

**RE-EXAMINING GENDER DISPARITY IN SENTENCING:
LOCATING THE SENTENCING OF VIOLENT OFFENDERS
IN THE CRIMINAL EVENT FRAMEWORK**

by

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**Re-Examining Gender Disparity in Sentencing:
Locating the Sentencing of Violent Offenders
In the Criminal Event Framework**

BY

Vanessa Chopyk

**A Thesis/Practicum submitted to the Faculty of Graduate Studies of The University
of Manitoba in partial fulfillment of the requirements of the degree
of**

MASTER OF ARTS

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ABSTRACT

The issue of the differential treatment of women and men by the criminal justice system has prompted much research in criminology. While a number of different approaches exist in the literature (specifically, the Chivalry/Paternalism Thesis, the Evil Woman Thesis and the (Un)Equal Approach), this thesis adopts the Criminal Event Framework to address the differential treatment of women and men by the criminal justice system. The Criminal Event Framework acknowledges that in addition to legal and social status variables, several other factors pertaining to the nature of the criminal event itself can contribute to differential treatment (for example, the victim/offender relationship, the nature of the violence used and the nature of the injuries incurred). A sample drawn from Winnipeg Police Incident Reports of 1002 women and men charged with violent offences between 1991 and 1995 is used to examine differences in stays of proceedings and incarceration rates both within and between genders. Based on cross tabulation and binary logistic regression procedures, the analysis indicates that differences do exist in the treatment of women and men, and that these differences are largely a result of legal status variables and variables pertaining to the nature of the criminal event itself. While the study confirms some of what has been cited in the existing literature, it is argued that the adoption of the Criminal Event Framework allows for a more comprehensive understanding of factors which contribute to the differential treatment of women and men in the criminal justice system.

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INTRODUCTION

The issue of the differential treatment of women and men in the criminal justice system has generated an ongoing debate in Sociology. Three main positions can be identified in the literature. The first is that women are treated more leniently than men. This disparity is attributed to the chivalrous and paternalistic nature of the criminal justice system and criminal justice officials. The second is that women are treated more harshly than men as a result of the failure of women who come into conflict with the law to adhere to the social stereotypes of how a woman should behave. The third position suggests that while differential treatment exists, disparity occurs as a result of varying social and legal statuses between gender. The purpose of the present study is to broaden the scope of this "differential treatment" debate. It will be argued that in order to test the differential treatment of women and men in the criminal justice system, it is important to consider not only the legal and social characteristics of the accused, but also the qualitative nature of women's and men's offending. A sample of women and men charged by the Winnipeg Police Service for violent offences will be used to examine differential treatment *between* genders as well as differential treatment *within* gender.

Many studies have addressed the differential treatment of women and men by the justice system. However, "differential treatment" has been operationalized many ways. The most common type of research conducted to test differential treatment has been sentencing studies. These studies use the severity of an accused's disposition as the measuring rod to investigate differential treatment. While most of the literature consulted for the present study relates to the differential sentencing of women and

men, other types of research (such as gender differences in arrest rates, pre-trial release status, probation officers' sentencing recommendations and judges' reasons for sentence) are also considered.

In the 1950s, Otto Pollack developed the first theory to address the differential treatment of men and women in the criminal justice system. Pollak argued that women were treated more leniently than men at all stages of the criminal justice process (arrest, prosecution and sentencing). He attributed this lenient treatment to chivalrous and paternalistic attitudes of criminal justice officials (police officers, prosecutors and judges). The Chivalry/Paternalism Thesis asserts that while women are under-represented in crime statistics, they only appear to be less criminal than men because they are protected by the criminal justice system. In the 1970s, this thesis was countered by liberal feminists who argued that women are actually treated more harshly than men. The Evil Woman Thesis was adopted by those who argued that women received harsher treatment than men due to their failure to conform to the accepted stereotype of "femininity." Both of these theses were subsequently countered by empirical research which controlled for social and legal characteristics of the accused. These studies found that once all legal and social variables pertinent to the accused were controlled, differential treatment between women and men disappeared. If disparity existed, it was due to differences in the legal and social statuses of the accused.

By considering the impact of legal statuses and social variables, these later studies have made significant inroads into the complex issue of differential treatment. Nevertheless, a gap remains – the qualitative nature of women's and men's offending must also be examined. To this end, the present study adopts a Criminal Event

Framework. This framework regards the nature of the criminal event itself as having an impact upon the criminal justice response. Although the legal and social statuses of offenders must still be considered, so must variables relating to the criminal event. These variables capture the qualitative nature of offending and victimization and include: the nature of the violence used, the nature of the injuries incurred, the victim/offender relationship, the involvement of co-accused, the use of weapons and the presence of drugs and/or alcohol.

The present study utilizes the Criminal Event Framework to inform the analysis and argues that if differential treatment occurs within or between gender, it is not due to sex alone. Rather, legal and social statuses, combined with the qualitative nature of the offence, account for the disparity. Differential treatment is operationalized two ways. First, the decision to stay charges or to proceed to court is examined. Given the nature of the data (on violent crime), it was determined that an analysis of stays of proceedings versus those cases which proceed to court (and to disposition) was warranted. Second, differential treatment is framed in terms of incarceration versus non-custodial sentences accorded to offenders charged with violent crime.

Although the data are stratified by offence type and by year, a disproportionate number of cases were stayed. The first analysis of the data will compare those cases which proceeded to disposition to those cases which were stayed. Differential treatment will be examined both within and between genders. While a stay of proceedings is not necessarily equated with a more lenient outcome, it is believed that the nature of these cases are qualitatively different than cases that proceed to disposition. The second analysis of the data will compare offenders who received a sentence of incarceration to offenders who received a non-custodial sentence. While

it is known that men are much more likely than women to receive sentences of incarceration, why is it so? What factors or variables contribute to an increased likelihood of receiving a sentence of incarceration rather than a non-custodial sentence?

The study is presented in five chapters. Chapter One provides a review of the literature. The three main approaches used to conceptualize differential treatment – the Chivalry/Paternalism Thesis, the Evil Woman Thesis and the (Un)Equal Treatment approach – are presented and critiqued. The Criminal Event Framework is then offered as an alternative framework for investigating the differential treatment of women and men in the criminal justice system.

Chapter Two presents the methodology used in the study. The source of the data is explained followed by a description of the data set, the measurement of the variables used and frequency distributions (by gender) of the main variables. These variables are divided into three separate types: Legal, Social and Criminal Event Framework variables. The chapter ends with a description of the analytical procedure used.

Chapter Three provides the findings and analysis from the first analytical procedure: charges that are stayed versus those charges that proceed to disposition. Cross tabulations of the dependent variable and the independent variables are delineated in order to get a sense of the distribution of the data. The findings from the regression procedure are then presented, first, between gender followed by the findings within gender. A discussion follows the explanation of the findings.

Chapter Four presents the findings and analysis from the second analytical procedure: offenders that receive a sentence of incarceration versus offenders that

receive non-custodial sentences. As with Chapter Three, cross tabulations of the dependent variable and the independent variables are provided followed by the findings from the logistic regression. Again, both the findings between and within gender are discussed.

The concluding chapter provides a summary of the main findings. The theoretical and practical implications of the research as well as the limitations of the research are discussed.

CHAPTER ONE

RESEARCH ON GENDER AND SENTENCING

Due to the relatively small number of female offenders in comparison to their male counterparts, little research has been conducted in the area of women and crime. When women did become the focus of criminologists' attention, the explanations offered for their criminal behaviour tended to be premised on stereotypical assumptions about females and/or used males as the standard or measuring rod. However, with the rise of the feminist movement in the 1970s, mainstream theory and research in criminology were challenged for their inattention to gender. In the effort to bring women into view, the feminist engagement with criminology prompted studies on women's offending and females' treatment by the criminal justice system. One area in particular that has received considerable attention is the relationship between gender and sentencing.

One of the earliest approaches to the issue of gender and sentencing is the Chivalry/Paternalism Thesis. Initially advanced by Otto Pollak in the 1950s, this thesis asserts that women are treated more leniently by the criminal justice system. Two decades later, liberal feminists countered the Chivalry/Paternalism Thesis with their claim that while differential treatment of women and men exists in the criminal justice system, it is *women* who are treated more harshly. Referred to as the Evil Woman Thesis, this approach argues that certain women – those who fail to conform to the traditional ideal of “womanhood” – will be subject to more severe sanctions for their offending behaviours. More recently, criminologists have expanded their investigation

of the relationship between gender and sentencing to examine the role of legal and social factors in the decision-making processes of the criminal justice system.

The results of all this research, however, have been inconclusive; the exact nature of the relationship between gender and sentencing is still an open question. The purpose of this chapter, then, is to review the findings of studies which examine the relationship between gender and sentencing. These studies will be discussed under three separate headings: the Chivalry/Paternalism Thesis, the Evil Woman Thesis and the (Un)equal Treatment approach. On the basis of this review, an alternative approach – one which adopts the Criminal Event Framework – will be proposed for investigating the relationship between gender and sentencing.

I THE CHIVALRY/PATERNALISM THESIS

First introduced by Otto Pollak (1950), the Chivalry/Paternalism Thesis asserts that differential treatment between women and men by the criminal justice system occurs and that it is women who are treated more leniently. This leniency extended to women is visible at all stages of the criminal justice system: from arrest, to prosecution, to sentencing. Differential treatment is attributed to the chivalrous and paternalistic attitudes of criminal justice officials towards female offenders.

The Chivalry/Paternalism Thesis argues that women offenders profit from their “femaleness.” Women are seen to escape criminal prosecution (despite their guilt) because of the operation of a chivalry factor in the society in general and the criminal justice system in particular (Scutt, 1979). Although women are under-represented in crime statistics, it is thought that they actually only *seem* to act less criminally than men because they are protected by the criminal justice system from the time of arrest to the

time of punishment (Williams, Winfree & Theis, 1984; Chesney-Lind, 1979). Pollack (1950: xv) believed that women "live under conditions which may often protect them against the detection or prosecution of crime." This 'protection' of women by the criminal justice system is also referred to as paternalism (Zingraff & Thomson, 1984; Daly, 1989a). Advocates of the Chivalry/Paternalism Thesis argue that due to chivalrous and paternalistic societal attitudes held towards women, victims of crimes committed by women are less likely to report an offence and police are more hesitant to lay charges and arrest women. Pollak (1950: 4) explains:

Except in times of aroused public opinion, our police are inclined to treat unofficially all minor offenses of young girls in order to save them from the social stigma which follows an appearance in court. Patrolmen and male detectives do not like to arrest women, because these officers are frequently confused by the apparent violation of our norms of behavior between men and women which such a professional act on their part seems to imply.

Parisi (1982: 207 in Saulter-Tubbs, 1993) states that chivalry also occurs at the prosecutorial and sentencing stages:

. . . . [M]ale judges and prosecutors treat females more leniently because our society has taught them to approach females in a fatherly, protective manner and to assume that females have an inherently submissive, domestic nature.

Since Pollak's initial work, several researchers have found support for the thesis (Chesney-Lind, 1973, 1974, W.I. Thomas, 1923, Kirkman, 1968 in Williams, Winfree & Theis, 1984; Douglas, 1986, Temin, 1976, Edwards, 1986 in Douglas, 1987; Reckless & Kay, 1967, Nagel, 1969, Terry, 1967, Marshall & Purdy, 1972, Pope, 1975, 1976, Rottman & Simon, 1975, Armstrong, 1977 in Frazier et. Al., 1983; Nagel & Weitzman, 1971 in Morris, 1987; and Sutherland & Cressy, 1966 in Scutt, 1979). Although support for the Chivalry/Paternalism Thesis has been found at all stages of

the criminal justice system, it appears to be most pronounced at the sentencing stage (Boritch, 1997; Belknap, 1996).

Williams, Winfree and Theis (1984) found support for the chivalry thesis in arrest rates and sentencing in their analysis of a sample of 127,000 offenders processed through the Seattle Police Department between 1973 and 1976. The offenders had been charged with a wide range of offences, which the authors categorized as personal, property, public order and public decency. Using arrest statistics, the authors determined that women were not making any great inroads in "masculine" (serious) crime and that they were less likely than men to be arrested. The authors also found that although women's arrest rates changed proportionately with men's over the three years, women continued to receive less severe sanctions. Based on cases that proceeded to court, women were less likely to receive serious sanctions such as jail/prison time compared with men's cases.

Zingraff and Thomson (1984) examined a sample of nearly 9,500 women and men who had received an active sentence in North Carolina between January 1, 1969 and December 31, 1977. These offenders had been charged with either one of four felony offences (second degree murder, voluntary manslaughter, larceny or forgery) or one of four misdemeanor offences (simple assault, child abandonment, worthless checks or concealment of merchandise). They found that with the exception of forgery, sex contributes more to the sentence length (defined as length of sentence of incarceration in days) than any other legal or extra legal variable; that is, women received shorter sentences of incarceration than men.

A number of studies have attempted to determine whether the chivalrous treatment of women in the criminal justice system can be attributed to the sex of the judge or other criminal justice officials. Winkler (cited in Mohr, 1990: 481) argues that

the gender of both the sentencer and the subject is important when attempting to understand unwarranted sentencing disparity:

Regardless of individual judges' commitment to the abstract values of fairness and impartiality, unconscious gender-based myths, biases and stereotypes can and often do influence judicial decision-making, fact-finding, and the conduct of a courtroom environment.

Worrall (1987) interviewed twelve magistrates to understand the sentencing of female offenders. She discovered that magistrates admitted to avoiding sending women to prison. Similar findings were noted in a study of 200 magistrates by Home Office Research Studies (1997).

Kruttschnitt (1985) studied the sentencing recommendations of probation officers. Sentencing recommendations ranged from a suspended sentence/fine to prison time. The sample consisted of nearly 2,300 offenders who had been convicted of theft, forgery or drug law violations in Hennepin County, Minnesota between 1965 and 1980. Although the sex of the probation officer did not have a significant effect on the severity of the recommended disposition, both male and female probation officers recommended that female offenders be given a more lenient sentence in comparison to male offenders. However, Kruttschnitt (1985: 300) cautions:

One possible explanation for finding a persistent pattern of paternalism is the qualitative differences in the types of crimes for which males and females are adjudicated.

Empirical support for the Chivalry/Paternalism Thesis suggests that women and men are treated differently by the criminal justice system. Differential treatment is visible at (but not exclusive to) the sentencing stage of the criminal justice process. This evidence suggests that differential treatment emerges as early as the arrest stage and is apparent throughout the justice process: women are less likely to be arrested and more likely to receive more lenient sanctions (i.e. non-custodial sentences). When

they are incarcerated, women are more likely to receive shorter sentences of incarceration than men. This differential treatment is understood in terms of protective attitudes held towards women by criminal justice officials (police, prosecutors, probation officers and judges). However, despite the empirical support for the Chivalry/Paternalism Thesis, it has not remained uncontested. Several writers have, in fact, argued the exact opposite; that is, women are more likely to receive harsher treatment by the criminal justice system than men.

II THE EVIL WOMAN THESIS

The Evil Woman Thesis was first advanced by liberal feminists in the late 1960s and early 1970s in response to the Chivalry/Paternalism Thesis. Similar to the Chivalry/Paternalism Thesis, the Evil Woman Thesis argues that differential treatment exists at all stages of the criminal justice system, including the sentencing stage. In contrast, however, the Evil Woman Thesis claims that differential treatment results in women receiving harsher treatment than men. This harsher treatment is attributed to offending women's failure to conform to the traditional ideal of "womanhood" (Scutt, 1979). As Steffensmeier and Kramer (1983: 290) explain, "the fallen woman is punished for straying from the behavior prescribed for females." As such, criminal justice officials are:

. . . more likely to throw the book at the female, because they believe there is greater discrepancy between her behavior and the behavior expected of women than there is between the behavior of a male defendant and the behavior expected of men. (Simon, 1975 cited in Steffensmeier and Kramer, 1983: 290)

Based on a review of sentencing literature, Morris (1987: 101) has suggested that women who adhere to the accepted stereotype of femininity (i.e. those women who

are married, passive and/or white) will be accorded leniency. However, harsher treatment is extended to those women who breach "appropriate" behaviour (i.e. those women who are divorced, aggressive, sexual and/or black). In her historical account of women's treatment by the criminal justice system, Boritch (1997: 138) explains that female offenders may have been treated more severely by all facets of the justice system compared with male offenders because when women came into conflict with the law, they had violated society's conception of ideal femininity. In sum, women who violate the law will be dealt with according to "the degree to which their criminal behaviour deviates from what is expected of them in their appropriate gender role" (Edwards, 1984: 1).

Findings which support the Evil Woman Thesis have been frequently noted in the literature (Nagel & Hagen, 1983 in Belknap, 1996; Chesney-Lind, 1987, Edwards, 1989, Gelsthorpe, 1989, Hancock, 1981, Nagel, 1981 in Boritch, 1997; Crites, 1978, Feinman, 1979, and Parisi, 1982 in Saulter-Tubbs, 1993). Although empirical support for the Evil Woman Thesis appears to be most pronounced at the arrest stage of the criminal justice process (Belknap, 1996), its ability to explain differential treatment has also been used to understand the role of gender at the sentencing stage.

Scutt (1979) reviewed the incidence of incarceration of men and women in the United Kingdom, the United States and Australia. Based on the literature, she concluded that women have been treated more harshly than men in specific circumstances. She found, for example, that certain offenders (i.e. female sex offenders) were sentenced more severely by the courts than men convicted of the same offence. She explains:

. . . . [A]lthough one view might be that women profit in the area of criminality from their being traditionally regarded as helpless, pure, conforming, chaste – an equally tenable view is that women coming into contact with the criminal

system are noticeably harmed by the traditional image. Where the purity is even slightly suspect, slightly tarnished, it is so easily converted into evil and absolute depravity: woman as the epitome of evil is not an unknown concept. Where the woman fails to live up to the 'ideal', her fall to 'wanton' in the eyes of society in general and law enforcement agencies in particular is easily imagined – and well documented in history, literature and sociological studies. (Scutt, 1979: 17)

McLean and Burrows (1988 in Saulter-Tubbs, 1993) found that differential treatment of women exists at the pre-trial release stage. They discovered that when female offenders were charged with "non-typical" crimes, they were more likely than men to be refused bail. Additionally, Orvis and Zupan (1990 in Saulter-Tubbs, 1993) found that women were more likely to receive harsher sentencing recommendations than men when charged with gender-neutral and typically masculine crimes.

Although the magistrates (most of whom were men) interviewed in Worrall's (1997) study agreed that they were more likely to avoid sending women to prison, they felt that this treatment standard did not hold with all magistrates. As one (male) magistrate noted:

Women offenders are different physically and emotionally – more complex. I don't understand them as well as women magistrates do. But women magistrates are sometimes harder – perhaps they feel that women who offend have let the side down. (cited in Worrall, 1987: 66)

In sum, these studies have suggested that the differential treatment of women by the criminal justice system exists. However, it is female offenders that are treated more harshly than male offenders. This harsh treatment of women has been found at all stages of the criminal justice system – including the sentencing stage – and is attributed to women's failure to adhere to socially accepted female behaviour. Nevertheless, both the Chivalry/Paternalism Thesis and the Evil Woman Thesis have been subject to criticism.

III. CRITIQUES OF THE CHIVALRY/PATERNALISM AND EVIL WOMAN THESES

Despite their popularity among some scholars, the Chivalry/Paternalism and Evil Woman Theses have been described as inadequate approaches for understanding disparities in male and female crime, arrest and prosecution rates, and particularly sentencing dispositions. Studies supporting the two theses have been criticized for being methodologically flawed and producing contradictory conclusions (Scutt, 1979).

The most significant critique has been the inability of these studies to control for relevant legal and extra-legal variables which may confound an offender's processing through the justice system. For example, Boritch (1997) has argued that studies that control for legally- and socially-relevant variables are less likely to find sentencing disparity than those studies that only control for a limited number of factors.

According to Terry (1967), studies supporting the Chivalry/Paternalism Thesis are:

. . . . characterized chiefly by their highly deceptive nature; by use of anecdotal rather than systematic evidence; by leaps from statistical significance to causal determinancy; by failure to introduce control variables into statistical procedures; by a focus on selected aggregates of offenders in order to make inferences about the criteria utilized at earlier stages in the legal process instead of on the decision making process itself; and by the equation of attitudes expressed by agents of social control with their actual behaviour. (cited in Scutt, 1979: 17)

Klein and Kress (1976: 175) argue that "differential treatment of women in the criminal justice system has been based on an assumption that, treated paternalistically, women will not make trouble." They suggest that the Chivalry/Paternalism Thesis is essentially a classist and racist notion that has been applied to affluent white women (1976: 172). In these terms, an offender's race and socio-economic status may be more accurate predictors of differential treatment by the courts. Boritch (1997) has

suggested that possible explanations for an apparent advantage of female offenders in the criminal justice system may be attributed to legally-relevant factors such as the less serious nature of their crime and the fact that women will be less likely to have a previous criminal record.

