

RACIAL AND ETHNIC DISPARITIES IN SENTENCING DEPARTURES ACROSS MODES OF CONVICTION*

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Recent analyses of guideline sentencing practices have demonstrated that sentences departing from guidelines serve as a significant locus of racial/ethnic and other extralegal disparity. Little is known, however, about the ways that different courtroom processes, such as modes of conviction, condition these effects. Using recent data from the Pennsylvania Commission on Sentencing (PCS), I analyze the overall effects of race/ethnicity and other factors on judicial decisions to depart from the sentencing guidelines, and then I reexamine these relationships according to four modes of conviction (non-negotiated pleas, negotiated pleas, bench trials, and jury trials). I argue that the mode of conviction provides a useful indicator of the differential exercise of discretion by different courtroom actors in the sentencing process. As such, it is likely to condition the use of stereotypical patterned responses, thus moderating the effects of race/ethnicity and other relevant sentencing factors. Findings support this expectation, demonstrating that extralegal effects vary considerably across modes of conviction. These results raise important questions about the role of different courtroom actors in contributing to racial and ethnic disparities under sentencing guidelines.

KEYWORDS: Guideline departures, courtroom discretion, sentencing disparity, race/ethnicity, modes of conviction

A long-standing research tradition in criminology focuses on racial and ethnic disparities in criminal sentencing. Increasing concern over this issue is evidenced by the recent popularity of sentencing guidelines designed to limit judicial discretion and reduce unwarranted disparities. The present research addresses two recent concerns surrounding unwarranted disparity under sentencing guidelines – a renewed interest in the

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role that departures from sentencing guidelines play in contributing to racial/ethnic disparities, and a newly emergent focus on the ways these disparities are contextualized by different courtroom processes. A sizable literature exists examining the role of legal and extralegal variables in sentencing outcomes under different guideline systems (e.g. Albonetti, 1997; Bushway and Piehl, 2001; Kramer and Steffensmeier, 1993), and a growing literature also examines the role that departures from sentencing guidelines play in exacerbating extralegal disparities (e.g. Kramer and Ulmer, 1996; Moore and Miethe, 1986; Mustard, 2001). Despite the burgeoning interest in both these areas, though, prior research has devoted little attention to understanding the subtleties of how unwarranted sentencing disparities are conditioned by different courtroom processes. The present study addresses this empirical void in the literature by examining the degree to which racial/ethnic and other extralegal disparities are conditioned by an often overlooked courtroom processing variable – the mode of conviction (i.e. non-negotiated pleas, negotiated pleas, bench trials and jury trials).

Prior scholarship suggests that mode of conviction reflects the differential influence of key members of the courtroom community (i.e. the judge and prosecutor) in the sentencing process (e.g. Padgett, 1985). To the extent that courtroom actor involvement in the sentencing decision is related to the way the case is convicted, there may be important differences in the effects of various sentencing factors across conviction categories. For instance, if prosecutors are more influential in cases that are plea-bargained, as some scholars have suggested (e.g. Tonry, 1996), then racial, ethnic, and other extralegal disparities may be related to whether or not an offender negotiates a plea. Previous research provides little guidance on this topic. In an attempt to extend prior research, the present study therefore investigates the degree to which the effects of race, ethnicity, and other extralegal factors are moderated by the mode of conviction.

In addition to furthering knowledge on racial and ethnic disparities in sentencing, the present study also provides potential insight into the role of different courtroom actors in the sentencing process. Though current scholarship acknowledges that sentencing outcomes are the product of interactions among several members of the courtroom community (Eisenstein et al., 1988), few empirical studies explicitly address the influence of different courtroom actors at sentencing. Therefore, relatively little is known about the role of different courtroom actors besides the judge in contributing to extralegal disparities. To the degree that the mode of conviction reflects the exercise of discretion by different courtroom actors, though, it provides a potentially useful tool for investigating this issue. By disaggregating sentencing outcomes by mode of conviction, the present study attempts to disentangle the role of different courtroom actors in the

sentencing process. While this investigation is exploratory in nature, it serves to move empirical analyses of sentencing outcomes from their limited focus on the role of the judge to a broader focus on other courtroom decision-makers. The virtual absence of research addressing this issue is noteworthy given its potential to enhance our understanding of both the locus and extent of unwarranted disparities under sentencing guidelines.

