

CLASS AND GENDERED JUSTICE:
AN ANALYSIS OF PRESENTENCE REPORTS
IN THE CANADIAN CRIMINAL JUSTICE SYSTEM

BY

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This work is dedicated
to my daughter Deanna
who is a constant source
of strength and joy in my life.

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ABSTRACT

Using a socialist feminist analysis, this study examines the way in which the legal system is able to materially and ideologically support the infrastructure (i.e., the productive and reproductive relations) within a capitalist system. The specific focus of this thesis is the analysis of the role of court agents within the Canadian criminal justice system in the reproduction of class and gendered social relations. Presentence reports are used to develop scales to measure: 1. **REPRODUCTIVE** (i.e.; procreation, socialization and maintenance of children); 2. **PRODUCTIVE** (i.e.; employment and educational status); 3. **SOCIAL** (including such issues as family relationships, drug and alcohol involvement and community status); and, 4. **LEGAL** (including such issues as prior involvement with the legal system and offender remorse) for each offender that was included in the study. The scores for each scale are regressed against a score on the dependent variable which is the **DISPOSITION** that is recommended to the court by the probation officer. The findings indicate that **REPRODUCTION** for females is the strongest predictor of recommended disposition. Conversely, for males, **PRODUCTION** is the strongest predictor of recommended disposition.

INTRODUCTION

While research must ultimately critique capitalist wage labour, immediate areas of investigation for a "feminist" criminology include those legal mechanisms, a both patriarchal and bourgeois liberal, which over time reinforce women's sole responsibility for unpaid domestic and reproductive labour (Currie, 1986:242).

This research will examine the way in which the legal system is able to materially and ideologically support the infrastructure (i.e., the productive and reproductive relations) within a capitalist system. The specific focus of this thesis is the analysis of the role of court agents within the Canadian criminal justice system in the reproduction of class and gendered social relations. While the part played by the Canadian courts in the oppression and social control of women has been relatively under analysed, there has been extensive evidence from studies in Great Britain (Carlen and Powell, 1979; Carlen and Collison, 1980; Carlen and Worrall, 1987; Eaton, 1985, 1986, 1987; Edwards, 1985; and Smart, 1982a); and in the United States, (Chesney-Lind, 1973, 1977, 1978a, 1978b, 1980, 1981, 1989; Daly, 1987a, 1987b, 1989a; Bickle and Peterson, 1991; Klein and Kress, 1976; Kruttschnitt, 1980-81; 1982b, 1984, 1985; Parisi, 1982 and Temin, 1979) to establish that the court systems in these countries operate under the ideology of "individualized" or "family-based" justice.¹

In Canada, an examination of incarceration statistics for women points to the disproportional representation of those women who are socially, economically and/or racially marginalized. For example, while Aboriginal women make up only 2% of the

national population, Statistics Canada (1989-1990) reports that 29% of the national female inmate population is native, while in Manitoba the numbers rise to 66%. A profile of female inmates in Saskatchewan indicated that 83% were Aboriginal (Hatch and Faith, 1989). Carol Laprairie (1987) also documents the "disproportionately heavy involvement with the criminal justice system on the part of Native women and Native female youth." Similarly, other researchers have found that the majority of female offenders in Canadian prisons are "poor, uneducated members of minority groups who are lacking in marketable skills, dependent on welfare, alcohol and men, and are single parents who are solely responsible for child care" (Ross and Fabiano, 1985:4 and Johnson, 1986). In terms of young people in conflict with the law, Gloria Geller postulates that the "sexuality of young women who have come before the court . . . has been identified as a significant reason, indeed the major reason, for which they have entered the juvenile justice system (1987:18)." She points to the fact that

...although they reported significant amounts of Criminal Code violations, girls were much less likely than boys to be charged with these offences. And while they reported equal amounts of status offences as boys, girls were twice as likely to be charged for them (1987:115).

In a statistical profile of female offenders, Alison Hatch and Karlene Faith (1989:449) conclude that while there is no legal justification for gender disparities in sentencing, there is reason to believe that extralegal factors play a major role in the sentencing decision.² In his analysis of the class-based discriminatory sentencing practices in Canadian courts, Michael Mandel (1987) points to the wide latitude given to the judiciary which, in turn, results in a "severe social skew in prison." While Mandel's work focuses on the effects of class relations or social structure on criminal justice, this study utilizes a

socialist feminist analysis in an attempt to further Mandel's work by examining gender- and class- based discriminatory practices within the court system³.

Meda Chesney-Lind (1989:19) deplores "the attempts to adapt male-oriented theory to explain female conformity and deviance" and argues that what is needed is a feminist model of female delinquency in order to consider "the role of the contemporary justice system in the maintenance of modern patriarchy" (1986:78). Susan Boyd and Elizabeth Sheehy (1986) maintain that a socialist feminist theory offers the most powerful interpretation of the role of the law in reinforcing women's economic subordination and, as such would be the model most effective in determining whether extralegal factors such as gender, race, sexual preference and marital status affect the processing of women and men in the criminal justice system. Amy Bartholomew and Susan Boyd (1989:213) insist that a developed political economy of law must resolve how "law and legal institutions mediate and reconstitute, or 'over-determine' relations of power within civil society and the relations of production."

Conventional accounts of the differential treatment applied to females in the courts have been inattentive to the realities of a capitalist system; that is, they have not attempted to make the linkages from personal relations to the larger social and economic necessities of a capitalist society⁴. In their consideration of the political economy of law, Bartholomew and Boyd maintain that "theorizing adjudication as a terrain of struggle, as well as locating it within the economic and political context, may provide a fruitful direction for future analyses of court decisions . . . " (1989:223).

By adopting a socialist feminist theoretical perspective, it is argued here that there are "ideal" roles for men and women which are given serious consideration by the

agents of the criminal justice system. It is also argued that through a process of “individualized” and “familied justice”, ultimately it is women who are judged as to the suitability as **reproducers**, and men as to their adequacy as **producers** in a capitalist system.

Chapter One provides a review of the conventional explanations for the differential treatment of women in the court system. **Chapter Two** provides a socialist feminist understanding of the problem of gender discrimination. **Chapter Three** focuses on the role of ideology in perpetuating the oppression of women. **Chapter Four** centres on judicial sentencing practices in the Canadian context, and **Chapter Five** introduces the role of the probation officer (PO) in the sentencing process. **Chapter Six** describes the methodology and presents the hypotheses of this study. **Chapter Seven** discusses the quantitative findings and **Chapter Eight** provides conclusions and policy implications.

CHAPTER ONE

Accounting for Gender Bias in the Criminal Justice System

Criminologists who have examined the effects of gender on criminal charge reduction and concluded that there is no evidence of differential treatment in the courts (Hagan, 1974, 1978; Bishop and Frazier, 1984) have been criticized for their empirical, theoretical and methodological inaccuracies (Taylor, Chappell and Brickey, 1980).

Other scholars have recognized the differential treatment of women in the criminal justice system [as middle-class judges (who for the most part share a common value system) sit in judgement on both female and male working class defendants (Eaton, 1983:385)] and have utilized a number of perspectives to interpret the phenomenon of gender-based differential treatment.

1. Paternalism, Chivalry and/or Chauvinism

Initial attempts by criminologists to account for sexism in the criminal justice system have commonly adopted an ahistorical and personalized approach, focussing on the individualized response of court agents to gender issues. This approach to the problematic of sexism in the criminal justice system sees the unit of analysis as the individual court officials. The conclusion has been made that discriminatory sentencing practices are based upon either a paternalistic or a chivalrous response (Anderson, 1976; Armstrong, 1977; Parisi, 1982 and Vischer, 1983) or is a chauvinistic reaction (Nagel and Hagan, 1982) to females within a male dominated court system⁵. However, if these interpretations were sufficient to account for the biases evident in the system, it would be legitimate to expect to see a transformation of sexist practices once there were

changes in the numbers of professional women working within the system. However, in a study that sought to examine the influence of the increasing participation of women into the criminal justice system as deviance processing agents, Candace Kruttschnitt (1985) found that the influx of women into the criminal justice system made little difference in the gendered nature of the court's response to female offenders. Gruhl et al. (1981) looked at the sentencing practices of male and female judges and found that judges did not show significant differences in their conviction and sentencing practices with the exception that female judges were twice as likely to sentence females to prison as male judges were.

As far as the notion of chivalry is concerned, there is little available data to confirm the chivalry hypothesis. Moreover, Meda Chesney-Lind (1978b:208) notes that males are jailed for more serious offences, while women are incarcerated for non violent and relatively less serious property and deportment offences.

Instead, Kruttschnitt concludes that there appears to be a more systemic motivation for social control which is inherent in the practice of differential treatment for men and women. Kruttschnitt and McCarthy (1985) examined whether and how a woman's offence of conviction or prior criminal record effects her criminal court sentence. They concluded that there was no evidence to support this relationship.

2. "Respectability" and "Sex-Appropriateness"

A second approach shifts the unit of analysis from court officials to the character of female offenders, but still remains at an individual level. Kruttschnitt (1982b:226) concludes that the degree of a woman's respectability is a great factor in the sanctioning

of females as is their previous involvement with the law. Within this framework, women who come before the justice system with a "reputation" or women who bring with them "nonlegal indicators" of a lack of "respectability" will invoke more severe dispositions than their "respectable" counterparts. These "nonlegal indicators" can include: 1) prior criminal record; 2) previous drug or alcohol abuse; 3) record of employment; 4) history of psychiatric treatment; and/or 5) the respectability of the defendant's associates.

Within this tradition, it has also been hypothesized that those women who have violated their sex-appropriate role (Chesney-Lind, 1973:54; Smart, 1976:72) may expect more severe sentencing. Bernstein et al. (1977) conjecture that where the offence is "unfeminine" in nature, the reaction from the courts is much stronger and especially so for the nonconforming woman (that is, nonmarried or homosexual). Frances Heidensohn (1985:51) asserts that an "individualization" approach⁶ is more likely to be applied to women than to men because "women are deemed to be twice deviant, having flouted two sets of social rules" and may therefore be the subject of increasing sanctions.

Motherhood *per se* does not exempt a woman from severe sanctioning. Carlen (1983) reports that court agents are reluctant to imprison "good mothers." From their research, Julia Brophy and Carol Smart (1981:12) explain that "it is not motherhood in isolation that is revered by the courts but motherhood within a family structure." Chesney-Lind (1978b) points out that if the defendant can prove conformity to a role which requires her to be nonviolent and subservient toward men, she is less likely to be incarcerated. In keeping with this analysis, Charles Frazier et al (1983:307) note that

The female role tends to be tied to the family; the male role, with job or career. It might . . . be predicted . . . that the closer females approximate traditional female roles (by being married, having children, and not employed outside the home), the more lenient will be their dispositions in criminal courts.

Given this premise, it can be expected that single or lesbian mothers will not experience the same leniency as married or heterosexual mothers in pleas for mitigation to the courts. To take this proposition a step further, mothers who are situated in family arrangements (such as aboriginal or immigrant families which differ from the "accepted" norm of family in a conventional value system) may not receive the leniency afforded those women in traditional North American family systems.

3. Passivity and Dependency Themes

A third explanatory theme switches the units of analysis from individual roles to social relations or how actors play out their roles, albeit at a *micro* level. These accounts are based on the assumption that women have been socialized to be non-aggressive and dependent, more specifically, economically dependent on males. For example, Kruttschnitt (1982b:) hypothesizes that the legal system does not exert as much control over women who appear to have daily social control such as that entailed by economic dependency or a spouse or family to provide control. From this perspective comes the assertion that the more economically dependent a woman is upon a male "breadwinner", the less severe will be her sanction.

For the majority of women, economic well-being and, in some cases, their very subsistence is dependent upon their position in a nuclear family. According to a dependency thesis, it would appear that women in a traditional nuclear family (where the

male is the sole wage-earner), will be less vulnerable to formal social control. It is clear that judges do consider dependency as an issue in their sanctioning of females (Eaton, 1983, 1985, 1986, 1987; Farrington and Morris, 1983; and Nagel, 1981). Eaton (1987:106) examines cases where sentencing decisions have relied upon economic dependency as a factor and concludes that the model that is used when dealing with both men and women is one that sees the male as the "breadwinner" and the "dependent woman, responsible for child care and domestic labour," and further, that "these roles are used in pleas of mitigation and reported in social inquiry reports" ⁷. Moreover, Eaton insists that this model is based on the sexual division of labour which while essential for the reproduction of a capitalist society, nevertheless reinforces and perpetuates the subordination of women (1987:397). To date there has been no research detailing sentencing practices given the situation where the female is the family breadwinner and the male is the dependent. Another uncharted area of exploration is the situation where the breadwinner is a single mother.

4. Individualized or "Familied" Justice

A fourth focus for criminologists has been the family and the unit of analysis is further broadened to include familial relations (rather than just spousal relations). Kathleen Daly (1989b) argues that the gender biases evident in judicial decisions may be more indicative of larger social concerns about the preservation of the nuclear family rather than the result of overt discrimination or economic dependency. Mary Eaton (1986) alleges that the criminal justice system is based on "familied justice". According to her research, these indictments are borne out by the fact that men and women who have no

family responsibilities are treated alike, but more severely than those who do have family obligations⁸. A conventional lifestyle is perceived by the courts as membership in a family unit which in turn provides evidence of adequate socialization (Eaton, 1983:389). Further, Eaton maintains that pleas of mitigation for both men and women are based upon their family circumstances; she notes that "[t]he idea that a spouse will act as a guardian in preventing repeat offending was suggested in cases involving both men and women" (p. 391). Eaton explains that the pattern of "familied-based" justice serves the needs of capitalism by maintaining and reproducing the nuclear family. Thus, according to this explanatory model, it is not only men's role in the productive system which will affect their sentencing but also their role in the reproductive sphere.

Dorie Klein and June Kress (1976:37) point out that the very "structure of the family itself is legitimated by the ideology of sexism, which assures us that the roles filled by women are their 'natural ones'". In an inquiry into the judicial expectations of the behaviour of men and women, Eaton (1987:100) ventures that:

Pleas of mitigation invoke a consensual social world in which the family is the basic unit, a privileged unit and the touchstone of normality. Those whose lives conform to this pattern can more easily refute the label "criminal" since membership in a family is recognised to involve a degree of social control.

Family circumstance (one component of the principles of individualized justice) is used as a mitigating factor for both males and females, but Edwards (1985) maintains that the adherence to the principles of individualized justice is much more apparent for women than for men. Edwards defines individualized sentencing as "that of arriving at the most suitable sentence for a particular defendant (p. 188)" and she claims that this

practice has been facilitated by the advent of the social inquiry report (in Canada, the presentence report).

Similarly, Eaton (1987:102) presents case histories which demonstrate that when the choice for the judiciary is between the formal controls of the prison system and the informal controls of the community, or family, men and women in more traditional families were much less likely to be held in custody. It was clear that judges do respond to the role of social control applied by the accepted model of family (a male breadwinner and dependents) but not found in other family forms (for example, single mother and children).

5. Social and Economic Costs

The fifth explanatory theme again extends the units of analysis - to that of capitalist relations of **production**. Nicole Rafter and Elena Natalizia (1981) conclude that the law reproduces the existing moral code in any society. Within a capitalist system, this would call for the relegation of women to particular positions within the productive sphere which, in turn, sustain the economic well-being of that society.

Another theme within this context is the cost to the state in terms of social control. Conflict theorists regard the criminal justice system as a "process of differential 'criminalization', guided by group interests, and prejudicially based on personal, extra-legal attributes" (Hagan, 1979). Kathleen Daly (1987a) provides evidence for the mitigating effects of extra-legal factors such as family circumstances that were found in both the pretrial release and noncarceral sentencing decisions. She relates these effects to the social costs of punishment which are the "negative consequences to the

state of imposing criminal justice sanctions, especially jail time, on defendants" (p. 153). Social costs for Daly are the "breaking up of families" or the "punishing of innocent family members" by jailing men and women. In interviews with court officials, Daly (p. 156) determined that higher social costs are attached to the removal of familial women than familial men. In a more recent investigation into the intersections of race, ethnicity, gender and family in criminal court decisions, Daly (1989b) again interviewed court officials and found that differential treatment was justified by the offender's ties and responsibilities for others. The court officials' belief was that those offenders who had the responsibility to support or care for others deserved more lenient treatment than those who were not *and* they believed that the familial women deserved even greater leniency than the familial men (p. 138). As well as considering the "social costs", financial costs must certainly play a role in considering incarceration for a familial woman. Meg Luxton (1990:14) speaks of the "sandwich generation" with reference to the fact that, for many Canadian women, it is not only child care but also the additional responsibility of caring for elder family members that rests most solidly on the shoulders of women. It is certainly true that where family members are able to provide care for the elderly, a significant financial burden is lifted from the state.

Gayle Bickle and Ruth Peterson (1991) further the exploration of the effects of family status on sentencing by including such measures as marital status, the presence and support of dependents, the defendant's source of economic support, and the offender's living arrangements. While their addition of these factors provides richness to the data around the relevance of family status in sentence determination, they do not

address the reproduction/production dynamic which is essential to the sustainment of a capitalist society.

In his examination of sex-based discretionary practices in the courts, Steffensmeier (1982) found that there was differential treatment given to women but he makes sense of the differences from a power/control perspective. He charges that

Male dominance in occupational, educational, and political institutions is not served . . . by putting women in jail. Rather, the prime structural mainstay of male dominance lies in the continued assignment of females to the home and the nurturant, homemaker role - specifically, in rearing children, emotionally caring for men and generally acting as softening agents in a harsh competitive society (p. 301).

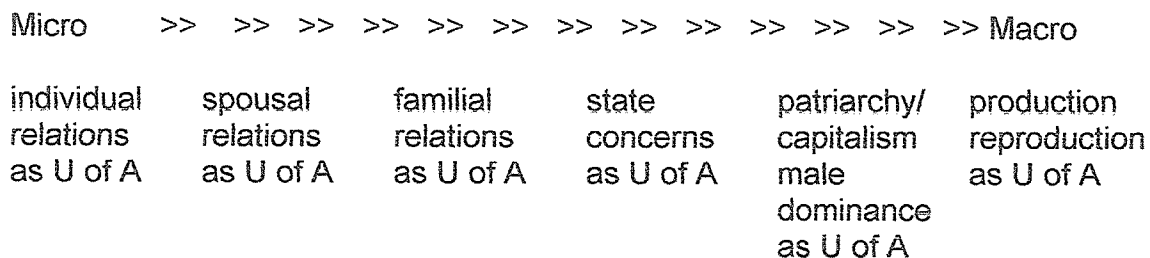
6. The Missing Link - Socialist Feminist Theory

James Inverarity (1983) has pointed to the difficulties associated with examining sentencing biases without a clear theoretical perspective. Explanations for the differential treatment of women in the criminal justice system can be located along a continuum (see Figure 1).