Daly (1994: 197) believes that the Evil Woman Thesis should be abandoned. Instead, she suggests that we should be examining the ways in which the courtroom discourse reflects notions such as "the good family woman." For example, her research focuses on the influence of familial status on sentencing and she argues that offenders (male or female) who care for their children or others (eg. an elderly family member) are treated differently by the criminal justice system than offenders with weaker family ties (eg. those who are single and have no family responsibilities). Based on the critiques of the Chivalry/Paternalism and Evil Woman Theses, it is suggested that: "Femaleness as escape route does not serve as an explanation for apparent disparities in male and female criminality" (Scutt, 1979: 17). In like manner, whether femaleness can serve as an explanation for differential treatment by the criminal justice system is also in question.

In an effort to address the shortcomings of the Chivalry/Paternalism and the Evil Woman Theses, researchers have turned to the analysis of legal and social factors and their impact on the differential treatment of men and women by the criminal justice system.

IV (UN)EQUAL TREATMENT: CONTROLLING FOR LEGAL AND SOCIAL FACTORS

The third approach for understanding the treatment of women and men by the criminal justice system suggests that women and men can be treated similarly or differently depending on their legal and social positions. When differential treatment emerges, it is attributed to the impact of legal and/or social factors. An offender's legal status is defined by the presence of a prior record, the type of record, the number of current charges and the seriousness of the offence. Social status is defined by the social characteristics of the offender, such as age, race, employment, education, marital status and dependents.

Legal Status

Researchers who have examined disparity in the treatment of women and men while controlling for legal factors have found that it is an offender's legal status, not gender per se, that influences decision-making. Eaton (1986) notes that those who have considered and controlled for legally-relevant variables have been more likely to find that gender disparity in sentencing disappears. Douglas concurs: "The evidence suggests that as the quality of controls for legally relevant variables increases, the likelihood of a gender-sentence relationship being reported decreases" (1987: 346). For example, offenders with prior and lengthy criminal histories and more serious charges are more likely to receive harsher treatment by the justice system. As a result, correlations between gender and sentence are likely to yield overestimates of the extent to which the courts discriminate in favour of women due to the fact that women

are more likely to have a shorter prior record and are more likely to have committed less serious offences.

The importance of controlling for legal variables in sentencing studies was demonstrated by Frazier and his colleagues (1983). They studied the role of probation officers' recommendations on the disparity in the severity of sentences accorded to women and men. The data were collected from pre-sentence reports filed in a judicial district in Florida during a one-year period between June 1, 1972 and May 31, 1973. Thirty-five percent of the 309 cases analysed were female offenders. While there initially appeared to be a strong relationship between the gender of offenders and disposition, the researchers found that when legal and other control variables (eg. number of previous convictions, prior arrests, seriousness of the charge, age, number of dependents, marital status and employment) were introduced into their analysis, the effect of gender bias was greatly diminished.

Spohn and his colleagues (1985) suggest that studies which have found differential treatment have not controlled for legally-relevant factors such as the nature of the crime and prior record. They substantiated this critique when they tested their sample of 29,000 female and male offenders charged with felony crimes (such as murder, manslaughter, robbery, assault, burglary, auto theft, embezzlement, receiving stolen property, forgery, drug possession and impaired driving). They examined the impact of legal variables on the severity of the disposition (which ranged from a suspended sentence to a death sentence) and on the dichotomous variable prison versus no prison. When they did not control for legal factors, women were found to be treated more leniently than men. When they introduced legally-relevant variables, however, the disparities in mean sentence were no longer statistically significant.

A study conducted by Farrington and Morris (1983) controlled for both legal and non-legal variables in order to understand the sentences accorded to women and men. Only those cases where the offender was found guilty were analysed. Their conclusions suggested that gender was not significantly related to sentence severity. Rather, the most important predictor of sentence severity was the type of offence committed. Women only appeared to receive more lenient sentences than men because they committed less serious offences and were less likely to have prior offences.

Douglas (1987) examined 2,992 sentencing decisions of Australian magistrates. Sentencing decisions were understood in terms of two dichotomous dependent variables: bonds versus licence loss (traffic cases) or bonds versus custody. Douglas determined that gender was unrelated to reasons for sentence. Instead, sentences were justified in terms of deterrence, seriousness of offence and prior record. The data indicated that, in general, women had significantly shorter prior records than men and women were more likely to be charged with minor offences, thus resulting in less serious sanctions.

Steffensmeier and Hebert (1999) also examined the sentencing decisions of judges. Their sample consisted of the sentencing decisions of 39 female and 231 male judges in Pennsylvania from 1991 to 1993. Sentencing decisions were operationalized in terms of incarceration versus non-custodial sentences. When custodial sentences were imposed, the length of the sentence was also treated as a second dependent variable. Their analysis indicated that legally-relevant variables had significant effects on sentencing outcomes. Variables such as offence severity and prior record had strong correlations with the severity of the sentence.

Social Status

Kruttschnitt (1981: 248) argues that we must "determine whether it is sex per se or the social locations attendant to a particular sexual status that affect any observed gender-related sentencing patterns" when attempting to determine the role played by a woman's social status and the accorded disposition. Research which focuses on offenders' social status to explain their treatment by the justice system has typically found that in addition to legally-relevant variables, variables such as employment, family status, age, race, and drug and alcohol abuse have effects on judicial decision-making.

Kruttschnitt (1981) analysed a sample of 1,034 female offenders who had been convicted of either disturbing the peace, assault, forgery, drug offences or petty theft and who had been processed through an adult probation department between 1972 and 1976 in northern California. After controlling for race, income, years on probation, age and employment status, she discovered that particular social statuses were significantly related to severe sanctions. Sanctions ranged from a suspended sentence or fine to a prison term. Being economically disadvantaged and being subject to previous legal control were predictors of a harsh sentence. On the other hand, social statuses that predicted lenient sanctions included being employed or holding a socially integrated status (i.e. student, retired or homemaker). Kruttschnitt notes:

. . . . [O]bservable patterns in sentencing do correspond to a woman's location in social life. Specifically, women who fall into the lower economic rank, women who are on the periphery of social life, and those who have experienced prior legal control in their lives will most likely receive the more severe sentences. (1981: 260)

An important aspect of Kruttschnitt's study is the inapplicability of her findings to offenders who had been charged with assault; none of the indicators of social stratification (status) had a significant effect on the dispositions for assault. She suggests that the victim-offender relationship may confound sentencing and that her failure to control for this variable may have affected the analysis (1981: 260).

In a subsequent study, Kruttschnitt (1984) sampled both men and women to determine how gender-related statuses influenced release status, amount of bail, sentence severity and months of probation. Her sample consisted of 1,027 offenders (523 were female) from probation files in Hennepin County, Minnesota who had been convicted of either theft, forgery or drug law violations between 1973 and 1976. When she examined differences between women and men, Kruttschnitt found that lighter sentences were given based on the following variables: having no outstanding court cases; being convicted of an offence that carried a light maximum statutory penalty; having few prior arrests; being employed; and being female. An examination of differences within gender revealed that a male offender was more likely to receive a light sentence if he: had no outstanding court cases; initially pleaded guilty; was convicted of an offence that carried a light maximum statutory penalty; had few prior arrests; was Caucasian; and was employed. A female offender was more likely to receive a light sentence if she: had no outstanding court cases; was convicted of a less serious crime; and was employed. Kruttschnitt concludes that:

. . . . [S]ex does have a significant effect on pretrial release and sentence severity decisions; the factors influencing both of these decisions vary depending upon the offender's gender; and differences in the social locations of men and women may confound assessments of the gender-disposition issue. (1984: 213)

Stryker and his colleagues (1983) examined the impact of ascribed and achieved statuses on release status pending adjudication. Although they did not examine sentencing per se, their findings are significant given the fact that the following statuses warranted less restrictive outcomes: being female; being white or Black (as opposed to being Latino or other); having a high income; having higher education; being charged with property offences; and being employed. More restrictive outcomes were attributed to having a prior record, being charged with a felony, being an illegal alien and being labelled "high risk."

Social Control

One approach which advocates incorporating legal and social factors in a study of gender differences in sentencing is the Social Control Framework developed by Black (1976). In *The Behavior of Law*, Black asserts that legal control varies inversely with social control: the more informal social control (i.e. family ties, employment and/or dependants) to which an offender is subject, the less legal control (more lenient sanctions) is imposed on the offender by the courts.

Using the Social Control Framework, Kruttschnitt (1982b) examined the effect of an offender's respectability on sentencing. She equated an increase of legal control (i.e. prior criminal record) and/or an increase in non-legal control (i.e. history of drug/alcohol abuse, mental health issues, having been previously fired from a job, etc.) with a decrease in respectability, thus resulting in a harsher disposition. The data consisted of a sample of 1,034 female defendants processed through adult probation in a Northern California County between 1973 and 1976. The women had been convicted of either disturbing the peace, assault, forgery, drug violations or petty theft.

The severity of the disposition ranged from a suspended sentence or fine to a prison term. Kruttschnitt found that although evidence of a prior criminal record significantly increased the likelihood of a woman being sentenced severely, extra-legal factors also increased the likelihood of a woman receiving a harsher disposition. The two major forms of disreputableness that had an impact on sentencing were prior criminal record (legal control) and disreputable associates (extra-legal control). However, once again, offenders who had been convicted of assault eluded the above findings.

From the same sample of offenders, Kruttschnitt used the social control framework to further assess the relationship between sentencing and social control. She explains that "the quantity of informal social control inherent in a dependency status may explain the sentences that female defendants incur" (1982a: 497). In this study, Kruttschnitt hypothesized that social control would vary directly with degrees of economic dependency (the degree to which an offender is economically dependent on others), thus the source and the degree of economic dependency will reveal the amount of social control to which a female offender is subject in court. She explains that economic dependence causes an increase in social control, resulting in a decrease in legal control. Kruttschnitt discovered that the relationship between economic dependency and severity of disposition is supported in the cases of petty theft and forgery. Women who were economically dependent were sentenced less severely than women who were economically independent. These findings suggest that "the legal system prefers to exert little control over women whose lives presently contain an indicator of daily social control such as that entailed by economic dependency" (1982a: 510).

Defendants with Families

Expanding on the social control framework, Daly (1987) suggests that social costs are also involved in the sentencing of men and women. Daly places the locus of informal social control on the dependency of others (i.e. children, elderly and/or partners) on the offender. In other words, there are social costs to punishing women and men with families. These social costs are understood in the context of the well-being of the family. For example, Daly argues that judges will be reluctant to impose a harsh sentence (i.e. a sentence of incarceration) on an offender who has family responsibilities. Thus, concern with the protection of families leads judges to impose more lenient sentences (such as conditional discharges and fines) on defendants with families.

In addition, Daly hypothesized that there are higher costs when removing women with families from their social setting than men with families (due to women's indispensable "care-taking" labour), thus resulting in more favourable sentences to women with families. Based on her 1987 study of both male and female offenders from a lower New York City criminal court, however, Daly discovered that, in fact, women and men without families were treated alike in the sentencing process. She also found that women and men with families were treated more leniently than those defendants who were without families. Women and men with families were less likely to receive a non-custodial sentence than women and men without families. Daly concluded that having dependants is the most determining feature of a lenient sentence. Unlike Kruttschnitt (1982a), who places the locus of informal social control on a woman's dependency status, Daly places the locus of social control in family responsibility. It is Daly's contention that the social control framework is better understood in this context (family responsibility) rather than in the context of a woman's economic dependency.

Daly's findings were replicated in a subsequent study (1989b) when she tested the interactive influences of gender and family, and the mitigating effects of family for men and women of different races. It was confirmed that defendants (both male and female) with families were treated more leniently (a deferred or suspended sentence versus a sentence of incarceration) than defendants without families. Defendants with families were seen as having greater informal social control than those without families, thus resulting in less legal control. Additionally, women with families were treated more leniently than men with families. Care-giving labour was believed to be more essential than economic support. However, Daly found that having family ties was a stronger mitigating factor for Black women than for Hispanic or white women, and for Hispanic and white men than for Black men.

Through interviews conducted with 23 American judges (20 male and 3 female), Daly (1989a) confirmed that judges were more likely to impose a more lenient sentence (i.e. non-custodial) on women and men with families because of their ties and responsibilities. The care of children was considered primary and economic support was secondary for the maintenance of families. Interviews conducted with magistrates by the Home Office Research Studies (1997) reflected similar views. The researchers discovered that being a parent would only mitigate against a sentence for a man if he were a single parent. Additionally, the magistrates believed that women with children should be kept out of prison due to their childcare responsibilities. The magistrates interviewed by Worrall (1987) also considered imprisoning women with children as a last resort. Daly suggests that although women may be sentenced more leniently than men, it is judicial concern for the protection of families and children – not the protection of women – that influences their sentencing decisions. Such findings were also supported by Bickle and Peterson (1991). The effect of a woman's sentence on her

family (Worrall, 1987) as well as the well-being of a woman's children (Home Office Research Studies, 1997) are thus seen as important mitigating factors in sentencing.

Based on observational case studies of magistrates in a London courtroom, Eaton (1983) also concluded that dispositions were often influenced by a concern for the families of both male and female defendants. Magistrates were seen as responding to case facts, not gender, in routine matters (i.e. drunkenness and drug offences). Even in non-routine matters, magistrates were more likely to respond to family concerns and/or prior criminal offences rather than gender. Defendants' pleas for mitigation reflected family concerns such as: the family as a site of social responsibility and social control; working for the family; and the family as a privileged and enduring institution. Eaton (1987) describes these pleas for mitigation as reflecting and sustaining a model family where the male fills the role of breadwinner while the female fills the role of caregiver. Differential treatment or leniency is subsequently viewed in the context of differing social roles. Eaton argues, however, that the emphasis on the family for male and female offenders is a practice that seems impartial, yet essentially perpetuates the structural subordination of women. Edwards (1984: 3) also understands discretionary decision-making (whether it is due to familial or other circumstances) as perpetuating gender ideology, some of which can be interpreted as sexism. She concludes that "the law 'manages' and maintains sexual difference" (1984: 10).

It would appear, then, that legal factors (such as prior record, seriousness of offence and number of charges) and social factors (such as employment, family status, race, age and education) influence the sentencing of men and women offenders.

V. CRITIQUE OF THE LEGAL AND SOCIAL STATUSES APPROACH

The preceding review of the literature tells us that legal and social factors are important to consider when explaining differential treatment. However, there is little consistency in the operationalization of 'differential treatment.' 'Harsher treatment' or 'leniency' is defined differently from one study to the next. Some studies examine only those cases that proceed to court (and thereby exclude those cases which are stayed), whereas others analyse only those cases where the offender entered a guilty plea (thereby excluding those cases where the accused was acquitted or where the accused entered a plea of not guilty). Additionally, the dependent variable varied from one study to the next. For example, leniency in one study may be understood in terms of a non-custodial sentence (versus a custodial sentences) whereas, in the next study, leniency is understood in terms of the length of the sentence of incarceration. It is therefore difficult to compare results from study to study when the dependent variables are so very different.

VI WHAT'S MISSING?

Although the (Un)equal Treatment Approach has been instrumental in addressing both the legal and the social aspects of differential treatment (something for which the other two approaches have been criticized), the research results have been mixed. In addition to the variability in the operationalization of 'leniency' or 'harsh treatment' in these studies, several potentially key factors associated with crime and differential treatment have not been fully explored: the qualitative nature of the offence; the victim-offender relationship; sentencing for violent crime; cases which result in a stay of proceedings; and the need for a more inclusive approach.

Crime Categories: The Nature of the Offence

Research on differential treatment has tended to treat crime categories as 'givens.' Although two offenders may be charged with the same offence, it is rare that the circumstances and the nature of the offences themselves are the same. Factors such as the type of criminal behaviour exhibited, the way in which an offence is committed and the degree of harm inflicted may well change from one incident to the next. For example, a charge of "assault with a weapon" may be laid in both of the following scenarios:¹

CRIME CATEGORIES - Case #1

After an evening of drinking at a downtown rooming house, two male tenants retire to their respective suites. However, during the course of returning to their rooms, an argument erupts as to which one of them will keep the remaining beer in his fridge. After a brief shouting match, the accused drops the case of beer, picks up an empty bottle from the case, and breaks the bottle on the victim's back as he was turning to get in the door of his suite. The victim sustained cuts and bruising from the glass. In addition, minor surgery was required to remove some pieces of embedded glass in his shoulder. The accused was subsequently charged with assault with a weapon.

CRIME CATEGORIES - Case #2

After the accused's ex-partner returned their child from his court-sanctioned visits, an argument ensued over the ex-partner's new girlfriend (who is waiting in his car). The accused, frustrated and upset over the fact that her ex-partner is seeing someone else, grabs her child's plastic toy which is sitting at her feet, throws it at her ex-partner's head, and then threatens to harm his new girlfriend. The victim is not injured, however he reports the incident to the police in an effort to "scare" his ex-partner. The accused is subsequently charged with assault with a weapon and uttering threats.

¹

These scenarios have been drawn from Police Incident Reports of events where violent crime charges result.

On the basis of these two scenarios, it is clear that there is much more at work than a simple criminal justice response to the charge of assault with a weapon. The sentences that might result from these actions cannot be explained solely by legal factors or by the personal or social characteristics of the accused.

The importance of deconstructing crime categories was demonstrated by Kathryn Farr's (1997) study of women on death row in the United States. Farr observed that descriptions of murders (for example, an extremely bloody crime scene or the use of a bizarre weapon) can be aggravating factors that influence sentencing. Consequently, to further our knowledge of gender and sentencing, it is important to consider whether qualitative differences – both between and within women's and men's offending – exist.

The Victim-Offender Relationship

An important implication of Kruttschnitt's studies is the inapplicability of her findings to offenders who were convicted of assault. Kruttschnitt suggests that in cases such as assault (and perhaps other interpersonal offences), the victim-offender relationship may confound sentencing. Similarly, Farr (1997) found that killers of strangers are more likely than killers of relatives or friends to receive the death penalty. In addition, having a female victim also increased the risk of a death sentence. Possible connections between the victim-offender relationship and the sentencing of offenders are illustrated by the following two scenarios:

VICTIM-OFFENDER RELATIONSHIP - Case #1

Two men enter a convenience store armed with knives. They demand that the store employee give them money and cigarettes. The store employee hands over a small amount of cash from the register and a few cartons of cigarettes. The two accused flee the store, only to be apprehended minutes later by a passing police officer who recognized the offenders from the description provided by the dispatcher who alerted police in the area immediately after the store employee contacted the police. The men were subsequently charged with robbery and possession of a weapon dangerous to public peace.

VICTIM-OFFENDER RELATIONSHIP - Case #2

Two female friends spend the evening drinking at a downtown hotel. Around midnight, the two friends decide to leave for another nearby bar. After leaving the hotel, the two friends get into an argument over cab fare in front of the hotel. The accused, upset that her friend owes her \$10 and still refuses to pay for the taxi, grabs her friend's wallet and jacket and dashes away in the taxi. The victim was forced to walk home in the middle of winter, as she had no money to take a cab. Upon the arrival to her house, the victim called the police to report that her friend had stolen her wallet and her jacket, and that she would like the items returned. The accused is apprehended and subsequently charged with robbery.

It is very likely that a judge would sentence these two offenders quite differently. As such, variations in the sentencing of men and women may well be tied to the nature of the victim-offender relationship.

Violent Crime

One of the legally-relevant variables cited in research has been the seriousness of the offences for which women and men are charged. Nevertheless, the bulk of the literature on differential treatment and sentencing has been based on an analysis of non-violent crime. Those studies (such as Kruttschnitt's) that do include (the more serious) violent

offences have produced mixed results. Further research is needed, therefore, on the relationship between gender and sentencing in cases involving violent offences.

Operationalizing Disposition

A thorough examination of differential treatment based on gender requires an analysis of all cases. Cases that do not proceed to court (those where the charges are stayed) should be compared with cases that do proceed as differences may emerge in the decision to stay charges. Subsequently, an analysis of those cases which do proceed to court will then provide insight as to differences which emerge when sentences are imposed. For the most part, the literature has failed to consider both criminal justice processes in the same study.

Differences within Gender

The majority of the differential treatment literature fails to consider disparity within genders. When differences within gender are considered, often disparity between genders is neglected. A more thorough analysis of differential treatment should examine both differences within and between genders in the same data set.

Conducting Research in Isolation

Mears (1998) has criticized research on gender and sentencing for failing to consider the broader social context within which sentencing occurs. Research has tended to focus exclusively on the dispositions accorded to offenders and the wide range of possible causal variables (mainly the social characteristics of offenders). It is perhaps this intense, microscopic examination of a small portion of the criminal justice process that has contributed to the multitude of conflicting findings. Although extensive

research on arrest, bail/pre-trial release and decision to prosecute have not been examined in this literature review, it can be observed that much of the research on each crucial phase in criminal justice decision-making has been studied in isolation from other criminal justice processes.

In order to attend to these potentially relevant factors, an alternative approach to the issue of gender and sentencing – one which views the issue within a Criminal Event Framework – will be adopted.

