

The Impact of Gender in Sentencing Offenders Convicted of
Physical and Sexual Abuse of Children

by

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**THE IMPACT OF GENDER IN SENTENCING OFFENDERS CONVICTED OF
PHYSICAL AND SEXUAL ABUSE OF CHILDREN**

BY

CHARENE GILLIES

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

MASTER OF ARTS

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ABSTRACT

This research explores the impact of gender stereotypes, specifically those of aggression and sexuality on the sentencing of offenders convicted of physical and sexual abuse of children. Two hypotheses were explored in this research. Hypothesis I was that offenders would be punished more harshly for the physical abuse of girls than for the physical abuse of boys. Hypothesis II was that offenders would be punished more harshly for the sexual abuse of boys than for the sexual abuse of girls.

The research found that sentences for offenders in cases of physical abuse did not differ by the sex of the victim. This finding provided no support for hypothesis I. In cases of child sexual abuse, while not statistically significant, slight trends in the direction predicted by hypothesis II were evident. Offenders received slightly more serious sentences for the abuse of boys than for the abuse of girls. This trend was especially apparent when a parent was the offender.

It was concluded in this analysis that gender stereotypes did not appear to influence the sentencing of offenders in either physical or sexual abuse cases. It is cautioned, however, that in the sexual abuse data, due to the small number of boys in the sample the findings were not conclusive.

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CHAPTER ONE - INTRODUCTION

Distinctions between the biological and social categories of female and male have characterized much of the history of human interaction. Explicit divisions between the sexes have formed the foundation of many of society's norms, taboos and institutional arrangements. Based on physiology alone, males and females are different. The social construction of gender behaviour, however, has been much more highly debated.

Gender is a cultural invention (Lee, 1976). It is a socially defined status attached to the biological divisions of male and female (Rubin, 1975; Greenglass, 1982; Hansot & Tyack, 1988; Crapo, 1991). Gender represents a powerful normative system that evaluates and controls the behaviour of females and males (Schur, 1984).

Representations of gender exist as stereotypes. Stereotypes are useful in their simplification of the social world and make information processing more efficient (Howard, 1984). Stereotypes are incorporated within society in laws, myths, norms, attitudes and values.

Gender stereotypes are the widely held, culturally shared beliefs about the categories of male and female (Skitka & Maslach, 1990). Knowing only the sex of an individual, inferences based on stereotypes can predict gender related characteristics (Deaux & Lewis, 1984).

This research explores one aspect of gender; its impact on the sentencing of child abuse cases in the criminal justice system. The sentence of an offender is perhaps the most visible result of the criminal justice process. A criminal sentence carries with it enormous symbolic significance (Gibson, 1977). Several studies have examined the characteristics of child abuse cases. Few studies have examined the factors that affect the legal disposition of these cases (Bradshaw & Marks, 1990). On the other hand, sentencing literature greatly emphasizes the importance of examining the factors that influence the sentencing process. Farrell & Holmes (1991) concludes that it is not possible to understand legal decision making without considering the social stereotypes that influence that decision-making. This research aims to examine gender stereotypes as a salient factor in the sentencing of offenders.

To evaluate the impact of gender within the criminal justice system, it is first necessary to investigate prevailing social stereotypes. The routine application of stereotypes in criminal courts influences decision making. Stereotypes reflect general social beliefs and often go unquestioned. Stereotypes become taken-for-granted assumptions that are significant in their influence in the context in which they occur. Any understanding of criminal processing requires consideration of the socially structured stereotypes that help shape decision-making (Emerson, 1983).

This research inspects the predominant gender stereotypes of aggression and sexuality. I am hypothesizing that stereotypes regarding aggression influence the sentencing of cases of child physical abuse in the criminal justice system. Similarly, I am hypothesizing that stereotypes of sexuality influence judges while imposing sentences for sexual abuse.

Chapter Two presents several theories of gender construction and includes a discussion of the theoretical premise of gender development incorporated in this research. Chapter Three examines prevailing stereotypes of aggression and sexuality. Chapter Four details the criminalization of child abuse and discusses the familiar characteristics of physical and sexual abuse. Chapter Five discusses the sentencing process and explores the factors most widely declared as influencing the offender's sentence. In Chapter Six a detailed description of the initial analysis of the child abuse data is provided. The findings from the data analysis are presented in Chapter Seven. Finally, in Chapter Eight the conclusions from this study are discussed.

CHAPTER TWO - THEORIES OF GENDER DEVELOPMENT

In any examination of gender stereotypes, it is necessary to clearly define the relationship between sex and gender. Sex refers to the biologically based categories of male and female (Six & Eckes, 1991). Physical characteristics like chromosomes and genitalia define the sex of an individual (Stoller, 1968).

Gender is more difficult to depict. Gender is a cultural construction based in the biological categories of sex (Mackie, 1987). Gender is prescriptive in nature (Eagly, 1987) and influences perceptions of males and females (Smith et al., 1989). Within gender, there are degrees of maleness and masculinity and degrees of femaleness and femininity (Stoller, 1968). Gender roles indicate socially accepted masculine and feminine behaviour (Solomon, 1992).

I. Theories of Gender Acquisition

The process of gender acquisition has been the centre of much debate. Several distinct theories explaining gender development have gained popularity. Biological theories view gender as natural and the characteristics that typify males and females as prescribed to each. According to psychoanalytic theories, gender development occurs in a series of phases. The development hinges on a child's subconscious identification with his or her parents. Cognitive and social theories concentrate

on socialization as the key to gender development. Feminist theories examine how gender differences have developed to serve the current patriarchal structure of western society.

i. Biological Theories

Proponents of the belief that biology decides gender argue that boys behave the way they do because of their male hormones. Socialization flows from a social acknowledgement of biological reality (Goldberg, 1973). Distinct genetic differences provide the evidence that supports the importance of biological factors on gender development.

Biological theorists explain differences in masculine and feminine behaviour as a result of different levels of testosterone. Evidence of genetic sex differences most often cited by biological theorists is the correlation of high levels of testosterone and aggressive behaviour. Biological theorists often stress that the basis of male aggression is a combination of their size and their higher levels of testosterone (Gray, 1971).

The specific reproductive roles of males and females are further examples of biological differences frequently cited as influencing gender behaviour. A popular claim is that women are naturally passive and nurturing due to their particular reproductive role (Archer, 1978).

ii. Psychoanalytic Theories

Freud was the first theorist to develop a major theory regarding personality, sexuality and gender-role development. Freud believed that gender development occurred throughout a sequence of stages in a child's life. All children progress through all stages. As children begin to identify with their same-sex parent, they develop gender characteristics.

The process of gender identification differs for boys and girls. Freud theorized that a boy's identification with his maleness began with a hidden desire for his mother. He called this desire the "Oedipus Complex". Freud suggested that normal gender development for a boy included the realization that he could never have sexual relations with his mother. Identification with his father figure was a direct result of this realization (Lips, 1988).

Gender identification for girls was also suggested to begin with a discovery of the penis. Freud suggested that while the penis was a great source of pride for boys, the opposite occurred for girls. Upon discovering their lack of a penis, girls developed a condition Freud termed as "Penis Envy". Freud postulated that lingering penis envy caused vanity and jealousy in girls. He reasoned that to compensate for their lack of a penis, girls turned their bodies into erotic vessels (Greenglass, 1982).

Freud proposed that a girl's realization that she lacks a penis and will always lack a penis resulted in the development of a sense of inferiority. With this sense of inferiority comes a contempt for her own sex (Lips, 1988). Freud wrote:

By facing this frustration she accepts the link between pain and pleasure that is inherent in the female role and becomes masochistic. Grudgingly, she reestablishes her feminine identification with her mother. Following the behaviour displayed by her mother, she concentrates on becoming an attractive love object. Sexual attractiveness becomes her primary source of self-esteem and identity (as quoted in Lips, 1988).

Psychoanalytic theory is no longer a popular theory of gender development today. However, the legacy of Freud's work can be identified in many of the myths and stereotypes of sexuality. These primarily include the depiction of males as instinctively needing sex and of females as seducers of all men.

iii. Cognitive Theories

The cognitive theoretical approach provides a different focus for the gender acquisition in children from that of biological or psychoanalytic theorists. The popular view in cognitive theory is that children participate actively in the world around them. This basis of cognitive theory is the perception of the child as the primary agent of his or her own socialization. A child's development begins at the inception of life. As a child's cognitive capacities develop, so to does an

understanding of others and of him or herself (Lewis & Weinraub, 1979, Lewis & Brooks-Gunn, 1979).

Cognitive theorists believe that gender development in children begins with gender label identification. As a child becomes aware of his or her gender label, he or she also becomes conscious of the behaviour and attitudes common to that gender. From this awareness, the child actively processes the observed gender behaviour and imitates the like-sexed behaviour (Kohlberg, 1966).

Two of the most popular recent cognitive theoretical explanations of gender development are 'social learning theory' and 'gender schema theory'. Social learning theory proposes that reinforcement is the key to gender development (Bandura, 1973). Positive reinforcement of like-sexed behaviour encourages the child to continue to develop appropriate gender behaviour in hopes of further praise (Mischel, 1966).

Parents are the key socialization agencies in the gender development of their children. Parents reward conforming gender behaviour and punish nonconforming behaviour. The process of reward and punishment enables a child to learn appropriate gender behaviour.

The focus of gender schema theory (Bem, 1981, 1983) rests in the method that a child uses to actively acquire knowledge. As a child becomes aware of gender information, he or she sorts that information into categories (schema) of male and female.

The sorting of gender behaviour into categories differentiates gender schema theory from other theories of cognitive development. Similar to social learning theory, gender schema theory acknowledges the impact of the social world on the child's perception of gender behaviour. Bem (1983) acknowledges that the categories of gender behaviour are socially created and gender schema merely reflects these social categories.

iv. Social Theories

The third approach to understanding gender development examines gender as ever-changing in the accommodation of influential social factors. Social theories approach gender as a social creation. The process of developing gender to adapt to the social world is the basis of social theories.

There are some common assumptions in cognitive and social theories. First, both acknowledge the child's awareness of society's divisions of people, behaviour and attitudes into two categories based on sex. Second, both acknowledge that the child becomes aware of rewards for like-gender behaviour and punishment for cross-gender behaviour. The importance placed on understanding the influence of the social world on gender is the difference between social theories and cognitive theories. The emphasis of social theories is how sex is the basis of differential socialization in society.

v. Feminist Theories

The generality of social theories form the basis of its appeal to feminist theorists (Bem, 1983). The premise of much of feminist theory is that gender is not fixed and static but is socially mediated. More importantly, gender differentiation has been built into the rules and procedures of all institutions within society.

Gender is viewed as playing a key role in structuring all social arrangements. The distinction between male and females and the subordination of women under patriarchy has been well documented in feminist theory. In particular, socialist feminist theory suggests that the defined roles for males and females as they have evolved have been based upon a division of labour, between production and reproduction. While reproduction is a biological function of which women are only capable, the gender divisions in society are not 'natural' as a result of this difference.

As an extension of gender roles, feminist theory claims that heterosexuality is a social construct as well. Marriage laws were devised to enforce heterosexuality and to maintain the family unit both for the short and the long term continuation of the social system. A critical component of reproduction is the act itself (Ursel, 1988). Norms of heterosexuality have been more rigorously enforced than norms of physical preservation. Reinforcing protection of the family unit, laws supporting

heterosexuality have appeared historically both in criminal and in civil law.

The heterosexual family unit is the established institutional base for the physical and ideological reproduction of the sex-gender system (Ursel, 1988). Gender roles have been developed to serve the needs of the family unit. Men are responsible for production while women for reproduction. The adult male is the producer and his role is to provide material support for his family. The role of the adult female is one which expects her to reproduce, to nurture, and to protect the family structure (Bradbury, 1982). The family unit is the primary institution for teaching gender behaviour and attitudes (Glenn, 1987).

In the heterosexual family unit, childhood socialization prepares young girls for their future maternal-domestic role. In contrast, the emphasis of socialization of young boys centres in the attitudes and behaviours necessary to prepare him for his future occupational role (Greenglass, 1982).

The theoretical approach to understanding gender in this study is one that takes a feminist perspective. The presumption in this research is that expectations of appropriate gender behaviour have developed to accommodate the prevailing patriarchal structure of western society. Under patriarchy, society maintains different gender expectations for males and females. The ensuing gender roles are best suited to

accommodate the productive-reproductive structure.

Gender expectations are coded in the form of stereotypes. These stereotypes are not only a means of categorizing behaviour but as well, provide a framework for interpreting behaviours and events. The following section provides examples of widely shared gender stereotypes as portrayed through the medium of television and in sport.

II. Gender Stereotypes

Perhaps the most influential medium in the mass communication of gender stereotypes today is television. The average American child watches twenty-four hours of television a week (Miedzian, 1991). Television is unique in part due to the sheer number individual members of society it reaches. As a prominent source of shared, common information about the world (Morgan & Rothschild, 1983), television is a crucial source in presenting gender stereotypes (Morgan, 1982).

i. Gender on Television

The traditional, sex-typed portrayal of males and females on television is supportive of the status quo (Signorielli, 1989). Similar actions by males and females on television are subject to differing consequences (McArthur & Eisen, 1976). Behaviour that is acceptable for men is often not acceptable for women. Television portrays men as aggressive and ambitious

(Morgan, 1992). In comparison, television most often portrays women as sexual objects, as weak and as acting in a supportive role to the dominating male hero.

Aggression on television is a means to an end. Males who employ aggression are heroes. This occurs not only in fantasy but in real life as well. News reports show men using aggression to some end on a daily basis. The portrayal of aggression by women is completely different.

Female characters are most often portrayed as soft, mild-mannered, and dependent. Emphasis is placed on their physical attractiveness (Durkin & Akhtar, 1983). Female characters taking an aggressive role are an oddity rather than the norm. Campbell (1993) found that:

Female characters (if they appear at all) almost never engage in aggression. Even 'tomboy' characters do not initiate or take part in violence, though they may be present to encourage and applaud the heroic actions of male figures. More often, women are helpless victims.

While women most often represent the helpless victim, there is one exception. Women who have been sexually assaulted are often portrayed: as wanting and encouraging the sexual interaction, as provoking the assault, or as lying about the actual occurrence of the sexual assault (Brinson, 1992).

The presentation of men as aggressive and women as sexual on television is perhaps most apparent in televised sports. There is a strong connection between sporting activities and the

social staging of gender. Sport is associated with male characteristics and frequently presents men as 'naturally' superior to women (Klein, 1990).

ii. Gender in Sports

The framing of athletes on television reinforces conventional gender stereotypes. Male athletes are presented as larger than life and as the essence of masculinity (Miedzian, 1991). In contrast, female athletes are more often portrayed as deviating from appropriate gender behaviour.

The characterization of the male athlete is one that highlights his power and aggression. Female athletes are more commonly: marginalized, trivialized, infantized, sexualized and, stigmatized (Duncan & Sayaovong, 1990; Blinde & Taub, 1992; Lee, 1992; Messner et al., 1992). Athleticism in women is often presented as a violation of gender norms.

When women do participate in sports requiring aggression and strength they are often considered to be inferior to their male counterparts (Klein, 1990). Female tennis players play only 'best out of three' set matches in Grand Slam tennis tournaments while men play 'best out of five'. In track while the decathlon has been the crowning event determining strength and ability since the first modern Olympics in 1996, women have only been allowed to participate in a similar event since 1968. The addition of the heptathlon for women caused a great deal of

controversy. The popular belief was that women did not have the strength, or natural athletic abilities, i.e. aggression, required to complete all seven events.

The best example of gender stereotypes in sport and in the presentation of sport is the separation between sports that emphasize grace and form, and sports that stress strength and power (Theberge, 1993). While much of the emphasis for females is in style, for males the dominating emphasis is strength. The most common representation of the female athlete is one of beauty (Lee, 1992), self-expression and gracefulness (Klein, 1990). Males more commonly participate in sports emphasizing strength, endurance, and risk (Lee, 1992).

While stereotypes presented on television and specifically in sports encompass prescriptions for many facets of behaviour, a common theme is found. Strongly linked to gender are the distinctions between the expressions of aggression and sexuality. Males and females possess aspects of both but the stereotypes most commonly held, equate males with aggressive behaviour and females with sexual behaviour. Chapter Three will first examine aggression and then, sexuality. From the stereotypes uncovered, the roles aggression and sexuality play in perceptions of child abuse will be presented.

CHAPTER THREE - GENDER STEREOTYPES

The impact of gender stereotypes begins in infancy (Mackie, 1987). As key components in defining gender, the impact of aggression and sexuality can be demonstrated from the first interactions with the child. Aggression is a defining feature of males and sexuality of females. The way adults treat children reflects the stereotypes associated with the two behaviours.

Girl babies are most often described as soft, fine featured, sweet, fragile, innocent, and beautiful (Aberle & Naegele, 1952; Minton et al., 1971; Rubin et al., 1974; Vogel et al., 1991). In comparison, boy babies are most often described as not cuddly, as large featured and as hardy (Rubin et al., 1974).

Gender stereotypes affect how parents interact with children as well (Berndt & Heller, 1986). The form this interaction takes is not necessarily a result of behaviour cues, but stems from preconceived notions of gender (Culp et al., 1983). Mothers smile more often when interacting with baby girls (Will et al., 1976). Boys are more likely to receive verbal reprimands and criticism than are girls (Minton et al., 1971; Serbin et al., 1973; Fagot, 1974). Physical punishment is more likely to happen to boys (Minton et al., 1971; Maccoby & Jacklin, 1974).

Parents join boys' play more often than they join girls' play (Fagot, 1974). Active play is encouraged for boys and nurturing play is encouraged for girls (Frisch, 1977). Parents are more likely to respond negatively to girls who engage in aggressive, large motor activities. In opposition, parents respond positively to girls engaged in quiet, dependent activities (Fagot, 1978).

The toys adults choose for children also vary with the gender of the child (Seavey et al., 1975; Will et al., 1976; Sidorowicz & Lunney, 1980). Parents provide boys with more categories of toys than girls (Rheingold & Cook, 1975). Boys receive sports equipment and tools while girls receive dolls and furniture (Pomerleau et al., 1990). Perhaps from the nature of the toys provided to children, girls are found to play more with soft toys and dolls. Boys are more active and manipulative with their toys. Boys play much more with cars, trucks and blocks (Fagot, 1974, Smith & Daglish, 1977).

The distinction between boys as aggressive and girls as meek is perhaps that which is most influential in determining the nature of interaction with children. Gender stereotypes dictate very different roles of aggression both in defining what is acceptable behaviour from children and what is acceptable behaviour towards children. As will be illustrated in this chapter, similar to aggression, stereotypes are key in dictating differences in sexuality as well. Preceding this however, the

uncovering of the prominent gender stereotypes surrounding aggression continues.

I. Aggression

Maccoby & Jacklin (1974) suggest that aggression is the only significant empirical difference between males and females. They suggest that men are naturally more aggressive than women. Recent literature in the study of gender, however, more commonly suggests that aggression is a learned behaviour and, as with all other behaviours, is socially constructed.

i. Aggression in Boys

In our society there is a strong equation between masculinity and aggression. Boys are encouraged to be tough, strong, and physically aggressive (Feshbach, 1970; Eron et al. 1971; Martin et al, 1990). Boys learn to accept physical punishment as a part of being male (Herzberger & Tennen, 1985). Boys are encouraged to protect themselves from others' aggression, whatever their size (Nasjleti, 1980; Pleck et al., 1994).

With an emphasis on being both assertive and aggressive, boys learn to be competent and self-sufficient (Wellman, 1993). Boys are not commonly encouraged to seek help (Nasjleti, 1980), or to show emotion or sensitivity to others (Rushton, 1993). Society expects boys to be strong and to conceal all 'soft'

emotions (Cornwall & Lindisfarne, 1994). There is a negative stigma attached to any behaviour viewed to be vaguely feminine (David & Brannon, 1976; Box, 1983).

ii. Aggression in Girls

While social expectations encourage aggressive behaviour from boys, the same is not true for girls. Social expectations strongly discourage girls from behaving in an aggressive manner (Olweus, 1984). Girls are encouraged to be nurturing, warm and caring (Wellman, 1993). Girls are taught to be passive, submissive and dependent (Box, 1983). Little girls are 'to be' as compared to little boys who are 'to do' (Brooks-Gunn & Matthews, 1979).

Displays of emotion are expected behaviour in females (Martin et al., 1990). The one exception is the expression of anger. As a component of aggressiveness, anger is an expected male response (Shields, 1987). This contrasts the view that the expression of anger in females is inappropriate (Smith et al., 1989).

iii. Aggression in Play

Children's play is often indicative of the divisive gender stereotypes that guide behaviour. Boys much more than girls take part in play that is aggressive, athletic, and rough. Typical 'boy play' involves vigorous body contact. Aggressive

behaviour such as fighting or wrestling is often encouraged for boys. Girls however, are discouraged from rough play (Lefkowitz et al., 1977). Girls more often than boys take part in quiet play including arts and crafts and fantasy play (Finegan et al., 1991).

Parents frequently disapprove of a boy choosing to dress up and play house. There is a fear that boys who participate in 'girl play' will become 'sissies' (Anthill, 1987).

Literature has documented that one of the prevailing fears of many parents is that boys who display feminine-typed behaviour are more likely to develop a homosexual orientation (David & Brannon, 1976; Gorham, 1982; Anthill, 1987). In examining the extreme negative evaluations of 'sissies' Martin (1990) writes:

Cross-sex characteristics are less tolerated in boys than they are in girls. Boys who play with feminine toys or who display feminine characteristics are more negatively evaluated than girls who adopt cross-sex characteristics.

Further, Martin (1990) documents that boys are more frequently punished for cross gender behaviour than are girls.

iv. Aggression Towards Children

In deciding standards for children's behaviour, we live in a society that gives a great deal of reinforcement to the use of force when disciplining children (Cole, 1985). In a recent

study of discipline upwards of 88% of parents surveyed agreed with the use of physical punishment when correcting the behaviour of children (Buntain-Ricklefs et al., 1994).

Within our society, discipline ranges from the socially accepted form of physical discipline to abuse. While not all child abuse occurs within the context of discipline, literature suggests that an understanding of discipline techniques is important in any examination of child abuse (Lenton, 1990).

Giovannoni (1971) describes the line distinguishing parental discipline and abuse:

Abuse constitutes an exploitation of the rights of parents to control, discipline and punish their children (649).

Strict discipline of children has roots in religious ideology. The tenet; 'spare the rod, spoil the child' is one cited in support of physical discipline (Carey, 1994). Physical punishment of children occurs in most American families (Straus, 1983). Straus & Gelles (1988) found that upwards of 90% of parents reported to having physically disciplined children aged three years and younger. Slightly more than 33% of parents reported to having physically disciplined children between the ages of fifteen to seventeen.

This belief in spanking as a form of punishment is an example of a cultural social norm that physical force is needed to control a child. There is a great deal of cultural

acceptance for the physical discipline of children by parents (Gil, 1970). Zellman (1992:57) notes:

Physical injuries inflicted by an enraged parent may provoke different reactions than would the same injuries inflicted by a parent in the name of discipline.

The normative aspect of what defines physical abuse often provokes disagreement whether the action taken was disciplinary or abusive. While the law may clearly define actions considered abusive, accepted practice in our society allows for physical punishment of children in the name of discipline. Discipline is frequently used to explain the physical abuse of children (Warner & Hansen, 1994). Disobedience is often cited a precipitator of physical actions on the part of parents (Morse et al., 1970).

Parents' intentions and a child's behaviour are often key issues in deciding guilt (Ehrlich, 1990). Often, a child's misbehaviour is characterized as the trigger for physical abuse (Krugman, 1984; Dukes & Kean, 1989).

Children labelled to be provocative by their parents are at a greater risk of being punished than children who do not receive that label (Waterman & Foss-Goodman, 1984, Muller, Caldwell & Hunter, 1993). Children perceived to be difficult to handle are also more likely candidates for physical punishment (Engfer & Schneewind, 1982).

Male children are more commonly labelled as provocative and are more often physically punished (Maden & Wrench, 1977). Punishment and abuse are considered less appropriate when delivered to a female child as opposed to a male child (Herzberger & Tennen, 1985). Male children are more often held responsible for their punishment than are female children (Herzberger & Tennen, 1985). The prevailing cultural myth of girls as 'sweet and innocent' may underlie this reluctance to hold girls responsible for their punishment (Muller et al., 1993).

The above examination clearly highlights the cultural definitions of aggression. Changes in the context of aggression result in changes in the definition of the behaviour. Boys are treated in a more aggressive fashion than are girls and are encouraged to display aggressive behaviour. Aggressive behaviour from boys is encouraged as a positive expression of their masculinity. In comparison, aggressive behaviour from girls is discouraged as it negates their femininity.

From the findings in the literature, boys are more often physically punished than are girls. More importantly, boys are more often blamed for their punishment than are girls. It is suggested in this research that this differing social acceptance of physical punishment for boys and girls will influence the perception of physical abuse in court. In finding an offender at fault for physically abusing a boy, there are socially

accepted reasons for the abuse. On the other hand, when the court is examining the physical abuse of a girl, the abuse is considered a more serious violation.

II. Sexuality

Sexuality in the western world has in many ways, been shrouded in a cloak of mystery. While sexuality, especially female sexuality has encountered a measure of freedom in recent years, many myths and stereotypes presenting conflicting images continue to exist. Similar to the influence of aggression stereotypes on physical abuse, stereotypes of sexuality influence the perception of sexual abuse.

Conflicting gender expectations of appropriate sexual behaviour have been deeply ingrained into social attitudes (Russell, 1975; Finkelhor, 1981). Males and females are not equally free to enter or to reject sexual relationships. Males are socialized to be the initiators in sexual interactions. In contrast, females are socialized to be the gatekeepers in sexual interactions (Struckman-Johnson et al., 1991).

i. Male Sexuality

Men are taught from childhood that they are expected to be sexually knowledgeable. Male sexual scripts dictate that boys experiment sexually from a young age (Campbell, 1981). The sexual socialization of boys includes a requirement to be

confident and aggressive in sexual encounters (Zilbergeld, 1979; Burt, 1980; Finkelhor, 1986; Tomlin, 1991; Wellman, 1993). Boys are taught to be aggressive and dominating in sexual encounters (Abbey, 1982). They learn to identify their sexuality with this dominance and aggression.

