

# SPLIT SENTENCING AND THE EFFECTS OF GENDER AND OFFENSE TYPE

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by

Anna I. Gomez

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## APPROVED:

Peter Lehmann, PhD  
Committee Director

Chelsey Narvey, PhD  
Committee Member

Michael Vaughn, PhD  
Committee Member

Phillip Lyons, PhD  
Dean, College of Criminal Justice

## DEDICATION

I dedicate this thesis to my family. Para mi papa y mama, J. Jesus y Maria de Jesus, quien siempre me han amado, apoyado, inspirado a ser la mejor en mis estudios, y por el empujo para ser exitosa. Los amo y no podría haber logrado este diploma sin ustedes; gracias y por siempre estaré agradecida que Diosito los eligió para ser mis padres. Ustedes son mi inspiración, motivación, héroes, y corazón. ¡Los amo y gracias!

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## ABSTRACT

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Research focusing on the gender effect in sentencing outcomes has emphasized the disparity in the sentencing of female and male defendants. With the drastic increase in the rate of female imprisonment following the changes in sentencing legislation during the 1980s, the leniency in sentencing extended to females has become notable in both the in/out and sentencing length decisions, net of extralegal and legal variables. While current literature has mainly focused on this disparity across traditional sentencing outcomes, the gender effect has been examined to a lesser extent in the application of alternative sanctions. Split sentencing—an alternative sanction offered in the state of Florida per the sentencing guidelines—has been especially understudied with only one study to date assessing the effects of age, gender, and race/ethnicity on receiving this alternative sanction. Additionally, no study to date has analyzed how the gender effect is moderated by offense type in the assignment of a split sentence as anticipated by the chivalry/paternalism, the evil woman, and the liberation hypothesis. Using data on felony cases sentenced in Florida circuit courts, this study examines the gender effect in the extension of a split sentence, and how it is moderated by offense type as predicted by the above mentioned theories. Results from the binary logistic regression and multiplicative interaction terms reveal that the gender effect persists across split sentencing outcomes in which females are more likely than their male counterparts to receive this sentence. However, the findings also indicate that the gender effect is only observable in the punishment of property and violent offenses, which was not anticipated by the evil

woman hypothesis. Support was found for the chivalry/paternalism hypothesis and partial support for the liberation hypothesis. Policy implications for revisitation of the current sentencing guidelines are discussed, as well as limitations and directions for future research.

**KEY WORDS:** Alternative sanctions, Gender, Offense type, Sentencing guidelines, Split sentencing.

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## TABLE OF CONTENTS

	Page
DEDICATION .....	iii
ABSTRACT .....	v
ACKNOWLEDGEMENTS .....	vii
TABLE OF CONTENTS .....	viii
LIST OF TABLES .....	x
CHAPTER I: INTRODUCTION .....	1
CHAPTER II: LITERATURE REVIEW .....	11
Gender and Sentencing .....	11
Theoretical Framework .....	17
Alternative Sanctions and Split Sentencing .....	27
CHAPTER III: DATA AND METHODS .....	34
Data .....	34
Variables .....	35
CHAPTER IV: RESULTS .....	42
Main Effects .....	42
Interactive Effects .....	44
Adjusted Predictions and Marginal Effects .....	46
CHAPTER V: DISCUSSION AND CONCLUSION .....	48
Findings .....	50
Theoretical Policy Implications .....	53
Limitations and Future Research .....	54



REFERENCES .....	56
VITA .....	65

## LIST OF TABLES

Table	Page
1 Descriptive Statistics: Felony Offenders Sentenced in Florida Circuit Courts, 1995-2006 .....	36
2 Bivariate Association Between Gender and Variables of Offenders Sentenced in Florida Circuit Courts, 1995-2006.....	39
3 Binary Logistic Regression of Receiving a Split Sentence: Main Effects of Gender and Offense Type .....	43
4 Binary Logistic Regression of Receiving a Split Sentence: Interactive Effects of Gender and Offense Type.....	45
5 Average Marginal Effects (AMEs) of Gender and Receiving a Split Sentence by Offense Type.....	47

## **CHAPTER I**

### **Introduction**

The 1980s marked a significant change in America's sentencing legislation. A shift from indeterminate sentencing to determinate sentencing took place after the Sentencing Reform Act of 1984 and the implementation of Federal Sentencing Guidelines in 1987 (Albonetti, 1997). Resulting from the limitation of discretion among court actors, such changes and an increase in crime led to an overflow in correctional facilities. Drastic growth in the rate of female imprisonment during this period became evident, reaching a 700% increase in the number of incarcerated women (The Sentencing Project, 2020). From a total population of 26,378 incarcerated females in 1980 to 222,455 in 2019, the rate at which females were incarcerated was double that of male offenders (The Sentencing Project, 2020). Although males continue to account for the majority of the incarcerated population, the spike in female incarceration has become alarming in recent decades as a total of 1.2 million females are under criminal justice supervision (The Sentencing Project, 2020).

The striking growth of the imprisoned female population has led to a substantial body of research which aims to further understand the female offender and the effects of gender on criminal court sentencing. Research in this area has emphasized a gender disparity in sentencing outcomes, with a focus on the leniency in sentencing extended to female defendants (Doerner, 2012; Doerner & Demuth, 2014; Steffensmeier et al., 1993). Across state and federal courts, findings suggest that female defendants generally receive shorter sentences than their male counterparts, even among defendants sentenced for similar crimes (Doerner & Demuth, 2014; Koons-Witt et al., 2014). Further, in a recent

study, Steffensmeier and colleagues (2017) found a consistent gender effect for both the in/out and length decisions, observing that these patterns persisted both within and between racial and age groups.

Some evidence suggests that the effect of gender on sentencing may be nuanced, varying according to other extralegal and legal factors. The study by Koons-Witt and colleagues (2014) revealed that as the severity of the crime at hand increased, the likelihood of incarceration and length of the imposed prison term was greater for males than for females. However, leniency in sentencing outcomes was not apparent among all female defendants; their findings showed that Black female offenders had greater odds of incarceration than their White female counterparts in similar situations. Additionally, Doerner and Demuth (2014) observed educational attainment, marital stability, and having dependents to be somewhat influential on sentencing outcomes; however, these factors were not found to reduce the gender gap in sentencing. Further, similar to prior research findings, extensive criminal history and crime severity were found to be important in the sentencing of offenders, leading to more severe sentencing outcomes among both females and males (Doerner & Demuth, 2014).

In efforts to explain these sentencing patterns, several theoretical frameworks have emerged. Steffensmeier and colleagues' (1998) focal concerns perspective claims that, in the process of reaching sentencing decisions, judges and other court actors consider three key concerns: offender blameworthiness, protection of the community, and the practical constraints and consequences of sentencing outcomes at the organizational and individual levels (see also Steffensmeier et al., 1993, 2017). The first focal concern of blameworthiness entails a retributive approach to sentencing that considers the

culpability of the defendant and the severity of the harm inflicted. Additionally, judges are concerned with ensuring the safety of the community, and for this reason weigh such factors as criminal history and offense type as well as certain extralegal defendant characteristics that may be perceived to be accompanied by a heightened risk of recidivism upon release. With regard to protection of the community, focus is commonly placed on the incapacitation and deterrence of the offender. Lastly, the focal concern of practical constraints and consequences relates to the organizational implications that might follow sentencing outcomes, including correctional space and prison costs as well as any possible collateral consequences of the sentence for the offender.

Because the sentencing process is characterized by uncertainty, time and resource constraints, and a lack of information about defendants, judges can use a “perceptual shorthand” (Steffensmeier et al., 1998, p. 767) through which they can engage stereotypes and behavioral expectations which, attribute certain meanings on the basis of legal as well as extralegal defendant characteristics, including, age, gender, and race. When engaging the three focal concerns and determining the appropriate sentence, judges may view females as less threatening and less blameworthy than males. As one Pennsylvania judge said, it may be like comparing “apples and oranges” (Steffensmeier et al., 1993, p. 434). Specifically, judges may categorize females and males into distinct groups with females generally being viewed as less culpable than male defendants and more as followers than leaders. This may lead judges to treat females with leniency and males more punitively. Similarly, when considering the protection of the community, judges may be particularly inclined to leniently sentence female defendants with children or who are pregnant as incarceration may be viewed as not needed to ensure the

protection of the community (Steffensmeier et al., 1993). Finally, defendants' gender can be conflated with a variety of practical concerns, including judges' perceptions of females being less able to "do time" in jail or prison (Daly, 1987; Steffensmeier et al., 1998).

Deriving from a sociological perspective, Black's (1976) theory of law and social control contends that formal and informal social controls are inversely correlated. Specifically, individuals who are subject to more informal social control are treated less severely by the criminal justice system than those who are subject to less informal social control. Within this theory, several propositions in relation to five variables that concern the variation of law, are discussed. These variables include stratification, morphology, culture, social organization, and social control. Stratification relates to the distribution of wealth, morphology to the division of labor, culture to the societies' symbolic aspect, social organization to the capacity for collective action, and social control to the definition of deviant behavior (Greenberg, 1983). According to Black (1976), family is an important informal social control, which contains the most control relative to other relationships and associations. Thus, especially for female defendants with families and dependents, these variables of informal social control mitigate their sentencing outcomes (Daly, 1989).

Beyond these main effects of gender, it is theoretically plausible that the gender gap in sentencing may be conditional upon offense type. Chivalry or paternalism theory is a commonly used framework in research on gender and sentencing which anticipates such an interactive relationship. According to this perspective, females are generally viewed as in need of protection by the justice system and, for this reason, are often sentenced more leniently than their male counterparts (Koons-Witt, 2002). Judges,

especially male judges, are expected to sentence female defendants particularly leniently, as they take a paternalistic approach and deem these defendants as more in need of protection than punishment (Holland & Prohaska, 2021). Further, more lenient punishments are typically granted to females who conform to traditional gender roles, such as those who commit less serious crimes (Koons-Witt, 2002). Similarly, the evil woman hypothesis also emphasizes the importance of gender role stereotypes; however, this perspective expects that a more punitive approach will be taken in the sentencing of female defendants who break traditional gender norms (Embry & Lyons, 2012). Females who violate gender-based behavior expectations by committing especially serious or violent “masculine” crimes, such as murder or robbery, are expected to be treated similarly to or possibly even more harshly than their male counterparts (Koons-Witt et al., 2014; Spohn & Spears, 1997).

Finally, the liberation hypothesis posits that, in the sentencing of more serious crimes, judges have limited discretion, and legal factors such as seriousness of the crime and prior criminal record will primarily guide punishment decisions. However, judges’ ability to exercise discretion increases as crime seriousness decreases, thus allowing them to more readily rely on extralegal defendant characteristics to inform sentencing decisions (Spohn & Cederblom, 1991). Specifically, in light of reduced evidentiary quality as well as heightened ambiguity about the appropriate sentence, judicial discretion is “liberated” among non-serious cases, thereby allowing judges to consider stereotypes and personal beliefs connected to extralegal factors. Thus, according to this perspective, it is possible that the gender gap in sentencing might be minimal or non-existent in the

sentencing of especially serious crimes, while female defendants might be especially advantaged in the sentencing of property and drug offenses.