VII THE CRIMINAL EVENT FRAMEWORK

After a crime is committed, there are a multitude of criminal justice responses: arrest, bail/detention, prosecution and sentencing. While these responses have been heavily researched and documented, they have been largely examined in isolation from one another, despite the fact that each transaction is a part of an interconnected criminal justice process. Additionally, before a crime is committed, there is a multitude of social interactions that occur prior to and during the offence. The intricate relationship between social interactions leading up to the offence and the criminal justice response form the “criminal event.” Although an important stage in the criminal event, sentencing cannot be viewed merely as the outcome of the criminal justice process. It must be understood in relation to the precursors, the offence itself and the aftermath (Sacco & Kennedy, 1994).

Sacco and Kennedy (1994: 114) have argued: “The criminal event cannot be separated from the physical and social settings in which it occurs.” They understand crime as *social* events due to the social character of criminal events; that is, the interaction between human beings (1994: 116). Specific aspects of the criminal event (like sentencing dispositions) must be examined in relation to the locational and

situational factors (precursors) of the offence, the interaction among participants during the offence (the event itself) and the criminal justice response (the aftermath) (1994: 137). In order to understand how the sentencing stage of the criminal justice process may operate within the criminal event, it is important to delineate the components of the criminal event as conceptualized by Sacco and Kennedy.

The *precursors* of the criminal event are described as “locational and situational factors that bring people together in time and space” (1994: 137). The authors indicate that in studying the precursors, we can see how certain circumstances may result in a behaviour being defined as a criminal offence, while under other circumstances the same behaviour may not be defined as criminal (1994: 138). Precursors may include: the social characteristics of the accused, setting, time, involvement of drugs/alcohol, presence of co-accused, number and sex of victims, victims' relationship to the offender and presence of witnesses or bystanders.

The criminal *event* is studied in relation to social events, as trends in crime are better understood in relation to the social and economic conditions in which they are present (1994: 138). In the case of violent incidents, elements of the event may include the type of violence and type of weapon used either by the offender, the victim and/or the co-accused(s).

The bulk of the *aftermath* encompasses the criminal justice response to the event and the harm inflicted on the participants during the event. Although the aftermath is the final component of the criminal event, the outcome must be understood in relation to the other components. The sentencing stage, for example, is the result of many social interactions and legal transactions and must be interpreted as such. Elements of the aftermath may include: the injuries sustained by the victim, the offender and/or the co-accused; the need for medical attention; co-operation with the police;

offender's previous contact with the police; types of charges laid; the decision to proceed with the charges; pleas; and dispositions.

VIII POTENTIAL ADVANTAGES OF THE CRIMINAL EVENT FRAMEWORK

Using the criminal event as a conceptual framework offers a number of advantages for exploring the issue of differential treatment both within and between genders. For one, the Criminal Event Framework offers a more holistic approach compared to traditional methods for conceptualizing crime. As such, this approach may be a more useful tool for understanding how (or if) gender and sentencing connect. By examining what is behind and beyond the offence, we may be able to paint a clearer picture of the judicial response to women and men offenders.

For another, while studies on differential sentencing have taken crime categories as "givens," the Criminal Event Framework is more sensitive to the idea that the nature of an offence category may differ both within and between genders, depending on the dynamics of the criminal event itself. Exploring the nature of the event, then, can shed new light on the charge.

In addition to the inability of traditional differential-treatment research to question crime categories, this type of research has also failed to account for gender disparity in sentencing in relation to the victim-offender relationship. Although it has been suggested that the victim-offender relationship be examined (especially in the area of interpersonal violence), this task has been left relatively untouched. As one of the precursors to a criminal event, the nature of the victim-offender relationship can be understood on a continuum of intimacy or closeness from stranger, to acquaintance, to family member, to partner. The specific nature of this relationship may well become a significant factor in the determination of a sentence.

Traditional research in the area of gender and sentencing has also failed (for the most part) to examine sentence disparity *within* gender. Although it is important to examine inter-gender differences (between men and women), it is also imperative to explore intra-gender differences (among men and among women).

Finally, the Criminal Event Framework provides a vehicle for an analysis of gender and sentencing as it pertains to more serious offences like violent crime. Factors pertaining to the event itself (including the specific violence tactics used by women and men) as well as to the aftermath of the event (such as the injuries incurred by participants) may prove to be determinants of the resulting sentence imposed by the courts.

In sum, the Criminal Event Framework offers several advantages for studying the issue of differential treatment. In the next chapter, the methodology used for this research will be outlined. Operationalization of the key variables will be presented along with a description of the analytical procedure.

CHAPTER TWO

RESEARCH DESIGN AND METHODOLOGY

Do women and men charged with violent offences receive differential treatment by the criminal justice system? If so, what contributes to this disparity? Chivalry? Legal status? Social status? Are there qualitative differences between women's and men's offending that warrant different criminal justice responses? Are there differences in the criminal justice processing of offenders within gender? These are the main questions which will be used to frame this study of gender and sentencing. The purpose of this chapter is to elaborate on the methodology to be used. This will include a delineation of the data source used for the analysis, a description of the data set (including descriptive frequency distributions for the main variables) and an outline of the analytical procedure.

I. SOURCE OF DATA

Data were collected on women and men charged by the Winnipeg Police Service for violent offences over a five year period (1991 to 1995).² The source of all information gathered was police incident reports. Police incident reports have not been typically used in sentencing studies. Most sentencing studies have been conducted in the United States using probation files (i.e. Kruttschnitt, 1982b, 1984; Kruttschnitt and Green, 1984), court files (i.e. Daly, 1989b), state criminal files (i.e. Daly, 1987) and case history records (i.e. Zingraff and Thompson, 1984). However, the use of police incident reports as information sources for criminal justice research have a number of benefits in comparison to these other sources. First, data in police incident reports are

2

All police incident reports post 1995 have been archived via Direct Voice Entry system. Non-Winnipeg Police Service employees are not afforded access to this system. Therefore, records between 1991 and 1995 were chosen for analysis as "hard copies" are kept on paper file.

quantitatively superior to data collected for other criminal justice agencies as they "speak to a large number of criminal events" (Sacco & Kennedy, 1994: 151). Every time a charge is laid by the police service, an incident report is compiled by the investigating officer. Second, police incident reports are qualitatively superior than other criminal justice data as they have not yet been subject to the filtering that occurs once a case is processed along the system (Sacco & Kennedy, 1994: 151). The incident report remains on police file regardless of the court outcome. This ensures that even charges that have been dismissed or stayed remain on file and can be included in the sampling procedure. Third, because police must ensure that they document the event in order to produce enough evidence to substantiate a criminal charge and to establish the severity of the charge (e.g. assault vs. assault causing bodily harm), reports will often include detailed information on the nature of the violence used and the harm or injury incurred by participants. Finally, police incident reports provide socio-demographic information (such as the accused's race, dependents, employment status and education) and legal information (such as an accused's prior criminal record). In sum, police incident reports offer a number of advantages as a data source for investigating the issue of gender differences in sentencing.

II THE DATA SET

The data for the study consist of a random sample (stratified by offence type) of 501 women and 501 men (total $n = 1002$) charged by the Winnipeg Police Service. The sample represents 15 percent of all women and 2.5 percent of all men charged with violent offences in Winnipeg between 1991 and 1995. The types of violent offences that were chosen for analysis include assault, assault causing bodily harm, assault with

a weapon, aggravated assault, other assaults,³ robbery, sexual offences,⁴ attempted murder, manslaughter, second degree murder and first degree murder.

III MEASUREMENT

While several variables were included during the data collection phase, not all variables are incorporated into this analysis. Information was collected on the social characteristics of the accused, the social setting of the offence, the victim/offender relationship, the nature of the violence used by all individuals involved, the nature of the injuries incurred and the criminal justice response. The present analysis utilizes variables pertaining to the social and legal status of the accused, the criminal event itself and the criminal justice response.

Most of the variables included in the analyses are categorical or ordinal and were re-coded into dummy variables for multivariate analyses.

Selection variable: Sex

The sample used for the multivariate analyses consisted of 495 women and 495 men.⁵

Dependent variable: Disposition

In order to assess differential treatment both within and between genders, disposition will be used as the dependent variable. Disposition is operationalized into five

3

"Other assaults" include assaults against police officers and administering a noxious substance.

4

Sexual offences included all levels of sexual assault and charges relating to sexual offences against children.

5

The total sample size was 1002, however there were six cases in each of the women's and the men's samples that were excluded due to missing information in the dependent variable.

categories:⁶ Acquittals/discharges/dismissals; Stays of proceedings; Absolute/condition discharges and fines; Probation/suspended sentence; and Incarceration. The distribution of the dependent variable by gender (Table 2.1) reveals a disproportionate number of both women and men receiving a stay of proceedings. Due to this disparity, the dependent variable was further operationalized for analysis purposes. This process will be fully explained in the analytical procedure section.

Table 2.1		
DISPOSITION BY GENDER		
	WOMEN	MEN
Acquittal/dismissal	7% (n = 35)	10% (n = 47)
Stay of Proceedings	59% (n = 293)	35% (n = 173)
Absolute/conditional discharge/fine	11% (n = 53)	10% (n = 50)
Probation+/suspended sentence	16% (n = 78)	17% (n = 85)
Incarceration	7% (n = 36)	28% (n = 140)
Total	100% (n = 495)	100% (n = 495)
Chi Square ⁷	.000	

Table 2.1 indicates that differences emerge between women and men when stays and incarceration are examined. Fifty-nine percent of women compared to 35 percent of men received stays of proceedings, while twenty-eight percent of men received a sentence of incarceration compared to only 7 percent of women. There is

⁶

An analysis of sentencing research provided the basis for the development the disposition scale. A Crown Attorney from the Family Violence Court was also consulted to ensure the scale was legally accurate. See Appendix A for a detailed operationalization of the scale.

⁷The level of significance used for the cross tabulations is < 0.05.

little disparity between acquittals, absolute/conditional discharges/fines and probation+ /suspended sentence between women and men.

Independent Variables

The independent variables are organized into three groups: Legal variables, Social variables and Criminal Event Framework variables

1. Legal variables

Four variables represent the legal variable set: severity of charge;⁸ prior contact with police; total number of charges; and whether the victim was charged.

a) *Severity of Charge*

Although some offenders were charged with multiple offences, only the most serious charge was flagged for analysis. There are five categories of charges ranging from the least serious charge of level I assault to the most serious charge of Attempted murder/Manslaughter/Murder.

a) *Total number of charges*

The total number of charges refers to the total number of both violent and non-violent offences for which an offender was charged during the criminal event. The number of charges ranged from one charge to five or more charges. For analysis purposes, this variable was re-coded into two categories: one charge and two or more charges.

8

See Appendix B for a detailed operationalization of the severity of charge scale. The scale was based on an analysis of minimum and maximum penalties (as stated in the *Canadian Criminal Code*) associated with each type of charge. For example, robbery was deemed more serious than all levels of sexual assault because robberies, in general, result in more serious sanctions than sexual assaults (the sexual assault category has a high stay rate.) The scale was verified and confirmed by a Crown Prosecutor from the Family Violence Court.

a) *Prior record*

Prior record refers to whether the offender had previous convictions⁹ at the time of his/her arrest. It was operationalized into two categories (yes/no).

b) *Victim charged*

This variable refers to whether the victim was also charged during the criminal event. It is coded dichotomously (yes/no).

The frequencies (by gender) for these legal variables are presented in Tables 2.2 through 2.5.

Table 2.2		
MOST SERIOUS VIOLENT CHARGE BY GENDER¹⁰		
	WOMEN	MEN
Level I Assault and Uttering Threats	51% (n = 255)	52% (n = 261)
Level II and III Assault	41% (n = 204)	30% (n = 150)
All levels of Sexual Assault	1% (n = 4)	8% (n = 38)
Robbery	7% (n = 33)	9% (n = 44)
Attempt murder/murder	1% (n = 5)	2% (n = 8)
Chi square: .000		

9

This variable was located on the Police Incident Report under the section:
"Summary of record & Other Details: Include present status (Parole, etc.) and describe whether co-operative or not."

Police officers are instructed to indicate whether the accused has previous convictions in order to assist the Crown, as the Police Incident Report is used as a Court Assistance Report.

10

See Appendix B for the operationalization of this variable. The scaling of this variable was conducted in consultation with a Senior Crown Attorney from Manitoba Justice.

Table 2.3		
PRIOR RECORD BY GENDER		
	WOMEN	MEN
Yes	41% (n = 205)	83% (n = 414)
No	59% (n = 290)	17% (n = 87)
Chi square: .000		

Table 2.4		
VICTIM ALSO CHARGED IN SAME EVENT BY GENDER		
	WOMEN	MEN
Yes	31% (n = 153)	6% (n = 32)
No	69% (n = 346)	94% (n = 469)
Chi square: .000		

Table 2.5		
NUMBER OF CHARGES BY GENDER		
	WOMEN	MEN
.One	58% (n = 291)	46% (n = 232)
Two or more	42% (n = 210)	54% (n = 269)
Average number of charges	1.70	1.99
Chi square: .000		

2. Social variables

Six variables represent the social variable set: age; race; employment status; marital status; dependents; and educational attainment. All of these variables pertain to the social characteristics of the accused.

a) *Age*

Age refers to the age of the accused at the time of their arrest. Age is measured at the interval level, ranging from a low of 18 years to a high of 76.

b) *Race*

The race of the offender was operationalized into two categories: Aboriginal and Non-Aboriginal. Aboriginal offenders include those offenders who were categorized by the police as being either Native (Indian), Metis or Inuit. Non-aboriginal offenders include those offenders who were categorized by the police as being either Caucasian or "Other."¹¹

c) *Employment status*

Employment status is a dichotomous variable with two categories: Unemployed/Social Assistance and Employed. Unemployed offenders, those receiving social assistance and those on disability were combined into one category, while offenders who were employed or were students were combined into a second category.

d) *Marital status*

The marital status of the accused was broken down into three categories: married/common-law; single; and separated/divorced/widowed.

e) *Dependents*

The variable "dependents" refers to any children (the accused's own, foster, step or other) dependent on the accused. It is operationalized dichotomously (yes/no).

¹¹

The category of "Other" was a small sample which included all offenders that were not categorized by the police as either Aboriginal or Caucasian.

f) *Educational attainment*

The educational attainment of the offender was operationalized into four categories: Grade eight or less; Grade nine or ten; Grade eleven or twelve; and Post-secondary education.

The frequency distribution (by gender) for these social variables are presented in Tables 2.6 through 2.11.

Table 2.6		
AGE BY GENDER		
	WOMEN	MEN
18-20	17% (n = 84)	12% (n = 62)
21-25	23% (n = 113)	21% (n = 104)
26-30	21% (n = 103)	25% (n = 126)
31-35	19% (n = 95)	19% (n = 93)
36-40	13% (n = 63)	11% (n = 56)
41+	9% (n = 43)	12% (n = 60)
Mean age	29	30
Maximum	76	71
Chi square: .100		

Table 2.7		
RACE BY GENDER		
	WOMEN	MEN
Non-Aboriginal	48% (n = 237)	57% (n = 283)
Aboriginal	52% (n = 260)	43% (n = 216)
Chi square: .008		

Table 2.8		
MARITAL STATUS		
	WOMEN	MEN
Single	41% (n = 228)	43% (n = 213)
Married/Common-law	52% (n = 211)	44% (n = 217)
Separated/Divorced/ Widowed	7% (n = 57)	13% (n = 63)
Chi square: .642		

Table 2.9		
DEPENDENTS BY GENDER		
	WOMEN	MEN
Yes	55% (n = 261)	43% (n = 196)
No	45% (n = 214)	57% (n = 262)
Chi square: .005		

Table 2.10		
EMPLOYMENT STATUS BY GENDER		
	WOMEN	MEN
Social Assistance / Unemployed	75% (n = 350)	64% (n = 299)
Employed / Student	25% (n = 114)	36% (n = 168)
Chi square: .000		

Table 2.11		
EDUCATION BY GENDER		
	WOMEN	MEN
Grade 9 or 10	56% (n = 237)	53% (n = 227)
Grade 11 or 12	39% (n = 165)	41% (n = 176)
Post-secondary	5% (n = 22)	6% (n = 25)
Chi square: .617		

3. Criminal Event Framework variables

Nine variables represent the Criminal Event Framework variable set: any involvement of drugs and/or alcohol; involvement of a co-accused(s); the use of a weapon; the victim-offender relationship; the number of victims; the severity of violence used by the accused; violence used by the victim and the co-accused; the severity of the injuries suffered by the victim; and injuries suffered by the accused.

A) *Involvement of Drugs and/or Alcohol*

The involvement of drugs and/or alcohol refers to the consumption of drugs and/or alcohol by the accused or the victim during the event. It also refers to the mere presence of alcohol and/or drugs in the social setting. It is coded dichotomously (yes/no).

B) *Involvement of a co-accused(s)*

The involvement of co-accused during the criminal event is dichotomously categorized (yes/no). This variable measures whether any other persons were involved in assisting the accused to engage in violence or other criminal activity during the event.

C) *Use of a weapon*

The use of a weapon refers to whether the accused used a weapon¹² during the commission of the offence. It is categorized as yes/no.

D) *Victim/offender Relationship*

The victim/offender relationship is a categorical variable (five categories) and refers to the relationship between the primary victim and the offender: partner/ex-partner; family member; friend/acquaintance; stranger; and police. The partner/ex-partner category includes married/common-law, girlfriend/boyfriend, and lesbian/gay relationships.¹³ The family member category includes a number of familial relationships, such as, (step) mothers, fathers, grandparents, children, nieces, nephews, aunts and uncles. The friend/acquaintance category refers to those relationships where the accused and the victim were friends or known to each other. The stranger category includes those cases where the victim and the offender were not known to each other (e.g. random acts of street violence, bar fights, and assaults against bouncers or security guards). The police category includes all those cases where the accused was charged with assaulting a police officer.

E) *Number of victims*

The number of victims refers to the number of individuals harmed or assaulted by the accused during the event. This variable ranged from one to five victims. However, it

¹²

Weapons included a wide range of objects such as: blunt objects, sharp objects, beer bottles, firearms and "other." This last category includes a number of (mostly household) objects that did not fit into the other categories of weapons.

¹³Only three cases involved violence between gay and lesbian partners or ex-partners.

was operationalized into two categories for analysis purposes: one victim and two or more victims.

F) *Severity of violence used by the accused*

The severity of the violence used by the accused was ordinally scaled into three categories:¹⁴ Minor, Moderate and Major violence. Although an accused may have used multiple forms of violence, their most serious form of violence was used for analysis purposes. Minor forms of violence included such tactics as: pushing, shoving, grabbing, shaking, wrestling, scratching, pinching, poking or slapping. Moderate violence tactics included: hitting with something, throwing something, biting, punching (once), burning and sexual touching. Major forms of violence included: slamming body/head, kicking/kneeing, choking/strangling, beating, sexual penetration/rape, shooting or stabbing.

G) *Violence used by the victim and the co-accused*¹⁵

Violence used by the victim and the co-accused during the criminal event refers to any acts of violence committed by the victim and by the co-accused. Both of these variables were operationalized dichotomously (yes/no).

¹⁴

See Appendix C for the operationalization of the severity of violence used scale.

¹⁵

Due to the number of victims that did not use violence and the number of cases where co-accused(s) were not involved, it was felt that for analyses purposes, simply whether or not they used violence will capture the nature of the violence used during the criminal event.

H) *Severity of the injuries suffered by the victim*

The severity of the injuries incurred by the victim was ordinally scaled into four categories:¹⁶ No injuries, Minor injury, Moderate injury and Major injury. Although a victim may have suffered multiple injuries, their most serious injury was selected for analysis purposes. Minor injuries include: cuts, broken skin, scratches, bite marks, bruises, swelling, welts or redness. Moderate injuries include: sexual violation, broken bones, fractures or burns. Major injuries include: gunshot wounds, stab wounds, head injuries, loss of consciousness, internal bleeding/organ damage and death.

I) *Injuries suffered by the accused*¹⁷

Injuries incurred by the accused refers to any injuries the accused may have suffered during the criminal event. It is operationalized dichotomously (yes/no).

Tables 2.12 through 2.21 display the frequency distributions (by gender) for these Criminal Event Framework variables.

Table 2.12 INVOLVEMENT OF DRUGS AND/OR ALCOHOL BY GENDER		
	WOMEN	MEN
Yes	76% (n = 309)	65% (n = 289)
No	24% (n = 97)	35% (n = 154)
Chi square: .000		

¹⁶See Appendix D for the operationalization of the severity of injuries scale.

¹⁷

Due to the number of accused that did not suffer any injuries, it was felt that for analyses purposes, whether or not they incurred any injuries will capture the nature of the injuries incurred during the criminal event.