As the sexual initiator, boys are expected to not reveal doubts, weaknesses, or fears about their sexuality (Faller, 1989). A man who fails to pursue sexual activities risks having his masculinity questioned (Kowalski, 1993).

The socialization of young males in Western culture, as in most cultures, includes an emphasis on being emotionally strong and stoic. Boys learn to be aggressive rather than vulnerable. Boys learn to be physical from an early age to protect themselves from harm. Boys learn to associate sexual behaviour with masculinity (Gilgun, 1991).

ii. Female Sexuality

Female sexuality is perhaps best described in terms of the 'Madonna/ Whore' duality. Madonnas are innocent, good, lacking in sexual knowledge and perceived as sexless; Whores are typified as sexually responsive and bad (Reiss, 1971). This dichotomy results in the notion of females as kind, passive, dependant and nurturing (Burt, 1980; Griffen, 1981; Margolin, Miller & Moran, 1989; Brinson, 1992).

Girls are socialized to be compliant (Wellman, 1993).

Innocence, virginity and chastity are both prized and precarious for girls (Muller et al., 1993; Lindisfarne, 1994). Even when sexually attracted to a male, the expectation for females is to stop any to sexual advances made towards her (Abbey, 1982).

Females do not learn to be comfortable in using physical aggression to defend themselves (Hokanson et al., 1968). Yet, while not equipped with the same aggressive tools as males, women have the responsibility to stop sexual advances (Burt, 1980; Allgeier & McCormick, 1983; Grauerholz & Serpe, 1985; Bridges, 1991). When women are not able to prevent sexual advances, they are often blamed for that failure (Bridges & McGrail, 1989).

iii. Myths of Sexual Behaviour

The conflicting sexual expectations for males and females have given rise to many myths and stereotypes surrounding sexual behaviour. Any understanding of sexual abuse requires an understanding of social perceptions of appropriate sexual behaviour. As one of the first to have his theories of sexuality widely read, Freud's work was a major influence on current social attitudes of both sexuality and sexual abuse.

a. The Influence of Freud

While his theories are no longer as popular among research psychologists today, several themes from Freud's work continue

to pervade present social attitudes of sexuality and sexual behaviour. Influential themes include the suggestion that males naturally possess strong sexual desires; that females are active seductresses; and, that incest is a result of unconscious sexual fantasies.

Freud developed the idea that claims of sexual improprieties within the family unit were products of female fantasies. Freud believed that the memories of sexual encounters were a form of hysteria. He suggested that accounts of incest were due to the fertile imagination of children (deYoung, 1992).

Freud's work has greatly influenced social perceptions of sexuality. Freud's theory of hysteria was key in perpetuating many myths and stereotypes surrounding sexual abuse in evidence today (Hunter, 1990).

b. Twentieth Century Myths

Gender role stereotypes and attitudes regarding proper sexual behaviour are closely interconnected with the myths surrounding sexual abuse (Burt, 1980). Research illustrates that gender stereotypes influence reactions to sexual assault (Check & Malamuth, 1983). All individuals apply gender stereotypes when evaluating situations of sexual assault (Krulewitz & Nash, 1979). It has been demonstrated that individuals who hold traditional gender stereotypes more often

believe a victim to be culpable in cases of sexual assault than do individuals who hold less traditional gender stereotypes (Waterman & Foss-Goodman, 1984; Willis, 1992; Snell & Gordon, 1993).

Rape myths¹ abound in society today. Examples are plentiful and wide ranging. There is the belief that women ask to be raped (Burt, 1980); want to be raped (Brownmiller, 1975); cause their own rape (Feild, 1978); or, could have resisted the rape (Burt, 1980). There is a pervasive belief that only bad women are raped (Griffin, 1981); that 'leading men on' justifies a woman's rape (Muehlenhard & MacNaughton, 1988); and, that rape is not harmful (Feild, 1978).

Many rape stereotypes reflect the conflicting sexual stereotypes for women that have developed through the twentieth century. For example, a victim of sexual abuse is held more responsible for the abuse when the perpetrator is an acquaintance as compared to stranger (L'Armand & Pepitone, 1982; Tetreault & Barnett, 1987; Bridges & McGrail, 1989). There is a false perception that when the sexual attacker is an acquaintance of the victim she experiences some level of enjoyment during the act (Bridges, 1991).

¹ In sexual abuse literature, the term 'rape' is often used interchangeably with sexual assault. Earlier literature tends to refer to rape while most recent literature now uses the broader term of sexual assault. In Canada in 1983, the legal term rape was redefined and changed to sexual assault.

Female victims of sexual assault are more often held responsible for their attack than are male victims. Identical behaviour by male and female victims of sexual abuse results in a differing assignment of blame. While female victims are accused of initiating the assault, male victims are not seen as having instigated or contributed to their assault (Schneider et al., 1994).

Myths are extensions of traditional stereotyping of male-female sexual interaction (Bridges & McGrail, 1989). General beliefs about sexual assault provide a frame of reference for an individual to evaluate specific incidents. Social definitions of appropriate conduct for females are critical components of rape myths (Krahe, 1988). Rape myths shift the blame to the victim. With this shift, the perception of the negative impact of the crime is lessened. Further, the sexual behaviour is normalized (Margolin et al., 1989).

iv. Sexuality in Children

One can apply the results of sexual assault studies to the situation of child abuse. The dynamics of sexual assault are most similar to those of child abuse in that it is a crime against a person. Due to their powerless position, children are vulnerable to victimization. Also, similar to adult sexual assault is the dynamic of blame. Common stereotypes of the sexual abuse of children have long implicated the child as a

willing participant (Stermac et al., 1989).

The stereotype of children as willing participants in their sexual abuse is perhaps that which most clouds the issue today. Freud was one of the first to formulate the image of the seductive female child. The myth of the willing participant is deeply implanted in the common perception of child sexual abuse. Evidence of this portrayal has been found imbedded in research from the early 1900s until present time.

Female children are accused of playing the role of the seductress (Bender & Blau, 1937) and of fully participating in their sexual abuse (Weiss et al., 1955). Young girls are described as active in the sexual encounter (Lukianowicz, 1972) and as perpetuating the abuse with their responsiveness to the activities (Harbert et al., 1974). Children have been described as initiating sexual acts (Mohr et al., 1964; Virkkunen, 1975), as encouraging sexual advances (Henderson, 1972), as sexually provocative and curious (Blumberg, 1978), as seductive (Krieger et al., 1980) and as finding pleasure from adult sexual attention (Rosenfeld, 1979).

The stereotype of the seductive child abounds in literature. Schultz (1973) describes a continuum of sexual abuse from accidental to seductive. The author suggests that victim invitation and seduction presents a problem for the courts in assessing guilt and punishment for the offender. In

cases of victim seduction, Schultz notes that the offender is usually relieved of his responsibility for the offence.

v. The Sexual Abuse of Children

Literature examining child sexual abuse most frequently classifies the behaviour into several categories. These include; incest, sexual involvement with non-family members but known to the victim, and sexual assault by strangers (Burgess, 1987). While all three categories involve child victimization, much of the differentiation between the categories has occurred due to the stereotypes defining the relationships they portray.

a. Incest

Differing definitions of incestuous relationships have made it a difficult crime to uncover. The definition of incest varies from an act of sexual intercourse with a blood relative, to any act of sexual contact between family members. This includes family members not related by blood, i.e. step parents or adoptive parents. This third definition includes sexual contact between a child and a step-parent, or a foster parent (de Young, 1992).

The familial relationship between the victim and the accused is the basis for the taboo of incest. The incest taboo is perhaps the only taboo that exists cross-culturally (Schlesinger, 1982). The universality of the incest taboo has

made it a behaviour that has interested researchers and practitioners in psychology, psychiatry, sociology, anthropology and biology for decades (Rist, 1979).

Several explanations have been put forward to explain the reluctance to report incest. An added component of the incest taboo is the taboo against talking about the behaviour (Justice & Justice, 1979). Stereotypes have developed which have attached a great deal of shame to incest victimization. There is a belief that incest only occurs in dysfunctional family units (Henderson, 1975).

Traditional incest literature has tried to highlight the type of family unit in which incest is most likely to occur. These have included depictions of a daughter who takes over her mother's role and becomes the central female figure in the household, impaired sexual relations between the husband and wife, a father who is not satisfied sexually, and finally, a non-participating mother who consciously or unconsciously sanctions the incest (Lustig, 1966).

The conditions for incest as described clearly illustrate key stereotypes of incestuous behaviour in society today. The first is that which portrays the father as the victim. The implication is that the incest is a result of unfulfilled sexual needs. The second stereotype portrays the daughter as a sexual aggressor. In blaming the victim, the myth of the seductive female child persists (Bograd, 1986).

Incest is a difficult crime to uncover in part due to the many stereotypes that define the behaviour. The nature of the relationship only adds to that difficulty. A child incest victim is generally in a trusting and dependent relationship with the offender who is perpetuating the acts. Children rarely understand the sexual behaviour. The combination of misunderstanding and fear makes it difficult for the child to report the crime. There is a fear perhaps because of the shame attached to the act, that reporting the crime will destroy the family unit. For those in a dependent relationship with the abuser a fear of abandonment may override a fear of the abuse (Hechler, 1988).

Misconceptions of incest continue. In sexual abuse literature, incest has only been recently recognized as the most prevalent form of abuse (Courtois, 1990). The recorded prevalence of incest in child abuse literature is in direct contrast to the predominant social stereotype of sexual abuse as rare.

b. The Sexual Abuse of Boys

Father-daughter incest has been the primary focus of much of child abuse research (Herman & Hirschman, 1977; Courtois, 1979; Rist, 1979; Rush, 1980; Russell, 1984; Gordon & O'Keefe, 1984; Parker & Parker, 1986; Faller, 1989). The sexual abuse of boys was 'discovered' only recently. It has been suggested that

the stereotype of boys as sexual initiators caused the abuse of boys to remain a hidden crime (Hunter, 1990). Since the early nineteen eighties research has begun to uncover the incidence of sexual abuse of boys.

Literature documents fewer male victims than female victims (Brant & Tisza, 1977; Finkelhor, 1979; Badgley Report, 1984; Gray 1993). What has become more clear in recent years is why there are fewer reported cases of male victimization. Evidence suggests that male victims of sexual abuse receive little sympathy and support, especially from other males (Garcia et al., 1989). Male victims of sexual abuse who remain passive or who flee in the name of self-defense are viewed as cowardly (Sanders, 1980). A boy experiencing sexual abuse is less likely to report the abuse for fear of exposing his vulnerability (Finkelhor, 1984).

The strongest deterrent in the reporting of sexual abuse of boys is perhaps the stigma of homosexuality (Hunter, 1990). The sexual victimization of young boys is an affront to several socially constructed taboos. First, is the taboo that regards the sexual abuse of children as wrong. Secondly is the taboo that brands the behaviour as homosexual (Geiser, 1979; Sanford, 1980; Courtois, 1990).

A detailed examination of the history of Western society shows that intolerance of homosexuality is deeply imbedded into the moral values of our social structure (Greenberg & Bystryn,

1982). A well-developed fear of homosexual behaviour stems from the fact that these forms of behaviour are perceived as a threat to crucial social boundaries (Davies, 1982).

c. The Homosexuality Taboo

In Western society, prevailing norms of sexuality hold that heterosexuality is natural while homosexuality is deviant (Herek, 1990). The taboo of prohibiting sexual acts between males is one with enough significance to have been codified both in religious tenets and by Western criminal law².

In the Christian Bible, any sexual act that did not produce children was condemned. In English Common Law upon which the Canada Criminal Code was based, homosexual was deemed illegal as it was cited as an 'Act against Nature' (Brinkley, 1970). In the Canada Criminal Code established in the late eighteenth century, the act of buggery was termed to be illegal under the category of "Offenses Against Morality". The offenses 'Indecent Acts' and 'Gross Indecency' were written to include all other sexual acts between males (Cohl, 1978).

² Most sources of legal history make little mention of lesbians. In the historical literature that does refer to lesbians, the point generally made is that lesbianism has been irrelevant in legal history. Robson (1992) has documented, however, that while it is widely believed lesbian acts have been immune to punishment by law, this assumption is not based in fact.

The decriminalization of homosexual acts between consenting males was addressed in the Canada Criminal Code in 1969. At that time the code was amended to decriminalize homosexual acts occurring between consenting adults in private. At that time, 'buggery' between married couples or between two consenting adults over the age of twenty-one was made legal (Cohl, 1978). Further amendments to the Criminal Code lowered the age for consenting adults to eighteen in 1983, and changed the term 'buggery' to anal intercourse in 1988.

Despite these changes, the act of anal intercourse continues to be illegal for any person under the age of eighteen, and more significantly, if there are more than two people present. These stipulations apply even in all parties consent³. The stipulation that no more than two people may participate in anal intercourse signifies that while homosexual acts which occur between consenting adults in private are no longer criminal offenses, there is a continued effort to regulate homosexual behaviour.

Despite the de-criminalization of anal intercourse between consenting adults, the taboo and stigma of homosexual behaviour remains. This negative stigma is exemplified by the continued perception that individuals with a homosexual orientation are

³ It is interesting to note that this is the only section in the Criminal Code which proscribes sexual acts between consenting adults.

dangerous (Plummer, 1975). This danger is most expressed in the fear that children are vulnerable to being corrupted by adult male homosexuals (Allgeier & Allgeier, 1988; Whitehead & Nokes, 1990).

The fear of the danger an individual with a homosexual orientation presents to children is perhaps best exemplified in public concern as to the sexuality of teachers. A nationwide survey in the United States documented an overwhelming fear that male homosexual teachers are dangerous because they try to become involved with children (Allgeier & Allgeier, 1988). In 1992 the majority of Americans surveyed felt that gay men should not be elementary school teachers. Only 41 percent felt that gay men should be allowed to teach at any level (Hugick, 1992).

The taboo prohibiting homosexuality has had a profound impact on creating a great deal of misunderstanding of sexual abuse and further, of the impact of same-sex abuse on a child's later sexual development. The result has been an overwhelming fear in society that homosexual adult males prey on children. Homosexuality has become prominently linked with child molestation (Plummer, 1975; Newton, 1978). The link between homosexuality and sexual deviance is strong and the end result has been the typification of child molesters as gay males (Kinsman, 1987).

While in literature there is a definite understanding that the typical child sexual abuser is not homosexual (Groth, 1979;

1982), the legacy remains. The sexual abuse of boys by adult males is stigmatized both by the taboo prohibiting the sexual abuse of a minor, and the taboo of homosexuality (Geiser, 1979; Sanford, 1980).

Evidence from the criminal justice system of this double stigmatization is that offenders who have sexually abused young boys receive harsher treatment than offenders who have sexually abused young girls (Carter, 1991). Offenders who have committed acts against young boys are more likely to go to prison and are more likely to be judged emotionally ill than the same who have committed sexual acts against young girls (Pierce & Pierce, 1985). Carter (1991) suggests that this finding is perhaps indicative of continued prevalence of homophobia in our society.

vi. Response to Child Sexual Abuse

Gender is clearly instrumental in structuring reactions to victims of sexual crimes (Howard, 1984). Female chastity is highly valued. However, sexual abuse has often been perceived to be more damaging to boys than to girls (DeMott, 1980; Kempe & Kempe, 1984). Stereotypes of victimization imply that sexual assault is more 'natural' for girls and therefore less destructive to their identity (Gray, 1993). This contrasts to the perception that the sexual abuse of boys is 'unnatural' and a threat to their manhood (Kincaid, 1992).

Gender stereotypes assume that females are more likely to be sexually victimized than are males (Howard, 1984). Female victims of abuse are also perceived more negatively than are male victims (Howard & Leber, 1988). Crimes of a sexual nature are most commonly linked with the victimization of females. Crimes of sexual violence involving male victims are not as prevalent and are viewed in a completely different fashion from crimes of sexual violence involving female victims.

In the understanding of criminal behaviour such as sexual abuse, it has been documented that society refers to commonly held stereotypes in order to understand the act which has occurred. When characteristics of a specific act approximate the common depiction of the behaviour, a process of normalization occurs (Sudnow, 1965). Referring specifically to criminal behaviour, Howard (1984:270) writes:

When women are victimized in a manner consistent to "normal" crimes, they may be more likely to incur blame and to be derogated in accord with gender stereotypes.

Howard concludes that studies of commonly held criminal stereotypes have found significant differences when the gender of the victim is taken into account. Not only are females perceived as more likely to be sexually victimized than are males, female victims receive greater attributions of blame than do male victims.

Clearly gender stereotypes are strongly linked to social perceptions of both sexuality and aggression. Gender stereotypes have a great deal of influence both on how an individual perceives society and in a dichotomous relationship, how society perceives an individual. Stereotypes of masculinity and femininity are both relevant and applicable in defining and understanding appropriate gender behaviour (Box, 1983).

In this research it is hypothesized that stereotypes of sexuality and aggression will guide how an individual evaluates the physical and sexual abuse of children. In this latest era which uses the criminal justice system to define physical and sexual abuse of children, it is crucial to try to uncover how the criminal justice process deals with the social nature of these crimes. Chapter Four examines the evolution of child abuse resulting in the current definitions of child abuse.

CHAPTER FOUR - THE CRIMINALIZATION OF CHILD ABUSE

The physical and sexual abuse of children is not a new phenomena. Mistreatment of children has been evident in all historical periods (Hearn, 1988; Gordon, 1988). While the behaviours have always existed, awareness of and response to these behaviours has differed over time. Historically, the definition of what constitutes abusive behaviour has reflected the social attitudes of the period. The definition of abuse is socially mediated (Garbarino, 1989).

I. Historical Background

Public interest in the criminalization of violence has been episodic since the fifteenth century (Pleck, 1989). The most recent development in the social response to crimes of violence against children is one which has progressed from a primarily medical approach to one which is has focused on the criminalization of child abuse. Within this latest movement is a growing acknowledgement of the child victim as an individual who requires and deserves protection from harm.

This latest movement aimed at criminalizing the abuse of children has risen to centre stage over the past three decades. The publication of an article in 1962 which coined the phrase "Battered Child Syndrome" was a primary instigator in the contemporary awareness of child abuse (Olafson et al., 1993).

With renewed interest in non-accidental injuries to children at the hands of parents or guardians, reporting of abuse in the United States sky-rocketed. The annual number of child abuse cases reported in 1967 was 7,000. This number rose to 200,000 cases reported annually in 1974 (Wethers, 1978).

The awareness of the physical abuse of children in the medical community led to the passing of reporting laws in both the United States and in Canada. In the United States, by 1967 all states had passed laws which made the reporting of all child abuse mandatory (Breines & Gordon, 1983). Canadian jurisdictions were somewhat slower to follow. In 1984, the Committee on Sexual Offenses Against Children and Youth issued a report which made the recommendation that it be mandatory that all cases of child sexual abuse that constitute offenses under the Criminal Code of Canada be reported to the police. By 1987 all jurisdictions except the Yukon had instituted reporting laws which applied to all cases of suspected physical or sexual abuse of a child (Vogl, 1991).

Much of the current awareness of child abuse, especially child sexual abuse can be attributed to the women's movement of the late 1960s and early 1970s (Courtois, 1990; Bagley & Thomlinson, 1991). The women's movement forced many problems previously considered personal to public attention. In particular, the movement renewed critical scrutiny of the family (Breines & Gordon, 1983). The growing awareness of disharmony

within the family lead naturally from an examination of abuses of women, to abuses of children.

While sexual abuse has moved to the centre of the most recent movement, physical abuse has remained an important focus for those examining violence within the family. In the past 20 years there has been a dramatic increase in awareness and education campaigns designed to alert the public to the importance of reporting suspected cases of abuse to social agencies (Daro & Gelles, 1992).

In Canada, the public outcry after the rape and murder of a young boy on Yonge Street in Toronto was instrumental in initiating the Committee on Sexual Offenses Against Children and Youths, a federal investigation of sexual offenses against children (Mitchell, 1985). The Committee chaired by Dr. Robin Badgley, was directed to conduct a large scale study to ascertain the incidence and prevalence of sexual abuse of children in Canada. The study was the largest of its kind in Canada to date. The recommendations from the resulting report influenced a number of amendments to both the Criminal Code of Canada and the Canada Evidence Act. Many of the recommendations suggested improvement in the laws for the protection of children (Badgley Report, 1984).

II. Canadian Legal Reform

Legal definitions relating to the abuse of children in

Manitoba are contained in the Child and Family Services Act and in the Criminal Code of Canada. The Child and Family Services Act is one which is a civil act under provincial jurisdiction. Both pieces of legislation are used for the protection of children. Under the Criminal Code of Canada, the criminal justice system is empowered to investigate all cases of child abuse, regardless of the relationship between the victim and the offender. The Child and Family Services Act tends to have a more narrow focus. Cases which become involved in the child welfare system are primarily those where either the child is considered to be at risk of being abused by a parent or guardian, or the parent/guardian cannot or is unwilling to protect the child from abuse (Hornick & Bolitho, 1992).

i. Child and Family Services Act

The Child and Family Services Act is intended to intervene in the lives of families when a child is in need of protection (Hallet, 1991). In Manitoba, Child and Family Services is a state agency which is legally mandated to protect children. This protection includes the investigating of reports of harmful behaviour towards children; and, the taking of appropriate steps to protect children from harmful behaviour (Bala, 1991).

Civil procedures are contained in the Child and Family Services Act and differ from criminal procedures. In a civil trial the victim has a choice of counsel and may actively

participate in the collecting of evidence. In criminal proceedings the pre-trial investigation and collection of evidence is conducted by the police. In civil proceedings, the victim's lawyer is responsible for the collection of evidence (Neeb & Harper, 1994).

Civil procedures focus on the victim whereas criminal proceedings focus on the accused. Perhaps the most significant difference between criminal and civil procedure is the requirement of the accused to testify. In criminal procedure the accused is not required to testify as the onus is on the crown to prove guilt beyond a reasonable doubt. In civil procedure, the respondent is compelled both in the discovery process and at trial, to respond under oath to all allegations (Neeb & Harper, 1994).

Meeting the burden of proof in civil proceedings is less difficult than in criminal proceedings as the accused is not presumed innocent, and the burden of proof does not require proof beyond a reasonable doubt. In civil procedures, hearsay testimony may be allowed and the standard of proof rests in the believability (balance of probabilities) of the testimony presented (Hechler, 1988). After hearing testimony from the victim and the accused, the judge decides which testimony is the most believable and finds in favour of either the victim, or of the respondent.

ii. Canada Criminal Code

In contrast to civil procedure, in criminal procedure the prosecution is required to demonstrate the guilt of the accused beyond a reasonable doubt. This means the crown attorney must prove all necessary acts and necessary mental elements were present when the crime was committed (Mewett, 1992). To convict an offender in criminal court, the judge must be sure there is no other reasonable explanation available which can explain the incident in question.

The aim of civil law is to determine proof of liability and offer compensation to the victim (Neeb & Harper, 1994). In comparison, criminal law is punitive and in this way, is a symbol. Hallet (1991) describes the role of criminal law:

The essential purposes of a criminal prosecution are the protection of society generally, and the social denunciation and punishment of offenders. The criminal law serves as a social symbol and its enforcement is generally accepted as having a deterrent effect on offenders (237).

The Criminal Code defines those offenses which are deemed to be criminal in nature. While there is a range of behaviour which may be defined as criminal as according to the statutes in the Code, not all of this behaviour comes to the attention of the police. In the instances where the behaviour is reported, the police investigate and determine what charges are warranted. Only after charges have been laid, does the case become a matter for the criminal courts.

There have been a number of recent legislative changes in Canada which illustrate how the criminal justice system has been a strategy used to increasingly criminalize abuse of children. Two significant reforms were made to the Canada Criminal Code during the 1980s. These reforms primarily addressed a need to more accurately capture the range of abusive behaviour towards women and children. Further, in compliance with the newly created Charter of Rights and Freedoms, the changes to the legislation aimed to achieve gender equality within the tenets of the Criminal Code (Los, 1992).

Reforms to the Canada Criminal Code were completed in two stages. In 1983, the focus of legal reform was centred in the protection of women, primarily in the redefinition of rape. Reform to the Criminal Code in 1988 was centred in the redefinition of sexual offenses against children.

In January 1983⁴, the offenses of rape and indecent assault were replaced by new crimes: sexual assault; sexual assault with a weapon, threats to a third party or causing bodily harm; and aggravated sexual assault (Mewett, 1993). With the creation of the new offenses, crimes of sexual aggression were transferred from the section dealing with sexual offenses to the section dealing with crimes against the person (Roberts, 1994b). The new tripartite structure of sexual assault made the same

⁴ Bill C-127: An Act to Amend the Criminal Code in Relation to Sexual Offenses and Other Offenses Against the Person

gradations as crimes of assault (Boyle, 1984). The change in legal terminology from rape to sexual assault was on a symbolic level, designed to clearly acknowledge that sexual aggression towards women was an act of violence rather than an act of passion (Los, 1994).

Previous to 1983, rape was defined by intercourse and referred exclusively to the penetration of a female by a male. Husbands could not be prosecuted for sexually assaulting their wives. The amendments to the Criminal Code in 1983 restructured the offenses of sexual assault and included acts of touching in which penetration did not occur. Spousal immunity was removed. This change was significant in that wives were no longer legislated as the sexual property of their husbands. The actual definition of sexual assault, however, was left for the courts to decide (Boyle, 1984).

The second major reform of the Canada Criminal Code took effect in January 1988⁵. These revisions to the Code altered and updated the section which covered offenses against children. Existing offenses pertaining to the sexual abuse of children were redefined, outdated offenses were repealed, and new provisions were created to more easily facilitate the giving of evidence in court by children (Giliberti, 1994).

⁵ Bill C-15: An Act to Amend the Criminal Code and the Canada Evidence Act

Prior to 1988 the Criminal Code girls and boys were protected differently. Sexual offenses were constructed under the assumption that the victim was female and the offender male (Neeb & Harper, 1994). There was also a limitation in the range of sexual behaviour that was prohibited by law. The focus of sexual behaviour defined as criminal was in the act of penetration. Many of the sexual activities that normally constitute child sexual abuse were not covered under the offenses defined as criminal (Giliberti, 1994). In the narrow conception of incest, preceding 1988 both parties involved in incest could be sentenced to prison (Lahey, 1984).