To date, the vast body of research on gender and sentencing has focused almost entirely on traditional sentencing outcomes, including the “in/out” decision, sentence length, and departures from presumptive sentencing guidelines (e.g., Doerner & Demuth, 2014; Koeppel, 2014; Spohn, 2000; Tillyer et al., 2015). The extent to which gender and other offender-level extralegal and legal factors affect the likelihood of receiving “alternative” or “intermediate” sanctions remains understudied. An alternative sanction is a type of non-traditional sentence that is often understood as falling between incarceration and probation in severity and is sometimes served outside of jail or prison entirely. Depending on the sentencing guidelines system in place and availability of these sentences to judges in a given jurisdiction, the range of alternative sanctions includes but is not limited to different forms of electronic monitoring, intensive supervision, boot camps, drug and alcohol treatments, and fines (Engen et al., 2003; Gainey et al., 2005; Johnson & DiPietro, 2012).

Research on the application of alternative/intermediate sentences relative to more punitive traditional sentencing outcomes (e.g., sentences to incarceration) generally has found that minorities and males are disadvantaged. Across several studies, males, and especially young Black and Hispanic males, have been found to be the group least likely to receive an alternative sanction (Franklin et al., 2017; Johnson & DiPietro, 2012; Lehmann & Gomez, 2021). Theoretically, it is plausible that judges may perceive male and minority offenders as less amenable to treatment, and thus, as less deserving of limited court resources. Other findings indicate a decreased likelihood of receiving an



intermediate sentence if the defendant takes their case to trial, and alternative sanctions are more likely to be granted to individuals convicted of non-violent crimes, though in some jurisdictions alternative sanctions are only available to non-violent offenders and/or those without prior criminal records (Brennan & Spohn, 2008; Gainey et al., 2005). There is also some evidence that intermediate sanctions are more commonly given to defendants with higher educational attainment (Franklin et al., 2017).

A form of alternative sanction that has received little attention in the sentencing literature is “split sentencing.” In efforts to alleviate inmate overcrowding as well as a competing demand for punitiveness in sentencing, split sentencing has been adopted in some jurisdictions as a cost-effective solution, especially where other methods of reducing correctional burdens (e.g., discretionary parole) have been abandoned (Morris & Tonry, 1991; Talarico & Myers, 1987).<sup>1</sup> A split sentence consists of an incarceration sentence followed by a term of post-release supervision; if granted a split sentence, the defendant serves a mitigated sentence in jail or prison then serves the remainder of his or her sentence within the community. In Florida, unlike traditional sentencing outcomes, the decision to assign a split sentence is highly discretionary and can be available to defendants across all offense types and criminal histories (Lehmann & Gomez, 2021). Thus, split sentencing can be understood to “represent a unique locus of court actor discretion” (Johnson & DiPietro, 2012, p. 816), and for this reason it is crucial to investigate extralegal disparities in the assignment of this unique sentence type.

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<sup>1</sup> Per the Florida Statute, the court may impose a split sentence if the defendant is imprisoned for a misdemeanor or a felony, except for a capital felony. Defendant completes a mitigated incarceration sentence followed by a term of probation or community control. For more information refer to Title XLVII Chapter 948.012 of the Florida Statutes.

Very limited research to date has examined split sentencing. Several assessments of the effects of extralegal offender characteristics on the likelihood of receiving an alternative sanction have included split sentencing, but this outcome is rarely differentiated from the other intermediate sanctions available in the jurisdictions under study (Brennan & Spohn, 2008; Franklin et al., 2017; Gainey et al., 2005; Johnson & DiPietro, 2012). Further, most of these studies were restricted to examinations of select subpopulations of defendants, such as drug offenders or first-time non-violent felons (Brennan & Spohn, 2008; Engen et al., 2003; Gainey et al., 2005). Using data from Florida, Lehmann and Gomez (2021) were the first to assess split sentencing as a distinct alternative sanction and they observed that Black and Hispanic males ages 21 and older were the least likely to receive a split sentence. Among female defendants, Black and White females ages 18-20 had similar odds of receiving a split sentence, while Hispanic females in the same age group were the most likely to be given this sentence.

In summary, existing research in gender and sentencing has extensively documented the discrepancy in sentencing outcomes between female and male defendants; however, this relationship has been underexplored in the application of different intermediate and non-traditional sentencing outcomes. While prior research generally has found leniency in sentencing among female offenders, the extent to which gender exerts an effect on split sentencing has been observed in only one prior study (Lehmann & Gomez, 2021). However, that study examined the effect of gender in concert with other extralegal defendant attributes, and no research to date has investigated whether, as anticipated by the chivalry hypothesis, the evil woman hypothesis, and the liberation hypothesis, the effects of gender on split sentencing are

moderated by offense type. This gap in the research is striking given the theoretical importance of split sentencing as a highly discretionary form of sentencing and mechanism through which sentencing guidelines recommendations can be circumvented (Johnson & DiPietro, 2012). In an effort to address this gap, this study will use data on felony cases sentenced in Florida circuit courts to analyze the effect of gender on receiving a split sentence outcome and assess the extent to which offense type moderates the effect of gender on the likelihood of receiving a split sentence.

The importance of this study is three-fold. First, as mentioned, it will contribute to the current gap in the literature concerning alternative sanctioning, especially the gender effect on the extension of a split sentence. Second, with the wide discretion afforded to sentencing judges per the Florida sentencing guidelines, this study will allow for further assessment of extralegal disparities among split sentencing outcomes. This is important as judicial discretion has been linked to disparities in sentencing outcomes, especially across gender and race (Engen et al., 2003). Lastly, with the drastic increase in female incarceration rates, this study also expresses the need for gender-based programs to reduce the recidivism rates experienced by female defendants. These programs are especially necessary as females exhibit different needs than males during imprisonment and experience higher stigmatization post-release (Gottlieb & Mahabir, 2022).

Three specific research questions are proposed: (1) Among defendants sentenced for felony offenses in Florida circuit courts, are female defendants more likely than male defendants to receive a split sentence relative to other sentence types? (2) Are the effects of gender on the likelihood of receiving a split sentence conditional upon offense type such that female-male disparities in split sentencing are less prominent in the sentencing

of more serious felony crimes? (3) Among defendants sentenced for violent crimes, does the effect of gender reverse direction such that female offenders are less likely to receive a split sentence than males? Data from the Florida Department of Corrections (FDOC) on offenders sentenced to Florida circuit courts between 1995 and 2006 will be used. Before the data and analytic plan are described in detail, the following chapter will contain a review of the literature on gender and sentencing, an overview of the theoretical accounts used to understand these patterns, and a discussion of the limited prior research on alternative sanctioning.

## CHAPTER II

### Literature Review

#### Gender and Sentencing

##### *Prior Literature on the Main Effects of Gender*

Leniency in the punishment of female defendants is evident at the federal and state levels (Doerner & Demuth, 2010) and across rural and urban areas (Lu, 2018). Compared to their male counterparts, females convicted of felony offenses receive relatively short sentences (Doerner & Demuth, 2010; Koons-Witt, 2002; Koons-Witt, et al., 2014; Steffensmeier et al., 2017). For example, using federal court data, Doerner and Demuth (2010) found an independent effect of gender on sentencing outcomes such that males received harsher punishment outcomes; specifically, females had 42% lower odds of receiving an incarcerative sentence relative to males, and they received sentence lengths that were approximately 25% shorter than those assigned to males. Similarly, Nowacki (2020) recently found lower odds of receiving a prison sentence among female defendants than for males. In light of these patterns, the prior literature consistently has pointed toward a “strong gender effect” (Kim et al., 2019, p. 489) through which female defendants benefit even after accounting for a wide range of legal and extralegal factors (Doerner, 2015; Doerner & Demuth, 2014; Holland & Prohaska, 2021).

The gender disparity in sentencing outcomes is observed especially notably in the “in/out” decision, with female defendants generally more likely than males to be sentenced to probation relative to incarceration. For instance, using data collected across three periods in Pennsylvania courts, Blackwell and colleagues (2008) found the odds of receiving a prison or jail sentence relative to probation was lower for females than for

males, and this pattern held true whether sentencing guidelines were present or suspended and regardless of the crime type. Similarly, Freiburger and Hilinski (2013) found that, in comparison to males, females were more likely to receive probation relative to county jail; however, both groups had similar odds of being sentenced to prison versus jail.

Regarding the decision to grant a sentencing guideline departure, the evidence suggests that female defendants, especially those who are White, were substantially more likely to receive beneficial guideline departures than similar males (e.g., Bontrager et al., 2013; Doerner, 2012; Ward et al., 2016). However, Warren and colleagues (2020) found that Black and Latina women in counties with large Black populations were particularly likely to receive an upward departure.

### ***Moderating Effects of Other Extralegal Factors***

In much of the research on gender and sentencing, the moderating effects of extralegal variables—specifically, race/ethnicity and age—have been examined most frequently. Studies that have explored the joint effect of gender, age, and race indicate that young minority males are more likely to receive harsher sentences than their female and White counterparts (e.g., Doerner & Demuth, 2010; Freiburger & Hilinski, 2013; Steffensmeier, et al., 1998, 2017; Warren et al., 2012). Steffensmeier and colleagues (2017) found the effect of race/ethnicity on the in/out and sentencing length outcomes to be moderated by gender such that Black and Hispanic males have greater odds of incarceration and receive lengthier sentences than Whites and females. However, they also observed that the effect of race was non-significant among female defendants. Additionally, while younger adults generally received more severe punishments than older offenders, the youngest female and White male age groups were sentenced most

leniently. The findings from Doerner's (2015) study, however, indicated that while females tended to receive less punitive sentencing outcomes than males of the same racial/ethnic group, Black and Hispanic females were *less* likely to be incarcerated than their White female counterparts. This study also revealed that White females received lengthier sentences than Hispanic females. More recently, Holland and Prohaska (2021) likewise found that, for federal drug offenses, Black and Hispanic females received shorter sentences than White female defendants.

Other sentencing research has investigated the moderating effects of extralegal defendant characteristics beyond race/ethnicity and age. Some of this work has shown that having financial dependents, which can influence sentencing outcomes across gender groups (Doerner & Demuth, 2014; Koons-Witt, 2002; Sloan et al., 2021), is particularly salient in the punishment of female defendants. For instance, Koons-Witt (2002) found that the number of dependents was highly relevant in the sentencing of female offenders; females with dependent children were sentenced more leniently under sentencing guidelines and were more likely to receive a community-based sentence than women without dependent children. Similarly, Tasca and colleagues (2019) found that mothers who lived with their children received shorter sentences than mothers not residing with their children. Interestingly, however, other recent findings indicate that, among male and female defendants sentenced in federal courts, having dependents is associated with an *increased* odds of incarceration, and these effects were not significantly different between female and male defendants (Testa & Hartley, 2021). However, the effects of race/ethnicity were significant among males with dependents only such that Black and Hispanic male defendants with dependents faced especially severe punishment.