In order to investigate the relationship between extralegal sentencing disparities and modes of conviction, the present study utilizes three recent years of sentencing data (1996-1998) in the state of Pennsylvania to examine the likelihood of receiving a sentence that departs from the guidelines. Recent scholarship highlights the importance of examining departures from sentencing guidelines as a potential locus of unwarranted sentencing disparity. The present study builds on this work, analyzing the overall effects of legal and extralegal variables on the likelihood of an offender receiving a sentence below or above the standard guideline recommendation (i.e. downward or upward departure), and then further investigating the conditioning effects that different modes of conviction exert on these departure decisions. The analysis is grounded in a focal concerns theory of sentencing (Steffensmeier et al., 1998), which is elaborated to account for theoretical expectations about the differential exercise of courtroom discretion across different modes of conviction.

The present study has several advantages over previous research examining sentencing disparity and guideline departures. First, it examines departure decisions under newly revised sentencing guidelines in a state with extensive prior research on disparity and departures. Second, it extends focal concerns theory by further detailing the intricate relationship among courtroom discretion, focal concerns, and modes of conviction. Third, it contributes to a longstanding research tradition examining racial and ethnic sentencing disparity by investigating interactive effects among extralegal variables and modes of conviction. And fourth, it advances present knowledge about mode of conviction sentencing differences by employing a more appropriate four-category measure of conviction type instead of the traditional plea/trial dichotomy. Before turning to the analyses, I review relevant research on the effects of race/ethnicity, departures, and modes of conviction at sentencing, and then I outline the basis for my theoretical expectations.

RACE/ETHNICITY, GUIDELINE DEPARTURES, AND MODES OF CONVICTION

Despite a plethora of research on the role of race/ethnicity in sentencing outcomes, the issue remains elusive. Several studies find that race has a

relatively modest but significant effect on sentencing decisions (e.g. Crawford et al., 1998; Kramer and Steffensmeier, 1993; Zatz, 1984). Others, however, maintain that these effects are inconsequential or the result of methodological artifacts that stem from a failure to properly control for legal variables (Kleck, 1981; Kleck, 1985; Wilbanks, 1987). The complexity of this issue may be to blame for the lack of consensus. The role of race and ethnicity has been shown to vary by context (e.g. Britt, 2000; Myers and Talarico, 1987; Ulmer, 1997), change over time (Peterson and Hagan, 1984), and involve more complicated processes, such as crucial interactions with other extralegal characteristics (Spohn and Holleran, 2000; Steffensmeier et al., 1998: For reviews, see Hagan and Bumiller, 1983; Mears, 1998; Thomson and Zingraff, 1981; Zatz, 2000).

A further complication associated with studies of race/ethnicity and sentencing outcomes revolves around the recent implementation of sentencing guidelines. Twenty-five states and the federal government currently maintain some form of sentencing guidelines (Reitz, 1999). The goal of sentencing guidelines is to increase uniformity in sentencing and eliminate unwarranted disparities by restricting judicial discretion and placing primary emphasis on characteristics of the offense and the offender's prior record (Kramer and Scirica, 1986). Several studies conclude that sentencing guidelines have attenuated the effects of race/ethnicity on sentencing outcomes (Kramer and Lubitz, 1985; Miethe and Moore, 1985). As Judge Cirillo's (1986) assessment of the Pennsylvania guidelines aptly pointed out, though, sentencing guidelines provide "windows of discretion" that risk the reintroduction of the types of unwarranted disparity they were designed to eliminate (see also Savelsberg, 1992). The decision to depart from standard sentencing ranges, for instance, may be influenced by race/ethnicity and other extralegal factors, allowing considerable extralegal disparity to be reintroduced into guideline sentencing systems.