Figure One

A Continuum of Explanations for the Differential Treatment
of Women in the Criminal Justice System

Based on Units of Analysis (U of A)



Beginning at a micro level of analysis, individual court officials and female offenders have been the units of analysis. Proceeding along the continuum, spousal relations and family affiliations are the units of analysis. Moving toward a more macro understanding, state concerns about the costs of social control have been contemplated. From a radical feminist perspective, concerns around male dominance have been articulated. What is lacking is a macro political-economic approach to "gendered justice". The missing approach can be provided by utilizing a socialist feminist analysis which specifically focuses on the dynamic of production and reproduction within capitalist relations of production. Some of the more traditional explanations of the relationship between gender and the law are valuable to make sense of how and when the criminal justice system is called upon to reinforce informal social control mechanisms (familial patriarchy) and to clarify how and when the formal mechanisms of social control (social patriarchy) are considered necessary to be enlisted. From the research conducted to date, it is clear that the more a woman adheres to the "appropriate" female role and the more ensconced she is in the traditional nurturing role, the less likely it is that formal social control will be seen as necessary. It is argued that these roles are precisely what constitutes a suitable **reproducer**. The following chapter will consider a socialist feminist understanding of gender differentiation.

CHAPTER TWO

SOCIALIST FEMINIST THEORY - THE PRODUCTION/REPRODUCTION DYNAMIC

Within a capitalist mode of production, which is ultimately reliant upon the continued reproduction of well-socialized labourers, the task of procreating, maintaining and socializing this future generation has been largely the responsibility of the female (Eisenstein, 1979; Ursel, 1984, 1986, 1992). Historically, in the competitive phase of capitalism, familial patriarchy was the site of social control, governing and delineating the appropriate role for women within society. Jane Ursel (1984) maintains that familial patriarchy "is ideally suited to the needs of class societies in which the production process is decentralized and labour intensive" (p. 277). The transition from an agrarian to an industrial society saw a reorganization of productive relations and Ursel (1992) maintains that it also involved a restructuring of reproductive because old rules of patriarchal control became obsolete and costly to the state, as well as to women.

With the advent of monopoly capitalism and the concomitant centralization of the labour process, the state has increasingly become the locus for the control of reproduction, giving way to social patriarchy. Social patriarchy does not necessarily replace familial patriarchy, but the state will instead attempt to reinforce social order (Ursel, 1984:281). It is for this reason that a feminist criminology must challenge traditional liberal assumptions of political neutrality within state institutions such as the criminal justice system to determine whether gender biases *affect* or are *affected by* the dialectic of production and reproduction.

The meaning of patriarchy has been the focus of substantial controversy among feminist theorists⁹. Within the context of this paper, patriarchy will be understood as a "particular mode of organizing a fundamental dynamic of society (that is, reproduction which involves three processes: procreation, socialization and daily maintenance)" and further, that "its rule permeates all other institutions and policies of society" (Ursel, 1984:270). Because patriarchy is a dynamic set of organizational relations, relational processes at a concrete level of analysis will be examined in order to recognize how gender differences can become gender inequalities. It is also necessary to determine where and when familial patriarchy (where the patriarch is the major agent of social control) instead of social patriarchy (where state agents of the criminal justice system assume the patriarchal role) is called upon to ameliorate social deviance.

THE CONTRIBUTIONS OF SOCIALIST FEMINISTS

Socialist feminists have prosaically chosen a dual model to examine the roots of inequality - that of the exploitation of women in the public realm and the oppression of women in the private domain. Zillah Eisenstein (1979) provides an evaluation of the socialist feminist synthesis of Marxian and radical feminist theory. The Marxian methodology of historical and dialectical materialism (which underscores exploitation in the productive arena) is taken as the thesis. A radical feminist notion of patriarchy (which underscore oppression in the reproductive arena) is used as the antithesis.

Dissatisfied with the oversimplified understanding of patriarchy from a radical perspective, Bonnie Fox (1988) argues that radical feminists have been culpable of a reductionist treatment of patriarchy by ignoring or trivializing **social and economic**

gender power differentials. The result is an "implied essentialist explanation: an innate desire for power is responsible for male dominance" (1988:165). Fox faults Millet for reducing social structure to the notion that "males rule females" and consequently charges that in this formulation, "social structure becomes a constructed aggregate of individual wills" (1988:165). Equally dissatisfied with a Marxist treatment of the "woman question", Eisenstein (1979) insists that an inquiry into women's oppression must consider both **sexual** and **economic** material conditions. She explains that, for socialist feminists, relations of production cannot be understood in isolation from relations of reproduction. Socialist feminists see that oppression (which is the economic reality of capitalist class relations) and exploitation (which is how women and minorities are defined within patriarchal relations¹⁰) are inextricably intertwined and have synthesized a standpoint which addresses the duality of exploitation/oppression contending that it is this phenomenon that needs to be addressed. The duality is referred to as capitalist/patriarchy.

Juxtaposed to a liberal/positivist orientation¹¹ - which sees women's oppression as unjust discrimination and sees individuals as isolated and unconnected - is the theoretical position of socialist feminists who envision individuals existing within the dynamic of production and reproduction. Critical of the liberal conception of individualism, socialist feminists have attempted to merge the Marxist theoretical position with that of the radical feminist.

Earlier Marxist formulations of the relationship between patriarchy and capitalism, or of production and reproduction, have suffered from what Catharine MacKinnon (1989)

has characterized as one of three approaches.¹² Critical of these initial attempts at synthesis, she charges that, while contemporary Marxists have sought a synthesis with feminism, what they have accomplished is at best a hybrid. In an attempt to reconcile the difficulties that have been encountered in previous efforts at a synthesis - such as falling prey to the danger of equating sex with class or subordinating feminism to Marxism - socialist feminists have located both production and reproduction in the economic base and by so doing, have made it possible to examine the economic and political implications of the dialectic of production and reproduction.

Marilyn Waring (1988) concurs with the importance of paralleling production and reproduction and charges that, while political, religious and military leaders claim that the future of the nation is dependent upon its children, women have become invisible as the reproducers of that future. She concludes that the wealth of a nation is also dependent upon the control of who reproduces that nation or who has control of reproduction.

But what value is a unit of production which cannot guarantee its continuous and regular reproduction? As a means of reproduction, woman is irreplaceable wealth. Reproducing the system depends on her. Gold, cloth, ivory, and cattle may be valuable, but they are only able to produce and reproduce wealth in the hands of progeny. Control derives ultimately not from the possession of wealth, but the control of reproduction. In terms of value, reproduction of the human species is either the whore, debased, of no worth, or the virgin on the pedestal, valued beyond wealth (p.28).

Bonnie Fox (1989) argues that "the marginalization of gender produces poor social theory" and she provides an historical account of the importance of women in Canadian political economy in such staple industries as farming and fishing which have been the backbone of Canadian economy. Stressing the significance of women's

contribution to farming, Fox notes the importance of the reproductive work done by farm wives because family farms are reliant on recruiting their labour force from their own ranks (p. 152). Fox goes on to argue that women's labour in the fur trade, the inshore fisheries and family farming has subsidized the industrial revolution by making possible the production of surplus value that is intrinsic to economic development (p.154).

Isabella Bakker (1989) examines the social reproduction of gender relations within the political economy and suggests that because labour power cannot be produced as a commodity proper, it must be reproduced within the household on a daily and on a generational basis (p. 109).

An article in the Globe and Mail (June 19, 1992) indicates that in 1986, unpaid household work alone was calculated to be worth 200 billion dollars to the nation's economy. Further, it is noted that:

... the value of household labour equals an estimated 32 to 39 percent of the gross domestic product - the value of all goods and services produced in the country . . . The study shows that the time spent on housework almost exactly matched time doing paid work - about 20.7 billion hours in the home and 21.2 billion hours on the job.

Waring delineates a number of facets of reproduction in an economic context - 1) biological reproduction; 2) the reproduction of the labour force; 3) reproduction of the relations of production; 4) reproduction of the relations of reproduction; and, 5) reproduction of the social relations between men and women. Within this final category, Waring includes the religious, **legal**, and cultural beliefs and practices that define women as the property of men. By applying a socialist feminist theoretical framework - which is based on political economy and explains women's exploitation/oppression from

a co-determinative system of production and reproduction - to the exploration of social organizations, it is possible to consider the extent to which existing social relations are recognized, legitimated, sanctified and perpetuated. So, for example, it is possible to examine whether the criminal justice system extends its usual repressive role to one of the legitimization of the liberal-bourgeois hegemonic notion of the "suitable roles" (reproduction for females in a capitalist society), and thereby assists in the control of any or all aspects of reproduction.

Allison Jaggar (1983) maintains that the major contribution of socialist feminism is the "recognition that the differences between women and men are not pre-social givens, but rather are socially constructed and therefore socially alterable" (p.303). This proposition directs feminist scholars to the institutions in society which reinforce and perpetuate women's subordination.

The premise of this thesis is that women's perceived value is as a reproducer rather than as producer in the capitalist system. Because this perception is perpetuated through liberal bourgeois ideology in all superstructural institutions, it is imperative that we examine the ways in which this ideology has been reproduced in a capitalist society. Fox warrants that "(i)t is the production of gendered subjectivity, and the gendered/subjectivity/ideology itself to which 'patriarchy' can be seen to refer" (1988:177).

Ursel (1986) argues that state intervention has first disintegrated familial patriarchy, and then has taken on the role of the male's *legal* authority over women and children. Daiva Stasilius (1988) concurs with Ursel's assessment and further concludes that "in juggling its contradictory imperatives, the state replaces men in their direct

control over women: a system of *private* or *familial patriarchy* has given way in the 20th century to *public* or *social patriarchy*" (p.235).

Institutions are replete with ideological beliefs about the suitable roles for men and women in a capitalist society. To understand how ideologies become taken for granted in everyday reality, and how these ideologies continue to be legitimated and reproduced, it is useful to turn to Antonio Gramsci (1983) and his focus on "idea systems". Gramsci introduced the idea of hegemony as "ideological predominance of bourgeois values and norms over the subordinate classes" (Carnoy: 1984).¹³ Feminists have turned their attention to the formation and proliferation of dominant ideologies. Sandra Morgan (1990:283) details the contributions which socialist feminism has made to the analysis of ideologies:

- 1) The provision of frameworks for the analysis of the relationship of ideology, consciousness, and historical conditions which focus on the process of consciousness formation and change;
- 2) A focus on the analysis of the specificity of class and gender consciousness; and
- 3) Theories of consciousness that take into account the historical/material and psychological/unconscious forces shaping consciousness and political action.

In combination with a Gramscian understanding of the role of ideology in human action, a socialist feminist sensitivity to the issues of class and gender will add to the investigation of discrimination in the Canadian criminal justice system.

CHAPTER THREE

1. Gramsci's Hegemony and the Preservation of Patriarchy

Basing his theory on a Marxist model, Antonio Gramsci accentuates the capacity of state institutions - which he situates in the superstructure - to maintain and uphold the dominant liberal-bourgeois ideology, to reproduce the relations of production and to prevent the formation of class consciousness. Gramsci attributes part of the function of promoting a single (bourgeois) conception of reality to the state, and therefore, gives it a more expansive part to play in perpetuating class relations in his theoretical model.

Stressing the role of hegemony and making it a central feature in his analysis of the capitalist state, Gramsci (1983) advances that

If every State tends to create and maintain a certain type of civilization and of citizen (and hence of collective life and of individual relations), and to eliminate certain customs and attitudes and to disseminate others, then the Law will be its instrument for this purpose (together with the school system, and other institutions and activities) (p. 246).¹⁴

In accordance with Gramsci, Colin Sumner (1979) concludes that the criminal justice system is "one of several ideological forms which combine to form and reproduce the ideological kernel of class hegemony" (p. 9). Janet Rifkin (1982) avers that "law is a crucial, substantial and ideological mechanism which updated pre-existing patriarchal order to meet the needs of emerging capitalist interests" (p. 301). Because the capitalist system depends upon a continuous supply of labourers and because the function of reproduction has always been relegated to the female, gender roles are reinforced in much the same manner as class relations in a capitalist mode of production. The law exhibits a liberal-bourgeois standard which develops into an instrument of social control

over women and a means of preserving the status quo (Rafter and Natalizia, 1981:83) and results in the relegation of women to a particular function, that of reproduction. Yet it is obvious that women have not been solely relegated to the reproductive sphere, given their increasing numbers in the labour force. It is argued that the assignment of women to the reproductive arena is more ideological than fact.

A socialist feminist model, which is based on a structural representation of the state, will be used as a starting point to argue that a co-determinative model of the relationship of production and reproduction is required to more fully appreciate the interplay of political and economic factors to determine why men and women are treated disparately in society in general and, more specifically, in the criminal justice system. It is important to determine how the state is able to reinforce the ideology of females as singularly responsible for reproduction and males as the more appropriate productive members in society. Critics of the structuralist perspective point to its tendency to regard all state action as contributing to the cohesion and maintenance of capitalist society and its one-sided treatment of class struggle (Stasalisus, 1988). For example, Esping-Andersen et al. (1976) insist that the main problem with the structuralist approach is its inability to explain class action. "Class located individuals respond to the stimuli born out of systemic logic, rather than act on the basis of self-conscious political practice" (p.186).

This thesis will therefore attempt to go beyond the economic determinism that is inherent in structuralist interpretations by arguing that it is the class consciousness rooted in *status quo* ideology reproduced through human agency which also accounts for the proliferation of gender discrimination in the Canadian criminal justice system.

2. Who Will Be the Reproducers?

If Women Counted is a feminist analysis of world economics in which Marilyn Waring (1988) equates the politics of reproduction to the "politics of enslavement".

Elaborating on this declaration, she quotes American feminists Hammer and Allen:

The reality is that men live in harmony with women by subordinating them. Control is generally exercised over women's sexual and reproductive capacities through customs that determine when and how we may have children . . . In our society our sexuality is often devalued and denied. An ideology justifying the general devaluation of women is essential if material exploitation is to succeed; it lays the basis for adherence to social customs and rules that enable men successfully to exercise individual and collective power and authority over women (p. 200).

Waring asserts that world economics has made human reproduction invisible as a form of production. She also points out that reproduction has a boundary which

... is the categorization, and subsequent institutionalization, of who does (and doesn't) and/or should (or shouldn't) reproduce. It is distinguished and characterized in the oppressions of ageism, classism, racism, "development", colonialization, neocolonialization, religious fundamentalism, and homophobia (p. 189).

According to Waring's formulation, there are women who lie outside the "accepted" reproductive boundary and she categorizes those women as:

1. Prepubescent people who are viewed as a long term investment only and old people, particularly menopausal women because they are postreproductive.
2. Celibate persons who, unless living in a context demanding celibacy (i.e., religious or, in most cultures, the state of virginity for women or the state of widowhood), are otherwise repressed, sick or "weird".
3. Any peoples perceived as threatening because of the combination of their poverty and/or enslavement, their capacity for revolt and their number (that is, entire peoples - largely Third World - who are forced outside the reproductive boundary toward/into extinction through forced sterilization, coercive population programs, deliberate destabilization of a region to encourage death by starvation or war or refugee status).

4. Heterosexual women who demand reproductive freedom - through contraception and abortion rights. (This is threatening because it is, in effect, workers' control over their labour and because it makes it possible for a woman to cross the reproduction boundary at will, thus making the boundary, as it were disappear).
5. Same sex lovers, but especially lesbian women, who are seen as foresaking their womanly reproductive function ("barren lesbians"). This why lesbian mothers in choosing fertilization - whether they become mothers pre- or post- lesbianism - are "privileged", in the sense of "heterosexual privilege". They have crossed the reproduction boundary to the inside; they have contributed a "product" and thus have reproductive validity (at least that taken-for granted invisible "validity" shared by all women who reproduce biologically). However, they have conceived, they are in this particular, no longer threatening to the patriarchy. They are now "under control" (p. 204-205.)

Those women who have dared to challenge the status quo by attempting to make personal choices regarding procreation (for example, pro-choice supporters) or those who have "exploited" sexuality for personal monetary gains (for example, prostitutes), challenge the ideology of the nuclear family. Within this framework, it can be expected that women who fall within the acceptable reproductive boundary of a capitalist society are those who will be less vulnerable to formal social control. Similarly, those women who are more susceptible to social control will be those who have, in some way, been perceived by the judiciary as having violated the liberal-bourgeois conception of who is the more appropriate reproducer of the next generation.

In his discussion of the "spousal exception" clause in the principle and practice of rape laws, Steven Box (1985) points out:

The legal principle of 'exclusion' has even wider ramifications in practice. The view of women as sexual servants, contracted willingly to serve men, gets extended beyond wives to include a whole category of 'sexually worthless' women - prostitutes, whores, drug addicts, alcoholics, sexually experienced, and divorced - who because they lack 'respectability' are considered to have no worthwhile reason for not consenting to men and therefore do not deserve legal protection ... (p. 122).

The same categorization of women is precisely the measuring stick to determine whether women are seen as appropriate reproducers. Nanette Davis and Karlene Faith (1987:187) advise that in an effort to maintain the status quo within a capitalist system women will be given institutionalized controls for behaviours which counter the gender roles demanded of females. For example, Meda Chesney-Lind (1977) has clearly shown how adolescent girls account for an inordinate proportion of persons brought into the juvenile justice system for status offenses.¹⁵ She maintains that the creation of the first juvenile courts was the result of a campaign to create a separate programme for juvenile offenders in an attempt to protect children from the adult system. However, Chesney-Lind documents that the founders were more interested in a system which would shore up 'traditional' American institutions like the family because there was concern about foreign immigration and urbanization (p. 122).