Educational attainment also has been found to differentially affect the sentencing of female and male defendants. Doerner and Demuth (2014) found that female defendants who had either less than or greater than a high school education, experienced longer sentences. Among males, their findings showed that having less than a high school education increased the likelihood of receiving an incarcerative sentence. Nowacki (2020) also found the effect of educational attainment to be associated with an increased likelihood of receiving a jail sentence among females.

### ***Moderating Effects of Legal Factors***

Though much research has revealed the moderating influence of such extralegal variables as age and race, family status, and education, other work has emphasized the conditional effects of legal and case processing characteristics as well. Specifically, the legal factors of prior criminal history and offense seriousness not only are highly influential on sentencing outcomes generally but also can condition the effects of gender (Daly & Tonry, 1997; Doerner, 2015; Doerner & Demuth, 2010; Koeppel, 2014). For instance, Doerner and Demuth (2014) found prior criminal history to be more influential in the in/out decision for female defendants than for male defendants. Similarly, Tillyer and colleagues (2015) found that having a more extensive criminal history exerted a stronger effect on sentence length for females than males. Holmes (2020) observed an interaction between gender and a trial conviction such that males convicted at trial were especially likely to receive an incarcerative sentence and received particularly long sentences. This latter study also revealed that females received greater sentencing discounts than males if they pled guilty.



Generally, the literature seems to indicate that females receive less severe sentences than their male counterparts when sentenced for the same crime type (e.g., Doerner & Demuth, 2014; Embry & Lyons, 2012; Hanrath & Font, 2020; Koons-Witt et al., 2014; Shields & Cochran, 2020; Spohn, 1999). However, it should be noted that males are more prone to commit severe and violent crimes than females, and females are more likely to commit drug and property crimes (Daly & Tonry, 1997; The Sentencing Project, 2020). In 2018, 24% of women versus 16% of men in state prisons were convicted for property crimes while 26% of women and 13% of men were convicted for drug crimes (The Sentencing Project, 2020). Additionally, 58% of males and only 38% of females were convicted for violent offenses in state prisons. Notably, however, while females account for the majority of the drug and property offenses, they are still more likely to receive lenient sentencing outcomes in cases involving those crime types.

Spohn's (1999) study of females and males convicted for drug offenses, found that females were sentenced more leniently than males and were especially granted lenient treatment at the pretrial stage. However, the effect of gender on the in/out decision was conditional upon other variables; specifically, gender disparities benefitting female offenders were especially prominent in the sentencing of cases that involved defendants with no prior drug convictions. Warren and colleagues (2012) found that the effect of gender, particularly when considered in concert with race/ethnicity and age, was most pronounced in the decision to incarcerate among less serious property and drug offense cases. Among non-violent property crimes, Koepfel (2014) found that females were less likely than males to be incarcerated, however, gender exerted non-significant effects in the estimates of sentence length and fine amount.

The findings from studies examining other crime types further suggest that females are less likely to be given an incarcerative sentence across child neglect and child physical abuse cases (Hanrath & Font, 2020) as well as in felony sex offenses (Shields & Cochran, 2020). Specifically, while the data revealed that female perpetrators constitute two thirds of neglect cases and 45% of physical abuse cases, only 28% of females versus 46% of males were given an incarcerative sentence (Hanrath & Font, 2020). Shields and Cochran (2020) additionally found that across all sex offense types and degree of severeness, females were more likely to be granted a community-based sanction and generally were more likely to receive this sentence. When examining data on female defendants only, Cho and Tasca (2019) found leniency in prison sentences among convicted female drug offenders when compared to females convicted of property, public, and violent crimes. Furthermore, gender effects have been found to vary with regard to the in/out decision for defendants convicted for property and drug crimes; males experienced odds of incarceration at 2.66 and 2.30 times higher than females for these offense types, respectively (Rodriguez et al., 2006). However, while Rodriguez and colleagues (2006) additionally found a nonsignificant effect of gender across violent crimes, Koons-Witt and colleagues' (2014) study showed less severe sentences for females relative to their male counterparts as the crime severity increased. Similarly, Liu and colleagues (2021) recently found no gender gap between female and male defendants sentenced for more serious crimes.

In addition, the intersection of gender, offense type, and familial roles has been found to be influential on sentencing outcomes for individuals charged with property offenses. Findings from Freiburger's (2011) study revealed that individuals charged with

property offenses and who are residing with a child face lesser odds of incarceration than property offenders living without a child. Across gender groups, women living with their children were found to be less likely to receive an incarcerative sentence than women living without their children (Freiburger, 2011). However, this effect was non-significant for individuals convicted of drug offenses.

### ***Summary***

Prior research concerned with gender and sentencing outcomes presents several key patterns that are relevant for this study. First, it reveals that female defendants consistently receive favorable treatment in sentencing outcomes such that they generally are extended more lenient sanctions (e.g., probation relative to incarceration) and shorter incarcerative sentences than their male counterparts. Second, the effect of gender on sentencing outcomes seems to be influenced by crime type. Specifically, females are at a particular advantage relative to males when sentenced for property and drug crimes. However, females are less advantaged in the sentencing of violent crimes and, more generally as the crime severity increases. While research seems to generally point towards an interactive effect of gender and crime type on sentencing outcomes, the literature has insufficiently analyzed this relationship in the context of alternative sanctions, and none has considered the unique outcome of split sentencing.

### **Theoretical Framework**

#### ***Causal Attributions, the Focal Concerns Perspective, and Law and Social Control***

Building upon earlier theoretical contributions (e.g., Carroll & Payne, 1976; Hawkins, 1980; Shaver, 1975), Albonetti's (1991) causal attribution perspective attempts to further understand the decision-making process of judges and other court actors when

confronted with uncertainty and incomplete knowledge about the defendant and the case at hand. With limited information available, judges' decision making relies on "bounded rationality" that consists of habit and social structure (March & Simon, 1958, p. 109).

Within the attribution process, three specific steps take place: the initial observation of the action, the judgement of the actor's intentions, and the final attribution placed on the actor (Hawkins, 1981; Shaver, 1975). Because court actors are most concerned with reducing the potential risk of recidivism, judges may refer to their own personal experiences and culturally derived stereotypes and apply these attributions to defendants when confronted with limited time and information. Thus, "causal judgements" (Albonetti, 1991, p. 250) or perceived stereotypes can be associated with race, gender, and other defendant characteristics as well as case characteristics and prior case processing outcomes as a basis for predicting future criminal offending. As such, judges may be more lenient towards female defendants than males as they are "attributed a lower probability of future criminal behavior" (Albonetti, 1991, p. 254).

According to Shaver (1975), judges attribute causality to the individual's actions through consideration of environmental (i.e., external) and personal (i.e., internal) factors. Individuals whose behaviors were believed to occur due to the influence of environmental factors may be perceived as less blameworthy than those engaging in actions due to personal factors. Relatedly, the focal concerns perspective by Steffensmeier and colleagues (1993) identified two focal concerns that were believed to guide judges sentencing decisions: blameworthiness and practical constraints. In assessing the influence of gender on judges sentencing decisions, "justified disparities" (Steffensmeier et al., 1993, p. 438) were used to explain the difference in sentencing

outcomes of male and female defendants. Specifically, judges generally were hesitant to send females to local jails due to the facilities' understaffing problems and limited rehabilitation opportunities as well as the judges' own perceptions surrounding reduced female culpability.

Steffensmeier and colleagues' (1998) later study further expanded on this perspective after analyzing judges' perceptions concerning age, gender, and race. This perspective posits that judges and other court actors use three focal concerns in reaching sentencing decisions. These include (1) the offenders' blameworthiness and severity of victim harm, (2) protection of the community, and (3) practical considerations and consequences. When confronted with limited time and information, judges develop a "perceptual shorthand" (Steffensmeier et al., 1998, p. 767) conflated with defendants' age, gender, and race to evaluate these three focal concerns and make sentencing decisions. The first of these concerns, blameworthiness, involves a "just deserts" approach, and is associated with assessing the defendant's culpability and the severity of the harm inflicted (Steffensmeier et al., 1993, 1998). As the most important variable in sentencing, judges' resort to the seriousness of the offense to measure culpability and harm, though variables such as criminal history, prior victimization at the hand of others, and the role in the offense are salient in this regard as well.

The second focal concern of protection of the community also refers to biographical variables and the seriousness of the offense to deter and incapacitate future offending (Steffensmeier et al., 1998). Judges attempt to evaluate the dangerousness of the offender through attributions of offense type, case information, criminal history, and personal characteristics (e.g., age, gender, race, education, and marital status;

Steffensmeier et al., 1993, 1998). Women and older offenders are viewed as less dangerous and posing less of a risk to the community, while younger Black males often are perceived as especially dangerous and threatening (Steffensmeier et al., 1998, 2017). Lastly, practical constraints and consequences focus on the implications that might result from sentencing outcomes at the individual and organizational levels. At the organizational level, judges can consider the limitations in correctional facilities including space and rehabilitative resources. At the individual level, judges may consider any concerns pertaining to the individual's health and needs, the separation of the offender from family and dependents, and their overall perception of the defendants "ability to do time" (Steffensmeier et al., 1998, p. 787).

To date, the vast majority of research within the sentencing literature interprets the observed findings in light of the focal concerns framework (e.g., Doerner, 2012; Doerner & Demuth, 2014; Freiburger, 2009; Holmes et al., 2020; Steffensmeier et al., 2017). Females are presumed to be victims at the hands of males or addiction problems (e.g., drug, alcohol), thus diminishing their levels of blameworthiness and reducing the odds of receiving an incarcerative sentence. Further, female defendants are commonly expected to support children and to maintain more ties within the community. On the other hand, prior empirical findings consistently point toward the relatively harsh sentencing of males, especially those who are young and Black or Hispanic (Freiburger & Sheeran, 2020; Steffensmeier et al., 1998, 2017), which is consistent with the theoretical expectation that Black males often are perceived as more dangerous and crime-prone than female offenders. Thus, out of concern for protection of the community, the harsh punishment of males poses "less of a social cost to the community" than it does for

females (Freiburger & Sheeran, 2020, p. 217). In this way, in their assessment of the focal concerns, court actors can engage a perceptual shorthand and stereotypes in the process of reaching sentencing decisions, such that male defendants are considered more blameworthy and dangerous and thus, more deserving of punitive sentencing than similar female offenders.