In this way, departures from guidelines are intricately related to the exercise of discretion – they allow for the reintroduction of personal judgment into the sentencing process. Criminal justice researchers have begun to recognize this fact, and a growing literature suggests that departures are indeed a significant source of unwarranted disparity (Albonetti, 1997; 1998; Everett and Nienstedt, 1999; Frase, 1993; Griswold, 1987; Kempf-Leonard and Sample, 2001; Kramer and Steffensmeier, 1993; Kramer and Ulmer, 1996; Moore and Miethe, 1986; Mustard, 2001). Recent studies of the federal criminal justice system lend credence to this assertion. Mustard's (2001:285) investigation of federal sentencing outcomes, for instance, reported that "disparities are primarily generated by departures from the guidelines, rather than differential sentencing within the guidelines." Similarly, Kempf-Leonard and Sample (2001:137) found that "demographic traits and personal circumstances" were significant more

often for sentences that departed downward from guideline recommendations than for decisions regarding incarceration or sentence length, and Albonetti (1997: 817) concluded that "judicial discretion to depart from the guidelines...is the principal mechanism for circumventing the guidelines."

Research on state sentencing guidelines have come to similar conclusions. In Florida, Griswold (1987) found significant gender disparities associated with departures, though he did not investigate race/ethnicity, nor did he separate downward departures from upward departures. Moore and Miethe's (1986) study of the Minnesota guidelines found that black offenders were less likely to receive dispositional departures below guidelines (i.e. a non-incarceration sentence when guidelines recommended incarceration), and Frase's (1993: 335) evaluation of these same guidelines reported that "black offenders had consistently lower rates of mitigated dispositional departure" and "higher rates of aggravated dispositional departure" than white offenders. In Pennsylvania, Kramer and Ulmer (1996) found that, although legally prescribed factors were the strongest predictors of departure decisions, extralegal factors, including race, gender, and mode of conviction, all significantly influenced guideline departures. Thus, to examine sentencing disparity under presumptive sentencing guidelines, it is crucial to examine guideline departures as potential sources of unwarranted disparity.

Although researchers have begun to acknowledge the importance of guideline departures, they have paid considerably less attention to the impact of different modes of conviction. Numerous studies find that offenders convicted through trial receive harsher sentences than those convicted through guilty plea (e.g. Spohn and Holleran, 2000; Steffenmeier and Demuth, 2001; Ulmer and Kramer, 1996). Few studies, however, explicitly focus on the role of mode of conviction, and those that do typically dichotomize the variable into pleas versus trials (e.g. Engen and Steen, 2000; LaFree, 1985; Walsh, 1990). Thus, little is known about potential differences among types of pleas and trials.

In addition, few prior studies that investigate modes of conviction acknowledge potential differences in the amount of discretion different courtroom actors are free to exercise across different types of conviction. The implicit assumption is that judges maintain uniform freedom to exercise their discretion regardless of the way in which the case is convicted. Therefore, little is known about the distribution of *courtroom discretion* and its effects on sentencing disparity across different modes of conviction. This lack of attention to courtroom discretion is likely the result of prior research not distinguishing between the *possession* of sentencing discretion and the *exercise* of it. A judge possesses discretion whenever he/she has the power to freely determine the sentence imposed; however, a judge

only exercises discretion when he/she elects to employ this power. The possession of judicial discretion is therefore determined by formal legal mechanisms, such as the legal statutes empowering the judge, but the exercise of judicial discretion is determined by the presence of restraining and liberating factors associated with case-and-courtroom specific characteristics. Although judges possess discretion in all cases, practically speaking, the amount of discretion they exercise may be limited by numerous factors, including the mode of conviction. The present work therefore proffers an exploratory theoretical framework for understanding the distribution of courtroom discretion across different modes of conviction by building on the focal concerns theory of sentencing.

THEORETICAL FRAMEWORK AND EXPECTATIONS

FOCAL CONCERNS AND COURTROOM DISCRETION

The “focal concerns” theory of sentencing developed by Steffensmeier and colleagues (e.g. Steffensmeier et al., 1998; Steffensmeier and Demuth, 2000) frames the present analysis. It is premised on the assertion that sentencing outcomes are the result of multifaceted and complex decision-making processes in which judges must simultaneously consider numerous relevant factors as well as diverse sentencing goals (Hogarth, 1971). They organize these complex influences into three general categories, which they label as 1) offender blameworthiness and victim harm, 2) protection of the community, and 3) practical implications.

