referred for further proceedings. Once being referred, scholars found the cases were handled similarly until the case reached the sentencing phase. At this point, the stark difference between the two is seen clearly. Not only were instances of stranger rape more likely to be sentenced to a term of imprisonment, but also the length of the sentences were on average longer than in instances of acquaintance rape. Consistent findings were also reported by Spohn and Spears (1996).

This distinction may be due to the difficulty in proving consent in instances where there was a prior relationship between the victim and the perpetrator. If the two had been
intimate in the past, it makes the victim less believable than were the two complete strangers at the time of the incident (Bryden and Lengnick 1997).

\( H_6: \text{If the perpetrator is a stranger to the victim, the sentence rendered, on average, is greater than those received for all other victim/perpetrator relationships, ceteris paribus} \)

Furthermore, in a study of homicide cases between 1974 and 1996, Dawson (2004) found that there is a significant difference in the way in which courts treat different defendant/victim relationships. She states: “the degree of intimacy that exists between a defendant and a victim is one characteristic that has been shown to generate stereotypical images in cases of interpersonal violence, leading to more lenient punishments in some cases” (106). Additionally, she emphasizes that the sometimes contradictory evidence within this strand of research is primarily due to the traditional conceptualization of relationship proximity as either intimate or non-intimate, meanwhile ignoring the intricacies of the different types of relationships within those levels. Findings in the homicide cases indicate that it is only the most intimate and familial relationships that play a significant role and that there is not a fundamental difference between friends, acquaintances and strangers when it comes to sentencing.

\( H_7: \text{The closer the proximity between the perpetrator and the victim, the lesser the sentence the defendant receives, ceteris paribus.} \)

It is essential to categorize beyond simply stranger and non-stranger relationships especially in cases of sexual assault where the victim is a child. In these cases, the relationship between the victim and the defendant becomes even more distinct because such cases are less likely to involve strangers and more likely to involve family members and those individuals in close proximity to the child (Spears and Spohn 1997). As such, familial
relations and notions surrounding incestuous behavior may become important considerations for decision-makers, and thus may have significant implications in sentencing outcomes.

The court, strapped with an ideological opposition against breaking up families and concerns about the reliability of victim testimony, may give reduced sentences for relationships of close proximity. Daly indicated two main reasons for this ideological standpoint by judges: “(1) In the interests of maintaining social order, one should not break up families; and (2) in the interests of justice, one should punish the guilty (the defendant), but protect the innocent (family members dependent on a defendant)” (1987, 155). While her analysis is not of sexual assault cases alone, there may be some applicability. If the father or step-father is the perpetrator of an assault, by incurring harsh sentences upon him, the court would be in essence breaking up the family for long periods of time. Therefore, the court may be less willing to impose long sentences. Similarly, in other types of familial relations, this effect may not be as strong, but still persist where the sentences imposed may not be as lenient as is for father/stepfather cases but still not as harsh as acquaintance and stranger assaults.

A desire to keep the family together, however, may not be the only reason to expect decreased sentences in instances of close proximity between the defendant and the complainant. There is also a pattern of disbelief of the victims of familial sexual abuse. Bienen (1998) asserts that in many cases where the accused is the father or step-father, the incident of sexual abuse arises during times of divorce or family crisis which is thought to bring forth false accusations. Whether or not she is correct in her assertion, the belief may
lead to lower sentencing in such cases, where the accused is convicted but to still remedy the potential of false accusations by the complainant.\textsuperscript{1}

Additional beliefs about incestuous relationships have had a stronghold in the court system throughout its history. For example, until the mid-seventies, Texas courts consistently held that females, even those under the legal age of consent, could be held as consensual accomplices for sexual activity with their father and step-father and were viewed more like statutory rape cases than as unwanted sexual violence (Bienen 1998). In both 1950 and in 1969, the Texas Criminal Court of Appeals indicated that a daughter had the \textit{duty} to resist her father or step-father during the commission of such acts (Hollander 2003). Courts also often emphasized “female fantasy” regarding such cases as its reasoning for acquitting familial offenders (Bienen 1998).

Furthermore, the legal framework has undermined familial victims of sexual assault. Even as late as 1974, the courts held that cases of incest had to be corroborated, whereas other statutory rape cases did not, thus setting inherently unequal treatment between familial cases and other cases.\textsuperscript{2} While the law has done much to attempt to alter this practice, belief systems take a great deal of time to fade away. Therefore, while the laws may no longer have prima facie bias against victims of familial sexual abuse, results may still represent these beliefs in lower sentencing outcomes of such defendants (Bryden 2000).

To assume that these preconceptions lead to sentencing differentials is not unfounded. In fact, the national legislature has attempted to address problems of sentencing disparity in familial sex abuse cases. In 1999, The Child Abuse Reform and Enforcement Act was introduced into the House with the intention of investigating and preventing child sexual abuse. Among other things,

\textsuperscript{1} Studies find that false accusations by children only constitute approximately 2-8% of cases and are quite uncommon (Everson and Boat, 1989).
\textsuperscript{2} This requirement relied on common law practice and precedent (Bienen 1998).
the bill threatened to withhold federal money to those states in which refused to spear head a study on the inconsistencies of both the charging and sentencing decisions for those accused within and out of the family \(^3\) (Hollander 2003). Although the bill failed to pass through the legislature, its introduction alone indicates that there must have been unequal treatment within the court system or at the very least there was a concern that the differences existed.

\(H_8: \text{ Relatives that are not the biological father or step-father on average receive a greater sentence than those cases where the father or stepfather is the perpetrator, ceteris paribus.}\)

b. Victim Age

Under the statutory guidelines of Texas law it is clear that the age of the victim is an important indicator of perceived crime severity. First, although all minors are protected from inappropriate sexual activity of any kind, the structure of the laws clearly establishes a hierarchy of protection with the highest levels of protection afforded to the youngest of the victims. There is a distinct division between the ages of victims of sexual assault. If a victim is under the age of 14, the offense is automatically considered to be aggravated regardless of whether or not any other aggravating factors, such as use of threat, force, drug or weapon are present. In addition, according to Texas law, if a child under the age of six is murdered, the potential sentence for the accused can automatically include the death penalty within its range of possibilities. Together these illustrate the willingness and desire to further protect the youngest and the most innocent of victims.

\(^3\) H.R. 2382 – Title II states: “State Study of Laws Regarding Intrafamilial and Extafamilial Child Sexual Abuse – A State meets the requirements of this subsection if, not later than 1 year after the date of enactment of this Act, the State – (1) has studied the laws in the State that apply to intrafamilial and extrafamilial sexual abuse of children; and (2) has examined, at minimum – (A) issues concerning differences in laws applicable to intrafamilial and extrafamilial child sexual abuse; (B) issues concerning disparities in charging and sentencing perpetrators of child sexual abuse, resulting from differences in applicable laws; and (C) issues concerning legislative actions necessary to equalize charging and sentencing of perpetrators of sexual abuse without regard to familial relationship of perpetrator to child victim.” (found at http://thomas.loc.gov/cgi-bin/query/z?c106:H.R.2382.IH: )
Although those victims under the age of 14 are automatically provided increased protection by the law, the law is not quite so kind or protective of those minors that are not under the age 14. While statutory rape laws indicate that no individual under the age of 17 can give consent to sexual activity, and therefore further protects this age group, there is still an indication that society views assaults of this age range as less deserving of attention (Lewin Group 2004). Most importantly, assaults are not *per se* aggravated for this group of victims as they are for those children under the age of 14. This disregards the fact that many of these assaults are incestuous and have been occurring for years, thus creating an environment that need not use any of the other aggravating mechanisms for the assault (Hollander, 2003). Second, in non-incestuous attacks, the common perception of sexual assaults occurring in the statutory rape age range is that they are merely “teenage-romances” that the law is intervening into, despite indications in research that this is the case in only 1% of the cases prosecuted in court (Oberman 2000). This perception may then lead to lower sentences.

The age of the victim is expected to have a significant impact upon the resultant sentence upon the accused. The youngest of the victims are expected to have the most significant impact upon the judge or juror as being deviant and unacceptable. As age of the victim increases, all else being equal, the law suggests that the actual activity must be more forceful and lewd to bring forth similar sentences. Thus it appears that it is the youngest of victims that receive the most protection by the law. From this I make the following hypothesis:

\[ H_9: \text{The younger the victim, the more severe the sentence imposed upon the convicted.} \]
c. Victim Gender

Ideally, the gender of the victim should have no significant impact on the sentence imposed upon the convicted, ceteris paribus. In a nation consistently focused on increasing equality at every step of the way, one would assume that those equalities would include an equal distribution of sentences regardless of the gender of their victim.

Traditionally discussions of sexual violence have focused on females as the victims disregarding the reality of the prevalence of sexual violence against males as well. Statistics suggest that 10% of all sexual assault are on males and they are far less likely than females to report the incident (Rape Abuse and Incest National Network 2006). Recently, however, society has begun to come to terms with the reality of male victims and sexual assault. Additionally, studies indicate that the psychological responses and trauma associated with sexual violence is similar for both male and female victims (Daniel 2005). Although, generally, the response and impact is similar for both male and female victims, one must question whether they receive the same level of retribution and justice within the courtroom setting.

While research has looked at differential treatment based on gender by the courts, this focus has tended to be on the defendants themselves and differences in incarceration rates and sentence severity imposed for the male and female convicted (Daly 1987). Scholars have yet to sufficiently address whether there are differences in how decision-makers respond to cases where the victim is a male versus a female (Martin and Pyle 2005). This is particularly important in sexual assault cases where males are just beginning to come forward with their assaults. If gender of the victim is found to be significant, this distinction falls outside the

---

4 One study approximates that only 12% of males come forward compared to the 20% of females; however, this number has been steadily rising in recent years (A Health Survey of Texas 2003).
statutory limitations and suggests that there are factors beyond the legal framework that are significant in sentence severity.

I theorize that the gender of the victim plays an important role in sentencing outcomes within the sex assault cases. First, history of the law in Texas indicates a predisposition against sexual acts that are homosexual in nature. Prior to the rape law reforms of 1983, there was a Texas law that suggested that to perform homosexual acts upon a child was in fact more egregious than other sexual assaults and thus was by law more deserving of increased sentences for the convicted (Former Tex. Penal code 21.10). Additionally, until 2003 with the *Lawrence v. Texas (539 U.S. 558)* decision, homosexual acts were criminalized for adults as well. Neither of these laws remains in Texas, but that does not mean that judges and juries instantly abandoned such viewpoints (Spohn and Horney 1996; Bryden 2000).

A further gender based expectation is that there is a gender sensitization effect occurring between the victim gender and the gender of the judge. Women are more sensitized to the occurrence of sexual assault given that more women face or potentially face sexual violence in their lives. Additionally, society has become sensitized to the sexual assault of females more than it has males because it is the more frequent occurrence and because females are more likely to report instances of sexual violence. Based on this sensitization effect, I look to whether the gender of the judge in combination with the gender of the victim leads to increasing sentence severity.

Based on these potential predispositions and the more infrequent, and thus less sensitized, occurrence of sexual assaults on boys, I suggest the following hypothesis:

\[ H_{10}: \text{In cases of sexual assault where the defendant and victim are male, ceteris paribus, the convicted receives slightly higher sentences than if the victim were a female.} \]
H$_{11}$: There is a gender sensitive effect apparent in sentencing between the sex of the judge and the sex of the victim.

d. Defendant Race

The final independent variable of interest is the race of the convicted. Similar to gender of the victim, there would ideally be no difference in the sentencing outcomes of different races. However, a large body of prior research indicates that there are disparities in sentencing favoring Caucasians over the minority races even when controlling for the defendants’ prior record. Previous studies indicate several disparities. African American individuals are less likely to be released pending trials than are Caucasians (Katz and Spohn 1995). Both African Americans and Hispanics are more likely to face incarceration than are their Caucasian counterparts (Spohn and Holleran 2000). African Americans and Hispanics are less likely to have charges dismissed (Spohn, Gruhl and Welch 1987). Finally previous research suggests that racial minorities are sentenced more harshly than are Caucasians in similarly situated felony cases (Spohn, DeLone, and Spears 1998, Kautt and Spohn 2002a; Spohn and Delone 2000; Walker, Spohn, and DeLone 2003). This research tests whether previous findings hold true in the context of sexual assault cases in Dallas County, and it is hypothesized that African American defendants receive higher sentences.

Additionally, race is thought to play a significant role in sexual assault cases in terms of the context of the defendant/victim dyad where the race of the defendant and the race of the victim is different (LaFree 1989). Specifically, findings indicate that sentences are highest for African Americans that sexually assault white victims (Dixon 1995). Again, here it is expected that minorities, African Americans specifically, receive higher sentences than Caucasian defendants.