A key component of the legislation enacted in 1988 was the elimination of gender inequality from the definitions of sexual offenses against children (Sullivan, 1992). Prior to 1988, criminal offenses dealt with only the sexual penetration of girls under the age of 14, or of girls of previous chaste character between 14 and 16 years of age. In contrast, the new offenses outlined crimes of a sexual nature against all children, male or female under the age of 18. These new offenses gave females and males the same legal protection respecting sexual offenses.

One of the most significant changes to the Criminal Code in 1988 was a recognition that vaginal penetration was not the only type of sexual behaviour which was harmful. The creation of new offenses which addressed sexual touching or fondling vastly

improved the scope of the types of sexual behaviour considered to be illegal. Not only did these new offenses make it criminal to touch a child in a sexual manner, but further, it became an offence for a person to invite a child to touch him or her in a sexual way (Hornick & Bolitho, 1992).

Along with the new offenses, the range of maximum sentences for the crimes were also adjusted to reflect gender neutrality. Previously, the crime of indecent assault on a female carried a maximum sentence of 5 years while and indecent assault on a male carried a maximum sentence of 10 years. The new crime of sexual assault carried a maximum sentence of 10 years and applied equally to both male and female victims (Boyle, 1984).

Legal reform in 1988 addressed not only the redefinition of sexual offenses in which children were the victims in the Criminal Code, but as well, the requirements for testimony specified under the Canada Evidence Act. Prior to 1988 the testimony of any victim in a sexual abuse case, whether adult or child, required corroboration. Reform to the Canada Evidence Act in 1988 stated that where an accused was charged with any offence which was sexual in nature, no corroboration was required for a conviction (Bala, Harvey & McCormack, 1992).

Changes to the Canada Evidence Act and Criminal Code in 1988 which dealt specifically with child victims permitted children to give evidence upon a promise to tell the truth. The most significant result of this change was the lowering of

threshold test which determined the competence of the child witness to give testimony. While the previous standard required sufficient evidence that the child understood the meaning of the oath, the new standard required only evidence of an 'ability to communicate'. This change allowed for the evidence of children who showed an ability to communicate the evidence but who were not able to appreciate the nature of the oath (Bala, Harvey & McCormack, 1992).

As has been demonstrated, much of the legal reform in Canada during the 1980s centred in the redefinition of sexual abuse. The redefinition of physical abuse towards children has been much less dramatic. The physical correction of children by parents or teachers has been sanctioned in the Canada Criminal Code since its enactment in 1892 and continues to be sanctioned in present time. Section 43 of the Criminal Code provides parents and teachers the right to correct with reasonable force, the actions of minors (McGillivray, 1995).

McGillivray (1995) has thoroughly documented the failure of Canadian Criminal Law to define reasonable force in the physical discipline of children. The definition of reasonable force has not been defined by parliament but rather has been left for individual courts to define. McGillivray has documented that judicial acceptance of reasonable force has varied widely not only between jurisdictions, but further within jurisdictions. What has become clear from her examination of court decisions is

that reasonable force is generally not defined by the nature of the physical punishment applied, but rather by the misbehaviour on the part of the child and the need for correction of that misbehaviour.

The defence of reasonable correction is a crucial distinction between the legal definitions of physical and sexual abuse of children in Canada. The sexual abuse of children as now defined under the Criminal Code does not allow the accused the opportunity to cite the child's behaviour as precipitating the abuse. In contrast, the Criminal Code has failed to define the physical abuse of children in a similar manner. The legal right of parents or teachers to physically discipline their children serves not only to sanction physical abuse of children, but more importantly, focuses attention on the behaviour of the child as a justification of the abuse.

iii. The Situation in Manitoba

The amendments to the Criminal Code during the 1980s made it much easier to prosecute cases of child abuse, especially child sexual abuse in the criminal justice system. With the increased number of child abuse cases entering the court system, pressure was felt within the court system to better process these cases (Ursel, 1992). Manitoba's response to the influx of family violence cases (including child abuse cases) in the court system included the creation of the Family Violence Court.

The Family Violence Court opened in Winnipeg in September 1990. The Court operated as a provincial court but was designed to be sensitive to the specific issues of family violence cases and of violence against children. The court was implemented in answer to a growing awareness of and concern for the problems encountered when bringing cases of family violence and child abuse into the criminal justice system.

The primary focus of the Family Violence Court is to better serve the needs of the victim in situations of violence in which the victim is in a close or trusting relationship to the offender. Goals of the court include: an effort to increase victim co-operation in order to reduce case attrition; to process cases expeditiously; and, to provide more consistent and appropriate sentencing (Ursel, 1992).

With the idea of specialization in mind, crown attorneys and judges sensitive to the issues of family violence were selected to sit in the court. Family Violence Court personnel were given educational training as to the needs of the victim and the legal tools available for use in these cases. A core of provincial court judges and specialized crown attorneys were assigned to the Family Violence Court.

The Family Violence Court is a provincial court and follows the same procedures as all other provincial courts. As with all criminal cases which enter the court system, the charge may be one which is a summary conviction or an indictable offence.

Cases which proceed as summary convictions must be heard entirely at the provincial level. Cases which proceed as indictable offenses may proceed at one of two levels.

A case which is considered to be indictable, may be heard entirely in the provincial Family Violence Court or may elect to be heard in the higher court, the Court of Queen's Bench. It is choice of the defence on behalf of the offender to elect for a trial by provincial court or for a trial in the Court of Queen's Bench.

The Court of Queen's Bench contains a federally appointed judiciary. While a much more formal court, the rules of evidence and the court procedures are the same as those in the provincial Family Violence Court. Unlike the Family Violence Court, Queen's Bench is not specialized and deals with all forms of criminal cases as well as civil cases.

While in theory it would appear that child abuse is now very clearly defined and therefore easily punished under the standards of the Canada Criminal Code, in practice this is not the case. Official reports of child abuse represent only a small number of victims of this crime (McLaren & Brown, 1989).

III. Incidence of Child Abuse

Determining the incidence of child abuse, both physical and sexual is a difficult task. The data comes primarily from three sources. The first includes official reports from cases

reported to social service agencies including hospitals and the police. The second consists of clinical samples and most often includes individuals who have tried to seek help in dealing with their abuse. The third source includes victimization surveys which ask adults to recall events which took place in their past. Both in the United States and in Canada, national surveys have been conducted asking adults to report on past victimization.

In the case of official reports, there is much variance between statistics from different agencies (Parker & Parker, 1986). Not all cases reported to social service agencies are reported to the police. This lack of uniform reporting leads to great variability in rates of victimization and in the types of abuses which are recorded. Due to the nature of the often limited number of cases sampled, generalization from such studies is limited (Dube & Hebert, 1988).

The variation in reporting, sampling and research models makes it difficult to present a clear picture of the nature and extent of physical and sexual abuse of children. The exact boundaries of what behaviours constitute child abuse are unclear (Lenton, 1990). While there are an abounding number of estimates of the prevalence of child abuse, truly accurate data simply do not exist (Cohen & Sussman, 1975).

i. Physical Abuse

Formal reports of incidence of child abuse in the United States have quadrupled since nineteen eighty (Lloyd, 1992). Estimates now suggest that the number of children severely abused each year in the United States alone exceeds 1 million (Hofford, 1991). The increased number of reported cases of physical abuse in recent years is suggested to be a direct result of greater public and professional awareness (Marshall et al., 1986). Despite the growing number of reports, estimates in both the United States and in Canada continue to suggest that the actual incidence of child physical abuse far exceeds the reported incidence (Straus & Gelles, 1988; Markesteyn, 1992).

Reported cases of physical abuse present similar demographics and paint a rough picture of the nature of the incidence. The accused is known to the child more than 75% of the time. Most perpetrators are the biological parents of the children they abuse (Maden & Wrench, 1977; Wilson et al., 1981). It has been suggested that in over 90% of the cases of physical abuse, the abuse is an extension of socially acceptable discipline techniques (Martin, 1983). Physical abuse is often cited as a consequence of disciplinary action of the part of a parent or caretaker in response to a specific action on the part of the child (Gil, 1970).

Both women and men are the perpetrators of physical abuse although males are more frequently the perpetrators in abuse

which results in injuries. This is true whether the injury is minor or serious (Rosenthal, 1988). The most common types of injuries are minor injuries including bruises and lacerations (Garbarino, 1989). More serious injuries such as head injuries and bone fractures are not uncommon. This is especially true among younger children (Maden & Wrench, 1977).

Estimates of physical abuse in the case of young children suggest that boys are at greater risk than girls (Gil, 1970; Lauer et al., 1974; Rosenthal, 1988). Statistics of reported cases of physical abuse in Canada show boys to account for just over 70% of victims in the under 12 age group (Wright & Leroux, 1991). As children move towards adolescence, girls are at greater risk than are boys (Gil 1970).

Boys tend to sustain injuries more frequently and which are more serious in nature. The frequency of physical injury declines however as boys grow older (Rosenthal, 1988). Boys under the age of 13 are more likely to be abused than girls in the same age group (Gil, 1970; Rosenthal, 1988; Wolfner & Gelles, 1993). For children age 13 and older, the incidence of physical abuse of girls increases while that of boys declines dramatically (Gil, 1970; Wilson et al., 1981). Rosenthal (1988) suggests one explanation for this phenomena may be that boys are abused much less often than girls in adolescence due to their growing physical stature. As they grow larger and stronger, boys can begin to hit back.

ii. Sexual Abuse

The Badgley Report was the first in Canada to study child sexual abuse on a national scale⁶. The final report concluded that over half (54%) of the females surveyed had been sexually assaulted in some manner before they reached the age of 18. The report agreed with American research collected during the same period which suggested that between 54% (Russell, 1984) and 62% (Wyatt, 1985) of females report to having been sexually abused during childhood.

The Badgley research was different from previous studies (Russell, 1984) in that not only did it detail extraordinary instances of victimization of female children but it included an examination of the incidence of sexual abuse for male victims as well. The Badgley Report (1984) suggested one in three males had been victims of sexual offenses at some time in their lives. The majority of these boys never reported their victimization to any formal authority.

Incidence of abuse never reported to an official authority is suggested as obscuring accurate estimates of victimization of sexual assault, for both female and male victims. Evidence suggests that official reports of child sexual abuse are not indicators of prevalence. Official reports represent only a

⁶ The Committee on Sexual Offenses Against Children was headed by Dr. Robin Badgley. From herein the final report issued by the Committee is referred to as the Badgley Report.

fraction of victimization (Finkelhor, 1994).

Research has established a number of characteristics believed to best describe the occurrence of child sexual abuse. Female children are much more likely to be the victims of child sexual abuse than are male children (Finkelhor & Baron, 1986). The sexual abuse of female children starts at an earlier age (Finkelhor & Baron, 1986), and continues for a longer period of time (DeJong et al., 1983) than it does for male children. Girls are victimized more frequently than boys and can be re-victimized throughout their lifetimes. Boys usually outgrow their vulnerability to abuse by the time they reach adolescence (Brickman, 1984).

There is no clear profile that distinguishes child sexual abusers. The only common feature of child sexual abusers is that the overwhelming majority are male (Neeb & Harper, 1994). Child sexual abuse is most commonly a crime committed against girls by men (Finkelhor, 1979; Mrazek & Kempe, 1981; Kempe & Kempe, 1984; Russell, 1986). Men are overwhelmingly the abusers of children, both boys and girls (Spencer & Dunklee, 1986; Vander Mey, 1988; Faller, 1989; Finkelhor et al., 1990; Gordon, 1990; Solomon, 1992). Data which has suggested that upwards of 90% of offenders are male has remained a constant (Russell, 1984; Cupoli & Sewell, 1988).

It is well documented that most sexual abuse of children is perpetrated by adults known to their victims (Rush, 1980;

Russell, 1984; Johnson & Shrier, 1985; Burgess, 1987; Stephens et al., 1989). This relationship is often one involving a member of the victim's immediate family, a relative, or a close family friend of the victim's family (Rush, 1980). Between one quarter and one third of assailants are related to the children they abuse and about 60 percent of the remaining assailants are well known to their victims. Only 15-18 percent of the perpetrators are strangers (Badgley Report, 1984; Russell, 1984).

While the relationship between the victim and offender has been firmly established, there are slight differences recorded between the relationship of the offender to girls and to boys. While intra-family abuse is still the predominant relationship for both girls and boys, boys are more likely to be abused outside their families than girls (DeJong et al., 1983; Dube & Hebert, 1988; Faller, 1989; Finkelhor et al., 1990). In comparing abuse experiences of boys and girls, Kendall-Tackett & Simon (1992) found that:

Boys and girls were equally likely to be molested by natural fathers, girls were more likely to be molested by stepfathers, and boys were more likely to be molested by friends of the family (57).

Recent studies which have identified characteristics of child sexual abuse cases processed in the criminal courts have found that for the most part, the characteristics of these cases reflect earlier literature. The majority of complainant know

their assailants, the majority of offenders are male and the majority of victims are female (Ursel, 1992; Gray, 1993; Gunn & Linden, 1994).

Estimations of child victimization have clearly indicated that the sexual victimization of boys is much less likely to be reported compared to the sexual victimization of girls (Hunter, 1992). The findings of literature examining the characteristics of reported cases has demonstrated that in 80% to 90% of reported cases of sexual abuse, the victim is a girl (Gray, 1993; Gunn & Linden, 1994).

A detailed examination of the dynamics of child abuse illustrates there are differences not only between physical and sexual abuse, but between the experiences of girls and boys. From an examination of previous literature, it has become obvious that the role that the gender of the child plays in society's perception of abuse is one which merits exploration.

CHAPTER FIVE - SENTENCING

The principal mandate of the criminal justice system is to ensure that the formal rules of society are upheld. These rules are enshrined in the form of tenets and laws. Criminal laws act as guidelines in defining what is considered acceptable and unacceptable behaviour according to society's norms. Criminal courts comprise the arena where formal sanctions are imposed.

Criminal courts have two broad functions. The first is to adjudicate the case against the offender in accordance to the well-established procedures of the criminal justice system; the second is to punish the offender if convicted (Carter, 1991). While in practice these functions appear to be straight forward, in theory conflicting perspectives exist as to how these functions are performed.

I. Theoretical Perspectives of Sentencing

The legal model subscribes to the belief that the criminal justice system is impartial. This model posits that justice is 'blind' to all factors except the pure evidence presented at the trial of an accused person. The social context of the crime is considered to be irrelevant (Curran, 1983). Under the legal model, the role of the judge is one which is interpretative. The judge does not sentence in response to the individual circumstances of the crime but instead is bound by the sentences

of previous cases with similar facts (Gall, 1990).

There is a second model which suggests that the stereotypes and prejudices which guide social relations within society also guide decisions within the legal system. The assumption of this model rests in the belief that the criminal justice system is a social organization and reflects the society which it represents (Myers & Talarico, 1987). Under this model, the judge plays an active role in the sentencing process. As active in the judicial process, the judge responds not only to precedent cases but to changing social attitudes and conditions as well (Gall, 1990).

In recent years, a large quantity of work in the area of legal research has examined the justice system as a social organization. One premise which underlines much of this work is that the criminal justice process is not static but mirrors the changes in society. In this way the criminal justice system is not unbiased or impartial. As a social construction, it enforces the present construction of society by reinforcing and reproducing the status quo (Eaton, 1983).

The Canadian Charter of Rights and Freedoms has to some extent, legitimized an activist role of the judiciary. In sentencing, judges do more than strictly applying the law to particular facts. As Gall (1990), suggests:

Judges resolve particular matters, not in isolation, but rather in the context of social, economic and other considerations, and render decisions in such a way as to permit the law to respond to changing social conditions (272).

It has been established that the formal practice within the criminal justice system is influenced by the same norms and values which influence society at large. Criminal laws are interpreted and applied to specific situations as dictated by both legal precedents and as well, by social norms and attitudes.

The realization that the criminal justice system is influenced by social norms and attitudes aroused the awareness of discrimination. As with society at large, not all individuals are treated as equal. Patterns of inequality found within society have been similarly identified within the criminal justice system. In recent years, the majority of research focusing on inequalities has been focused on the sentencing of offenders (Thomson & Zingraff, 1981; Palys & Divorski, 1986; Steffensmeier et al., 1993; Ulmer, 1994).

II. Inequality in Sentencing

Inequality in sentencing has been widely debated and a number of theories have been put forward as to how these inequalities occur. In examining the literature available, Inverarity et al., (1983) found the bulk of studies fall into

two groups. The first group the authors describe as having an 'involvement hypothesis'. The hypotheses within this group of studies is that the differences in criminal sentences arise from the nature and frequency of the participation in illegal activities among members of various social categories.

The second is termed 'discrimination hypothesis'. In this group of studies the hypotheses rest in the idea that differences in sentences are illustrated as being due to biases within the system. Included in this category is research which examines characteristics of the judiciary, and which examine the role of the judiciary in sentencing (Nagel S., 1962; Hogarth, 1971; Gibson, 1978a; Gibson, 1983; Nagel I., 1983; Miller et al., 1986; Myers, 1988; Miller & Sloan, 1994). A key premise in this work is that as with every other individual in society, personal values, beliefs and experiences affect how a judge will perceive the relevant facts of a case (Bala et al., 1991).

The weakness of both these hypotheses is implicit in their assumption of equal treatment of all individuals by the criminal justice system. Much of this research assess discrimination as a deviation from an otherwise unbiased standard (Inverarity et al., 1983). What this research fails to address is the bias inherent within the criminal justice system itself which prevents from the start, an assumption of equal treatment.

The theoretical premise upon which this research rests expands on the hypothesis of unequal treatment and combines it

with a feminist questioning of how the social structure as a whole acts upon the individual actors within the criminal justice system. It is suggested that the construction of gender within society is echoed within the criminal justice system. Response of court officials to criminal behaviour is guided not by individual biases but by the socialization patterns and stereotypes which guide all human behaviour. In this way discrimination is explained as a product of the biases inherent within the wider social structure. The judge as the key representative of the criminal justice system sentences in accordance to the norms, values and beliefs of the society which he or she represents.

III. Components of the Sentencing Process

The judge as the representative of the criminal justice process is responsible for assigning formal sanctions (Mewett, 1992; Ulmer, 1994). A judge does not arbitrarily assign a sentence to a case. In determining the fate of an offender, a judge takes a number of broad legal principles into account. In Canada, the four principles of sentencing usually cited are those set out in *Regina v. Morrissette* (1971), 1 C.C.C. (2d) 307 (Sask. C.A). These are: deterrence, protection of the public, and, reformation and rehabilitation of the offender (Leonoff, 1993). Of paramount concern to the judge in the sentencing of any individual is the protection of society (Fiske, 1992).

i. Principles of Sentencing

Punishment of the offender is aimed at denouncing both the criminal and the crime. All forms of punishment are ultimately aimed at protected society (Mewett, 1992). The principles of sentencing are based in the belief that punishing the actions of an individual can be beneficial in maintaining society's standards and values.

Deterrence can be categorized as general or as specific. The aim of general deterrence is to discourage all members of society from committing a similar crime. Specific deterrence is more focused in that it is aimed at the individual with the hopes that he or she will be discouraged from recommitting a similar crime (Fiske, 1992).

The principle of protection of the public is one aimed at ensuring the criminal is prevented from continuing to commit crimes. Terms of incarceration the most often the suggested manner of meeting the needs of protection.

The principle of rehabilitation is applied when the judge believes it is in the best interest of both society and the offender to promote the reformation and rehabilitation of the convicted person. The rationale behind a rehabilitative sentence is that the offender has made a mistake. A rehabilitative sentence is hoped to encourage the individual to avoid criminal behaviour in the future (Fiske, 1992).

In Canada along with the basic principles of sentencing, a number of further factors are taken into account when an offender is sentenced (Nadin-Davis, 1982; Carter, 1991; Ruby, 1994). All sentences have pre-determined maximum penalties established in the Criminal Code. The maximum penalties dictate the most serious sentence that may be given for each crime. In reality, the maximum sentence is rarely used other than for sentences of life imprisonment in cases of murder (Leonoff, 1993). The general range for specific offenses is more commonly dictated by precedent cases. Precedent cases are typical sentences for similar crimes and which a judge often uses as a starting point.

ii. Precedent Cases

In all Criminal Courts in Canada, judges are guided by a range of precedent sentences. This range is a scale of sentencing which has emerged from previous decisions of similar offenses. The previous decisions serve as guidelines to judges in like offenses. The most serious sentences are reserved for the worst offender who has committed the offence in the most aggravating of circumstances (Fiske, 1992). While every charge carries with it a maximum sentence, the judge determines what is appropriate for the individual case, within the accepted range of sentences for that particular offence (Boyle, 1984).

iii. Aggravating & Mitigating Factors

Aggravating factors are those which when taken into account may serve to increase the sentence from the pre-determined starting point. Aggravating factors show the specific crime to not fit the pattern of the 'typical' crime and therefore are is not deserving of the 'typical' sentence. The two most commonly cited aggravating factors include the gravity of the crime and the prior record of the offender (Miller & Sloan, 1994). The use or threat of violence is also a factor often considered (Boyle, 1984).

In the physical abuse of children common aggravating factors cited in the determination of a sentence have included: the nature of the injuries (*Regina v. Willison*, 1987, Ont. D.C.); a demonstrated pattern of repeated abuse⁷; and, evidence of wilful and deliberately inflicted injury (*Regina v. Goldberg & Goldberg*, 1988, Ont. D.C.).

In instance of sexual assault with a child victim, the following aggravating factors have been demonstrated to increase the sentence length: position of trust wherein the offender betrays that trust in committing the crime (Fiske, 1992); repeated instances of sexual intercourse over a long period of time; and the degree of psychological and emotional damage to

⁷ Evidence of patterns of physical abuse is different from the aggravating factor of a prior record. The demonstration of a history of abusing the child may be evidence from incidents not reported to the authorities.

the victim (*Regina v. Deakin*, 1990, (2d) 466, Man. C.A.).

Mitigating factors are less obvious and often more controversial (Boyle, 1984). They are those which when taken into account serve to reduce the sentence to fit the particular circumstances of the individual accused. Mitigating factors are any explanation which helps to explain the behaviour of the accused or which shows the accused in a more positive light. It has been demonstrated that one of the strongest mitigating factors is an acceptance of guilt. The entrance of a guilty plea is a strong mitigating factor for the accused (Nadin-Davis, 1982; Ruby, 1987; Fiske, 1992).

In cases of physical abuse, mitigating factors have included: genuine remorse (*Regina v. Inglis*, 1986, Man C.A); parental recognition that the force used to punish was excessive (*Regina v. Dupperon*, 1985, (3d) Sask. C.A); and evidence of physical abuse in the accused's childhood (*Regina v. Mercer*, 1987, Nfld. T.D.).

Common mitigating factors documented as having influenced a sentence in cases of child sexual abuse include: the accused's admitting to his involvement with the child; his illustration of remorse; his co-operation with assessment counsellors; his apparent motivation for treatment; his lack of a criminal record; his young age; and, his personal background which was viewed as a factor leading to his criminal behaviour (*Regina v. Ducharme*, 1991, (2d) 171, Man. C.A).

iv. Types of Sentences

Types of sentences available are set out in the Canada Criminal Code. Certain offenses may have specific sentences (Leonoff, 1993). The basic types of sentences are: terms of incarceration; terms of probation; fines and discharges (Mewett, 1992).

Sentences including imprisonment which are two years less a day are served in provincial reformatories. Sentences of two years or more are served in federal penitentiaries. In cases where more than one term of imprisonment is imposed, the terms run concurrently unless otherwise stated. Consecutive sentences are generally only imposed when there are unrelated activities arising from one set of charges (Leonoff, 1993).

Probation orders used when the court feels it is necessary to monitor the offender's behaviour in the community (Leonoff, 1993). Probation orders may be assigned on their own or attached to conditional discharges, suspended sentences, fines or terms of provincially served incarceration. The maximum term for a probation order is three years (Mewett, 1992).

Fines are monetary penalties and may be given in lieu of any other punishment or in addition to other punishment (Mewett, 1992). Fines may be given in lieu of punishment only for cases in which the maximum punishment the charge carries is five years

or less⁸. In cases where the maximum penalty is more than five years, a fine may only be assigned in addition to other punishment (Leonoff, 1993).

Discharges are given in spite of convictions. In order to assign a conditional or an absolute discharge, the court must be satisfied the discharge is not only in the best interest of the accused, but is not contrary to public interest (Leonoff, 1993). If an absolute discharge is assigned, there is no conviction entered on the accused criminal record. If a conditional discharge is assigned, the offender is under a probation order until the terms of the conditional discharge expire. If the offender has satisfied the terms of the probation order, at completion there is no conviction entered (Mewett, 1992).

v. Judicial Discretion

The formal and informal authority used by judges when making sentencing decisions is referred to as judicial discretion. It is the judge who decides the relevant factors in a case. In his or her determination of the sentence, a judge combines the evidence presented, the broad principles of sentencing, the individual mitigating and aggravating

⁸ A fine may be assigned to charges of Assault in which the maximum punishment is five years imprisonment. Fines may not be assigned in cases of Sexual Assault as the maximum punishment that charge carries is ten years imprisonment.

circumstances of each case, and previous precedents of similar cases. It is a process which allows for a wide range of variation between sentences (Carter, 1991).

It is widely accepted that in Canada and in the United States a number of factors influence sentencing by basis of the process alone. Each case has its own individual characteristics and in assessing a sentence, the judge must combine the individual facts of the case with the broad principles of sentencing. As with every individual in our society, personal values, beliefs and experiences affect how a judge perceives the facts of a case (Bala, Hornick & Vogl, 1991).

IV. Previous Sentence Literature

A great deal of research has been focused towards uncovering the factors which influence legal decisions. The bulk of previous research has centred in the exploration of sentence discrimination. The most predominant areas of study have included examinations of the influence of offender's race (Quinney, 1970; Wolfgang & Riedel, 1973; Gibson, 1978b; Thomson & Zingraff, 1981; Radelet & Pierce, 1985), offender's socio-economic status (Hagan et al., 1980; Spohn et al., 1981-82), and offender's sex (Hewitt, 1976; Swigert & Farrell, 1977; Hagan & O'Donnell, 1978; Teilmann & Landry, 1981; Kruttschnitt, 1984; Zingraff & Thomson, 1984; Daly, 1989; Steffensmeier et al., 1993) on sentencing decisions.