Donald Black's (1976) sociological theory of law and social control argues that "law can be conceived as a quantitative variable, measured by the number and scope of prohibitions, obligations, and other standards to which people are subject" (Gottfredson & Hindeland, 1979, p. 3). According to Black (1976), law is a form of "governmental social control," or formal social control, and is inversely correlated to informal social controls. Thus, individuals who are subject to more informal social controls experience less severe treatment by the criminal justice system. Utilizing stratification, morphology, culture, social organization, and social control as variables to measure the variation of law, several propositions associated to the variation of law are expressed within this theory. Briefly, stratification is associated with the distribution of wealth, morphology with the variation in labor and network locations, culture with the symbolic aspect of the society, social organization with the capacity for collective action, and social control in terms of deviant behavior (Greenberg, 1983).

Prior literature that has examined Black's (1976) propositions of formal and informal social controls in relation to gender, have identified family ties as one of the most important types of informal controls. Specifically, having family and dependent children have been linked to mitigating sentencing outcomes and processes for females (Daly, 1987), such that female defendants of petty theft and forgery experience release

prior to trial on their own recognizance (Kruttschnitt, 1982). Black's (1976) theory, however, remains underapplied in gender and sentencing literature. This is especially so as the propositions of law within this theory are causal predictions and explanations based on social variables (Greenberg, 1983). Nevertheless, the theory of law and social control remains essential in explaining the gender effect in relation to the variation of law across formal and informal social controls.

### ***The Chivalry/Paternalism Hypothesis and the Evil Woman Hypothesis***

A related theoretical approach used to explain the lenient treatment of female defendants, is the chivalry or paternalism hypothesis. Rooted in gender stereotypes of women "as maternal, passive, weak, and dependent on men for protection" (Franklin & Fearn, 2008, p. 281), this hypothesis proposes that court actors, and especially males, extend leniency to female defendants in an attempt to guard them from any potential harms caused by the criminal justice system, as they are deemed more in need of protection than punishment (Koons-Witt et al., 2014; Moulds, 1978). The practice of chivalry originated from Europe during the Middle Ages, in which men were protectors of women, showing courtesy and respect (Moulds, 1978). However, as chivalry evolved, distinct female and male societal behaviors emerged, reflecting the idea of paternalism. Patriarchal notions of gender roles have long been rooted in the functioning institutions in the United States, and the persistent cultural perception that men are superior to women is thus expected to inform the decision-making of actors in criminal courts.

Within the criminal justice system, the idea of paternalism is most evident among male judicial actors who can view female defendants as defenseless, unaware, and in need of guidance. Male judges are especially inclined to take a paternalistic approach



when they relate female defendants to their own “wives, mothers, sisters, and daughters” (Bishop & Frazier, 1984, p. 386). This process results in relatively lenient sentencing outcomes extended to women, as judges can extend and transfer the positive feelings they have for female family members toward female defendants as well (Farnworth & Teske, 1995).

Although females generally receive lighter sentencing outcomes than their male counterparts (Doerner & Demuth, 2014; Steffensmeier et al., 1993), females who adhere to societal gender roles such as being a housewife, mother, or who commit stereotypically female crimes (e.g., property or drug offenses), typically are granted leniency according to this perspective. This is especially true for females who properly care for their children. Judges perceive a “good family woman” as one who cares for her children or dependents, while an “irresponsible family woman” inadequately cares for her children (Daly, 1989, p. 17). Relatedly, the decision to incarcerate might be influenced by familial responsibilities, as judges are less willing to send away a responsible mother. Thus, female defendants with dependent children are expected to be the most advantaged according to the chivalry/paternalism hypothesis, and they are more likely to be granted a community sanction than female offenders with no dependent children (Koons-Witt, 2002). Aside from protecting female defendants generally, judges are particularly concerned with the care of children and maintaining the family unit, thus, reducing the likelihood of an incarcerative sentence for certain female offenders (Daly, 1989).

Less severe sanctions are also believed to be extended to female defendants as prison is perceived as a harsh and unsuited environment for women and their needs (Moulds, 1978). However, this leniency is not extended equally among all females;

minority female defendants, and especially Black females, can be perceived as “unworthy of protection” (Franklin & Fearn, 2008, p. 280). As a result, it is possible that scholars must be selective in their application of the paternalism hypothesis, as it might be most relevant for understanding the sentencing of White female defendants. Females who deviate from typical feminine crime and traditional gender-roles (e.g., mothers, wives) are also disadvantaged, and are faced with potentially harsher sanctions (Franklin & Fearn, 2008). This is especially true for females who commit more serious and violent crimes (Farnworth & Teske, 1995), possibly resulting in more punitive sentencing outcomes than for their male counterparts convicted of similar crimes (Bernstein et al., 1977; Koons-Witt et al., 2014; Liu et al., 2021).

Corresponding closely with the chivalry/paternalism perspective, the evil woman hypothesis also concerns traditional gender stereotypes. The difference between these frameworks, however, is that while chivalry focuses on the leniency granted to female defendants, the evil woman hypothesis focuses on the possibility of harsher sanctioning for female defendants under certain circumstances. Specifically, it is concerned with the punishment of female criminal behavior that more closely conforms to traditional gender norms (e.g., property offenses, shoplifting, fraud) as well as that which relates more closely to “masculine” crimes such as armed robbery or murder (Nagel & Hagen, 1983; Rodriguez et al., 2006; Spohn & Spears, 1997). According to this hypothesis, when females commit more serious property offenses or (especially) violent crimes, they can be perceived to be worse than male counterparts (Crew, 1991). As a result, these females are portrayed and labeled as evil, and therefore not deserving of protection from the criminal justice system which would normally be extended to women. This leads to a

reversal of the gender gap in sentencing, producing a context where women are disadvantaged compared to similarly situated males (Nagel & Hagen, 1983).

Thus, there is strong theoretical rationale which expects that the lenient treatment extended to female defendants will be conditioned by the type of crime (Rodriguez et al., 2006); as the seriousness of the offense increases, the perceived innocence of the defendant decreases (Nagel & Hagen, 1983). The evil woman hypothesis expects female defendants to be treated leniently by the criminal justice system in most instances but to be sanctioned similarly to—or possibly more harshly than—male defendants for violent and “masculine” crimes. Although the prior literature assessing sentencing outcomes among female defendants across different offense types finds little support for the evil woman hypothesis (e.g., Crew, 1991; Embry & Lyons, 2012; Spohn & Spears, 1997), this perspective remains an important theoretical explanation for the harsher sentencing of some female defendants.

### ***Liberation Hypothesis***

Kalven and Zeisel’s (1966) liberation hypothesis was originally developed to explain the decision-making of jurors. It posited that based on the strength or weakness of the evidence presented at trial, juries would reach the verdict favored by the evidence. Specifically, when the evidence presented was clear and strong, such as that in serious criminal offenses, jurors’ decision-making would be based on those merits. However, if the evidence was unclear and weak, juries would deviate from the “constraints imposed by the law” allowing them to “consider their own sentiments or values” (Spohn & Cederblom, 1991, p. 306). Building on this framework, Spohn and Cederblom (1991) extended the liberation hypothesis to relate to the decision-making of judges, particularly

with regard to the decision to incarcerate. These authors theorized that when presented with more serious crimes including murder, robbery, or rape, judges have little discretion over the incarceration decision. However, in less serious cases where the sentencing outcome is less obvious, judges are “liberated” and are given greater discretion to consider extralegal factors, including gender (Spohn & Cederblom, 1991, p. 323). As such, while disparities according to defendants’ extralegal factors are expected to be limited in the sentencing of especially serious cases, judges’ reliance on biases and stereotypical attitudes in their sentencing decisions will be most salient among cases involving less serious offenses.

In support of the liberation hypothesis, some research has found that judges are likely to sentence defendants more equitably with regard to extralegal factors when they have extensive criminal records (Hester & Hartman, 2017). The favorable treatment of female defendants seems to diminish among defendants convicted of violent crimes (Rodriguez et al., 2006). Overall, in the body of research applying the liberation hypothesis, mixed support for the perspective emerges (Cassidy & Rydberg, 2020; Hauser & Peck, 2017; Hester & Hartman, 2017; Lehmann, 2020; Rodriguez et al., 2006). Though some studies find evidence confirming the expectations of this perspective, other work shows that extralegal disparities can be especially notable among more serious cases (Hauser & Peck, 2017; Lehmann, 2020). By exploring the interactive relationship between gender and offense type in the assignment of split sentencing, this study aims to contribute to the rather inconsistent body of literature testing this hypothesis.

## ***Summary***

In the sentencing literature, the causal attributions, focal concerns perspectives, and law and social control, as well as the chivalry/paternalism hypothesis, the evil woman hypothesis, and the liberation hypothesis, have provided relevant explanations of the gender-sentencing relationship. These frameworks most often have been used to analyze the disparity in female and male sentencing outcomes, finding that females are sentenced more leniently than male defendants (Doerner 2012; Doerner & Demuth, 2012; Embry & Lyons, 2012; Holland & Prohaska, 2021), as women are commonly viewed as less dangerous than men and in greater need of protection. However, the nature and influence of the attributional stereotypes connected to gender are expected to be closely linked to the type of crime for which the defendants are sentenced. These latter hypotheses, however, have been largely untested in the context of non-traditional sentencing outcomes such as split sentencing. While a few studies have used these theoretical frameworks to analyze the effect of gender on receiving an alternative sanction (Franklin et al., 2017; Lehmann & Gomez, 2021), the moderating role of offense type as expected by the chivalry hypothesis, the evil woman hypothesis, and the liberation hypothesis has not yet been examined.

## **Alternative Sanctions and Split Sentencing**

### ***Alternative Sanctions and Judicial Discretion***

Alternative sanctions, otherwise known as intermediate sanctions, were developed during the 1980s and 1990s in response to prison overcrowding resulting from political and policy goals during the 1960s and 1970s (Tonry & Lynch, 1996). Falling somewhere between the severity of incarceration and traditional probation, alternative sanctions help

to alleviate some of the prison overcrowding and the high costs of incarceration while still achieving just deserts (Tonry & Lynch, 1996). These non-traditional sentences are intended to divert offenders from an incarcerative sentence entirely or to mitigate such a sentence and supplement it with a term of community supervision (Johnson & DiPietro, 2012). The different types of alternative sanctions include but are not limited to electronic monitoring, intensive supervision, drug and alcohol treatments, fines, boot camps, and home detention (Engen et al., 2003; Gainey et al., 2005; Johnson & DiPietro, 2012; Kahan, 1996; Ulmer, 2001). Some forms of alternative sanctions may further be combined with rehabilitative strategies including counseling, substance abuse treatment, and educational and vocational opportunities (Ulmer, 2001). While many different alternative sanctions exist, their availability varies across states and sentencing guidelines system. In some cases, they are extended only to specific types of offenders who are legally eligible, such as first-time drug offenders (see Gainey et al., 2005).