H$_{12}$: Minorities receive harsher sentences than Caucasians, ceteris paribus.
F. Control Variables

In order to most clearly and accurately get at the autonomous effects of the independent variables, it is essential to include some important control variables as well. Without including all the highly significant influences on the dependent variable, one faces the risk of model misspecification which may bias the results and suggested impact of the included variables (Wooldredge 1998). Thus, I include four control variables within this study in addition to the previously discussed hypotheses. The controls included are the number of counts convicted, prior convictions, charge severity, and judge ideology.

1. Number of Counts Convicted

The first control variable is the number of counts convicted during the trial. This encompasses any counts connected at trial to the sexual assault count, including not only other sexual assault counts but any count in which the defendant was convicted. It is expected that the more counts that a defendant is convicted of would have an increasing impact upon the sentence imposed. Additionally, Wilmont and Spohn (2004) found that the number of counts did in fact have an effect upon sentence severity. As a control, this makes intuitive sense given that the greater the number of guilty charges associated with the defendant, the greater the level of criminal activity by that defendant which in turn necessitates a greater punitive response from the criminal justice system.

2. Prior Convictions

In order to adequately test for sentencing disparities within the courts, the prior record of the accused is an essential control variable. Studies have found that it may be one of the most important determinants of sentencing outcomes and explicatory of many of the sentencing disparities within the same crime (Welch and Spohn 1986; Spohn and Welch
Without controlling for the prior criminal history of the defendant, it would be difficult if not impossible to ascertain any meaningful results as to why the severity of the sentences varies (Spohn and Welch 1987; Steffensmeier and Herbert 1999).

3. Charge Severity

Finally, it is imperative to control for the severity of the charge in each case. Previous research and common sense clearly indicate that the severity of the charge is likely to be the single most important predictor of sentence severity in a given case (Spohn and Welch 1987). Texas law statutorily distinguishes three different potential degrees of charge severity for felonies: first, second and third degree. First degree felonies, which include aggravated sexual assault, have a minimum sentence of five years and a maximum sentence of 99 years or life. Second degree felonies, on the other hand which include sexual assault and indecency with a child, require a minimum sentence of two years and a maximum sentence of 20 years. (§12.32, §12.33, and §12.34 of the Texas Penal Code). Such statutory distinctions indicate that this should and does result in increasing levels of sentence severity depending upon the charge.

Given that aggravated sexual assault is considered by law to be a higher crime, one would expect that whether the judge or jury render the sentence upon the accused, that the sentence would be higher than that of either non-aggravated sexual assault or crimes such as indecency with a child or attempted sexual assault where no penetration ever occurred. In fact, the latter of the crimes cannot by law be punished as severely as aggravated sexual assault. Given this distinction, whether or not the crime is aggravated or not must be controlled for.

---

5 See Appendix A
4. Judge Ideology

The fourth appropriate control variable for the study of sentencing outcomes is the ideology of the judges. Research indicates that there is ideological difference in the sentencing practices of Republicans and Democrats, and liberal judges sentence criminal defendants more leniently than conservative judges (Nagel 1961; Carroll, Purkowitz, Lurigio, and Weaver 1987; Spohn 1990a). In studying sentencing severity then, it is important to control for potential increases and decreases in sentences that occur based on ideological differences of the judges. Only by doing so can the impact of the other legal and extra-legal factors truly be detected.
CHAPTER IV
DATA AND ANALYSIS

A. Data Collection

The data set consists of all the child sexual assault cases arising from Dallas County, Texas from 1999-2005. These cases were collected from the Texas Fifth Circuit Court of Appeals website\(^1\) and include only those sexual assault cases where the defendant was convicted at trial. This is appropriate because the dependent variable for the research is the sentence imposed upon convicted defendants, not whether a defendant was found guilty. Excluding acquittals from the data limits the research inquiry on decision-makers. While certain categories of offenders and other case characteristics may lead judges or juries to be more or less likely to find guilt, I am interested only in examining what influences sentence severity for those individuals that are found guilty. To do otherwise might lead to invalid conclusions about judicial or juror decision-making because of questions about whether the crime was committed at all.

Texas requires an automatic appeal in all criminal cases, so the usage of the court of appeals website means there is not a bias towards those cases in which a defendant would be more likely to appeal the decision. Rather, it is a comprehensive data set of all sexual assault cases arising from Dallas County from 1999-2005. With conviction, even in instances where the defendant offered no argument on appeal,\(^2\) the case was documented by the Fifth Circuit Court of Appeals, and all cases are entered into the online database once an appeal or the decision not to appeal is filed. Furthermore, the Fifth Court of Appeals website also includes cases in which the appeals were ultimately sent to a different venue. For example, some

---

\(^1\) [www.courtstuff.com](http://www.courtstuff.com), Last accessed on October 6, 2006.
\(^2\) This, according to court personnel, is actually very rare.
cases arising in Dallas County had appeals sent to other courts of appeals to balance the caseload among different courts. These were also included because the trial cases were all heard in Dallas County trial courts.

From the appeals decisions I created a comprehensive list of sexual assault case trial cause numbers to document the cases. Once this original set of cases was established, all case files available at the Dallas County Courthouse were examined to extrapolate all the relevant case information. Finally, information was gathered from the Dallas County online record search to find prior convictions of the defendants.

While most studies only look at adult cases, the examination of decisions in child sexual assault cases has yet to be thoroughly examined. Research has found that such cases are fundamentally different from adult cases because of the way the criminal justice system handles each type (Spears and Spohn 1997; Spohn 1994). Findings indicate that cases involving children are less likely to be prosecuted (49.2% versus the 77.8% of adult cases), are less likely to involve strangers or the use of overt force, and finally are less likely to prompt a timely outcry (Spears and Spohn 1997). When these differences are taken into account and controlled for, however the defendants received higher sentences on average than those convicted of adult sexual assault (Spohn 1994). It is for these reasons that I exclusively look to those cases involving children.

The total data set consisted of 556 cases. To analyze only the differences among the sex assault cases where children were the victims of the assault, all instances where the victim was an adult were eliminated from the data set, bringing the data set to 467 cases for

---

3 According to a judge in interview these cases are not fundamentally different, they are merely randomly sent to different courts of appeals to balance workload.
4 A sample code sheet used for gathering data from the court files can be found in Appendix E.
the time period, 1999-2005. Of these cases 367 were aggravated offenses and 100 of them were non-aggravated offenses. Ultimately only 396 cases were used for the empirical analysis due to missing information in the data.

B. Operationalization of the Variables

1. Dependent Variables

Before discussing the results of the data and the hypotheses it is important to understand how the different variables were operationalized. For the specific coding of the variables, see Appendix D. The first dependent variable of this study is the severity of the sentence as measured by the number of years the individual received. Although the highest sentence within the statutory guidelines for aggravated sexual assault, short of a life sentence, is 99 years, life sentences are set at 100 years. The reason for this is so that life sentences could be included within this analysis. While indisputably a 99 year sentence is essentially a life sentence, it is essential to include life sentences as part of the analysis when examining aggravated sexual assault cases. To not do so would exclude a set of defendants that the jurors or judges have determined are the most deserving of punishment. Although artificially setting life at 100 years may potentially skew the results, excluding them would also skew the results substantially and undermine the validity of the conclusions and the generalizability of the results.

Finally, life is the most severe of sentences available to decision-makers in sexual assault cases. In order to more clearly distinguish which factors play the most influential role in the imposition of a life sentence as opposed to the 99 year or lesser sentence, a separate probit analysis examines whether the defendant received life. By including this analysis, I am able to analyze cases that the courts view as the most severe. This also helps to account for any potential skew of results in the regression models.
2. Independent Variables

a. Decision Maker Characteristics

The first decision-maker characteristic is whether the defendant was sentenced by a judge or jury. Although Texas has a bifurcated system in which a judge or jury can determine guilt and then a judge or jury can determine sentence, I examine only the decision-maker who actually rendered the sentence. It is important to note that the jury never comes in only for sentencing phase, so regardless of whether it is the jury or judge that sentences, the decision-maker was also present at the time of conviction. It is only relevant what factors influenced the decision-maker in the sentencing of the defendant. Following the full model in which the dummy for jury sentence is included to see whether a judge or a jury punishes more leniently as was hypothesized, separate analyses examine juror sentencing decisions and judge sentencing decisions.

Separate analyses for judge and juror sentencing further test for other decision-making characteristics and interactive effects such as the gender and the race of the judge. Although, the makeup of the jury may have important implications as well (i.e. the number of women versus males on a jury), juror information is not kept by Dallas County and therefore could not be determined and analyzed. Also, the separate analyses allow for the exploration into the specific influences on judges versus juries when it comes to sentencing.

3. Case Characteristics

a. Pleas

Cases originally resulting in guilty pleas were divided and examined as two different categories: negotiated guilty pleas and non-negotiated guilty pleas. I hypothesized that while negotiated guilty pleas would bring forth more lenient sentences, a non-negotiated plea would
have negligible impact. To distinguish the negotiated guilty pleas from the non-negotiated guilty
pleas, two separate dummy variables were created.

b. Victim/Defendant Relationship

Hypotheses six through eight suggested that the closer the proximity between the victim
and his or her perpetrator, the more lenient the sentence imposed, with biological fathers
receiving the lowest of sentences. Instead of categorizing the relationship between the victim and
defendant as either intimate and non-intimate or stranger and acquaintances as much of the
literature does, I further break down relationships into six different categories. Relationship was
coded as biological father, step-father, relatives (i.e. non-father family), mother’s boyfriend,
acquaintance and stranger. This allows for a more comprehensive examination of the different
potential relationships between the victim and his or her perpetrator, and the categories are both
exhaustive and exclusive.

c. Victim Age and Gender

Victim age was coded as the age of the victim at the time of the offense ranging
anywhere from one years old to seventeen years old. I hypothesized that the younger the victim,
the greater the sentence severity given the inherently protective nature of the youngest of the
victims within Texas law. All cases above the age of 17 at the time of the offense were
considered adult cases. Victim gender denotes whether the victim was a male or female.

d. Defendant Race

The final case characteristic is defendant race. If the defendant was an African American
defendant race was coded as a one and zero otherwise. Unfortunately, with the data available
for Dallas County, the race variable is somewhat limited in its ability to fully test the impact
regarding sentencing. Although ideally, and especially in the study of sexual assault
outcomes, race would be examined in the context of the defendant/victim dyad, where we would expect the different races between the two to play the most significant role (Dixon 1995; LaFree 1989). In most cases, however, the race of the victim is not available, and therefore the dyadic approach is impossible.

The second data limitation regarding race is the inclusion of the Hispanics within the category of whites. Despite high number of Hispanics in Texas, Dallas County records only distinguish between white and black. It is expected that as a minority, Hispanics would be treated similarly to African Americans by the criminal justice system. Thus, based on previous research I expect that higher sentences would also be given to Hispanics (Walker, Spohn and Delone 2000). Unfortunately there is no way to test for this difference. As a result, the effects of race on sentencing may be minimized because a large number of minorities are included in the majority category for the analyses.

4. Control Variables

The number of counts convicted encompasses any counts connected at trial to the sexual assault count, including not only other sexual assault counts, but any count in which the defendant was convicted. Therefore if there were two sexual assault counts and an associated count of kidnapping, the number of counts convicted was coded as three. It is expected that the greater the number of counts convicted the longer the sentence because of the higher level of criminal activity associated with the defendant. While in a few cases there were additional counts in which the defendant was charged, but found “not guilty” at trial, this measure would be an inappropriate control for sentence severity given that the defendant was cleared of the crime and the judge or jury may not know about the additional counts if they were dropped by the prosecutor.
Previous research indicates that all previous encounters with the law should not be created equally (Spohn and Welch 1987). Arrests and misdemeanor convictions are unlikely to have a significant impact upon sentencing outcomes, whereas previous felony convictions may provide very important cues to decision-makers about potential recidivism (Spohn and Welch 1987, Interview with Dallas County Judge, August 18, 2006). Therefore, prior felony convictions are analyzed. Further, the number of prior sex crimes may also be especially relevant because they point to specific recidivist behavior for sexual violence. Therefore I distinguish between prior felonies and prior sex crimes and include the number of prior sex crimes that the defendant was convicted of, including both child and adult cases. These are included as a separate variable because in analyzing sexual assaults, previous sex crimes are likely to have the most influencing effect on decision-makers.

Charge Severity is coded as either aggravated or non-aggravated. Aggravated sexual assaults are analyzed to account for the different minimum and maximum sentencing guidelines of each. By law aggravated cases can receive much higher sentences than non-aggravated cases and the separate analysis controls for this difference in a way that a dummy variable cannot.⁶

Finally, I controlled for the ideology of the judge. Originally I hypothesized that Democrat judges would sentence more leniently than Republican judges. The variable however is necessarily excluded from the analyses because the model failed due to a lack of variation in the data. There are only a very small handful of cases in which a Democrat judge sat and even fewer cases where a Democrat judge made the sentencing decision. Given the overwhelmingly high number of Republican judges, the data essentially controls on its own for the ideology of

---

⁶ Although ideally I would have included analyses of non-aggravated sexual assault cases as well, there were not enough cases for a thorough analysis to test the hypotheses accurately. See Appendix F for the aggregate model of non-aggravated sexual assault cases.
the judge. Therefore, I am able to test for factors beyond the attitudinal model. Any sentencing differences found are not due to ideology as is commonly suggested (Segal and Spaeth 2002).