Blameworthiness is associated with offender culpability and the degree of injury caused. It is ordinarily tied to a retributive philosophy of punishment and is generally related to the seriousness of the offense, the criminal history of the defendant, and additional factors, such as prior victimization of the offender and the offender’s role in the crime. Protection of the community focuses more specifically on the need to incapacitate the offender and deter other potential offenders. Constrained by their “bounded rationality” and faced with uncertainty about the offender’s future behavior (Albonetti, 1991), judges assess offender dangerousness and likelihood of recidivism based on multiple factors such as the nature of the offense, case information, the offender’s criminal history, the facts of the crime, and offender characteristics, such as race/ethnicity, age, and gender. Finally, practical constraints and consequences consist of two different facets – the organizational facet and the individual facet. The organizational facet includes maintaining working relationships among courtroom actors, ensuring regular case flow, and being sensitive to criminal justice resources, such as local prison capacities. These concerns are sometimes grouped together under the heading “organizational efficiency” concerns (Engen and Steen, 2000). The individual facet includes

the offender's "ability to do time," health conditions, special needs, and family relations, as well as their individual impact on the correctional system. The impact of offender recidivism on the court's community standing may also be of import to sentencing judges concerned with the way their sentences reflect on the court. While focal concerns theory allows for the influence of race/ethnicity and other extralegal factors in the courtroom decision-making process, though, it maintains that legal factors should dominate sentencing decisions (see Steffensmeier et al., 1998).¹

Steffensmeier and colleagues correctly emphasize the diverse factors that influence judicial decision-making; however, they stop short of delineating the role that case processing variables (like mode of conviction) play in shaping which types of focal concerns come to the forefront in the decision-making process. Moreover, although their theoretical framework is applicable to courtroom actors besides the judge, it has primarily been applied when examining judicial decision making. The seminal works of Eisenstein and associates pointed out that sentencing decisions are not the sole product of judges but rather the result of courtroom community interactions among several participants (Eisenstein et al., 1988). The present work therefore applies focal concerns theory to the courtroom community while explicitly considering the influence of a crucial court-processing variable – the mode of conviction.

COURTROOM DISCRETION AND MODES OF CONVICTION

Mode of conviction constitutes an important component of the courtroom decision-making process. As such, it may condition the specific focal concerns that are emphasized, as well as the extent to which offender attributes are influential in courtroom assessments of blameworthiness, dangerousness, and practical constraints. One reason for this is that different modes of conviction are likely to reflect the differential exercise of discretion across courtroom actors. The amount of discretion, in turn, is significant because it is likely to affect one's reliance on "perceptual shorthands," or stereotypical patterned responses tied to extralegal characteristics. Spohn and Holleran (2000:281), for instance, point out that, "Because judges rarely have enough information to accurately determine an offender's culpability or dangerousness, they develop a 'perceptual shorthand,' which is 'based on stereotypes and attributions that are themselves linked to offender characteristics, such as race, gender, and age.'"

1. This expectation is straightforward for analyses of in/out incarceration and sentence length, but its applicability to studies of departures from the guidelines is less clear. Because guideline recommendations are inherently tied to offense severity and criminal history, expectations about the effects of these variables on departures from guidelines are ambiguous. This point is elaborated in the discussion section of the paper.

This assertion is largely based on the work of Albonetti (1991) who suggested that judicial decision making is limited by "bounded rationality," or a lack of sufficient information about offenders to make accurate predictions about their future behavior. In the face of this uncertainty, she argued, judges develop "patterned responses" based on attributions that may be tied to extralegal characteristics. In this way, then, perceptual shorthands, or patterned responses, may link certain extralegal variables to stereotypes about fundamental courtroom focal concerns, like offender culpability and future dangerousness (see Bridges and Steen, 1998 for a useful discussion of the specific attributional processes at work). When the exercise of discretion is greatest, so too should be the reliance on stereotypical patterned responses, resulting in greater effects for extralegal variables like race and ethnicity. Because it is likely that modes of conviction reflect the differential exercise of discretion by courtroom actors, then, the effects of race/ethnicity and other sentencing variables may vary in important ways across modes of conviction.