However, these writers fail to extend their analyses to account for the economic necessity of a capitalist society to have a continuous supply of suitable labourers. It is argued here that because reproduction is linked co-determinatively with production and because women have the biological capacity to procreate, they have also been given the responsibility to socialize and maintain the future labour force. In his work on class and sentencing, Mandel (1986:145) points out that those offenders who have been integrated into the productive apparatus are treated as if they *deserve* 'credit' for their adherence to *social* values. Similarly for women who accept and perform their role as a suitable reproducer will be given credit for their efforts. The criminal justice system is an

appropriate place to explore discrimination as it applies to women. The next chapter will look at some of the work that has been done around the issue of discrimination.

CHAPTER FOUR

i. Discrimination in the Criminal Justice System

The court system has been a focus of extensive analysis (Steffensmeier et al, 1993, 1988, 1982, 1977; Bickle and Peterson, 1991; Carlen, 1990; Allison, 1989; Daly, 1989, 1987; Eaton 1986; Edwards 1985; Kruttschnitt 1982a, 1982b, 1984, 1985 and Chesney-Lind 1973, 1989) and the more critical perspectives emphasize social power and patriarchal control as the primary mechanisms through which justice is gendered (Kruttschnitt 1982, 1984; Daly 1989). Susan Boyd and Elizabeth Sheehy (1989:259) note that:

Another important and recent theme of socialist feminist jurisprudence has been the development of the idea that the law functions to reinforce familial structures which remain compatible with capitalism, despite arguably progressive changes in women's roles.

Sally Simpson (1989) reviews the literature on the intersections of court and gender which provide evidence to show that when informal methods of social control are lacking (i.e.; familial patriarchy) females are much more likely to be subjected to the more formal social control mechanisms (i.e.; social patriarchy).

Certainly, in the practice of the correctional philosophies of reform and restraint, there is a variance in terms of what is considered to be the most appropriate way to "rehabilitate" female offenders. Simpson (1989:616) elucidates these differences in correctional philosophy as it applies to the two different groups of offenders. She suggests that it emerges from two competing images of female nature and, in one view, women are seen as fragile and immature creatures, more childlike than adult. Rasche (1974) points to the perception that, given this image, the female offender is in need of

guidance but is not a true danger to society. Rafter and Natalizia (1981) comment that for this type of offender the reformatory staffed by reform-minded middle-class women is the ideal solution. In these types of settings, an emphasis is placed upon the learning of skills which resocialize working-class misdemeanants into proper gender roles (that is, good servants or wives).

In contrast to this philosophy, which is deemed most appropriate for the reformation of white working class women, is the restraint position taken when the offenders are members of a minority:

In custodial prisons . . . a different archetype dominated. Women's "dark side", their inherent evil and immorality shaped prison philosophy. Here, the pre-dominantly black felons (who were perceived as more masculine, more self-centred, volatile and dangerous) were treated as men (Rafter, 1985:82).

Thus intersections of class, gender and race are evident in the custodial philosophies for women. To conclude that this system of differential treatment is solely related to individual racial biases would be to lose sight of the much needed focus on the politics of reproduction. If female offenders are considered to be serviceable to the capitalist economy and are seen as "salvageable" reproducers, then it makes sense to undertake rehabilitation. If, on the other hand, female offenders are not perceived to be suitable or valuable reproducers of the labour force, no such exertion of time nor energy is deemed necessary.

Thus, it will be those women who stay within the boundaries of what is deemed gender-appropriate behaviour by those who control the means of production who will be dealt with most leniently in the justice system. In other words, it will be those women who are seen as the nurturant supporters and moral models for children and husbands¹⁶

and who are regarded as non-threatening to the economic fibre of society who will receive the more lenient sentence.

Indeed, if a woman is living within a heterosexual family relationship, judges will defer to the forces of familial patriarchy as a way of dealing with the woman's aberrant behaviour. Conversely, those women who do step outside of the boundaries of their reproductive function will be incarcerated and/or subjected to "rehabilitative" programs to correct their "pathology" most often because the agents of social patriarchy recognize that, lacking the presence of a male figurehead in the traditional system of familial patriarchy, the state has the responsibility to fulfil the function of social control.

ii. Sentencing in the Criminal Justice System

Writing from a Canadian perspective, John Hogarth (1971) characterizes sentencing as a "human process" and professes that identifying individual characteristics of judges permitted greater accuracy in predicting sentences than knowing the characteristics of the crime. He alleges that judicial attitudes are intrinsic to sentencing decisions. Dennis Olsen (1980) has delineated the class homogeneity of the Canadian judiciary; he clearly documents that the majority of judges come from upper middle class backgrounds, attend similar educational institutions, and belong to the same kinds of social clubs - all of which support a liberal-bourgeoise sentiment. It is not surprising, then, that there is consistency in judicial attitudes toward offenders who appear before them for sentencing. Consistent with their liberal-bourgeois understanding of the most appropriate role for women as "wife" and "mother", and while other roles may be accepted, there is a limit to judicial tolerance. In those cases where the woman has

"deviated" too far from the reproductive boundaries in capitalist society (as defined by Waring, 1988), the judiciary will respond in a negative way.

Michael Mandel (1986:138) has written of the discretionary practices in the Canadian criminal justice system and of the wide latitude given judges within this context. Judges have the option of requesting a presentence report before the disposition in any matter. Mandel notes that presentence reports generally contain a complete social history which focusses on the offender's relation to the productive apparatus, that is, his or her employment status, employment history and occupation.

It is clear that the courts recognize that a legitimate part of the sentencing function is to determine the severity of the sentence on the basis, not only of the nature of the offence, but also of the nature of the offender, not as an offender, but as a social being. Part of the sentencing decision has to do with the offender's criminal record but a major portion of it has to do with the extent to which the offender fulfils his or her role in the productive apparatus. In an attempt to add to Mandel's formulation, this study will determine the degree to which the severity of the recommendation for sanction is dependent upon the offender's role in the reproductive and/or productive apparatus. In addition to legal factors, (such as seriousness of offence, severity of violence, prior record, degree of *mens rea* and premeditation), as well as qualitative matters (such as the victim-offender relationship), great importance is also given to extra-legal factors (such as race, sex, socioeconomic and family status). It will be argued that extra-legal factors are taken into account in the sentencing decisions of the judiciary. Because probation officers tailor their reports and recommendations for the judiciary, it is possible to make some linkages from the highest level of the court system (the judiciary) to the

agents of the court (probation officers) and in so doing provide an understanding of how liberal-bourgeois ideology becomes translated into practice in our society.

The next chapter will focus on the presentence report in an attempt to demonstrate that patriarchal bourgeois ideology is conveyed to all of the agents of the court through this reporting mechanism.

CHAPTER FIVE

I. Probation Officers and the Presentence Report

To determine the extent to which the Canadian criminal justice system aids in the oppression of women, a content analysis of presentence reports (PSR) was undertaken to ascertain what kinds of information are considered relevant in judicial sentencing decisions. The rationale for this focus is that the PSR is one of the most influential determinants in judicial sentencing decisions (White, 1972; Lotz, 1977; Gabor and Jayewardene, 1978; MacDonald, 1981; Schmolesky and Thorson, 1982; Frazier and Bock, 1982; Spencer, 1984; and Mandel, 1986). Jennifer Thorpe and Ken Pease (1974:393-394) have documented that there is an 85 to 95 percent concordance between the recommendations made by probation officers and the actual court dispositions.

There are scholars who have contended that the PSR is a mere endorsement of other agents within the criminal justice system. For example, from an ethnographic study of probation officers' (POs') decision-making process, John Rosecrance (1985) concludes that POs make their recommendations for sentencing to a particular audience (that is, judges, crown prosecutors and probation supervisors). He alleges that there are narrow, informal parameters which become known to more experienced POs and which provide guidelines for making "ball park recommendations." Eugene Czajkoski (1973:10) argues that, while there is a strong correlation between probation officer's recommendations and the sentencing outcome, it is very possible that "the prosecutor has found a way to communicate the plea bargaining agreement to the probation officer

and the probation officer responds with an appropriate recommendation (or no recommendation)" in his/her presentence report. Because this thesis intends to deal with the role of agents of the court in general and not with probation officers in particular, it is less important who the originator of an ideology is and more important to determine whether a particular ideology is proliferated throughout the system.

Given the above stated arguments, an examination of the PSR is one of the best ways to understand how agents in the criminal justice system perceive the dynamic of production/reproduction, communicate relevant information to other court agents and, thus, contribute to the allocation of women to the reproductive realm and males to the productive sphere. The argument will be made that the manner in which women are dealt with in the Canadian criminal justice system is contingent upon their real or potential capacity to reproduce a future generation of labourers.¹⁷ Conversely, the manner in which males are dealt with is contingent upon their real capacity to produce in the capitalist labour market.¹⁸

ii. The Presentence Report

This section will focus more specifically on the extra-legal factors which are taken into consideration in the preparation of the presentence report. A presentence report is an inquiry by a probation officer¹⁹ on behalf of the court indicating socio-demographic information in a particular format. The report can be requested under a number of circumstances. For instance, defence lawyers may request a PSR if they expect that the forthcoming information may be beneficial to the client by providing details of mitigating factors that are relevant to the court. The Crown may ask for a PSR if they

feel that the information will strengthen their case against the accused. Judges will order a PSR if they feel that they need more information than has been supplied by the defence or the Crown. The information in the PSR is then utilized by the judiciary in sentencing decision-making.

The format of the report is fairly standard and includes the following legal and extra-legal considerations:

- 1) The sources of information used for the report
- 2) Circumstances surrounding the offence
- 3) Offender's explanation of the offence
- 4) Previous offences
- 5) Offender's family circumstances
- 6) Offender's education
- 7) Offender's employment record
- 8) Offender's financial situation
- 9) Offender's personal and social factors
- 10) Probation Officer's assessment
- 11) Probation Officer's recommendations

Extra-legal considerations make up a major part of the report and provide the PO with a great deal of information upon which to make a subjective impression of the offender. Preliminary research into the conditions that affect the preparation of PSRs has been undertaken²⁰ and it has been offered that the content of PSRs in one Canadian jurisdiction (Cited in Griffiths and Verdun-Jones 1989:441) was clearly influenced by the socio-biographical attributes of the offender, the organizational

procedures of the probation office, and the personal orientation of the probation officer in preparing the report.

Charles Frazier (1983:316) explores the part played by PSRs in accounting for gender differences and concludes that a substantial proportion of the gender effect occurs through the probation officer's presentence recommendations. For example, Frazier found that Independent of other potential influences, being female increased the likelihood of a non-incarceration recommendation by 22 percent.

Because of the influential nature of the PSR and the relative accessibility of these reports as secondary data, it is useful to begin to examine the organizational procedures under which PSRs are prepared. There are some analysts²¹ who conclude that probation officers adopt an individualized style in their decision-making process while others²² have pointed to more conformity to the narrow parameters that restrict their input in the process. For example, Rosencrance (1985) posits that through their experience as court agents, probation officers develop "specialized" knowledge as to the kind of information that will be acceptable to particular judges, or Crown prosecutors and/or their own supervisors. They then present "ball park recommendations" as a way of developing and maintaining credibility and securing promotions within their profession.²³

Anne Worrall (1989) reports that probation officers acknowledge that there is an emphasis in presentence reports on the role expectations of 'normal' womanhood which disadvantages those offenders who do not fit the stereotype. She cautions that the preparation of presentence reports often reflects the writer's own biases and ideology of the "ideal" woman. In a more recent article, Worrall (1995:4) notes that :

The trap for probation officers who might want to construct female lawbreakers within alternative discourses is that, in an area where such stereotypes dominate, they run the risk of seriously disadvantaging their client. Hence many officers justify their continued writing of gender-stereotyped reports on the grounds that they are working tactically in their clients' best interest.

The next chapter will present the methodology used to collect, code and analyze the data.

CHAPTER SIX

I. Methodology

In a review of the research that has been done on differential treatment of females in the criminal justice system Steffensmeier (1993:413-416)) addresses the inherent difficulties in these studies. He notes that the analyses published in recent years are based on data sets which date back to the 1960's or 1970's and argues that, based on changes in the legal system (such as a greater concern for equal application of the law, increasing professionalization and bureaucratization of criminal justice agencies, and a move toward more determinate sentencing procedures (p. 413)), these data sets may not be valid today. It could also be argued that the societal changes stemming from the women's movement (i.e.; increasingly more women in the labour market and demands for equal treatment by women) have invalidated earlier studies. Steffensmeier also cites methodological flaws in prior studies which include "crude measures of the nature of the offenses adjudicated; 'weak' controls for the defendant's prior record; and absence of contextual analysis to assess possible interaction effects of legal and extralegal factors on gender-sentencing patterns, particularly seriousness of offense and the defendant's race."

To address these concerns, the data set is drawn from cases before the court from 1985 to 1990. Steffensmeier also argues that the only appropriate measure of prior record is prior convictions and, accordingly, this is the indicator used in the research. In terms of the need for contextual analysis, this analysis of sentencing practices tests five separate independent variables (reproductive, productive, social,

legal, and seriousness of offence scores) against the dependent variable (severity of recommended sanction) in an attempt to contextualize male and female differences in these categories.

The quantitative analysis is the result of codifying presentence reports that have been requested in Provincial court systems for a period of five years. A sample of ninety-five male offenders was matched to an equal sample of female offenders as to type of offence and prior record. Offences were categorized as to their potential severity of sanction (for example, offences against the person and property offences and seriousness of offence). The offenders were also matched for related and unrelated prior offenses. A schedule was prepared in advance so that data were coded directly from the presentence report (see Appendix I).

It is recognized that no one variable will be sufficient to explain differences in the perceived need for state intervention. Indeed, it is instead an additive effect of a number of variables that paint an overall portrait of an offender. It is for this reason that an attempt will be made to construct an aggregate scale representative of the productive, reproductive and social components of an offender's characteristics. The independent variables for reproduction, production and social considerations are coded in such a way that the higher the numerical score, the more positive is the productive, reproductive, and social component of the offender's qualities. The independent variables for legal factors and seriousness of offence are coded in such a way that the higher the rating, the more the offender is viewed negatively. The schedule includes variables for assessing the offenders scores on:

1. REPRODUCTION, 2. PRODUCTION, 3. SOCIAL CONSIDERATIONS, 4. LEGAL FACTORS AND 5. SERIOUSNESS OF OFFENCE. The following is an inventory of the operationalization of the variables that have been considered for each scale and the rationale for choosing them.

1. REPRODUCTIVE VARIABLES

In an attempt to understand the influence of social patriarchy on sentencing decisions, it is important to explore a number of characteristics of the offender's reproductive potential. The reproductive variables are proposed to assess the offender's marital status and responsibility for caring for family members as well as race and role suitability. It is expected that, where there is a patriarchal head of a family, the sentencing recommendations for women will be more lenient, moreover, where there is "appropriate care" for dependents, the sentencing will be more lenient for both men and women, but more so for women (Bickle and Peterson, 1991; Bishop and Frazier, 1984). As well, where the offender has a degree of responsibility for caring for elderly or disabled family members (Luxton et al. 1990), the expectation is that the severity of sentence will diminish. The highest possible score for reproduction is 34.

The following variables were used to develop the reproductive scale:

1A. Gender

The reproductive sphere has been seen as the domain of women in our society and therefore, on the reproductive scale a female offender received a rating of (2) and the male offender was given a (1).

1B. Race

The judges who sit in Canadian courts are predominantly white males who come from and upper middle class background.²⁴ Given the disproportionate numbers of nonCaucasian female offenders populating the jails and prisons it is important to include race as part of the reproductive scale. Where the offender is Caucasian a rating of (2) was given as opposed to the nonCaucasian rating of (1).

1C. Marital Status

It is clear from a review of the sentencing literature that "familied" offenders are given lighter sentences than are their counterparts. Two clear demonstrations of this can be seen in the following recommendations for disposition from this study. The probation officer recommended supervised probation for a female offender but qualified the suggestion with the statement that "if the judge sees fit to incarcerate it should be an intermittent sentence to minimize family disruption." As well, a PO stated:

Although I do not approve of [subject's] actions in this matter, I would like to ask the court to show [subject] some leniency as she would be very much missed by her children and where she is very much needed.

Another indication of the leniency to mothers is the following passage from a presentence report:

Another factor that the court will consider in reaching its decision will be the defendant's responsibilities as a single parent.

Since the normal family arrangement is still seen as a legally married couple, the offenders in this category were rated higher (6) than those in common law situations (5) or who had a separated or divorced status (4). Single parents were given a (3) and

single individuals were rated a (2). Those offenders who were in homosexual relationships were rated the lowest (1). Examples of positive ratings (6) are:

[Subject's wife] reported that her marriage was fine and felt her husband was a good provider.

[Subject] is married with one child.

[Subject] is married and the sole support for his immigrant wife.

Examples of a negative rating (2) are the following:

The only problem in her life appears to be that she has never dealt with the death of her first child, and as a result, was unable to keep her marriage together.

[Subject] has never been legally married. She informs she was involved in a common law relationship with [a man] for a year which **she claimed to be very abusive**. She had two further relationships which were both very abusive. **Subject has a tendency to become involved in abusive relationships which have a very negative impact on her life**(emphasis added).

It would appear [subject] is having a difficult time establishing a **stable, monogamous relationship**. At this time she is not prepared to become involved in **one** relationship, preferring the company of **many** boyfriends (emphasis added).

1D. Dependents

In previous studies noted earlier in the theoretical discussion, those women who were responsible for children or other family members were given a less severe sentence, thus those offenders who had dependents were given a score of (2) whereas those who did not have dependents were rated a score of (1). Further, there is a measure provided to assess the status of the dependents. Dorothy Chunn and Shelley Gavigan (1995:170) point out that according to the "law as ideology thesis", stereotypical assumptions and beliefs about social reality pervade capitalist institutions including the

legal system. "Familial ideology" is based on the belief that the "only appropriate form of family is one organized around a heterosexual, monogamous marriage and the sexual division of labour." Even though only about seven percent (cited in Chunn and Gavigan, 1995) of families fit this description, justice agents continue to operate under this ideology and the most appropriate family is seen as the male spouse providing financial support to the mother and children. So, in cases where the children had been apprehended by welfare, the lowest rating of (1) was given; where the children were not currently living with offender the rating was (2). Where the children were living with the offender but were supported by welfare, the assessment was (3). If, on the other hand, the children were living with the offender but supported by others (which included cases where an ex-spouse or any other supported the offender and children except state support) the rating was (4). Where the children were living with the offender and supported by spouse the rating of (5) was provided. If the offender supported the dependents a rating of (6) was awarded. Examples of more positive ratings on this scale are:

... Young mother who has provided appropriate counselling to her brother. Her activities revolve around her children and her family. She has been a single mom for 5 years and is committed to parenting.