5. Summary Statistics

Table one presents an overview of the variables and data used throughout the models. The number of observations indicates the number of times that the characteristic was present in a case. The table includes the average sentences given by judges and juries for each variable. For variables that are not dummy variables, the range of the variable within the data is indicated. Following the summary statistics I discuss the results of the data.

TABLE 1

Variable Summary Statistics of Aggravated Sexual Assault Cases

<table>
<thead>
<tr>
<th>Variable</th>
<th>Number of Observations</th>
<th>Mean Judge Sentence</th>
<th>Mean Jury Sentence</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Woman Judge</td>
<td>69</td>
<td>51.28</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>Male Judge</td>
<td>157</td>
<td>29.35</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>White Judge</td>
<td>207</td>
<td>36.14</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>African American Judge</td>
<td>17</td>
<td>32.53</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>Negotiated Guilty Plea</td>
<td>39</td>
<td>24.28</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>Non-Negotiated Guilty Plea</td>
<td>105</td>
<td>33.99</td>
<td>48.86</td>
<td>----</td>
</tr>
<tr>
<td>Relative</td>
<td>80</td>
<td>46.48</td>
<td>29.50</td>
<td>----</td>
</tr>
<tr>
<td>Biological Father</td>
<td>41</td>
<td>29.24</td>
<td>48.19</td>
<td>----</td>
</tr>
<tr>
<td>Step-Father</td>
<td>76</td>
<td>31.16</td>
<td>54.39</td>
<td>----</td>
</tr>
<tr>
<td>Mother’s Boyfriend</td>
<td>34</td>
<td>52.75</td>
<td>48.55</td>
<td>----</td>
</tr>
<tr>
<td>Stranger</td>
<td>11</td>
<td>20</td>
<td>58.22</td>
<td>----</td>
</tr>
<tr>
<td>Acquaintance</td>
<td>79</td>
<td>43.44</td>
<td>51.88</td>
<td>----</td>
</tr>
<tr>
<td>Victim Age at Offense</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>0-17 (mean 9.9)</td>
</tr>
<tr>
<td>Male Victim</td>
<td>53</td>
<td>65.09</td>
<td>50.84</td>
<td>----</td>
</tr>
<tr>
<td>Female Victim</td>
<td>295</td>
<td>32.14</td>
<td>47.40</td>
<td>----</td>
</tr>
<tr>
<td>White Defendant</td>
<td>249</td>
<td>38.93</td>
<td>44.97</td>
<td>----</td>
</tr>
<tr>
<td>African American Defendant</td>
<td>113</td>
<td>29.89</td>
<td>53.2</td>
<td>----</td>
</tr>
<tr>
<td>Interaction of Judge Gender and Victim Gender</td>
<td>20</td>
<td>76.25</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>Interaction of Judge Race and Defendant Race</td>
<td>11</td>
<td>32.18</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td># of Counts Convicted</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>1-17 (mean 2.6)</td>
</tr>
<tr>
<td># of Prior Felony Convictions</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>0-9 (mean 0.71)</td>
</tr>
<tr>
<td># of Prior Sex Offenses</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>0-6 (mean 0.16)</td>
</tr>
</tbody>
</table>
C. Examining Factors of Sentence Length (Regression Analysis)

1. Aggravated Sexual Assault: Aggregate Model

To test the hypotheses, this research employs ordinary least squares regression with robust standard errors for the first dependent variable of sentence length. The first model tests the hypotheses for aggravated sexual assault including whether the jury made the sentencing decision. Following the analyses of the aggregated model of decision-making in aggravated sexual assault cases, further models are examined by dividing up the jury and judge decisions to distinguish which factors are important to each of the decision-makers. This allows the inclusion of judge characteristics such as race and gender and interactive effects between judge characteristics and victim or defendant characteristics.

TABLE 2
Aggregate Regression for Sentence Severity in Aggravated Sexual Assault Cases

| Variable                        | Coefficient | Robust Standard Error | P>|t|
|--------------------------------|-------------|-----------------------|-----|
| Decision-Maker Characteristics  |             |                       |     |
| Jury Sentence                  | 6.44        | 4.081                 | 0.188|
| Case Characteristics            |             |                       |     |
| Negotiated Guilty Pleas        | -18.88      | 4.901                 | 0.000***|
| Non-Negotiated Guilty Pleas    | -1.44       | 4.972                 | 0.773|
| Relative                       | -9.83       | 4.896                 | 0.046**|
| Biological Father              | -15.86      | 5.805                 | 0.007***|
| Step-Father                    | -2.14       | 5.621                 | 0.703|
| Mother’s Boyfriend             | 2.16        | 6.825                 | 0.752|
| Stranger                       | 7.85        | 11.036                | 0.478|
| Victim Age at Offense          | -0.62       | 0.584                 | 0.293|
| Male Victim                    | 12.59       | 5.541                 | 0.024|
| Defendant Race                 | 0.08        | 4.081                 | 0.984|
| Control Variables              |             |                       |     |
| Number of Counts Convicted     | 5.59        | 0.592                 | 0.000***|
| Number of Prior Felonies       | 3.047       | 1.622                 | 0.061*|
| Number of Prior Sex Offenses   | 10.24       | 3.142                 | 0.001***|
| Constant                       | 33.97       | 8.832                 | 0.000***|

n=298; R-squared = 0.2641

*p<0.10  ** p<0.05  *** p<0.01
a. Decision-Maker Characteristics

The only decision-maker characteristic in the aggregate model is whether the jury determined the sentence. Hypothesis one indicated an expectation that jurors sentence more leniently in sexual assault cases. The model, however, indicates that there is no statistically significant relationship between the length of sentence and whether or not a jury or judge sentences the defendant (See Table 2). This suggests that juror decisions do not significantly differ from judge decisions at the sentencing stage as was hypothesized. Whether juries and judges are influenced by different factors when arriving at such decisions, however, cannot be determined by this alone. Simply because the two decision-makers come to the similar conclusions about the severity of necessary punishment for an individual does not indicate that they arrive at those conclusions in the same manner. There is, however, no previous literature that looks at this distinction.

b. Case Characteristics

i. Guilty Pleas

Hypotheses four and five suggested that while negotiated plea agreements produce more lenient sentences, there would be no significant relationship between sentence length and non-negotiated or open guilty pleas. The data reveals that only when a defendant enters a negotiated guilty plea does a plea of guilt play a significant role in sentencing outcomes. The variable is significant at the highest level of significance and the coefficient suggests an average of 18.8 years less of a sentence, ceteris paribus. Non-negotiated guilty pleas, on the other hand, provided no significant results whatsoever, and even if we examine the difference in the coefficient, the defendants entering non-negotiated guilty pleas are only receiving approximately one year less in exchange for their plea of guilt.
These results emphasize that it is important to distinguish between the type of guilty plea entered before the court, which is absent in much of the previous research (King, Soule, Steen, and Weidner 2005). The reason these results may be occurring is that if a defendant enters a plea of guilt there must be some reason that the court is not willing to enter a negotiated bargain. In this instance, the court may just be taking the guilty plea and sentencing the defendant the same as if no plea of guilt had occurred. Furthermore, this indicates that while the institutional norm to accept plea bargains is significant for sentencing outcomes, a similar norm for decreasing a sentence upon the admittance of guilt without a plea bargain does not exist.

ii. Victim Defendant Relationship

The next variables hypothesized in the model were the categories of relationships between the victim and the perpetrator. It was hypothesized that the closer the proximity of the victim and the defendant the more lenient a sentence. It was also hypothesized that strangers would receive the greatest of sentences and fathers and step-fathers would receive the lowest of the sentences because they are in the closest proximity to their victims. All other family members were hypothesized to receive a sentence greater than fathers and step-fathers, but less than other relationship categories. Mothers’ boyfriends were hypothesized to receive a greater sentence than any family category, but less than acquaintances and strangers. Acquaintances were used as the reference category. Acquaintances are defined as anyone knew the victim, but not in the same intimate manner as a father, a step-father, a relative, or as a boyfriend of his or her mother.

According to table two, when both judge and jury decisions are included in the analysis, the only relationships with a statistically significant effect were biological fathers and non-father

---

7 Additionally, when the data is run with only a plea variable, indicating only whether the defendant pled guilty, the results are insignificant (table not shown). Although the coefficient is in the expected direction, indicating some sort of decrease in sentence, no relationship can be determined in the data. The inclusion of non-negotiated pleas with the negotiated pleas cancels out the effect of the negotiated plea bargains.
family members. For both of these categories there was a statistically significant difference and in the expected direction. Relatives receive on average about 10 years less (significant at the .05 level). If the defendant is the biological father of the victim, he receives close to 16 years less on average (significant at the .01 level). All of the other relationships were statistically insignificant however the coefficients were in the direction hypothesized as compared to the acquaintance relationship.

Overall these results neither confirm nor support the relationship hypotheses. Biological fathers are receiving the lowest sentences, thus confirming that those defendants in the closest proximity to the victims are receiving the lowest of all sentences. The same is not true for step-fathers. We fail to reject the null hypotheses that the step-father and stranger relationships have no significant impact upon the sentences imposed. It does appear, however, that for the most part in the aggregate, courts are less willing to incur harsh sentences to those closest to the victim.

These findings suggest that it is important to distinguish beyond the simple categorization that is found in much of the literature. Although the results do not confirm all of the expected relationships, they do indicate that the criminal court system looks beyond stranger and acquaintances when using attitudes toward victim-defendant relationship. These results correlate with Dawson’s (2004) findings in homicide cases that it is only the most intimate relationships that play a significant role when it comes to sentencing. It is the biological fathers and relatives that the courts are protecting, the most intimate relationships in a child’s life. Interestingly, however, fathers and step-fathers are not treated alike as was expected. Perhaps biological fathers are getting the most lenient of sentences because of the limited believability that a biological father could commit incestuous acts upon his child, particularly without some fault of the victim as the literature suggests (Bienen 1998). While step-fathers are in close of proximity
to the victim, the acts are not viewed as incestuous. It is also important to note there are only 11 cases of stranger assault on children in the data, and therefore these results are tentative are there are not likely enough cases to determine a relationship.

iii. Victim Age

The age of the victim according to the aggregate model (see table 2) is insignificant in determining the sentence length indicating that the age of the victim does not play a role in sentencing outcomes. It is, however, in the direction expected in that the younger the victim, the greater the sentence. Many reasons may account for the fact that there does not appear to be a significant effect. As one judge emphasized in an interview, children that are very young have limited testimonial credibility because their understanding and memories is highly questionable (Interview with Dallas County Judge, August 18, 2006). The trend may be that offenders with younger, but not the youngest, of victims receive an increased sentence, whereas instances of the oldest victims receive the lowest sentence. The handful of cases, however, where the victim is so young that he or she lacks credibility and therefore brings more lenient sentences may cancel out the overall results forcing the failure to reject the null hypothesis.8

iv. Victim Gender

There should be no significant difference in the treatment to defendants based on the sex of the victim alone. It was hypothesized, however, that cases in which the victim was a male are punished more severely based on a predisposition against homosexual acts and previous laws indicating that such acts ought to be punished more harshly. The model results indicate that this is in fact the case. Significant at the .05 level, the results signify that in cases of male victims, the defendant is on average receiving 12.5 years greater in sentence.

---

8 When the age of the victim is broken down into categories, the results remain insignificant but the coefficients indicate that it is the youngest and oldest of victims that bring forth lesser sentences.
Increased sentences in cases of male victims may be the result of several things. First, it may indicate the predisposition of decision-makers against homosexual acts. Second, it may be a response to the increasing acceptance of males as victims of sexual assault. Males are the least likely group to report sexual assaults, however, consistently harsh sentences in cases with male victims may impact the willingness of other males to come forward once they see that the courts take the offenses seriously. Little research, however, exists on the impact of gender victim on outcomes.

v. Defendant Race

Similar to the age of the victim, the basic model of aggravated sexual assaults offers no significant relationship between the race of the defendant and sentence severity so I fail to reject the null hypothesis. Although prior research indicates that African American defendants receive more severe punishments, ceteris paribus, those results are not supported in this model.

c. Control Variables

The control variables in the aggregate model behave as was predicted (see table 2). For each additional count that a defendant was convicted of in connection to the sexual assault, an additional 5.6 years is added onto the sentence, significant at the .001 level. That is, the greater the level of criminal activity presented within the same trial, the greater the sentence given by judges and juries.