The current analysis distinguishes among four conviction categories: non-negotiated pleas represent cases in which the defendant pled guilty outright; negotiated pleas represent cases in which the prosecutor bargained with the defendant to reach a guilty plea; bench trials represent cases tried by the judge alone; and jury trials represent cases tried in front of a panel of jurors.

Non-negotiated pleas are likely to reflect the least exercise of discretion by either prosecutors or judges when determining departure decisions. This is because, as Padgett (1985:759) pointed out, "implicit plea-bargaining" (i.e., non-negotiated pleas) "is blind to all idiosyncrasies of individual defendants: the judge perceives only an undifferentiated pool of defendants who clear themselves voluntarily in response to aggregate rewards." These non-negotiated cases are sometimes described as "open pleas," in which judges typically apply "going rates," or routine sentences, which are based on formal guideline recommendations, informal local court norms, or some combination of the two (Ulmer and Kramer, 1998). While the sentencing judge maintains individual discretion in these cases, he or she is practically limited by courtroom efficiency concerns and courtroom norms that encourage standardized sentences for offenders who plead guilty outright (Eisenstein et al., 1988; Ulmer, 1997). In essence, judges are likely to apply global sentencing policies to aggregate groups of offenders in non-negotiated pleas, limiting the extent to which individual offender attributes are factored into courtroom actors' assessments of particular focal concerns, like offender blameworthiness and dangerousness.

Negotiated pleas, on the other hand, are likely to reflect considerable prosecutorial discretion. Because prosecutors utilize their own judgment when negotiating sentencing recommendations in exchange for guilty

pleas, and because judges almost always adhere to these recommendations, prosecutors exercise more sentencing discretion than judges for these cases (Engen and Steen, 2000; Padgett, 1985; Standen, 1993; Tonry, 1996). Therefore negotiated plea sentences are more likely to reflect prosecutorial biases than sentences for other cases, though this discretion remains bounded by both judicial approval and the normative courtroom environment (Eisenstein et al., 1988). This view is supported by qualitative evidence conducted with Pennsylvania judges. Kramer (unpublished) reported that in negotiated pleas, judges give "plea bargain" as their reason for guideline departure 74% (23/31) of the time. Furthermore, this report quoted one judge as saying "his standard for rejecting a plea agreement is whether the sentence 'shocks his conscience' . . . a clear reference to the low likelihood of his rejecting a negotiated plea and the importance of the judge supporting the prosecutor" (Kramer, unpublished: 20). Despite the clear distinction between non-negotiated and negotiated pleas, most prior studies examining modes of conviction have collapsed them into a single plea category, obscuring potential differences (e.g. Engen and Steen, 2000; LaFree, 1985; Walsh, 1990).

Conversely, bench and jury trials are likely to reflect little prosecutorial discretion but considerable judicial discretion. Judges are free to exercise significant personal judgment when electing to sentence outside the standard guideline recommendation for both bench and jury trials. The two are not identical however. For instance, bench trials in some jurisdictions are akin to guilty pleas in which the defendant receives a "waiver discount" for not going to jury trial. One judge explained his reasoning thus: "You have given up your right to a jury trial. I think that you are entitled to some consideration for that, because if this case had been a jury [trial], it would have taken two to three days to try" (Ditzen, 1997). Despite the fact that both bench and jury trials reflect considerable exercise of judicial discretion, then, there is reason to believe that they may differ in substantively important ways. Jury trials are associated with a more elaborate sentencing process in which the judge learns more about the case and more about the offender (Ulmer, 1997). This may therefore reduce his or her reliance on stereotypical patterned responses, resulting in larger extra-legal effects for bench trials than jury trials. Therefore, I argue that prior research has inappropriately combined these two substantially different processes into one category (e.g. Walsh, 1990). Table 1 outlines these basic assertions and summarizes the expected relationships between modes of conviction and various courtroom processes.