Collaterals indicate that [subject] is a good mother who spends the majority of her money on her child and usually stays home with the baby and has handled this responsibility well. [Subject] is currently 21 years of age and has one child. She appears to be fairly mature and is handling the responsibility of looking after her child at this time.

Comments which would receive more negative ratings on this scale item are:

[Subject] states that two of the children died in birth and two of the children are living. Her children have been apprehended by child and family services and are placed with [an aunt]. [She] has lived on the street in a

fairly transient lifestyle for most of her life. She states that she began prostituting when she was age thirteen.

[Subject] had her first child [the complainant] in 1976. She preferred not to give the father's name. . . She was physically abused by her husband on numerous occasions. In 1986 they separated, they were divorced in 1989 and she is living with another woman. [Subject] retained custody of all four children at that time. There have been allegations of child neglect.

1E. Parenting Skills

Another variable under dependents was the Probation Officer's assessment of the offender's parenting skills. When the PO's judgement that the parenting skills were poor the lowest rating of (1) was given. If the PO pronounced that the parenting skills were inappropriate the offender received a rating of (2). Where the PO felt that parenting skills were adequate or they were neutral on this issue, the rating was (3). When the PO found that the parenting skills were good or appropriate a score of (4) was granted. In those cases where the PO declared that the offender was a devoted parent, the offender was awarded a (5). Examples of positive ratings on this factor are:

In spite of significant negative factors, it is quite clear that [subject] is striving to become a responsible citizen with the meeting of her maternal responsibilities being her top priority. . . For her to be able to continue to care for her children is also an important consideration. . . It is very evident that mothering her children is extremely important to her and is a powerful incentive to improve herself.

She is a devoted mother and spends a lot of time at home with her children. She is a very warm caring mother and she has been working very hard at providing a stable home environment for her children and herself.

Although she has had little paid work experience, [subject] has spent many years working as a full time mother who has raised good and honest children with respect for others. Collaterals report "we are impressed with [subject's] ability to retain control of three energetic children, as well as

raise them to become three nice, polite, well balanced adolescents with good values". Her success is well above the norm. It would appear then, that [subject] has been successful in her life work.

Examples of negative ratings would include the following:

Children have been apprehended by child and family services and the offender is presently living with her sister.

Her children are presently under the temporary guardianship of her mother and are staying with [subject's] brother with whom she has a good relationship.

[Subject] married very young and then remarried. Both relationships resulted in children and both ended unsuccessfully. [Subject's] children were sent to live with their respective fathers as the [subject] felt that she was incapable of providing the care they needed.

1F. Responsibility for Providing Care to Elderly Or Disabled Family Members

Where the offender was responsible for caring for elderly or disabled family members they received a (2) on the reproductive scale. Examples of statements to this effect are the following:

[Subject] has temporary custody of her five year old niece who has liver damage and who is hyperactive. It is the opinion of the writer that the [subject's] decision to change her life was precipitated by her recent acceptance of responsibility for her niece. Hopefully this impetus is sufficient.

Subject] is a thirty-five year old mother of two who has continually played the role of care giver since the age of 15. Her own aspirations of being a nurse have fallen by the wayside. She has legal custody of her 16 year old nephew and 2 year old grandson and she is also taking care of her 6 month old grandson.

All of the offender's money goes into caring for children and grandchildren and she is willing to take in four grandchildren who are now permanently in foster care.

[Subject] is a strong support to her elderly mother and 12 year old niece.

Whereas if the offender was seen as "self-centred" a rating of (1) was given. Indicative of this statement is the following:

[Subject] is self-centred and his extended family offer no support for him.

1G. Role of Offender as Wife/Husband or as Mother/Father and Homemaker

If the Probation Officer rated the role of the female offender as wife, mother and homemaker as negative the lowest score of (1) was given. If the role was given a neutral assessment, the score of (2) was used. Where the PO saw these roles played by the female offender as positive a score of (3) was attributed. The same scoring process was used for the male offender in his role of husband, father or homemaker.

Examples of positive ratings on this variable are:

[Subject's] financial situation is somewhat tight due to the fact that she is unemployed and totally dependent on her husband for financial support. Spouse emphasized [subject's] strengths of being a good homemaker. He stated that she is an excellent cook, housekeeper and a source of strength to him. . . He is willing to help any way that he can.

PO stated that [subject] is "a good mother whose best interests revolve around her son. She has a young son who means everything to her and she means everything to him. . . [Subject] is mother, teacher and best friend to [her son]. He looks up to and respects his mother. I have never seen a mother and child who are as close to one another as [subject] and [her son] are.

[Subject's] children are basically looked after in terms of attending school and having clean clothes to wear. She keeps a spotless home. [Subject] keeps her children well dressed and truly tries to do the right thing for them. She maintains a spotless home and presents herself with a good outward appearance.

[He is very much a family man who spends time with his children, is helpful to his wife plus maintains his property and home.

Illustrative of a negative rating are the following:

When [subject] went to jail in 1989, [an uncle] was not able to take [her son] into his home. The boy was placed by child and family services in a foster home. Although the care provided was adequate, it was understandably an unhappy experience for [him]. [He] is apprehensive that his mother's current predicament will result in the necessity for another stint in foster care. Her son is still in foster home care. . . She said that she was not in a hurry to assume responsibility for his care as she realized that she had to first straighten her own life around.

[Subject] has experienced three broken marriages. All three children are in the custody of their respective fathers. [Subject] is afflicted by a condition which is "generally known as free-floating anxiety". This became a severe problem very suddenly during her second marriage and it disabled her to the extent that she could no longer care for her two children.

[Subject] has to learn to be a good mother. The children have been in the care of child and family services since the offences.

Collaterals state that [subject] is not able to cope with her children's problems.

The subject is not considered able to parent her children.

[Subject] has been told by child and family services that she will be charged with "deserting and abandoning her children". She loses her temper with her children and counsellor wants her to go to a parenting group. [Subject] has been visiting with her children weekly during the apprehension. She is described as being a "good parent with little babies" but she seems to not have quite the same level of skill in dealing with older children. CFS worker informed her that her children will not be returned to her until she gets psychiatric help. She has agreed to become involved in a [parenting group].

1H. An Example of Reproduction Coding for the Female Offender

Using the reproductive coding, an example of the scoring is as follows: a subject who is a Caucasian (2), married (7), female (2) offender with dependents (2) who is a devoted mother (5) with a spouse supporting the children (5) ; who has a responsibility to care for elderly family members (2) and who is seen positively in her role as wife (3), mother (3)

and homemaker (3) will receive an overall score of on the reproductive score of 34. In contrast, a native (1) female (2) offender who is living in a lesbian relationship (1) with no dependents (1) and who has no responsibility for caring for elderly/disabled family, and is seen as a poor homemaker (1) will receive an overall reproductive score of 6.

1I. An Example of Reproductive Coding for the Male Offender

Using the reproductive coding an example of the scoring is as follows: a subject who is a Caucasian (2), married (6), male (1) offender with dependents (2) who is a good father (4) and is supporting the children (6) who has a responsibility to care for elderly family members (2) and who is seen positively in his role as husband (3), father (3) will receive an overall score of on the reproductive score of 29. In contrast, a native (1) male (1) offender who is single (3) with no dependents (1) with no responsibility for caring for elderly/disabled family (1), with no mention of homemaking skills (0) will receive an overall reproductive score of 7.

1J. Interpreting the Significance of the Reproductive Scores

It is hypothesized that despite the severity of the offence, the higher the overall rating, that is, the more positively a female offender scores on the reproductive scale, the less severe will be the probation officer's recommendation for intervention. For example, it is hypothesized that the above-mentioned female offender with a score of 34 may receive a recommendation for unsupervised probation without conditions for an overall disposition score of 5. In contrast, the female offender with a score of 5 may be recommended for supervised probation with 3 conditions which would result in a

disposition score of 21. It is also hypothesized that the reproductive scores will not be as significant for male offenders as will the scores on the productive scale.

2. PRODUCTIVE VARIABLES

The variables used to create the productive scale represent an attempt to understand the role of the offender in the productive sphere. It is expected that where the offenders (both male and female) have positive work histories, the sentencing will be less severe for both genders but will be more so for males than females.²⁵ The highest possible score for the production scale is (30).

2A. Education

Education is an important factor in considering an offender's potential for productivity and thus is factored into the productive scoring. Those offenders who have a university education are given a rating of (5); offenders with vocational training received a score of (4). Offenders who have some university education will receive a score of (3) and those who have completed high school but have no further training will be register a score of (2). Finally offenders who have less than a high school diploma receive (1).

Examples of high ratings on this scale item are:

[Subject] is well educated and gainfully employed. . .

[Subject] has good academic goals (with a clear plan for his future career)

Examples of low ratings are:

[Subject] has a limited education and has no plans for educational upgrading.

[Subject] does not possess any type of training or job skills. His goals are to eventually start a business in landscaping, however, he has no academics in business administration.

[Subject] has a grade eleven education. He has no stable work history to speak of and possesses no saleable vocational skill. The subject requires vocational assessment, counselling and placement.

2B. Employment status

The success of a capitalist society is dependent upon how well its citizenry conform and adapt to the relations of production. Therefore, norms exist which recognize and reward adherence to the value of "productivity", that is, to a person's employment status and history.²⁶ In accordance with this reality the productive scale provided measures of employment status in the following way. If the offender was dependent on welfare they received the lowest rating (1). Where the offender was dependent on family, they received a (2). If the offender was receiving some kind of benefit as a result of having worked in the past (such as unemployment insurance or worker's compensation), they were given a (3). Students (because they have the potential for productivity), offenders who were retired (because they had already been productive), and homemakers (who were filling their appropriate role in the productive sphere in terms of looking after the home for their working spouse) all received a scoring of (4). For those offenders who were employed in the workforce but who were unskilled received a (5), for those offenders who were skilled or semi-skilled (6) and for those who had a professional status a rating of (7) was given. Comments that would rate a positive rating are the following:

[Subject] is a hard working individual, who provides as well as he can for his wife and daughter. He likes his present employment [as a mechanic] and intends to remain at this job for some time.

The defendant has had a fairly positive and continuous employment history [as a salesman].

[Subject] is presented as a worker [semi-skilled] in good standing.

[Subject] completed her school and found herself gainfully employed throughout her working career [as an accountant] aspiring and maintaining a positive value orientation that appears an intricate part of her maturing life as well as married life.

Illustrations of negative comments from a PO on this subject are:

[Subject] is a single parent with five children who range in age from 16 years to 5 months and is on provincial assistance.

During interviews with [subject], he has stressed that he has become very frustrated in being unable to find suitable employment and feels that employers are very prejudiced. Collaterals who have attempted to assist the subject in the past and at present basically feel that his past work record, along with his high expectations, have been significant factors which are hindering his employment prospects.

Presently, [subject] remains unemployed until his seasonal job begins.

2C. Work History

Work history was an important consideration in the presentence report and especially so for male offenders. Where the offender has had no employment in past year, he received the lowest rating of (1). If the offender had been employed intermittently for less than one year a rating of (2) was used. When an offender had been intermittently employed for two years or more they were given (3). Those who had been steadily employed for less than one year received a (4) and for less than three years but greater than one were given (5). Those offenders who had steady employment for greater than six years received the highest scoring of (6). Examples of positive rating are the following:

[Subject] has had a fairly stable work history, having worked approximately nine years in two part time jobs.

[Subject] has a work record extending some twelve years. Indications are that she is motivated with respect to employment.

One collateral from [subject's] home reserve informed the writer that [he] was one of the most respected trappers in that community. His work ethic was admired by all people who knew him.

Examples of a negative ratings are:

[Subject] has never had a full time job except for landscape work during previous summers. He has never been eligible for unemployment insurance benefits.

[Subject] has virtually been unemployed since arriving in [the city].

[Subject] has had no employment during the past 5 years.

He is almost unemployable as he lacks any specific skills. He has been referred to various programs through manpower over the past couple of years, but he did not like the content and did not follow through.

2D. Employer's Assessment of Offender

It is not merely the fact that the offender is working which provides mitigating circumstances for the judge to consider, but how well they are doing in the productive sphere. If the offender was working, the Probation Officer often provided the employer's assessment of the offender's work. For the purposes of rating this assessment, where the offender was not employed, there was a (0) given. If the employer's assessment was negative, the rating was (1). If the evaluation was neutral the offender received a (2). Where the appraisal was positive the offender was given the highest rating of (3).

Examples of positive ratings are:

[Subject's employer] describes her as a very good employee who is also a conscientious mother.

Employer talked about [subject] as "an excellent employee with many positive attributes" and stated that they "have total confidence in her".

Collateral information describes the subject as a reliable and conscientious worker.

His employers described him as "honest, reliable, intelligent and courteous". Another employer said he was "reliable, sincere, trustworthy, good with customers and a hard worker".

An example of a negative (1) score is:

In the work setting, collaterals comments were not very positive for example "not very work-oriented", "no commitment to job". His employer commented that "socially the offender related very well to his co-workers but he always left the impression that having a good time was more important than doing a good job".

Employer stated that he "questioned the offender's responsibility and dependability" and that he "would never consider rehiring such an individual".

2E. The Offender's Role as "Breadwinner"

Part of the measure for how well an offender fits into the productive arena is the ability to provide a living for him/herself and his/her family. If the Probation Officer was positive in his/her comments about the offender's ability to provide, they scored a (3), if the comments were neutral (2) and if the Probation Officer had negative remarks about the offender in this capacity (1) was scored. An example of a positive (3) scoring would be the following:

"[Subject's wife] reported that her marriage was fine and felt her husband was a good provider. . . she stated that if her husband went to jail it would cause a great deal of disruption in the home. They depend on his income to survive. Subject reported that he is the sole bread winner in the family.

[Subject] has several pluses in his favour. He now has a steady job with a regular pay cheque, he has a strong positive relationship with a woman. . .

[Subject] has consistently provided his family with ongoing financial support and a good lifestyle.

[Subject's wife] reported that her marriage was fine and felt her husband was a good provider. She does not have any complaints, other than she stated that if her husband went to jail it would cause a great deal of

disruption in the home. They depend on his income to survive. Subject reported that he is the sole bread winner in the family.

. . . subject does provide financial assistance to his mother and his girlfriend. I would therefore recommend that he be considered for supervised probation.

An example of a negative (1) rating is the following:

[Subject] indicated that four months prior to him obtaining employment he was supported by his wife. He said that his wife was very unhappy because he was unable to provide for her adequately.

[Subject] is presently unemployed and receiving welfare assistance. He has minimal job experience.

[Subject] realizes that he has no established pension or career and owns no property or assets.

2F. The Offender's Educational Achievements

Often the issue of how well trained the offender was for the productive sphere was raised. For example, PO's often stated that the offender should be placed on probation so that they can get training or help with employment. It was clear in a number of statements from the presentence reports that education and training were synonymous with being pro-social or having positive values as is evident in the following passage:

We see [subject] as having potential to be employed, to return to school for training, and generally implement a positive set of values in her life. We believe that [subject's] propensity to re-offend would be sharply reduced by the above-mentioned interventions.

If the Probation Officer was positive in his/her comments about the offender's educational achievements, the offender scored a (3), if the comments were neutral (2) and if the Probation Officer had negative remarks about the offender's accomplishments

(1) was scored. Some examples of positive (3) ratings are the following quotes from a presentence reports:

He does however have excellent employment skills.

The [subject] presents as a bright and diligent working individual who has marketable skills in a clerical/medical field and the probability of long term employment appears favourable.

[Subject] is skilled in computer training and art work.

Examples of negative ratings (1) are the following remarks from a probation officers in their reports for the court:

He does not possess any type of training or job skills.

He has bounced around a number of university programs but has done nothing with his education.

He is almost unemployable as he lacks any specific skills.

He has no stable work history to speak of and possesses no saleable vocational skill.

2H. Offender's Employment Status and/or Work History

If the Probation Officer was positive in his/her comments about the offender's work history or employment status, the offender scored a (3), if the comments were neutral (2) and if the Probation Officer had negative remarks about the offender's status or history (1) was scored. Some samples which would receive positive (3) ratings are the following:

A review of [subject's] employment history shows a positive work ethic.

[Subject] has consistently provided his family with ongoing financial support and a good lifestyle.

[Subject] presents as fundamentally well as indicated by attendance to steady employment.

Illustrations of negative (1) ratings are the following passages:

[Subject] has never had a full time job except for landscape work during previous summers. He has never been eligible for unemployment insurance benefits.

[Subject] admits to having a great deal of difficulty maintaining a job.

[Subject] has had a lack of employment during the past 5 years and he uses his welfare money for drugs.

2I. An Example of Production Coding for the Male and Female Offender

Using the productive coding, an example of the scoring is as follows: a subject who has a university degree (5), working in a professional capacity (7) and has worked for six years (6), who receives a positive assessment from an employer (3); provides well for the family (3); and is viewed as having appropriate training for the workplace (3); with a positive comment on their employment status and/or work history (3) will receive an overall score of on the productive scale of 30. In contrast, a subject without a high school diploma (1), dependent on welfare (1), and has had no employment in the past year (1), and is unable to provide for family (1), with no adequate job skill training (1); and a negative work history (1) will receive an overall productive score of (6). It is hypothesized that for both males and females the higher the score on the reproductive scale, the lower will be the score on the disposition scale - but more so for males.

2J. Interpreting the Significance of the Production Scores

It is hypothesized that the higher the overall rating, that is, the more positively both male and female offenders score on the productive scale, the less severe will be the

probation officer's recommendation for intervention. For example, it is hypothesized that the above-mentioned offender with a score of 30 may receive a recommendation for unsupervised probation without conditions with restitution or a fine for an overall disposition score of 7. Whereas, the offender with a score of 6 may be recommended for supervised probation with 4 conditions including community service work, a fine and restitution which would result in a disposition score of 61. It is hypothesized that the productive scores will not be as significant for female offenders as will the scores for males on the productive scale.