Prior felony convictions nears significance with a $p$ value of 0.061 and suggests that for each prior felony that the defendant had on his record, it brought forth a three year increase. Prior convictions of sexual offenses, however, is highly significant at the 0.001 level and suggests that for each prior sex offense conviction, the defendant’s sentence is increased by a little over 10 years. The significance of prior sex offenses and the resultant impact on sentences for prior sex
offenses as compared to overall prior felonies suggests the important role of views on recidivism. An individual with a high number of prior sex offenses is likely to commit another sex offense in the future as is predicted by past behavior (Interview with Dallas County Judge, August 18, 2006).

2. Judge versus Jury Decisions in Aggravated Sexual Assault Cases

Now that the aggregate model of sentences for aggravated sexual assaults has been discussed, I move to more specific analyses of how judges and juries determine sentences in such cases. This breakdown is important given that the two different decision-makers may have different influences on sentencing with a varied impact that would not be apparent by aggregating data. While the aggregate model indicated there is no overall difference in sentence severity, other sentencing differences between the judges and juries may exist. One variable may be significant for judges, it may be insignificant for jurors, and thus, when examined together, the variable may indicate statistical insignificance, despite the influencing effect it may have. These differences, however, begin to appear when jury and judge decisions are examined separately.

Additionally, by looking at judicial decision-making alone as opposed to decision-making in a cumulative model of both judge and juror decisions, it is possible to then include certain characteristics of the judges including race and gender and any interaction of these variables with other victim and defendant characteristics.
### TABLE 3

#### Regression of Sentence Severity for Aggravated Sexual Assault by Decision-Maker

<table>
<thead>
<tr>
<th>Variables</th>
<th>Judge Decisions</th>
<th>Jury Decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Robust Coefficient</td>
<td>Robust Standard Error</td>
</tr>
<tr>
<td>Decision-Maker Characteristics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Woman Judge</td>
<td>11.31</td>
<td>5.496</td>
</tr>
<tr>
<td>African American Judge</td>
<td>-6.44</td>
<td>5.474</td>
</tr>
<tr>
<td>Case Characteristics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Negotiated Plea</td>
<td>-19.03</td>
<td>5.695</td>
</tr>
<tr>
<td>Non-Negotiated Plea</td>
<td>-2.04</td>
<td>5.158</td>
</tr>
<tr>
<td>Relative</td>
<td>-15.72</td>
<td>6.672</td>
</tr>
<tr>
<td>Biological Father</td>
<td>-24.85</td>
<td>7.294</td>
</tr>
<tr>
<td>Step-Father</td>
<td>-12.18</td>
<td>6.790</td>
</tr>
<tr>
<td>Mother’s Boyfriend</td>
<td>18.63</td>
<td>11.437</td>
</tr>
<tr>
<td>Stranger</td>
<td>-1.79</td>
<td>5.996</td>
</tr>
<tr>
<td>Victim Age at Offense</td>
<td>-2.26</td>
<td>0.652</td>
</tr>
<tr>
<td>Male Victim</td>
<td>16.18</td>
<td>10.03</td>
</tr>
<tr>
<td>Defendant Race</td>
<td>-11.00</td>
<td>5.474</td>
</tr>
<tr>
<td>Interactive Effects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Woman Judge, Male Victim</td>
<td>0.84</td>
<td>14.51</td>
</tr>
<tr>
<td>Black Judge, Black Defendant</td>
<td>11.16</td>
<td>16.87</td>
</tr>
<tr>
<td>Control Variables</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Counts Convicted</td>
<td>4.74</td>
<td>0.709</td>
</tr>
<tr>
<td>Number of Prior Felonies</td>
<td>-2.65</td>
<td>1.814</td>
</tr>
<tr>
<td>Number of Prior Sex Offenses</td>
<td>9.76</td>
<td>3.910</td>
</tr>
<tr>
<td>Constant</td>
<td>59.01</td>
<td>11.075</td>
</tr>
<tr>
<td>N</td>
<td>169</td>
<td></td>
</tr>
<tr>
<td>r-squared</td>
<td>0.4489</td>
<td></td>
</tr>
</tbody>
</table>

* $p<0.10$   ** $p<0.05$   *** $p<0.01$
a. Decision-Maker Characteristics

i. Judge Gender

In hypotheses two I suggested that women judges have a sensitization to crimes and would give harsher sentences than male judges. Table three strongly supports the hypothesis. Whether the sentencing judge is a male or a female has a statistically significant effect upon the severity of the sentence handed down. In aggravated sexual assault cases, women give sentences a little over 11 years greater than their male counterparts, significant at the $p<.05$ level. This supports the findings of previous literature by Spohn (1990) that women would punish harsher in sexual assault cases. Additionally it confirms the literature that suggests that women are not mere tokens but rather they have a substantive policy representation in the courts.

The findings, however, refute findings by Steffenmeir and Herbert (1999) who did find that women would sentence more severely but indicated that in rape cases sentences would be equivalent to males. Additionally, my findings go against previous research by Gruhl, Spohn and Welch (1981) that suggested women were more likely to convict for sexual assault but would actually be more lenient in their sentencing for sexual assault cases. Neither of these studies, however, specifically looked at sexual assault case decision-making as their primary focus.

ii. Judge Race

In addition to the gender of the judge, I hypothesized that African American judges would be more lenient in their sentencing. My results, however, do not support this hypothesis, and I fail to reject the null hypothesis. There is no statistically significant relationship between the race of the judge and the final sentencing outcome. It is important to note, however, that there were only 17 instances with an African American judge as opposed to a white judge.\(^1\) Although

---

\(^1\) Additionally there was one Hispanic judge that was included in the “white” category to be consistent with the defendant race categorization.
the results fail to support my hypothesis, the findings are consistent with previous research by Spohn (1990, 1990a) who found that race of the judge was insignificant for sentencing outcomes.

b. Case Characteristics

i. Guilty Pleas

In the model of judicial decision-making (see table 3) negotiated guilty pleas continue to play an important role in bringing forth more lenient sentences. The results remain statistically significant at the .001 level and suggest that judges allow, on average, a 19 year sentencing decrease in cases of negotiated plea agreements. Non-negotiated plea agreements, however, continue to have a negligible impact on sentencing outcomes. Judges simply are not taking into account that a defendant entered an open plea of guilt when determining sentences. Juries on the other hand take open pleas and on average increase the sentence by close to thirty years significant at the $p<.05$ level (see table 3). Not only are they not giving any sort of leniency in sentencing for the admission of guilt, but juries are more harsh in their sentencing in instances of non-negotiated guilty pleas for aggravated sexual assault cases. Perhaps this effect is due to the fact that there is no question of guilt or innocence that needs to be debated, and jurors are able to agree more on what sentences should be because they know that the individual did in fact do what he is being accused of doing.

The difference in results between non-negotiated and negotiated plea agreements justifies my decision to distinguish between the two types of pleas that a defendant can enter. Additionally, the differences in the ways that juries and judges treat the non-negotiated pleas indicates that while on the whole sentencing severity is not different, judges and juries do not treat case characteristics the same.
ii. Victim Defendant Relationship

As indicated on the left hand side of table three, the relationship between the victim and the defendant does have an effect upon the judge when it comes to sentencing; however, the effect of relationship is not equal for judges and juries. I hypothesized that for both judges and juries, the closer the proximity between the defendant and the victim that the most lenient sentences would be afforded to biological fathers and step-fathers followed by relatives, mothers’ boyfriends, acquaintances and then strangers.²

When a judge sentences the defendants, biological fathers and relatives are receiving less of a sentence than all other categories. Fathers receive close to 25 years less of a sentence than the acquaintance reference category and significantly less than all the other categories as well. This is even more so than was seen in the previous model which means that judges are the decision-makers that are offering the most lenient of sentences to biological fathers. On the right hand side of table three, it indicates juries are not offering the same leniency towards biological fathers. The coefficient remains in the negative direction, suggesting a decrease in sentence of about an average of 10 years, but it is not statistically significant. Attitudes toward incestuous relationships, particularly with the biological fathers may not be as significant to jurors.

Relatives continue to receive lesser sentences for both judges and with an average decrease in sentence of 15 years in both cases. This is the only relationship in which both judges and juries seem to agree on for sentencing outcomes and the only relationship found to be statistically significant in jury decisions.

When a judge decides the sentence, step-father relationships also come close to taking on significance and in the direction hypothesized. Although, the results are not quite significant yet at the .05 level (with a p value of .075), it suggests that there still is a sentence decrease for step-

² Hypotheses six through eight
fathers. Mother’s boyfriend is also nearing levels of statistical significance with a coefficient that suggests an increased sentence of about 18.5 years. If the defendant is the victim’s mother’s boyfriend, they are on average getting a much higher sentence. Both of these relationships are in the direction hypothesized.

From these differences, it is important to note that judges seem to consider the relationship to the victim much more than do juries in reaching their sentencing decisions. The attitudinal perspective that decision-makers base sentences partially upon the relationship between the victim and the defendant appears only to influence judges to a large extent. Attitude towards the victim and defendant relationship plays only a minimal role for juries in sentencing outcomes and perhaps indicates that judges and juries do not follow the same decision-making process. Previous literature, however, does not examine such differences.

iii. Victim Age and Gender

When the age of the victim was examined for all aggravated sexual assault cases it made no significant difference for sentencing outcomes. When judge decisions, however, are put under the microscope, the age of the victim does begin to play a highly significant role. The models indicate that age is highly significant at the .001 level, and that it is the youngest of the victims that judges are willing to protect. For every year older that the victim was at the time of the offense, the defendant receives on average two years less of a sentence. Another way to look at this is to say that for each year younger the victim is at the time of the offense, judges sentence the defendant to two more years. Juries, however, do not appear take the age of the victim into account. The lack of age effect for juries was washing out the age effect for judges in the aggregate model. Again this indicates that juries are not taking into account the more attitudinal aspects of decision-making. There is, however, no literature that looks at this.
The same is true for the gender of the victim. While the gender of the defendant is not statistically significant for either judges or juries, it is nearing significance for judges (see table three). I hypothesized that cases with male victims would receive greater sentences than cases with female victims given attitudes surrounding homosexual acts and previous laws indicating that such instances were to be punished more severely. The coefficient for judges indicates around a 16 year increase, whereas juries are not looking at gender of the victim at all when determining sentences. Again, attitudes have a greater stronghold for judge decisions than for jury decisions. This suggests that juries do not use the same factors as judges when coming to decisions, and that perhaps the attitudinal model is not as important for jury decisions as it is for judicial decisions. Again, there is no previous literature looking at this.

iv. Defendant Race

While defendant race was not significant in the more basic model, defendant race does have a statistically significant relationship to sentence severity when looking only at judge sentencing decisions. The results, however, are in the opposite direction than hypothesized indicating that African Americans are receiving about 11 years less of a sentence than are Caucasians. This is in direct opposition to a plethora of literature indicating that African Americans are actually sentenced more harshly than Caucasians in similarly situated felony cases (Spohn, DeLone and Spears 1998; Kautt and Spohn 2002a; Spohn and DeLone 2003).

The treatment of Hispanics in the data may account for the uncorroborated findings of other research. Dallas County includes Hispanics in the category of white defendants for documentation purposes; therefore, Hispanics had to necessarily be included as whites within the data, despite their minority status. By doing so, it is impossible to discern the effect of the treatment of minorities by the court system. If Hispanics are receiving higher sentences based on
their race it would increase the sentences of the white category, maybe even to the extent that it appears that whites are receiving higher sentences than African Americans. This would account for differences in results between this research and previous research. Only with proper race categorization can the true effects of race on sentences be discerned. Until then, suggested conclusions about race discrimination in the courts are limited.

c. Interactive Effects

In the same judicial model, I interact judge characteristics with defendant and victim characteristics as well to see if there is interplay between the two. First, I included an interaction term for a woman judge and male victim. In hypothesis 11, I suggest that there would be a gender sensitive effect that would play out differently for male and female judges. Specifically, I suggested that male and female judges would sentence defendants differently depending on victim gender. The results, however, suggest that we fail to reject the null hypothesis. There is no gender sensitize interaction between the gender of the judge and the gender of the victim. Both male and female judges are giving increased sentences in cases of male victims at about the same rate. Women give slightly higher sentences than male judges in cases with male victims, but this is a product of the judges’ female status not the status of the victim. The same is true for women judges in cases of female victims. Thus, the only gender sensitization effects are a result of either victim status alone or judge gender alone, it is not an interaction between the two.