Table 2.13 INVOLVEMENT OF CO-ACCUSED BY GENDER		
	WOMEN	MEN
Yes	20% (n = 99)	15% (n = 77)
No	80% (n = 402)	85% (n = 424)
Chi square: .068		

Table 2.14 NUMBER OF COMPLAINANTS BY GENDER		
	WOMEN	MEN
One	84% (n = 420)	84% (n = 419)
Two or more	16% (n = 81)	16% (n = 82)
Average number of victims	1.22	1.21
Chi square: .932		

Table 2.15 RELATIONSHIP TO VICTIM BY GENDER		
	WOMEN	MEN
EX/PARTNER	48% (n = 243)	57% (n = 285)
FAMILY	14% (n = 68)	4% (n = 21)
FRIEND	22% (n = 112)	19% (n = 95)
STRANGER	14% (n = 69)	18% (n = 90)
POLICE	2% (n = 9)	2% (n = 10)
Chi square: .000		

Table 2.16 TYPE OF VIOLENCE USED BY ACCUSED BY GENDER¹⁸		
	WOMEN	MEN
Minor	15% (n = 76)	21% (n = 53)
Moderate	38% (n = 189)	31% (n = 155)
Major	47% (n = 236)	58% (n = 293)
Chi square: .001		

Table 2.17 USE OF VIOLENCE BY THE VICTIM BY GENDER		
	WOMEN	MEN
Yes	43% (n = 216)	24% (n = 119)
No	57% (n = 285)	76% (n = 382)
Chi square: .000		

Table 2.18 USE VIOLENCE BY THE CO-ACCUSED(S) BY GENDER		
	WOMEN	MEN
Yes	19% (n = 95)	15% (n = 74)
No or no co-accused(s) present	81% (n = 406)	85% (n = 427)
Chi square: .076		

¹⁸

See Appendix C for the operationalization of this variable. The scaling of this variable was conducted using expert validity.

Table 2.19 USE OF A WEAPON BY ACCUSED BY GENDER		
	WOMEN	MEN
Yes	39% (n = 195)	32% (n = 163)
No	61% (n = 306)	68% (n = 338)
Chi square: .035		

Table 2.20 TYPE OF INJURIES INCURRED BY THE VICTIM BY GENDER¹⁹		
	WOMEN	MEN
None	22% (n = 108)	21% (n = 105)
Minor	55% (n = 274)	52% (n = 261)
Moderate	4% (n = 19)	13% (n = 67)
Major	20% (n = 100)	14% (n = 68)
Chi square: .000		

Table 2.21 DID THE ACCUSED RECEIVE INJURIES BY GENDER		
	WOMEN	MEN
Yes	30% (n = 149)	7% (n = 36)
No	70% (n = 352)	93% (n = 464)
Chi square: .000		

¹⁹

See Appendix D for the operationalization of this variable. The scaling of this variable was conducted using expert validity.

IV ANALYTICAL PROCEDURE

As indicated in Table 2.1, the frequency distribution of the dependent variable reveals a disproportionate number of stays of proceedings for both women and men; 59 percent of women's charges and 35 percent of men's charges were stayed. The remaining 41 percent of women's dispositions were distributed between acquittals/dismisses/discharges (7%), absolute/conditional discharges or fines (11%), probation+/suspended sentence (16%) and incarceration (7%). Ten percent of the remaining 65 percent of men's charges were acquitted/dissmissed/discharged; 10 percent of men received absolute/conditional discharges or fines; 17 percent received probation+/suspended sentences; and 28 percent were sentenced to incarceration. As a result of this skewed distribution of the dependent variable, two separate binary logistic regression procedures were conducted.

Binary Logistic Regression

Chapter Three analyses differences in stay rates (stay of proceedings vs. proceeding to disposition) both within and between genders. The impact of Social, Legal and Criminal Event Framework variables on the dependent variable will be examined using binary logistic regression. The dependent variable is operationalized in terms of stays of proceedings (stays) versus actual dispositions (non-stays).

Logistic regression enables the researcher to predict a discrete outcome based on a set of variables measured at the nominal, ordinal or interval level. "In logistic regression, the value that is being predicted represents a probability and it varies between 0 and 1" (George & Mallery, 1999: 234). In this analysis, a stay of proceedings receives a value of "1" while the non-stays (actual dispositions) receive a value of "0."

Four separate logistic regressions will be performed in Chapter Three. The first regression will involve an analysis of sex by the dependent variable. This regression will assess the impact of sex on the dependent variable without any controls. The second regression will analyse the impact of the independent variables²⁰ on disposition between gender. Sex will be included as one of the variables in the analysis to determine whether differences emerge between women and men who receive stays. The third regression will analyse differences within the women's sample only, while the fourth regression will examine the impact of the independent variables on the men's sample only. It is important to remember that the logistic regression procedure can only tell us differences between those cases which receive stays in comparison to those cases which proceed to sentencing.

The biggest difference in men's and women's dispositions is their incarceration rates. Few differences emerged between women's and men's acquittals, discharges and sentences of probation. Therefore, an examination of incarceration versus non-custodial sentences will be conducted. In Chapter Four, binary logistic regression will be also be used to examine all those cases that proceeded to the disposition stage (i.e. the "non-stays"). Again, differences in dispositions both between and within gender will be examined by controlling for Legal, Social and Criminal Event Framework variables. Disposition is operationalized as follows: Incarceration versus non-custodial sentences. Non-custodial sentences include: discharges and probation/suspended sentences,²¹

20

All of the independent variables are put into the regression in one "block" as opposed to three blocks (e.g. Social, Legal and Criminal Event Framework blocks). The reason for this procedure is to see how a number of independent variables impact upon a dependent variable independent of all the other independent variables in the study. In other words, when all of the variables are controlled, which "types" of variables (e.g. Social, Legal and Criminal Event Framework variables) emerge and significantly effect the dependent variable?

21

All acquittals were removed from the analysis in this section, because acquittals are not, "dispositions" per se, but rather a court outcome. Acquittals were deemed inherently different than discharges, probation and incarceration due to the accused being declared "not guilty."

while incarceration includes all offenders who received a sentence of incarceration or time in custody. The dependent variable will be dichotomously coded (1 = incarceration, 0 = non-custodial sentences).

In Chapter Four, four separate binary logistic regression procedures will be conducted. The first regression will examine sex and disposition with no controls to determine the impact of sex on disposition without the influence of Legal, Social or Criminal Event Framework variables. The second regression will expose differences between genders by including all independent variables in the analysis. The third regression will assess differences within gender by analysing the women's sample while controlling for all independent variables. Similarly, the fourth regression will assess differences within gender by analysing the men's sample while controlling for all independent variables.

CHAPTER THREE

Stays of Proceedings versus Cases which Proceed

As noted in Chapter Two, research on the issue of gender and sentencing has typically used probation files, court files, state criminal files or case history records as a data source. In contrast, the present study utilizes police incident reports. One of the advantages of this data source is that cases are captured at a much earlier stage in the criminal justice process. In particular, those cases resulting in a stay of proceedings are included in the sample. The decision to stay the charges against an accused is at the discretion of the Crown prosecutor and is based upon whether there is a "reasonable prospect of conviction" (Brockman & Rose, 1996: 102). Once a charge is stayed, the Crown can reactivate the proceedings within one year. If not, then they are treated as if they never commenced. As indicated in Table 3.1, gender differences exist in the likelihood of receiving a stay of proceedings. Specifically, 59 percent of women's cases received a stay of proceedings compared to only 35 percent of men's cases.

Table 3.1		
DISPOSITION BY GENDER		
	WOMEN	MEN
Stay of proceedings (sop)	59% (n=293)	35% (n=173)
All other outcomes (non-sop)	41% (n=202)	65% (n=322)
Total	100% (n= 495)	100% (n= 495)
Chi Square	.000	

While a stay of proceedings does not necessarily indicate a more lenient court outcome (as other outcomes include acquittals, discharges and dismissals), this finding

appears to support the Chivalry Thesis, as women's cases are much less likely to proceed than men's. However, further analysis is necessary to determine whether Legal, Social and Criminal Event Framework variables contribute to this disparity.

The purpose of this chapter, therefore, is to provide the findings and analysis of those cases which receive a stay of proceedings compared with those that do not. The chapter will be divided into two sections. The first section will delineate the cross tabulations of the dependent variable (stays versus non-stays) by the independent variables and by gender to provide the reader with a general sense of the distribution of the data. Chi square will be used in the cross tabulations to measure the statistical significance of the independent and the dependent variables, while gamma will be used to measure the strength of the association between the variables. The second section will highlight the significant findings from the logistic regression and provide an analysis of the findings.

I. DISTRIBUTION OF THE INDEPENDENT VARIABLES ²²

Legal Variables

Seriousness of charge, prior criminal record and number of charges are the legal variables which have been deemed significant in the literature. These variables will be examined along with a variable relating to the charging of the victim. The charging of the victim in the same criminal event and its potential impact upon an offender's disposition has not been explored in sentencing research. Consideration of this variable may therefore shed light on the relationship between gender and the criminal justice processing of cases.

²²

The cross tabulations should be interpreted with caution as empty cells are apparent in some tables.

Table 3.2 SERIOUSNESS OF CHARGE BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Level I Assault	65% n = 164	45% n = 88	31% n = 80	69% n = 179
Level II and III Assault	59% n = 120	41% n = 83	44% n = 65	56% n = 83
All levels of Sexual Assault	33% n = 1	67% n = 2	30% n = 11	70% n = 26
Robbery	25% n = 8	75% n = 24	36% n = 15	64% n = 28
Attempt murder/murder		100% n = 5	25% n = 2	75% n = 6
Gamma	-.30		.10	
Chi Square	.000		.095	

Table 3.2 indicates that a relationship exists between the severity of women's charges and the staying of their charges. Although the association is weak, the data suggest that more serious charges are less likely to result in a stay of proceedings. For example, 65 percent of women charged with level I assault had their charges stayed compared to 59 percent of those charged with levels II and III assault and 25 percent of women charged with robbery. None of women's murder/attempt murder cases were stayed. However, the data do not support a relationship between the severity of the charge and stays for the men's sample. As noted by the value of gamma, the direction of the relationship differs from that of the women's sample. Levels II and III assault and robbery were more likely to be stayed than level I assault and sexual assault. While this relationship will be clarified during the logistic regression, this finding may be due to plea bargaining and/or the higher threshold of proof required to convict on a charge of level II/III assault and robbery, as opposed to a simple assault.

Table 3.3 PRIOR CRIMINAL RECORD BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Yes	49% n = 140	51% n = 147	34% n = 137	66% n = 272
No	73% n = 149	27% n = 54	42% n = 36	58% n = 50
Gamma	-.49		-.18	
Chi square	.000		.139	

A relationship exists between a woman's prior criminal record and the staying of her charges. Women with no prior criminal record are more likely to receive a stay of proceedings than women with prior criminal records. Table 3.3 shows that 49 percent of women with prior criminal records received a stay of proceedings compared to 73 percent of women with no prior records. While this pattern also held true for men, it was not statistically significant.

Table 3.4 NUMBER OF CHARGES BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
One	72% n = 207	28% n = 81	46% n = 104	54% n = 124
Two or more	42% n = 86	58% n = 121	26% n = 69	74% n = 198
Gamma	.57		.41	
Chi square	.000		.000	

Table 3.4 reveals that a relationship exists between the number of charges and the staying of both women and men's charges. The moderate association between the dependent variable and the independent variable shows that women and men charged with only one offence are more likely to receive a stay of proceedings compared to

offenders charged with two or more offences. Seventy-two percent of women and 46 percent of men received stays when charged with only one offence compared to 42 percent of women and 26 percent of men charged with two or more offences.

Table 3.5				
VICTIM CHARGED BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Yes	89% n = 135	11% n = 17	72% n = 23	28% n = 9
No	46% n = 158	54% n = 183	32% n = 150	68% n = 313
Gamma	.80		.69	
Chi square	.000		.000	

Table 3.5 shows a strong association between the charging of the victim and the staying of women's and men's charges. The data reveal that both women and men are much more likely to receive a stay of proceedings when the victim is also charged during the event. When victims are charged, 89 percent of women and 72 percent of men receive stays of proceedings, whereas only 46 percent of women's cases and 32 percent of men's cases were stayed when the victim was not charged. The findings from this cross tabulation begin to expose the reasons stays of proceedings are imposed. It suggests that when mutual violence between the accused and the victim occurs, the courts tend to stay charges. This is more likely to occur in cases where women are charged and can partially account for the higher stay rates for women.

Social Variables

Several variables relating to an offender's socio-economic and familial status have been found to be predictors of disposition. In fact, some researchers (Stryker et al,

1983; Kruttschnitt, 1984) have found that social (and/or familial) variables have the greatest impact upon the criminal justice response (from pre-trial release to case attrition to sentencing). Cross tabulations between the decision to stay charges and social variables such as age, race, employment status, marital status, dependents and education will be examined in this section.

A cross tabulation between age and stays reveals that a relationship exists between men's ages and the staying of their charges, however the strength of the association (as revealed by the gamma value) is relatively weak (Table 3.6). There is no relationship for women.

Table 3.6				
AGE BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
18-20	54% n = 44	46% n = 38	31% n = 19	69% n = 42
21-25	58% n = 64	42% n = 47	36% n = 37	64% n = 66
26-30	58% n = 60	42% n = 43	29% n = 35	71% n = 87
31-35	66% n = 62	34% n = 32	42% n = 39	58% n = 54
36-40	64% n = 40	36% n = 23	23% n = 13	77% n = 43
41+	55% n = 23	45% n = 19	50% n = 30	50% n = 30
Gamma	.08		.08	
Chi square	.580		.016	

Table 3.7 indicates that a relationship exists for women between race and the staying of charges. While the association is relatively weak, it nonetheless indicates that non-Aboriginal women compared to Aboriginal women are more likely to receive

a stay of proceedings. Sixty-seven percent of non-Aboriginal women received a stay of proceedings compared to 52 percent of Aboriginal women. There is no relationship between race and stays for men.

Table 3.7				
RACE BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Aboriginal	52% n = 132	48% n = 124	33% n = 70	67% n = 144
Non-Aboriginal	67% n = 161	33% n = 78	37% n = 103	63% n = 178
Gamma	-.16		.06	
Chi square	.000		.362	

Perhaps one of the greatest indicators of social control, as noted by criminologists such as Candice Kruttschnitt (1980-81), is an offender's employment status. Table 3.8 shows a relationship between employment status and the staying of charges for women. While the strength of the relationship is moderate, it does clearly indicate that women who are employed are much more likely to receive a stay of proceedings compared to women who are unemployed. Seventy-five percent of employed women received a stay of proceedings compared to 54 percent of unemployed women. There is no relationship between employment status and stays for men.

Table 3.8				
EMPLOYMENT STATUS BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Employed	75% n = 85	25% n = 29	40% n = 65	60% n = 99
Unemployed/Social Assistance	54% n = 187	46% n = 158	33% n = 99	67% n = 198
Gamma	.43		.14	
Chi square	.000		.176	

Researchers such as Kathleen Daly (1987 & 1989a) and Mary Eaton (1983 & 1987) have found that an offender's marital status can significantly affect the criminal justice response. Table 3.9 confirms that a relationship exists between marital status and the dependent variable, however this relationship only holds true for the women's sample and the variables are relatively weakly associated. The data, nonetheless, indicate that women who are co-habiting (either married or common-law) are more likely to receive a stay of proceedings compared to women who are "estranged" (separated or divorced) or single. Sixty-eight percent of married/common-law women received a stay of proceedings compared to 57 percent of separated/divorced women and 52 percent of single women.

Table 3.9				
MARITAL STATUS BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Single	52% n = 118	48% n = 107	34% n = 71	66% n = 139
Separated/Divorced	57% n = 32	43% n = 24	30% n = 19	70% n = 44
Married/Common-law	68% n = 142	32% n = 68	37% n = 80	63% n = 134
Gamma	.19		.01	
Chi square	.005		.518	

Most surprisingly, the data do not support a relationship between the dependent variable and “having dependents” (Table 3.10). This finding is notable in light of the strong body of literature which suggests that having dependents is given considerable weight in the criminal justice response. Although a relationship also did not emerge between educational attainment and stays (Table 3.11), the gamma value in the women’s sample reflects a modest association. The table shows that women with more education are more likely to receive a stay of proceedings compared to women with lower educational attainment. Only 41 percent of women with a grade 8 or less education received a stay of proceedings compared to 66 percent of those with a grade 11 or 12 and 73 percent with post-secondary education.

Table 3.10				
DEPENDENTS BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Yes	61% n = 151	39% n = 98	39% n = 79	61% n = 125
No	59% n = 121	41% n = 98	33% n = 88	67% n = 177
Gamma	.03		.12	
Chi square	.726		.216	

Table 3.11				
EDUCATION BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Grade 8 or less	41% n = 26	59% n = 37	39% n = 22	61% n = 35
Grade 9 or 10	52% n = 89	48% n = 82	31% n = 52	69% n = 114
Grade 11 or 12	66% n = 109	34% n = 56	35% n = 62	65% n = 113
Post-Secondary	73% n = 16	27% n = 6	42% n = 10	58% n = 14
Gamma	.15		.04	
Chi square	.088		.815	

Criminal Event Framework Variables

Variables pertaining to the criminal event have remained unexplored in sentencing research. The cross tabulations between the Criminal Event Framework variables and the dependent variable will provide a first-time glance at the explanatory power of these variables. The Criminal Event Framework variables include: the involvement of drugs and/or alcohol, the involvement of co-accused, the use of a weapon by the accused, the number of victims, the victim/offender relationship, the severity of the violence used by the accused, the use of violence by the victim and the co-accused, the severity of injuries incurred by the victim and whether the accused received injuries.

Table 3.12 shows a relationship between the use of drugs and/or alcohol and the dependent variable for the women's sample. Women who have drugs and/or alcohol involved in their offences are less likely to receive a stay of proceedings compared to women who did not have drugs and/or alcohol involved. Seventy-two percent of women who did not have drugs and/or alcohol involved in their events received a stay of proceedings compared to 54 percent of women who did have substances involved. There is no relationship between the involvement of drugs and/or alcohol and stays for men.

Table 3.12				
INVOLVEMENT OF DRUGS AND/OR ALCOHOL BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Yes	54% n = 167	46% n = 140	35% n = 101	65% n = 184
No	72% n = 68	28% n = 27	35% n = 54	65% n = 99
Gamma	.36		-.00	
Chi square	.002		.851	

The involvement of co-accused is associated with the staying of charges for women. Women who do not have co-accused involved in their event are more likely to receive a stay of proceedings than women who commit violent acts with other accused. Table 3.13 shows that when no co-accused was present during the criminal event, 63 percent of women received stays of proceedings compared to 45 percent of cases where a co-accused was involved. There is no relationship between the involvement of a co-accused and stays for men.

Table 3.13				
INVOLVEMENT OF CO-ACCUSED(S) BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Yes	45% n = 43	55% n = 53	36% n = 27	64% n = 49
No	63% n = 250	37% n = 149	35% n = 146	65% n = 273
Gamma	-.35		.02	
Chi square	.001		.909	

Table 3.14 indicates that no relationship exists between the use of a weapon by the accused and the staying of their charge(s) for either women or men.

Table 3.14				
USE OF WEAPON BY ACCUSED BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Yes	56% n = 109	44% n = 85	35% n = 57	65% n = 104
No	61% n = 184	39% n = 117	35% n = 116	65% n = 218
Gamma	-.10		.02	
Chi square	.303		.920	

Table 3.15 indicates that a moderate relationship exists between the number of victims and the dependent variable in the women's sample, however there is no relationship between these variables in the men's sample. Women charged with harming only one victim were more likely to receive a stay of proceedings compared to women charged with harming two or more victims. Sixty-three percent of women charged with harming one victim received a stay of proceedings compared to only 39 percent of women charged with harming two or more victims.

Table 3.15				
NUMBER OF VICTIMS BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
One	63% n = 262	37% n = 154	36% n = 150	64% n = 264
Two or more	39% n = 31	61% n = 48	28% n = 23	72% n = 58
Gamma	-.44		-.17	
Chi square	.002		.331	

The failure of previous research to analyse the victim/offender relationship has been arguably one of the greatest limitations of the sentencing literature. The present study found a significant relationship between the victim/offender relationship and the staying of women's and men's charges. Table 3.16 indicates that overwhelmingly, partner/ex-partner cases are much more likely to result in a stay or proceedings compared to other social relationships. Seventy-eight percent of women charged with harming partners/ex-partners received a stay of proceedings compared to 47 percent of women charged with harming family members, 49 percent of friend/acquaintance relationships, 28 percent of stranger violence and 12 percent of women charged with assaulting police officers. Men, on the other hand, were more likely to receive a stay

of proceedings in cases involving family members as the victims. Fifty-seven percent of men charged with assaulting family members received a stay of proceedings compared to 36 percent of men charged with assaulting partners/ex-partners, 36 percent of men charged with harming friends/acquaintances and 28 percent of men charged in cases involving stranger violence received a stay of proceedings.