3. SOCIAL VARIABLES

The variables under social considerations will measure the social bonds and the social "appropriateness" of the offender. It is hypothesized that where there is a perceived need for state intervention, as opposed to having social control located within the family, sanctioning will be more severe. It is expected that where there is a strong and continued relationship with a traditional family, the necessity for state intervention will be ameliorated. Conversely, where the traditional family is not in evidence, the sanctioning will be more severe for both genders, but more so for women than men. The variables that comprise the social scale include: family background or history; nuclear and extended family relationships and support (including the potential for family to provide social control); the offender's drug and alcohol involvement; community involvement; the co-operativeness of the offender and the offender's potential for rehabilitation. The highest possible social score is 40.

3A. Family history and support

In his study on sentencing practices, Hogarth (1971) identified the information that judges consider relevant.²⁷ The issue of family background was seen as the most essential information. Further, Hogarth notes that:

Information of this type can be used to determine whether the offender "needs" treatment or it can be used to determine whether the offender "deserves" punishment (p. 232).

In keeping with the view that family background information is significant, three areas of were assessed: family of origin, extended family and nuclear family. If the Probation Officer indicated that the offender's family of origin was dysfunctional and that there was no continuing contact, the offender received a rating of (1). If the family was considered to be dysfunctional but one with whom the offender had continuing contact, the score was (2). If the family was dysfunctional but was also supportive of the offender, the rating was (3). Where there was a stable family but there was no contact at the present time the rating was (4). When the indication was that the offender had received a stable upbringing and had continued family relations the score was (5). And, finally, where there was a stable family who were supportive to the offender the rating was (6). Two other variables were introduced to assess the influence of family on the offender. One was the characteristics of extended family and the other was the characteristics of the nuclear family. The rating system used to assess these two factors was the same as the family of origin background. Among the statements that would indicate a higher rating on these three scales would be the following:

[Subject's] supportive family background leaves no excuse for her present involvement.

[Subject] has a strong value system who has now turned to her natural support system - family and friends for support and encouragement.

[Subject's] personal and family background seem to be stable and supportive.

Examples of a continuing family relationship with a family that are willing to support and who have the potential for social control are:

[Subject] states that the stability shown in the lives of some of her older siblings motivates her to become more responsible to ensure that her children have a stable, wholesome life.

[Subject's] personal and family background seem to be stable and supportive.

Defendant does not impress as criminally oriented, on the contrary, her values and attitudes are obviously what one would expect, given the fact that she has had the benefit of a good home.

An example of a probation officer's statement indicative of a dysfunctional family with no contact are the following excerpts:

[Subject] is self-centred and his extended family offer no support for him.

[Subject's] family background is extremely unstable and there are no support systems.

[Subject] is a single mother with a two year old child who has little support from the community or family.

[Subject] has no local family support system. ...Suspected drug abuse within the family unit.

[The psychologist's report] makes reference to the fact that the defendant grew up in a totally dysfunctional household, with the result being that [subject] acquired a very negatively skewed value system.

3B. Offender's Relationship with family

If the PO remarked on a positive relationship with family the offender was given a (3) if the family was mentioned but there was no judgement as to the nature of the

relationship the rating was (2). Where the PO indicated that the relationship was negative the offender received the lowest rating of (1). Comments that would receive a positive rating are:

All needed supports are clearly in place. Her family remains mostly supportive of their daughter... Daughter is living at home.

[Subject] maintains a close, intimate relationship with family and siblings.

[Subject] looks up to and respects his mother. I have never seen a mother and child who are as close to one another.

The following comments would receive a negative rating:

[Subject] feels that she has been placed in an untenable situation trying to minimize conflict within the family.

Family background is extremely unstable and there are no support systems.

3B. Community involvement

Frequently, the presentence report would mention the degree to which the offender participates in community activities or how they are viewed by the community. If the PO indicated that the offender was not involved or active in the community the score was (1). Where the PO reported that the offender was somewhat active in the community the score was (2) and when the offender was actively involved, they received the highest rating of a (3). Examples of positive ratings were the following excerpts:

[Subject] is a productive citizen in the community and has worked at various occupations in this country.

Community involvements are favourable and [subject] presents as fundamentally well as indicated by attendance to steady employment.

The subject is described by everyone contacted as a very giving person, who volunteers herself and her energies to both individuals and organizations. The subject is described positively in all areas of her life.

Negative ratings would result from the following statements:

[She] has lived on the street in a fairly transient lifestyle for most of her life.

[Subject] has been very transient, moving from community to community.

3C. Drug and/or alcohol involvement

If the defendant had a long history of drug and/or alcohol dependency he/she was given the lowest rating (1). Where the PO indicates that the offender abuses drugs and/or alcohol (2). If the PO indicates that the offender uses alcohol socially (3). When the PO indicates that the offender rarely uses drugs/alcohol the rating is (4). If the offender does not use drugs or alcohol at all a rating of (5) is given. The most positive rating was given to the following subject:

[Subject] is described as a "good mom who has no drinking problem".

Negative ratings were given to the following examples:

[Subject] is a prostitute and uses her money to support her drug habit which is very extensive. All of her family abuse drugs. [Subject] stated that "incarceration is the only way that she will be able to kick her drug habit". Her most stable period was when her current partner was in jail on a drug charge.

[Subject] admits that he has a serious alcohol problem and wants treatment.

Her periods of abstention from alcohol are marked by her involvement in abusive relationships with alcoholic men. This form of dual addiction is common among some women alcoholics.

[Subject] has a chronic problem with drugs and alcohol.

[Subject] has limited employment skills and is plagued by a very serious drinking problem.

Employment has been a problem as a result of alcohol abuse.

3D. Offender Cooperation Or Amenability to Intervention

Probation officers frequently made reference to the offender's amenability to treatment or intervention. If the PO indicated that the offender was open to treatment or other interventions they received a (2). If the PO considered that the offender did not seem accepting of intervention the scoring was (1). Some of the statements that received a (2) rating are:

He appears to be motivated to create some changes.

[Subject] expressed an emotional desire to turn his life around and start over. He admits that he has a serious alcohol problem and wants treatment. He appears to be motivated to create some changes.

[Subject] has recognized that he does have some psychological problems that need addressing and he is prepared to make some changes in his lifestyle.

Negative comments which would receive a rating of (1) are:

He has been referred to various programs through manpower over the past couple of years, but he did not like the content and did not follow through.

The pathological relationship which she continues with her boyfriend, appears detrimental and acts as a catalyst for future difficulties...

3E. PO's Assessment of the Potential for Social Control by Family

The issue of social control by family is an important consideration in judging the type of intervention needed to keep the offender from continuing their criminal activity.²⁸ If the assessment was that social control was nonexistent, the rating was (1). When a supportive family was mentioned but no assessment was made about the potential for social control the rating was (2). Where it was clear that the PO felt that family

members would be a control for the offender, the highest rating of (3) was given. The following statements would be rated as a (3).

[Subject] is currently supported by her common law husband who lets [subject] own her behaviour and helps her learn that consequences may follow from her behaviour.

[Subject] recently moved in with her mother who feels that this is best for her daughter. [Subject's] mother feels that [subject] can use some support and guidance in raising her daughter.

At this time, [subject] has a new boyfriend and it appears that this individual has a somewhat positive influence on her.

A rating of (2) would be given to the following offender:

From interviews with the subject and collaterals it appears that this accused is usually a quiet individual who spends a considerable amount of time with her mother.

Negative ratings (1) are given to the following offenders:

[Subject] appears to have had a poor upbringing with little control.

[Subject] is a single mother with a two year old child who has little support from the community or family.

3F. PO's Assessment of Offender's Leisure Activities

Another measure of "pro-social" values is the type of activities that the offender engages in during non-working time and with whom he/she chooses to associate. If the comments made by the probation officer were positive the rating was (3). When there was no mention made a neutral rating of (2) was given. When the probation officer clearly indicated that the offender was not engaging in constructive activities the lowest rating of (1) was given. The following statements received a positive (3) rating:

[Subject] informed that she has spent a lot of time doing volunteer work. She also stated that she is creative, in that she writes poetry and fiction, knits and does other work and she likes to draw.

[Subject] attends school regularly and is doing well. He has been working part time while he attends school and is playing for a junior hockey team.

The majority of her spare time is devoted to either studying or looking after her nine month old child."

Negative ratings would result from the following comments:

[Subject] appears to lack skills and motivation to deal with his present situation and to make long range plans for the future.

[Subject] appears to lead a life that is without focus and structure.

3G. PO's Assessment of the Potential for Rehabilitation

The issue of the offender's proclivity to recidivate is a significant factor in determining the appropriate disposition for the offender. When the probation officer indicated that there was no need for concern about the possibility of reoffending the offender received the highest rating (3). When the probation officer indicated that there was the possibility or the potential for rehabilitation the rating used was (2). If the probation officer indicated that there was no likelihood of "reforming" the offender the lowest rating was given (1). Statements that indicated the strong possibility of rehabilitation are the following:

Although he has made a serious mistake, he has also demonstrated that he has the capability to be a productive member of society. He does not impress as a criminally oriented individual and the writer does not feel there is a need for him to continue to be involved with probation services.

[Subject] has had a solid upbringing and is aware of the difference between right and wrong.

It would appear that [subject] has changed his lifestyle so that he can become a productive and valued member of the community.

[Subject] has the necessary capacity to live in the community in a law-biding way.

The statements that would be given a rating of (2) are:

[Subject] has recognized that he does have some psychological problems that need addressing and he is prepared to make some changes in his lifestyle.

[Subject] beat three of her children quite severely and they were apprehended by child and family service workers who describe subject as "a lady who is genuinely sorry for what she has done, and someone who is working hard to ensure that it is never repeated".

In spite of significant negative factors, it is quite clear that [subject] is striving to become a responsible citizen with the meeting of her maternal responsibilities being her top priority. The defendant is more committed than she ever has been to avoiding further offences.

Negative comments about the potential for rehabilitation which would receive (1) are:

[Subject] appears to lead a life that is without focus and structure. She has no fixed plans for the future - short or long term.

The risk of reinvolvement is relatively high.

It is noted that subject has been incarcerated in the past which has not had the desired deterrent effect.

3H. An Example of Social Coding for Male and Female Offenders

Using the social coding, an example of the scoring is as follows: an offender who was raised in a stable family that were supportive to the offender (6); who had continued relations with a supportive extended family (6); and who was involved in a supportive functional nuclear family (6) and had continued close relationships with that family (3); and was actively involved in the community (3); who did not use alcohol or drugs (5); and was cooperative with the PO (2); and where the PO felt that there was a good potential for social control by the family (3); and the offender made productive use of

their leisure time (3); and had a strong potential for rehabilitation (3); the score for the offender on the social scale was (40). Conversely an offender who was raised in a dysfunctional family that was not supportive to the offender (1); who did not have continued relations with his or her dysfunctional extended family (1); and who was involved in a nonsupportive dysfunctional nuclear family (1) and had no relationships with that family (1); and was not involved in the community (1); who had a long history of drug and/or alcohol abuse (1); and was not cooperative with the PO (1); and where the PO felt that there was no potential for social control by the family (1); and the offender did not make productive use of their leisure time (1); and had no potential for rehabilitation (1); the score for the offender on the social scale was (10).

3I. Interpreting the Significance of the Social Scores

It is hypothesized that the higher the overall rating, that is, the more positively both male and female offenders score on the social scale, the less severe will be the probation officer's recommendation for intervention. For example, it is hypothesized that the above-mentioned offender with a score of 40 may receive a recommendation for unsupervised probation without conditions with restitution or a fine for an overall disposition score of 7. Whereas, the offender with a score of 10 may be recommended for supervised probation with 4 conditions including community service work, a fine and restitution which would result in a disposition score of 61. It is hypothesized that the social scores will be more significant for female offenders than for male offenders.

LEGAL VARIABLES

Hogarth has identified a number of legal factors which are considered by magistrates to be relevant to sentencing.²⁹ The scale used to rate the offender on legal factors taken into consideration in the sentencing process were reversed in terms of the higher rating seen as more negative and the lower rating less serious. The highest rating on this scale is 33.

4A. Prior Offence

The first factor considered in the legal scale was the issue of previous offences. If the offender did have a record of prior offences the rating was (2) and if there were no prior convictions the rating was (1). Further, the offender was assessed one point per prior criminal offence that was related to the present offence to maximum of 6 points added. As well, the offender was assessed another point per prior unrelated offence to a maximum of 6.

4B. Offender's Remorse

The second factor that was added to the legal scale was the degree of the offender's remorse. If the offender blamed others for their present circumstances the highest rating of (4) was charged. When the offender did not demonstrate any remorse the rating (3) was given. Where the PO indicated that there was some degree of remorse shown by the offender, the rating was (2). Finally if the offender exhibited a high degree of remorse the rating was (1).

4C. Previous Probation and/or Incarceration

The third factor on the legal scale was previous criminal justice interventions such as probation or incarceration. If the offender had been on parole or probation prior to the current involvement with the legal system they received a (2) whereas those offenders who had no history of parole/probation received a (1). Similarly offenders who had been incarcerated received a (2) rating and those who had not been jailed received a (1).

5D. Probation officer's Assessment

A three point scale was used to measure the importance of the following three factors:

1. The importance the probation officer placed on offender's prior record;
2. The importance placed on the impact on the victim; and
3. The degree to which the offender understood the seriousness of the offence.

The scale for these factors consisted of a (3) rating for a negative remark, a rating of (2) for a neutral comment and a rating of (1) for any positive statements about each of the three factors. The final factor considered on the legal scale was whether the offender had been cooperative with agents of the criminal justice system. If the Probation officer indicated an unwillingness to cooperate the offender was rated (2). However, when the indication was that the offender was cooperative and compliant the rating was (1).

5E. An Example of Legal Coding for Male and Female Offenders

An offender who had no prior convictions (1), who exhibited a high degree of remorse (1), who had never been on probation (1) nor in jail (1), where the PO had a positive comment to make about the lack of criminal record (1) and that there was no comment made about the impact on the victim (2), and the offender understood the seriousness of the offence (1) the scoring was (7). Conversely, where an offender had prior convictions

(2) with 3 being related and 2 being unrelated (5), blamed others for the incident (4), who had been on probation (2) as well as in jail (2) and the PO made a negative comment about the extent of the offender's criminal record (3), and indicated the seriousness of the impact upon the victim (3), and indicated that the offender did not understand the seriousness of the offence (3) the score on the legal scale was (24).

5F. Interpreting the Significance of the Legal Factors

It is hypothesized that the higher the overall rating, that is, the more negatively both male and female offenders score on the legal scale, the more severe will be the probation officer's recommendation for intervention. For example, it is hypothesized that the above-mentioned offender with a score of (8) a fine for an overall disposition score of (3). Whereas, the offender with a score of 27 may be recommended for supervised probation with 4 conditions including community service work, a fine and restitution which would result in a disposition score of 61. It is hypothesized that the legal scores will have the same effect on the disposition for both female offenders and male offenders.

SERIOUSNESS OF OFFENCE

The seriousness of the offence committed has been shown to have a significant impact on the disposition.³⁰ There has been a great deal of controversy around the ranking of offences in terms of seriousness.³¹ The controversy is around both the type of offence and multiplicity of offences. While there has been some attempts to rank order offences in Canada,³² there is still no definitive scale ranking seriousness of offence. As a result, the offences in this study were ranked on a continuum utilizing the categories of

summary, hybrid and indictable offences as well as breaking down property versus personal offences. Each offence was given a number ranging from 1-73 (See Appendix III). The scale also took into consideration the number of counts of each offence. Accordingly, each offender was ranked according to the offence under consideration. It is hypothesized that the higher the offender rates on the seriousness of offence scale, the more severe will be the recommendation for disposition for both males and females.

RECOMMENDATIONS FOR DISPOSITION

The severity of sanction will be rated by the recommendations that are given by the probation officer. The recommendations were ranked from a low score of 1 and a high of 91 depending on the degree of intervention suggested by the probation officer. Females offenders scored an average of 35.65 on DISPOSITION the median was 23 and the mode was 21. Male offenders scored an average of 34.92 with a median of 25 and a mode of 17.

In the Manitoba Probation Service policy manual, there is a directive specifying that:

Recommending dispositions other than probation, i.e. incarceration, fines, absolute and conditional discharges are not to be referred to unless specifically requested by the Court³³.

In a criminology field study,³⁴ Andrew Alguire (1991) determined that there were "hidden codes" which reflected the probation officer's conviction that the offender should be incarcerated. These codes³⁵ are defined as "any recommendation that does not state that an offender is a suitable candidate for probation". Initially, forty presentence reports were pretested and it was determined that there is a specific recommendation given by the probation officer in 90 percent of the reports. Where there is no specific

recommendation provided, it is very clear when the PO believes that a period of incarceration is the appropriate sentence. The recommended dispositions were scaled and ranked on a continuum from the least to the greatest degree of intervention (see Appendix IV). The following are excerpts from the presentence report illustrating the probation officers recommendations for incarceration:

. . . [I]f the judge sees fit to incarcerate it should be an intermittent sentence to minimize family disruption.

The subject has had four periods of supervised probation. Six months remain on the current order and we question whether further probation would be helpful.

It is suggested a pre-employment program upon release coupled with a drug treatment program while in the institution would be appropriate.

While taking into account the possible deleterious affect of incarceration on the offender, the probation officer does not recommend any other options leaving very few options:

It is noted that subject has been incarcerated in the past and while it has not had the desired deterrent effect....

While the writer feels that incarceration could be harmful to the subject in that it would increase the stress level in her life, reinvolverment in the offence while on supervised probation must be taken seriously.

An example of the statements made by Probation Officers recommending supervised probation with counselling are as follows:

It is recommended that the [subject] takes part in a counselling program to focus on obtaining money by legal means and on educational goals.

We believe that [subject's] propensity to re-offend would be sharply reduced by the above-mentioned interventions [supervised probation and counselling].

[Subject] needs appropriate marriage counselling as part of a supervised probation order.

[Subject] would be considered a good candidate for probation supervision as his living and economic situations are stable.

Supervised probation could be of benefit to him in terms of job training and possibly in terms of appropriate vocational selection.