The significance of race and socio-economic status has been perhaps the most widely debated variables in discussions of sentence variance. The over-representation of Black males in prison in the United States and of Native males in prison in Canada has strongly suggested there is inequality in the impositions of criminal sentences in both countries. Quinney (1970) suggested that under our present social structure those offenders not members of the dominant class would receive more serious sentences than those who are.

i. Race Studies

Many of the recent studies investigating the influence of race on sentencing found varying results. A number of studies have concluded that black and hispanic offenders are sentenced more harshly than are white offenders (Petersilia, 1983; Peterson & Hagan, 1984; Klein et al., 1990). This trend was especially true in the case of misdemeanour charges where black and hispanic offenders are more likely than white to be sentenced to a term of incarceration.

Racial discrimination has been most pronounced in the sentencing in cases of rape (Wolfgang & Riedel, 1973; LaFree, 1980). A black male sentenced for the sexual assault of a white female is more punitively sentenced than is a white male for the same crime. The sexual assault of a white female regardless of the race of the offender is considered to be much more serious

than the rape of a black female (LaFree, 1980; Walsh, 1987).

There is a perception in society which has been reflected in criminal courts that the sexual assault of a black female is considered to be a 'normal' behaviour within the black subculture (Swigert & Farrell, 1977). As a 'normal' behaviour, the assumption has been made that on the basis of race alone, women do not experience sexual assault in the same way (Bohmer, 1974).

Research in Canada, the United States and Great Britain in the area of racial discrimination in the criminal justice system has consistently pointed to the over-representation of visible minorities in prison. Studies of discriminatory sentencing practices have reflected this concern. A number of factors have been cited as explaining this phenomena including an over-representation of visible minorities charged by the police and convicted in criminal courts (Hood, 1992). The conclusions reached in many studies are that any examination of racial discrimination in sentencing must be examined in relation to the entire criminal justice process beginning at the stage of arrest. Racial biases while evident at the sentencing stage are present throughout the entire criminal justice process (Hood, 1992).

ii. Sex and Gender Studies

A more recent area of inquiry is one which is centred in

sex and gender. The legal system is one which for many years made the appearance of being unaffected by gender. Interest within sociological and social-legal research has only recently begun to uncover gender biases which were previously ignored (Cousin, 1980; Greenwood, 1981). Studies which examine the female offender and her place in the criminal justice system clearly illustrate both the impact of gender and of stereotypes in sentence discrimination.

It is an established fact that sex is the strongest predictor of criminal activity (Sutherland & Cressey, 1966; Harris, 1977). The majority of criminals are men. Until only recently, many studies of criminal behaviour and examinations of the criminal justice system focused on defining 'normal' criminal behaviour and 'normal' patterns of crime. Criminal behaviour was equated with male behaviour. Female offenders did not fit the criminal stereotype and generally were regarded as incidental in the study of criminality (Sarri, 1986).

The advent of the women's movement instrumental in uncovering gender arrangements in all social institutions, was a crucial factor in the acknowledgement of gender bias within the criminal justice system as well. With the uncovering of female criminal patterns came a number of theories as to how women are treated within the criminal justice system.

Competing findings as to the treatment of female offenders continue to be debated in criminal justice research. The first

is that females are preferentially treated (Giallombardo, 1966; Anderson, 1976; Steffensmeier & Kramer, 1982; Curran, 1983; Visher, 1983; Kruttschnitt, 1984; Ghali & Chesney-Lind, 1986; Boritch, 1992). The second, that female offenders are more harshly treated on the basis that their criminal behaviour greatly violates the norms of passivity which define female behaviour (Feinman, 1979; Teilmann & Landry, 1981).

Research that indicates female offenders receive more lenient sentences than men predominantly suggests that gender bias is instrumental in this leniency. Steffensmeier & Kramer (1982) list a number of gender stereotypes which they found to aid in the passing of more lenient sentences. Included were: the view of females as nurturers and the need for her to be at home with her children; the view that women are less capable than men of committing crimes; the view that women are capable of change and will be less likely to commit future crime; and the view that women do not pose a threat to society in the future.

The familial role assigned to women has been cited by a number of studies for its role in influencing sentencing decisions (Eaton, 1983; Kruttschnitt, 1984; Daly, 1987, 1989; Bickle & Peterson, 1991). Since child care has been a role assigned primarily to women, removing a mother from her home is often considered not in the best interest of her family in particular or for society in general. In this manner, the

social harm of punishing the defendant as well as those who depend on the defendant is taken in to account (Daly, 1987, 1989).

Studies which have found women committing similar offenses to males, to be sentenced more harshly, do not negate the leniency theory but rather comply with the idea of gender bias. Harsh treatment of females is most often found when the female commits a serious offence which negates the stereotypes of 'natural' or 'normal' female characteristics. Severe treatment is a result of a perceived violation of female gender roles (Bernstein et al., 1979; Johnson & Scheuble, 1991). Kruttschnitt (1982) proposes that females charged with crimes that violate appropriate female gender behaviour are treated more harshly than females charged with traditional female crimes. Feinman (1994) suggests that this is an example of the whore/madonna duality. She writes:

Women who deviate from traditional norms become whores and must be punished to set an example so that madonnas will not be tempted to fall from grace.

The conclusion of many of the studies which find harsh treatment of women conclude that it is not the crime but the violation of the stereotyped gender roles which guides sentencing.

What becomes apparent in these studies and central to this research is the distinction made between sex and more importantly, the influence of gender roles in the sentencing

process. Whether the view taken of the treatment of women in the criminal justice system is one of leniency or one of harshness, upon closer examination the treatment of the offender ultimately reflects the gender stereotypes upon which society defines appropriate behaviour.

iii. Victim Studies

Research has demonstrated that stereotypes influence not only perceptions of offenders, but perceptions of victims as well. Gender ideology is instrumental in the treatment of victims in the justice system, particularly when the crime is related to sexuality (Lips, 1988). The research specifically important to this study is that which examines the role of gender stereotypes in structuring responses to victims involved in the criminal justice system. In crimes against the person, research which focuses on the offender while ignoring the victim only captures half the dynamic. The behaviour and attributes of the victim have been demonstrated as influencing the sentencing of the offender as well (Myers, 1979).

a. Adult Victims

Over the past two decades, feminist-led concern has focused on the attitudes of judges in cases of sexual violence (Soothill et al., 1990). Feminist research which had been instrumental in uncovering the prevalence of sexual assault both for women and

for children, has also been instrumental in illustrating the victim's role in the sentencing process.

According to Statistics Canada, almost 40% of all Canadian women have been sexually victimized at least once since the age of sixteen. The overwhelming majority of these women were victimized by a male known to them. A minority of these incidents of sexual assault were reported to the police (Roberts, 1994a).

It has been firmly established within Canadian criminal justice research that the majority of sexual assault are never reported to the police. Of those reported to the police, very few go to trial and even fewer result in convictions (Roberts, 1994a).

Charges are not always laid in a case of sexual assault reported to the police. Once a report is made, police must conduct a preliminary investigation to determine if there is sufficient evidence to establish that a crime has been committed. A major factor in the discrepancy between reported incidents and conviction rates rests in the judgmental policies of criminal justice personnel. In Canada in 1992, 14% of cases reported to the police were not pursued beyond a preliminary police investigation (Roberts, 1994a).

A number of studies have examined how victim stereotypes impact perceptions of rape and sexual assault, and further how these stereotypes influence the determination that a crime has

been committed. It has been widely documented that females with sexual histories are blamed more for their rape than are virginal female victims (Mazelan, 1980; Gunn & Linden, 1992). A promiscuous sexual history also tends to elicit more negative perceptions of the victim (Johnson, 1994).

It has also been established that victims of sexual assault are more likely to incur blame if the offender is known to them (Check & Malamuth, 1983). Acquaintance rape victims are perceived as more responsible for their rape than are stranger rape victims (Johnson & Russ, 1989). Acquaintance rape is not viewed as being as 'real' as stranger rape (LaFree, 1989). This has been found to be especially true in cases where the victim had a prior personal relationship with the offender (L'Armand & Pepitone, 1982; Tetreault & Barnett, 1987; Bridges & McGrail, 1989; Johnson, 1994). In court proceedings, dismissals are more likely to occur when the victim and offender are acquaintances as opposed to when they are strangers (Jamieson & Blowers, 1993).

Wife assault has been plagued by many of the same stereotypes as demonstrated in cases of sexual assault. The assault of a women by her husband was viewed as a private matter and not as serious as an assault by a stranger. Unlike general assault cases in which the police made the decision to lay the charges, in wife abuse cases the victim usually had to request that charges be laid (Ursel & Farough, 1986). Traditionally,

cases of wife assault were not as vigorously prosecuted in the criminal justice system. (Currie, 1990).

There are strong parallels which exist between the assault of women, both sexual and physical, and the abuse of children. In the current patriarchal social structure, both women and children lack power and their abuse is facilitated by a lack of power. Whereas women traditionally have been regarded as the property of their husbands, children are regarded as the property of their parents (Bagley, 1986).

The characteristics of cases of abuse of children in court in many ways mirrors the characteristics of cases in which adult women have been victimized. Most often the victim is in a trusting of dependent relationship with the offenders. As well, the victim is often the only witness to the incident. When there are no other witnesses to the offense, the case rests on the evidence of the victim alone.

b. Child Victims

Research which examines the processing of child abuse cases in the criminal court system is not plentiful. While child abuse of all forms is reported to a number of official agencies each year, legal intervention in these cases is rare. In a recent study of child abuse reported to child welfare authorities in three American centres, only 4% of the reported cases resulted in criminal filings (Tjaden & Thoennes, 1992).

Several factors have been identified as significant in influencing whether or not a case is processed through the criminal justice system. Cases of sexual abuse are much more likely than cases of physical abuse to result in a court filing. Cases of physical abuse are more likely than cases of sexual abuse to be settled with the help of agencies outside the criminal justice system (Tjaden & Thoennes, 1992).

In examining cases of child abuse within the criminal justice system, it has been demonstrated that the majority of the child sexual abuse cases involve female victims (MacMurray, 1989; Biesenthal, 1991; Tjaden & Thoennes, 1992; Gray, 1993; Gunn & Linden, 1994). In cases which are nonsexual by nature, cases involving boy and girl victims are represented equally (Tjaden & Thoennes, 1992).

Gray (1993) suggests that gender biases exist in the system from the first time a case is reviewed. At the initial screening process, while the large majority of cases involve female child victims, these cases are almost twice as likely to be found not worthy of prosecution than those cases with male child victims (MacMurray, 1989). MacMurray proposed that this variance in processing may suggest that the gender of the child victim may have some bearing on the perception of the seriousness of the abuse.

While biases towards gender have been documented for the cases coming in to the system, what these studies fail to

address are what happens to cases at the sentencing stage. The research most valuable to this study is that which uses gender to explain variation in sentencing patterns in cases of child abuse.

An extensive review of child abuse literature uncovered only two studies which examined gender as a variable used to analyze sentencing patterns in child abuse cases. Adjusting for the effects of prior record, crime seriousness, Walsh (1994) found that male offenders who molested male children were almost seven times more likely to be imprisoned than male offenders who molested female children. Walsh concluded that societal revulsion against homosexuality combined with a revulsion of child molestation could account for harsher legal sanctions in cases where an adult male abused a boy.

Walsh's findings concurred with an earlier Canadian study which concluded that homophobia played a key factor in explaining differences in the sentencing of child molesters in one Ontario region. Carter (1991) found that in the Waterloo, Ontario region, male offenders who had abused young boys received prison sentences that were 45% longer than those offenders who had abused female children. The finding could not be explained by the level of severity of the abuse.

V. Hypotheses in this Research

It is the premise in this study that gender plays an important role in the criminal justice system. What is being suggested is that based on the sex of the victim in physical and sexual child abuse cases, a number of associated gender stereotypes influence the perception of the child's victimization. The judge learns very little more than the facts of the case and the sex of the child. Related to the sex of the child are gender stereotypes which influences the judge's perception of the individual victim and therefore the circumstances of the crime.

In formulating a sentence for a convicted offender, a judge must weigh and consider a number of factors. He or she must first evaluate the evidence presented. The evidence must be weighed with the principles of sentencing and the mitigating and aggravating factors of the case. The process is one which relies heavily on human judgment. There is no single formula which can be applied in order to achieve a sentence without human interpretation of the facts of the case. It is the judge's role to evaluate all the factors of the case and to provide an appropriate sentence to suit the offence. This study will explore the extent to which these biases influence the sentencing process.

Using a feminist perspective which views gender as a creation of social forces, this study is an exploration of the

impact of gender on court processing. Prior research literature suggests that child abuse sentencing is influenced by a number of factors, both legal and extra-legal. Legal factors which most influence sentencing in these types of cases appear to be; the existence of a prior criminal record, and the nature and severity of the original charges brought forward by the police. Extra-legal factors found to be influential in the evaluation of child abuse cases include the age of the victim and the relationship of the victim to the accused (Boyle, 1984; Gray, 1993).

This research intends to examine the severity of the sentences invoked for all offenders convicted of child physical and sexual abuse in Winnipeg during the period of Sept 17 1990 and March 31 1993. Taking in to account; the age of the child victim, the relationship of the victim of the accused, the prior record of the accused and the nature of the original charges, this research will examine how the gender of the victim will impact the sentence of the offender.

i. Hypothesis I: Physical Abuse

It is hypothesized that the influence of gender will result in distinct differences in sentencing. First when examining cases of physical abuse, it is suggested that differing gender role expectations and stereotypes surrounding aggression will result in differing interpretations of the physical abuse of

boys and girls. It is hypothesized that because girls are viewed as needing protection and as fragile and weak, and because it is commonly accepted that rough treatment of boys is a necessary part of their masculine development, the physical abuse of girls will be punished more severely than the physical abuse of boys.

ii. Hypothesis II: Sexual Abuse

The second pattern to be examined in this research is that of differential sentencing in cases of sexual abuse. From a review of the gender role expectations revolving around sexuality, it is hypothesized that sentencing patterns for sexual abuse cases will reflect the a number of cultural stereotypes and sexual taboos.

Traditionally, gender stereotypes of 'good' girls are those females who are sweet, naive and sexually unknowledgeable. Innocence is highly valued. In contrast, 'bad' girls are sexually experienced. Gunn & Linden (1992) illustrate that evidence of a 'bad' character has been cited as pertaining to the female as not being a virgin, as having had sex with the accused in the past or as having been a willing participant in the sexual act.

The distinction between 'good' and 'bad' has been applied even when the young girl has been sexually abused. In order to explain how the abuse has happened, girls are questioned as to

their role in provoking the abuse and further, held responsible for not preventing the abuse. Boys on the other hand, are rarely held responsible for their sexual victimization. A boy who has been sexually abused is viewed as a victim and as having under-gone a very damaging traumatic experience. A boy's actions before or during his victimization are rarely questioned.

In addition to culturally mediated gender stereotypes, are the widely shared taboos defining appropriate sexual behaviour. Two taboos are under examination in this research, that of the sexual violation of a child and secondly, that prohibiting homosexuality.

Child sexual abuse is now widely understood as a crime against girls committed by men. Upwards of 90% of offenders are male (Russell, 1984). The dynamics of the crime are such that the sexual abuse of girls most frequently violates only the taboo prohibiting sexual behaviour against children. In comparison, the sexual abuse of boys violations two taboos, that of the violation of a child and secondly, that governing homosexuality.

It is suggested that a violation of two taboos will be punished more harshly than the violation of only one taboo. The resulting hypothesis for this research is that sentences for offenders who sexually abuse female children will be less severe than those for offenders who sexually abuse male child victims.

CHAPTER SIX - METHODS

The child abuse data used in this research is part of a larger data set which was collected by the Family Violence Research Team headed by Dr. Jane Ursel. The Family Violence Court research project included a compilation of court data for spousal, elder and child abuse cases. The data collection process began at the inception of the Provincial Family Violence Court in Winnipeg, Manitoba on September 17, 1990.

I. Data Collection Process

The family violence research project was designed to track all cases entering the provincial court system. The research team followed the cases through the court process to their disposal. Once disposed, a tracking schedule (see Appendix 1) was completed⁹. This tracking schedule was completed regardless of the outcome of the case.

The tracking schedule contains 162 variables. A coding schedule (see Appendix 2) was designed to capture the relevant data. The data was compiled from the variety of information contained within the crown attorney's file. A number of sources relating information about the case constitute the crown

⁹ A number of child abuse cases were also monitored by research staff. Upon the conclusion of a trial, preliminary hearing or guilty plea, the staff member would fill out both a monitoring and tracking schedule for the observed case.

attorney's file. These include; the official police report, the offender's prior police record, independent reports from hospitals and social service agencies, the pre-sentence report (if one had been requested), and notes made by the crown attorney as to the progression of the case through the criminal justice system.

For this research, all the cases in which a child was a victim during the initial 30 months of Court operation were examined. The data set obtained included all cases of child abuse which entered the Family Violence Court system after September 17, 1990 and which were disposed of by March 30, 1992¹⁰.

During this period, a total of 653 child abuse cases were disposed and tracked by the research team. In 427 of the child abuse cases a sentence was recorded. In 226 cases no sentence was recorded as the case ended in either an acquittal, dismissal, discharge, or stay of proceedings. Table 1 presents the child abuse cases tracked by the Family Violence Court research project during the identified time frame.

¹⁰ All cases in which a child is the victim, regardless of the victim-offender relationship fall under the jurisdiction of the Family Violence Court.

Table 1		
Dispositions of all Cases Tracked by the Family Violence Court Research Team N = 653		
Disposition	N	%
Sentence Recorded	427	65.4%
No Sentence Recorded	226	34.6%
Total	653	100%

The present study is an examination of sentencing patterns. As a study of sentencing only those cases in which a sentence was recorded were considered. The 226 cases in which no sentence was recorded were not included in the data set for the present research. The remaining 427 cases were inspected to determine if they met the criteria established for this research.

II. Defining and Selecting Cases

This study is aimed specifically at uncovering the influence of a child's gender on sentencing. The legal definition of a child as a person under the age of eighteen is used in this study. Cases analyzed in this study include only those in which the victim is a child at the time of reporting; the child is the primary victim of the abuse; and the offender is in an adult role in relation to the child victim. Cases

excluded from this study include those in which a child was a victim but which were classified as 'historical abuse', 'spouse and child abuse', and 'dating abuse'.

Cases of historical abuse were not included in this data set as they involve incidents of abuse which occurred when the victim was a child but which were not reported until the victim reached adulthood. Cases of historical abuse were excluded due to the unique situation of an adult testifying to his or her victimization as a child.

Cases involving the abuse of a spouse and a child were excluded as the dynamics of these cases differ from cases where children are the only reported victims. Most often in cases involving both the spouse and the child, the child is the secondary victim. While the child is a victim, the dynamics of these cases differ from those of child abuse.

Cases defined as dating relationships were excluded on the basis of the relationship between the victim and the offender. The relationships which defined these cases included: common law; ex-common law; boyfriend; and ex-boyfriend. The exclusion of these cases is based on the fact that the relationship between the victim and the offender is more similar to that of a spouse.

After examining the dynamics of the 427 cases in which a sentence had been recorded, 147 cases were excluded on the basis on their failure to meet the criteria established for this

research. The remaining 280 cases comprise the data set used for this study. Table 2 identifies the breakdown of the cases by the type of abuse incurred.

Table 2		
Cases in Present Data Set by Type of Abuse N = 280		
Type of Abuse	N	%
Sexual	165	58.9%
Physical	115	41.1%
Total	280	100%

III. Characteristics of the Child Victims

This research specifically addresses the differences between the victimization of girls and boys. As has been demonstrated, previous research in the area of child abuse has maintained that the abuse of children differs by gender.

i. Victimization by Case

The 280 cases in this data set involve a total of 317 victims. In a small percentage of cases, the sentence refers to more than one victim. In this data set approximately 89% of the cases were sentenced for the abuse of a single victim. Table 3 identifies the breakdown of child abuse cases by the number of victims.

Table 3		
Cases by Number of Victims		
N = 280		
Number of Victims	N	%
One Victim	249	88.9%
Two Victims	25	8.9%
Three Victims	6	2.2%
Total	280	100%

ii. Sex of Victim

Girl victims represent 70% and boy victims 30% of the total victims in this data set. Girls were more frequently the victims of both sexual and physical abuse than were boys. Table 4 illustrates the frequency of child victimization.

Table 4			
Frequency of Type of Abuse			
by Sex of Victim			
N = 317			
Victim Sex	Type of Abuse	N	%
Girl	Sexual Abuse	150	47.4%
Girl	Physical Abuse	71	22.4%
Boy	Physical Abuse	54	17.0%
Boy	Sexual Abuse	42	13.2%
Total		317	100%

The abuse of child victims clearly differs by gender. Girl

victims are more commonly the victims of sexual abuse whereas boy victims are more likely to be physically victimized. More than twice as many girls are victimized sexually than physically. Boys are more likely to be victims of physical abuse than of sexual abuse. 56% of boys are physically victimized and 44% of boy victims are victimized sexually. Table 5 identifies the sex of the child victim by type of abuse.

Table 5					
Sex of Child Victims by Type of Abuse					
N = 317					
GIRLS N= 221			BOYS N = 96		
Type	N	%	Type	N	%
Sexual	150	67.9%	Sexual	42	43.7%
Physical	71	32.1%	Physical	54	56.3%
Total	221	100%	Total	96	100%

iii. Age of Victim

Victims range in age from one to seventeen. Victims whose ages were listed in months in the court file were rounded to the nearest age in years. An overwhelming majority of girl victims are in their pre-teen and teen years. The largest number of girl victims are found in the 13-17 age group. The largest number of boy victims fall in the 9-12 age group. Table 6 illustrates the breakdown of victims by age.

Table 6					
Age of Child Victims					
N = 317					
GIRLS			BOYS		
N = 221			N = 96		
Age	N	%	Age	N	%
0-5 years	27	12.2%	0-5 years	25	26.0%
6-8 years	31	14.0%	6-8 years	12	12.5%
9-12 years	71	32.2%	9-12 years	33	34.4%
13-17 years	92	41.6%	13-17 years	26	27.1%
Total	221	100%	Total	221	100%

iv. Race of Victim

The most commonly recorded race of the victim is that of European origin. The second most common is Aboriginal origin. The category of aboriginal includes; Status and Non-status Natives and Métis. In only a small percentage of the cases is a race recorded other than European or Aboriginal Origin. The category of Visible Minority includes all other categories of race recorded in this research. In 15% of the cases the race of the victim was not recorded and therefore listed as no information.

Table 7 illustrates the race for girl and boy victims. The patterns are similar for both with 48% of girl victims and 42% of boy victims recorded as European origin. The slight difference between girl and boy victims is found in the category

of Visible Minority in which 12% of girl victims and only 4% of boy victims are found.

Table 7					
Race of Victims by Case					
N = 280					
GIRLS N = 197			BOYS N = 83		
Race	N	%	Race	N	%
European	95	48.2%	European	35	42.2%
Aboriginal	56	28.2%	Aboriginal	27	32.5%
Visible Minority	23	11.8%	Visible Minority	3	3.6%
No Information	23	11.8%	No Information	18	21.7%
Total	197	100%	Total	83	100%

v. Victim-Offender Relationship

In cases involving children, perhaps the most important distinction in the relationship of the victim to the offender rests in the position of trust or relative power (Canadian Panel, 1993) A breach of trust, especially parental trust, is viewed to be damaging and traumatic to the victim.

The most prevalent relationship between the girl victim and the offender is that of parent-child. The relationship of natural parents, step parents, foster parents and adoptive parents comprise 46% of the relationships. A further 21% of the abuse of girls was perpetrated by other family members. The

category of other family members includes; uncles, grandparents and siblings.

Parents are the most frequent abusers for boy victims as well. Previous literature suggests that boys are more likely to be abused by strangers than are girls (Faller, 1989). In this data, very little of the abuse of children, either girls or boys is at the hands of strangers. Table 8 illustrates the victim-offender relationship by the sex of victim.

Table 8					
Relationship of Offender to the Victim by Sex of Victim					
N = 280					
GIRLS N = 197			BOYS N = 83		
Relationship	N	%	Relationship	N	%
Parent	90	45.6%	Parent	42	50.6%
Other Family	42	21.4%	Other Family	10	12.0%
Acquaintance	32	16.2%	Acquaintance	13	15.7%
Stranger	19	9.7%	Stranger	11	13.3%
Caregiver	14	7.1%	Caregiver	7	8.4%
Total	197	100%	Total	83	100%

IV. Characteristics of the Offender

The sample of 280 cases involved 280 offenders. All the child victimization in this study was perpetrated by individual offenders. Consistent with previous research the majority of

the offenders are male. In this sample, 89% of the total offenders are male. While female offenders in cases of child abuse are not common, those that do appear in the court system are more often involved in cases of physical abuse. In this data set, only 1% of the female offenders are sentenced on charges of sexual abuse. Table 9 illustrates the frequency of the sex of offender by the type of abuse.

Table 9			
Sex of Offender by Type of Abuse			
N = 280			
Offender	Type of Abuse	N	%
Male	Sexual Abuse	161	57.5%
Male	Physical Abuse	87	31.1%
Female	Physical Abuse	28	10.0%
Female	Sexual Abuse	4	1.4%
Total		280	100%

i. Sex of Offender

Males are the overwhelming abusers of both boys and girls. The patterns for boys and girls by the sex of the offender are similar. Table 10 shows the sex of the offender by the sex of the victim.

Table 10					
Sex of Offender by Sex of Victim					
N = 280					
GIRL VICTIMS			BOY VICTIMS		
N = 197			N = 83		
Offender	N	%	Offender	N	%
Male	177	89.8%	Male	71	85.5%
Female	20	10.2%	Female	12	14.5%
Total	197	100%	Total	83	100%

ii. Race of Offender

The patterns of race for offenders are similar to those for victims. The majority or 56% of offenders are listed as of European origin. In the second largest category, 27% of offenders are recorded as Aboriginal Origin. In only 1% of the cases is there no information. The patterns of race of the offender when analyzed by girl and boy victims are similar. In both cases, the majority of offenders are of European origin. Table 11 identifies the race of the offender.