Table 3.16				
VICTIM/OFFENDER RELATIONSHIP BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Partner/Ex-partner	78% n = 188	22% n = 54	36% n = 102	64% n = 179
Family member	47% n = 32	53% n = 36	57% n = 12	43% n = 9
Friend acquaintance	49% n = 53	51% n = 56	36% n = 34	64% n = 60
Stranger	28% n = 19	72% n = 49	28% n = 25	72% n = 64
Police	12% n = 1	88% n = 7	0% n = 0	100% n = 10
Gamma	-.57		-.13	
Chi Square	.000		.017	

Although the relationship between the variables presented in Table 3.17 is not statistically significant, the data do show that charges are more likely to be stayed in cases involving minor and moderate violence.

Table 3.17				
SEVERITY OF VIOLENCE USED BY ACCUSED BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Minor	64% n = 49	36% n = 27	42% n = 22	58% n = 30
Moderate	63% n = 117	37% n = 69	36% n = 55	64% n = 98
Major	54% n = 127	46% n = 106	33% n = 96	67% n = 194
Gamma	-.16		-.10	
Chi Square	.132		.419	

Table 3.18 shows a strong association between the use of violence by the victim and the staying of women's charges. When women's victims also use violence during the course of an event, women are much more likely to receive a stay of proceedings compared to cases when the victim does not use violence. The table indicates that 78 percent of women had their charges stayed when their victims also used violence, whereas only 45 percent of women had their charges stayed when the victim did not reciprocate the violence. This finding coincides with the findings from Table 3.5, which showed that women were more likely to receive a stay of proceedings when the victim was also charged. As such, it is logical that women receive stays in cases where the victim used violence, as Crown attorneys are more likely to define the accused's actions as self-defense. There is no relationship between the use of violence by the victim and the staying of men's charges.

Table 3.18				
USE OF VIOLENCE BY THE VICTIM BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Yes	78% n = 168	22% n = 47	41% n = 48	59% n = 70
No	45% n = 125	55% n = 155	33% n = 125	67% n = 252
Gamma	.63		.16	
Chi Square	.000		.135	

Table 3.19 indicates that a relationship exists between the use of violence by the co-accused and the staying of women's charges. Women are more likely to receive a stay of proceedings when the co-accused also uses violence. Forty-six percent of women received stays when their co-accused used violence compared to only 25 percent of women who received stays when no-co-accused was present or when the

co-accused did not use violence. There is no relationship between the use of violence by a co-accused and the staying of men's charges.

Table 3.19 USE OF VIOLENCE BY THE CO-ACCUSED(S) BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Yes	46% n = 42	54% n = 50	36% n = 26	64% n = 47
No	25% n = 1	75% n = 3	33% n = 1	167% n = 2
Gamma	-.33		.02	
Chi Square	.003		.897	

Table 3.20 indicates that a relationship exists between the severity of women's victims' injuries and the staying of their charges. Stays of proceedings are more likely to occur when the victim received no injuries or minor injuries compared to when the victim sustained moderate or major injuries. Sixty-six percent of women whose victims did not receive any injuries and 63 percent of those who received minor injuries were granted stays of proceedings compared to 37 percent of cases where the victim suffered moderate injuries and 46 percent of cases where the victim incurred major injuries. There is no relationship between the severity of the victim's injuries and stays for men.

Table 3.20				
SEVERITY OF INJURY INCURRED BY VICTIM BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
None	66% n = 69	34% n = 36	39% n = 40	61% n = 63
Minor	63% n = 171	37% n = 100	35% n = 91	65% n = 167
Moderate	37% n = 7	63% n = 12	30% n = 20	70% n = 46
Major	46% n = 46	54% n = 54	32% n = 22	68% n = 46
Gamma	-.29		-.09	
Chi Square	.002		.677	

Table 3.21 shows a relationship between injuries incurred to female accused and the staying of their charges. The association between these two variables is strong and it suggests that when women are also harmed during the course of the event, they are much more likely to receive a stay of proceedings. Eighty-four percent of women who were injured received a stay of proceedings compared to only 49 percent of women who were not injured. The findings from this table also lend credence to the likelihood that charges are stayed when mutual violence occurs or when the accused's actions are viewed as self-defense. There is no relationship between the injuries incurred to male accused and the staying of their charges.

Table 3.21				
INJURIES INCURRED BY THE ACCUSED BY GENDER				
	WOMEN		MEN	
	SOP	Non-SOP	SOP	Non-SOP
Yes	84% n = 124	16% n = 24	47% n = 17	53% n = 19
No	49% n = 169	51% n = 178	34% n = 155	66% n = 303
Gamma	.69		.27	
Chi Square	.000		.109	

SUMMARY

The cross tabulations begin to highlight some interesting findings relating to the decision to stay women's and men's charges. Several independent variables were statistically associated with the dependent variable for both women and men (Table 3.22). For women, legal variables such as the severity of their charge, prior criminal record, number of charges and whether the victim was charged were all significantly associated to the staying of their charges. For men, the number of charges and whether the victim was charged were related to the dependent variable. The only social variable significantly related in the men's sample was age, while race, employment status and marital status were all related in the women's sample. The victim/offender relationship was significant in both samples, however other criminal event framework variables were significantly related in the women's sample, such as the involvement of drugs and/or alcohol, the involvement of a co-accused, the use of violence by the victim and the co-accused, the severity of the victim's injuries and whether the accused received any injuries.

Table 3.22 - Significant Variables From the Cross Tabulations

Independent Variable	Women	Men
<i>LEGAL</i>		
Severity of Charge	Gamma -.30 Chi Square .000	-
Prior Record	Gamma -.49 Chi Square .000	-
Number of Charges	Gamma .57 Chi Square .000	Gamma .41 Chi Square .000
Victim Charged	Gamma .80 Chi Square .000	Gamma .68 Chi Square .000
<i>SOCIAL</i>		
Age	-	Gamma .08 Chi Square .016
Race	Gamma -.16 Chi Square .000	-
Employment Status	Gamma .43 Chi Square .000	-
Marital Status	Gamma .19 Chi Square .005	-
<i>CRIMINAL EVENT FRAMEWORK</i>		
Involvement of drugs and/or alcohol	Gamma .36 Chi Square .002	-
Involvement of a co-accused	Gamma -.35 Chi Square .001	-
Number of victims	Gamma -.44 Chi Square .002	-
Victim/offender relationship	Gamma -.57 Chi Square .000	Gamma -.125 Chi Square .017
Use of violence by the victim	Gamma -.63 Chi Square .000	-
Use of violence by the co-accused	Gamma -.33 Chi Square .003	-
Severity of victim's injuries	Gamma -.25 Chi Square .002	-
Accused's injuries	Gamma .690 Chi Square .000	-

These findings suggest that the gender-criminal justice processing equation is not merely a case of chivalry; there is a complex relationship between gender and the processing of cases. Several factors, some pertaining to the legal status of the accused and some pertaining to the criminal event, are significantly related to the decision to stay charges.

Although the cross tabulations are useful for understanding the nature of the data and the general relationship between the dependent and the independent variables, the binary logistic regression will clarify these relationships by controlling for a number of variables simultaneously. The following section will provide the significant findings of the logistic regression. The results from the logistic regression *between* genders will be presented first, then the findings *within* gender. A discussion of these findings will follow.

II FINDINGS AND ANALYSIS

Between Gender

When sex and the dependent variable are analysed without any controls (in the absence of any independent variables), women have far higher odds than men of receiving a stay of proceedings. Table 3.23 indicates that women are 167 percent more likely than men to receive a stay of proceedings. At first glance, this finding does appear to confirm the initial cross tabulation (Table 3.1) and support the Chivalry Thesis. However, once Legal, Social and Criminal Event Framework variables are added to the analysis, sex remains a significant variable, but its influence on stays is diminished. The findings for the total model (Tables 3.23 and 3.24) indicate that when controlling for all of the independent variables, women are 55 percent more likely to receive a stay of proceedings when compared to men. Therefore, sex alone does not

determine the likelihood of receiving a stay. Rather, a complex relationship exists between sex, an offender's legal and social status and the qualitative nature of women's and men's offending (reflected in the significance of the Criminal Event Framework variables).

Table 3.23 INCIDENTS OF STAYS OF PROCEEDINGS BETWEEN GENDER		
	NO CONTROLS	TOTAL MODEL
	n = 990	n = 990
Covariates	Odds Ratio	Odds Ratio
Sex		
Women	2.670 ***	1.545 *
Men	1.000	1.000
-2 Log Likelihood	1369.0315	1075.529
*p < 0.05; ** p < .01; *** p < .001		

The analysis of the relationship between the independent variables and the decision to stay charges reveals that *sex* and *legal* variables have the greatest influence. The logistic regression flagged eight independent variables (Table 3.24) that are significantly related to the dependent variable: sex, prior criminal record, severity of charge, number of charges, victim charged, the victim/offender relationship, the severity of the victim's injuries and whether the accused received injuries.

Table 3.24 INCIDENTS OF STAYS OF PROCEEDINGS BETWEEN GENDER²³	
	TOTAL MODEL
	n = 990
Covariates	Odds Ratio
Sex	
Women	1.545 *
Men	1.000
Prior Criminal Record	
Yes	0.559 **
No	1.000
Severity of Charge	
Levels II and III Assault	1.737 **
Level I assault	1.000
Total Number of Charges	
One	2.388 ***
Two or more	1.000
Victim Charged	
Yes	3.363 ***
No	1.000
Victim/Offender Relationship	
Stranger	0.354 ***
Police	0.060 **
Partner/ex-partner	1.000
Severity of Victim's Injuries	
Major injuries	0.506 *
Minor injuries	1.000
Accused receive injuries	
Yes	1.846 *
No	1.000
-2 Log Likelihood	1075.529
*p < 0.05; ** p < .01; *** p < .001	

See Appendix E for a summary of the odds ratios for all of the variables included in the model. This table only displays those findings which were significant.

Turning first to the significance of the Legal variables, having a prior record compared to having no prior record decreases the likelihood of receiving a stay of proceedings by 44 percent. This finding is consistent with the literature which suggests that prior record does have a significant impact upon the criminal justice response (Douglas, 1987; Farrington and Morris, 1983; Kruttschnitt, 1980-81, 1982b, 1984; Steffensmeier and Hebert, 1999; and Stryker et al, 1983). A second legal variable which emerged from the regression is the severity of the charge. Offenders charged with levels II and III assault are 74 percent more likely to receive a stay of proceedings compared to offenders charged with level I assault. The third significant Legal variable in the model is the total number of charges. The finding indicates that when an accused is charged with only one offence, compared to being charged with multiple offences, they have a 139 percent increase in the likelihood of receiving a stay of proceedings. This is a logical finding considering that more charges are likely to result in multiple dispositions, and thus decrease the chance of receiving a stay of proceedings.

While an offender's legal status has been identified as important in the staying of charges, the *victim's* legal status also plays a role. The data indicate that when the victim is charged in the same event, the accused has a 236 percent increase in the likelihood of receiving a stay compared to when the victim is not charged. This is an interesting finding and deserves more attention.

A return to the cross tabulations (Table 3.18) reveals that 78 percent of female offenders and 41 percent of male offenders received a stay of proceedings when the victim used violence. Women's victims are much more likely to use violence than men's victims, and they are also more likely to also be charged in the same event. Table 3.5 indicates that when charges were stayed, 89 percent of women's and 72

percent of men's victims were also charged. These findings suggest that when women are charged, their victims are more likely to have used violence and to have been charged in the same event. Consequently, women are more likely to have their charges stayed. Overall, however, the cross tabulations indicate that both women and men receiving stays of proceedings are more likely to have suffered violence by the victim. Their victims are also more likely to have been charged than those accused whose cases proceeded to disposition.

Three of the eight significant independent variables in the regression model are Criminal Event Framework variables. The victim/offender relationship significantly influences the decision to stay charges. When compared to partner/ex-partner cases, both stranger violence and violence directed towards the police are less likely to result in a stay of proceedings. When offenders assault strangers, they are 65 percent less likely to receive a stay of proceedings, and when they assault police officers, they have a 94 percent decrease in the likelihood of receiving a stay of proceedings.

There are a couple plausible reasons why these findings emerged as significant. First, the victim is more likely to be charged in partner/ex-partner cases and these types of cases are much more likely to be stayed. In general, men's victims were not likely to be charged – except in the case of partner/ex-partner violence where 10 percent of the victims were also charged. In the women's sample, however, 55 percent of women's victims in partner/ex-partner cases were also charged compared to only 13 percent of cases involving family members and 7 percent of cases involving friends/acquaintances (only 3% of victims in stranger violence cases were charged).

The second reason why the victim/offender relationship may have emerged as significant is due to the role of the victim in the court process. Although the data can not speak directly to the role of the victim in court, it is argued that the victim is much

more likely to appear for court in stranger violence cases and cases involving police as victims. Although the reasons for stays have not been analysed in this study, it can be noted that partner/ex-partner cases were often stayed because the victim "could not be located" or refused to testify.

The second Criminal Event Framework variable which emerged in the regression is the severity of the victim's injuries. When the accused receives injuries compared to when the accused is not injured, they are 85 percent more likely to receive a stay of proceedings. Although men in general were not likely to be injured, women were much more likely to be injured, especially in partner/ex-partner cases. Forty-eight percent of women received injuries in partner/ex-partner cases compared to 19 percent of cases involving family members, 10 percent of cases involving friends/acquaintances and 9 percent of cases involving strangers. When victims receive major injuries, the accused has a 49 percent decrease in the likelihood of receiving a stay of proceedings compared to when victims receive minor injuries. Also significant are injuries incurred by the accused.

In sum, the analysis between gender indicates that women are more likely to receive stays of proceedings compared to men. However, offenders' and victims' legal statuses have significant bearings on the decision to stay charges, as does the qualitative nature of the accused's offending. The implications of the findings will be discussed at greater length after the findings from the analysis within gender are presented.

Within Gender

An analysis of the relationship between the independent variables and the dependent variable within gender reveals that for both women and men, *Legal* variables and *Criminal Event Framework* variables have the greatest influence. Overall, five variables (Table 3.25) were significantly related to women's stay rates: prior criminal record, the number of charges, whether the victim was charged in the same event, the victim/offender relationship and the involvement of drugs and/or alcohol in the event. For men, five independent variables were significantly related to the dependent variable: the severity of the charge, the total number of charges, whether the victim was charged in the same event, the victim/offender relationship and the severity of the victim's injuries.

Turning first to the women's regression model, two of the five significant independent variables pertain to the legal status of the offender, while one variable relates to the legal status of the victim. Women with prior criminal records compared to women with no prior criminal records have a 55 percent decrease in the likelihood of receiving a stay of proceedings. Alternatively, women charged with only one offence compared to those charged with multiple offences had a 131 percent increase in the likelihood of receiving a stay. The significance of these two independent variables reaffirms the importance placed by the courts on the offender's legal statuses (both their criminal histories and their current legal status before the courts). However, the victim's legal status is rarely discussed in the literature and it appears again as an important consideration when staying women's charges. When women's victims were also charged, the accused had a 120 percent increase in the likelihood of receiving a stay of proceedings compared to when their victims were not charged.

Table 3.25		
RESULTS OF LOGISTIC REGRESSION ON INCIDENTS OF STAYS OF PROCEEDINGS WITHIN GENDER		
	WOMEN	MEN
	n = 495	n = 495
Covariates	Odds Ratio	Odds Ratio
Prior Criminal Record		
Yes	0.452 **	-
No	1.000	-
Severity of Charge		
Levels II and III Assault	-	2.562 **
Level I assault	-	1.000
Total Number of Charges		
One	2.306 **	2.734 ***
Two or more	1.000	1.000
Victim Charged		
Yes	2.199 *	4.426 **
No	1.000	1.000
Victim/Offender Relationship		
Stranger	0.196 ***	0.456 *
Police	0.067 *	-
Family	-	3.207*
Partner/ex-partner	1.000	1.000
Severity of Victim's Injuries		
Major injuries	-	0.397 *
Minor injuries	-	1.000
Involvement of drugs and/or alcohol		
Yes	0.519 *	-
No	1.000	-
Constant		
-2 Log Likelihood	474.149	556.58
*p < 0.05; ** p <.01; *** p <.001		

Two variables pertaining to the criminal event were significantly related to the decision to stay women's charges: the victim/offender relationship and the involvement of drugs and/or alcohol. When women assaulted strangers or police officers compared to when they were involved in partner/ex-partner violence, they had a decrease in the likelihood of receiving a stay of proceedings. Women who assaulted strangers were 80 percent less likely to receive a stay of proceedings, while those who assaulted police officers had a 93 percent decrease in the likelihood of receiving a stay. The social context in which women's offending occurs also affected the decision to stay charges. When drugs and/or alcohol were involved in women's criminal events, they had a 48 percent decrease in the likelihood of receiving a stay of proceedings compared to when no drugs or alcohol were present during the offence.

The men's regression model indicates that both Legal and Criminal Event Framework variables play significant roles in the decision to stay charges. Men's legal statuses and the legal statuses of their victims were factors in the staying of charges. First, men who were charged with levels II and III assault were significantly more likely to receive a stay compared to men charged with only level I assault. Men had a 156 percent increase in the likelihood of receiving a stay of proceedings if charged with level II or III assault as opposed to level I assault. In addition, men charged with only one offence compared to men charged with multiple offences have a 173 percent increase in the likelihood of receiving a stay of proceedings. The victim's legal status also played a significant role in the decision to stay men's charges. When men's victims were charged, the accused had a 343 percent increase in the likelihood having their charges stayed compared to when their victims were not charged.

Variables pertaining to the qualitative nature of men's offending are also important in the analysis of stay rates. First, when men are charged with assaulting

strangers compared to being charged for partner/ex-partner violence, they have a 54 percent decrease in the likelihood of receiving a stay. On the other hand, when they are charged with assaulting family members, they have a 221 percent increase in the likelihood of receiving a stay of proceedings. This suggests that in comparison to cases involving partners/ex-partners, violence against strangers is much more likely to involve the proceeding of charges, but violence between family members is much more likely to result in a stay of the charges. The second significant variable relating to the nature of men's offending is the degree of injury incurred to the victim. Men who cause major injuries to their victims compared to men who cause minor injuries to their victims have a 60 percent decrease in the likelihood of receiving a stay of proceedings.

The findings from the logistic regression reveal some important differences in the staying of women's and men's charges. First, differences do exist between gender. Overall, women are more likely than men to receive a stay of proceedings. Second, differences also exist within gender. Differential sentencing also occurs due to differences in legal and social status and differences in the nature of the criminal act itself (reflected by the significance of the Criminal Event Framework variables).

The first question posed in Chapter Two asked whether women and men charged with violent offences receive differential treatment? The results from the analysis in this chapter indicate that "sex counts." The cross tabulation delineated in Table 3.1 clearly suggests that women are more likely than men to have their charges stayed. Fifty-nine percent of women received a stay compared to only 35 percent of men. Sex also emerged as significant in the logistic regression (Tables 3.23 and 3.24). Women are much more likely than men to receive a stay of proceeding. These findings suggest that the status of being female has a significant impact upon the criminal justice response. While such conclusions lend support to the Chivalry Thesis, it is also

the case that gender alone does not sufficiently explain disparity in stay rates. A further investigation of women's and men's offending reveals that Legal and Criminal Event Framework variables also contribute to the staying of charges.

What clearly emerges from the analysis between gender is the importance of controlling for the legal status of the accused. An offender's prior criminal record, the severity of the charge and the number of charges emanating from one criminal event significantly influence the decision to stay charges. If an offender's legal status is one of the greatest predictors of the staying of charges, then it is simply logical that women are more likely than men to receive a stay of proceedings because their legal histories and current legal status are not as "severe." In general, women are less likely than men to have a prior record. Recall from Table 2.3 that 83 percent of men charged with violent offences had been convicted of a criminal offence in the past compared to only 41 percent of women. Women are also generally less likely than men to be charged with multiple offences. Table 2.5 showed that 58 percent of women were charged with only one offence compared to 46 percent of men. Overall, while women are much more likely than men to receive a stay of proceedings, a summary of their history and their current status demonstrates that their legal status is less "severe" than men's.

One finding that remains puzzling is the impact of the severity of the accused's charge on the decision to stay charges. The more serious forms of assault were more likely to result in a stay of proceedings compared to the less serious forms of assault. Yet, this finding would also support why women are more likely to receive stays. Table 2.2 indicates that women are much more likely than men to be charged with levels II and III assault. Forty-one percent of women charged with levels II and III assault received a stay of proceedings compared to 30 percent of men. One explanation for this finding may be due to the impact of plea bargaining. When offenders are charged

with more than one offence, plea bargaining is an important tool in the criminal justice processing. Often, the police lay several charges relating to one criminal event, however due to the burden that is placed on the Crown to prove that a certain level of injury occurred, resulting in a particular charge, the charge is often pleaded down or stayed and the offender is found guilty of other offences.

The analysis between gender not only showed that offenders' legal statuses are important, but so are the legal statuses of the victim. Attention to this variable can provide some insight as to why women are more likely than men to receive stays. Women's victims are more likely than men's victims to be charged in the same event. Table 2.4 shows that, overall, 31 percent of women's victims were also charged compared to only 6 percent of men's victims.