The second interactive term is an interaction between judge race and defendant race. I hypothesized that minority judges would be more lenient on their minority counterparts than would non-minorities. Again, however, (see table 3) there is no statistically significant relationship between the two. Minority judges do not appear to sentence other minorities differently than non-minorities. This is inconsistent with previous research that suggests minority
judges sentence more leniently (Spohn 1990a); particularly, it is inconsistent with the study by Spohn, Gruhl and Welch (1987) that indicated the black judges would favor their own race. It is important to note, however, that only eleven cases fit the category for the interaction term, so results are limited.

d. Control Variables

Interestingly while most of the control variables continue to behave as they had in earlier models, indicating that the legal framework is in fact important, judges appear to take into account prior sex offenses only in determining sentences and juries take into account both prior felonies and prior sex offenses. Additionally, the impact of prior sex offenses is greater for juries than judges for increasing sentence length. This indicates that such legal factors, while significant for both judges and juries, plays a larger role in jury sentencing. All other controls remain about the same.

D. Examining Factors of Life Sentences (Probit Analysis)

1. Aggregate Model: Aggravated Sexual Assault

For the next set of models, I change the dependent variable to examine which factors in aggravated sexual assault cases influence a judge or jury to give a life sentence as opposed to the maximum number of years or lower of a sentence. By looking at life sentences, it becomes clear what induces the actors in the criminal justice system to give the most severe penalty available in such cases. Similar to that of the models examining sentence length, I begin with an aggregate probit model of what determines a life sentence followed by models that specifically examine the differences between the judges and the jury decisions. The discussion that follows emphasizes only key similarities and differences with the regression model.
TABLE 4

Aggregate Probit Model of Life in Aggravated Sexual Assault Cases

<table>
<thead>
<tr>
<th>Variable</th>
<th>Coefficient</th>
<th>Standard Error</th>
<th>P&gt;(t)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision-Maker Characteristics</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jury Sentence</td>
<td>0.54</td>
<td>0.228</td>
<td>0.811</td>
</tr>
<tr>
<td>Case Characteristics</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Negotiated Guilty Pleas</td>
<td>0.02</td>
<td>0.270</td>
<td>0.934</td>
</tr>
<tr>
<td>Relative</td>
<td>-0.52</td>
<td>0.275</td>
<td>0.059*</td>
</tr>
<tr>
<td>Biological Father</td>
<td>----</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>Step-Father</td>
<td>0.07</td>
<td>0.270</td>
<td>0.804</td>
</tr>
<tr>
<td>Mother’s Boyfriend</td>
<td>0.17</td>
<td>0.338</td>
<td>0.624</td>
</tr>
<tr>
<td>Stranger</td>
<td>0.23</td>
<td>0.428</td>
<td>0.592</td>
</tr>
<tr>
<td>Victim Age at Offense</td>
<td>-0.03</td>
<td>0.030</td>
<td>0.308</td>
</tr>
<tr>
<td>Male Victim</td>
<td>0.80</td>
<td>0.275</td>
<td>0.003***</td>
</tr>
<tr>
<td>Defendant Race</td>
<td>0.11</td>
<td>0.201</td>
<td>0.575</td>
</tr>
<tr>
<td>Control Variables</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Counts Convicted</td>
<td>0.21</td>
<td>0.045</td>
<td>0.000***</td>
</tr>
<tr>
<td>Number of Prior Felonies</td>
<td>0.12</td>
<td>0.086</td>
<td>0.168</td>
</tr>
<tr>
<td>Number of Prior Sex Offenses</td>
<td>0.55</td>
<td>0.209</td>
<td>0.008***</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.268</td>
<td>0.417</td>
<td>0.002***</td>
</tr>
</tbody>
</table>

Marginal Effects

| Variable                        | dy/dx | Standard Error | P>\(|z|\) |
|---------------------------------|-------|----------------|---------|
| Decision-Maker Characteristics  |       |                |         |
| Jury Sentence                   | 0.015 | 0.066          | 0.811   |
| Case Characteristics            |       |                |         |
| Non-Negotiated Guilty Pleas     | 0.006 | 0.078          | 0.934   |
| Relative                        | -0.136| 0.066          | 0.039** |
| Biological Father               | ----  | ----           | ----    |
| Step-Father                     | 0.019 | 0.079          | 0.806   |
| Mother’s Boyfriend              | 0.050 | 0.107          | 0.639   |
| Stranger                        | 0.071 | 0.412          | 0.617   |
| Victim Age at Offense           | -0.009| 0.009          | 0.310   |
| Male Victim                     | 0.274 | 0.103          | 0.008***|
| Defendant Race                  | 0.033 | 0.059          | 0.579   |
| Control Variables               |       |                |         |
| Number of Counts Convicted      | 0.062 | 0.013          | 0.000***|
| Number of Prior Felonies        | 0.034 | 0.025          | 0.168   |
| Number of Prior Sex Offenses    | 0.158 | 0.061          | 0.009***|

n=260                                                                                   * p<0.10
Pseudo r-squared=0.1989                                                                 ** p <0.05
% Correctly Classified=83.46                                                               *** p<0.01
Reduction of Error= 10.97%
a. Decision-Maker Characteristics

For this model, again it is apparent that juries are not more or less apt to opt for a life sentence in comparison to the judges. This suggests that there are no significant differences between decision-makers on whether the defendant receives a life sentence. It does not, however, suggest that the same factors influence how those decision-makers arrived at similar conclusions on sentencing as a whole. As with the regression models, it is important to examine the differences between the two decision-makers in separate models because juries may not ultimately follow the same cues in the determination of their sentences.

b. Case Characteristics

i. Guilty Pleas

In looking at the determinants of life sentences, negotiated guilty pleas are dropped from the model because such cases are inapplicable. Given that there is not a more severe sentence that can be imposed upon the convicted, the defendant is better off taking his chances with a judge or jury. If life is the only sentence that the prosecutor is willing to accept, a bargain does not ensue.

Non-negotiated guilty pleas, on the other hand, may wind up ultimately with a life sentence given that no specific bargain is struck in advance (Table 4). According to the results, however, whether an individual enters an open plea of guilt is not significantly related to whether a life sentence is handed down. It neither determines a greater likelihood for receiving a life sentence, nor does it ensure the absence of a life sentence. There simply is no relationship. This means that it is other characteristics that decision-makers examine when determining life sentences.
c. Victim/Defendant Characteristics

i. Victim Defendant Proximity or Relationship

The next group of independent variables is comprised of the victim defendant characteristics beginning with the relationship between the victim and the defendant (Table 4). First, biological father is necessarily dropped from the model given that it perfectly predicts the failure to receive a life sentence.\(^3\) There is not a single biological father in the data that has received a life sentence for the assaults he has inflicted upon his children. This alone signifies support for the hypothesis that biological fathers receive more lenient sentences. Of the other relationships, the only one that has, or comes near, statistical significance is when the defendant is related to the victim but is not the father or step-father such as uncles, grandfathers, brothers, etc. In these instances, the variable is reaching significance at a \(p\) value of \(<.069\) and indicates that if the defendant is a relative he is be about 13.5% less likely to receive a life sentence. Again this confirms the hypothesis that relatives receive more lenient sentences.

The impact of such findings is the extent to which the courts are unwilling to punish family to the same extent of the law as they are for other categories of crime. Court officials simply are not willing to give such individuals life, despite their actions. Again this confirms Dawson’s (2004) finding that suggested that it is only the most intimate of relationships that plays a role in sentencing outcomes.

ii. Victim Age and Defendant Race

In the aggregate probit model, both victim age and defendant race appear to have little significance in determining a life sentence as well. There is no relationship between whether the defendant is African-American or Caucasian nor the age of the victim for the decision to impose life. The age hypothesis indicates that for the youngest of victims, the defendant would be more

---

\(^3\) This drops thirty-eight observations.
likely to receive a life sentence. This, however, is not the case for all decision-makers in aggravated sexual assault cases for children. I fail to reject the null hypotheses and this is consistent with results of the regression model.

For defendant race, I expect that African Americans receive more severe sentences and thus I expect that African Americans would have a greater probability of receiving a life sentence than Caucasians. This, however, does not appear to be the case, and is inconsistent with much of the literature that indicates that African Americans receive more severe sentences. Again, this may be a result of the inclusion of Hispanics within the category of whites (Spohn, DeLone and Spears 1998; Kautt and Spohn 2002a; Spohn and DeLone 2003).

iii. Victim Gender

Whether the victim is a male or a female remains significant when analyzing whether the defendant receives a life sentence. Again this indicates increased sentence severity for those defendants that commit homosexual acts upon a child. If the victim of the assault is a male, there is a statistically significant probability that the defendant receives a life sentence with \( p < .003 \). There is less than a 0.3% chance that this relationship is occurring by chance alone. The marginal effects suggest that if the victim is a male, there is a 27% greater probability that that the defendant receives a life sentence as opposed to any other sentence as compared to female victims. Again, the courts appear more willing to protect male victims from their perpetrators. Previous literature does not examine victim gender.

d. Control Variables

The control variables are as expected and consistent with the prior regression model. Both the number of counts convicted and prior convictions are highly significant in determining life sentence. The greater the number of counts convicted, the greater the probability that the
defendant receives a life sentence ($p<0.000$ level). For each additional count convicted, it raises the probability of receiving a life sentence by 6%. When looking only at the number of prior felony convictions the results are insignificant; the prior number of all sexual offenses, however, is highly significant. Decision-makers take into account prior sexual assaults much more than they do prior felony convictions alone. For each prior sex offense, the probability that the defendant receives a life sentence increases by close to 16%.

This indicates two things. First, it indicates the importance of legal factors in decision-making. Second, it may indicate views of recidivism. Given prior sex offenses, decision-makers are more likely to give life sentences, and this is probably out of the fear that the individual is not likely to be rehabilitated and will continue to have a higher recidivism rate.

2. Jury versus Judge Decision-Making for Life Sentences

Next I analyze the differences between how juries and judges determine whether or not to give a life sentence, the most severe sentence available for aggravated sexual assault cases (Table 5). Although there was no significant difference in the probability that a jury or judge gives a life sentence that does not indicate that they come to the decision to give life sentences based on the same factors. As we saw in the regression models, judges and juries take different cues when making sentencing decisions. Therefore, it is likely, that different factors also influence the decision to give life sentences for judges and juries.
### Table 5

Probit of Life Sentences for Aggravated Sexual Assault by Decision-Maker

<table>
<thead>
<tr>
<th>Variables</th>
<th>Judge Decisions</th>
<th>Jury Decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Robust Coefficient</td>
<td>Standard Error</td>
</tr>
<tr>
<td>Decision-Maker Characteristics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Woman Judge</td>
<td>0.638</td>
<td>0.373</td>
</tr>
<tr>
<td>Judge Race</td>
<td>-0.485</td>
<td>0.587</td>
</tr>
<tr>
<td>Case Characteristics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Negotiated Plea</td>
<td>0.014</td>
<td>0.327</td>
</tr>
<tr>
<td>Relative</td>
<td>-0.727</td>
<td>0.390</td>
</tr>
<tr>
<td>Step-Father</td>
<td>-0.527</td>
<td>0.484</td>
</tr>
<tr>
<td>Mother’s Boyfriend</td>
<td>1.583</td>
<td>0.594</td>
</tr>
<tr>
<td>Stranger</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>Victim Age at Offense</td>
<td>-0.160</td>
<td>0.045</td>
</tr>
<tr>
<td>Male Victim</td>
<td>0.827</td>
<td>0.513</td>
</tr>
<tr>
<td>Defendant Race</td>
<td>-0.522</td>
<td>0.432</td>
</tr>
<tr>
<td>Interactive Variables</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Woman Judge, Male Victim</td>
<td>0.512</td>
<td>0.804</td>
</tr>
<tr>
<td>Black Judge, Black Defendant</td>
<td>0.573</td>
<td>1.095</td>
</tr>
<tr>
<td>Control Variables</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Counts Convicted</td>
<td>0.183</td>
<td>0.047</td>
</tr>
<tr>
<td>Number of Prior Felonies</td>
<td>-0.143</td>
<td>0.120</td>
</tr>
<tr>
<td>Number of Prior Sex Offenses</td>
<td>0.505</td>
<td>0.250</td>
</tr>
<tr>
<td>Constant</td>
<td>0.150</td>
<td>0.520</td>
</tr>
</tbody>
</table>

N= 142, 89
Pseudo r-squared= 0.4066, 0.2825
% Correctly Classified= 86.62%, 80.90%
Reduction of Error= 20.4%, 10.87%

*p<0.10  **p<0.05  ***p<0.01
TABLE 5 Continued

Marginal Effects of Life Sentences for Aggravated Sexual Assault by Decision-Maker

