



# From Initial Appearance to Sentencing: Do Female Defendants Experience Disparate Treatment?



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## ABSTRACT

**Purpose:** While various perspectives have been offered to explain why females might be treated more leniently by the court system than males, very few studies have investigated sex-based disparities at stages of case processing prior to sentencing. Therefore, we examine outcomes at pretrial release and sentencing and investigate for cumulative disadvantage across the criminal court system.

**Methods:** A sample of felony cases referred to the Prosecutor's Office of a large northern urban jurisdiction in the United States during calendar year 2009 were analyzed and included violent, property, and drug offenses.

**Results:** In general, it was found that females were treated more leniently by the court system, although specific groups of female defendants were found to experience cumulative disadvantage across the criminal court system.

**Conclusions:** While support for the chivalry/paternalism perspective was found, it is suggested that scholars revisit the many perspectives currently put forth to explain sex-based disparities.

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## Introduction

Some scholars have argued that there is much evidence of the disparate treatment of certain demographic groups of criminal defendants by the courts (e.g. Cravens, 2010; Ulmer & Johnson, 2004). Much of this attention has focused on the existence of racial disparities in sentencing, and the empirical literature includes many contributions to our understanding of the problem (for a summary of the empirical literature, see Ulmer, 2012). More specifically, scholars now recognize the need to assess cumulative disadvantage across the entire court system, including how decisions related to pretrial detention might impact sentencing for select groups of defendants (Baumer, 2013; Bushway & Forst, 2013; Stolzenberg, D'Alessio, & Eitle, 2004; Sutton, 2013; Ulmer, 2012). Unfortunately, such contributions have yet to be discussed with respect to the existence of sex-based disparities in case processing and outcomes.

Most studies investigating sex-based disparities have focused on either pretrial decisions (Demuth & Steffensmeier, 2004; Katz & Spohn, 1995; Kruttschnitt, 1984; Kruttschnitt & McCarthy, 1985; Steury & Frank, 1990; Turner & Johnson, 2006) or sentencing,<sup>1</sup> without analyses of both stages simultaneously. While there is strong evidence to suggest that female defendants are treated more leniently than male defendants, such analyses do not provide scholars with a clear

picture of how pretrial release decisions might influence sentencing decisions in the same court system (Spohn, 2009). Additionally, it is unclear whether defendant sex might interact with other legal or extralegal factors and condition one another to influence outcomes (Doerner & Demuth, 2010; Katz & Spohn, 1995), resulting in cumulative disadvantage for certain groups of defendants. In order to gain a more in-depth understanding of how women are treated by the entire criminal justice system, we examined gender disparities for 3,593 felony cases referred to the Prosecutor's Office of a large northern urban jurisdiction in the United States during 2009.

## Current Perspectives on Sex-based Disparities in Treatment by the Courts

Several perspectives have been put forth to explain sex-based disparities in case outcomes, many of which predict the lenient treatment of females in comparison to males. First, the chivalry/paternalism thesis argues that, because the criminal justice system is male dominated, judges tend to associate female offenders with women in their own lives, such as their mothers, sisters, wives, or daughters (Bishop & Frazier, 1984; Farnsworth & Teske, 1995; Griffin & Wooldredge, 2006; Visher, 1983). When confronted with female offenders who conform to the traditional gender roles of housewife and mother, judges may feel a need to protect them and may ultimately treat them more leniently than similarly situated male offenders. Daly (1989) contended, however, that paternalism may ultimately lead to harsher treatment of

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females, particularly female juveniles, if in the need to protect them detention or incarceration was seen as necessary.

Another related perspective is focal concerns theory (Steffensmeier et al., 1998). Steffensmeier and his colleagues argued that prosecutors' and judges' decisions on case dispositions and outcomes are influenced by three concerns. First, they are concerned with the blameworthiness of the defendant and the overall level of harm inflicted on the victim and on society. Second, both prosecutors and judges are concerned with protecting the community from future harm. Finally, there are practical considerations when sending someone to prison, such as available bed space in facilities, the physical and mental capacity of a defendant, and the costs of caring for a parent's dependent children (Daly, 1987; Freiburger, 2010; Steffensmeier, 1980; Steffensmeier et al., 1998).

From this perspective, defendants who commit more serious offenses, and cause more harm to their victims, may receive more severe sentences. Related to this, prosecutors and judges may consider how willing a defendant is to participate in a treatment program. Because females are perceived to be more amenable to treatment services (Meyer & Jesilow, 1997), female defendants may be perceived to be less dangerous or at a lower risk to recidivate (Hessick, 2010). Additionally, since women are more likely to engage in criminal activity because of a dominant husband/boyfriend or because of drugs/alcohol (Demuth & Steffensmeier, 2004; Hessick, 2010), female defendants are likely to be perceived as less blameworthy than male defendants. Female defendants who are mothers may be treated more leniently in order to keep their children out of the care of the state (Koons-Witt, 2002). However, the third focal concern also suggests that judges may consider how well a female defendant is capable of caring for her children. While a judge may not want to remove a mother from her child, it may be necessary if the judge perceives the mother's criminal lifestyle to be overly damaging to her child's well-being (Freiburger, 2010; Griffin & Wooldredge, 2006). To test the assumptions of focal concerns theory and investigate whether relevant legal factors are considered similarly for males and females, it is necessary to examine sex-based interactions for the conditional effects of a defendant's sex on pretrial release and sentencing outcomes.