Although the use of violence by the victim did not emerge as significant in the analysis between gender, it is likely that if the victim was charged in the same event as the accused, their charges were also violence-related. In the women's sample, when the victim used violence, 78 percent of the cases were stayed compared to 45 percent of the cases when the victim did not use any violence (Table 3.18). Could it not be argued that the staying of charges is more likely to be imposed when mutual violence occurs between the victim and the offender? This becomes more clear when the nature of the criminal event itself is exposed.

Stays were more likely to be imposed when the accused received injuries. Table 2.21 indicated that women are much more likely than men to receive injuries: 30 percent of women compared to only 7 percent of men received injuries. Also, when women did receive injuries, their charges were more likely to be stayed. Table 3.21 showed that 84 percent of women who received injuries had their charges stayed compared to only 47 percent of men. This variable, combined with the victim's legal

status, suggests that when mutual violence occurs, the accused's charges are more likely to be stayed.

The victim/offender relationship had a considerable impact upon stays. Stays of proceedings were much more likely to occur between people known to each other. When the victim and the offender are not known to each other, the charges are much more likely to proceed to trial. One explanation for this finding may be due to the perception by the courts and by those involved that violence between people known to each other is a private matter and should be settled in an alternate manner, while violence between people unknown to each other should proceed through the courts. In an effort to turn to restorative measures within the criminal justice system, a stay is often imposed once the victim and the offender agree to mediation or alternate dispute resolution. Unfortunately the data cannot speak to the impact of restorative justice on violent crime.

What also emerges from the analysis between gender are qualitative differences in women's and men's offending. Cases involving major injuries to the victim are less likely to be stayed than cases involving minor injuries to the victim. This held true for the analysis between gender and within gender for men. This finding suggests that the nature of the offence warrants differential treatment. Major injury to the victim is deemed a serious matter that should proceed to disposition. It may also be the case that victims are less likely to ask the court to have the charges dropped when they are severely injured. On the other hand, when the accused is injured, they are much more likely to have their charges stayed. Again, mutual violence increases the likelihood of the accused receiving a stay. This finding however, contradicts to an extent, the finding that more serious assaults (level II and III) are more likely to be stayed than level I assault. It must be noted that when the severity of the charge is analysed, level II and

III assaults are being compared to level I assaults, however when the injuries are analysed, major injuries are being compared to minor injuries. Therefore, sexual assaults, robberies and murders will also contribute to the significance in the injuries finding.

The second question posed in Chapter Two asked whether differences emerged in the staying of charges within gender? The findings from the logistic regression flagged significant differences within women's and men's categories. In both samples, it was clear that differences will emerge within gender because of variation in the legal status variables. For women, differences in the decision to stay charges were based on three legal variables. First, women with a criminal record were less likely than women with no criminal record to receive a stay of proceedings. Second, women facing only one charge were more likely than women facing two or more charges to receive a stay of proceedings. Third, when women's victims were charged, the accused was more likely to receive a stay of proceedings than when the victim was not charged.

Differences in stay rates between women were also based on the nature of the criminal event itself. Women who were charged with assaulting a stranger or the police were less likely to receive a stay of proceedings compared to those women who assaulted a partner/ex-partner. Also significant in the women's sample was the presence of drugs and/or alcohol in the social context in which the offence took place. When drugs and/or alcohol were present, women were less likely to receive a stay of proceedings. Finally, when women's victims were charged, they were more likely to receive a stay compared to those cases where the victim was not charged. On the basis of these findings, it can be argued that women who have their charges stayed are

most likely to have been involved in domestic dispute involving mutual violence and occurring in a social situation where drugs and/or alcohol are not present.

When men are compared to other men, it is their legal status and the victim's legal status which define differences in stay rates along with factors relating to the nature of the offence itself. Men who are charged with only one offence compared to men who are charged with two or more offences are more likely to receive a stay of proceedings. Also, those men charged with levels II or III assault are more likely to receive stays compared to men charged with less severe assault charges. Again, as with the women's sample, this may be due to the role of the victim in the criminal justice process as the present data are unable to account for the agency of the victim. However, the data are also unable to capture the impact of plea bargaining. It is more difficult for the Crown to prove a level II assault without corroborating evidence, than it is a simple assault.

As in the women's sample, when men's victims are charged, they are more likely to receive a stay compared to when their victims are not charged. Thus, as in the women's sample, when mutual violence occurs (cross-charging), the accused is more likely to receive a stay of proceedings.

Differences within the men's sample also exist when the context of the criminal event is considered. Men are less likely to receive stays if their victim is a stranger or if major injuries were incurred by the victim, but they were more likely to receive a stay if the victim was a family member.

While the regression analysis in this chapter provided insight into the factors (both legal and those pertaining to the criminal event itself) which explain differences in stay rates, one entire set of factors – the Social variables – did not contribute to the analysis. The importance of controlling for and including Social variables when

analysing gender differences in the criminal justice response has been dutifully noted in the literature (Bickle and Peterson, 1991; Daly, 1987, 1989a, 1989b; Eaton, 1983; Home Office Research Studies, 1997; Kruttschnitt, 1980-81, 1984; Stryker et al, 1983; and Worrall, 1987). Yet, none of the factors pertaining to an offender's socio-economic status emerged as significant in this chapter. One explanation for this absence of significant Social variables may be due to the importance placed by the courts on legal factors when debating whether or not to stay violent crime charges. When offenders come before the courts charged with a violent offence, there is often no physical evidence (or injuries), no witnesses and it is not uncommon for the complainant to refuse to testify (especially in domestic cases). The judge's options become very limited at this point and it could be that legal factors and the nature of the offence itself influence the decision to stay charges.

In Chapter Four, binary logistic regression will be used to analyse sentencing disparity within and between genders for those cases which proceeded to the sentencing stage of the criminal justice process. The same independent variables are used for comparison and methodological purposes.

CHAPTER FOUR

Cases which Proceed to Sentencing

As a result of the disproportionate number of stays in the sample, only 41 percent of women's cases actually proceeded to trial, while 65 percent of men's cases proceeded. Table 4.1 delineates the distribution of those cases which proceeded to disposition.²⁴ What emerges most clearly in this cross tabulation is the disproportionate number of men who receive custodial sentences compared to women. Fifty-one percent of men compared to only 21 percent of women received a sentence of incarceration. When non-custodial sentences are examined, there are also some substantive differences between women and men. Women appear more likely to receive intermediate sanctions (such as probation) and more lenient sanctions (such as discharges). Forty-seven percent of women received sentences of probation compared to 31 percent of men; while 32 percent of women compared to 18 percent of men received discharges. Overall, women are more likely to receive lenient dispositions than men.

Table 4.1		
DISPOSITION BY GENDER		
	WOMEN	MEN
Conditional/Absolute discharge/fine	32% n = 53	18% n = 50
Probation/Suspended sentence	47% n = 78	31% n = 85
Incarceration	21% n = 36	51% n = 140
Gamma	-.32	
Chi Square	.000	

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All acquittals were removed from the analysis in this section, because acquittals are not, "dispositions" perse, but rather a court outcome. Acquittals were deemed inherently different than discharges, probation and incarceration due to the accused being declared "not guilty."

In Chapter Three, differences in the staying of charges were examined both within and between genders. In this chapter, differences in the incarceration of women and men will be examined, again, both within and between genders. Offenders who receive custodial sentences will be compared to offenders who receive non-custodial sentences. The impact of Social, Legal and Criminal Event Framework variables will be assessed in an effort to explain the disparity in incarceration rates between gender, and also to achieve an understanding of why (or if) differential sentencing within gender occurs.

The first section will present the cross tabulations of the dependent variable by the independent variables in order to observe the general relationships and distribution of the data. The second section of this chapter will present the findings from the logistic regression procedures, followed by an analysis of the findings.

I. DISTRIBUTION OF THE INDEPENDENT VARIABLES

Legal Variables

The literature has indicated that legal variables such as seriousness of charge, prior criminal record and number of charges are significant in the sentencing of offenders. The charging of the victim in the same criminal event proved very significant in the logistic regression of stays versus non-stays, therefore this variable will also be considered in the present analysis.

Table 4.2 SERIOUSNESS OF CHARGE BY GENDER				
	WOMEN		MEN	
	Incar	Non-Custodial	Incar	Non-Custodial
Level I Assault	10% n = 9	90% n = 77	34% n = 59	66% n = 116
Level II and III Assault	12% n = 9	88% n = 74	47% n = 36	53% n = 40
All levels of Sexual Assault	50% n = 1	50% n = 1	65% n = 15	35% n = 8
Robbery	54% n = 13	46% n = 11	89% n = 24	11% n = 3
Attempt murder/murder	80% n = 4	20% n = 1	100% n = 6	0% n = 0
Gamma	.60		.54	
Chi Square	.000		.000	

Table 4.2 indicates that a relationship exists between the severity of the charge and the dependent variable. The strength of the association is moderate and positive. This means that in both samples, more serious charges are more likely to result in a more serious disposition (a sentence of incarceration). For example, 80 percent of women charged with Attempt murder/murder and 54 percent charged with robbery received a custodial sentence compared to only 12 percent of women charged with level I assault and 11 percent charged with levels II and III assault. In the men's sample, 34 percent of men charged with level I assault and 47 percent charged with levels II and III assault received a sentence of incarceration compared to 65 percent of men charged with sexual assault, 89 percent charged with robbery and 100 percent of men charged with attempt murder/murder. This is an important finding as it concurs with the literature which finds the seriousness of an accused's charge is an important variable in the sentencing process (Frazier et al, 1983; Farrington and Morris, 1983; Douglas, 1987; Steffensmeier and Hebert, 1999).

Table 4.3 PRIOR CRIMINAL RECORD BY GENDER				
	WOMEN		MEN	
	Incar	Non-Custodial	Incar	Non-Custodial
Yes	22% n = 32	78% n = 110	50% n = 131	50% n = 129
No	8% n = 4	92% n = 45	19% n = 9	81% n = 38
Gamma	.53		.62	
Chi Square	.027		.000	

Table 4.3 indicates that for both women and men, a relationship exists between prior criminal record and the dependent variable. The strength of this association is moderate for women and relatively strong for men. The cross tabulations suggest that offenders with prior criminal records are much more likely to receive custodial sentences compared with those offenders with no criminal record. For example, only 8 percent of women and 19 percent of men with no prior record received a sentence of incarceration compared to 22 percent of women and 50 percent of men with prior criminal records.

Table 4.4 NUMBER OF CHARGES BY GENDER				
	WOMEN		MEN	
	Incar	Non-Custodial	Incar	Non-Custodial
One	10% n = 7	90% n = 66	35% n = 41	65% n = 75
Two or more	25% n = 29	75% n = 89	52% n = 99	48% n = 92
Gamma	-.51		-.33	
Chi Square	.010		.005	

There is a negative but significant relationship between the number of charges and disposition. The strength of the association between these two variables is moderate for both samples. Table 4.4 suggests that offenders with two or more charges are more likely to receive a sentence of incarceration than those offenders charged with only one offence. Only 10 percent of women and 33 percent of men charged with one offence received a sentence of incarceration compared to 25 percent of women and 75 percent of men charged with two or more offences.

Table 4.5 VICTIM CHARGED BY GENDER				
	WOMEN		MEN	
	Incar	Non-Custodial	Incar	Non-Custodial
Yes	12% n = 2	88% n = 15	25% n = 2	75% n = 6
No	20% n = 34	80% n = 138	46% n = 138	54% n = 161
Gamma	-.30		-.44	
Chi Square	.423		.236	

Although, for both women and men, the relationship between the charging of the victim and stays is not statistically significant, an interesting pattern does emerge. For both women and men, when the victim is also charged, the accused is less likely to receive a sentence of incarceration. Twelve percent of women and 25 percent of men were sentenced to a custodial sentence when the victim was also charged compared to 20 percent of women and 46 percent of men when the victim was not charged.

Social Variables

Offenders' socio-economic and familial statuses have been deemed significant factors to consider in the sentencing process. Variables pertaining to the socio-economic status (age, race, employment status and education) and the familial status (marital status and dependents) of offenders will be cross tabulated with the severity of their disposition.

Table 4.6				
AGE BY GENDER				
	WOMEN		MEN	
	Incar	Non-Custodial	Incar	Non-Custodial
18-20	29% n = 11	71% n = 27	69% n = 27	31% n = 12
21-25	23% n = 10	77% n = 33	40% n = 25	60% n = 38
26-30	13% n = 5	87% n = 34	45% n = 37	55% n = 45
31-35	9% n = 3	91% n = 29	48% n = 25	52% n = 27
36-40	15% n = 3	85% n = 17	38% n = 16	62% n = 26
41+	21% n = 4	79% n = 15	34% n = 10	66% n = 19
Gamma	-.22		-.17	
Chi Square	.293		.032	

There is statistically significant relationship between age and the dependent variable in the men's sample (albeit a relatively weak one) , however the relationship was not significant in the women's sample. The general trend in Table 4.6 suggests that for men, younger offenders are more likely than older offenders to receive a sentence of incarceration (thus explaining the negative gamma value). Sixty-nine percent of men aged 18 to 20 received a sentence of incarceration compared to 38 percent of men aged 36 to 40 and 34 percent of men aged 41 or older.

Table 4.7				
RACE BY GENDER				
	WOMEN		MEN	
	Incar	Non-Custodial	Incar	Non-Custodial
Aboriginal	22% n = 26	78% n = 93	56% n = 77	44% n = 61
Non-Aboriginal	14% n = 10	86% n = 62	37% n = 63	63% n = 106
Gamma	.27		.36	
Chi Square	.173		.001	

Table 4.7 reveals a statistically significant relationship between race and the dependent variable for men. Aboriginal men were more likely than non-Aboriginal men to receive a sentence of incarceration. Fifty-six percent of Aboriginal men received a custodial sentence compared to 37 percent of non-Aboriginal men. The relationship in the women's sample follows the same pattern, but is insignificant.

Table 4.8				
EMPLOYMENT STATUS BY GENDER				
	WOMEN		MEN	
	Incar	Non-custodial	Incar	Non-custodial
Employed	0% n = 0	100% n = 25	29% n = 26	71% n = 65
Unemployed/Social Assistance	23% n = 35	77% n = 117	54% n = 105	46% n = 88
Gamma	-1.00		-.50	
Chi Square	.007		.000	

Table 4.8 indicates that there is a significant relationship between employment status and the dependent variable for both samples. The gamma value in the women's sample reveals that a perfect negative relationship exists between employment and the dependent variable, however this perfect relationship is due to the zero cell in the cross tabulation. The gamma value in the men's sample indicates that the strength of the

association between these two variables is moderate and negative. Overall, employed offenders are less likely to receive custodial sentences compared to offenders who are unemployed or receiving social assistance. Twenty-three percent of unemployed women were incarcerated, while none of the employed women in the sample received custodial sentences. Fifty-four percent of unemployed men received a custodial sentence compared to only 29 percent of employed men.

Table 4.9				
MARITAL STATUS BY GENDER				
	WOMEN		MEN	
	Incar	Non-custodial	Incar	Non-custodial
Single	19% n = 20	81% n = 87	49% n = 66	51% n = 68
Separated/ Divorced	29% n = 7	71% n = 17	50% n = 21	50% n = 21
Married/ Common-law	12% n = 8	88% n = 58	40% n = 51	60% n = 75
Gamma	-.01		-.07	
Chi Square	.127		.304	

Table 4.9 indicates that there is no statistically significant relationship between marital status and the dependent variable for either women or men.

Table 4.10				
DEPENDENTS BY GENDER				
	WOMEN		MEN	
	Incar	Non-custodial	Incar	Non-custodial
Yes	12% n = 12	88% n = 86	38% n = 45	62% n = 74
No	23% n = 24	77% n = 80	52% n = 87	48% n = 81
Gamma	-.39		-.28	
Chi Square	.038		.019	

The cross tabulations in Table 4.10 indicate that a relationship between having dependents and disposition exists. The association is weak/medium and negative. The data suggest that both women and men with dependents are less likely to receive a sentence of incarceration compared to women and men without dependents. Only 12 percent of women and 38 percent of men with dependents received a custodial sentence compared to 23 percent of women and 52 percent of men with no dependents.

Table 4.11 EDUCATION BY GENDER				
	WOMEN		MEN	
	Incar	Non-custodial	Incar	Non-custodial
Grade 10 or less	18% n = 19	82% n = 88	50% n = 74	50% n = 73
Grade 11 or 12	21% n = 11	79% n = 42	42% n = 43	58% n = 60
Post-Secondary	0% n = 0	100% n = 5	7% n = 1	93% n = 12
Gamma	.01		-.28	
Chi Square	.507		.009	

The data contained in Table 4.11 demonstrate a statistically significant relationship between education and disposition in the men's sample. However, the relationship between the two variables was not significant in the women's sample. Although the strength of the relationship was relatively weak for the men's sample, it does indicate that men with more education are less likely to receive a sentence of incarceration compared to men with less education. For example, only 7 percent of men with a post-secondary education received a sentence of incarceration, compared to 42 percent of men with a grade eleven or twelve education and 50 percent of men with a grade ten education or less.

Criminal Event Framework Variables

In order to determine whether the nature of the criminal event itself had an impact upon sentencing, factors relating to the event itself will be examined. While this type of analysis has not been conducted in past sentencing research, the present study has identified a number of variables relating to the criminal event. Examination of these variables assists in providing a picture of the nature of women's and men's offending. The Criminal Event Framework variables included in this analysis are the involvement of drugs and/or alcohol, the involvement of co-accused, the use of a weapon by the accused, the number of victims, the victim/offender relationship, the severity of the violence used by the accused, whether the victim and the co-accused used violence, the severity of injuries incurred by the victim and whether the accused received any injuries.

Table 4.12 INVOLVEMENT OF DRUGS/ALCOHOL BY GENDER				
	WOMEN		MEN	
	Incar	Non-custodial	Incar	Non-custodial
Yes	18% n = 24	82% n = 108	46% n = 82	54% n = 96
No	12% n = 3	88% n = 21	40% n = 37	60% n = 55
Gamma	.22		.12	
Chi Square	.499		.359	

Table 4.12 demonstrates that the relationship between the involvement of drugs and/or alcohol in the criminal event is not significantly related to the disposition.

Table 4.13 INVOLVEMENT OF CO-ACCUSED BY GENDER				
	WOMEN		MEN	
	Incar	Non-custodial	Incar	Non-custodial
Yes	42% n = 22	58% n = 31	62% n = 29	38% n = 18
No	9% n = 14	91% n = 135	43% n = 111	57% n = 149
Gamma	.73		.37	
Chi Square	.000		.016	

A relationship between the involvement of a co-accused and disposition exists in both samples, however the strength of the association is stronger in the women's sample (Table 4.13). When a co-accused is involved, offenders are more likely to receive a sentence of incarceration. Forty-two percent of women and 62 percent of men who had co-accused involved in their criminal events received a custodial sentence compared to only 9 percent of women and 43 percent of men who acted alone.

Table 4.14 USE OF WEAPON BY ACCUSED BY GENDER				
	WOMEN		MEN	
	Incar	Non-custodial	Incar	Non-custodial
Yes	19% n = 15	81% n = 64	52% n = 51	48% n = 48
No	19% n = 21	81% n = 91	43% n = 89	57% n = 119
Gamma	.01		.17	
Chi Square	.967		.151	

Table 4.14 does not demonstrate a statistically significant relationship between the use of a weapon by the accused and the disposition for either women or men.

Table 4.15 NUMBER OF VICTIMS BY GENDER				
	WOMEN		MEN	
	Incar	Non-custodial	Incar	Non-custodial
One	5% n = 22	85% n = 122	44% n = 109	56% n = 141
Two or more	30% n = 14	70% n = 33	54% n = 31	46% n = 26
Gamma	-.40		-.21	
Chi Square	.027		.140	

Table 4.15 reveals a negative moderate relationship between the number of victims and disposition for women. However, the relationship between the two variables for men was not significant. Women charged with harming only one victim were much less likely to receive a sentence of incarceration compared to women charged with assaulting two or more victims. Only 5 percent of women charged with assaulting one victim received a sentence of incarceration compared to 30 percent of women charged with two or more victims.

Table 4.16 VICTIM/OFFENDER RELATIONSHIP BY GENDER				
	WOMEN		MEN	
	Incar	Non-custodial	Incar	Non-custodial
Partner/Ex-partner	12% n = 6	88% n = 45	39% n = 65	61% n = 103
Family member	14% n = 5	86% n = 30	67% n = 6	33% n = 3
Friend acquaintance	18% n = 9	82% n = 42	41% n = 24	59% n = 34
Stranger	32% n = 15	68% n = 32	61% n = 38	39% n = 24
Police	14% n = 1	86% n = 6	70% n = 7	30% n = 3
Gamma	.31		.30	
Chi Square	.110		.008	

Table 4.16 reveals a positive weak association between the victim/offender relationship and disposition for men. However, the relationship was not statistically significant for women. Men are more likely to receive a sentence of incarceration in cases involving police, family members and strangers. When men assaulted police officers, 70 percent of the accused received a custodial sentence. Men also received a sentence of incarceration in 67 percent of cases involving family members and 61 percent of cases involving strangers. On the other hand, men were more likely to receive a non-custodial sentence in cases involving friend/acquaintances and partner/ex-partners.