Grounded in expectations about the differential exercise of courtroom discretion across different modes of conviction, then, the present work draws on focal concerns theory to suggest the following hypotheses:

Table 1. Differences in Courtroom Sentencing Processes Across Modes of Conviction

Courtroom Sentencing Processes	Modes of Conviction			
	Non-negotiated Plea	Negotiated Plea	Bench Trial	Jury Trial
<i>Exercise of Courtroom Discretion</i>	Little Individual Discretion—Focus on Courtroom Norms And “Going Rates”	Increased Prosecutorial Discretion	Increased Judicial Discretion	Increased Judicial Discretion
<i>Most Salient Focal Concerns</i>	Courtroom Efficiency—Limited Emphasis on Offender-Based Focal Concerns	Courtroom Efficiency In Conjunction with an Emphasis on Offender-Based Focal Concerns	Emphasis on Offender-Based Focal Concerns (Open Pleas in Some Jurisdictions Emphasize Courtroom Efficiency)	Emphasis on Offender-Based Focal Concerns
<i>Use of Stereotypical Patterned Responses</i>	Limited Use of Patterned Responses—Emphasis on Legal Variables	Strong Reliance on Patterned Responses—Used in Conjunction With Legal Variables	Strong Reliance On Patterned Responses	Strong Reliance on Patterned Responses—(But Characterized by More Complete Information Than Bench Trials)
<i>Expected Influence from Race/Ethnicity and Other Extralegal Factors</i>	Smaller Extralegal Effects Than Negotiated Pleas or Trials—Larger Legal Effects Than Trials	Larger Extralegal Effects Than Non-negotiated Pleas—Larger Legal Effects than Trials	Larger Extralegal Effects Than Non-negotiated Pleas—Smaller Legal Effects Than Negotiated or Non-negotiated Pleas (In Most Jurisdictions)	Larger Extralegal Effects Than Non-negotiated Pleas—Smaller Legal Effects Than Negotiated or Non-negotiated Pleas

Hypothesis 1 (H1): Legally relevant factors will be the primary determinants of sentencing outcomes, though extralegal offender characteristics such as race and ethnicity will also influence courtroom decision-making.

Hypothesis 2 (H2): Offenders who go to trial will be likely to receive a more severe sentence than offenders who plead guilty. Additionally, offenders who go to jury trial should receive the most severe treatment and offenders who negotiate a plea should receive the least severe treatment. Moreover, because different modes of conviction likely reflect the differential exercise of discretion across courtroom actors, the mode of conviction should moderate the effects of extralegal offender characteristics, suggesting the following:

Hypothesis 3 (H3): Non-negotiated pleas will be associated with large effects for legal variables and small effects for extralegal variables, relative to other modes of conviction. Non-negotiated pleas should be the least affected by extralegal factors because they are likely to reflect the least exercise of individual discretion; judicial discretion is constrained by courtroom workgroup expectations resulting in going rates uniformly delivered across typical cases.

Hypothesis 4 (H4): Negotiated pleas will be associated with large effects for extralegal factors relative to non-negotiated pleas, and large effects for legal factors relative to trials. Negotiated pleas should be affected by extralegal offender attributes because prosecutors are likely to exercise considerable discretion in these cases, which may result in reliance on stereotypical patterned responses. Legal effects should also be strong, however, because prosecutors are influenced by courtroom efficiency concerns that may lead them to routinize sentencing recommendations according to legal criteria.

Hypothesis 5 (H5): Bench and jury trials will be associated with relatively large extralegal effects and relatively small legal effects compared to non-negotiated pleas. Trial cases should be associated with large extralegal effects because these cases are likely to reflect the significant freedom of judges to exercise individual discretion, which introduces increased opportunity for potentially discriminatory patterned responses and stereotypes to be factored into sentencing decisions.