On the opposite end of the spectrum are gender conflict theory and the "evil woman" thesis (Chesney-Lind, 1977; Kruttschnitt, 1984; Visser, 1983). A derivative of conflict theory, gender conflict contends that female offenders will be treated *more* harshly when they step outside prescribed gender roles. According to gender conflict theorists, women are less valued than men because women's work is less valued (evidenced through unequal pay), because they are not as visible in positions of economic and political power, and because women continue to be victimized at the hands of men (Franklin & Fearn, 2008). As a result of this oppression, gender conflict theorists argue that men use their positions in society, and in the criminal justice system, to exert their power over women in order to keep them in a subservient status. In the criminal justice system, men use laws and procedures to punish women who threaten the social order and, ultimately, their power. Therefore, gender conflict theory predicts that female defendants, especially those charged with violent crimes, will be treated more harshly than other groups of females (Franklin & Fearn, 2008). Consequently, gender conflict theory suggests that the interaction effect of sex ( $x$ ) offense type can lead to harsher treatment for particular groups of females.

Another explanation for possible sex-based disparities in treatment by the courts is the "evil woman" thesis. Similar to gender conflict theory, the "evil woman" thesis attempts to explain why certain groups of female defendants are treated *more* harshly in the criminal justice system (Visser, 1983). More specifically, it is believed that chivalrous treatment by the court is thought to be reserved for women who hold the prescribed roles of wife and mother, who appear docile and in need of protection (Bickle & Peterson, 1991), and who engage in the more typical "female" offenses (e.g., minor property crimes) (Belknap, 2001; Bickle & Peterson, 1991; Crew, 1991; Daly, 1987; Kaukinen, 1995; Young, 1986). In comparison to White females, it is believed

that African American females may be perceived as more independent and less worthy of protection when they assume the role of raising a family on their own (Belknap, 2007; Black, 1980). Additionally, African American women may be perceived by court actors to be loud, forceful, and crime-prone (Collins, 2004; Miller, 2008; Moore & Hagedorn, 1996; Sinden, 1981). As a result of these perceived assumptions of minority female defendants, the "evil woman" thesis suggests that the interaction effect of sex ( $x$ ) race can lead to harsher treatment for African American females.

Although racial threat theory is not directly tied to explaining why sex-based disparities exist, it does offer a possible explanation for why minority women might be treated more harshly compared to White women. Racial threat theory contends that when the size of a minority population increases within a given geographic area (primarily an urban area), Whites may perceive a threat to their political, social, and economic power (Blalock, 1967). Within these areas, the criminal justice system is used to increase sanctions against minority defendants in order to reduce the likelihood that the minority population will successfully compete with the majority for scarce resources (Stolzenberg et al., 2004). Therefore, while racial threat theory does not predict any differential treatment between males and females, it suggests that African Americans are likely to be treated more harshly than Whites in particular areas or neighborhoods. This implies that, among female defendants, African American women may be treated more harshly than White women. (A similar argument has been made regarding the harsher treatment of minority men relative to White men (Bishop & Frazier, 1984; Demuth & Steffensmeier, 2004)). While we cannot test racial threat theory directly due to our focus on a single jurisdiction, the theory provides a context for understanding why minority females might be treated more harshly in this particular jurisdiction.

### Disparate Treatment at Initial Appearance versus Sentencing

Most empirical tests of the perspectives described above have focused on the much more visible stage of sentencing.<sup>2</sup> While a smaller number of studies have investigated the existence of sex-based disparities in pretrial release decisions (Demuth & Steffensmeier, 2004; Katz & Spohn, 1995; Kruttschnitt, 1984; Kruttschnitt & McCarthy, 1985; Steury & Frank, 1990; Turner & Johnson, 2006), the examination of sex effects on pretrial release and sentencing with the same sample has been limited to the federal system (Spohn, 2009).

While still important, studies focused only on sentencing are unable to identify if chivalry shown to female defendants operates uniformly across decision points, specifically whether earlier decisions made at initial appearance (e.g., bond amounts) influence later outcomes such as conviction (Albonetti, 1991) and imprisonment (Demuth & Steffensmeier, 2004; Goldkamp, 1985). Thus, while prior research suggests that, in comparison to males, females are more likely to be afforded pretrial release (Daly, 1987; Kruttschnitt, 1984), are assigned lower bail amounts in general (Kruttschnitt, 1984), are less likely to be sentenced to a period of confinement (Doerner & Demuth, 2010, 2014; Griffin & Wooldredge, 2006; Johnson, 2006; Kruttschnitt, 1984), and often receive shorter sentences when they are incarcerated (Albonetti, 1998; Doerner & Demuth, 2010, 2014; Engen, Gainey, Crutchfield, & Weis, 2003; Jeffries et al., 2003; Kramer & Ulmer, 2002; Kruttschnitt, 1984; Martin & Stimpson, 1997/1998; Nagel & Johnson, 1994; Steffensmeier et al., 1993), it remains unknown if certain types of female defendants experience increasingly disparate treatment as their cases proceed through the system.

The importance of examining cumulative disadvantage has been underscored in the literature on racially disparate treatment (Baumer, 2013; Bushway & Forst, 2013; Kutateladze, Andiloro, Johnson, & Spohn, 2014; Ulmer, 2012), but the possibility of cumulative advantage as it applies to female defendants has yet to be fully examined. Spohn (2009) investigated the effects of pretrial release on sentencing outcomes for drug trafficking offenders in three U.S. District Courts using data from

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