Table 11		
Race of Offender N = 280		
Race	N	%
European Origin	157	56.1%
Aboriginal Origin	75	26.7%
Visible Minority	36	12.9%
No Information	4	1.3%
Total	280	100%

iii. Employment of Offender

Almost half of offenders were unemployed. Of those offenders who were employed, 17% were classified as skilled. The category of skilled employment includes; professional, skilled and semi-skilled. 24% of offenders were categorized as unskilled. Unskilled employment includes; unskilled, seasonal and part-time. The category of 'Other' includes; students, retired persons and worker's compensation. Table 12 illustrates the breakdown of offenders by employment categories.

Table 12		
Employment of Offenders		
N=280		
Employment	N	%
Employed - Skilled	47	16.8%
Employed - Unskilled	67	23.9%
Unemployed	132	47.2%
Other	34	12.1%
Total	280	100%

V. Case Characteristics

It is hypothesized in this research that there will be marked differences in the seriousness of sentences when the type of abuse and the gender of the victim are taken into account. To examine seriousness, the dependent variable is the sentence.

A criminal sentence is a product of a number of factors, both legal and extra-legal. In cases of child abuse it has been demonstrated that the impact of a number of legal variables must be controlled for in any sentencing study (Walsh, 1994). These variables include; the type of plea entered, the court in which the case is heard, the offender's prior record and the charge severity.

i. Type of Plea Entered

Plea bargains have become an integral part of the justice process both in the United States and in Canada. It has been widely documented that only a minority of cases go to trial. The data in this study reflects previous research which has documented that plea bargains account for between 80% to 90% of all cases adjudicated in the court system (LaFree, 1985).

Research has documented that offenders who plead guilty receive average sentences that are almost half the length of sentences for offenders convicted after a trial (Carter, 1991). Guilty pleas are viewed positively by the courts as an indication of remorse (Nadin-Davis, 1982). In cases of child abuse, offenders who plead guilty are looked upon favourably as the victim has been saved from the embarrassment of giving evidence (Carter, 1991). Literature suggests that a plea of guilt is perhaps one of the strongest mitigating factors in reducing the sentence of an offender (Ruby, 1994). The power of the impact of guilty pleas on sentence requires that the type of plea must be controlled for in order to more accurately measure the impact of gender on sentence.

In this data set, 81% (N=227) of sentences resulted from a guilty plea. The remaining 19% (N=53) of sentences were the result of a conviction at a trial.

ii. Court Jurisdiction

In this research the court jurisdiction is important to acknowledge for several reasons. The Family Violence Court is a provincial court with a provincially appointed judiciary. The Court of Queen's Bench differs from the Family Violence Court as it is a higher court with a federally appointed judiciary.

As a provincial court, the Family Violence Court hears all cases of summary convictions. The Family Violence court also conducts trials for indictable offenses if the defendant elects to be heard at the provincial level; and preliminary hearings if the defendant elects to be heard in the Court of Queen's Bench. In contrast, the Court of Queen's Bench hears only indictable offenses by election.

It is important to distinguish between the two courts for several reasons. The first is due to the procedural differences between the two courts; the second is due to specialization. A case heard in Queen's Bench differs from one in provincial court in that before a case can be heard in Queen's Bench a preliminary hearing is conducted to evaluate whether there is sufficient evidence to proceed. Primary witnesses are called upon to testify at the preliminary hearing and then again at the trial. The addition of a preliminary hearing results a much longer processing time for cases heard in Queen's Bench than for cases heard in Family Violence Court (Ursel, 1992).

The second difference between Queen's Bench and Family Violence Court is that the Family Violence Court is a specialized court. This specialization includes a sensitization to the needs of the victim/witness in cases of family violence. While specialization of court personnel is a mandated policy in the Family Violence Court, it is not a mandated policy in the Court of Queen's Bench.

All cases in this study originate in the Provincial Family Violence Court. A small number of cases elect to be heard in the Court of Queen's Bench rather than proceed to trial at the provincial court level. In this data set, 86% of cases were heard in Family Violence Court. The remaining 14% were heard in the Court of Queen's Bench. Table 13 presents the distribution of cases by the court jurisdiction.

Table 13		
Distribution of Cases by Court Jurisdiction N = 280		
Court	N	%
Family Violence	241	86.1%
Queen's Bench	39	13.9%
Total	280	100%

iii. Prior Record

The existence of a prior record is most commonly cited as key in influencing sentence dispositions (Miller & Sloan, 1994). A related prior record has been demonstrated to increase court punitiveness (Hagan, 1975). For this reason it is essential to control for the existence and type of prior record.

Table 14 illustrates the breakdown of prior record in this data set. The largest category of offender's with a prior record are those who have committed crimes against persons. This includes charges of assault and/or sexual assault. The category 'Other' includes all types of charges excluding crimes against persons. When prior record is analyzed with respect to the sex of the victim, there is no significant difference.

Table 14		
Offender's Prior Record		
N = 280		
Prior Record	N	%
Assault	103	36.8%
Other Record	78	27.9%
No Record	99	35.3%
Total	280	100%

iv. Charge Severity

The severity of the charge upon sentencing is a powerful of how an offender is punished (Walsh, 1984). The offender often

enters court with multiple charges but is typically sentenced on only a few. The severity of the charge/s at sentencing is the variable/s to be controlled.

Sentencing literature has employed a number of methods to assess the severity of the offence. A common approach has included a ranking of offenses according to the type of harm associated with the offence. Violent offenses against a person such as assault are ranked as more serious than crimes such as theft where there is no physical injury to the victim.

A second approach has been to use the Criminal Code hierarchy of offenses to rate severity. This rating scale is based on whether an offence is purely indictable, a hybrid offence or a summary conviction. Charges which are hybrid offenses allow the crown attorney the option to proceed either as an indictable offence or as a summary conviction.

A third approach in assessing charge is to rate severity by the maximum penalty the charge carries in the Criminal Code (Hagan, 1975; Kruttschnitt & Green, 1984; Walsh, 1984). Maximum punishments for summary convictions can not include periods of incarceration longer than six months. Maximum sentences for indictable offenses are specified in the Criminal Code and vary from more than six months to life in prison.

It is the third approach to assess severity taken in this research. The charges upon which a sentence is based are rated from least serious to most serious on the basis of the maximum

penalty. In cases where the sentence is based on two or three charges, the maximum penalty of each charge is added to obtain the full maximum penalty on which the sentence is based. Table 15 indicates the rating scale developed to assess charge severity.

Table 15		
Rating Scale for Charge Severity		
Maximum Penalty	Charges	Rating
Summary Conviction	Indecent Act Hybrid Charges	1
5 years	Assault Sexual Exploitation Gross Indecency ¹¹ Indecent Assault ¹²	2
10 years	Sexual Interference Invit. to Sex Touching Anal Intercourse Sexual Assault Assault/CBH/Weapon Indecent Assault	3
12 years	Combination	4
14 years	Incest Aggravated Assault Sexual Assault/CBH/ Weapon/Threats	5
15 years	Combination	6
20 years	Combination	7
30 years	Combination	8

¹¹ gross indecency was repealed in 1988.

¹² indecent assault was repealed in 1983. Previously the crime of indecent assault on a female carried a maximum sentence of 5 years while indecent assault on a male carried a maximum sentence of 10 years.

Table 16 indicates the number and percent of cases on a continuum of severity based on the potential maximum sentence the charge could incur. In none of the cases dealing with indictable charges did the actual sentence even approximate the potential maximum penalty.

Table 16		
Charge Severity		
N = 280		
Severity	N	%
Summary	104	37.1%
Five Years	42	15.0%
Ten Years	97	34.6%
Twelve Years	3	1.1%
Fourteen Years	8	2.9%
Fifteen Years	4	1.4%
Twenty Years	15	5.4%
Thirty Years	7	2.5%
Total	280	100%

VI. Measuring the Dependent Variable

Numerous studies have attempted to evaluate sentencing patterns and have employed a variety of methods. Previous examinations of sentence seriousness have included: comparisons of custodial to non-custodial sentences (Myers, 1979; Frazier & Bock, 1982; Walsh, 1994), evaluations of the length of custodial

sentences (Chiricos & Waldo, 1975; Hagan, 1975; Pruitt & Wilson, 1983; Zingraff & Thomson, 1984; Carter, 1991), and scales generated to establish a measure of comparison for the various custodial and non-custodial dispositions (Buchner, 1979; McDavid & Stipak, 1981).

Research examining sentence seriousness has been criticized for not adequately accounting for variation in severity. This has occurred primarily due to a failure to take in to account the full range of possible sentencing dispositions (LaFree, 1980). This study attempts to address the issue of variation by devising a scale which includes all dispositions, from the least to most serious. The scale also accounts for combination sentences like terms of probation with fines and terms of incarceration with added periods of probation.

Seriousness of sentence is a function of sentence length and sentence gravity. Measures must ensure that they are evaluating both, those that do not are inadequate (Gibson, 1977). The gravity of the sentence is measured by the degree of formal supervision. Incarceration is the most serious method of supervision as the offender is most restricted in his or her activities. The length of sentence is measured by the number of months in which the offender is to be held under formal supervision. As would be expected, as the length of the sentence increases so does classification of seriousness.

In order to account for both factors, a scale has been developed which measures the seriousness of sentences combining both the form and length of supervision. Those sentences which do not include supervision of the offender are considered to be less serious sanctions than those which involve periods of supervision. For example, supervised probation is more serious than unsupervised probation.

The scale which has been developed for this research rates all the types of sentences specific to this study. The scale ranges from 1 and 40. Those sentences valued as a 1 are the least serious and alternately, those rated 40 are the most serious. Table 17 presents the range of sentences in this data set rated from least serious to most serious.

Table 17

Scale of Sentence Seriousness

Type of Sentence	Rating	Type of Sentence	Rating
Absolute Discharge	1	4 mos Incarceration + Sup. Probation	21
Conditional Discharge	2	6 mos Incarceration	22
Fine (up to \$500)	3	6 mos Incarceration + Sup. Probation	23
Fine (\$500 - \$1000)	4	8 mos Incarceration	24
Unsupervised Probation	5	8 mos Incarceration + Sup. Probation	25
6 mos Sup. Probation	6	9 mos Incarceration	26
12 mos Sup. Probation	7	9 mos Incarceration + Sup. Probation	27
12 mos Sup. Probation + Fine	8	12 mos Incarceration	28
18 mos Sup. Probation	9	12 mos Incarceration + Sup. Probation	29
24 mos Sup. Probation	10	15 mos Incarceration + Sup. Probation	30
24 mos Sup. Probation + Fine	11	18 mos Incarceration + Sup. Probation	31
36 mos Sup. Probation	12	20 mos Incarceration + Sup. Probation	32
1 mo Incarceration	13	24 mos Incarceration	33
1 mo Incarceration + \$2000 Fine	14	24 mos Incarceration + Sup. Probation	34
1 mo Incarceration + Sup. Probation	15	36 mos Incarceration	35
2 mos Incarceration	16	42 mos Incarceration	36
2 mos Incarceration + Sup. Probation	17	48 mos Incarceration	37
3 mos Incarceration	18	60 mos Incarceration	38
3 mos Incarceration + Sup. Probation	19	72 mos Incarceration	39
4 mos Incarceration	20	84 mos Incarceration	40

The 40 sentences in the scale can be divided in to four categories to more clearly illustrate the seriousness of the sentence. The first category contains those sentences which are the least serious in nature. Fewer than 8% of the total sentences are disposed with discharges or fines. These sentences provide no punishment in the case of discharges or minimal punishment in the case of a fine. For example, an Absolute Discharge which offers no punishment to the offender is rated the least serious of all sentences.

Unsupervised probation which offers minimal punishment but which does restrict the freedom of the offender for some period of time falls in to the second category. The largest number of sentences (50%) received sentences of probation. Supervised probation is more serious than unsupervised as the offender is required to report to a probation officer during the specified period of his or her sentence. Probationary terms are the most frequent sentences given in provincial court. The seriousness of probation increases in the length of supervision. Sentences which include both a period of probation and a fine are considered to be more serious than those with only a term of probation.

The third category includes all sentences of incarceration that are less than two years in length. Slightly more than a third of total sentences (35%) are included in this category. For sentences which received periods of incarceration that are

less than 2 years, the judge also has the option of assigning a term of probation. Sentences with incarceration and probation are rated accordingly. A sentence of 2 months incarceration plus 24 months probation is considered to be more serious than one of only 2 months incarceration but less serious than sentence with a longer term of incarceration.

The fourth category contains those sentences in which more than 2 years incarceration have been assigned. This is the smallest category with only 7.5% of the total sentences receiving the most serious sentences. Offenders serving sentences more than 2 years are housed in federal penitentiaries rather than in provincial prisons. Sentences of incarceration to a federal penitentiary are the most serious as they are the longest in length and are rated accordingly. Table 18 illustrates the breakdown of sentence seriousness.

Table 18			
Breakdown of Sentence Seriousness			
N = 280			
Category	Sentence	N	%
I.	Absolute Discharge	7	2.5%
	Conditional Discharge	8	2.9%
	Fine (up to \$500)	4	1.4%
	Fine (over \$500)	3	1.1%
	Category I - Total		22

Category	Sentence	N	%
II.	Unsupervised Probation	2	.7%
	6 mos Supervised Probation	4	1.4%
	12 mos Supervised Probation	33	11.8%
	12 mos Supervised Probation/Fine	5	1.8%
	18 mos Supervised Probation	10	3.6%
	24 mos Supervised Probation	54	19.3%
	24 mos Supervised Probation/Fine	7	2.5%
	36 mos Supervised Probation	24	8.6%
Category II - Total		139	49.6%

III.	1 mos Incarceration	2	.7%
	1 mos Incarceration/Fine	1	.4%
	1 mos Incarceration/Probation	9	3.2%
	2 mos Incarceration	1	.4%
	2 mos Incarceration/Probation	8	2.9%
	3 mos Incarceration	5	1.8%
	3 mos Incarceration/Probation	16	5.7%
	4 mos Incarceration	2	.7%
	4 mos Incarceration/Probation	4	1.4%
	6 mos Incarceration	4	1.4%
	6 mos Incarceration/Probation	5	1.8%
	8 mos Incarceration	1	.4%
	8 mos Incarceration/Probation	2	.7%
	9 mos Incarceration	2	.7%
	9 mos Incarceration/Probation	8	2.9%
	12 mos Incarceration	4	1.4%
	12 mos Incarceration/Probation	4	1.4%
	15 mos Incarceration/Probation	3	1.1%
18 mos Incarceration/Probation	3	1.1%	
20 mos Incarceration/Probation	1	.4%	
24 mos Incarceration	4	1.4%	
24 mos Incarceration/Probation	9	3.2%	
Category III - Total		98	35.0%

IV.	38 mos Incarceration	7	2.5%
	42 mos Incarceration	4	1.4%
	48 mos Incarceration	5	1.8%
	60 mos Incarceration	1	.4%
	72 mos Incarceration	2	.7%
	84 mos Incarceration	2	.7%
Category IV - Total		21	7.5%
Total		280	100%

VI. Summary

Descriptive analysis of the child abuse data set illustrates the nature of child abuse cases sentenced in the criminal justice system. In this study it was determined that significantly more cases of sexual abuse were sentenced than cases of physical abuse. The sentences for sexual abuse account for 59% (N = 165) of the data set while the sentences for physical abuse account for only 41% (N = 115) of the data set.

In this research, almost 70% of the victims were girls while only 30% were boys. Girls were the most frequent victims of both physical and sexual abuse case. In contrast, almost 90% of offenders are male. Females offenders in only 10% of cases. All the abuse in this data set, was committed by individual offenders. In the majority of cases (89%) the sentence applies to only one victim. In no cases do the sentences apply for the abuse of more than three victims.

There are many more older victims than younger victims. Slightly more than 70% of victims were between the age of nine and seventeen. When examining age by the sex of the victim, while older girl children were the largest category of victims, slightly more boys (39%) were younger victims as compared to girls (26%).

Parents are the most frequent offenders of child victims. This is true for both girls and boys. The second most frequent abuser of girls is an "Other" family member. The second most frequent abuser of boys is an Acquaintance. Offenders are most

commonly of European origin, most frequently unemployed and most often have a prior record of some kind.

Cases in this data set are most frequently sentenced after a plea is entered. Only 19% of cases in this data set were sentenced after a conviction at a trial. The majority of cases are sentenced in the provincial Family Violence Court. More than 86% of the total cases were sentenced in the specialized court.

The charge severity in this data was measured by the maximum penalty ascribed to each charge in the criminal code. A scale was developed to assess the severity of the charges in this study. The most frequent sentence was based on a charge severity in which the maximum penalty was ten years incarceration. Ten years incarceration was ranked three out of a possible eight levels of severity.

A scale was also developed to assess sentence seriousness. The scale developed ranked all the sentences in the data set on a 40 point scale. The 40 point scale can be categorized into four separate types of sentences. These include the least serious sentences (discharges/fines), sentences which included terms of probation alone, sentences with terms of incarceration two years less a day, and sentences of more than two years incarceration.

In Chapter Seven, the analysis of the sentences of child abuse by the type of abuse is presented. The first section of this chapter describes the types of sentences and the method of

data analysis used to uncovering the patterns in sentencing. Next, is a presentation of the sentences of physical abuse. The findings pertinent to sentencing of offenders who physically abuse children are discussed. The final section analyzes the sentences of sexual abuse and again, highlights the findings pertinent to the sexual abuse of children.

CHAPTER SEVEN - DATA ANALYSIS

Two hypotheses are under examination in this study. The first relates to the physical abuse of children. It is hypothesized that sentences for offenders who physically abuse female children will be more severe than those for offenders who physically abuse male children.

A survey of child abuse literature has demonstrated that there are differing levels of tolerance in the use of physical force with children. Boys are treated in a much more aggressive fashion than are girls (Maden & Wrench, 1977). It is predicted that social acceptance of the physical treatment of boys is reflected in less serious sentences for the physical abuse of boys.

The second hypothesis outlines a different dynamic. It is hypothesized that sentences for offenders who sexually abuse male children will be more severe than those for offenders who sexually abuse female children.

The sexual abuse of children violates the social taboos that define sexual acts with minors as immoral. The overwhelming majority of offenders who sexually abuse children are male (Russell, 1984). In this study, 98% of the offenders in cases of sexual abuse are male. Male offenders who sexually abuse boys violate a second taboo; the taboo that prohibits homosexual behaviour (Sanford, 1980). It is predicted the

added taboo prohibiting homosexual behaviour will result in more serious sentences for offenders who sexually abuse boys.

Initial examination of the data determined that the types of sentences for crimes of physical and sexual abuse differ. According to the maximum punishments allowable by the criminal code, crimes of sexual abuse are penalized more harshly than crimes of physical abuse. The maximum punishment for sexual assault is ten years incarceration. In comparison the maximum punishment for physical assault is five years incarceration.

This difference in severity dictated by the Criminal Code is reflected in the mean sentences for each type of abuse. Overall, offenders convicted of crimes involving sexual abuse receive more serious sentences than offenders convicted of physical abuse. In the study, the range of sentences for physical abuse is from the least serious sentence, an absolute discharge to the most serious, 36 months (3 years) incarceration. In comparison, the range of sentences for sexual abuse is from an absolute discharge to 84 months (7 years) incarceration.

These differences are reflected in the mean sentences by type of abuse. For physical offenders in this study, the mean sentence was 18 months supervised probation. This contrasts to the mean sentence for offenders convicted of sexual abuse which was 4 months incarceration.

While the range and mean sentences differ by type of abuse,

it is interesting to note that the most frequent sentence for both physical and sexual abuse is 24 months supervised probation. Slightly more than 26% (N = 31) of the sentences for physical abuse are 24 months supervised probation; almost 14% (N = 23) of sexual abuse sentences are 24 months supervised probation.

The difference between the types of abuse however, is that 24 months supervised probation is representative of a more serious sentence for physical abuse. In opposition, 24 months supervised probation is representative of a less serious sentence in cases of sexual abuse. Unlike in physical abuse in which the majority of sentences include only periods of probation alone, the majority of sentences for sexual abuse are more serious than 24 months supervised probation.

Sentences including probation alone are the most frequent penalty for physical abuse. Sentences which include terms of incarceration are the most frequent in cases of sexual abuse. Table 19 illustrates the frequency of the sentences for physical and sexual abuse by the representative category of sentence seriousness. As described in Table 18 (p. 113) the category of Discharges/Fines is least serious and Federal Incarceration is most serious.

Table 19

Categories of Sentences for Physical and Sexual Abuse
N = 280

Physical Abuse (N = 115)			Sexual Abuse (N = 165)		
Category	N	%	Category	N	%
Discharge/Fine	17	14.8%	Discharge/Fine	6	3.6%
Probation Alone	83	72.2%	Probation Alone	56	33.9%
Provincial Jail	14	12.2%	Provincial Jail	83	50.3%
Federal Pen.*	1	0.8%	Federal Pen.*	20	12.1%
Total	115	100%	Total	165	100%

* denotes penitentiary

The factors that affect sentencing differ by type of abuse as well. The age of the victim, the offender's prior record and the charge severity were all found to be statistically significant in explaining the variance in sentences for cases of physical abuse. The relationship between the victim and the offender, the charge severity, and the interaction between victim and offender race were found to be statistically significant in explaining the variance in sentences for cases of sexual abuse.

Because of the differences in the research hypotheses; the maximum punishments allowable by the Criminal Code; the differences in types of sentences received; and, the factors affecting the variance in sentencing, physical and sexual abuse

cases will be examined separately. While the previous chapter provided a detailed description of victim, offender and case characteristics, this chapter will focus on the variables which best explain variation in sentencing.

In order to explore variation in sentencing, an analysis of variance (abbreviated Anova) was performed. The Anova procedure tests the variance in the means of the dependent variable. In order to test the means, the procedure requires an interval level dependent variable. An interval level variable does not have an inherently determined zero point and has meaningful distance between assigned values. An interval level scale allows the study of differences between categories without measuring their proportionate magnitudes (Norusis, 1993).

As demonstrated in the previous chapter (Table 17), a 40 point scale was created to measure sentence seriousness. The scale ranks each sentence according to the gravity and length of the sentence. For example, a sentence of 12 months supervised probation + fine is ranked one point above a sentence of 12 months supervised probation. Alternately, a sentence of 3 months incarceration + probation is ranked one point above a sentence of 3 months incarceration. The addition of a fine to the period of probation or probation to a period of incarceration makes the sentence slightly more serious. The creation of an interval scale to rank all the sentences in this data set made it possible to examine the relative seriousness of all the child

abuse sentences in this study.

The primary use of Anova is to determine whether the independent and control variables affect the variance in sentences. The null hypotheses for the analysis of physical and sexual abuse cases is that: there is no variation in sentencing when examined by the effects of the sex of the victim. The alternative hypothesis is that: variation in sentencing can be explained by the sex of the victim.

Previous sentencing literature has determined that there are a number of factors which influence sentencing. Charge severity, prior record, and type of plea are the factors most commonly cited as influential in any court jurisdiction. In cases of child abuse a number of further factors have been demonstrated as having influence in the sentencing process. Together with victim sex, Anova was conducted to determine the impact of the effects of: charge severity, prior record, type of plea, court jurisdiction, victim age, victim race, relationship between the victim and the offender, offender sex, offender race, and, offender employment.

The null hypotheses for the analysis of the control variables is that: there is no variation in sentencing when examined by the effects of each control variable. The alternative hypothesis for the analysis of the control variables is that: variation in sentencing can be explained by the effects of each control variable.

Anova determined whether the variables were statistically significant in explaining sentencing variance. Statistical significance was determined at a 95% confidence interval. The null hypothesis is rejected for each variable found to be statistically significant.

In addition to Anova a multiple classification analysis (abbreviated MCA) was conducted. The MCA is a valuable tool when undertaking a detailed analysis of variance when there are many categorical variables. The MCA table provides a description of the amount of variation in the dependent variable by each level of each categorical variable. For example, the variable sex of victim has two levels; boys and girls. The MCA table provides the mean values for the individual effects of both levels of sex of victim on sentencing. This tool is useful in that it demonstrates the impact of each level of the categorical variable on the dependent variable.

The MCA table not only provides a detailed description of how categorical independent variables interact with the dependent variable, but further provides a Multiple R Squared value. The multiple R square demonstrates the amount of variance explained in the dependent variable by the independent variables. In conducting a 'step by step' analysis¹³ of all the statistically

¹³ As each variable was entered, the resulting multiple R squared value was calculated in relation to the value from the previous variable. For example, in the first step, a single variable was entered and the multiple R squared value noted. In

significant independent variables, it is possible to determine the amount of variation in the dependent variable caused by each independent variable on its own.

I. Physical Abuse

Hypothesis I: It is hypothesized that the physical abuse of girl victims will be punished more severely than the physical abuse of boy victims.

Findings: Initial analysis of physical abuse found that sentences did not differ when examined by the sex of the child victim. Further, the calculation of the Multiple R Squared determined that the variable sex of victim explained none of the variation in sentencing. Table 20 identifies the offender's mean sentence when examined by the sex of the child adjusting for the effects of the critical variables of age, prior record and charge severity.

each consecutive step, a variable was added and the multiple R squared value noted in relation to the amount explained by the previous step.

Table 20				
Mean Sentences by Sex of Victim in Cases of Physical Abuse N = 115				
Sex	N	Mean Sentence	Scale Score	
Girl	66	18 mos supervised probation	9	
Boy	49	18 mos supervised probation	9	
Main Effects		Mean Square	F	Sig F
Sex of Victim		.061	.003	.954
Multiple R Squared		.002		

It was predicted that gender stereotypes would influence perceptions of child abuse in the criminal justice system. From a review of previous literature it was demonstrated that the physical treatment of girls and boys is viewed differently. Boys are more often physically disciplined than are girls (Minton et al., 1971), more harshly disciplined than girls (Mulhern & Passman, 1981) and more often viewed as deserving of harsh punishment than are girls (Muller et al., 1993). Due perhaps to the perception of girls as more fragile, the physical punishment of girls is perceived as being more harmful and abusive than is the physical punishment of boys (Herzberger & Tennen, 1985).