Recommendations for unsupervised probation include the following:

Since [subject] has a natural support system, including her employers in place, since she has a value system by which she operates, and since her involvement does not seem to represent a lifestyle issue, probation supervision is not seen as necessary in this case. Instead, it is recommended that she do community service work hours on unsupervised probation.

Based on the information we do have about the subject's lifestyle, we would not recommend supervised probation at this time as we cannot identify any specific rehabilitative concerns.

When the Probation Officer believed that a conditional or absolute discharge was appropriate, it was stated in the following manner:

Although he has made a serious mistake, he has also demonstrated that he has the capability to be a productive member of society. He does not impress as a criminally oriented individual and the writer does not feel there is a need for him to continue to be involved with probation services.

Taking this individual's present living situation and positive attitude into account this officer does not feel that a period of supervised probation is necessary in monitoring his progress in the future.

An example of a statement made recommending a fine is:

This is the first time that [subject] has held down a job for any duration and is finally earning decent wages. Since he is on probation we will not be recommending any additional probation. The writer also feels that incarceration will not gain anything positive for the [subject]. There is a good chance that he will be terminated from his work and all his exhausted struggles in the past eight months will be in vain. The writer would be inclined to recommend a monetary sanction.

The following is an example of a case where the disposition of community service hours was recommended:

It is recommended that there be no intervention except for him to complete 200 CSW hours that have previously been assigned.

HYPOTHESES

The principal objective of this study is to test the strength of the proposed scales relevant to the recommended disposition. The following hypotheses are advanced:

1. FEMALE DATA SET

HYPOTHESIS 1: The HIGHER that a female offender scores on the REPRODUCTIVE scale, the LESS SEVERE will be the recommended sanction.

HYPOTHESIS 2: The HIGHER that a female scores on the PRODUCTION scale the LESS SEVERE will be the recommended sanction.

HYPOTHESIS 3: The HIGHER that female offenders score on the social scale, the LESS SEVERE will be the recommended sanction.

HYPOTHESIS 4: The LOWER that female offenders score on the legal scale the LESS SEVERE will be the recommended sanction.

HYPOTHESIS 5: The LOWER that female offenders score on the seriousness of offence scale, the LESS SEVERE will be the recommended sanction.

2. MALE DATA SET

HYPOTHESIS 6: The HIGHER that a male offender scores on the PRODUCTIVE scale, the LESS SEVERE will be the recommended sanction.

HYPOTHESIS 7: The HIGHER that male offenders score on the REPRODUCTION scale, the LESS SEVERE will be the recommended sanction.

HYPOTHESIS 8: The HIGHER that male offenders score on the social scale, the LESS SEVERE will be the recommended sanction.

HYPOTHESIS 9: The LOWER that male offenders score on the legal scale the LESS SEVERE will be the recommended sanction.

HYPOTHESIS 10: The LOWER that male offenders score on the seriousness of offence scale, the LESS SEVERE will be the recommended sanction.

COMPARING THE MALE AND FEMALE DATA SETS

HYPOTHESIS 11: The impact of the REPRODUCTIVE scale on DISPOSITION will be GREATER for females than males.

HYPOTHESIS 12: The impact of the PRODUCTIVE scale will be GREATER for males than females.

CHAPTER SEVEN - QUANTATIVE FINDINGS

This chapter presents the quantitative findings derived from the data sets. The first section discusses the diagnostic tests to confirm linearity and the process of checking for outliers for both female and male data sets. The data sets are then discussed separately. Beginning with the female data, the correlation coefficients are inspected. Secondly, the results of running stepwise regression are examined. Finally, the regression results are discussed in connection with the hypotheses.

DIAGNOSTIC TESTS FOR LINEARITY AND MULTILINEARITY

The dependent variable DISPOSITION was plotted against each of the independent variables to determine whether the points clustered around a straight line. The residuals were then plotted against the predicted values in order to identify multivariate outliers and to check for normality, linearity and homoscedasticity. There were no outliers in the data set and the data met the assumptions for linearity.

1. FEMALE DATA SET

1A. CORRELATION COEFFICIENTS

Pearson correlation coefficients were generated using to determine whether there was multicollinearity between the independent variables. There is a danger of multicollinearity when the value of the correlation is high (eg. .8 - .9). Table 1 is a summary of the correlation coefficients for the female and the male data sets. There was no indication of multicollinearity.

TABLE 1**Correlation Coefficients Female Data**

	REPRO	SOCIAL	LEGAL	PROD	SERIOUS	DISPO
REPRO	1					
SOCIAL	0.345	1				
LEGAL	-0.199	-0.430	1			
PROD	0.132	0.455	-0.235	1		
SERIOUS	-0.071	-0.130	0.041	-0.099	1	
DISPO	-0.508	-0.477	0.400	-0.300	0.050	1

The strongest correlations for the female data set are between disposition and reproduction (.508), disposition and social (.477) and disposition and legal (.400).

1B. STEPWISE REGRESSION

The female and the male data were run through a stepwise multiple regression which determines which independent variable has the smallest probability of F and then enters it into the regression equation first. Variables are removed if their probability of F becomes significantly large. Once all variables with a high probability are excluded, the method terminates. The R Square is a measure of the goodness of fit of the linear model. It is the proportion of the variation in the dependent variable explained by the regression model. The Adjusted R Square is an estimate of how well the model will fit the population. The model's R Square tends to overestimate the goodness of fit of the population so the Adjusted R Square corrects the optimistic bias of the sample R Square by taking into account sample size and the number of variables (Norisus, 1983, 1991). The partial regression coefficient (B) is an estimate of the change in the dependent variable which can be attributed to a change of one unit of the independent variable.

The partial regression coefficients for the stepwise regression are as follows:

1. There is a negative relationship between REPRODUCTION and DISPOSITION whereby a 1.41 unit change in DISPOSITION can be attributed to a one unit change in REPRODUCTION.
2. There is a negative relationship between SOCIAL and DISPOSITION whereby a .92 unit change in DISPOSITION can be attributed to a one unit change in SOCIAL.
3. There is a positive relationship between LEGAL and DISPOSITION whereby a .95 unit change in DISPOSITION can be attributed to a one unit change in LEGAL.

Table 2 provides a summary of the results of the stepwise regression for the female data set. The first variable to be entered into the stepwise regression was REPRODUCTION with an R Square of .26. Using REPRODUCTION alone explained 26% of the variance in the dependent variable DISPO. Therefore, by knowing what the reproductive value is for a female will indicate what the disposition will be 26% of the time. The second variable to be included in the stepwise regression for females was SOCIAL. With the inclusion of SOCIAL, an additional 10% was added to the explanation of the variance. The variables REPRODUCTION and SOCIAL taken together explained 36% of the variance. The third variable to be included in the regression was LEGAL. LEGAL added another 4% to the variance of disposition and when the three statistically significant variables REPRODUCTION, SOCIAL and LEGAL are regressed against DISPOSITION 40% of the variance is explained. Two variables (PRODUCTION AND SERIOUS) were not included in the stepwise regression because they were not statistically significant.

TABLE 2**Stepwise Multiple Regression of Model Variables on Disposition Female Data Set****REPRODUCTION**

Multiple R	R Square	Adjusted R Square	Standard Error
.51	.26	.25	23

Variable	B	SE B	BETA	T	Sig t
Repro	-1.89	.33	-.51	-5.69	.0000***
(Constant)	68.29	6.20		11.01	.0000

*p < .05; ***p < .001

SOCIAL

Multiple R	R Square	Adjusted R Square	Standard Error
.60	.36	.35	21

Variable	B	SE B	Beta	T	Sig T
Social	-1.24	.32	-.34	-3.90	.000***
Repro	-1.45	.33	-.39	-4.39	.000***
(Constant)	86.34	7.44		11.61	.000

*p < .05; ***p < .001

LEGAL

Multiple R	R Square	Adjusted R Square	Standard Error
.63	.40	.38	21

Variable	B	SEB	Beta	T	Sig T
Social	-.92	.34	-.25	-2.70	.008**
Repro	-1.41	.32	-.435	-4.35	.000***
Legal	.95	.40	.22	2.39	.019*
(Constant)	66.41	11.06		6.00	.000

*p < .05; **p < .01; ***p < .001

2. MALE DATA SET

2A. CORRELATION COEFFICIENTS

TABLE 3

Correlation Coefficients Male Data

	PROD	LEGAL	REPRO	SOCIAL	SERIOUS	DISPO
PROD	1					
LEGAL	-0.295	1				
REPRO	0.199	0.030	1			
SOCIAL	0.501	-0.313	0.161	1		
SERIOUS	-0.018	-0.032	0.064	-0.010	1	
DISPO	-0.538	0.502	-0.014	-0.313	0.038	1

The strongest correlations for the male data (See Table 3) set are between disposition and production (.538) and disposition and legal (.502). While SOCIAL (.313) appears to have somewhat of a correlation, it is not statistically significant.

2 B. STEPWISE REGRESSION

The partial regression coefficients for the stepwise regression are as follows:

1. There is a negative relationship between PRODUCTION and DISPOSITION whereby a 1.49 unit change in DISPOSITION can be attributed to a one unit change in PRODUCTION.
2. There is a positive relationship between LEGAL and DISPOSITION whereby a 1.51 unit change in DISPOSITION can be attributed to a one unit change in SOCIAL.

Table 4 provides a summary of the results of the stepwise regression for the male data set. The first variable to be entered into the stepwise regression was PRODUCTION. Using PRODUCTION alone explained 29% of the variance in the dependent variable

DISPO. Therefore by knowing what the productive value is for a male will indicate what the disposition will be 29% of the time. The second variable to be included in the stepwise regression for males was LEGAL. With the inclusion of LEGAL, an additional 13% was added to the explanation of the variance. The variables PRODUCTION and LEGAL taken together explained 36% of the variance. When the two statistically significant variables PRODUCTION, LEGAL are regressed against DISPOSITION 42% of the variance is explained. Three variables (REPRODUCTION, SOCIAL AND SERIOUS) were not included in the stepwise regression because they were not statistically significant.

Using PRODUCTION alone explained 29% of the variance in the dependent variable DISPO. Therefore by knowing what the productive value is for a male will indicate what the disposition will be 29% of the time. The second variable to be included in the stepwise regression for males was LEGAL. This variable added an additional 13% to the explanation of the variance. The variables PRODUCTION and LEGAL taken together explained 42% of the variance in DISPOSITION. SOCIAL, REPRODUCTION and SERIOUS were not inserted in the stepwise regression because they did not meet the criteria for inclusion.

TABLE 4**Stepwise Multiple Regression of Model Variables on Disposition Male Data Set****PRODUCTION**

Multiple R	R Square	Adjusted R Square	Standard Error
.54	.29	.28	21.9

Variable	B	SE B	BETA	T	Sig t
Pro	-1.88	.31	-.54	-6.16	.000***
(Constant)	64.15	5.24		12.23	.000

*p < .05; ***p < .001

LEGAL

Multiple R	R Square	Adjusted R Square	Standard Error
.65	.42	.41	19.9

Variable	B	SE B	Beta	T	Sig T
Production	-1.49	.29	-.43	-5.14	.000***
Legal	1.51	.33	-.38	-4.51	.000***
(Constant)	35.17	8.00		4.40	.0000

*p < .05; ***p < .001

TABLE 5

SUMMARY OF INCREMENTAL VALUES FOR R SQUARES FOR FEMALE DATA

Variable	Incremental R Square	Total R Square
Reproduction	.26	.26
Social	.10	.36
Legal	.04	.40

SUMMARY OF INCREMENTAL VALUES FOR R SQUARES FOR MALE DATA

Variable	Incremental R Square	Total R Square
Production	.29	.29
Legal	.13	.42

COMPARING THE FEMALE AND MALE DATA SETS

Three variables **REPRODUCTION**, **SOCIAL** and **LEGAL** explained 40% of the variance on the dependent variable for females while only two variables **PRODUCTION** and **LEGAL** were included in the regression for males explaining 42% of the variance.

The partial correlation coefficients for the female data set indicate that reproduction estimates the strongest per unit change in **DISPOSITION** (-1.41) whereas, for males **PRODUCTION** (1.49) is the strongest estimate.

DISCUSSION OF HYPOTHESES TESTING

HYPOTHESIS 1: The HIGHER that a female offender scores on the REPRODUCTIVE scale, the LESS SEVERE will be the recommended sanction.

The model predicted that the reproductive scale for women would be inversely related to the dependent variable and in fact REPRODUCTION had a strong negative relationship (-1.41) to DISPOSITION for females. With an R Square of .26, it was the strongest predictor of the recommended disposition. Therefore Hypothesis 1 is supported. This finding suggests that the reproductive value is important for women and has previously been ignored in the research on gender differentiation in sentencing issues.

HYPOTHESIS 2: The HIGHER that a female scores on the PRODUCTION scale the LESS SEVERE will be the recommended sanction.

The second hypothesis stated that there would be an inverse negative relationship between the score on the productive scale for women and the dependent variable. However, there was no statistical significance between the variable PRODUCTION and DISPOSITION and, for this reason, hypothesis 2 is not supported. This finding is somewhat surprising given the literature on the importance of an offender's standing in the productive sphere. However, these previous studies did not take gender into consideration.

HYPOTHESIS 3: The HIGHER that female offenders score on the social scale, the LESS SEVERE will be the recommended sanction.

The third premise was that there would be a negative inverse relationship between SOCIAL and DISPOSITION and the social scale was significantly negatively related (-.92) to the dependent variable for females and accounted for 10% of the variance.

Hypothesis 3 is supported. Given the literature on sex appropriate roles for women, it makes sense that the social considerations are the second most indicative determinant in predicting the recommended sentence for women.

HYPOTHESIS 4: The LOWER that female offenders score on the legal scale the LESS SEVERE will be the recommended sanction.

Hypothesis 4 maintained there would be a positive relationship between LEGAL and DISPOSITION for female offenders. In fact, the legal scale was positively related (.95) to DISPOSITION for females and as well predicted 4% of the variance in the dependent variable. This hypothesis is supported. While other criminologists have pointed to the importance of legal factors in the determination of sentence, it is clear that extra-legal factors have more weight in this model than legal factors.

HYPOTHESIS 5: The LOWER that female offenders score on the seriousness of offence scale, the LESS SEVERE will be the recommended sanction.

The fifth assumption was that there would be a positive relationship between SERIOUSNESS OF OFFENCE and DISPOSITION for female offenders. The variable SERIOUS was not statistically significant for females and the hypothesis was not supported.

2. MALE DATA SET

HYPOTHESIS 6: The HIGHER that a male offender scores on the PRODUCTIVE scale, the LESS SEVERE will be the recommended sanction.

The sixth hypothesis stated that there would be a negative inverse relationship between PRODUCTION and DISPOSITION for males. PRODUCTION had a strong negative relationship (-1.49) to DISPOSITION for males and the PRODUCTION scale certainly proved to be the strongest predictor of DISPOSITION for male offenders explaining 29% of the variance. Therefore, the hypothesis is supported. This finding is in keeping with the view that the law supports the "*status quo*" in terms of relations of production by ensuring that those offenders who are economically marginalized receive a harsher penalty. In his study on the influence of class on sentencing practices, Mandel (1986) points to "the legitimacy of varying punishment not only according to the *offence*, but also according to the *offender*". But the influence of class holds true only for male offenders - production did not influence sentencing decisions for females. Johnson (cited in Mandel, 1986)) cautions that "If the Court can discriminate according to class in imposing sentence, then there is nothing to prevent it from imposing punishment based on race, creed, color or society status of the accused". Taking the warning one step further, there is the possibility of discrimination based on gender which is demonstrated by this model.

HYPOTHESIS 7: The HIGHER that male offenders score on the REPRODUCTION scale, the LESS SEVERE will be the recommended sanction.

Hypothesis 7 claimed that there will also be an negative inverse relationship between REPRODUCTION and DISPOSITION for males. There was no statistical significance and the hypothesis is not supported.

HYPOTHESIS 8: The HIGHER that male offenders score on the social scale, the LESS SEVERE will be the recommended sanction.

Hypothesis 8 avered there will be a negative inverse relationship between SOCIAL and DISPOSITION for males but there was no statistical significance and the hypothesis is not supported.

HYPOTHESIS 9: The LOWER that male offenders score on the legal scale the LESS SEVERE will be the recommended sanction.

The ninth premise postulated that there would be a positive relationship between LEGAL and DISPOSITION. The LEGAL scale was the second strongest predictor of DISPOSITION for males explaining 13% of the variance of the dependent variable with a strong positive correlation of 1.51. Hypothesis 9 is supported in this model.

HYPOTHESIS 10: The LOWER that male offenders score on the seriousness of offence scale, the LESS SEVERE will be the recommended sanction.

Hypothesis 10 assumed that there would be a direct relationship between SERIOUSNESS OF OFFENCE and DISPOSITION, however there was no statistical significance between these two variables.

COMPARING THE MALE AND FEMALE DATA SETS

HYPOTHESIS 11: The impact of the REPRODUCTIVE scale on DISPOSITION will be GREATER for females than males.

Hypothesis 11 predicted that the impact of the reproductive score on DISPOSITION would be greater for females than for males. While the REPRODUCTION scale

certainly proved to be the strongest predictor ($R^2 = .26$) of DISPOSITION for female offenders, it was not statistically significant for male offenders.

HYPOTHESIS 12: The impact of the PRODUCTIVE scale will be GREATER for males than females.

Hypothesis 12 predicted that the impact of the productive score on DISPOSITION would be greater for men than for women. PRODUCTION was the strongest indicator of DISPOSITION for men but their merit in the reproductive sphere did not have any significant influence on the recommendation for sentencing. For female offenders, the score on PRODUCTION was statistically insignificant. There is reluctance by the criminal justice system to use imprisonment for men who are employed; similarly there is a disinclination to use jail for women who are engaged in positive reproductive work.

DESCRIPTIVE ANALYSIS OF SOCIAL, LEGAL AND SERIOUSNESS OF OFFENCE VARIABLES

1. SOCIAL VARIABLES

The literature on gender differentiation has pointed to social factors having more influence on women than they do on men. The SOCIAL scale was predictive of 10% of the variance for women in this study but was not statistically significant for men. This suggests that there is some validity to the work on gender differentiation which points to the role of "familied justice" where ties to family are seen as mitigating factors for female offenders.