Alternative sanctions are unique by virtue of the wide discretion they afford to sentencing judges (Gainey et al., 2005), which, in turn, has been tied to disparities in sentencing outcomes (Bushway & Piehl, 2001). The “windows of discretion” opened by sentencing guidelines are expected to lead to pronounced extralegal disparities (Engen et al., 2003, p. 99). Such a concern is closely linked to the goals of these sanctions: extralegal factors are central considerations in the decision to extend an alternative sanction, as judges deliberately protect specific defendants who are deemed to be deserving (Engen et al., 2003; Gainey et al., 2005). When making these decisions, judges may resort to the offender’s perceived blameworthiness, threat, and dangerousness (Steffensmeier et al., 1998), which can be informed by stereotypes attributed to the

offender (Albonetti, 1991). While minimal research surrounding alternative sanctions exists (Brennan & Spohn, 2008; Engen et al., 2003; Franklin et al., 2017; Gainey et al., 2005; Johnson & DiPietro, 2012; Lehmann & Gomez, 2021), the findings to date consistently have pointed toward extralegal variables as highly influential in judges' decisions to assign intermediate sentences.

Within this limited body of work, research has observed that gender and race are influential in these sentencing decisions such that male and minority offenders are less likely than female and White defendants to receive an intermediate sanction (Engen et al., 2003; Franklin et al., 2017; Gainey et al., 2005; Johnson & DiPietro, 2012). Young Black males are the least likely to receive these sentences relative to imprisonment (Franklin et al., 2017), and Black and male offenders are generally less likely to receive this type of punishment relative to all other sentencing options, including probation (Johnson & DiPietro, 2012). The recent study by Lehmann and Gomez (2021) likewise revealed that young female offenders in Florida were more likely than others to be assigned a "split sentence." Further, young Black and Hispanic males were found to have the lowest probability of being assigned a split sentence. Theoretically, these consistent findings might imply that males and minorities are less likely to receive this type of sentencing outcome because judges perceive these defendants to be less amenable to treatment and less likely to complete the terms of the sanction (Johnson & DiPietro, 2012). Thus, it is plausible that these offenders are thought of as more deserving of conventional, punitive sentences, while female defendants may be perceived as in need of the court's special protection or intervention via alternative sanctions.

### ***Split Sentencing***

An understudied type of alternative sanction is split sentencing, which was developed in response to public demands for punitiveness as well as the competing realities of prison overcrowding (Talarico & Myers, 1987). Adopted in some states and assigned at the sentencing hearing (Lehmann & Gomez, 2021), split sentencing involves a truncated prison term followed by a period of post-release supervision (Talarico & Myers, 1987). Specifically, the convicted felon serves a specified time in prison and then serves the latter portion of their sentence in the community. The application of split sentencing helps address concerns faced by the criminal justice system such as prison overcrowding and further allows for the system to keep some sort of control over incarcerated felons (Talarico & Myers, 1987).

In Florida, a split sentence can be granted to felony defendants who have committed any offense type and who have criminal histories of any length. Moreover, like the general extension of alternative sanctions, split sentencing in this state is highly discretionary, and the extension of a split sentence is guided by limited rules (Lehmann & Gomez, 2021). A split sentence can be granted to any defendant convicted of a misdemeanor or felony, but not of a capital felony (Probation & Community Control, 2021), and, according to the state statute, is assigned *after* the decision to imprison has been made (Lehmann & Gomez, 2021). It can also be prescribed in the form described above (i.e., a term of specified incarceration followed by immediate probation or community control), or, less commonly, as first serving a term of probation followed by a period of incarceration or community control (Probation & Community Control, 2021). The court can make modifications to terms of incarceration, probation, or community



control depending on whether the offender met or failed the terms and conditions in place.

To date, there has only been one study that has assessed split sentencing as a distinct alternative sanction, and thus, this study is the only research to assess the effect of gender on the likelihood of receiving a split sentence. Using Florida data, Lehmann and Gomez (2021) found that Black and Hispanic offenders, and especially minority males, were the least likely to receive a split sentence relative to an incarcerative sentence. Young Hispanic females ages 18-20, however, were found to be the group most likely to receive a split sentence. Consistent with the theoretical expectations outlined in Steffensmeier and colleagues' (2017) recent rearticulation of the focal concerns perspective, it is possible that judges perceive young minority males as "dangerous, recidivism-prone, and easily adaptable to incarceration" (p. 817) which accounts for judges' decision to incarcerate. On the other hand, these findings suggest that females and especially young Hispanic females, might be portrayed as vulnerable and in need of protection by court actors (Lehmann & Gomez, 2021), which would be consistent with the chivalry or paternalism theoretical framework (Moulds, 1978).

### ***Gender, Offense Type, and Split Sentencing***

As shown consistently in the prior sentencing literature, female defendants are sentenced more leniently than male defendants (Doerner & Demuth, 2010; Koons-Witt, 2002; Koons-Witt, et al., 2014; Steffensmeier et al., 2017). However, the extent to which this relationship holds within non-traditional sentencing outcomes has been underexplored. Only a few studies to date have looked at the effects of extralegal variables on receiving an intermediate sanction (Engen et al., 2003; Franklin et al., 2017;

Gainey et al., 2005; Johnson & DiPietro, 2012; Lehmann & Gomez, 2021) but have most often focused on specific subgroups (e.g., drug offenses, first-time non-violent offenders; see Brennan & Spohn, 2008; Engen et al., 2003). To date, only one study has analyzed the effect of extralegal variables (i.e., gender, age, and race) on the likelihood of receiving a split sentence (Lehmann & Gomez, 2021). Studies that have analyzed data which include information about the extension of split sentences tend to remove those cases due to limited sample sizes (Curry et al., 2004; Rodriguez et al., 2006) or have failed to distinguish split sentencing from other types of intermediate sanctions (Brennan & Spohn, 2008; Franklin et al., 2017; Gainey et al., 2005; Johnson & DiPietro, 2012).

While the joint effects of gender, age, and race on receiving a split sentence has been studied (Lehmann & Gomez, 2021), how offense type moderates the gender effect on receiving a split sentence or any other alternative sanction has not been explored. In light of the chivalry, evil woman, and liberation hypotheses, it is likely that an interactive relationship exists between gender and offense type. Specifically, in the decision to assign a split sentence, it is possible that females will be more likely to receive this sanction as they are deemed to be in greater need of protection (Moulds, 1978), while males will be viewed as more dangerous and prone to recidivism (Steffensmeier et al., 1998). However, this gender gap in sentencing might be conditional upon offense type, with females who commit violent crimes sentenced more similarly to their male counterparts than females convicted of property and drug offenses. While such a pattern might be the result of paternalistic perceptions of gender and gender roles that are conflated with crime type, it may also be the case that heightened judicial discretion in these less serious cases will lead to the more favorable treatment of females in the split

sentencing decision (Spohn & Cederblom, 1991). Moreover, according to the evil woman hypothesis, it may be the case that females are *disadvantaged* relative to males among violent offense cases (Nagel & Hagen, 1983), as these defendants can be perceived as violating gender norms in ways that distinguishes them as particularly undeserving of the benevolent intervention of a split sentence.

The current study will examine the effects of gender on receiving a split sentence and whether it is moderated by offense type as predicted by the chivalry, evil woman, and liberation hypothesis. In so doing, it will contribute to the existing gap of gender disparities in sentencing more broadly as well as in alternative sentencing specifically. Given the exceptional amount of discretion afforded to judges in the application of a split sentence, it is important to examine to what extent the disparities in this sentencing outcome exist. Thus, in this study, I address the following three research questions.

*Research Question 1:* Corresponding with the prior literature, are there gender disparities in the application of a split sentence such that female defendants are more likely than males to receive this sanction?

*Research Question 2:* In accordance with the chivalry/paternalism hypothesis as well as the liberation hypothesis, is the effect of gender on the likelihood of receiving a split sentence moderated by offense type such that this disparity is less pronounced among more serious offenses but more pronounced among less serious crime types?

*Research Question 3:* In accordance with the expectations of the evil woman hypothesis, are female defendants who commit violent offenses *less* likely than similar male defendants to receive a split sentence?

## CHAPTER III

### Data and Methods

#### Data

Like many other states as well as the federal system, the sentencing guidelines in use in Florida circuit courts provide judges with a structure that specifies a recommended sentence for offenders regarding the imprisonment decision as well as the recommended length of the imposed incarceration term (del Carmen & Hemmens, 2015). Unlike guidelines matrix structures, however, Florida's system involves the use of a scoresheet in which the offenders are assigned a single numerical score that is compared with the recommendations of the guidelines associated with certain cutoff points. Except in cases where a statutory mandatory minimum sentence is in effect, the sentencing recommendations are advisory; judges must take these into consideration when sentencing but are allowed to depart from the guidelines. As noted above, the state's Criminal Punishment Code does not provide any guidance over the imposition of split sentences (Lehmann & Gomez, 2021). Under Florida Statute 948.012, however, a split sentence is mandatory for offenders convicted of a life felony for lewd and lascivious molestation committed on or after September 1, 2005.

Within this sentencing context, the data for the current study were collected by the Florida Department of Corrections (FDOC), and they involve a combination of information from the Florida-Sentencing Guidelines database and FDOC's Offender-Based Information System. These data include all non-capital felony offenders that were convicted and sentenced in Florida circuit courts under the state's sentencing guidelines between 1995 and 2006. These data contain a wide array of information on defendants,

including legal and extralegal variables that are highly relevant for the incarceration decision (i.e., age, sex, current offense, prior criminal history). This study analyzes 203,104 offenders, including 16,540 females (8.14%) and 186,564 males (91.86%). The descriptive statistics for the study variables are presented in Table 1.

## **Variables**

### ***Dependent Variables***

Florida Statute 948.012 stipulates that the discretionary assignment of a split sentence must occur after the decision to imprison has been made. Thus, split sentencing is described as a sentencing option only for the subgroup of defendants who will receive a state prison term (see Lehmann & Gomez, 2021). However, some scholars exploring alternative sanctions under other sentencing systems have argued that, regardless of the wording within the guidelines, intermediate sanctions are likely considered alongside all other sentencing options, and thus the decision to assign an alternative sanction is not necessarily made following the decision to imprison (Franklin et al., 2017; Johnson & DiPietro, 2012). Accordingly, there is some conceptual confusion regarding the sentence type(s) which should serve as the reference group in these analyses as well as whether all offenders—or only imprisoned defendants—should be included.

Despite these latter considerations, only one dependent variable will be examined in this study for the sake of parsimony. The variable of interest is dichotomous and measures whether the sentence prescribed was a *split sentence* (= 1) or a traditional prison sentence among those who received a sentence to prison. Of the 203,104 cases that received a prison sentence, 37,124 (18.3%) were assigned a split sentence, while 165,980 (81.7%) were assigned traditional prison terms.