It was hypothesized that the gender stereotypes which identify a differing tolerance of aggression both from and towards girls and boys would influence sentences in cases of physical abuse. The results in this study however, did not

support this assertion. An analysis of physical abuse sentences found that none of the variation in sentencing was explained by the sex of the victim.

i. Impact of Control Variables

While support was not found to indicate that offenders of girl victims are punished more severely than offenders of boy victims, age of victim, prior record and charge severity were found to be significant in explaining variation in sentencing. Figure 1 presents the results of the Anova procedure and identifies the variables found to achieve statistical significance.

Figure 1

Analysis of Variance - Physical Abuse
Variables that Achieved Statistical Significance

Source of Variation	Mean Square	F	Sig of F
Covariates			
Charge Severity	502.217	26.065	.000*
Main Effects			
Prior Record	146.660	7.612	.000*
Age of Victim	111.598	5.792	.018**
Sex of Victim	.185	.010	.922
2-Way Interactions			
Prior Record with Age of Victim	7.124	.370	.692
Sex of Victim with Age of Victim	10.865	.564	.454

* significant at < .01
** significant at < .05

a. Age of Victim

Considering age¹⁴ first, the mean sentence for offenders who abused young victims was found to be most serious. Table 21 demonstrates the mean sentences by the age of the victim adjusting for the effects of prior record and charge severity.

¹⁴ In the initial analysis, the age of the victim was coded in to four categories; 0-5 years, 6-8 years, 9-12 years, and 13-17 years. The smallest category of victims of physical abuse was the 6-8 age group and comprised 10% (N=11) of the total. Only two of the eleven victims in the 6-8 age group were female. Due to the small number of female victims in the 6-8 age group the decision was made to collapse the variable. The resulting age variable divided the victim in to two categories; 0-8 years and 9-17 years.

Table 21

Mean Sentence by Age of Victim
in Cases of Physical Abuse
N = 115

Age	N	Mean Sentence	Score
0-8 Years	45	24 mos supervised probation	10
9-17 Years	70	12 mos sup.* probation/fine	8

* denotes supervised

The more severe sentencing of offenders who abused younger children may be explained by the perceived degree of harm to the child. Injury in cases of child physical abuse is most often the result of a beating from either a hand or an instrument (Martin, 1983). It is suggested that an adult hitting a very young child is perceived to cause more serious injury than an adult hitting an older child. This perception is based in the size and strength differential between the adult and the child. The physical stature of a young child limits how he or she may defend themselves.

As a child grows older the size and strength differential is lessened. Older children are more able to protect themselves. Rosenthal (1988) suggested that this ability to protect themselves is perhaps the most powerful explanation of why fewer older boys than girls are physically abused. He says that older boys are abused much less often because they can hit back.

In this research 62% (N = 28) of the victims in the 0-8 age group are boys while only 38% (N = 17) are girls. This finding reflects similar findings in previous literature. Younger boys are at greater risk of being physically abused than are younger girls (Wright & Leroux, 1991). As boys grow older however, they are much less susceptible to physical abuse than are girls (Rosenthal, 1988). Once again the imbalance in the numeric distribution by age and sex in this research illustrates this finding. In the 9-17 age group, 69% (N=48) of the victims are girls while only 31% (N=22) of the victims are boys.

While not statistically significant, the interaction between the sex and age of the victim illustrates an interesting trend in the sentencing of offenders in cases of physical abuse. Offenders who abused girls under the age of nine were sentenced more harshly than offenders who abused boys in the same age group. However, sentences for offenders who physically abused girls between the age of nine and seventeen were less harshly punished than were offenders of boys.

Older children are more frequently held responsible for their abuse when they are viewed as having misbehaved (Dukes & Kean, 1989; Muller et al., 1993). The less serious sentences for offenders abusing older children in this research suggests perhaps that in contrast to young children who are most protected from abusive behaviour, older children are held more responsible for their misbehaviour and are more often blamed for their abuse.

The less serious sentence for older children may be a result of a consideration on the part of the judge that the abuse was provoked by the child's behaviour.

b. Prior Criminal Record

Those offenders who possess a criminal record which includes crimes against persons were found to receive the most serious mean sentences. The mean sentence for offenders who have no prior record is significantly less. The effect of prior record on sentence variance is statistically significant. Table 22 identifies the mean sentence by the offender's prior record adjusting for the effects of age and charge severity.

Table 22			
Mean Sentence by Prior Record in Cases of Physical Abuse N = 115			
Record Type	N	Mean Sentence	Score
Aslt/Sex Aslt	42	24 mos sup. probation/fine	11
Other Record	37	24 mos sup. probation	10
No Record	36	6 mos sup. probation	6

The relationship between prior record and sentence was predicted by sentencing literature. First time offenders are entitled to more lenient sentences than are those offenders with a prior record (Leonoff, 1993). The existence of a prior record is an aggravating factor and precludes leniency in sentencing.

c. Charge Severity

The differences in mean length of sentence with respect to charge severity is statistically significant. The co-variate raw regression coefficient for charge severity is +2.37. As would be expected, the more severe the charge, the more severe the sentence. Charge severity is often the most powerful predictor of sentence severity (Walsh, 1984). As with prior record the significance of the relationship between sentence and charge severity was predicted. Regardless of the circumstances of the accused, a more serious charge typically warrants more serious punishment.

d. Combined Effects of Control Variables

In order to explain the amount of variation in sentencing explained by the statistically significant variables it is necessary to refer to the Multiple R Squared. In the analysis of physical abuse, the Multiple R Squared refers to the amount of the variation in sentencing that can be explained by the variables found to be statistically significant.

The three significant variables: age of victim, prior record, and charge severity explain approximately 35% of the variance in the sentences of physical abuse. As would be expected from the findings in previous literature, prior record and charge severity were most influential in explaining variance in sentencing. Each explained approximately 13% of the variance

in sentencing. Age was found to be less strong and explained approximately 8% of the variance in sentencing. Figure 2 identifies the results of the Multiple R Squared analysis.

Figure 2 Results of the Multiple R Squared Analysis		
Variable	Variation in Sentencing Explained	
	R Squared	Percent
Age of Victim	.0812	8%
Prior Record	.2164	13%
Charge Severity	.3534	13%
Total	.3534 ¹⁵	35%

ii. Control Variables Not Achieving Statistical Significance

In other studies a number of variables have been found to have a significant impact on sentencing. These include: court jurisdiction; type of plea; sex of offender; victim-offender relationship; and, race and employment status. While none of the above variables had a statistically significant impact on sentence in this study, a number of trends emerge which are of interest. Figure 3 illustrates the result of the Anova procedure for the variables which did not reach statistical significance.

¹⁵ The R squared value is accumulated with each variable added to the equation. The percent figure is calculated by subtracted each preceding amount from the total. For example the percentage explained by prior record is calculated by subtracted the R Squared value for age of victim from that for prior record.

Figure 3

Analysis of Variance - Physical Abuse
Variables not reaching Statistical Significance

Source of Variation	Mean Square	F	Sig of F
Main Effects			
Court Jurisdiction	225.355	9.964	.002*
Type of Plea	8.852	.391	.533
Relationship**	48.177	2.130	.085
Sex of Offender	54.899	2.427	.123
Race of Victim	.391	.017	.983
Race of Offender	8.701	.385	.682
Employment of Offender	29.170	1.290	.284

* determined to be a False Significance

** denotes Victim-Offender Relationship

a. Court Jurisdiction

In the initial analysis, court jurisdiction appeared to be statistically significant. This significance was later determined to be false. An assumption required to be satisfied to successfully perform Anova is that of equal variance¹⁶. Only four cases of physical abuse were sentenced in the Court of Queen's Bench. This is compared to 111 cases heard in the Family Violence Court.

¹⁶ The Levene statistic determined that all group variances in the variable court jurisdiction were not equal (Levene = 11.02, p = .001).

In the situation where a small number of cases comprise a category, mean sentences are more likely to be influenced by extreme cases. Extreme cases are commonly referred to in statistical analysis as outlier cases. Exploratory analysis of the court jurisdiction found that the sentence of one case identified as an outlier was skewing the mean for all cases sentenced in the Court of Queen's Bench.

The outlier sentence of 36 months incarceration is the most serious for physical abuse in this data set. The other three cases from the court of Queen's Bench included only terms of probation. When the outlier case was excluded, the analysis indicated that there were only slight differences in the mean sentences by court jurisdiction. Table 23 illustrates the mean sentences of court jurisdiction controlling for the effects of victim age, prior record and charge severity.

Table 23			
Mean Sentences for Court Jurisdiction (Outlier Removed) in Cases of Physical Abuse N = 114			
Type	N	Mean Sentence	Score
Court of Queen's Bench	3	24 mos sup. probation	10
Family Violence Court	111	18 mos sup. probation	9

Sentences from the Court of Queen's Bench were slightly more serious than those in Family Violence Court. The small number of

cases heard in the Court of Queen's Bench however, makes a comparison between mean sentences of the two Courts difficult. Nevertheless, the trend of more serious sentences from the Court of Queen's Bench was expected. Because only indictable charges may be heard in Court of Queen's Bench the higher court handles more cases with greater charge severity than Family Violence Court. As indicated above, charge severity is a major determinant of sentencing.

b. Type of Plea

Sentencing literature consistently shows that a guilty plea serves to reduce an offender's sentence by half from that of a trial conviction (Carter, 1991). Contrary to this literature type of plea has no effect on sentencing in this study¹⁷. Table 24 illustrates the sentencing trends for the type of plea controlling for victim age, prior record and charge severity.

¹⁷ Eta square is a correlation ratio used to measure association for nominal measures (Pilcher, 1990). In this case. The Eta square value of .0009 suggests there is absolutely no correlation between type of plea and sentence.

Table 24

Mean Sentence for Type of Plea
in Cases of Physical Abuse
N = 115

Type of Plea	N	Mean sentence	Score
Guilty Plea	103	18 mos supervised probation	9
Trial	12	18 mos supervised probation	9

The finding that a guilty plea does not reduce sentencing in this data may not be a function of the type of plea, it may instead be an artifact of the small number of cases that went to trial. Almost 90% (N=103) of sentences for physical abuse are the result of a guilty plea. In only 10% (N=12) of the cases was there a conviction at a trial.

Due in part to the small number of cases sentenced at a trial, the range of sentences from which to calculate the mean is limited. The sentences resulting from a conviction range from an absolute discharge to 1 month incarceration + a \$2000 fine. In comparison the range of sentences resulting from a guilty plea is from an absolute discharge to a sentence of 3 years incarceration.

Two outlier cases were identified and their influence on the mean sentence may also explain the finding of no difference. The first outlier is an absolute discharge; the other a \$300 fine. When these two outliers are eliminated, the mean sentence for

cases convicted at a trial is slightly more serious than for sentences in which a guilty plea is recorded although the difference is not statistically significant. Table 25 identifies the mean sentences by type of plea with the outlier cases removed. The sentences are controlled for victim age, prior record and charge severity.

Table 25			
Mean Sentence by Type of Plea (Outliers Removed) in Cases of Physical Abuse N = 113			
Type of Plea	N	Mean sentence	Score
Guilty Plea	103	18 mos supervised probation	9
Trial	10	24 mos supervised probation	10

c. Victim-Offender Relationship

In cases of physical abuse parents made up more than 70% (N=83) of the total number of offenders. Further, the analysis demonstrated that although not statistically significant, parents received the most serious mean sentences. Greater public and professional awareness in recent years has pointed to the duty of parents to protect their children (Marshall et al., 1988). Table 26 illustrates the differences in mean sentences when explored by the victim-offender relationship controlling for the effects of age of victim, prior record and charge severity.

Table 26

Mean Sentences by Victim-Offender Relationship
in Cases of Physical Abuse
N = 115

Relationship	N	Mean Sentence	Score
Parents	83	24 mos supervised probation	10
Acquaintance	4	24 mos supervised probation	10
Caregiver	7	18 mos supervised probation	9
Other Family	9	12 mos supervised probation	7
Strangers	12	6 mos supervised probation	6

The finding that acquaintances/friends receive equally serious sentences as parents may be due to the small number of offenders in the acquaintance/friend category. Closer examination of the 4 sentences in the acquaintance category finds that 3 of the sentences involve terms of probation while 1 sentence includes a period of incarceration. With only four sentences from which to draw the mean, the period of incarceration produces a more serious mean sentence than what would otherwise be expected.

d. Sex of Offender

Numerous studies document that male offenders receive more serious sentences than female offenders. However, little research compares sentences of male and female offenders within one type of crime. In this study for cases of physical abuse,

male offenders received slightly longer sentences than female offenders. The difference however was not statistically significant. Table 27 identifies the mean sentences when explored by the sex of the offender controlling for the effects of age of victim, prior record and charge severity.

Table 27			
Mean Sentences for Sex of Offender in Cases of Physical Abuse N = 115			
Sex	N	Mean Sentence	Score
Male	87	18 mos supervised probation	9
Female	28	12 mos supervised probation/fine	8

The trend of more lenient sentencing for female offenders in this data is consistent with other studies. A large body of previous research has discussed the trend of leniency in sentencing when the offender is a women (Curran, 1983). Recent feminist research suggests that the paternalistic structure of society is apparent within the criminal justice. It is suggested that leniency for women is the result of a paternalistic effort to protect families. The nurturing role of women is considered to be a mitigating factor in their sentence (Daly, 1987, 1989).

The small difference noted in the mean sentence by sex of the offender in this data may be a result of the type of crime

committed. In cases of physical abuse, women have violated their duty to protect and nurture children. Therefore, invoking the maternal role may not have as strong a mitigating effect for a woman convicted of abusing her children.

e. Impact of Race and Socioeconomic Status

There were no differences in the mean sentences when examined by victim race. In all cases, the mean sentence when examined by the victim's race was 18 months supervised probation.

However, when examining sentence by offender race a trend emerges. Offenders of Aboriginal origin receive more serious mean sentence than offenders of European origin or other Visible minorities. Table 28 illustrates the mean sentences for offender's race controlling for victim age, prior record and charge severity.

Table 28			
Mean Sentence by Offender's Race in Cases of Physical Abuse N = 115			
Race	N	Mean sentence	Score
Aboriginal Origin	33	24 mos supervised probation	10
European Origin	60	18 mos supervised probation	9
Visible Minority	22	18 mos supervised probation	9

The trend of difference uncovered in the mean sentences by offender's race lends some support to the belief the offender's race may influence sentencing. In this study Aboriginal offenders were sentenced more harshly than are offenders of other racial origins. It is important to note, however, that the difference is not sufficiently strong to meet the requirements of statistical significance.

Finally, an analysis was done to examine the effects of offender employment on sentence. Prior literature has demonstrated that stereotypes concerning race and class operate to the disadvantage of certain defendants (Sudnow, 1965; Swigert & Farrell, 1977; Farrell & Holmes, 1991). In this data, there is no variation in sentencing when the examined by the effects of offender employment. Regardless of employment category, the mean sentence for all offenders was 18 months supervised probation.

iii. Summary

Detailed analysis of the physical abuse data found no support for hypothesis I. The sex of the victim was not found to impact on the sentences of physical abuse cases. It suggested that the gender stereotypes detailing a different social tolerance for physical aggression towards children are not evident in the sentencing of cases of physical abuse. From the statistical analysis, it was determined that offender sentences did not vary by the sex of the victim.

The variables which were found to be statistically significant in explaining variance in sentencing included: age of victim, prior record and charge severity. Consistent with previous literature, offenders with a prior record of assault and/or sexual assault are punished more harshly than offenders with no prior record. As well, offenders with the most severe charges are punished most harshly.

The age of the victim did have a significant impact on sentences. Offenders of younger children were punished more harshly than offenders of older children. This finding may be a result of differing stereotypes as to how the abuse is perceived. It is suggested that older children are held more responsible for their abuse than are younger children. Secondly, it is suggested that abuse of younger children is more harmful than the abuse of older children.

A number of variables were found not to be statistically significant. It was expected that the influence of both court jurisdiction and type of plea would help to explain variation in sentencing. In cases of physical abuse, this was not the case.

Slight trends were found in the variables: victim-offender relationship; sex of offender; and, race of offender. In this data set, parents were most harshly punished. Male offenders were punished slightly more seriously than female offenders and offenders of Aboriginal origin were punished more harshly than offenders of European origin or of a Visible Minority status.

II. Sexual Abuse

The analysis of sexual abuse examines the impact of the violation of two strongly held social taboos: the sexual violation of minors, and homosexuality. It is proposed that a single violation of the stated taboos is perceived as less serious than a double violation of these sexual taboos.

Hypothesis II: Offenders who sexually abuse boys will be more severely punished than offenders who sexually abuse girls.

Findings: Initial analysis found that offenders who sexually abused boys were punished more severely than those who sexually abused girls. However this difference was not statistically significant.

Slight variance in mean sentences were found to provide support for hypothesis II when the sex of the victim was taken into account. Offenders who sexually abused boys were punished more severely than offenders who sexually abused girls¹⁸. This difference, however, was not statistically significant. In addition from the calculation of the Multiple R Squared, less

¹⁸ Similar to preceding analysis of physical abuse the range of sentences in sexual abuse were examined for patterns by sex. In sexual abuse there were no differences in the percentage of sentences by category for girl and boy victims. For example, 50% (N = 66) of offenders against girl victims received a sentence which included provincial jail and 53% (N = 18) of offenders against boy victims received a sentence which included provincial jail.

than 1% of the variation in sentencing could be attributed to the variable sex of victim. Table 29 identifies the mean sentences by sex of victim controlling for the effects of relationship and charge severity, and the interaction between victim and offender race.

Table 29				
Mean Sentences by Sex of Victim in Cases of Sexual Abuse N = 165				
Sex	N	Mean Sentence	Score	
Girl	131	4 mos incarceration	20	
Boy	34	6 mos incarceration	22	
Main Effects		Mean Square	F	Sig F
Sex of Victim		130.048	1.725	.191
Multiple R Squared		.006		

When the offender is the parent to the child, sentencing was more severe. Parents were punished more severely than any other offender. Consistent with the above findings, the mean sentence for parents sexually abusing boys was more serious than that of parents sexually abusing girls.

The analysis of the effect of victim-offender relationship on sentence seriousness was statistically significant. Overall, parents who sexually abused their children were most harshly punished. Table 30 illustrates the mean sentences by the victim-offender relationship controlling for charge severity.

Table 30

Mean Sentence by Victim-Offender Relationship
in Cases of Sexual Abuse
N = 165

Relationship	N	Mean Sentence	Score
Parents	49	6 mos incarceration/probation	23
Caregiver	14	4 mos incarceration	20
Other Family	43	3 mos incarceration/probation	19
Acquaintance*	41	3 mos incarceration	18
Stranger	18	3 mos incarceration	18

* denotes Acquaintance/Friend

This study found that parents were not only the most frequent offenders of children in cases of sexual abuse, they were also the most severely punished offenders. Sentencing patterns suggest that sexual abuse by parents was considered to be the most serious form of abuse.

The interaction between relationship and sex of victim also provides support for hypothesis II. Parents who sexually abused sons were punished more harshly than parents who sexually abused daughters. Table 31 illustrates the mean sentences for sex of victim by victim-offender relationship controlling for the effects of charge severity.

Table 31

Mean Sentence for Offenders by Sex of Victim
and Victim-Offender Relationship¹⁹
In Cases of Sexual Abuse
N = 165

Sex - Relationship	N	Mean Sentence	Score
Boy - Parents	7	8 mos incarceration/prob*	25
Girl - Parents	43	6 mos incarceration/prob	23
Boy - Other ²⁰	27	4 mos incarceration	20
Girl - Other	88	3 mos incarceration	18

The sentencing pattern identified in Table 31 indicates that parent-son sexual abuse is considered to be the most serious form of abuse. For many years the incidence of child sexual abuse by parents was kept hidden. However, more recent sexual abuse literature now widely concurs that the most frequent perpetrators of child sexual abuse are parents (Faller, 1989). Father-daughter incest is by far the most prevalent type of child sexual abuse.

While the disparity in numbers of boy and girl victims is an accurate reflection of reported incidence of sexual abuse, it

¹⁹ Due to the small number of boy victims, the variable relationship was recoded to more clearly identify the patterns of sentencing in the interaction between victim sex and victim-offender relationship.

²⁰ The category of 'Other' is composed of all family members except parents, caregivers, acquaintance/friends, and strangers.

seriously complicates tests of statistical significance. Despite the evident difference in sentences of parent offenders of boys and girls, it is important to note that only seven cases of sexual abuse of boys by parents were sentenced in this study. It is suggested that the failure to reach statistical significance may be due to the small number of boy victims in the sexual abuse sample. The imbalance in the numbers of boy and girl victims makes it difficult to statistically compare means²¹. Nevertheless, despite the small number of boy victims interesting trends provide support for hypothesis II and can not be ignored.

The effects of incest on child victims has been widely discussed. While most research generally concludes that incest is harmful for all children, there has been support in sexual abuse research that due to the double stigma it carries, father-son incest is most harmful (Kempe & Kempe, 1984).

Father-son sexual abuse crosses the boundaries of two taboos, that of incest and that of homosexuality (Forseth & Brown 1981; Williams, 1988). The fear that homosexual abuse will result in the victim becoming gay is reflected in the fears of boy victims themselves. In a recent study of incest, de Young (1992:78) found that all the boys in the study had fears "that they are or will become homosexuals".

²¹ While not a necessity, it is suggested when performing statistical tests of significance that categories be fairly equal in numbers.

In examining the relationship between sex of victim and victim-offender relationship there appears to be a hierarchy of sanctions. The sentencing patterns clearly show disapproval for sexual abuse of children, the disapproval is even more evident when the child is a boy. The greatest disapproval is evident when the sexual abuse is at the hands of a parent, with the strongest sanction applied to fathers who sexually abuse sons.

It is interesting to note that in all but one case of parental sexual abuse of boys, the offender was male. In the case where the offender was the mother to the boy victim, the father was also sentenced and formed a separate case in the data set. The parents in this case were prosecuted as individual offenders. They were sentenced at different times and by different judges. Both parents were sentenced for the sexual abuse of their son, however, the father received a significantly longer sentence than the mother.

In this case, both parents plead guilty in Family Violence Court to one charge of sexual assault. In both the mother's and father's case, the severity of charge and facts of the offence were similar. The father of the boy victim received a sentence of 7 years (84 months) incarceration. The mother received a sentence of 4 years (48 months) incarceration. When asked why the difference in sentences, the crown attorney who handled both cases responded that the abuse by the father will harm the boy more in the future than that by the mother.

Support for hypothesis II was found in the data examined by relationship. Offenders who sexually abuse boys receive more serious sentences than offenders who sexually abuse girls. While not statistically significant, in all categories of relationships the mean sentences for offenders of boys were more serious than the mean sentences for offenders of girls.

This pattern indicates that while there is a general sanction against sexual abuse of minors, the sanction increases when the incest taboo is violated, i.e. when parents are the offenders. The sanction is most severe when the two taboos of incest and homosexuality are violated, i.e. when male parents sexually abuse boy children.

i. Impact of Control Variables

In the sexual abuse of children, support for hypothesis II was found in the trend for offenders of boy victims to be punished more severely than offenders of girl victims. This result however was not statistically significant. In addition to the victim-offender relationship, the independent (main) effects of charge severity and the interaction between victim and offender race were also found to be statistically significant in explaining variation in sentencing. Figure 4 identifies the results of the Anova procedure.

Figure 4

Analysis of Variance - Sexual Abuse
Variables that Achieved Statistical Significance

Source of Variation	Mean Square	F	Sig of F
Covariates			
Charge Severity	3183.853	42.234	.000*
Main Effects			
Relationship	289.487	6.221	.002*
Race of Victim	178.015	2.361	.098
Race of Offender	184.001	2.441	.091
2-Way Interactions			
Race of Victim with Race of Offender	238.881	3.079	.030**
			* significant at < .01
			** significant at < .05

a. Charge Severity

The differences in mean length of sentence with respect to severity of abuse was statistically significant. The co-variate raw regression coefficient for charge severity is +2.404. Once again, this finding is consistent with previous literature. Charge severity is perhaps the most important variable in determining sentence seriousness (Walsh, 1984). As would be expected, the more serious the charge, the more serious the sentence. Similar to the sentences of physical abuse, the findings indicate that an increase in charge severity results in an increase in sentence seriousness.

b. Interaction between Victim and Offender Race

Differences appear in the mean sentences when the race of the victim was measured, however these differences were not statistically significant. Table 32 illustrates the mean sentences by victim's race adjusting for the effects of victim-offender relationship and charge severity.

Offender's Race	N	Mean Sentence	Score
Visible Minority	16	6 mos incarceration/prob.*	23
European Origin	84	4 mos incarceration/prob.*	21
Aboriginal Origin	52	3 mos incarceration	18

* denotes supervised probation

Offenders who sexually abused victims of Aboriginal origin received the least serious mean sentences. However the real impact of victim's race is demonstrated in the interaction between the victim's race and offender's race.

Analysis of sentences by offender's race found that offenders of Aboriginal origin were punished most harshly. This compared to the analysis of sentences by victim's race that

²² In 13 cases the victim's race was unknown and therefore not included in this analysis.

offenders of victims of Aboriginal origin received the least serious sanctions. Neither the independent (main) effect of victim's race nor the independent effect of offender's race was found to be statistically significant.

The interaction between victim and offender race, however, did explain the contrasting findings in the individual effects of the variables. Further, the interaction between victim and offender race was statistically significant. Analysis of cross-race offenses revealed that offenders of Aboriginal origin were punished most harshly when the victim was of European origin. Conversely, offenders of European origin were punished least severely when the victim was of Aboriginal origin. Table 33 demonstrates the effect of the interaction of victim and offender's race on mean sentences in cases of sexual abuse. The mean sentences were controlled for the effects of victim-offender relationship and charge severity.

Table 33

Mean Sentences by the Interaction between
Victim and Offenders Race
in Cases of Sexual Abuse
N = 121²³

Victim	- Offender	N	Mean Sentence	Score
European	- Aboriginal	25	6 mos incarceration	22
European	- European	58	4 mos incarceration	20
Aboriginal	- Aboriginal	14	4 mos incarceration	20
Aboriginal	- European	24	3 mos incarceration	18

The different patterns in mean sentences by race, both by victim and offender, provides evidence for the claim that racial bias affects sentencing. It is the interaction between victim and offender race, however, that most clearly illustrates the differential impact of race on sentencing. Significant differentials in sentencing occur in cases of cross-race offenses.