2. LEGAL

Historically, studies on the issue of sentencing have given legal factors a great deal of weight. It is therefore not surprising to see that in this model the variable LEGAL was

statistically significant for both genders however, LEGAL accounted for 13% of the variance for men and only 4% of the variability for women. It is clear that REPRODUCTION and SOCIAL far outweigh the legal factors for women. As well, while LEGAL is a predictor of male outcome (13%) it is not as significant as PRODUCTION (29%).

3. SERIOUSNESS OF OFFENCE

Seriousness of offence has been considered to be an important factor in determining outcome in criminal matters. In this study, this variable was not statistically significant for either gender. The offences in this study were ranked from a low score of 1 to a high score of 71 and the mean was 36. There was a wide scope of crimes ranging from summary to indictable offences. The offences were broken into three categories (minor, medium and major) depending on the degree of severity of sanction called for by the Canadian Criminal Code. The first category included 26 offences which were minor in nature. There were 44 (20 female and 24 male) subjects in this classification. The middle range of offences included 23 offences and were committed by 72 (38 female and 34 male) offenders. Finally there were 21 indictable offences committed by 74 (37 female and 37 male) offenders.

CHAPTER EIGHT

CONCLUSIONS AND SOCIAL IMPLICATIONS

The fact that the differences between women and men are not pre-social givens, but rather are socially constructed and therefore socially alterable directs feminist scholars to the institutions in society which reinforce and perpetuate women's subordination. In the Introduction, it was indicated that a socialist feminist analysis of discretionary sentencing practices in general and more specifically class and gender differentiation in the Canadian Criminal Justice System would provide the means with which to more fully explore how the dynamic of production and reproduction affects the roles of men and women in a capitalist society. It is apparent from past research that the justice system functions to strengthen productive relations but what is left to determine is the extent to which it circumscribes reproductive relations.

As feminist theory in criminology developed to explain the impact of the legal system on gender, it is seen that we have moved from a micro to a macro explanation of gender differentiation. While legal factors such as prior record, seriousness of crime, and rehabilitative potential are important factors in determining recommendations for sentencing, it is clear from this study that the most consequential influence is the offender's value in either the productive or reproductive sphere. In his discussion of class-based justice, Mandel (1986) points out that presentence reports generally comprise a complete social history and that, essential to this history, is a summary of the offender's employment status, employment history and occupation. While this premise holds true for male offenders, the pre-sentence reports for females concentrated much

more on family history and their worth as a reproducer. It is essential that we pay attention to how marginalized individuals are punished more severely and recognize that men are valued for their productive capabilities; but we must also examine how gender enters into the equation and determines what the social value is for women. It is in this way that it is possible to reveal how patriarchal/capitalist ideology plays a critical role in perpetuating the relations of both production and reproduction.

SOCIAL IMPLICATIONS

The presentence report is an influential tool used by the judiciary to determine the appropriate sentence for an offender. From this examination of the manner in which presentence reports are written and the information that is deemed relevant, it is clear that justice is not only "classed" but also "gendered". Worrall (1989:79) speaks to the existence of a "gender contract" which permits the offender the opportunity to neutralize the effects of her lawbreaking activity by permitting her life to be described or represented primarily in terms of its domestic, sexual and pathological dimensions". For male offenders, their life is represented primarily in terms of its employment and educational dimensions.

To move beyond a form that "genders" sentencing practices to an ungendered format, it is essential for probation officers to recognize that because "our understanding of ourselves is gendered" (Worrall, 1995), the information that is presented to the courts through presentence reports is gendered. In one instance a community program³⁶ has constructed the presentence report in such a way as to standardize the areas to be considered in sentencing decisions and then to ensure that

they are addressed for both men and women, rather than concentrating on areas that are considered important for each gender. The issues concerning reproductive value have equal weight for men and women as does productive worth. For example, parenting concerns are made relevant for both men and women. Employment and educational concerns are valid for both genders. To exclude or to trivialize either issue from an offender's pre-sentence report is to perpetuate the *status quo*. The findings from this study are not consonant with some previous studies whereby it was found that prior criminal record increased the severity of sanctioning. However, Kuttschnitt (1982)³⁷ found that a woman's general level of "respectability" has a significant impact on the sentence she will receive. In her conclusions, Kruttschnitt suggests that we need to know why this is the case. This study provides an explanation for the respectability factor. "Respectable" women are those who will make the most appropriate **reproducers** which is vital to a capitalist system.

LIMITATIONS OF THE STUDY AND SUGGESTIONS FOR FUTURE RESEARCH

This study was intended as a test of newly developed scales devised to explore whether sentencing decisions are based solely on individualistic traits of offenders or whether there are larger societal issues which come into play. The question of validity and reliability of the measurement instruments needs to be addressed. Reliability of the scales could be checked by replicating the study with different observers using the instruments and checking to see if there are similar results.

Once the reliability of the scales has been established, there remains the question of validity or whether the items on each of the scales are reasonable

representatives of the construct being measured. The factors that were used to construct the legal, social and productive scales have been operationalized in a number of empirical tests and are generally considered to be valid predictors of sentencing. Validity is still a question for the reproductive scale. The number of subjects in this research is relatively small and it would be important to test the model on a larger number of subjects to discover whether the model would hold true under these conditions.

Pre-sentence reports are not always provided to the court for consideration before sentencing. In fact, it is most often true that a judge makes sentencing decisions without the benefit of a pre-sentence report. This study used recommended dispositions as the dependent variable but, in future research, it would be interesting to use the actual sentence given by a judge and compare and contrast sentences where there is a pre-sentence report and where there is not.

Another important consideration for future research using this model is to compare the findings in other provinces and then in other capitalist countries to determine whether these findings hold true in other systems. By so doing, it would ensure that the findings were not based on a particular organizational value system.

In conclusion, this study has explored the impact of the productive and reproductive roles of male and female offenders on the recommended disposition. The model predicts that women who are seen as "good" **reproducers** will be recommended for less severe sanctions; and, men who are seen as "good" **producers** be recommended for less severe sanctions. Kruttschnitt (1982:133) concludes that:

. . . to understand legal behaviour, perhaps social scientists should pay more attention to the totality of statuses an individual occupies in social life rather than focusing simply on any one particular location.

ENDNOTES

1. Jane Jenson (1985) convincingly demonstrates the necessity for a comparative analysis of the "capitalist's state's contribution to the oppression of women" (p.9). She shows how state policies can vary from one social formation to another "because assumptions about the family [are] powerful historical constructs".
2. See Albonetti (1991) for a structural organizational explanation of understanding the exercise of judicial discretion.
3. Marcia Millman (1975) deplores the treatment that has been given to the question of female deviance by criminologists and comments that the professional understanding of deviance has been constrained by what she describes as a "systematically male-biased perspective" (Cited in Naffine (1987:5).
4. C. Wright Mills' central contribution to the discipline was the concept of the sociological imagination or the ability to understand the connections between personal experiences (micro) and the larger social structures (macro) which govern our life experiences.
5. For example, Nagel and Hagan (1982) have conjectured that "while [men have been] encouraged to be aggressive, traditionally [they] have also been socialized to avoid aggression toward females and to relate to them with courtesy and respect" (p. 135).
6. Heidensohn explains that an individualization approach "tends to locate the causes of crime within each offender and then "treat" them or "cure" them for their own good (p.51).
7. The social inquiry report in the British system is the equivalent to the presentence report in the Canadian system.
8. See Chunn and Menzies (1990).
9. For a detailed summary of the debate around patriarchy, see Bonnie Fox (1980).
10. See Jaggar (1983) for a full review on the politics of socialist feminism.
11. Boyd and Sheehy (1985) outline the premises and strategies of the various liberal feminists.
12. Mackinnon alleges that synthesizers have taken one of three approaches and that each approach is problematic:

1. Equate and collapse: equating sex with class, feminism with Marxism.
 2. Derive and subordinate: deriving an analysis of sex from an analysis of class, feminism from Marxism, and in order to subordinate sex to class, feminism to Marxism.
 3. Substitute contradictions: applying a Marxist method to sex or a feminist method to class.
13. Miliband (1973:162) cites Williams definition of hegemony as:
- . . . an order in which a certain way of life and thought is dominant, in which one concept of reality is diffused throughout society in all its institutional and private manifestations, informing with its spirit all taste, morality, customs, religious and political principles, and all social relations, particularly in their intellectual and moral connotations.
14. Mary O'Brien (1988:256-257) outlines Gramsci's understanding of the superstructure as one of:
- [C]lass rule working on two superstructural levels: political society and civil society. These together constitute hegemony, the one protecting the hegemony of the ruling class 'by the armour of coercion', the other, the civil society, representing the needs of individuals and standing between the political level of state and economic structures.
15. Chesney-Lind has contributed much to the understanding of the role of the juvenile justice system in the "ordering" of the female juvenile. For more detail on this topic see Chesney-Lind (1973, 1977, 1978a, 1979) and for a Canadian context see Gloria Geller (1987).
16. See Nancy Chodorow (1979) for a discussion on mothering, male dominance and capitalism.
17. See Melossi (1980) for a discussion on the transition of the religious structure of society to the secular and impersonal structure of the bourgeois society.
18. In his discussion on the relationship between production and sentencing patterns in the Canadian Criminal Justice system, Mandel (1986:145) notes:

Thus good character - which means, as we have seen, properly fulfilling a valued role in the productive apparatus and also something not to be interfered with in itself - is a guarantee against future criminality since it dispenses with the need for more severe guarantees.

19. Pat Carlen and Margaret Powell (1979:101) outline the history of probation officers and their role in the British court system. In their analysis, they categorize the dominant definitions of the court room role as: (1) the servant of the court; (2) the political educator of the magistrate; (3) a lay person speaking on behalf of the defendant; and (4) the independent professional.
20. See for example Kruttschnitt (1985); Rosencrance (1987) and MacDonald (1981).
21. See for example Carter (1966, 1967); also Carter and Wilkins (1967).
22. See for example, Rosencrance, 1985 and 1987.
23. In a qualitative study, William Spencer (1984:221) elucidates the manner in which probation officers elicit, interpret and utilize specific pieces of information and he offers that:

In making recommendations POs chose subsets of information that, as a result of their interpretation, were 'deemed relevant' for the recommendation. These recommendations were oriented to generally recognized yet informal guidelines for sentencing in the court.

24. In Sentencing as a Human Process, John Hogarth (1971) has documented that 93% of the judges in his study were between the ages of 40 -69, that 92% of the judges were born in Canada and that 97% were married.

As well, Ralph Miliband (1973) notes that:

... judicial elites ... are mainly drawn from the upper and middle layers of society: and those judges who are not have clearly come to belong to these layers by the time they reach the bench. ... the conservative bias which their class situation is thus likely to create is here strongly reinforced by the fact that judges are, in many of these systems, also recruited from the legal profession, whose ideological dispositions are traditionally cast in a conservative mould (p. 124).

In thus interpreting and making law, judges cannot fail to be deeply affected by their view of the world, which in turn determines their attitude to the conflicts which occur in it (pp. 125-126).

25. Contrasting the penal sanctions given to unemployed males and females, Steven Box (1985) explains:

...unemployed males are more likely to be perceived as problematic, because in western culture work is not only believed to be the typical way in which males are disciplined but it is also their major source of identity and thus the process by which they build up a stake in conformity...

In contrast, because of institutionalized sexism, unemployed females can, and for the most part do, slip back into or take up the wife/mother social role and hence become subject to all the informal controls of *being* in the family, thus making criminalization and imprisonment, as a form of social control, an unlikely resource to be utilized by the judiciary.

Furthermore, given the view held by a large proportion of the population that female employment leads to delinquent 'latch-key' children, it is unlikely that judges and magistrates will favor imprisoning unemployed mothers, for they will be seen as fulfilling their stereotypical gender-role and hence playing their informal part in delinquency control (214-215).

26. See Michael Mandel (1986:137-139).
27. In this study the information about offenders that was seen as essential ranked in order of most to least important are the following: family background, criminal record, employment record, intelligence, marital status, ties in the community, mental condition, attitude to rehabilitation, use of alcohol or drugs, other (p. 232 Table 74) .
28. See Eaton (1983) p. 389.
28. The information considered relevant in Hogarth's study (1971) are the following ranked in order from most essential to least: criminal record, planning and premeditation, culpability in other respect, degree of personal injury or violence, damage or loss to property, offender's present attitude to the offence, other (p. 232 Table 74).
29. See Hogarth (1971:231-236) and Pink (1992:235).
30. See Hugh Wagner and Kenneth Pease (1978) and Monica Walker (1978).
31. See Normandeau(1966); Rossi(1974); and Thorsten, Sellin and Wolfgang (1964).

32. See Manitoba Probation Service, A Guide to Court Reports, p. 5.
33. Alquire, Andrew (1991) University of Manitoba Criminology Field Experience Project. Unpublished paper,
34. Codes representing the Probation Officer's belief that the offender should be incarcerated:
 1. "It is obvious that the offender has gained nothing from past Probation Supervision, and this writer believes that (the offender) requires a more structured environment than a community based sentence can provide".
 2. "This writer is at a loss as to recommending what sentence should be imposed".
 3. "This writer is unable to recommend a suitable community based sentence, and it is my opinion that this offender would benefit from a stronger disposition".
 4. "It is obvious that this offender did not benefit from supervised probation, and requires a disposition that will allow close monitoring of her activities".
 5. "This writer believes that this offender should not be allowed to remain in the community based on the risk factor he imposes".
35. In Hollow Water, a First Nations community in Manitoba, the presentence reports are written by the program staff rather than probation officers. The community has entered into a partnership with the criminal justice system in an attempt to meld tribal justice with the conventional system. The staff who prepare the reports are community people and they have constructed the report so that the information provided in the report for both female and male offenders is the same. There is no emphasis made on one part of the offender's life more than on another.
36. Kruttschnitt (1982:232) found that:
 1. Totally respectable women receive the lightest sentence;
 2. Women who have prior records but are otherwise generally respectable receive slightly better treatment by the court than those women who can be considered generally disreputable based on variables other than a criminal record, and;
 3. Totally disreputable women receive the harshest sentence.

APPENDIX I
RESEARCH SCHEDULE

VARIABLE CODES

VAR = INFORMATIONAL ITEMS

RVAR = ITEMS SCORED ON THE REPRODUCTIVE SCALE

PVAR = ITEMS SCORED ON THE PRODUCTIVE SCALE

LVAR = ITEMS SCORED ON THE LEGAL SCALE

SVAR = ITEMS SCORED ON THE SOCIAL SCALE

DVAR = ITEMS SCORED ON THE DISPOSITION SCALE

SOVAR = ITEMS SCORED ON THE SERIOUSNESS OF OFFENCE SCALE

VAR1 IDENTIFICATION NUMBER

RVAR1A GENDER OF OFFENDER (FEMALE ... 2 MALE ... 1)

PVAR1A GENDER OF OFFENDER (FEMALE ... 1 MALE ... 2)

RVAR1 RACE OF OFFENDER (NONCAUCASIAN ... 1 CAUCASIAN ... 2 NI ... 0)

RVAR2 MARITAL STATUS OF OFFENDER (SEE CODE BOOK 1A)

RVAR3 DEPENDENT SCORE (YES ... 2 NO ... 1 NO INFO ... 0)

RVAR4 STATUS OF DEPENDENTS (SEE CODE BOOK 1B)

IF OFFENDER HAS DEPENDENTS,

RVAR5 THE PO'S ASSESSMENT OF HIS/HER PARENTING SKILLS (SEE CODE BOOK 1C)

RVAR6 IS THE OFFENDER RESPONSIBLE FOR ELDERLY/DISABLED FAMILY MEMBERS

(NO ... 1 YES ... 2 NO INFO ... 0)

USE THE FOLLOWING TO SCORE THE PO'S ASSESSMENT OF OFFENDER ON RVAR7-12

NEG ... 1 NEUT ... 2 POSITIVE ... 3

RVAR7 ROLE OF FEMALE OFFENDER AS WIFE

RVAR8 ROLE OF FEMALE OFFENDER AS MOTHER

RVAR9 ROLE OF FEMALE OFFENDER AS HOMEMAKER

RVAR10 ROLE OF MALE OFFENDER AS HUSBAND

RVAR11 ROLE OF MALE OFFENDER AS FATHER

RVAR12 ROLE OF MALE OFFENDER AS HOMEMAKER

RVAR13 REPRODUCTIVE SCORE ADD RVAR1 - RVAR12

VAR14 YEARS OF EDUCATION ATTAINED

PVAR15 EDUCATION SCORE (<HS .. 1 HS .. 2 SOME U ... 3 VOC .. 4 UD .. 5)

PVAR16 EMPLOYMENT STATUS OF OFFENDER (SEE CODE BOOK 1D)

VAR17 IF EMPLOYED AT PRESENT, LENGTH OF EMPLOYMENT (IN MONTHS)

PVAR18 WORK HISTORY (SEE CODE BOOK 1E)

PVAR19 EMPLOYER'S ASSESSMENT OF OFFENDER (SEE CODE BOOK 1F)

USE THE FOLLOWING TO SCORE DEGREE OF IMPORTANCE PO PLACED ON PVAR20-23

NEG ... 1 NEUT ... 2 POS ... 3 NO INFO ... 0

PVAR20 ROLE OF FEMALE OFFENDER AS FAMILY'S "BREADWINNER"

PVAR21 ROLE OF MALE OFFENDER AS FAMILY'S "BREADWINNER"

PVAR22 OFFENDER'S EDUCATIONAL ACHIEVEMENTS

PVAR23 OFFENDER'S EMPLOYMENT STATUS AND/OR WORK HISTORY

PVAR24 PRODUCTIVE SCORE

LVAR25 DID OFFENDER HAVE PREVIOUS OFFENCES (YES ... 2 NO ... 1)

IF YES TO VAR20A SPECIFY NUMBER OF OFFENCES

VAR26 NUMBER OF RELATED PRIOR OFFENCES (ACTUAL NUMBER)