**Table 1**

*Descriptive Statistics: Felony Offenders Sentenced in Florida Circuit Courts, 1995-2006*

	Mean/%	SD	Min.	Max.
<b>Dependent Variable</b>				
Sentencing Type				
Split Sentencing	18.28%	-	0	1.0
Traditional Prison*	81.72%	-	0	1.0
<b>Independent Variables</b>				
Gender				
Female	8.14%	-	0	1.00
Male*	91.86%	-	0	1.00
Offense Type				
Violent*	27.44%	-	0	1.00
Sex	5.07%	-	0	1.00
Property	29.09%	-	0	1.00
Drug	27.04%	-	0	1.00
Other	11.36%	-	0	1.00
<b>Control Variables</b>				
Race/Ethnicity				
Black	52.32%	-	0	1.00
Hispanic	8.43%	-	0	1.00
White*	39.25%	-	0	1.00
Age				
<=17	4.72%	-	0	1.00
18-20*	12.33%	-	0	1.00
21-29	32.32%	-	0	1.00
30-39	29.98%	-	0	1.00
40-49	16.21%	-	0	1.00
50-59	3.65%	-	0	1.00
60+	0.78%	-	0	1.00
Trial	6.47%	-	0	1.00
Total Guidelines Score	85.46	75.52	4	3420
Total Guidelines Score (log)	4.22	0.64	1.39	8.14
Scored to Prison	77.90%	-	0	1.00
Prior Prison Commitments	1.19	1.62	0	13.00
Prior Supervision Violations	1.34	1.50	0	13.00
Credit for Time Served	6.4%	-	0	1.00

*Note.*  $N = 203,104$ . \* Indicates reference category. Sentence year and circuit court dummy variables are not displayed.

### ***Independent Variables***

This study focuses on two independent variables. The independent variable of primary interest is gender, with *females* coded as 1 and males treated as the reference group. As noted above, 8.1% of cases involve female offenders, and 91.9% of cases involve males. Table 2 presents the descriptive statistics of the dependent and independent variables disaggregated by gender, along with the differences in the means or proportions assessed using *t*-tests and *z*-tests, respectively. Of the 203,104 defendants sentenced to prison, 17.9% of females and 18.3% of males were given split sentences.

The second key independent variable is primary offense type, which is captured using five categories. These include *violent*, *sex*, *property*, *drug*, and *other*, with violent offenses used as the reference group. In these data, 24.1% of females and 27.7% of males were sentenced for violent offenses, and .7% of females and 5.5% of males were sentenced for similar sex offenses. Further, 31.8% of females and 28.9% of males were sentenced for property offenses, and 34.6% of females and 26.4% of males were convicted of drug offenses. Finally, 8.9% of females and 11.6% of males were sentenced for other offenses. As shown in Table 2, these proportions are statistically significantly different across all five offense type categories.

### ***Control Variables***

Identified as influential extralegal factors in sentencing, age and race/ethnicity are used as control variables. Age at the time of the offense consists of seven categories, including:  $\leq 17$ , 18-20, 21-29, 30-39, 40-49, 50-59, 60+. As shown in prior research (e.g., Lehmann & Gomez, 2021; Steffensmeier et al., 2017), this coding scheme helps to emphasize the unique sentencing outcomes experienced by the “teen-adult” age group

of 18-20-year-olds from young adults ages 21-29 while also including youth under age 18 transferred to the adult system. For race/ethnicity, three mutually exclusive categories are used: *Black*, *Hispanic*, and *White*, with *White* treated as the reference. Asians, Native Americans, and Pacific Islanders were excluded from the original dataset by the FDOC data administrator due to their small sample size. Black offenders represent 52.3% of the defendants in these data, Hispanics comprise 8.4%, and White defendants make up 39.2%. Unfortunately, these data do not contain information on the marital status, parental status, education, employment, or immigration status of the defendants.

Beyond these two extralegal factors, several additional case-processing and legally relevant factors are included as well. First, a dichotomous measure is used to indicate whether the offender was convicted through a guilty plea or a *trial* (=1). These analyses also control for the *total guidelines score*, which is a numerical score comprised of the total number of points assigned to each offender associated with the primary (i.e., most serious) offense, any secondary offenses, the defendant's prior record accumulated in Florida or elsewhere, and any sentencing enhancements assigned by the sentencing judge. The Florida guidelines specify that these points be summed, and the total is used to compute the recommended sentence. The natural log of this measure is used in the analysis. Further, the analyses control for whether the offender *scored to prison* (=1), that is, whether a prison sentence is recommended based on the total guidelines score. Cases that received a total score of 44 or less are recommended a non-prison sentence under the Florida guidelines while cases that score greater than 44 are recommended a state prison sentence (Lehmann, 2021). In addition to these variables, the number of *prior prison commitments* in Florida, the number of *prior supervision violations* in Florida, and



whether the defendant was given *credit for time served* (=1), are also controlled for in this study. Finally, this study controls for two sets of dummy variables capturing the sentencing year and in which of Florida's 20 judicial circuits the case was processed.

**Table 2**

*Bivariate Association Between Gender and Variables of Offenders Sentenced in Florida Circuit Courts, 1995-2006*

	Females		Males		Diff.
	Mean/%	SD	Mean/%	SD	
<b>Dependent Variables</b>					
Sentence Type					
Split Sentence	17.90%	-	18.31%	-	-0.41%
Traditional Sentence	82.10%	-	81.69%	-	0.41%
<b>Independent Variables</b>					
Offense Type					
Violent	24.11%	-	27.74%	-	-3.63%***
Sex	00.67%	-	5.46%	-	-4.79%***
Property	31.77%	-	28.85%	-	2.92%***
Drug	34.59%	-	26.37%	-	8.22%***
Other	8.85%	-	11.58%	-	-2.73%***
<b>Control Variables</b>					
Race/Ethnicity					
Black	46.64%	-	52.83%	-	-6.19%***
Hispanic	6.12%	-	8.64%	-	-2.52%***
White	47.24%	-	38.54%	-	8.7%***
Age					
<=17	2.19%	-	4.95%	-	-2.76%***
18-20	6.54%	-	12.84%	-	-6.3%***
21-29	28.63%	-	32.65%	-	-4.02%***
30-39	39.46%	-	29.14%	-	10.32%***
40-49	19.78%	-	15.90%	-	3.88%***
50-59	3.02%	-	3.71%	-	-0.69%***
60+	0.39%	-	0.81%	-	-0.42%***
Trial	3.69%	-	6.71%	-	-3.02%***
Total Guidelines Score	68.22	60.93	86.99	76.49	-18.77%***
Total Guidelines Score (log)	3.98	.68	4.24	.64	-0.26%***
Scored to Prison	63.46%	-	79.18%	-	-15.72%***
Prior Prison Commitments	0.85	1.29	1.22	1.64	-0.37%***
Prior Supervision Violations	1.56	1.69	1.32	1.48	0.24%***
Credit for Time Served	6.72%	-	6.38%	-	0.34%

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*Note.*  $N = 203,104$ . Sentence year and circuit court dummy variables are not displayed.

\* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

### ***Analytic Strategy***

To address the proposed three research questions, logistic regression will be used. In the analyses of the dichotomous dependent variable, binary logistic regression will be used to address the first question by estimating the effect of gender on the likelihood of receiving a split sentence relative to a traditional prison sentence, net of the control variables. To address the second research question, multiplicative interaction terms between offense type and gender will be included in the main effects model to assess whether any moderating effects of offense type emerge in the relationship between gender and split sentencing. These interactive effects models likewise will be estimated using binary logistic regression.

The interaction terms between gender and offense type will be used to address the third research question regarding the evil woman hypothesis. However, the inclusion of multiplicative interaction terms can pose a problem with the interpretation of coefficients from the logistic regression model. Coefficients from the multiplicative interaction terms in nonlinear models may be misleading, and there is also a possibility of inaccurate statistical significance tests. Further, the coefficients themselves do not provide intuitive information about whether the gender gap in sentencing is reversed among violent offenses. To address these concerns and the third research question, supplemental analysis using estimated regression coefficients will be conducted. Specifically, the coefficients will be used to calculate the predicted probabilities of a split sentence for the two gender groups and the five different offense types. Then, the marginal effects of

gender across offense types will also be calculated to examine whether there are statistical and substantive differences in the probability of receiving a split sentence between females and males.

## CHAPTER IV

### Results

The following chapter presents the results from the logistic regression models to address the proposed three research questions. Table 3 displays the findings from the binary logistic regression model that shows the main effects of interest, and Table 4 includes the multiplicative interaction terms between gender and offense type to answer the second research question. Further, the supplementary analyses intended to answer the third research question are provided in Figure 1; shown are the average adjusted predictions (AAPs), that is, the predicted probabilities of receiving a split sentence for female and male defendants across the five offense groups (i.e., violent, sex, property, drug, and other). Finally, Table 5 includes the average marginal effects (AMEs) of gender on the probability of receiving a split sentence by offense type.

#### Main Effects

Beginning with the binary logistic regression model to assess gender disparities in the application of a split sentence in accordance with the first research question, the results presented in Table 3 indicate a statistically significant 21.5% increase in the odds of receiving a split sentence for female defendants relative to their male counterparts, net of the control variables ( $b = 0.195$ ,  $\text{Exp}(b) = 1.215$ ,  $p < .001$ ). Regarding offense type, defendants sentenced for sex offenses have a 240.3% greater odds of receiving a split sentence than for defendants sentenced for violent offenses ( $b = -0.058$ ,  $\text{Exp}(b) = 3.403$ ,  $p < .001$ ). Defendants sentenced for drug and other offenses, however, have a reduced odds of receiving a split sentence of 47.7% ( $b = -0.647$ ,  $\text{Exp}(b) = 0.523$ ,  $p < .001$ ) and 35.8% ( $b = -0.443$ ,  $\text{Exp}(b) = 0.642$ ,  $p < .001$ ), respectively, relative to those convicted of violent

offenses. Offenders sentenced for property crimes have 5.6% ( $b = -0.058$ ,  $\text{Exp}(b) = 0.944$ ,  $p < .001$ ) lower odds than violent offenses of being assigned this sanction.

**Table 3**

*Binary Logistic Regression of Receiving a Split Sentence: Main Effects of Gender and Offense Type*

	<i>b</i>	SE	$\text{Exp}(b)$
<b>Independent Variables</b>			
Female	0.195***	0.023	1.215
Sex Offense	1.223***	0.024	3.403
Property Offense	-0.058***	0.016	0.944
Drug Offense	-0.647***	0.020	0.523
Other Offense	-0.443***	0.025	0.642
<b>Control Variables</b>			
Black	-0.478***	0.014	0.620
Hispanic	-0.228***	0.023	0.796
<=17	1.099***	0.025	3.000
18-20	0.462***	0.019	1.588
30-39	0.090***	0.017	1.095
40-49	0.108***	0.021	1.114
50-59	0.145***	0.035	1.156
60+	0.230***	0.065	1.258
Trial	-0.556***	0.027	0.573
Total Guidelines Score (log)	0.292***	0.013	1.339
Scored to Prison	0.172***	0.021	1.187
Prior Prison Commitments	-0.169***	0.006	0.845
Prior Supervision Violations	-0.185***	0.006	0.831
Credit for Time Served	-0.091***	0.026	0.913
Intercept		-96,593.76	
LR chi <sup>2</sup>		27,257.82***	
Nagelkerke R <sup>2</sup>		0.205	

*Note.*  $N = 203,104$ . Sentence year and circuit court dummy variables are not displayed.