<table>
<thead>
<tr>
<th>Variables</th>
<th>Judge Decisions</th>
<th></th>
<th></th>
<th>Jury Decisions</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Coefficient</td>
<td>Standard Error</td>
<td>P&gt;</td>
<td>z</td>
<td></td>
<td>Coefficient</td>
</tr>
<tr>
<td>Decision-Maker Characteristics</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Woman Judge</td>
<td>0.174</td>
<td>0.097</td>
<td>0.074*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judge Race</td>
<td>-0.097</td>
<td>0.093</td>
<td>0.297</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Case Characteristics</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Negotiated Plea</td>
<td>0.014</td>
<td>0.327</td>
<td>0.965</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Relative</td>
<td>-0.166</td>
<td>0.082</td>
<td>0.044**</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Step-Father</td>
<td>-0.118</td>
<td>0.090</td>
<td>0.187</td>
<td>0.285</td>
<td>0.163</td>
<td>0.080*</td>
</tr>
<tr>
<td>Mother’s Boyfriend</td>
<td>0.554</td>
<td>0.198</td>
<td>0.005***</td>
<td>0.178</td>
<td>0.226</td>
<td>0.430</td>
</tr>
<tr>
<td>Stranger</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>0.222</td>
<td>0.205</td>
<td>0.280</td>
</tr>
<tr>
<td>Victim Age at Offense</td>
<td>-0.040</td>
<td>0.010</td>
<td>0.000***</td>
<td>0.011</td>
<td>0.018</td>
<td>0.529</td>
</tr>
<tr>
<td>Male Victim</td>
<td>0.256</td>
<td>0.178</td>
<td>0.150</td>
<td>0.383</td>
<td>0.240</td>
<td>0.110</td>
</tr>
<tr>
<td>Defendant Race</td>
<td>-0.118</td>
<td>0.078</td>
<td>0.130</td>
<td>0.162</td>
<td>0.110</td>
<td>0.144</td>
</tr>
<tr>
<td>Interactive Variables</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Woman Judge, Male Victim</td>
<td>0.153</td>
<td>0.281</td>
<td>0.585</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black Judge, Black Defendant</td>
<td>0.178</td>
<td>0.393</td>
<td>0.651</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Control Variables</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Counts Convicted</td>
<td>0.046</td>
<td>0.013</td>
<td>0.000***</td>
<td>-0.055</td>
<td>0.065</td>
<td>0.395</td>
</tr>
<tr>
<td>Number of Prior Felonies</td>
<td>-0.036</td>
<td>0.029</td>
<td>0.234</td>
<td>0.091</td>
<td>0.052</td>
<td>0.081*</td>
</tr>
<tr>
<td>Number of Prior Sex Offenses</td>
<td>0.127</td>
<td>0.061</td>
<td>0.043**</td>
<td>0.180</td>
<td>0.129</td>
<td>0.164</td>
</tr>
</tbody>
</table>

* p<0.10
** p<0.05
*** p<0.01
a. Decision-Maker Characteristics
   i. Judge Gender

   It was hypothesized that women judges punish sex offenders more severely than male judges given their unique viewpoint on sexual assault. There is no punishment more severe than a life sentence, so in turn we would expect women to be more apt to give a life sentence, which is what the table indicates. Women judges that sentence have an increased probability of sentencing the defendant to life imprisonment. If a woman judge sentences the defendant there is an increased probability of close to 20% that he receives a life sentence for his punishment. Again this confirms the hypothesis that women are more sensitized to sexual assault and it supports that this effect carries over to time sentences. It is also consistent with previous literature on women in the courts (Spohn 1990).

   ii. Judge Race

   The race of the judge is insignificant in the determination of whether to give a life sentence. Even when the race of the judge is examined dyadically with the race of the defendant, there is no significant relationship. Race of the judge, in any fashion, does not change the probability whether a defendant receives a life sentence. Therefore, the hypotheses that minority judges would sentence more leniently does not appear to be accurate for this data.

b. Case Characteristics

   i. Guilty Pleas

      a. Non-negotiated Guilty Pleas

      Non-negotiated guilty pleas also do not have an impact on whether or not the defendant is likely to receive a life sentence as with the regression model. This confirms the hypotheses that non-negotiated guilty pleas have a negligible effect upon the sentence imposed indicating that a
plea of guilt does not improve the defendant’s chances of receiving leniency. This relationship is true whether it is a judge or a jury making the decision.

c. Victim/Defendant Characteristics

   i. Victim Defendant Proximity or Relationship

   Results are similar for defendant relationship when looking individually at jury and judge decisions. Biological father still predicts failure to receive a life sentence perfectly and is therefore dropped from the model. Interestingly, however, for the other relationships, differences between the judges and jury decisions begin to emerge. First, for jury decisions, relatives that are not the father or step-father are never sentenced to a life sentence. For judges, there is a statistically significant relationship that indicates not that there is never a life sentence but rather that there is a 16-17% less of a probability that a life sentence is imposed for such relationships. This proves the hypotheses that relatives receive less of a sentence because they are in closer proximity. Additionally, when examining judicial decisions, whether the defendant is the boyfriend of the victim’s mother becomes significant. There is a 55% greater likelihood that the defendant receives a life sentence if he is the mother’s boyfriend and a judge makes the decision. The same relationship does not exist, however, for jury decisions. Finally, where step-father is of no significance in judicial decisions, it is nearing significance for jury decision-making with an increasing probability of about 28% that a life sentence is received. This is in the opposite direction than expected in the theory.

   ii. Victim Age

   The age of the victim at the time of the offense was insignificant for the probability that a defendant receives a life sentence in the aggregate model. When we break apart the decision-makers, however, it is apparent that judges and juries look at age differently. Judicial decisions to
impose a life sentence are highly dependent upon the age of the victim. For every year older that the victim was at the offense, there is a 4% decrease in the likelihood that a judge gives a life sentence to the defendant. This indicates that judges are willing to protect the youngest and more defenseless of the victims. Juries, on the other hand, do not react to age in the same way that judges do.

iii. Victim Gender, Defendant Race and Interactive Variables

Defendants that committed assaults against male victims continue to receive higher sentences and regardless of the decision-maker are more likely to receive a life sentence. Committing a sexual assault on a male brings a 32-38% increase in the probability of receiving a life sentence, for judge and jury decisions respectively. Additionally, consistent with all the prior models, defendant race and the interactive variables are insignificant in the determination of life sentences for both judges and juries.

d. Control Variables

Control variables remain about the same when the decision-makers are broken apart. The only difference is that juries take into account prior felonies more than prior sex assaults and judges take into account prior sex assaults more than only prior felonies.

In the final chapter of the thesis, I conclude about the results that I just discussed. The models indicate many things about sexual assault treatment in the trial courts. Additionally, it indicates many things about models of judicial decision-making for both judges and juries. Finally, I conclude with suggestions for future research that were not addressed by my research.
A. Conclusions and Discussion

The results of this study suggest several different things about trial court decision-making and the treatment of sexual assault cases. First, the results of the models point to the validity of the neo-institutional approach to studying trial court decision-making. Given that legal, attitudinal and institutional variables all consistently played a significant role for outcomes for both judges and juries, the neo-institutional approach, which encompasses all of these, proved to be the far superior approach to study decision-making.

Probably the most important finding of this research is the extent to which judges and juries differ in their sentencing patterns. Despite the findings that juries do not on the whole sentence either more severely or more leniently than judges, juries do sentence quite differently from judges. Juries take into account different considerations when determining sentences. While all prior felony convictions are important to juries, it is prior sex offenses that are important to judges. Most interesting, is the extent to which juries take into account legal factors over all other influences such as prior felony and sex assault convictions. This is particularly intriguing given that many would assume that juries would be less inclined to do so because of their lack of expertise in legal matters as compared to judges. Although findings indicated that juries are not immune to basing decisions on attitudinal and institutional factors as well, they appear to less prevalently or consistently as compared to judges. Judges, on the other hand, consistently looked
to victim age, victim gender, and victim/defendant relationships in addition to legal factors and institutional factors.

The distinction between influences on judges and juries signals the importance of using the neo-institutional approach for the study of state trial courts. This is particularly true when examining sentencing decisions where either a judge or jury may make such decisions. Who is afforded the discretionary power to impose sentences seems to be a powerful institutional aspect of decisional outcomes. Furthermore, this research has brought to light the relative importance of looking at judges and juries in separate analyses as opposed to aggregate models of decision-making. The question should not simply be whether juries sentence more or less severely but rather research should explore whether the same influences bring them to those final outcomes. Additionally, research should address how and under what conditions juries and judges differ in their sentencing practices.

Several conclusions can be made about the treatment of sexual assault cases by the court system. First, and most striking, is the differential treatment based on the relationship between the defendant and victim. Biological fathers and other relatives consistently received the most lenient of sentences regardless of their close proximity to their victims. The courts simply are not protecting the victims of interfamilial abuse to the same extent of the law as other victims of sexual assault. This is actually quite alarming given that these are the victims that are not only likely to have faced repeated assaults at the hands of the defendant prior to the trial, but they are also the victims of perpetrators that have violated the most sacred trust of family (Hollander 2003). Regardless, decision-makers apply the laws in a way that it suggests that these cases are not as deserving of harsh punishments.
Second, cases with male victims resulted in more severe sentences than cases with female victims, despite the gender neutral language of the current law. By doing so, the court system appears to be fostering an acceptance of the reality of male victims which is significant because males are just beginning to come forward about their assaults and they constitute a good portion of such assaults. Potentially, however, the differential treatment of defendants based on victim gender may begin to undermine the severity of assaulting females as well. All in all, the law is gender neutral and should be applied as such. Sentences should not be based on victim gender.

The findings on both relationship of the victim to his or her perpetrator and victim gender suggest that prior sex laws may continue to play a role even though they are no longer on the books. One must question then the relative impact of rape law reforms and whether they have thus far been effective. If laws have changed, and if judges have in particular are still ruling with such preconceptions, how far have we really come if prior laws continue to be penalized?

Third, I examined the gender and the race of the judge. Findings indicate that women are more apt to give increased sentences over their male counterparts in cases of sexual assault. This is significant for several reasons. First, it offers evidence that women are not mere tokens on the bench, and their representation has important policy implications (Marshall 1993). Second, it confirms previous research that women punish more severely in sexual assault cases given their unique understanding of sexual assault (Spohn 1990). Judge race, on the other hand, consistently proved to be insignificant in sentencing decisions. The findings, however, are limited given that racial diversity of the judges is limited in Dallas County with only seventeen cases having been decided by an African American Judge.

Fourth, the separate examination of life sentences revealed the factors in which increase or decrease the probability of receiving a life sentence over any other sentence. Findings
suggested many of the same things that the regression models for what would increase sentence severity.

B. Future Research

There is much more left to be examined within the study of sexual assault and trial courts that has not been addressed by this research. First, I only examined sexual assaults of child victims, whereas most of the literature focuses only on the treatment of sexual assault of adult victims. Future research is necessary to compare the treatment of child and adult victims of sexual assault in the trial courts to distinguish the two categories of crime.

Much of this research has focused on aggravated sexual assault. Although non-aggravated sexual violence was analyzed as well, the limited number of cases prevented separate analyses for judge and jury decisions. In order to determine whether there is a difference between judge and jury decisions and the factors that influence the different decision-makers, more data needs to be collected. Moreover, future research needs to examine different jurisdictions within Texas and other states to see if results are theories about decision-making are consistent. Furthermore, sentencing differences between judge and juries need to be further examined in different substantive areas of law to see if this is only an effect in sexual assault cases or if it is generalizable to other types of cases as well.

Future research should also explore the potential for change over time. Rape law reforms are relatively recent throughout the states, and viewpoints on sexual assault have begun to change (Spohn and Horney 1993). It is particularly relevant to examine whether sentencing outcomes reflect these changing viewpoints. By analyzing a greater time span, it would be possible to determine whether there has been a change in time in the sentencing of sexual assault cases, particularly in the impact of attitudes. Research has yet to analyze a trend in this.
Additionally, these shifts in treatment of the victims over time includes whether defendants that assault male victims have always been more severely punished and whether there has been a change in sentencing patterns based on relationship and the age of the victim.

The role of race needs to be further examined. Future research should focus on whether the victim race/defendant race dyad plays a significant role in sentencing outcomes. Additionally, data must be established that includes Hispanics within their own category instead of aggregating them together with Caucasians. Hispanics are a minority and are likely to receive more severe sentences similarly to other minorities. By including a minority in the majority category it can potentially wash out the results of the variable. This is particularly important for demographic areas that are highly populated with Hispanics such as Texas. Only when this distinction is adequately made can the true effects of defendant race on sentencing be discovered. Additionally, effects of judge race need to be further examined in an area with greater diversity on the bench to adequately see what kind of difference that makes.

Finally, other demographic areas need to be studied and compared. Is Texas or Dallas County unique in its treatment of sexual assault cases or is this true across the board? By looking at other demographic areas the significance of ideology in decision-making can be determined. Texas is virtually entirely made up of conservative Republicans. Would decision-making be different in an area with greater partisan divide?

Previous research suggests that there is a difference in sentencing outcomes depending on the ideology of the judge (Nagel 1961; Carroll, Purkowitz, Lurigio, and Weaver 1987; Spohn 1990a). Future research should examine whether this effect remains true in sexual assault cases despite universal belief that child sexual assault will not be tolerated. Perhaps the crime of sexual
assault is so egregious that there is no ideological divide when it comes to sentencing, but it needs to be examined further.