1 POINT FOR EACH RELATED FROM LEGAL SCORE TO MAX 6

VAR27 UNRELATED PRIOR OFFENCES

1 POINT IF ANY UNRELATED FROM LEGAL SCORE TO MAX 6

LVAR28 ADD TOTAL POINTS FROM LVAR26 AND LVAR27

LVAR29 DEGREE OF OFFENDER'S REMORSE

BLAMES OTHERS ... 4 NO REMORSE ... 3

SOMEWHAT REMORSEFUL ... 2 HIGHLY REMORSEFUL ... 1

LVAR30 PREVIOUS INCARCERATION (YES ... 2 NO ... 1 N/M ... 0

LVAR31 PREVIOUS PROBATION (YES ... 2 NO ... 1 N/M ... 0

USE THE FOLLOWING TO SCORE THE IMPORTANCE THE PO PLACES ON LVAR32-35

NEG ... 3 NEUT ... 2 POS ... 1

LVAR32 OFFENDER'S PRIOR RECORD

LVAR33 VICTIM IMPACT

LVAR34 OFFENDER UNDERSTANDS SERIOUSNESS OF OFFENCE

LVAR35 COOPERATION WITH AGENTS OF THE CRIMINAL JUSTICE SYSTEM

NO ... 2 YES ... 1

LVAR36 LEGAL SCORE

SVAR37 WAS THE OFFENDER AMENABLE TO TREATMENT (NO .. 1 YES .. 2 NI .. 0)

SVAR38 FAMILY OF ORIGIN CHARACTERISTICS (SEE CODE BOOK 2A)

SVAR39 COMMUNITY INVOLVEMENT (SEE CODE BOOK 2B)

SVAR40 DRUG AND/OR ALCOHOL INVOLVEMENT (SEE CODE BOOK 2C)

USE THE FOLLOWING TO SCORE VAR41 TO 45

NEGATIVE ... 1 NEUTRAL ...2 POSITIVE ... 3

SVAR41 OFFENDER'S RELATIONSHIP WITH FAMILY

SVAR42 PO'S ASSESSMENT FOR POTENTIAL FOR SOCIAL CONTROL BY FAMILY MEMBERS

SVAR43 PO'S ASSESSMENT OF OFFENDER'S LEISURE TIME ACTIVITIES

SVAR44 PO'S ASSESSMENT OF OFFENDER'S POTENTIAL FOR REHABILITATION

SVAR45 CHARACTERISTICS OF EXTENDED FAMILY (SEE CODE BOOK 2D)

IF MARRIED OR COMMON LAW, (SEE CODE BOOK 2E)

SVAR46 CHARACTERISTICS OF NUCLEAR FAMILY

SVAR47 SOCIAL SCORE

DVAR48 RECOMMENDATION (SEE CODE BOOK PAGE 3A)

DVAR49 DISPOSITION SCORE

SOVAR50 SEE CODE BOOK (8A)

SOVAR51 SERIOUSNESS OF OFFENCE SCORE

APPENDIX II

CODE BOOK

1A. MARITAL STATUS CODE	
HOMOSEXUAL RELATIONSHIP	1
SINGLE	2
SINGLE PARENT/PREGNANT SINGLE WOMAN	3
DIVORCED/LEGALLY SEPARATED	4
WIDOW(ER)	5
COMMON LAW	6
MARRIED	7
1B. STATUS OF DEPENDENTS	
APPREHENDED BY WELFARE	1
NOT CURRENTLY LIVING WITH OFFENDER	2
LIVING WITH OFFENDER SUPPORTED BY WELFARE	3
LIVING WITH OFFENDER SUPPORTED BY OTHER	4
LIVING WITH OFFENDER SUPPORTED BY SPOUSE	5
OFFENDER SUPPORTS DEPENDENTS	6
1C. P O'S ASSESSMENT OF OFFENDER'S PARENTING SKILLS	
POOR	1
INAPPROPRIATE	2
MENTIONED/NEUTRAL	3
ADEQUATE	4
GOOD	5
DEVOTED	6
1D. EMPLOYMENT CODE	
DEPENDENT (WELFARE)	1
DEPENDENT (FAMILY)	2
UNEMPLOYED UIC/UNEMPLOYED WCB	3
STUDENT/RETIRED	4
HOMEMAKER	5
EMPLOYED - UNSKILLED	6
EMPLOYED - SKILLED/SEMI-SKILLED	7
EMPLOYED - PROFESSIONAL	8
1E. EMPLOYMENT HISTORY CODE	
NO EMPLOYMENT IN PAST YEAR	1
INTERMITTENT EMPLOY> 1 YR	2
INTERMITTENT EMPLOY> 2 YRS <1YR	3
STEADY EMPLOYMENT< 1YR	4
STEADY EMPLOYMENT< 3 YRS BUT >1YR	5
STEADY EMPLOYMENT< 6 YRS BUT >3 YRS	6
1F. EMPLOYER'S ASSESSMENT OF OFFENDER	
VERY NEGATIVE	1
SOMEWHAT NEGATIVE	2
NEUTRAL	3
SOMEWHAT POSITIVE	4
VERY POSITIVE	5

2A. FAMILY OF ORIGIN CHARACTERISTICS

DYSFUNCTIONAL FAMILY W/NO CONTINUING CONTACT .. 1
DYSFUNCTIONAL FAMILY W/CONTINUING CONTACT 2
DYSFUNCTIONAL FAMILY SUPPORTIVE..... 3
STABLE FAMILY W/NO CONTACT AT PRESENT 4
STABLE UPBRINGING W/CONTINUING RELATIONS 5
STABLE FAMILY SUPPORTIVE 6

2B. COMMUNITY INVOLVEMENT

NOT AT ALL ACTIVE IN THE COMMUNITY 1
SOMEWHAT INVOLVED IN THE COMMUNITY 2
ACTIVELY INVOLVED IN THE COMMUNITY 3

2C. DRUG/ALCOHOL INVOLVEMENT

LONG HISTORY OF DRUG/ALCOHOL DEPENDENCY 1
ABUSES DRUGS/ALCOHOL 2
FREQUENTLY USES DRUGS/ALCOHOL 3
USES SOCIALLY ONLY 4
RARELY USES DRUGS/ALCOHOL 5
DOES NOT USE DRUGS/ALCOHOL AT ALL 6

2D. EXTENDED FAMILY SUPPORT CODE

UNSTABLE FAMILY UNWILLING TO SUPPORT OFFENDER . 1
UNSTABLE FAMILY WILLING TO SUPPORT N/C..... 2
UNSTABLE FAMILY WILLING TO SUPPORT W/C 3
STABLE FAMILY UNWILLING TO SUPPORT OFFENDER ... 4
STABLE FAMILY WILLING TO SUPPORT N/C..... 5
STABLE FAMILY WILLING TO SUPPORT W/C..... 6

2E. NUCLEAR FAMILY SUPPORT CODE

UNSTABLE SPOUSE UNWILLING TO SUPPORT OFFENDER . 1
UNSTABLE SPOUSE WILLING TO SUPPORT N/C 2
UNSTABLE SPOUSE WILLING TO SUPPORT W/C 3
STABLE SPOUSE UNWILLING TO SUPPORT OFFENDER ... 4
STABLE SPOUSE WILLING TO SUPPORT OFFENDER N/C.. 5
STABLE SPOUSE WILLING TO SUPPORT OFFENDER W/C.. 6

**APPENDIX III
SERIOUSNESS OF OFFENCE
RANKED FROM LEAST SERIOUS TO MOST SERIOUS**

RANKING	CRIME	# OF OFFENDERS
01	BREACH FAMILY MAINTENANCE	(1)
02	BREACH PROBATION	(1)
03	FOOD AND DRUG ACT	(1)
04	NARCOTICS CONTROL ACT	(5)
05	NARCOTICS CONTROL ACT/FAILURE TO APPEAR	(1)
06	NCA/FOOD AND DRUG ACT	(3)
07	NCA X2	(1)
08	NCA X3	(1)
09	HARRASS PHONE CALLS	(1)
10	HAR PH CALLS X20	(1)
11	PERSONATION	(1)
12	POSSESSION OF GOODS OBTAINED BY CRIME	(2)
13	FALSE PRET X1	(1)
14	FALSE PRET X5	(1)
15	FALSE PRET X6	(1)
16	FALSE PRET X12	(1)
17	FALSE PRET X13	(1)
18	FALSE PRET X13 FAIL	(1)
19	FALSE PRET X23	(1)
20	FALSE PRET X9 FRAUD X5	(1)
21	ATT FRAUD>	(1)
22	FRAUD	(8)
23	FRAUD X3	(1)
24	FRAUD/FALSE PRET	(1)
25	FRAUD/FALSE PRET X3	(1)
26	FORGERY	(2)
27	DRIVE IMPAIRED	(2)
28	DRIVE IMPAIRED/DRIVE UNDER SUSPENSION	(2)
29	THEFT UNDER	(18)
30	THEFT UNDER/FAIL	(1)
31	THEFT UNDER/ FAILX3	(1)
32	THEFT UNDER/BREACH PROBATION X2	(1)
33	THEFT UNDER/ PGOBC	(3)
34	THEFT UNDER/ PGOBC +	(1)
35	THEFT UNDER/ PGOBC X3	(1)
36	THEFT UNDER X2	(5)
37	THEFT UNDER X3	(3)
38	THEFT UNDER x5	(1)
39	THEFT UNDER FRAUD	(2)
40	THEFT UNDER/FALSE PRET X12	(1)
41	THEFT UNDER/FORGERY	(1)
42	THEFT UNDER/FORGERY X7	(1)
43	THEFT OVER	(16)
44	THEFT OVER/+	(3)
45	TRAFFIC	(6)
46	BREAK ENTER THEFT	(4)
47	BET/FAIL/WF DAM	(1)
48	BET/PWDPP	(1)
49	UTTERING	(2)
50	UTTER/FORGERY	(1)
51	UTTER/FRAUD X5	(1)
52	ROBBERY	(8)
53	POSSESSION OF A WEAPON DANG PP	(1)
54	PWDPP /PGOBC	(1)
55	ASLT	(10)
56	ASLT/BREACH	(1)
57	ASLT/BREAK ENTER AND THEFT	(1)
58	ASLTX2/ BREAK ENTER AND THEFT/ BREACH	(1)
59	ASLT X3	(3)

60	ASLT X3 MIS CHIEF	(1)
61	ASLT/THEFT<	(1)
62	ARSON	(1)
63	ARSON X2 MISCHIEF	(1)
64	SEXL INTERFERENCE	(2)
65	ASLT W/WEAP	(8)
66	ASLT POLICE OFFICER/FIREARMS CONTROL ACT	(1)
67	ASLT PO /ESCAPE	(1)
68	DRIVE IMPAIRED CAUSING BODILY HARM	(4)
69	AGG ASLT	(1)
70	AGG ASLT W/WEAP	(1)
71	ASSAULT CAUSING BODILY HARM	(22)
	TOTAL	(190)

APPENDIX 1V
RECOMMENDATIONS FOR DISPOSITION

PROBATION OFFICERS RECOMMENDATIONS

NO INTERVENTION	01
COMMUNITY SERVICE WORK	02
FINE/RESTITUTION	03
COMMUNITY SERVICE WORK + RESTITUTION/FINE	04
UNSUPERVISED PROBATION W/OUT CONDITIONS	05
UNSUPERVISED PROBATION W/OUT CONDITIONS + COMMUNITY SERVICE WORK	06
UNSUPERVISED PROBATION W/OUT CONDITIONS + RESTITUTION/FINE	07
UNSUPERVISED PROBATION W/OUT CONDITIONS + CSW + RESTITUTION/FINE	08
SUPERVISED PROBATION W/OUT CONDITIONS	09
SUPERVISED PROBATION W/OUT CONDITIONS + CSW	10
SUPERVISED PROBATION W/OUT CONDITIONS + RESTITUTION/FINE	11
SUPERVISED PROBATION W/OUT CONDITIONS + CSW + RESTITUTION/FINE	12
SUPERVISED PROBATION W/1 CONDITION	13
SUPERVISED PROBATION W/1 CONDITION + CSW	14
SUPERVISED PROBATION W/1 CONDITION + RESTITUTION/FINE	15
SUPERVISED PROBATION W/1 CONDITION + CSW + RESTITUTION/FINE	16
SUPERVISED PROBATION W/2 CONDITIONS	17
SUPERVISED PROBATION W/2 CONDITIONS + CSW	18
SUPERVISED PROBATION W/2 CONDITIONS + RESTITUTION/FINE	19
SUPERVISED PROBATION W/2 CONDITIONS + CSW + RESTITUTION/FINE	20
SUPERVISED PROBATION W/3 CONDITIONS	21
SUPERVISED PROBATION W/3 CONDITIONS + CSW	22
SUPERVISED PROBATION W/3 CONDITIONS + RESTITUTION/FINE	23
SUPERVISED PROBATION W/3 CONDITIONS + CSW + RESTITUTION/FINE	24
SUPERVISED PROBATION W/4 CONDITIONS	25
SUPERVISED PROBATION W/4 CONDITIONS + CSW	26
SUPERVISED PROBATION W/4 CONDITIONS + RESTITUTION/FINE	27
SUPERVISED PROBATION W/4 CONDITIONS + CSW + RESTITUTION/FINE	28
SUPERVISED PROBATION W/5 CONDITIONS	29
SUPERVISED PROBATION W/5 CONDITIONS + CSW	30
SUPERVISED PROBATION W/5 CONDITIONS + RESTITUTION/FINE	31

SUPERVISED PROBATION W/5 CONDITIONS + CSW +	
RESTITUTION/FINE	32
INTERMITTENT SENTENCE	33
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/OUT CONDITIONS	34
INTERMITTENT SENTENCE +	
COMMUNITY SERVICE WORK	35
INTERMITTENT SENTENCE +	
FINE/RESTITUTION	36
INTERMITTENT SENTENCE +	
COMMUNITY SERVICE WORK +	
RESTITUTION/FINE	37
INTERMITTENT SENTENCE +	
UNSUPERVISED PROBATION W/OUT CONDITIONS	38
INTERMITTENT SENTENCE +	
UNSUPERVISED PROBATION W/OUT CONDITIONS +	
COMMUNITY SERVICE WORK	39
INTERMITTENT SENTENCE +	
UNSUPERVISED PROBATION W/OUT CONDITIONS +	
RESTITUTION/FINE	40
INTERMITTENT SENTENCE +	
UNSUPERVISED PROBATION W/OUT CONDITIONS +	
CSW +	
RESTITUTION/FINE	41
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/OUT CONDITIONS	42
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/OUT CONDITIONS +	
CSW	43
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/OUT CONDITIONS +	
RESTITUTION/FINE	44
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/OUT CONDITIONS +	
CSW +	
RESTITUTION/FINE	45
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/1 CONDITION	46
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/1 CONDITION +	
CSW	47
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/1 CONDITION +	
RESTITUTION/FINE	48
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/1 CONDITION +	
CSW +	
RESTITUTION/FINE	49
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/2 CONDITIONS	50
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/2 CONDITIONS +	
CSW	51
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/2 CONDITIONS +	
RESTITUTION/FINE	52
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/2 CONDITIONS +	
CSW +	

RESTITUTION/FINE	53
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/3 CONDITIONS	54
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/3 CONDITIONS +	
CSW	55
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/3 CONDITIONS +	
RESTITUTION/FINE	56
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/3 CONDITIONS +	
CSW +	
RESTITUTION/FINE	57
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/4 CONDITIONS	58
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/4 CONDITIONS +	
CSW	59
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/4 CONDITIONS +	
RESTITUTION/FINE	60
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/4 CONDITIONS +	
CSW +	
RESTITUTION/FINE	61
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/5 CONDITIONS	62
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/5 CONDITIONS +	
CSW	63
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/5 CONDITIONS +	
RESTITUTION/FINE	64
INTERMITTENT SENTENCE +	
SUPERVISED PROBATION W/5 CONDITIONS +	
CSW +	
RESTITUTION/FINE	65
CUSTODIAL SENTENCE	66
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/OUT CONDITIONS	67
CUSTODIAL SENTENCE +	
COMMUNITY SERVICE WORK	68
CUSTODIAL SENTENCE +	
FINE/RESTITUTION	69
CUSTODIAL SENTENCE +	
COMMUNITY SERVICE WORK +	
RESTITUTION/FINE	70
CUSTODIAL SENTENCE +	
UNSUPERVISED PROBATION W/OUT CONDITIONS	71
CUSTODIAL SENTENCE +	
UNSUPERVISED PROBATION W/OUT CONDITIONS +	
COMMUNITY SERVICE WORK	72
CUSTODIAL SENTENCE +	
UNSUPERVISED PROBATION W/OUT CONDITIONS +	
RESTITUTION/FINE	73
CUSTODIAL SENTENCE +	
UNSUPERVISED PROBATION W/OUT CONDITIONS +	
CSW +	
RESTITUTION/FINE	74
CUSTODIAL SENTENCE +	

SUPERVISED PROBATION W/OUT CONDITIONS	75
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/OUT CONDITIONS +	
CSW	76
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/OUT CONDITIONS +	
RESTITUTION/FINE	77
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/OUT CONDITIONS +	
CSW +	
RESTITUTION/FINE	78
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/1 CONDITION	79
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/1 CONDITION +	
CSW	80
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/1 CONDITION +	
RESTITUTION/FINE	81
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/1 CONDITION +	
CSW +	
RESTITUTION/FINE	82
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/2 CONDITIONS	83
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/2 CONDITIONS +	
CSW	84
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/2 CONDITIONS +	
RESTITUTION/FINE	85
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/2 CONDITIONS +	
CSW +	
RESTITUTION/FINE	86
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/3 CONDITIONS	87
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/3 CONDITIONS +	
CSW	88
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/3 CONDITIONS +	
RESTITUTION/FINE	89
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/3 CONDITIONS +	
CSW +	
RESTITUTION/FINE	90
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/4 CONDITIONS	91
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/4 CONDITIONS +	
CSW	92
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/4 CONDITIONS +	
RESTITUTION/FINE	93
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/4 CONDITIONS +	
CSW +	
RESTITUTION/FINE	94
CUSTODIAL SENTENCE +	

SUPERVISED PROBATION W/5 CONDITIONS	95
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/5 CONDITIONS +	
CSW	96
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/5 CONDITIONS +	
RESTITUTION/FINE	97
CUSTODIAL SENTENCE +	
SUPERVISED PROBATION W/5 CONDITIONS +	
CSW +	
RESTITUTION/FINE	98

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