Split sentence is the base outcome. Male, violent offense, White, and ages 21-29 are used as the reference categories. \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

Concerning the control variables, the findings indicate a decreased odds for Black and Hispanic defendants in the application of a split sentence when compared to their White counterparts. Regarding age, all age groups denoted have a greater likelihood of

receiving a split sentence than those ages 21-29. Further, defendants who were found guilty at trial are less likely to be extended a split sentence. The total guidelines score and having scored to prison are associated with an increased likelihood of a split sentence, while prior prison commitments, prior supervision violations, and receiving credit for time served are negatively associated with this outcome.

### **Interactive Effects**

In light of the second research question which considers whether the effect of gender on the likelihood of receiving a split sentence is moderated by offense type, the findings from the logistic regression model that includes the multiplicative interaction terms between offense type and gender are presented in Table 4. Before interpreting the interaction term coefficients, however, it is important to first address the main effects in this model, which reflect the effect of the variables among those coded as the reference group on the other variable in the interaction. Thus, among violent offenses, female defendants have a 37.5% greater odds than males of receiving a split sentence among those sentenced for violent offenses ( $b = 0.318$ ,  $\text{Exp}(b) = 1.375$ ,  $p < .001$ ). In addition, the main effects of offense type mirror the patterns shown in Table 3; for instance, male defendants sentenced for sex offenses have a 244.9% greater odds of receiving a split sentence than males convicted of violent offenses ( $b = 1.238$ ,  $\text{Exp}(b) = 3.449$ ,  $p < .001$ ).

Regarding the interaction terms, all four coefficients are in the negative direction, and three of the four are statistically significant. Thus, the gender gap in split sentencing appears to be strongest among violent offenses. The negative interaction that is largest in magnitude is observed for sex offenses ( $b = -0.425$ ,  $\text{Exp}(b) = 0.654$ ,  $p < .05$ ), while the moderating effects are less pronounced for drug ( $b = -0.262$ ,  $\text{Exp}(b) = 0.770$ ,  $p < .001$ )

and other offense types ( $b = -0.296$ ,  $\text{Exp}(b) = 0.744$ ,  $p < .01$ ). The non-significant interaction for property offenses suggests that female-male disparities are similar between defendants sentenced for property and violent crimes. Thus, in light of the third research question regarding whether female defendants are less likely than males to receive a split sentence for violent offenses, the findings from these analyses show the opposite.

**Table 4**

*Binary Logistic Regression of Receiving a Split Sentence: Interactive Effects of Gender and Offense Type*

	<i>b</i>	SE	<i>Exp(b)</i>
<b>Interaction Terms</b>			
Female x Sex Offense	-0.425*	0.203	0.654
Female x Property Offense	-0.105	0.054	0.901
Female x Drug Offense	-0.262***	0.061	0.770
Female x Other Offense	-0.296**	0.095	0.744
<b>Independent Variables</b>			
Female	0.318***	0.039	1.375
Sex Offense	1.238***	0.035	3.449
Property Offense	-0.050**	0.017	0.951
Drug Offense	-0.620***	0.021	0.538
Other Offense	-0.422***	0.026	0.656
<b>Control Variables</b>			
Black	-0.481***	0.014	0.618
Hispanic	-0.229***	0.023	0.795
<=17	1.102***	0.025	3.009
18-20	0.464***	0.019	1.590
30-39	0.091***	0.017	1.096
40-49	0.109***	0.021	1.115
50-59	0.144***	0.035	1.155
60+	0.228***	0.065	1.256
Trial	-0.556***	0.027	0.574
Total Guidelines Score (log)	0.292***	0.013	1.339
Scored to Prison	0.170***	0.021	1.186
Prior Prison Commitments	-0.169***	0.006	0.845
Prior Supervision Violations	-0.184***	0.006	0.831
Credit for Time Served	-0.091***	0.026	0.913
Intercept		-96,593.76	
LR $\chi^2$		27,283.20***	
Nagelkerke $R^2$		0.205	

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*Note.*  $N = 203,104$ . Sentence year and circuit court dummy variables are not displayed. Split sentence is the base outcome. Male, violent offense, White, and ages 21-29 are used as the reference categories.  $*p < .05$ ,  $**p < .01$ ,  $***p < .001$ .

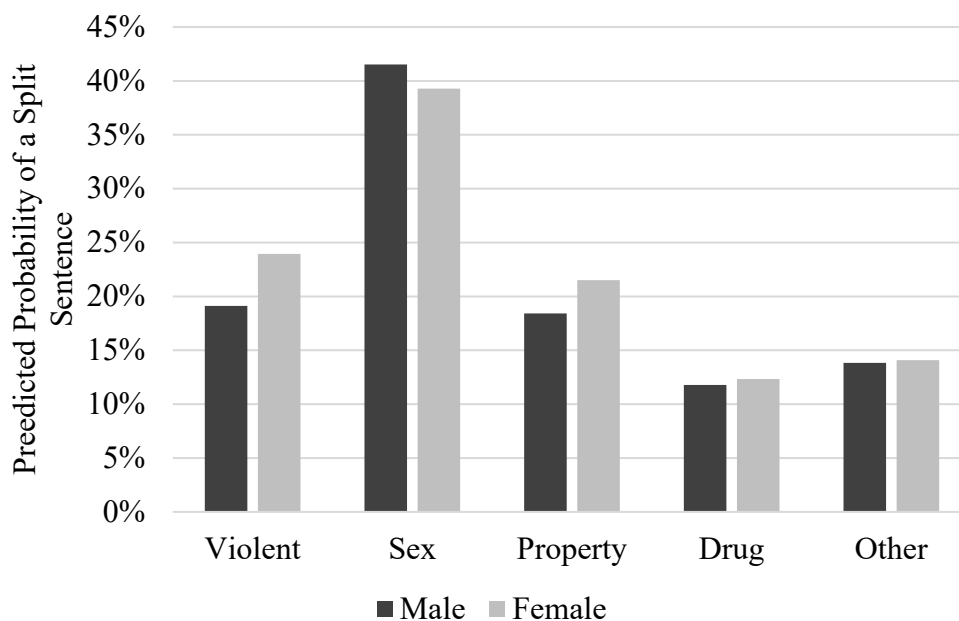
### **Adjusted Predictions and Marginal Effects**

Given the issues surrounding the interpretation of multiplicative interaction terms in nonlinear models discussed above, the average adjusted predictions (AAPs) and average marginal effects (AMEs) associated with gender and offense type as derived from the model shown in Table 4 are included in Figure 1 and Table 5, respectively. The predicted probabilities of a split sentence as shown in Figure 1 reveal that females are more likely to receive this sanction than their male counterparts among defendants convicted of violent, property, drug, and other offenses. Specifically, the predicted probability of receiving a split sentence for females convicted of violent offenses is 23.95%, compared to 19.11% for similarly situated males. However, among sex offenses, female defendants (39.28%) have a slightly lower probability of receiving a split sentence than males (41.53%). Additionally, two of the AMEs of gender across the five offense types in Table 5 are positive and statistically significant. Specifically, the discrete difference in the AAPs between male and female offenders for violent offenses is 4.84% ( $p < .001$ ), and the AME of gender for property offenses is 3.09% ( $p < .001$ ). Thus, the results from these latter analyses reveal that it is *only* among violent and property offenses that a gender gap in split sentencing is observed.



**Figure 1**

*Average Adjusted Predictions (AAPs) of Receiving a Split Sentence by Gender and Offense Type*

**Table 5**

*Average Marginal Effects (AMEs) of Gender and Receiving a Split Sentence by Offense Type*

	Males	Females	$dy/dx$	SE
Violent Offense	19.11%	23.95%	4.84%***	0.006
Sex Offense	41.53%	39.28%	-2.25%	0.042
Property Offense	19.41%	21.50%	3.09%***	0.006
Drug Offense	11.78%	12.33%	0.56%	0.005
Other Offense	13.84%	14.08%	0.24%	0.010

*Note.*  $N = 203,104$ .  $dy/dx$  = marginal effect (i.e., discrete difference in the AAPs). \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

## CHAPTER V

### Discussion and Conclusion

Across the vast majority of gender and sentencing literature, the effect of gender on sentencing outcomes has been consistently documented. Following the rise in the rate of female incarceration resulting from the limitation in judicial discretion after the Sentencing Reform Act of 1984 and the Sentencing Guidelines in 1987 (Albonetti, 1997), the favorable treatment experienced by female defendants became notable. Observable in both the in/out and sentencing length decisions, females are granted shorter sentences than their male counterparts, even when sentenced for similar crimes (Doerner & Demuth, 2014; Koons-Witt et al., 2014). While females are more likely to commit property and drug offenses, and less likely to commit violent offenses than their male counterparts, the leniency extended to females persists as the crime severity increases (Koons-Witt et al., 2014). This further holds true even after extralegal and legal variables have been accounted for (Doerner, 2015; Doerner & Demuth, 2014; Holland & Prohaska, 2021). To explain the gender gap in sentencing outcomes, the focal concerns perspective, the chivalry/paternalism hypothesis, the evil woman hypothesis, and the liberation hypothesis, have been widely employed.

According to the focal concerns perspective, judges and other court actors consider three key concerns upon reaching a sentencing decision (Steffensmeier et al., 1993, 1998). These include the offender's blameworthiness, protection of the community, and the practical constraints and consequences of sentencing outcomes at the organizational and individual levels. Compared to males, females are perceived to be less threatening, less blameworthy, and less culpable, and therefore, do not need to be

incarcerated to ensure the protection of the community. Focusing on gendered stereotypes, the chivalry/paternalism hypothesis views females as in need of protection from the criminal justice system, especially if female defendants conform to traditional gender norms such as committing less serious crimes (e.g., property and drug crimes) (Moulds, 1978). Correspondingly, the evil woman hypothesis relates to females who violate gender-based expectations; those who commit more serious or violent masculine crimes might be labeled as evil and are expected to be sentenced similarly to or even more harshly than their male counterparts (Spohn & Spears, 1997). Lastly, according to the liberation hypothesis, judges experience limitations in their discretion in the disposition of more serious crimes. However, as the crime severity decreases, judges rely more readily on extralegal variables including defendant characteristics such as gender, age, and race (Spohn & Cederblom, 1991).