Overall this research is important for several reasons. First, it gives tremendous insight on models of judicial decision-making, particularly the inherent differences between judges and juries. Second, it suggested that the application of the vague sexual assault laws in Texas has resulted in the contextualization of the law by judges and juries. Through their decisions, precedents, and trends, the courts have an impact on how the laws apply to the victims and defendants. In this, the consistent use of victim characteristics such as age, gender, and the relationship of these characteristics relative to the defendant suggest that rape law reforms have much farther to go. This is particularly true for the use of relationship as a cue to decision-makers. Victims of interfamilial abuse not only deserve, but require more protection from the courts that is not yet being received. The use of sexual assault cases proved significant not only as a way to study trial courts but also as an important policy area interest in its own right.
APPENDIX A

TEXAS SEX ASSAULT LAWS
§ 21.11. INDECENCY WITH A CHILD

(a) A person commits an offense if, with a child younger than 17 years and not the person's spouse, whether the child is of the same or opposite sex, the person:

(1) engages in sexual contact with the child or causes the child to engage in sexual contact; or

(2) with intent to arouse or gratify the sexual desire of any person:

   (A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or

   (B) causes the child to expose the child's anus or any part of the child's genitals.

(b) It is an affirmative defense to prosecution under this section that the actor:

(1) was not more than three years older than the victim and of the opposite sex;

(2) did not use duress, force, or a threat against the victim at the time of the offense; and

(3) at the time of the offense:

   (A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

   (B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

(c) In this section, "sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or

(2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(d) An offense under Subsection (a)(1) is a felony of the second degree and an offense under Subsection (a)(2) is a felony of the third degree.
§ 22.011 SEXUAL ASSAULT.

(a) A person commits an offense if the person:

(1) intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor;

(C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force or violence;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
(4) the actor knows that as a result of mental disease or defect the other person is at the
time of the sexual assault incapable either of appraising the nature of the act or of
resisting it;

(5) the other person has not consented and the actor knows the other person is unaware
that the sexual assault is occurring;

(6) the actor has intentionally impaired the other person's power to appraise or control
the other person's conduct by administering any substance without the other person's
knowledge;

(7) the actor compels the other person to submit or participate by threatening to use
force or violence against any person, and the other person believes that the actor has the
ability to execute the threat;

(8) the actor is a public servant who coerces the other person to submit or participate;

(9) the actor is a mental health services provider or a health care services provider who
causes the other person, who is a patient or former patient of the actor, to submit or
participate by exploiting the other person's emotional dependency on the actor;

(10) the actor is a clergyman who causes the other person to submit or participate by
exploiting the other person's emotional dependency on the clergyman in the
clergyman's professional character as spiritual adviser; or

(11) the actor is an employee of a facility where the other person is a resident, unless
the employee and resident are formally or informally married to each other under
Chapter 2, Family Code.

(c) In this section:

(1) "Child" means a person younger than 17 years of age who is not the spouse of the
actor.

(2) "Spouse" means a person who is legally married to another.

(3) "Health care services provider" means:

(A) a physician licensed under Subtitle B, Title 3, Occupations Code;

(B) a chiropractor licensed under Chapter 201, Occupations Code;

(C) a physical therapist licensed under Chapter 453, Occupations Code;

(D) a physician assistant licensed under Chapter 204, Occupations Code; or
(E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.

(4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section 505.002, Occupations Code;

(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;

(C) licensed professional counselor as defined by Section 503.002, Occupations Code;

(D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;

(E) member of the clergy;

(F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or

(G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.

(5) "Employee of a facility" means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.

(d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

(e) It is an affirmative defense to prosecution under Subsection (a)(2) that:

(1) the actor was not more than three years older than the victim and at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and
(2) the victim:

(A) was a child of 14 years of age or older; and

(B) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

(f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.
§ 22.021. AGGRAVATED SEXUAL ASSAULT

(a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(B) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of a child by any means;

(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;

(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(ii) by acts or words places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;
(iii) by acts or words occurring in the presence of the victim threatens to cause the death, serious bodily injury, or kidnapping of any person;

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode;

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(vi) administers or provides flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine to the victim of the offense with the intent of facilitating the commission of the offense;

(B) the victim is younger than 14 years of age; or

(C) the victim is an elderly individual or a disabled individual.

(b) In this section:

(1) "Child" has the meaning assigned by Section 22.011(c).

(2) "Elderly individual" and "disabled individual" have the meanings assigned by Section 22.04(c).

(c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b).

(d) The defense provided by Section 22.011(d) applies to this section.

(e) An offense under this section is a felony of the first degree.
§12.32. FIRST DEGREE FELONY PUNISHMENT

(a) An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the institutional division for life or for any term of not more than 99 years or less than 5 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed $10,000.

§12.33. SECOND DEGREE FELONY PUNISHMENT

(a) An individual adjudged guilty of a felony of the second degree shall be punished by imprisonment in the institutional division for any term of not more than 20 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed $10,000.

§ 12.34. THIRD DEGREE FELONY PUNISHMENT

(a) An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years.

(b) In addition to imprisonment an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed $10,000.
APPENDIX B

LIST OF CASES


Texas v. Andrade, Carlos. Trial Cause No.F00-32446-IM (Dallas County, Texas 1/10/2001).

Texas v. Andrade, Carlos. Trial Cause No.F00-32445-IM (Dallas County, Texas 1/10/2001).

Texas v. Andrade, Carlos. Trial Cause No.F00-32444IM (Dallas County, Texas 1/10/2001).


Texas v. Avery, Sylvester. Trial Cause No.F00-02428-KL (Dallas County, Texas 4/12/2002).


Texas v. Bowens, Damon. Trial Cause No.F00-49964-UN (Dallas County, Texas 4/20/2001).


Texas v. Bueno, Oscar Elicer. Trial Cause No. F00-70126-PH (Dallas County, Texas 12:00:00 AM).

Texas v. Bueno, Oscar Elicer. Trial Cause No. F00-70094-QH (Dallas County, Texas 12:00:00 AM).


Texas v. Camp, Terry Lee. Trial Cause No. F00-71131-VT (Dallas County, Texas 11/14/2000).

Texas v. Campbell, Joe. Trial Cause No. F00-50390-HU (Dallas County, Texas 2/28/2001).

Texas v. Campos, Jose. Trial Cause No. F02-71286-RSK (Dallas County, Texas 10/16/2002).

Texas v. Canchola, Stephen Jaso. Trial Cause No. F00-36000 (Dallas County, Texas 10/18/2000).

Texas v. Canchola, Stephen Jaso. Trial Cause No. F00-36000 (Dallas County, Texas 10/18/2000).


Texas v. Castilla Jr., Marcos. Trial Cause No.F00-33002-LU (Dallas County, Texas 10/24/2001).


Texas v. Chance, Taiwan L.. Trial Cause No.F00-55399-W (Dallas County, Texas 6/13/2002).

Texas v. Clark, Andrew. Trial Cause No.F95-73156-HR (Dallas County, Texas 11/12/1999).


Texas v. Coleman, William Fredrick. Trial Cause No.F02-73278-MR (Dallas County, Texas ).


Texas v. Cooper, Stanley Earl. Trial Cause No.F00-71580-IU (Dallas County, Texas 11/8/2001).


Texas v. Cruz, Antonio Sr.. Trial Cause No.F97-76800-UP (Dallas County, Texas 12:00:00 AM).


Texas v. Davis, William Wayne. Trial Cause No.F01-74354-T (Dallas County, Texas 12:00:00 AM).


Texas v. Dotson, Ricky Carl. Trial Cause No.F00-37310-LJ (Dallas County, Texas 11/18/2002).


Texas v. Farr, John. Trial Cause No.F00-29497-PV (Dallas County, Texas 10/19/2000).


Texas v. Foster, Lamont. Trial Cause No.F03-71229-V (Dallas County, Texas 8/12/2004).


Texas v. Garcia, Jesus Eduardo. Trial Cause No.F00-54684-LU (Dallas County, Texas 1/17/2002).

Texas v. Garcia, Jose Juan. Trial Cause No.F02-16030-IR (Dallas County, Texas 10/14/2002).

Texas v. Garcia, Jose Juan. Trial Cause No.F02-16037-IR (Dallas County, Texas 10/14/2002).

Texas v. Garcia, Jose Juan. Trial Cause No.F02-16038-IR (Dallas County, Texas 10/14/2002).
Texas v. Garcia, Jose Juan. Trial Cause No.F02-16039-IR (Dallas County, Texas 10/14/2002).


Texas v. Gill, Lawrence Oliver. Trial Cause No.F00-44391-RQ (Dallas County, Texas 6/16/2000).


Texas v. Gonzalez, Jose Santos. Trial Cause No.F03-53704-LI (Dallas County, Texas 4/7/2004).


Texas v. Gramly, Terry. Trial Cause No.F00-42596-NH (Dallas County, Texas 1/12/2001).

Texas v. Gramly, Terry. Trial Cause No.F00-42597-NH (Dallas County, Texas 1/12/2001).


Texas v. Guerrero, Miguel Angel. Trial Cause No.F04-71254-JR (Dallas County, Texas 1/12/2005).


Texas v. Guerrero, Richard. Trial Cause No.F02-16073-MS (Dallas County, Texas 12/12/2002).

Texas v. Guerrero, Richard. Trial Cause No.F02-16072-MS (Dallas County, Texas 12/12/2002).
Texas v. Guinn, Gene. Trial Cause No.F00-01439-TJ (Dallas County, Texas 7/18/2000).


Texas v. Harris, Gary. Trial Cause No.F01-76160-LS (Dallas County, Texas 6/19/2002).

Texas v. Harris, Gary. Trial Cause No.F01-76132-LS (Dallas County, Texas 6/19/2002).

Texas v. Harris, Tommy Ray. Trial Cause No.F01-37586-PN (Dallas County, Texas 5/16/2002).

Texas v. Harris, Tommy Ray. Trial Cause No.F01-37587-PN (Dallas County, Texas 5/16/2002).


Texas v. Hughes, Greg. Trial Cause No.Fm00-22803 (Dallas County, Texas 5/8/2000).


Texas v. Keen, Gary Dwight. Trial Cause No.F01-00060-J (Dallas County, Texas 2/7/2002).

Texas v. Keen, Gary Dwight. Trial Cause No.F01-02456-J (Dallas County, Texas 2/7/2002).


Texas v. Lewis Jr., Alton Lee. Trial Cause No.F01-75441-Q (Dallas County, Texas 2/7/2002).


Texas v. Lopez, Jose Luis. Trial Cause No.F00-21960-M (Dallas County, Texas 4/20/2001).

Texas v. Lopez, Jose Luis. Trial Cause No.F00-21971-M (Dallas County, Texas 4/20/2001).

Texas v. Loveless, Terry Lyn a/k/a Terry Lynn Loveless. Trial Cause No.F97-36959-UV (Dallas County, Texas 1/22/1999).


Texas v. Marcos, Julio Alberto. Trial Cause No.F01-73043-SI (Dallas County, Texas 8/1/2001).


Texas v. Martinez, Juan Francisco. Trial Cause No.F00-70310-QN (Dallas County, Texas 6/9/2003).


Texas v. Maynard, Donald. Trial Cause No.F02-73253-KL (Dallas County, Texas 1/16/2003).


Texas v. MCCurry, Sylvester. Trial Cause No.F01-00915-UK (Dallas County, Texas 12/14/2001).

Texas v. MCCurry, Sylvester. Trial Cause No.F99-01864-IK (Dallas County, Texas 12/14/2001).


Texas v. McNac, Calvin Ervin. Trial Cause No.F03-71678 (Dallas County, Texas 4/1/2004).


Texas v. Menjivar, Moises Brizuela. Trial Cause No.F00-53459-HL (Dallas County, Texas 12:00:00 AM).

Texas v. Mijango, Jose Salomon. Trial Cause No.F01-37468-MU (Dallas County, Texas 11/14/2003).

Texas v. Mijango, Jose Salomon. Trial Cause No.F-0301731-PU (Dallas County, Texas 11/14/2003).


Texas v. Miller, David L. Trial Cause No.F03-73517 (Dallas County, Texas 3/30/2004).


Texas v. Moore, Shedrick. Trial Cause No.F00-71089-TP (Dallas County, Texas 4/6/2001).


Texas v. Moorefield, Jimmy. Trial Cause No.F00-00159 (Dallas County, Texas 2/16/2000).


Texas v. Mungaray, Jorge Luis. Trial Cause No.F00-73072-PA (Dallas County, Texas 2/12/2003).

Texas v. Mungaray, Jorge Luis. Trial Cause No.F01-75552-I (Dallas County, Texas 2/12/2003).