Past sentencing literature has clearly stated that racial biases in sentencing are most observable in cross-race victimization (LaFree, 1980). An analysis of cross-race sexual abuse shows that sexual offenses in cases where the victim was of Aboriginal origin are punished least seriously, regardless of the

²³ The cross-race analysis has been limited to European and Aboriginal victims and offenders because of the small number of cases in the Visible Minority category.

race of the offender. The second finding illustrates that offenders of Aboriginal origin who sexually abuse victims of European origin are sentenced more harshly than offenders of European origin who sexually abuse victims of the same race.

In those cases where cross-race victimization has occurred, racial bias towards both offenders and victims of Aboriginal origin were a significant influencing factor in sentencing. Aboriginal offenders who commit cross-race abuse are most harshly punished. In comparison, European offenders who commit cross-race abuse are least harshly punished.

c. Impact of Control Variables

As noted in cases of sexual abuse, statistically significant differences in sentence were obtained in relation to charge severity, victim-offender relationship, the interaction between victim and offender race. Similar to the procedures used for the analysis of the physical abuse cases, Anova was conducted and a multiple classification analysis (MCA) table produced.

Once again, the Multiple R Squared was used to determine the strength of the significant variables in explaining the variance in sentencing. The combined effects of the significant variables explained approximately 30% of the variance in sentencing. In cases of sexual abuse, charge severity has the strongest impact on the sentencing of offenders. Approximately 19% of the total explained variance can be attributed to charge severity. The

relationship between the victim and the offender explained almost 7% of the variance in sentencing while the interaction between victim and offender's race was responsible for explaining approximately 4% the variance in sentencing. Figure 5 indicates the results of the Multiple R Squared analysis.

Figure 5 Results of the Multiple R Squared Analysis		
Variable	Variation in Sentencing Explained	
	R Squared	Percent
Race Interaction	.0387	4%
Relationship	.1076	7%
Charge Severity	.2993	19%
Total	.2993	30%

ii. Control Variables Found to be Not Statistically Significant

Sentencing literature has demonstrated that a number of variables have been found to impact sentencing. These variables include prior record; type of plea; court jurisdiction; victim and offender characteristics other than race. While none of the above variables were found to be statistically significant in the sexual abuse data, a number of interesting trends emerged. Figure 6 identifies the result of the Anova procedure for the variables which did not reach statistical significance in the sentencing of cases of sexual abuse.

Figure 6

Analysis of Variance - Sexual Abuse
Variables not reaching Statistical Significance

Source of Variation	Mean Square	F	Sig of F
Main Effects			
Prior Record	152.658	1.973	.143
Court Jurisdiction	121.639	1.572	.212
Type of Plea	154.964	2.003	.159
Age of Victim	143.357	1.853	.140
Sex of Offender	37.074	.479	.490
Employment of Offender	148.496	1.920	.129
Interaction Effects			
Victim Sex / Victim Age	198.638	.360	.781

a. Prior Record

While prior record had a strong impact on sentencing in physical abuse cases, it had very little effect in sexual abuse cases. Table 34 illustrates the mean sentences by the offender's prior record controlling for victim-offender relationship and charge severity.

Table 34

Mean Sentences by the Offender's Prior Record
in Cases of Sexual Abuse
N = 165

Record Type	N	Mean Sentence	Score
Aslt/Sex Aslt	61	4 mos incarceration*/probation	21
Other Record	41	4 mos incarceration/probation	21
No Record	63	3 mos incarceration/probation	19

* denotes incarceration and supervised probation

The existence of a prior record is often an aggravating factor in the sentence of an offender. A prior record demonstrates criminal history. There is also a belief that an offender with a prior record is more likely to re-offend than an offender with no prior criminal history.

In a recent comprehensive analysis of child sexual abuse Gray (1993) found that prior criminal history to be strongly related to the processing and sentencing of child abuse cases. Gray found that the majority of cases involving offenders with a prior record were disposed by way of guilty plea. Gray suggested that the explanation for the remarkable number of guilty pleas rests in the belief that offenders with a prior record will receive more serious sentences when they go to trial.

Examination of the variable prior record in this data set found that equal numbers of offenders plead guilty regardless of their prior record. Further there were no mean differences in sentences for offenders pleading guilty as analyzed by prior record. Table 35 presents a description of the type of plea by the prior record of the offender.

Table 35

Description of Prior Record by Type of Plea
in Cases of Sexual Abuse
N = 165

Type of Record	Guilty Plea		Trial		Total
	N	%	N	%	
Prior Record*	77	75.4%	25	24.6%	100%
No Prior Record	47	75.0%	16	25.0%	100%

* Is a combination of all types of prior record including assault and sexual assault.

Unlike Gray's findings, in cases of sexual abuse, offender's with prior records were not sentenced differently to those offenders with a prior record. Detailed analysis of the variable uncovered no patterns of interaction with variables such as guilty plea, court jurisdiction or sex of victim. It was concluded that unlike the cases of physical abuse in this data set, in cases of sexual abuse the existence of a prior record is not a strong aggravating factor and has no effect on sentencing.

b. Type of Plea/Court Jurisdiction

In sexual abuse cases, as in the physical abuse cases type of plea had no effect on sentences. Table 36 illustrates the mean sentences by type of plea controlling for the effects of victim-offender relationship and charge severity.

Table 36			
Mean Sentences by Type of Plea in Cases of Sexual Abuse (N = 165)			
Type of Plea	N	Mean sentence	Score
Guilty Plea	142	4 mos incarceration	20
Trial	41	4 mos incarceration	20

Type of plea typically interacts with court jurisdiction in effecting sentence. In this study however, neither variable separately or in interaction were found to effect sentencing.

Mean sentences from the Court of Queen's Bench were only slightly more serious than those from the Family Violence Court. Table 37 identifies the mean sentences for court jurisdiction adjusting for the effects of charge severity, victim-offender relationship and the interaction between victim and offender race.

Table 37			
Mean Sentences by the Court Jurisdiction in Cases of Sexual Abuse N = 165			
Court	N	Mean Sentence	Score
Family Violence	130	4 mos incarceration	20
Queen's Bench	35	4 mos incarceration*/probation	21

* denotes incarceration and supervised probation

Due to the small number of physical abuse cases sentenced in the Court of Queen's Bench it was difficult to compare the mean sentences by court jurisdiction. In cases of sexual abuse, once again an imbalance in court jurisdiction is present. In sexual abuse cases, however, the small number of cases heard in the Court of Queen's Bench does not affect the assumption of equal variance²⁴. Because the numbers do not appear to be skewing the analysis, the explanation of the lack of significant differences in sentencing by court may rest in the impact of court specialization.

The two most distinguishing factors between cases heard in Family Violence Court and the Court of Queen's Bench are the charge severity and the type of plea. Due to procedural differences, the less serious summary convictions make up the bulk of provincial court work but are excluded from the Court of Queen's Bench. In Family Violence Court the overwhelming majority of cases are disposed by a guilty plea. In Queen's Bench the majority of cases are disposed by way of a trial (Ursel, 1992).

Criminal justice literature has thoroughly documented evidence of the positive impact of a guilty plea on sentence leniency. This would lead us to believe that sentences in Family

²⁴ (Levene = 1.12, p = .29) Because the observed significance level is not less than .05, can not reject the null hypothesis that all variances are equal.

Violence Court would be significantly more lenient than sentences in the Court of Queen's Bench because of the predominance of guilty pleas in Family Violence Court. In Family Violence Court 88% (N = 115) of sentences were the result of a guilty plea. In contrast, in the Court of Queen's Bench, the majority of sentences, 74% (N = 26) were the result of a conviction at a trial.

The absence of differences in disposition by court jurisdiction may be the result of dynamics in Family Violence Court. The Family Violence Court was developed to consider the particular needs of vulnerable victims in court. Specialization was intended to create a core of personnel that would be sensitive to the difficulties which arise when the victim is in a close relation to the accused. One of the goals of the court was to provide more consistent and appropriate sentences to reinforce the policy of zero tolerance. One of the most dramatic consequences of court specialization was a change in sentencing patterns. Ursel (1992) documents the emergence of much more serious sentences for offenders in Family Violence Court than existed prior to specialization.

The convergence of sentences in Family Violence Court and Court of Queen's Bench seem to be a result of the pattern of more rigorous sentencing in the specialized court. While cases heard in Queen's Bench are characterized by greater charge severity, court jurisdiction does not show statistically significant

differences in sentences.

c. Age of Victim

There are slight differences in mean sentences for victims in all four age groups. Offenders who abuse older children receive the most serious sentences. Offenders who abuse the youngest children receive the second most serious sentences. Table 38 indicates the mean sentences by victim's age controlling for relationship and charge severity.

Age	N	Mean Sentence	Score
0-5 Years	15	4 mos incarceration*/probation	21
6-8 Years	26	3 mos incarceration	18
9-12 Years	64	3 mos incarceration/probation	19
13-17 Years	60	6 mos incarceration	22

* denotes incarceration and supervised probation

The pattern in sentencing by age of victim mirrors previous Canadian child sexual abuse research. Offenders who abuse the oldest and youngest victims receive the most serious sentences (Carter, 1991). This bipolar pattern may be a reflection of two factors; a selection effect for younger children and an

articulation effect for older children.

Cases involving very young victims are difficult to prosecute as the child victim rarely has the verbal abilities to clearly communicate the nature of the abuse. It is suggested that due to the difficulties associated with young child witnesses, only cases with the strongest evidence are prosecuted. A strong case combined with the social disapproval of abuse of very young children may be the factors that explain the more serious sentences found in this age group.

Credibility is often an issue for children testifying in court. Convincing testimony is often related to a child's ability to articulate their victimization. It is suggested that the most serious sentences for children age 13-17 is a reflection of their increased ability to clearly articulate their experiences to the court.

d. Interaction of Victim Sex with Victim Age

The interaction of sex and age of victim in cases of sexual abuse was found to be not statistically significant but an interesting trend emerged. Offenders who sexually abused boys received more serious sentences than offenders who sexually abused girls regardless of age. Table 39 indicates the mean sentences by victim's sex and age.

Table 39			
Mean Sentence by Victim's Age/Sex in Cases of Sexual Abuse N = 165			
Age/Sex	N	Mean Sentence	Score
0-8/Girls	36	3 mos incarc.*/probation	19
0-8/Boys	6	4 mos incarceration	20
9-17/Girls	95	4 mos incarceration	20
9-17/Boys	28	4 mos incarc./probation	21

* denotes incarceration and supervised probation

e. Sex of Offender

Analysis indicates that male offenders of sexual abuse receive longer sentences than female offenders. Table 40 indicates the mean sentences by the sex of the offender controlling for victim-offender relationship and charge severity.

Table 40			
Mean Sentences by Sex of Offender in Cases of Sexual Abuse N = 165			
Sex	N	Mean Sentence	Score
Male	161	4 mos incarceration	20
Female	4	2 mos incarceration/probation	17

In this data set only 2% (N = 4) of the offenders were female. This finding reflects most previous research which has

documented males to be the overwhelming offenders in cases of child sexual abuse. The small number of female offenders makes it difficult to draw conclusions as to the effect of offender sex.

f. Employment of Offender

An analysis of sentences by offender's employment status revealed a trend, however, it was not statistically significant. The mean sentences for offenders who were employed in skilled occupations were the least serious. The mean sentences for offenders who were unemployed were most serious. Table 41 indicates the mean sentences by the employment of the offender adjusting for the effects of victim-offender relationship and charge severity.

Table 41			
Mean Sentences by the Employment of the Offender in Cases of Sexual Abuse			
N = 144 ²⁵			
Employment	N	Mean Sentence	Score
Skilled	28	2 mos incarceration./probation	17
Unskilled	38	3 mos incarceration./probation	19
Unemployed	78	4 mos incarceration./probation	21

²⁵ In 21 cases the employment of the offender is unknown. These cases were eliminated from analysis.

The finding that unemployed offenders are punished most harshly is consistent with other sentencing studies. Previous literature has documented a direct effect of socioeconomic status on sentence seriousness (Spohn et al., 1991-82). Social stereotypes dictate that the role of the adult male is one of producer (Gordon, 1988). An offender who is productive and employed is viewed in a much more positive fashion than an offender who is unemployed. An argument used by defence attorneys when they "speak to sentence" is that incarceration will disrupt employment.

While the trend for sentencing by employment status is clear, the data suggests that race may also be a factor. Analysis in this study found that an offender who was both employed and of European origin was punished least seriously. The interaction between offender race and employment however, was not statistically significant. Table 42 identifies the mean sentences for the interaction of offender's employment and race.

Table 42

The Interaction between Offender's Employment²⁶
and Race in Cases of Sexual Abuse
N = 121²⁷

Employ-Race	N	Mean Sentence	Score
Employed/Europ*	45	3 mos incarceration	18
Employed/Aborig.**	9	4 mos incarceration	20
Unemployed/Europ	36	4 mos incarceration	20
Unemployed/Aborig	31	6 mos incarceration	22

* denotes European origin
** denotes Aboriginal origin

Previous literature suggests that sentencing biases exist in relation to class and race (Farrell & Holmes, 1991). Levels of class can be depicted by employment. In this data, the least serious punishment was assigned to the offenders who were employed and of European origin. In comparison, the offenders who were most seriously punished were unemployed and of Aboriginal origin.

The findings in the interaction between offender's employment and race illustrates a possible 'double

²⁶ To highlight the important trends in this analysis, the category of Employed is a combination of the original categories of Skilled and Unskilled.

²⁷ Due to the small numbers of offender's whose race was that of Visible Minority, this category was deleted from this specific analysis of the interaction effect.

discrimination' for offenders of Aboriginal origin. Offenders of Aboriginal origin may experience discrimination twice. The first is discrimination on the basis of racial bias, the second on the bases of social economic status or 'class' bias.

iii. Summary of Findings for Sentences of Sexual Abuse

The preceding analysis of sexual abuse sentences provides support for hypothesis II. As predicted, gender of victim was found to influence sentencing. While not statistically significant, an analysis of the sentencing trends found that offenders who sexually abused boy victims were punished more harshly than offenders who sexually abused girl victims. It is suggested that the sexual abuse of boys is viewed to be a double violation of appropriate sexual behaviour and is punished accordingly. This is especially true when the offender is the parent to the child.

When the victim-offender relationship was taken in to account, parent offenders were punished most harshly. This result was found to be statistically significant. The interaction between sex of victim and victim-offender relationship, while not statistically significant found that a parent sexually abusing a boy was punished more severely than a parent sexually abusing a girl.

Charge severity was positively correlated with sentence seriousness consistent with the findings in cases of physical

abuse. The more severe the charge, the more harshly the offender was punished. Of all the control variables, this factor explained the greatest variance in sentencing.

The analysis of sexual abuse found clear evidence of racial bias in sentencing. While the individual effects of victim and offender race were not found to be statistically significant, the interaction between the two was indeed significant. Findings from an exploration of victim and offender race uncovered a very clear cross-race bias. The sentences for Aboriginal offenders sexually abusing victims of European origin were much more serious than all other combinations of race.

A number of variables were found to be not statistically significant but again, as in the case of physical abuse these variables presented a number of interesting trends. There was very little difference in sentencing patterns when prior record was taken into account. It was concluded that prior record was not a strong aggravating factor in the sentences of sexual abuse.

Similar to the trend in the case of physical abuse, neither type of plea nor court jurisdiction influenced the sentences of sexual abuse offenders. It was suggested in the absence of sentence differentials that specialization in the Family Violence Court had an equalizing effect on sentencing regardless of plea or jurisdiction.

Age of victim was not statistically significant in the sentencing of sexual abuse. The trends in sentencing by age

indicated that offenders who abused the oldest children were most serious. The second most serious sentences were given to offenders who abused the youngest children. It is suggested that this trend can be explained as a product of two factors. Children who are older are more able to present clear testimony in court, while children in the youngest age category are selected more rigorously because of their difficulty verbalizing their experiences in court well. Only those cases with the strongest evidence against offenders of young children are prosecuted.

III. Conclusions

Hypothesis I which predicted that offenders who physically abused girls would be punished more harshly than offenders who physically abused boys was not supported by the data in this study. It was concluded that differing gender stereotypes regarding a different tolerance of aggression towards girls and boys is not apparent in the sentencing of offenders in cases of physical abuse in the criminal justice system.

In cases of sexual abuse victim sex was found to have the predicted effect on sentencing, however the difference was not statistically significant. Consistent trends in the predicted direction found that offenders who sexually abused boys were punished more harshly than offenders who sexually abused girls. This trend was equally true when the offender was a parent.

Parents who sexually abused boys received mean sentences of one year incarceration in comparison to six months incarceration for parents who sexually abused girls.

It is important to note that as with any piece of social science research, there may be a number of factors which play a role in the results of the data analysis. One limitation in the analysis of sexual abuse cases in this study is the imbalance in the number of boy and girl victims. In the sexual abuse data set, only 21% of the recorded sentences involved boy victims. The overwhelming majority of victims were girls. While the variable sex of victim satisfied the assumption of equal variance necessary to conduct an analysis of variance (Anova), the unequal categories of boy and girls do weaken the analysis.

When testing the relationship between two or more variables, the small number of boy victims affected the cell sizes from which the mean sentences were calculated. For example, it was not possible to determine the higher order interactions (interactions between three or more variables) in the sexual abuse data. When the effects of more than two variables were combined, in most cases the empty cells resulting from the small number of boy victims made a comparison of sentence means impossible.

The data for this study were collected over a period of two years. Perhaps with the addition of a further two years, there would be a sufficient number of boy victims to test the

hypothesis more conclusively. It may be that with an increased number of boy victims, the weak trends of differential sentencing evident in this study would become more pronounced.

The imbalance in numbers is clearly the most significant issue to consider for future research. However, a second factor which deserves mention is the difficulties associated with scales designed to measure seriousness in sentencing.

Numerous studies in criminal justice research have employed a variety of methods to measure sentence seriousness. There are a number of further studies which have documented the failure of this research to adequately account for all the subtleties of sentence variation (LaFree, 1980). This study is not immune to criticisms of sentence scales.

The measurement strategy adopted in this study was to develop a scale which measured both the gravity and the length of all the child abuse sentences in the data set. The intent behind the development of the scale was to try to capture the full range of sentences. Both the type of sentence and the length of sentence were recognized as contributing to the level of seriousness.

Analysis of the data found that while there was a wide range of sentences in both the physical and sexual abuse data set, the majority of sentences were terms of probation. Analysis of the data uncovered the fact that the most frequent sentence was that of 24 months supervised probation. In cases of physical abuse,

the second most frequent sentence was 12 months supervised probation. In cases of sexual abuse, the second most frequent sentence was 36 months supervised probation. While previous research suggested that it was important to design a scale which included a means of measuring the range of sentences, it is apparent that sentence clustering is a predominant feature of this data set.

Previous literature examining sentencing trends has documented the importance of capturing the wide range of sentences assigned. The results of this research suggest that while range is significant, the clustering of sentences in one or two areas may also affect accuracy of measurement. Perhaps one of the issues which future research may wish to address is how to develop a scale which acknowledges both the range of sentences as well as the effects of clustering.

CHAPTER EIGHT - CONCLUSIONS

A review of the literature provided evidence of significant sex role stereotyping concerning the expression of aggression and sexuality in our society. In both cases the literature documented very distinct differences in what was considered acceptable behaviour for girls and boys. This was true not only in society's tolerance of what behaviour was acceptable from children, but also, towards children.

Girls and boys are treated differently. In preparation for roles in their adult life, boys are encouraged to be active and girls to be nurturing (Frisch, 1977). Boys are taught to be tough, strong, adventurous and determined. Girls are taught to be weak, dependent and caring. Boys learn to take what they want, girls learn to accept what they are given.

The manner in which an adult interacts with a child was illustrated to further reflect the differing expectations for girls and boys. Parents are most commonly described as protective and gentle with girls. In comparison, parents are described to be rougher with boys, to reprimand boys more frequently than girls (Fagot, 1974), and to physically punish boys more often (Maccoby & Jacklin, 1974).

As outlined in the review of the literature, stereotypes of aggression and sexuality are socially constructed. Aggression and sexuality are defined not only by gender stereotypes but by

other social prescriptions, such as appropriate relations between parents and children and age appropriate behaviour. The findings in this study point to the significance of the above prescriptions in addition to gender stereotypes.

I. Physical Abuse

Research detailing the nature of the physical treatment of children suggests that the physical discipline of children continues to be a common method used in child-rearing. Literature suggests that parents are the most frequent abusers of children (Wilson et al., 1981) and discipline is the most frequent explanation for the physical abuse of children (Warner & Hansen, 1994). It has been suggested that in over 90% of all incidence of physical abuse, the abuse is an extension of socially acceptable discipline techniques (Martin, 1983).

Previous literature has found that parental treatment of children can be differentiated by the gender of the child. Further, literature has documented that the risk of physical abuse also differs by the gender of the child. In the reports of abuse of younger children, boys are more frequently the victims than are girls (Wright & Leroux, 1991). In opposition, reports of abuse of older children, girls are more frequently the victims than are boys (Wilson et al., 1981).

In the review of the literature, it became evident that not only were boys and girls perceived to behave differently, they

were treated differently as a result of this perception. Boys were viewed as tough and strong and were treated accordingly by parents. In comparison, girls were encouraged to be soft and meek. Parental treatment of girls reflected this perceived delicate nature.

The documented stereotypes of boys as tough and girls as delicate led to the formulation of hypothesis I: Offenders who physically abused girls would be punished more harshly than offenders who physically abused boys. It was suggested that gender stereotypes would result in a bias in the criminal justice system that would perceive the physical abuse of girls as more harmful and therefore, more serious than the physical abuse of boys.

However, the analysis of the data in this study found no support for hypothesis I. The mean sentences for offenders who had physically abused boys were identical to those for offenders who had physically abused girls. Cultural stereotypes suggest that the physical treatment of girls and boys would be viewed differently. However, the findings of this study indicate that it is not the sex of the victim but the age of the victim which influences the sentencing of offenders.

The age of the victim was found to be statistically significant in influencing sentences of offenders. Offenders who physically abused younger children were more harshly punished than offenders who physically abused older children. It is

interesting to note that the breakdown of physical abuse victims by age in this study replicated previous studies which found that younger boys are more at risk of being physically abused than younger girls; and, older girls are more at risk of being physically abused than older boys (Rosenthal, 1988).

In this study, among younger victims (0-8 years), 62% of the victims were boys. Among older victims (9-17 years), 69% of the victims were girls. Also consistent with previous research, parents were the abusers in more than two-thirds of the cases of physical abuse. It is likely that the majority of the physical abuse in this study began as disciplinary actions.

Findings from the examination of physical abuse in this study support the suggestion that the right of parents to physically discipline their children appears to be modified by the age of the child. It is deemed more socially appropriate for an adult to spank an older child compared to an infant. It appears that physically striking a teenager is not perceived to be as harmful as physically striking a young child. The finding that offenders who physically abused younger children were sentenced more harshly than offenders who physically abused older children provides evidence for this belief.

While the sex of the victim was not found to be significant in the sentencing of offenders, the interaction of age and gender stereotypes may explain why the bulk of physical abuse sentences in this study were the result of physical crimes against younger

boys and older girls. Gender stereotypes emphasize aggression as an expression of masculinity for boys. The literature has documented how this stereotype leads to greater misbehaviour by young boys and greater physical discipline. In contrast, gender stereotypes in girls emphasize compliance and obedience and young girls are less frequently reported as misbehaving. As a result young girls are less frequently at risk for physical discipline.

The acceptance of girls' violation of gender stereotypes is greater when they are young and diminishes as they approach puberty. As the intolerance for girls' misbehaviour increases with age, it coincides with older, larger girls for whom physical punishment is seen as more legitimate. Thus age, size and social expectations interact to make girls more vulnerable to physical abuse when they are older.

In the case of boys, increasing size seems to discourage physical punishment because they are capable of striking back and/or defending themselves. The cultural approval of aggression in boys serves to reinforce this dynamic.

It is concluded that gender stereotypes are a factor in the determination of risk of abuse in younger boys and older girls. However, gender stereotypes are not a factor in the determination of sentences for offenders. Instead, it would appear that age and the stereotypes associated with age appropriate behaviour are more predominant in influencing sentencing decisions than any other victim characteristic.

An additional factor to consider in assessing sentencing of physical abuse offenders is the law itself. The Canada Criminal Code specifies that parents have a legal right to physically discipline their children using reasonable correction.

This legal right to physically punish may override any cultural stereotypes about delicate girls or robust boys. In physical abuse cases the question of guilt or innocence revolves around the concept of reasonable correction/excessive force. In such a debate the issue of age and size of the child would provide a much clearer guideline concerning reasonable force than cultural conceptions of delicacy or toughness assigned to girls and boys. The finding that offenders of young children received more serious punishment than offenders of older children would support this interpretation.

II. Sexual Abuse

The socially prescribed gender expectations of sexuality are perhaps best described in relation to the conflicting expectations for males and females. Males are expected to be sexual aggressors and to experiment with their sexuality from a young age (Wellman, 1993). Boys learn to associate sexual behaviour with masculinity (Gilgun, 1991).

In contrast females are expected to be sexual gatekeepers (Struckman-Johnson et al., 1991) and to preserve their chastity until marriage (Lindisfarne, 1994). Social stereotypes label

females who remain sexually inexperienced as 'good' and females who lose their sexual innocence as 'bad'. As the sexual gatekeepers, females who lose their sexual innocence are held responsible for that loss (Bridges & McGrail, 1989).

The gender expectations which require females to maintain sexual innocence and more importantly, to prevent sexual encounters have been perhaps most influential in social definitions of female sexual abuse. The literature reviewed earlier documents the responsibility society places on females to prevent sexual violation. This responsibility affects whether the violation is in fact labelled an act of abuse. The victim's failure to prevent the violation is commonly interpreted as a sign of full participation in the sexual activity. It is firmly believed by many that if a women had really wanted to resist the sexual act, she would have (Burt, 1980).