While prior sentencing literature has explored the effect of gender on sentencing outcomes (Doerner, 2012; Doerner & Demuth, 2014; Steffensmeier et al., 1993), a few gaps in this body of work exist. First, the gender effect has been examined mostly in the context of traditional sentencing outcomes, leaving a void in the research of nontraditional sentencing such as alternative sanctions. Split sentencing—an alternative sanction offered in Florida consisting of a mitigated incarceration term followed by community supervision—has been explored to a lesser extent with only one study to date assessing the effect of age, gender, and race/ethnicity on receiving a split sentence (Lehmann & Gomez, 2021). Further, existing research on alternative sanctions does not distinguish the different types of intermediate sanctions and tends to focus on specific subpopulations of defendants. Lastly, the extent to which the effect of gender is

moderated by offense type as predicted by the previously mentioned theoretical frameworks, has yet to be examined. To contribute to these existing gaps, this study focuses on the assignment of a split sentence in Florida circuit courts by being the first to examine whether the effect of gender is moderated by offense type as anticipated by the chivalry, the evil woman, and the liberation hypothesis.

The proposed research questions are as follows: (1) Corresponding with prior literature, are there gender disparities in the application of a split sentence such that female defendants are more likely than males to receive this sanction? (2) In accordance with the chivalry/paternalism hypothesis as well as the liberation hypothesis, is the effect of gender on the likelihood of receiving a split sentence moderated by offense type such that this disparity is less pronounced among more serious offenses but more pronounced among less serious crime types? (3) In accordance with the expectations of the evil woman hypothesis, are female defendants who commit violent offenses less likely than similar male defendants to receive a split sentence? The key findings derived from this study, as well as their implications for future research, are discussed below.

## **Findings**

In light of the first research question, the first key finding resulting from this study is the presence of an overall gender effect in the extension of a split sentence. Net of the extralegal and legal variables, female defendants are more likely than their male counterparts to receive a split sentence relative to a traditional prison term. The gender effect corresponds with that observed by Lehmann and Gomez (2021), who found young female offenders to be more likely than others to receive a split sentence. It likewise mirrors prior studies which have revealed the harsher sentencing outcomes imposed on

male offenders (Engen et al., 2003; Franklin et al., 2017; Gainey et al., 2005; Johnson & DiPietro, 2012). As anticipated by the chivalry/paternalism hypothesis and by the focal concerns perspective, it is theoretically plausible that judges and other court actors view females as more vulnerable and less able to do time than their male counterparts (Moulds, 1978; Steffensmeier et al., 1998). Due to the highly discretionary nature in the assignment of a split sentence, female defendants may be more likely to receive this alternative sanction relative to a traditional prison term as court actors attempt to protect them from the criminal justice system. A split sentence may also be encouraged as females are perceived to be less blameworthy and less of a threat to the community than their male counterparts (Steffensmeier et al., 1998).

Resulting from the interaction analyses, the second key finding from this study is that the gender effect in the assignment of a split sentence is *only* observable among property and violent offenses. Regarding the second research question, partial support is offered to the liberation hypothesis such that the gender effect is pronounced among property offenses, reflecting a similar observation by Rodriguez and colleagues (2006) who found females the most advantaged across property and drug crimes. Contrary to prior literature that finds no gender gap among more severe and violent crimes (Liu et al., 2021; Rodriguez et al., 2006), the gender effect was also the most pronounced among *more* serious offenses (i.e., violent offenses), which was not anticipated. This latter finding corresponds to that of Koons-Witt and colleagues (2014), who also found less severe sentences for female defendants relative to males as the crime severity increased. As a result, no support is offered for the evil woman hypothesis, which expected female

defendants convicted of violent offenses to be less likely than their male counterparts to receive a split sentence.

Theoretically, it is plausible that the perceived differences in female and male defendants by court actors may account for the gender effect across violent offenses. Even when convicted for more severe crimes, females may still be viewed as less dangerous and less likely to recidivate than male defendants, as well as more amenable to treatment (Spohn & Spears, 1997). Per the chivalry/paternalism hypothesis, females engaging in violent offenses may be considered as accomplices to males as they are believed to be inferior and in need of their guidance. As such, females could be perceived as less culpable or blameworthy than their male counterparts in the sentencing of violent offenses. Judges may also be concerned with the “social costs of punishment” such as incarcerating females who are the sole caretakers of their children or splitting up families (Daly, 1989, p. 138). While the gender effect was expected to be pronounced in the sentencing of drug offenses as commonly found in the prior literature (Rodriguez et al., 2006; Warren et al., 2012), it is possible that only first-time female drug offenders are advantaged in this way. Regardless of gender, repeat drug offenders may be viewed as likely to recidivate, and thus deserving of a traditional prison term (Spohn, 1999).

In summary, the key findings that emerge from this study indicate that the gender effect observed in traditional sentencing outcomes persists in the application of distinct alternative sanctions, such as split sentencing. Resulting from the windows of discretion afforded to sentencing judges (Engen et al., 2003), it is likely that females are deemed to be more deserving of a split sentence relative to their male counterparts. Regardless of the offense severity, the observable gender gap in split sentencing decisions emphasizes

the leniency afforded to female defendants and the harsher sanctioning imposed on males, as they may still be viewed as more blameworthy and dangerous. Judges may be more inclined to conform to paternalistic values per the chivalry/paternalism hypothesis to protect female defendants from the criminal justice system, net of the offense severity.

### **Theoretical Policy Implications**

Considering the gender effect observed in the assignment of a split sentence across Florida circuit courts, the sentencing guidelines in place must be revisited. The current guidelines involve the use of a scoresheet with a single numerical score that is compared with the recommendations of the guidelines. While judges must consider these recommendations, they are allowed to depart from them. With no guidance over the imposition of a split sentence, wide judicial discretion is afforded to sentencing judges. The observable gendered disparity in the extension of this alternative sanction may be tied to the judicial discretion and limitation in sentencing directions.

Further, the vast increase in female imprisonment calls for the implementation of more gender-based programming to reduce the recidivism rates experienced by females. Nearly 60% of women who are released from prison or jail, are rearrested within three years post-release and nearly 70% are rearrested within five years post-release (Durose et al., 2014). Although males comprise the majority of the prison population, gender-based programming targeting female needs are critical as females experience different pathways to incarceration, have different necessities while incarcerated, and face reentry challenges at a higher rate than males (Gottlieb & Mahabir, 2022). While females receive more lenient sentencing outcomes, it is essential that during their short imprisonment they receive fundamental programming to reduce their risk of recidivism.

## Limitations and Future Research

While the present study significantly contributes to the gender and sentencing literature by expanding the understanding of the gender effect in split sentencing, a few limitations should be mentioned. First, while the dataset provided essential information on defendant characteristics such as age, gender, and race, the dataset did not include information on other extralegal variables that have been found influential across sentencing outcomes in prior literature. These include educational attainment, marital status, financial dependents, and residing with children (Doerner & Demuth, 2014; Franklin et al., 2017; Koons-Witt, 2002; Nowacki, 2020; Tasca et al., 2019; Testa & Hartley, 2021), which have been found to differently affect the sentencing of female and male defendants. As these extralegal variables may be viewed as traditional gender norms, inclusion of these items in the analyses could further capture any influential effects on the discretion exercised by sentencing judges and other court actors.

Secondly, no measurement to directly assess judicial discretion in their decision to grant a split sentence was available. As sentencing judges are afforded great discretion in their decision to extend this alternative sanction, this study would have benefited from an ability to assess how judges evaluate extralegal and legal variables in light of the chivalry/paternalism, the evil woman, and the liberation hypothesis. Further, no characteristics on the sentencing judges were available such as demographics and prior experience, which might influence sentencing outcomes and gender disparities therein.

Another limitation to this study, was the inability to anticipate the gender effect in split sentencing per Black's (1976) propositions in his theory of law and social control. The lack of information on the sentencing areas' culture, stratification, morphology,



social organization, and social control, makes it impossible to assess the distribution and availability of law within the context in which the defendant was sentenced. As an underapplied theoretical framework in the field of criminology, future research should attempt to understand the application of alternative sanctions in respect to these propositions. In doing so, assessment of the gender effect in alternative sentencing across higher and lower stratification societies will further contribute to the gap in the literature on non-traditional sentencing outcomes.

Finally, in light of the noteworthy gender effect in the sentencing of violent offenses, future research also should be directed towards the analysis of the gender effect across specific violent offenses in the application of other alternative sanctions to see if this pattern persists. Further research is needed to understand whether this gender effect in split sentencing is evident between violent offenses as well as within the broad category of violent offense types as observed in this study.

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## VITA

**Anna I. Gomez**

### EDUCATION

- 2019 - Present Master of Arts, Criminal Justice and Criminology  
Sam Houston State University, Huntsville, TX  
Expected graduation: May 2022
- 2017 - 2019 Bachelor of Arts, Law and Justice  
Minor: Sociology  
Central Washington University, Ellensburg, WA  
Magna Cum Laude
- 2015 - 2017 Associate of Arts  
Pierce College, Puyallup, WA  
Honors

### RESEARCH EXPERIENCE

- 2021 - Present Graduate Research and Teaching Assistant, Department of Criminal Justice and Criminology  
Sam Houston State University  
Assisting: Dr. Cassandra Gonzalez and Dr. Peter Lehmann
- 2019 - 2020 Graduate Research and Teaching Assistant, Department of Criminal Justice and Criminology  
Sam Houston State University  
Assisting: Dr. Travis Franklin and Dr. Peter Lehmann
- 2018 - 2019 McNair Scholars Program  
Central Washington University  
Mentor: Dr. Roger Schaefer

### JOURNAL PUBLICATIONS

- 2021      Lehmann, P. S., & Gomez A. I. Split sentencing in Florida: Race/ethnicity, gender, age, and the mitigation of prison sentence length. *American Journal of Criminal Justice*. Advance online publication. <https://doi.org/10.1007/s12103-020-09550-4>

### PRESENTATIONS

- 2020      Gomez, A., & Lehmann, P.S. Split sentencing and the intersection of race/ethnicity, gender, and age. Paper presentation at the annual meeting of

the Academy of Criminal Justice Sciences, held at San Antonio, TX.  
(Conference canceled).

- 2019 Gomez, A. Gendered disparities in educational and vocational programming in America's prisons. Paper presented at the Symposium of University Resource and Creative Expression (SOURCE), held at CWU in Ellensburg, WA.
- 2019 Gomez, A. Gendered disparities in educational and vocational programming in America's prisons. Paper presented at the annual meeting of the Academy of Criminal Justice Sciences, held at Baltimore, MD.

### **BOOK CHAPTERS**

Lehmann, P. S., & Gomez, A. I. Racial, ethnic, gender and economic sentencing disparity. In E. L. Jeglic & C. Calkins (Eds.), Handbook of issues in criminal justice reform. Springer.

### **AWARDS / HONORS**

- 2019 McNair Post Baccalaureate Achievement Program Scholar  
Gendered disparities in educational and vocational programming in America's prisons
- 2019 (SOURCE) – Outstanding Oral Presentation  
Central Washington University
- 2019 Student of the Year Award, Department of Law and Justice  
Central Washington University