Texas v. Neff, John Wesley. Trial Cause No.F95-00545-HS (Dallas County, Texas ).


Texas v. Newport, Edward Augustine Peter. Trial Cause No.F00-29440-RT (Dallas County, Texas 6/14/2001).

Texas v. Newport, Edward Peter Augustine. Trial Cause No.F00-29454-QT (Dallas County, Texas 6/14/2001).

Texas v. Newport, Edward Peter Augustine. Trial Cause No.F00-29456-QT (Dallas County, Texas 6/14/2001).


Texas v. O'Canas, Jr., Foster. Trial Cause No.F01-32304-M (Dallas County, Texas 10/10/2002).


Texas v. Orellana, Samuel. Trial Cause No.F00-70643 (Dallas County, Texas 10/11/2000).

Texas v. Oriano, Ramon Santiago. Trial Cause No.F00-72542-N (Dallas County, Texas 10/10/2001).


Texas v. Pace, Charles Anthony. Trial Cause No.F01-73465-SW (Dallas County, Texas 9/10/2001).


Texas v. Parent, Mark. Trial Cause No.F00-01404-UJ (Dallas County, Texas 1/19/2001).


Texas v. Pichardo, Rodolfo Avila. Trial Cause No.F00-46308-NP (Dallas County, Texas 10/19/2000).


Texas v. Potter, Christopher L.. Trial Cause No.F98-02383-HT (Dallas County, Texas 1/14/1999).

Texas v. Prado, Ruperto. Trial Cause No.F00-29813-WT (Dallas County, Texas 12/20/2001).


Texas v. Ramirez, Enrique Castillo. Trial Cause No.F00-72442-MS (Dallas County, Texas 2/12/2001).

Texas v. Ramirez, Enrique Castillo. Trial Cause No.F00-72442-MS (Dallas County, Texas 9/29/2004).


Texas v. Rivera, Juan Jose. Trial Cause No.F00-31944-ST (Dallas County, Texas 2/20/2002).

Texas v. Rivera, Juan Jose. Trial Cause No.F00-31945-ST (Dallas County, Texas 2/20/2002).


Texas v. Rodriguez, Juan Jesus. Trial Cause No.F03-71825-VP (Dallas County, Texas 10/1/2004).

Texas v. Rodriguez, Juan Jesus. Trial Cause No.F03-71824-VP (Dallas County, Texas 10/1/2004).


Texas v. Roth, Glen Earl. Trial Cause No.F01-01424-KU (Dallas County, Texas 7/2/2002).
Texas v. Samples, Timothy E.. Trial Cause No.F00-70204-NI (Dallas County, Texas 5/18/2001).
Texas v. Samuel, Samkutty. Trial Cause No.F00-00389-RM (Dallas County, Texas 7/18/2003).

Texas v. Smith, Larry Don. Trial Cause No.F01-56388-Q (Dallas County, Texas 8/15/2003).


Texas v. Soto, Francisco. Trial Cause No.F00-31331-M (Dallas County, Texas 8/30/2000).


Texas v. Subonilla, Jose. Trial Cause No.F01-37592 (Dallas County, Texas 10/24/2002).


Texas v. Swift, Aaron. Trial Cause No.F00-70478 (Dallas County, Texas 6/7/2002).


Texas v. Tear, Robert. Trial Cause No.F00-20976-TP (Dallas County, Texas 1/19/2001).

Texas v. Tear, Robert. Trial Cause No.F00-20976-TP (Dallas County, Texas 1/19/2001).


Texas v. Tinsley, Tony Eugene. Trial Cause No.F01-73185-PI (Dallas County, Texas 12:00:00 AM).


Texas v. Toole, Tony. Trial Cause No.F00-71293-TP (Dallas County, Texas 7/31/2000).

Texas v. Toole, Tony. Trial Cause No.F00-71294-TP (Dallas County, Texas 7/31/2000).

Texas v. Tyson, Antoine. Trial Cause No.F01-74994-HS (Dallas County, Texas 5/10/2002).


Texas v. Valenzuela, John Angelo. Trial Cause No.F00-24045-NQ (Dallas County, Texas 4/9/2002).


Texas v. Ventura, Miguel Angel. Trial Cause No.F02-01737-T (Dallas County, Texas 7/9/2004).


Texas v. Vlerah, Donald Leroy. Trial Cause No.F00-00414-PI (Dallas County, Texas 11/30/2000).


Texas v. Watters, Quentin. Trial Cause No.F97-23159-TR (Dallas County, Texas 10/19/2000).

Texas v. Watters, Quentin. Trial Cause No.F97-23160-TR (Dallas County, Texas 10/19/2000).


Texas v. Williams Jr., Larry Leon. Trial Cause No.F02-48133-UL (Dallas County, Texas 6/12/2003).


Texas v. Wilson, Dickie Bruce. Trial Cause No.F01-00681-Q (Dallas County, Texas 4/19/2001).


Texas v. Wilson, Lewis Wayne. Trial Cause No.F98-68386-UV (Dallas County, Texas 1/7/1999).


Texas v. Witte, Fred. Trial Cause No.F99-00625 (Dallas County, Texas 6/14/1999).


APPENDIX C

LIST OF JUDGES AND PARTISANSHIPS
Adams, Don – Democrat
Alvarez, Manny – Republican
Ashworth, Glen – Democrat
Bachus, William – Unknown
Biard, Webb – Democrat
Bradshaw, John – Unknown
Chapman, Ron – Democrat
Cruezot, John – Republican
Cunningham, Vickers – Republican
Dean, Keith – Republican
Entz, Harold – Republican
Entz, Kate – Unknown
Francis, Molly – Republican
Francis, Robert – Republican
Greene, Karen – Republican
Hawk, Susan – Republican
Johnson, Faith – Republican
Jones, Robert C. – Unknown
King, Edwin – Republican
Marshall, Richard – Unknown
McDaniel, Lana – Republican
McDowell, Pat – Republican
Meier, Gerry – Republican
Metcalf, Don – Republican
Miller, Mary – Republican
Nancarrow, Mark – Republican
Nelms, John – Republican
Parker, Quay – Democrat
Price, Tom – Republican
Stephens, Gary – Republican
Sticklin, Cliff – Republican
Thorpe, Thomas B. – Republican
Tolle, Mark – Republican
Wade, Jr., Henry – Republican
Warder, Janice - Republican
APPENDIX D

CODING APPENDIX
### Dependent Variables

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sentence Imposed</td>
<td>Number of years incarcerated - life sentences coded as 100 years</td>
</tr>
<tr>
<td>Life Sentence</td>
<td>If life sentence imposed 1, 0 otherwise</td>
</tr>
</tbody>
</table>

### Legal Characteristics

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggravated Offense</td>
<td>If offense aggravated 1, 0 otherwise.</td>
</tr>
<tr>
<td>Number of Counts Convicted</td>
<td>Total number of all counts the defendant is convicted of at the same time including all offenses not just sex assault offenses.</td>
</tr>
<tr>
<td>Prior Convictions</td>
<td>Number of prior felonies (or sex offenses) the defendant was convicted of based Dallas County criminal background records, information in the appeals decisions, and from mention in the case files.</td>
</tr>
</tbody>
</table>

### Case Characteristics

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plea</td>
<td>If defendant pled guilty 1, 0 otherwise</td>
</tr>
<tr>
<td>Open Plea</td>
<td>If a guilty plea was non-negotiated 1, 0 otherwise</td>
</tr>
<tr>
<td>Negotiated Plea</td>
<td>If a guilty plea was negotiated 1, 0 otherwise</td>
</tr>
</tbody>
</table>

### Decision-Maker Characteristics

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jury Sentence</td>
<td>If the jury chose the sentence 1, 0 otherwise</td>
</tr>
<tr>
<td>Woman Judge</td>
<td>If judge on trial was a woman 1, 0 otherwise</td>
</tr>
<tr>
<td>Judge Race</td>
<td>If judge in trial was African-American 1, 0 otherwise</td>
</tr>
</tbody>
</table>
**Victim Characteristics**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victim Age</td>
<td>The age of the victim at the time of the offense in years.</td>
</tr>
<tr>
<td>Adult Victim</td>
<td>If victim is an adult defined as 17 or above (legal age of consent) 1, 0 otherwise</td>
</tr>
<tr>
<td>Under Age 6</td>
<td>If the victim was under six years at the time of the offense coded as 1, 0 otherwise</td>
</tr>
<tr>
<td>Ages 6 through 13</td>
<td>If the victim was between the ages of 6 and 13 coded as 1, 0 otherwise</td>
</tr>
<tr>
<td>Ages 14 through 16</td>
<td>If the victim was between the ages of 14 and 16 coded as 1, 0 otherwise</td>
</tr>
<tr>
<td>Male Victim</td>
<td>If victim is male 1, 0 otherwise</td>
</tr>
</tbody>
</table>

**Victim/Defendant Relationship**

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family</td>
<td>If victim and defendant are related by blood or marriage 1, 0 otherwise</td>
</tr>
<tr>
<td>Relative</td>
<td>If victim and defendant are related by blood or marriage but is not either the father or step-father 1, 0 otherwise</td>
</tr>
<tr>
<td>Step-Father</td>
<td>If defendant is the victim's step-father 1, 0 otherwise</td>
</tr>
<tr>
<td>Biological Father</td>
<td>If the defendant is the victim's biological father 1, 0 otherwise</td>
</tr>
<tr>
<td>Mother's Boyfriend</td>
<td>If the defendant is the boyfriend of the victim's mother 1, 0 otherwise</td>
</tr>
<tr>
<td>Stranger</td>
<td>If the victim and defendant are strangers at the time of the offense 1, 0 otherwise</td>
</tr>
</tbody>
</table>

**Defendant Characteristics**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defendant Race</td>
<td>If convicted was African-American 1, 0 otherwise</td>
</tr>
</tbody>
</table>

**Interactive Variables**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Interaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge &amp; Victim Gender</td>
<td>Woman Judge * Male Victim</td>
</tr>
<tr>
<td>Judge &amp; Defendant Race</td>
<td>Judge Race * Defendant Race</td>
</tr>
</tbody>
</table>
APPENDIX E

SAMPLE CODE SHEET
Name: ________________ Trial Cause # ________________ Year: ______

Judge: ________________ Judge Race: ______ Judge Gender: ______

Attorney for State: _______________________

Attorney for Defense: _______________________

Appointed defense? ____

Sentence: ___________ Life: ___________ Fine: ___________

Race of defendant: ________________ Defendant DOB: ________________

Conviction Jury or Judge: ___________ Sentence Jury or Judge: ___________

Date of offense: ________________

Total Charges: ____________________________________________________

Actual charge by count: ___________________________________________

Plea: ________________ Plea Type: _______________________

Victim age: ________________

Victim gender: ________________

Relation to victim: _______________________________________

CPS: _____ Advocates:_____

Probation: _______________________

Appeals mention of prior conviction: _______________________

# of Misdemeanor convictions: _______________________

# of Felony conviction: _______________________

# of Sex offender convictions: _______________________

Notes:
APPENDIX F

AGGREGATE REGRESSION FOR SENTENCE SEVERITY IN NON-AGGRAVATED CASES
| Variable                          | Coefficient | Standard Error | P>|t|
|----------------------------------|-------------|----------------|-----|
| Decision-Maker Characteristics   |             |                |     |
| Jury Sentence                    | 5.67        | 4.654          | 0.228 |
| Case Characteristics             |             |                |     |
| Negotiated Guilty Pleas         | -7.82       | 6.924          | 0.264 |
| Non-Negotiated Guilty Pleas     | -0.24       | 4.075          | 0.952 |
| Relative                         | 1.49        | 3.942          | 0.707 |
| Biological Father                | 3.37        | 12.875         | 0.794 |
| Step-Father                      | -3.08       | 8.455          | 0.717 |
| Mother’s Boyfriend               | 3.30        | 4.627          | 0.479 |
| Stranger                         | -1.27       | 7.388          | 0.864 |
| Victim Age at Offense            | -0.52       | 0.645          | 0.425 |
| Male Victim                      | -4.074      | 5.458          | 0.458 |
| Defendant Race                   | -2.00       | 4.427          | 0.653 |
| Control Variables                |             |                |     |
| Number of Counts Convicted       | 0.486       | 0.506          | 0.341 |
| Number of Prior Felonies         | 3.37        | 7.388          | 0.864 |
| Indecency Charge                 | -12.58      | 6.943          | 0.075*|
| Constant                         | 23.98       | 13.03          | 0.071*|

n=74
R-squared = 0.2479

* p<0.10
** p<0.05
*** p<0.01
REFERENCES


Texas Penal Code §12.32. “First Degree Felony Punishment.”


Texas Penal Code §12.34. “Third Degree Felony Punishment.”

Texas Penal Code §20.011. “Sexual Assault.”


Texas Penal Code §22.021. “Aggravated Sexual Assault.”