There is an abundance of literature that has documented how females are blamed for not having prevented their sexual violation. The tendency to blame female victims for not preventing their sexual abuse is true even in cases in which the victim is a child and the offender is an adult (Johnston, 1979). Common stereotypes of the sexual abuse of children have long implicated the female child as a willing participant in sexual activity (Stermac et al., 1989).

While there is a tendency to hold girl victims responsible for their sexual abuse, the same is not true for boy victims.

Boy victims of sexual abuse by male offenders are rarely viewed as having contributed to their attack (Schneider et al., 1994). Instead it is the adult male who is most often held responsible for threatening the masculinity of his boy victim (Hunter, 1992).

Evidence suggests that the sexual abuse of boys is viewed as a more serious violation than the sexual abuse of girls. A common theme in research examining the sexual abuse of boys is that boys are more seriously traumatized by sexual abuse than are girls (Kempe & Kempe, 1984). In a recent Canadian study assessing the nature and incidence of child sexual abuse, anal penetration by a penis was rated to be a more harmful, and therefore severe form of abuse than was vaginal penetration by a penis (Hornick & Bolitho, 1992).

The perception that the abuse of boys is more serious than the abuse of girls can be explained with reference to the social taboos of sexuality and sexual behaviour. While there is an almost universal taboo which defines the sexual abuse of children as wrong, the sexual abuse of boy children violates a further taboo, that which prohibits homosexual behaviour. Penalties contained in the Criminal Code of Canada until 1988 formally codified the unequal social sanction for the violation of girls and boys. The maximum penalty for the indecent assault of a female was five years incarceration. In comparison, the maximum penalty for the indecent assault of a male was ten years incarceration (Boyle, 1984).

The previous gender inequalities codified in the Criminal Code combined with evidence that the sexual abuse of boy children is perceived as more serious, provided the basis for hypothesis II. It was hypothesized that offenders who sexually abused boys would be punished more harshly than offenders who sexually abuse girls.

The data provided only weak support for hypothesis II. While the mean sentences for offenders who had sexually abused boys were slightly more serious than those for offenders who had sexually abused girls, these differences were not statistically significant. Further, the sex of the victim was not found to predict any of the variation in sentencing. However, the relationship between the victim and the offender was found to have a significant impact on sentences.

In cases of physical abuse there is a fine line between discipline and abuse. In the Criminal Code of Canada, parents have a legal right to physically discipline their children. In contrast, social standards and the law define sexual abuse by parents as the most abhorrent type of abuse. The maximum penalties as defined in the criminal justice system reflect the abhorrence of sexual abuse by parents, especially biological parents. The crime of incest which is defined as sexual intercourse between blood relations, carries a maximum punishment of fourteen years incarceration. In comparison, the crime of sexual assault which covers sexual intercourse between any other

adult and child carries a maximum punishment of ten years incarceration.

The significance of the victim-offender relationship in sentencing sexual abuse offenders demonstrates an intolerance not only of the incest taboo, but also of the violation of a position of trust. In this study, parents were most harshly punished for sexually abusing children. Caregivers were the next most harshly punished. In both cases the relationship of the offender to the child is one which is characterized by trust.

As with physical abuse, there are very different patterns in the sexual victimization of girls and boys. The literature estimates that girls are much more frequently the victims of sexual abuse than are boys. Further, girls are more likely to report their victimization to the authorities than are boys. While both girls and boys are most likely to be victimized in their home, boys are slightly more likely than girls to be victimized outside the home (Badgley Report, 1984).

The significance of the victim-offender relationship in the sentencing of sexual abuse offenders, is consistent with social expectations. One of the aims of the legislation which redefined sexual offenses against children in the Criminal Code of Canada in 1988 was to better protect children from harm. The need to more harshly punish offenders in a position of trust was clearly stated in the legislation. The finding in this research that parents and caregivers were the most harshly punished perhaps

illustrates a concerted effort on the part of the criminal justice system to recognize this aim.

A second focus of the criminal justice legislation in 1988 was the recognition of the need to eliminate gender bias (Hornick & Bolitho, 1992). Previous to 1988, the construction of many of the sexual offenses in the Criminal Code ignored the victimization of boys. On the other hand, in the cases where the victimization of boys was recognized, it was codified to be more harshly punished than was the victimization of girls.

The weak relation between the sex of the victim and the sentences of offenders found in this study may in fact provide evidence of a move to gender equity intended by the 1988 legislation. Clearly the expected differentials in sentence by sex of victim were not as strong as anticipated. The differentials were no where near the magnitude prescribed in the legislation in 1988.

While this study provides some evidence to suggest a move towards gender equity in sentencing, two factors suggest caution in this interpretation. First, given the significant imbalance in the number of girl and boy victims it is not possible to be conclusive about the absence of gender bias or even the extent to which such bias may be diminishing. Further research with an increased number of boy victims may serve to provide more conclusive answers to these issues.

A second reason for caution in interpreting the findings in this study is the fact that most of the cases were heard in the specialized Family Violence Court. Studies have documented the important role of the judge in the determination of sentences. In this study the majority of judges presiding over cases in Family Violence Court were specifically selected for their awareness of and sensitivity to issues of family violence. This selection process may have collected a cohort of judges who are especially progressive on issues of gender equity. As a result, it is difficult to generalize this study to jurisdictions without specialized courts.

III. Summary

Previous literature examining the physical and sexual abuse of children has demonstrated that there is no question that gender is a factor when evaluating risk for a child. Young boys are more frequently physically abused than are young girls. Older girls are more frequently physically abused than are older boys. Girls of all ages are more frequently sexually abused than are boys. This study provides further evidence of the relationship between gender and victimization.

The different risk factors for girls and boys combined with differing gender stereotypes defining the treatment of girls and boys provided the bases for the two hypotheses in this study. The findings from the data analysis, however, suggest that while

the reported cases of physical and sexual abuse differ by sex of the victim, the prevailing gender stereotypes of girls and boys do not translate into different perceptions of the seriousness of the abuse in the criminal justice system.

What this study did uncover however were the interesting effects of the age of the victim in cases of physical abuse and the victim-offender relationship in cases of sexual abuse. Perhaps more importantly, this study also uncovered new issues to explore.

In the case of physical abuse, the legal rights of parents to discipline their children and the significance of age in determining the boundaries between discipline and abuse may override any effect of gender bias. While we may not admire the legislation which gives parents the right to physically discipline their children, the influence this legislation has on the sentencing of offenders appears to be significant. Social stereotypes dictate that physical discipline is accepted, however, the age of the victim moderates this acceptance. The combination of the right to discipline and the effects of the age of the victim may override the effects of gender in the sentencing of offenders convicted of physical abuse of children.

In the case of sexual abuse, the effects of legislation may be even more apparent. In 1988, the changes to the Criminal Code of Canada no longer condoned gender biases. Changing the text of the Criminal Code may have at least partially eliminated the

effects of previously codified gender biases. In terms of reform, the formalizing of gender equity within the text of the statute may be an effective means of reducing or eliminating some of the more explicit forms of gender discrimination. A further factor to consider in legal reform are the potential positive effects of court specialization.

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APPENDIX A

Second Year
Tracking Schedule
Family Violence Court

Tvar1	Case Name	-----
Tvar2	I.D. Number	-----
Tvar3	Police Number	-----
Tvar4	Date File Opened	-----
Tvar5	Case Number	----

Part 1 Charges
 ** See Code Book 1A **

Tvar6A	Charge 1	--
Tvar6B	#	-
Tvar6C	(Stay .. 1) (Proceed .. 2) (Dismiss .. 3) (Plea .. 4)	-
Tvar7A	Charge 1	--
Tvar7B	#	-
Tvar7C	(Stay .. 1) (Proceed .. 2) (Dismiss .. 3) (Plea .. 4)	-
Tvar8A	Charge 1	--
Tvar8B	#	-
Tvar8C	(Stay .. 1) (Proceed .. 2) (Dismiss .. 3) (Plea .. 4)	-
Tvar9A	Charge 1	--
Tvar9B	#	-
Tvar9C	(Stay .. 1) (Proceed .. 2) (Dismiss .. 3) (Plea .. 4)	-
Tvar10A	Charge 1	--
Tvar10B	#	-
Tvar10C	(Stay .. 1) (Proceed .. 2) (Dismiss .. 3) (Plea .. 4)	-
Tvar11A	Charge 1	--
Tvar11B	#	-
Tvar11C	(Stay .. 1) (Proceed .. 2) (Dismiss .. 3) (Plea .. 4)	-
Tvar12A	Charge 1	--
Tvar12B	#	-
Tvar12C	(Stay .. 1) (Proceed .. 2) (Dismiss .. 3) (Plea .. 4)	-
Tvar13A	Charge 1	--
Tvar13B	#	-
Tvar13C	(Stay .. 1) (Proceed .. 2) (Dismiss .. 3) (Plea .. 4)	-
Tvar14A	Charge 1	--
Tvar14B	#	-
Tvar14C	(Stay .. 1) (Proceed .. 2) (Dismiss .. 3) (Plea .. 4)	-
Tvar15A	Charge 1	--
Tvar15B	#	-
Tvar15C	(Stay .. 1) (Proceed .. 2) (Dismiss .. 3) (Plea .. 4)	-

Tvar16	When Offence Occurred?	-----
Tvar17	If Child Abuse, Duration of Abuse	---
Tvar18	Type of Offence ** See Code Book 2A **	--
Tvar19	Where was the Case Heard	-
	Family Violence Court	1
	Provincial Court	2
	Queen's Bench	3
Tvar20	Crown Election	-
	Indictable	1
	Summary	2
	Both	3
Tvar21	Origin of Case	-
	Family Violence Court	1
	Import	2
	Transfer	3
Tvar22	Place of Offence ** See Code Book 2B **	--
Tvar23	Suspect-Victim Relationship ** See Code Book 2C **	--
Tvar24	If Multiple Victims, Relationship	
	** See Code Book 4E **	--
Tvar25	Offence Reported By ** See Code Book 2D **	--
	Sex of Victim(s):	
Tvar26A	Victim 1 (Male .. 1) (Female .. 2)	-
Tvar26B	Victim 2	-
Tvar26C	Victim 3	-
Tvar26D	Victim 4	-
	Age of Victim(s):	
Tvar27A	Victim 1	--
Tvar27B	Victim 2	--
Tvar27C	Victim 3	--
Tvar27D	Victim 4	--
Tvar28	If Female, Was the Victim Pregnant at Time?	-
	Yes	1
	No Information	9

Tvar29	Employment of Victim	** See Code Book 3A **	--
Tvar30	Race of Victim	** See Code Book 3B **	--
Tvar31	Was There a Language Barrier?		--
	Yes	1	
	No Information	9	
Tvar32	Was the Victim Disabled?		--
	Yes	1	
	No Information	9	
Tvar33A	Disability	** See Code Book 3C **	--
Tvar33B	Are there Children in the Relationship		--
	Yes	1	
	No	2	
	No Information	3	
Tvar33C	Number of Children in Relationship		--
	Sex of Suspect(s):		
Tvar34A	Suspect 1 (Male .. 1)(Female .. 2)		-
Tvar34B	Suspect 2		-
Tvar34C	Suspect 3		-
Tvar34D	Suspect 4		-
	Age of Suspect(s):		
Tvar35A	Age of Suspect 1		--
Tvar35A	Age of Suspect 1		--
Tvar35A	Age of Suspect 1		--
Tvar35A	Age of Suspect 1		--
Tvar36	Occupation of Suspect	** See Code Book 3A **	--
Tvar37	Race of Suspect	** See Code Book 3B **	--
Tvar38	Was There a Language Barrier?		-
	(Yes .. 1)(No Information .. 2)		
Tvar39	Was the Suspect Disabled?		-
	(Yes .. 1)(No Information .. 9)		
Tvar40A	Disability 1	** See Code Book 3C **	--
Tvar40B	Disability 2	** See Code Book 3C **	--
Tvar40C	Suspects Education	** See Code Book 4A **	--

Tvar41 Actual Use of Weapon --
 (Yes .. 1)(No .. 2)(No Information .. 9)

Tvar42 Threatened Use of Weapon --
 (Yes .. 1)(No .. 2)(No Information .. 9)

Describe the Weapon(s) Used/Threatened ** See Code Book 3D **

Tvar43A Weapon 1 --

Tvar43B Weapon 2 --

Tvar44 Use of Alcohol/Drugs * See Code Book 3E ** --

Tvar45 Witnesses to the Incident? --
 Yes 1
 No 2
 No Information 9

Tvar46 If Yes to Tvar45, Relationship to Victim --
 ** See Code Book 4B **

Tvar47 Were Any Injuries Suffered by the Victim? --
 Yes 1
 No 2

Tvar48A If Yes to Tvar47, Nature of Injuries --
 ** See Code Book 4C **

Tvar48B Injury 1 --

Tvar48C Injury 2 --

Tvar49 Did the Victim get Medical Attention? --
 (Yes .. 1)(No .. 2)(No Information .. 9)

Tvar50 Were There any Prior Contacts with Police --
 (Yes .. 1)(No .. 2)(No Information .. 9)

Tvar51 Did the Suspect have a Criminal Record --
 (Yes .. 1)(No .. 2)(No Information .. 9)

Tvar52 If Yes to Tvar51, Nature of Record --
 ** See Code Book 4D **

Tvar53	Action Taken at the Police Level		--
	Charged and Held	1	
	Charged and Released	2	
	Released for Crown Opinion	3	
	No Information	9	
Tvar54	At the PSB Court, What Action was Taken		--
	Held in Custody	1	
	Released No Conditions	2	
	Released Conditions	3	
	Specify Conditions	** See Code Book 5A **	
Tvar55A	Condition 1		--
Tvar55B	Condition 2		--
Tvar55C	Condition 3		--
Tvar56	Request for Variance of Conditions		--
	Yes	1	
	No	2	
	No Information	3	
Tvar57	If Yes to Tvar56, Requestion By		--
	Victim Initiated	1	
	Accused Initiated	2	
	Jointly Initiated	3	
	No Information	9	
	If Yes to Tvar56, Conditions Varied?	** See Code Book 5A **	
Tvar58A	Condition 1		--
Tvar58B	Condition 2		--
Tvar58C	Condition 3		--
	Which Agencies Were Contacted from Intake into System	** See Code Book 5B **	
Tvar59A	Agency 1		--
Tvar59B	Agency 2		--
Tvar59C	Agency 3		--

Tvar60 Were Charges Added? --
 Yes 1
 No 2

If Yes to Tvar60, What Were They ** See Code Book 1A **
 Tvar61A Charge 1 Added --
 Tvar61B Charge 2 Added --
 Tvar61C Charge 3 Added --

Tvar62 Was the Final Case Outcome a Guilty Plea? --
 Yes 1
 No 2
 Not Applicable 9

If Yes to Tvar62, What Charges Plead ** See Code Book 1A **
 Tvar63A Charge 1 Guilty Plea --
 Tvar63B Charge 2 Guilty Plea --
 Tvar63C Charge 3 Guilty Plea --
 Tvar63D Charge 4 Guilty Plea --

Tvar64 Was the Final Case Outcome a Stay of Proceedings? --
 Yes 1
 No 2
 Not Applicable 9

Tvar65 If Yes to Tvar64, Why was Case Stayed ** See Code Book 5C ** --

Tvar66 Was the Accused Remanded? --
 Yes 1
 No 2
 No Information 9

Tvar67 If Yes to Tvar 66, How Many Times --
 Not Applicable 7
 No Information 9

Tvar68 Was a Subpoena Served to the Victim --
 Yes 1
 No 2
 No Information 9

Tvar69 Was the Case a Trial -
 Yes 1
 No 2
 Not Applicable 7

Tvar70 If Yes to Tvar69, Trial Elected By:
 ** See Code Book 6A ** --

Tvar71 Was the Case a Preliminary Hearing -
 Yes 1
 No 2
 Not Applicable 7

Tvar72 If Yes to Tvar71, Was the Accused Committed to Trial -
 Yes 1
 No 2

Tvar73 Were Reports Requested? --
 Yes 1
 No 2
 No Information 9

If Yes to Tvar73, What Kind of Reports
 ** See Code Book 6B **

Tvar74A Report 1 -
 Tvar74B Report 2 -
 Tvar74C Report 3 -

Nature of the Report

Tvar75 Assessment of Danger to Victim -
 Tvar76 Assessment of Damage to Victim -
 Tvar77 Potential for Rehabilitation -

 1 2 3 4 5
 Very Low Low Medium High Very High

Tvar78 What was the Verdict of the Trial or Prelim --
 Guilty 1
 Not Guilty 2
 Dismissed 3
 Discharged (applicable to PH only)..... 4

Final Disposition

Tvar79	Date of Final Disposition	-----
Tvar80	Name of Judge ** See Code Book 1A **	--
Tvar81	Charge 1 ** See Code Book 6D **	--
Tvar82A	Disposition 1 Charge 1	--
Tvar82B	Disposition 2 Charge 1	--
Tvar82C	Disposition 3 Charge 1	--
Tvar83A	Condition 1 ** See Code Book 7A	--
Tvar83B	Condition 2	--
Tvar83C	Condition 3	--
Tvar84	If Fine/Restitution (Amount in Dollars)	-----
Tvar85	If Probation (Time in Months)	--
Tvar86	If Incarceration (Time in Months)	--
Tvar87	Charge 2 ** See Code Book 6D **	--
Tvar88A	Disposition 1 Charge 2	--
Tvar88B	Disposition 2 Charge 2	--
Tvar88C	Disposition 3 Charge 2	--
Tvar89A	Condition 1 ** See Code Book 7A	--
Tvar89B	Condition 2	--
Tvar89C	Condition 3	--
Tvar90	If Fine/Restitution (Amount in Dollars)	-----
Tvar91	If Probation (Time in Months)	--
Tvar92	If Incarceration (Time in Months)	--
Tvar93	Charge 3 ** See Code Book 6D **	--
Tvar94A	Disposition 1 Charge 3	--
Tvar94B	Disposition 2 Charge 3	--
Tvar94C	Disposition 3 Charge 3	--
Tvar95A	Condition 1 ** See Code Book 7A	--
Tvar95B	Condition 2	--
Tvar95C	Condition 3	--
Tvar96	If Fine/Restitution (Amount in Dollars)	-----
Tvar97	If Probation (Time in Months)	--
Tvar98	If Incarceration (Time in Months)	--
Tvar99	Is Sentence Being Served Concurrently	-
	Yes	1
	No	2
	No Information	9

APPENDIX B

Second Year
Tracking Code Book
Family Violence Court

1. Charge Code

Murder	11
Attempted Murder	12
Manslaughter	13
Assault with a Weapon	14
Aggravated Assault	15
Assault Causing Bodily Harm	16
Common Assault/Assault	17
Sexual Assault	18
Sexual Assault Threats/Bodily Harm/Weapon	19
Aggravated Sexual Assault	20
Unlawful/Forcible Confinement	21
Break & Enter	22
Attempted Break & Enter	23
Unlawfully in a Dwelling	24
Uttering Threats	25
Poss. Weapon Dangerous to Public Peace	26
Breach of Recognizance	27
Breach of Probation	28
Breach of Court Order/Peace Bond	29
Mischief	30
Abduction	31
Causing Disturbance	32
Harassing/Annoying Phone Calls	33
Housebreak Enter w/Intent	34
Sexual Interference	35
Pointing a Firearm	36
Invitation to Sexual Touching	37
Possession of Prohibited Weapon	38
Sexual Exploitation	39
FMA	40
HTA	41
Indecent Assault	42
Choking to Overcome Resistance	43
Gross Indecency	44
Incest	45
Assaulting a Police Officer	46
Forcible Entry	47
Anal Intercourse	48
Bestiality	49
Other	50
Buggery	51
Obstruct Justice	52
Criminal Negligence Causing Bodily Harm	53
Indecent Exposure	54
Robbery	55

2A. Type of Offence Code

Spousal Abuse.....	1
Child Abuse	2
Elder Abuse	3
Dating Abuse	4
General Assault	5
Spouse and Child Abuse	6
Family Member Abuse	8

2B. Place of Offence

Victim's Residence	1
Offender's Residence.....	2
Common Residence	3
Other Residence	4
At Work	5
In a Public Place	6
Other (Specify)	7
No Information	9

2C. Relationship Code

Married.....	1
Ex-Spouse/Legally Separated	2
Divorced	3
Common Law	4
Ex-Common Law	5
Boyfriend/Girlfriend	6
Ex-Boyfriend/Girlfriend	7
Natural Child/Parent	8
Child/Step-Parent	9
Child/Grand-Parent	10
Child/Uncle - Aunt	11
Siblings	12
Caregiver	13
Acquaintance	14
Stranger	15
Friends	16
No Information	99

2D. Offence Reported By:

Victim	1
Spouse	2
Friend	3
Parent	4
Child	5
Neighbour	6
Teacher	7
Child Care Worker	8
Social Worker	9
Caregiver	10
Other (Specify)	11
Medical Staff	12
Other Relative	13
Not Applicable	77
No Information	99

3A. Employment Code

Employed - Professional	1
Employed - Skilled/Semi-Skilled	2
Employed - Unskilled	3
Employed - Seasonal/Part Time	4
Homemaker	5
Student	6
Unemployed	7
Dependent	8
Other	9
Retired	10
No Information	11

3B. Race Code

Caucasian	1
Native/Métis	2
Black	3
Oriental	4
East Indian	5
Filipino	6
Central/South American	7
Other New Canadian (Specify)	8
No Information	9

3C. Disability Code

Visually Impaired.....	1
Hearing Impaired	2
Cognitively Impaired	3
Physically Impaired	4
Speech Impediment	5
Mentally Ill	6
Other (Specify)	7
No Information	9

3D. Description of Weapon

Knife	1
Blunt Object	2
Sharp Object	3
Gun	4
Rifle	5
Household Objects	6
Other (Specify)	7
Not Applicable	77
No Information	99

3E. Alcohol Present Code

Present in Victim and Suspect	1
Present in Victim but not in Suspect	2
Present in Suspect but not in Victim	3
Not Present in Either Victim or Suspect	4
Present in Suspect but no Information re: Victim	5
Present in Victim but no Information re: Suspect	6
Not Applicable	7
Alcohol in Environment	8
No Information	9

4A. Education Code

Primary	1
Some Secondary	2
Completed Secondary	3
Post Secondary (Technical)	4
Post Secondary (University)	5
Not Applicable	7
No Information	9

4B. Witness Relationship

Child(ren)	1
Friend	2
Parent	3
Other Relative	4
Neighbour	5
Other (Specify)	6
Not Applicable	7
No Information	9

4C. Injury Code

Minor Cuts/Bruises	1
Major Cuts/Bruises	2
Bites	3
Broken Bones/Teeth	4
Black Eye	5
Stitches Required	6
Miscarriage	7
Bumps to Head	8
Attempted Suicide	9
Emotional Stress/Breakdown	10
Damage Genitals	11
Damage to Reproductive Organs	12
Pregnancy	13
Other	14
No Information	99

4D. Type of Prior Record Code

Domestic Assault	1
General Assault	2
Other (Specify)	3
Child Abuse	4
Sexual Assault	5
Attempted Murder	6
Not Applicable	7
No Information	9

4E. Multiple Victim/Suspect Relationship Code

All Family Members	1
Family Members and Third Party	2
Third Party Only	3
Not Applicable	7
No Information.....	9

5A. Court Order Code

Released with Bail	1
Keep the Peace and Be of Good Behaviour	2
Report to Designated Person as Directed	3
Remain in Jurisdiction	4
Personal Appearance	5
Report Change in Address	6
No Contact/Communication	7
Contact only for Purposes of Visitation	8
Abstain from Alcohol Consumption	9
Restriction/Change of Visitation	10
To Reside at Given Residence	11
Not to Possess Firearms	12
Nondisclosure	13
Other (Specify)	14
No Contact with Anyone < 14	15
Not to Attend at Premises of Complainant	16
Adhere to Curfew	17
Not Applicable	77
No Information	99

5B. Services Contacted

Medical	1
WAP	2
Victim Assistance	3
Shelter	4
Probation	5
Child and Family Services	6
Child Protection Services (HSC)	7
Child/Witness Victim Program	8
Other Social Service Agency	9
Psychiatric Help	10
Language Bank	11
Mediation	12
Not Applicable	77
No Information	99

5C. Stayed Code

Victim Refused to Testify	1
Victim Retracted Original Statement	2
Victim Failed to Attend Court	3
Accused Sought Counselling	4
Insufficient Evidence	5
Victim not Served/not Located	6
Peace Bond	7
Victim Provoked	8
Consensual Fight	9
Other (Specify)	10
Victim Unable to Testify	11
Mediation	12
Not Applicable	77
No Information	99

6A. Court Election Code

Provincial Court Judge	1
Re-Elect	2
Queen's Bench Judge Alone	3
Queen's Bench Judge and Jury	4

6B. Report Code

Pre-Sentence Report	1
WAP Report	2
Psychiatric Report	3
Other (Specify)	4
Medical Report	5
Not Applicable	7

6C. Sentencing Judge Code

Meyers	1
Devine	2
Kopstein	3
Collerman	4
Mitchell	5
Garfinkel	6
Guy	7
Kramer	8
Kimmelman	9
Connors	10
Allen	11
Duval	12
Giesbrecht	13
Swail	14
Morlock	15
Harris	16
Rubin	17
Webster	18
Gyles	19
Queen's Bench Judge	20
Sinclair	21
Newcombe	22
Ennes	23
Minuk	24
Other (Specify)	25
Lismar	26
No Information	99

6D.

Acquittal	1
Absolute Discharge	2
Conditional Discharge	3
Suspended Sentence	4
Supervised Probation	5
Fine	6
Incarceration	7
Peace Bond	8
Restitution	9
Unsupervised Probation	10
Community Service Order	11
Intermittent Sentence	12
Time in Custody	13
Weapon Prohibition	14

7A. Probation Condition Code

Sex Offender Counselling	1
Psychiatric Counselling	2
Attend Abuse Group	3
Abstain from Alcohol	4
Substance Abuse Assessment/Treatment	5
Other Treatment	6
No Contact/Communication	7
Contact only for Purposes of Access to Children .	8
Abstain from Possessing/Carrying Weapon	9
Remain in Jurisdiction	10
Other Conditions	11
Anger Management	12
Enter No Relationship until After Treatment	13
Not Applicable	77