Table 4.17 SEVERITY OF VIOLENCE USED BY ACCUSED BY GENDER				
	WOMEN		MEN	
	Incar	Non-custodial	Incar	Non-custodial
Minor	19% n = 5	81% n = 21	55% n = 16	45% n = 13
Moderate	8% n = 5	92% n = 57	42% n = 40	58% n = 55
Major	25% n = 26	75% n = 77	46% n = 84	54% n = 99
Gamma	.34		-.02	
Chi Square	.024		.462	

The severity of the violence used by the accused has a statistically significant relationship to disposition in the women's sample (Table 4.17). However, this relationship did not emerge as significant in the men's sample. The moderate association between the variables indicates that women who use major forms of violence are most likely to receive a sentence of incarceration compared to women who use minor and moderate forms of violence. Women who used moderate forms of violence were least likely to receive a sentence of incarceration.

Table 4.18 USE OF VIOLENCE BY VICTIM BY GENDER				
	WOMEN		MEN	
	Incar	Non-custodial	Incar	Non-custodial
Yes	18% n = 8	82% n = 37	48% n = 32	52% n = 35
No	19% n = 28	81% n = 118	45% n = 108	55% n = 132
Gamma	-.05		-0.55	
Chi Square	.834		.688	

The use of violence by the victim is not significantly related to the dependent variable in either samples (Table 4.18). No differences emerge between cases where the victim used violence and cases where the victim did not use violence.

Table 4.19 DID THE CO-ACCUSED(S) USE VIOLENCE BY GENDER				
	WOMEN		MEN	
	Incar	Non-custodial	Incar	Non-custodial
Yes	40% n = 20	60% n = 30	62% n = 28	38% n = 17
No or no co-accused	11% n = 16	89% n = 125	43% n = 112	57% n = 150
Gamma	.68		.38	
Chi Square	.000		.015	

The use of the violence by the co-accused is statistically significant for both samples, but the strength of the association to the dependent variable is much stronger in the women's sample (Table 4.19). When co-accused used violence, both women and men were more likely to receive a sentence of incarceration. Forty percent of women and 62 percent of men's cases involving violence by the co-accused resulted

in a sentence of incarceration compared to 11 percent of women and 43 percent of men's cases where no co-accused was present or did not use violence.

Table 4.20 SEVERITY OF INJURY INCURRED BY VICTIM BY GENDER				
	WOMEN		MEN	
	Incar	Non- custodial	Incar	Non- custodial
None	21% n = 7	79% n = 27	55% n = 33	45% n = 27
Minor	13% n = 13	87% n = 84	39% n = 63	61% n = 98
Moderate	36% n = 4	64% n = 7	49% n = 21	51% n = 22
Major	24% n = 12	76% n = 37	54% n = 23	47% n = 20
Gamma	.16		.00	
Chi Square	.159		.106	

The severity of the victim's injuries is not significantly related to the dependent variable (Table 4.20), nor are the injuries incurred to the accused (Table 4.21).

Table 4.21 DID THE ACCUSED RECEIVE ANY INJURIES BY GENDER				
	WOMEN		MEN	
	Incar	Non- custodial	Incar	Non- custodial
Yes	17% n = 4	83% n = 20	63% n = 12	37% n = 7
No	19% n = 32	81% n = 135	44% n = 128	56% n = 160
Gamma	-.09		.36	
Chi Square	.770		.113	

SUMMARY

Overall, a number of independent variables have a significant impact upon the dependent variable (Table 4.22). For both women and men, the severity of the charge, prior criminal record and the number of charges were legal variables which influenced the accused's disposition. The status of having dependents and employment status were the only social variables that emerged as significant in both the women's and the men's sample. Age, race, employment status and education also made an impact on men's dispositions. An analysis of the Criminal Event Framework variables indicates that the involvement of, and the use of violence by, a co-accused affected both women and men's dispositions. The victim/offender relationship had an impact on men's dispositions, but not women's. However, the number of victims and the severity of the violence used by the accused emerged as significant in the women's sample, but not the men's.

Table 4.22 - Significant Variables From the Cross Tabulations		
Independent Variable	Women	Men
LEGAL		
Severity of Charge	Gamma .60 Chi Square .000	Gamma .54 Chi Square .000
Prior Record	Gamma .53 Chi Square .027	Gamma .62 Chi Square .000
Number of Charges	Gamma -.51 Chi Square .010	Gamma -.33 Chi Square .005
SOCIAL		
Age	-	Gamma -.17 Chi Square .032
Race	-	Gamma .36 Chi Square .001

Employment Status	Gamma -1.00 Chi Square .007	Gamma -.50 Chi Square .000
Dependents	Gamma -.39 Chi Square .038	Gamma -.28 Chi Square .019
Education	-	Gamma -.28 Chi Square .009
CRIMINAL EVENT FRAMEWORK		
Involvement of a co-accused	Gamma .73 Chi Square .000	Gamma .37 Chi Square .016
Number of victims	Gamma -.40 Chi Square .027	-
Victim/offender relationship	-	Gamma .29 Chi Square .008
Severity of violence used by accused	Gamma .34 Chi Square .024	-
Use of violence by the co-accused	Gamma .68 Chi Square .000	Gamma .38 Chi Square .015

In sum, the cross tabulations allow for an exploratory analysis of the relationship between the independent variables and the severity of the accused's disposition. In order to confirm and refine the analysis, a logistic regression was conducted. The following section will provide the findings and the analysis of the regression.

II FINDINGS AND ANALYSIS

Between Gender

When sex and the dependent variable are analysed without any controls, women are less likely than men to receive a sentence of incarceration. Table 4.23 indicates that when women are compared to men in the absence of the influence of any independent variables, they are 72 percent less likely to receive a sentence of incarceration. When the total model is considered and Legal, Social and Criminal Event Framework variables are added into the regression, sex remains a significant variable: women are

86 percent less likely than men to receive a sentence of incarceration. While women's odds ratio decreases, a difference between the two regressions signifies that the independent variables have an impact on incarceration rates between genders, but the impact makes sex more strongly related to disposition.

Table 4.23 RESULTS OF LOGISTIC REGRESSION ON DISPOSITION BETWEEN GENDER		
	NO CONTROLS	TOTAL MODEL
	n = 498	n = 498
Covariates	Odds Ratio	Odds Ratio
Sex		
Women	0.277 ***	0.144 ***
Men	1.000	1.000
-2 Log Likelihood	608.108	449.191
*p < 0.05; ** p <.01; *** p <.001		

The logistic regression performed between genders indicates that Legal, Social and Criminal Event Framework variables are almost equally as likely to affect the decision to impose a sentence of incarceration (Table 4.24). The model flagged nine independent variables that are significantly related to the dependent variable: sex, employment status, educational attainment, dependents, the involvement of co-accused(s), the use of violence by co-accused(s), prior criminal record, the severity of the charge and the number of charges.

Table 4.24 RESULTS OF LOGISTIC REGRESSION ON DISPOSITION BETWEEN GENDER²⁵	
	TOTAL MODEL
	n = 498
Covariates	Odds Ratio
Sex	
Women	0.144 ***
Men	1.000
Employment Status	
Unemployed	2.122 **
Employed	1.000
Educational Attainment	
Grade 8 or less	0.073 *
Grade 9 or 10	0.090 *
Grade 11 or 12	0.074 *
Post-secondary	1.000
Children	
Yes	0.607 *
No	1.000
Co-accused	
Yes	8.319 *
No	1.000
Co-accused use violence	
Yes	0.116 *
No	1.000
Prior record	
Yes	4.238 **
No	1.000
Severity of charge	
Sex offences	7.415 *
Robbery	12.059 ***
Murder	89.593 ***
Level I assault	1.000

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See Appendix E for a summary of the odds ratios for all of the variables included in the model. This table only displays those findings which were significant.

Total number of charges	
One	0.460 **
Two or more	1.000
-2 Log Likelihood	449.191
*p < 0.05; ** p <.01; *** p <.001	

Three of the nine significant independent variables in the analysis between gender are Social variables. Employment status is significantly related to the decision to incarcerate. The data indicate that unemployed offenders compared to employed offenders have a 122 percent increase in the likelihood of receiving a sentence of incarceration. Arguing from a social control framework, one could suggest that the courts tend to place less legal control on an individual who is subject to more social control in their daily lives. In other words, offenders who are employed are less likely to receive a sentence of incarceration due to their ties to their job and responsibilities associated with being employed. However, this view does not contribute to an understanding of why women are less likely to receive a custodial sentence as women are less likely than men to be employed. As Table 2.10 indicated, only 25 percent of women were employed compared to 36 percent of men.

The second Social variable which emerged as significant in the analysis is educational attainment. Overall, the data indicate that offenders with no post-secondary education are less likely than offenders with post-secondary education to receive a sentence of incarceration. This finding is puzzling, as it is expected that offenders with a higher education (a higher social status) are less likely to receive harsh treatment from the criminal justice system. It is suggested, however, that this variable be interpreted with caution as the majority of the sample does not hold a post secondary degree. Only 5 percent of women and 6 percent of men had a post-secondary education (Table 2.11).

Also significant in the regression analysis between gender is the impact of having dependents. The data demonstrate that offenders with dependents, compared to offenders with no dependents, are less likely to receive a sentence of incarceration. This finding is consistent with the literature stating that an offender's family status has a significant bearing in the sentencing process.

The regression procedure identified three significant Legal variables. More serious crimes are more likely to be met with custodial sentences when compared to less serious (assault) crimes. Sex offences, robberies and murders were all much more likely than level I assaults to receive a sentence of incarceration. These three crime categories are the three most serious crime categories in the scale. Therefore, offenders who commit these crimes should be more likely to be incarcerated than offenders who committed assaults.

Having a prior criminal record also increased the likelihood of receiving a sentence of incarceration. Offenders with prior records had a 324 percent increase in the likelihood of receiving a sentence of incarceration compared to offenders with no prior criminal records. While an offenders' legal history was an important consideration, so was their current legal status. Offenders charged with only one offence were much less likely than offenders charged with two or more offences to receive a sentence of incarceration.

The analysis of incarceration rates between gender also revealed that the qualitative nature of the criminal event has an impact. Two of the nine significant independent variables were variables pertaining to the Criminal Event Framework. When co-accused were involved in the criminal event, offenders were much more likely to receive a sentence of incarceration. Group-based violence, compared to violence committed by the accused alone, warrants custodial sentences. Table 2.13 indicated that women were more likely than men to have co-accused involved. Twenty percent

of women's cases involved co-accused compared to 15 percent of men's cases. The second finding from this group of variables is interesting. While offences involving co-accused are more likely to result in sentences of incarceration, when the co-accused used violence compared to when the co-accused used no violence or no co-accused was present, offenders had a decreased likelihood of receiving a sentence of incarceration. This finding can suggest one of two things, either that when co-accused use violence, they (as opposed to the accused) were more likely to be perceived by the courts as the primary aggressor or that the operationalization of the variable is confounding the data. With regard to the former, it is possible that when group-based violence occurs, the accused may play a more secondary role and their involvement in the criminal event is perceived as less serious. With regard to the latter, this variable compares those cases where the co-accused used violence to cases where the co-accused used no violence *or* where no co-accused was present. The reason for this dichotomy is to ensure that all cases are included in the logistic regression (a reduction in the missing cases).

Overall, the logistic regression between gender supports the Chivalry Thesis because the data indicate that women are less likely than men to receive custodial sentences. However, gender alone does not determine whether the accused will be spared a sentence of incarceration. Other factors such as employment status, having dependents and the use of violence by a co-accused also decrease the likelihood of incarceration. The involvement of a co-accused and an offender's legal status contribute to an increase in the likelihood of receiving a sentence of incarceration.

Differences within gender will now be presented, followed by a discussion of the relevant findings.

Within Gender

The logistic regression conducted within gender found five variables (both Criminal Event Framework and Legal) significantly related to women's incarceration rates, while three variables (both Social and Legal) emerged in the men's sample.

Table 4.25 RESULTS OF LOGISTIC REGRESSION ON DISPOSITION WITHIN GENDER		
	WOMEN	MEN
	n = 191	n = 307
Covariates	Odds Ratio	Odds Ratio
Educational Attainment		
Grade 8 or less	-	0.066 *
Grade 9 or 10	-	0.076 *
Grade 11 or 12	-	0.070 *
Post Secondary	-	1.000
Involvement of co-accused		
Yes	79.921 **	-
No	1.000	-
Severity of violence used by accused		
Minor violence	0.080 *	-
Major violence	1.000	-
Co-accused use violence		
Yes	0.021 **	-
No	1.000	-
Prior criminal record		
Yes	-	5.459 **
No	-	1.000
Severity of charge		
Sex offences	-	8.393 **
Robbery	8.595 *	22.860 ***
Murder ²⁶	361.133 **	-
Level I assault	1.000	1.000

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The murder category did not emerge as significant in the men's sample due to the small number of cases in the sample and due to two of the cases involving no injury to the victim (i.e. cases of attempt murder).

Total number of charges		
One	0.227 *	-
Two or more	1.000	-
-2 Log Likelihood	99.761	314.123
*p < 0.05; ** p <.01; *** p <.001		

Three of the five significant variables in the women's regression model pertained to the nature of the criminal event itself. The involvement of co-accused, the use of violence by co-accused and the severity of the violence used by the accused have an impact upon incarceration rates. First, when co-accused were involved in women's criminal events, the accused was much more likely to receive a sentence of incarceration compared to when the accused acted alone. Women's group-based violence warrants the more serious disposition of incarceration.²⁷ Second, when the co-accused used violence, female accused had a 98 percent decrease in the likelihood of receiving a sentence of incarceration. This finding also emerged in Table 4.24. It may be the case that when women's co-accused engage in violence, female accused play secondary roles in the criminal event. It may also be the case that the number of cases where no co-accused was actually present is confounding the data. Unfortunately, the nature of the data does not enable one to choose between the two explanations.

When female offenders use minor forms of violence compared to major forms of violence, they are less likely to receive a custodial sentence. This finding coincides with significance of the severity of the charge. Women charged with more serious charges such as robbery and murder were much more likely to be sentenced to prison

²⁷

When women engage in group-based violence, 41 percent of the women were accompanied by other women, while 50 percent of the co-accused were men. Both female and male co-accused appeared in 9 percent of women's cases.

compared to women charged with a less serious assault. Considering that the severity of charge scale was based on the minimum and maximum penalties assigned to these crime categories, it is logical that these types of offences would result in more serious sanctions. The number of charges which women face is also related to incarceration. Women charged with only one offence have a decreased likelihood of receiving a sentence of incarceration compared to women charged with two or more offences.

Turning now to the men's sample, only three significant variables emerged in the regression model: one relating to the social status of the accused and two relating to the legal status of the accused. None of the variables pertaining to the qualitative nature of the offence itself were significantly related to the severity of the disposition. The social status of the accused was captured by the significance of an accused's educational attainment. As with the findings in Table 4.25, offenders with no post-secondary education are less likely than offenders with post-secondary education to receive a sentence of incarceration. Unfortunately, due to the small number of offenders in the "Post secondary" category, it is difficult to assess the true impact of this variable on the dependent variable.

Both men's prior criminal record and the severity of the charge increased the likelihood of receiving a sentence of incarceration. Men with prior records compared to men with no prior records were significantly more likely to receive a sentence of incarceration, as were men charged with sex offences and robbery compared to men charged with level I assault.

The findings from the logistic regression have identified some important differences both between and within gender concerning the likelihood of receiving sentences of incarceration as opposed to non-custodial sentences. The between-gender analyses confirms that sex does have an impact on incarceration. However, sex alone does not explain differences in incarceration rates between women and men.

Legal considerations, the social status of the accused and the nature of the criminal event all contribute to differences in incarceration. Differences within gender also emerge as a result of the impact of these variables. Women and men are treated differently from other women and men based on key factors relating to their offence and their legal and social statuses.

The first question posed in Chapter Two asked whether women and men charged with violent offences are sentenced differently. Indeed, they are. Women are less likely than men to receive sentences of incarceration. While the independent variables account for some of the disparity, Table 4.22 shows that sex has a stronger relationship in the full model.

Another question posed in Chapter Two asked what the impact of the nature of the criminal event itself had upon the severity of the disposition. Group-based violence was more likely to result in a sentence of incarceration compared to when offenders acted alone. Women are slightly more likely than men to engage in group-based violence (20% versus 15%). Group-based violence was much more likely to occur in both women's and men's stranger violence cases. Fifty-seven percent of men's group-based violence occurred against strangers, while 47 percent of women's violence involving co-accused resulted in stranger violence. While the victim/offender relationship did not emerge as a significant variable, a further exploration of the data suggests that the nature of group-based violence may contribute to more serious sanctions.

Yet, when group-based violence occurred and the co-accused used violence (as opposed to when group-based violence occurred, but the co-accused used no violence or no co-accused was present), offenders were less likely to be incarcerated. The data indicate that women's co-accused were marginally more likely to use violence compared to men's co-accused (19% versus 15%). Women's decreased likelihood of

receiving a custodial sentence may be due to the nature of the involvement of the co-accused. When women commit crimes with others, these individuals are most likely to be men or both men and other women as opposed to just other women. Women's role, then, in group-based violence may be secondary to that of the co-accused who is more likely to be male.

Differential treatment within gender is also evident in the analysis. Legal status, again, was a very important consideration in the incarceration of both women and men. For both women and men, more serious charges resulted in the more serious disposition of incarceration. For women, having only one charge decreased the likelihood of receiving a sentence of incarceration. For men, having a prior record increased the likelihood of receiving a custodial sentence. The nature of the offence itself clearly had an impact on the severity of women's dispositions. When women committed offences with others, they were much more likely to receive a sentence of incarceration. However, when a co-accused did use violence, women were less likely to go to jail. Women who used minor forms of violence as opposed to major forms of violence were less likely to be sentenced to custody.

CONCLUSION

The issue of differential treatment of women and men by the criminal justice system has generated a considerable body of research in criminology. A number of different approaches have emerged to account for gender disparity in the criminal justice system. The Chivalry/Paternalism Thesis asserts that women are treated more leniently than men at all stages of the criminal justice system because criminal justice officials "protect" women from arrest, prosecution and jail. Opposite to this approach is the Evil Woman Thesis, which suggests that women are treated more harshly than men in the criminal justice system. Advocates of the Evil Woman Thesis argue that women who come into conflict with the law are treated more severely than men by the justice system because they violate social stereotypes of how women should behave. A third approach for explaining differential treatment is the (Un)Equal Approach. This approach states that the differential treatment of women by the criminal justice system exists, but that the disparity occurs as a result of different social and legal statuses between women and men. The purpose of this research has been to broaden the scope of the differential treatment debate by using a Criminal Event Framework to assess the criminal justice response to violent crime. The Criminal Event Framework considers both the legal and social status variables which have been deemed important in the literature, but also includes variables pertaining to the nature of the criminal event itself.

SUMMARY OF MAIN FINDINGS

Overall, the decision to stay charges and the decision to incarcerate are largely based on the legal status of the accused, the qualitative nature of their offending and, to some extent, their social status. While there are gender differences, differential treatment is not solely due to the sex of the accused. The analysis has also demonstrated that differential treatment exists within genders, and this disparity occurs as a result of significant differences in legal and social statuses along with qualitative differences within the two samples.

The study has confirmed that differential treatment exists between women and men. First, women are more likely than men to receive a stay of proceedings. Second, women are less likely than men to receive a sentence of incarceration. The data also indicate that a complex relationship exists between the qualitative nature of the offence, the legal status of the accused, the legal status of the victim and the social status of the accused and the decision to stay charges or incarcerate.

Differential treatment in the staying of charges between gender was attributed to a number of factors. First, Legal variables have been cited in the literature as key variables for explaining differential treatment between women and men (Eaton, 1986; Douglas, 1987; Frazier et al, 1983; Spohn, et al, 1985; Farrington and Morris, 1983; and Steffensmeier and Hebert, 1999). The present study has confirmed that legal variables are important considerations in the processing of offenders through the criminal justice system. Specifically, the legal history and current legal status of the accused were important factors. Differential treatment exists between women and men as a result of differences in legal status. Further probing revealed that women have less serious legal histories than men and are more likely to come before the courts with

fewer charges. Second, differential treatment between genders is related to the qualitative nature of the criminal event. Stays of proceedings are more likely to be imposed when mutual violence between the accused and the complainant is evident. When the victim is charged and when the accused is injured, the accused is much more likely to have the charges stayed. Further analysis of these variables revealed that events involving mutual violence are more likely to occur in partner/ex-partner relationships. Overall, events where women are charged are more likely than those of men accused to involve mutual violence, the charging of the victim and injury to the accused. In sum, analysis of those cases which result in a stay of proceedings versus those which proceed to disposition reveals that differential treatment of women and men is due to differences in legal statuses and in the nature of their offending.

Differential treatment in disposition (incarceration versus non-custodial sentences) between genders is largely due to the economic status of the accused, their legal status and the impact of group-based violence. Offenders who are economically disadvantaged were more likely to receive a sentence of incarceration compared to those who are employed. This finding confirms what has been found in the literature (Kruttschnitt, 1981, 1984, 1982a & 1982b). Disparity was also revealed in terms of legal status. Those offenders with no prior record, with less serious charges and facing only one charge before the courts are less likely to received incarceration as a disposition.

The analysis has also confirmed that differential treatment exists within gender. One of the weaknesses of past research has been the failure to consider disparity within gender. The present study has found that women and men are treated differently from others within the same gender as a result of varying legal statuses and

differences in the nature of their offending. This differential treatment within genders held true for both the analyses of stays and incarceration.

Differential treatment in the staying of charges within gender is attributed to the legal status of the accused and the victim and the nature of the offence. For both women and men, stays were more likely to be imposed when the victim was also charged. This implies that when offenders are involved in mutual confrontation, the charges are more likely to be stayed. Women with prior criminal records and charged with more than one offence were less likely to have their charges stayed compared to women with no prior criminal records and charged with only one offence. Men's cases were more likely to be stayed when they were charged with levels II or III assault or when they were charged with only one offence. This finding has been attributed to the impact of plea bargaining, which can not be measured by the data.

Differential stay rates within gender also occurred as a result of the victim-offender relationship. Both women and men were less likely to receive a stay of proceedings if the victim was a stranger compared to when the victim was a partner or ex-partner. Women were also less likely to receive a stay when they assaulted a police officer. On the other hand, men were much more likely to receive a stay when they assaulted family members as opposed to when they assaulted partners or ex-partners.

When custodial versus non-custodial sentences were examined, both women and men were handed the more serious disposition when charged with more serious offences. Men were also more likely to be treated harshly when they had prior criminal convictions. Women were granted more leniency when they were charged with only one charge (as opposed to two or more charges). Women who engaged in group-based violence were accorded harsher treatment compared to women who acted

alone. However, they were treated more leniently when their role in group-based violence was deemed secondary to that of their co-accused. Leniency was also accorded to women who used less serious forms of violence.

Overall, these findings indicate that differential treatment, both within and between genders, is due to many factors. This research has shown that women do receive more lenient treatment even when Legal, Social and Criminal Event Framework variables are controlled. They are more likely than men to receive stays of proceedings in their charges, and they are also more likely than men to receive non-custodial sentences. Men, on the other hand, are less likely to have their charges stayed and are more likely to receive sentences of incarceration. These findings suggest that paternalism in the criminal justice system does play a role. When all things are considered, women are treated less harshly than men. Thus, the Chivalry Thesis argument can not be discounted. While several independent variables also contribute to disparity in sentencing between gender, sex alone makes a significant impact. The status of being female directly contributes to a more lenient sentence.

The analysis, however has also shown that there is an intricate relationship between a number of variables. Several variables contribute to disparity in the processing of offenders through the justice system. Most notably, the importance of legal status variables is consistent throughout the analysis. In the processing of violent offenders through the criminal justice system, the court continues to place an emphasis on the legal histories of the accused, the current legal status of the accused and the legal status of the victim. This research has also confirmed that variables pertaining to an offender's social status also contribute to differential treatment. The social and economic marginalization of the poor and the favourable treatment extended to the

economically and socially advantaged is perpetuated by the courts in the processing of violent offenders. Finally, this study has also demonstrated that the qualitative nature of women's and men's offending has a significant impact on the criminal justice response. In sum, although legal characteristics remain important, the nature of the criminal event itself is not ignored by the courts. Adoption of the Criminal Event Framework, therefore, leads to the conclusion that while social and legal statuses are important factors in the processing of offenders, variables specific to the nature of the event also have an impact on the decision to stay charges or impose a sentence of incarceration.

LIMITATIONS

This research has enabled a better understanding of the differential treatment of women and men in the criminal justice system. While several of the findings have confirmed what is known in the literature (specifically, with regard to the importance placed on an offender's legal status in the criminal justice response), other findings relating to the nature of the criminal event itself have broadened the scope of sentencing research. Although the research has provided insight into the nature of women's and men's offending and their differential treatment by the criminal justice system, there are some limitations of the data that should be acknowledged.

Arguably, one of the greatest limitations of the research is its inability to control for an offender's pre-trial release status. An offender's pre-trial release status has been cited in the literature as an important Legal variable which significantly affects the severity of sentence (McLean & Burrows, 1998 in Saulter and Tubbs, 1993; and Kruttschnitt, 1984). Whether or not the accused received bail, was released on a

“promise to appear” or on his/her own recognizance has a direct impact upon disposition. Another Legal variable which has been deemed significant in the literature, and which these data cannot speak to, is the number of prior convictions of an accused. Although the data can control for prior convictions, they cannot control for the *number* of prior convictions. The data are also unable to properly address breaches in probation, parole or other orders specific to domestic violence (i.e. breach of a non-molestation order, protection order or prevention order). A dichotomous variable indicating a breach would have been beneficial to this analysis.

An analysis of offender’s Pre-Sentence Reports (PSRs) would also have contributed to this analysis. Although PSRs are not available for most offenders appearing before the courts, sentencing recommendations by the probation officer have been found to be significant in the prediction of the severity of an offender’s disposition (e.g. Kruttschnitt, 1985; and Frazier et al, 1983). In addition, the demeanour of the accused in court cannot be addressed with this type of quantitative research. It is unknown if the demeanour or appearance of the accused in court contributes to differential treatment. These types of in depth, qualitative analyses are not possible given the data set.

With specific relevance to cases which are stayed, it is not possible to measure the degree of control that the complainant is able to exert in the court outcome. Although the reasons for stays were documented (e.g. cross charging, mutual violence, unable to locate complainant, complainant refuses to testify, etc.), too many missing cases rendered a proper analysis impossible. Information on the violence used by the victim, the charging of the victim and the injuries incurred by the accused are well documented. However, the self-defense argument cannot be tested by these data.

Again, a dichotomous variable indicating whether the violence was used in self-defense would certainly contribute to a Criminal Event Framework analysis of gender and sentencing.

The data cannot speak to "abnormalities." For example, abnormalities in this sample are the attempted murders, manslaughters, murders and women's sexual assault cases. Although the media often portrays violent crime in terms of "abnormalities" (e.g. random acts of violence, gang activity, serial rapists and incomprehensible murders), conclusions from these data should be interpreted with caution as there are too few cases of major violence which occur.

Finally, it is difficult to reflect the impact of social policy changes using the Criminal Event Framework approach. For example, the Winnipeg Police Service implemented a Zero Tolerance Policy (for domestic violence) in July 1993. While the data certainly indicate a substantial number of domestic violence cases in the sample, and a large percentage of stays of proceedings (associated to charges relating to domestic violence), the Criminal Event Framework approach cannot account for these political changes on the nature and extent of crime. Future work using this approach will need to account for the impact of policy on police and prosecutorial work.

CONCLUDING REMARKS

The findings of this research are important for several reasons. First, since there has been so little research conducted on the sentencing of violent offenders, the present study has filled a gap in the existing literature. Second, given that the majority of sentencing studies have been conducted in the United States, the research has contributed to our knowledge of the ways in which gender disparity may feature in the

Canadian context. Third, while this study has confirmed findings of other research, examination of factors relating to the criminal event itself has uncovered some important variables directly correlated with stay rates and dispositions that have not been explored in previous research (such as those relating to the legal status of the victim). Finally, by offering the Criminal Event Framework as an alternative to understanding violent crime, it is hoped that this research prompts further study in the area of gender and crime.

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Appendix A

Severity Of Disposition Scale

1. **Acquittal/Discharge/Dismissal** (includes Dismissed for Want of Prosecution)
2. **Stay Of Proceedings** (may include conditions such as domestic violence counseling or a peace bond)
3. **Absolute/Conditional Discharge/Fine/CSW/Restitution** (includes conditional discharge in combination with probation and/or conditions such as community service work and includes fine or community service work or restitution alone)
4. **Suspended Sentence Plus Probation** (includes suspended in combination with probation and may include conditions such as community service work, restitution and fine)
5. **Incarceration** (includes a provincial or federal sentence of incarceration in combination with conditions; may also include time in custody)

Appendix B

Severity of Charge Scale

- 1. Level 1 Assaults**
 - Assault (level 1)
 - Assault police/peace officer
 - Assault - resist arrest
 - Utter threats
 - Administering a noxious substance
- 2. Level 2/Level 3 assaults**
 - Assault with a weapon/Assault cause bodily harm (Level 2)
 - Aggravated assault (Level 3)
 - Dangerous operation of a motor vehicle cause bodily harm
 - Forcible confinement/abduction/kidnap
 - Discharge firearm with intent
 - Choking to overcome resistance
- 3. Sexual Offences**
 - Sexual assault (Level 1)
 - Sexual assault with a weapon/threats to a third party/cause bodily harm (Level 2)
 - Aggravated sexual assault (Level 3)
 - Other sexual offences
- 4. Robbery**
 - Robbery
 - Attempt robbery
- 5. Attempt Murder/Manslaughter/Murder**
 - Attempt murder
 - Accessory after the fact
 - Manslaughter
 - Murder

Appendix C

Severity of Violence Used Scale

1. Minor Violence

- Sit on/restrain otherwise
- Blind-fold
- Push/shove/grab/elbow/pull/shake/wrestle
- Property damage/destruction
- Scratch/pinch/poke eye
- Pull/cut hair
- Twist arm/wrist
- Slap (face and body)
- Spray (with something)
- Force to remove clothing
- Expose one's self

2. Moderate Violence

- Sexual touching/forced kissing
- Shave pubic hair
- Urinate/rub semen on
- Tattoo body
- Bite
- Punch (once)
- Utter threats/threats with weapon
- Hit with/throw object
- Head-but
- Shove fingers down throat
- Sick dog on victim
- Burn

3. Major Violence

- Slam body/head into something
- Kick/knee
- Choke/strangle
- Carve into body
- Pass virus (i.e. chlamydia)
- Beat (repeat punching)
- Force to perform sexual acts
- Sexual penetration/rape
- Stab/slash
- Shoot

Appendix D

Severity of Injuries Incurred Scale

1. Minor Injuries

- Cuts/broken skin/scratches/bite marks
- Bruises/swelling/welts/redness
- Black eye/eye damage
- Sprains/soreness
- Loss of hair
- Spray-related burns

2. Moderate Injuries

- Broken bones/fractures
- Broken teeth
- Imbedded glass/object
- Burns
- Sexual violation

3. Major Injuries

- Gunshot wound
- Stab wound
- Slashes/lacerations
- Concussion
- Head injury
- Loss of consciousness
- Internal bleeding/organ damage
- Loss of limb/body part
- Coma
- Brain damage
- Paralysis
- Death

Appendix E

Binomial Logistic Regression Values

STAYS VS. CASES WHICH PROCEED BETWEEN GENDER

Variable	Significance	B
Female	.015	1.545
Male		1.000
Age	.251	1.011
Aboriginal	.600	0.913
Non-Aboriginal		1.000
Single	.439	1.156
Separated/Divorced	.613	0.881
Married/Common-law		1.000
Dependents	.315	2.207
No dependents		1.000
Employed	.149	1.314
Unemployed		1.000
Grade 8 or less	.887	1.059
Grade 9 or 10	.570	0.815
Grade 11 or 12	.943	0.975
Post-secondary		1.000
No Drugs/alcohol	.167	1.301
Drugs/alcohol		1.000
Co-accused	.886	0.877
No co-accused		1.000
One victim	.653	1.109
Two or more victims		1.000
Family member	.876	1.044
Friend/acquaintance	.503	0.859
Stranger	.000	0.354
Police	.009	0.060
Partner/ex-partners		1.000

Victim use violence	.248	1.281
No violence used by victim		1.000
Co-accused use violence	.338	2.434
No violence used by co-accused		1.000
Accused use minor violence	.370	1.269
Accused use moderate violence	.669	1.077
Accused use major violence		1.000
Accused use weapon	.386	1.192
No weapon used by accused		1.000
Victim incurred minor injury	.023	0.506
Victim incurred moderate injury	.114	1.462
Victim incurred major injury		1.000
Accused injured	.046	1.846
Accused not injured		1.000
Prior convictions	.002	0.559
No prior convictions		1.000
Levels II and III assault	.008	1.737
Sex offences	.311	1.673
Robbery	.854	0.932
Murder	.498	0.566
Level I assault		1.000
One charge	.000	2.388
Two or more charges		1.000
Victim charged	.000	3.363
Victim not charged		1.000

STAYS VS. CASES WHICH PROCEED
WITHIN GENDER (Women)

Variable	Significance	B
Age	1.90	1.021
Aboriginal	.838	1.058
Non-Aboriginal		1.000
Single	.835	1.061
Separated/Divorced	.805	0.908
Married/Common-law		1.000
Dependents	.536	0.851
No dependents		1.000
Employed	.133	1.682
Unemployed		1.000
Grade 8 or less	.485	1.566
Grade 9 or 10	.876	1.092
Grade 11 or 12	.496	1.451
Post-secondary		1.000
No Drugs/alcohol	.050	1.927
Drugs/alcohol		1.000
Co-accused	.744	1.143
No co-accused		1.000
One victim	.357	1.369
Two or more victims		1.000
Family member	.142	0.589
Friend/acquaintance	.071	0.539
Stranger	.000	0.196
Police	.029	0.067
Partner/ex-partners		1.000
Victim use violence	.251	1.532
No violence used by victim		1.000
Co-accused use violence	.169	5.443
No violence used by co-accused		1.000
Accused use minor violence	.608	1.237

Accused use moderate violence	.922	1.027
Accused use major violence		1.000
Accused use weapon	.632	1.188
No weapon used by accused		1.000
Victim incurred minor injury	.554	0.761
Victim incurred moderate injury	.720	1.134
Victim incurred major injury		1.000
Accused injured	.080	2.098
Accused not injured		1.000
Prior convictions	.003	0.452
No prior convictions		1.000
Levels II and III assault	.858	1.061
Sex offences	.804	1.442
Robbery	.096	0.360
Murder	.550	0.003
Level I assault		1.000
One charge	.073	2.199
Two or more charges		1.000
Victim charged	.073	2.199
Victim not charged		1.000

STAYS VS. CASES WHICH PROCEED
WITHIN GENDER (Men)

Variable	Significance	B
Age	.472	1.009
Aboriginal	.840	0.953
Non-Aboriginal		1.000
Single	.263	1.362
Separated/Divorced	.975	0.989
Married/Common-law		1.000
Dependents	.116	1.485
No dependents		1.000
Employed	.590	1.142
Unemployed		1.000
Grade 8 or less	.986	0.990
Grade 9 or 10	.583	0.762
Grade 11 or 12	.726	0.842
Post-secondary		1.000
No Drugs/alcohol	.942	0.982
Drugs/alcohol		1.000
Co-accused	.551	2.244
No co-accused		1.000
One victim	.941	0.975
Two or more victims		1.000
Family member	.027	3.207
Friend/acquaintance	.708	1.134
Stranger	.044	0.456
Police	.571	0.002
Partner/ex-partners		1.000
Victim use violence	.639	1.142
No violence used by victim		1.000
Co-accused use violence	.957	0.929
No violence used by co-accused		1.000
Accused use minor violence	.378	1.397

Accused use moderate violence	.781	1.070
Accused use major violence		1.000
Accused use weapon	.431	1.243
No weapon used by accused		1.000
Victim incurred minor injury	.040	0.397
Victim incurred moderate injury	.414	1.549
Victim incurred major injury		1.000
Accused injured	.653	1.267
Accused not injured		1.000
Prior convictions	.296	0.742
No prior convictions		1.000
Levels II and III assault	.001	2.563
Sex offences	.457	1.561
Robbery	.307	1.723
Murder	.635	1.584
Level I assault		1.000
One charge	.000	2.734
Two or more charges		1.000
Victim charged	.004	4.426
Victim not charged		1.000

INCARCERATION VS. NON-CUSTODIAL SENTENCES
BETWEEN GENDER

Variable	Significance	B
Female	.000	0.144
Male		1.000
Age	.495	0.939
Aboriginal	.226	1.400
Non-Aboriginal		1.000
Single	.210	0.720
Separated/Divorced	.113	1.666
Married/Common-law		1.000
Dependents	.075	0.607
No dependents		1.000
Unemployed	.024	2.122
Employed		1.000
Grade 8 or less	.026	0.073
Grade 9 or 10	.034	0.090
Grade 11 or 12	.022	0.074
Post-secondary		1.000
Drugs/alcohol	.239	1.452
No Drugs/alcohol		1.000
Co-accused	.024	8.319
No co-accused		1.000
One victim	.260	0.700
Two or more victims		1.000
Family member	.825	0.883
Friend/acquaintance	.342	0.707
Stranger	.206	1.623
Police	.333	2.127
Partner/ex-partners		1.000
Victim use violence	.984	0.994
No violence used by victim		1.000
Co-accused use violence	.042	0.116

No violence used by co-accused		1.000
Accused use minor violence	.416	0.675
Accused use moderate violence	.325	0.753
Accused use major violence		1.000
Accused use weapon	.241	0.696
No weapon used by accused		1.000
Victim incurred minor injury	.657	1.182
Victim incurred moderate injury	.526	0.707
Victim incurred major injury		1.000
Accused injured	.427	1.576
Accused not injured		1.000
Prior convictions	.000	4.238
No prior convictions		1.000
Levels II and III assault	.147	1.624
Sex offences	.005	7.415
Robbery	.000	12.059
Murder	.000	89.593
Level I assault		1.000
One charge	.007	0.460
Two or more charges		1.000
Victim charged	.386	0.552
Victim not charged		1.000

INCARCERATION VS. NON-CUSTODIAL SENTENCES
WITHIN GENDER (Women)

Variable	Significance	B
Age	.105	0.681
Aboriginal	.077	0.530
Non-Aboriginal		1.000
Single	.270	2.900
Separated/Divorced	.201	3.706
Married/Common-law		1.000
Dependents	.202	0.388
No dependents		1.000
Unemployed	.752	9292.285
Employed		1.000
Grade 8 or less	.849	0.000
Grade 9 or 10	.864	0.000
Grade 11 or 12	.838	0.000
Post-secondary		1.000
Drugs/alcohol	.078	8.357
No Drugs/alcohol		1.000
Co-accused	.013	79.921
No co-accused		1.000
One victim	.490	0.621
Two or more victims		1.000
Family member	.375	0.370
Friend/acquaintance	.712	0.715
Stranger	.437	2.222
Police	.618	0.276
Partner/ex-partners		1.000
Victim use violence	.594	0.648
No violence used by victim		1.000
Co-accused use violence	.043	0.021
No violence used by co-accused		1.000
Accused use minor violence	.041	0.080

Accused use moderate violence	.074	0.186
Accused use major violence		1.000
Accused use weapon	.893	0.892
No weapon used by accused		1.000
Victim incurred minor injury	.559	1.700
Victim incurred moderate injury	.673	1.694
Victim incurred major injury		1.000
Accused injured	.243	4.186
Accused not injured		1.000
Prior convictions	.357	2.684
No prior convictions		1.000
Levels II and III assault	.634	0.657
Sex offences	.611	3.494
Robbery	.023	8.595
Murder	.003	361.133
Level I assault		1.000
One charge	.046	0.227
Two or more charges		1.000
Victim charged	.584	2.119
Victim not charged		1.000

INCARCERATION VS. NON-CUSTODIAL SENTENCES
WITHIN GENDER (Men)

Variable	Significance	B
Age	.812	0.973
Aboriginal	.106	1.684
Non-Aboriginal		1.000
Single	.604	0.827
Separated/Divorced	.445	1.397
Married/Common-law		1.000
Dependents	.081	0.553
No dependents		1.000
Unemployed	.129	1.720
Employed		1.000
Grade 8 or less	.025	0.066
Grade 9 or 10	.024	0.076
Grade 11 or 12	.022	0.070
Post-secondary		1.000
Drugs/alcohol	.346	1.392
No Drugs/alcohol		1.000
Co-accused	.549	2.929
No co-accused		1.000
One victim	.743	0.873
Two or more victims		1.000
Family member	.350	2.439
Friend/acquaintance	.214	0.564
Stranger	.117	2.069
Police	.232	3.197
Partner/ex-partners		1.000
Victim use violence	.935	1.031
No violence used by victim		1.000
Co-accused use violence	.428	0.229
No violence used by co-accused		1.000
Accused use minor violence	.704	1.262

Accused use moderate violence	.888	1.048
Accused use major violence		1.000
Accused use weapon	.273	0.665
No weapon used by accused		1.000
Victim incurred minor injury	.889	0.933
Victim incurred moderate injury	.292	0.478
Victim incurred major injury		1.000
Accused injured	.549	1.637
Accused not injured		1.000
Prior convictions	.001	5.459
No prior convictions		1.000
Levels II and III assault	.081	1.984
Sex offences	.009	8.393
Robbery	.000	22.860
Murder	.463	12126.424
Level I assault		1.000
One charge	.061	0.524
Two or more charges		1.000
Victim charged	.282	0.354
Victim not charged		1.000