Hypothesis 6 (H6): Bench trials will be associated with larger extralegal effects than jury trials. Although both bench and jury trials are likely to reflect significant judicial discretion, judges presiding over jury trials tend to have more complete information about the offense and offender, which should result in less reliance on stereotypical patterned responses.

DATA AND METHODS

In order to test these hypotheses, the present research examines departures from sentencing guidelines over three recent years (1996-1998) in the state of Pennsylvania, using data on criminal convictions collected by the Pennsylvania Commission on Sentencing (PCS). The PCS data provide

extensive information about individual offender characteristics as well as case characteristics. Using county-level data from the United States Census, the Administrative Office of Pennsylvania Courts, and the 1999 County and City Extra, the PCS data were extended to include relevant characteristics of the county-level contexts in which sentencing decisions were made. Cases in the analysis were limited to those that were sentenced under the 1994 guidelines, and to those that provided necessary information on guideline conformity. In addition, only the most serious offense per judicial transaction was included in the analysis. Once these criteria were met, the total number of cases analyzed equaled 109,931. Overall, this final data set provides a rich and detailed body of information that is well suited to examining the influence that various factors have on decisions to depart from the guidelines across modes of conviction.

In 1994, the PCS revised the Pennsylvania guidelines (see Appendix for the 1994 guidelines). In general, these changes provided for guideline ranges that were narrower and more severe for violent offenders, and less severe for non-violent offenders, than the previous guidelines. Prior studies of Pennsylvania sentencing practices have all analyzed sentences under the earlier 1982 and 1991 guidelines (e.g. Kramer and Steffensmeier, 1993; Kramer and Ulmer, 1996; Steffensmeier and Demuth, 2001; Steffensmeier et al., 1998); therefore, the present study extends prior research by examining sentencing practices under newly revised sentencing guidelines.

I begin the analysis by first evaluating the likelihood that an offender receives a sentence below the standard guideline range or above the standard guideline range for all conviction types. Then I proceed to evaluate separate departure models for each mode of conviction, discussing the findings in conjunction with statistical tests for significant differences in coefficients across models (Brame et al., 1998; Paternoster et al., 1998). Multinomial regression was selected instead of ordinal regression because the data failed to meet the assumption of parallel regression lines required for ordinal regression (Clogg and Shihadeh, 1994) ($\chi^2 = 7314$, $df = 14$, $p < .001$). It was selected instead of logistic regression to more clearly distinguish the two separate types of departure (downward and upward departure) from the reference category (no departure). Whereas logistic regression potentially confounds one type of departure with the reference category (i.e. it contrasts downward departures with non-downward departures that may include both no departure and upward departure sentences), multinomial regression clearly separates each type of departure from standard sentences.

DEPENDENT VARIABLE

The dependent variable in my models is a three-category variable that distinguishes sentences that are downward departure, standard sentence,

and upward departure.² Sentences that fell below the lower bound of the standard guideline recommendation were coded as downward departures, while sentences that fell above the upper bound of the standard guideline recommendation were coded as upward departures. Sentences that fell at or between the standard range boundaries were coded as standard sentences.

The downward departure analysis included only the cases for which a downward departure was possible. This was consistent with prior research (Kramer and Ulmer, 1996) and was necessary because sentences below the standard range are not possible when the recommendation calls for a minimum of no incarceration (i.e. restorative sanction (RS)). This criterion resulted in 40,594 total cases, 15,906 of which were downward departures. For departures above the guidelines, all cells in the guideline matrix were included in the analyses (see Appendix). This was because an upward departure was possible for any case. A sentence of incarceration where the standard range maximum was restorative sanctions (RS) or restrictive intermediate punishment (RIP) was considered an upward departure.³ This resulted in 109,931 total cases, 17,934 of which were upward departures. Because separate samples make up the available cases for the downward and upward analyses, I report only half of the coefficients from each multinomial regression for each departure decision. This procedure is akin to running separate logistic regressions comparing downward departures to no departures and upward departures to no departures for the separate samples of cases. Results from these multinomial analyses therefore represent 1) the likelihood of receiving a downward departure instead of a standard sentence for all cases in which a downward departure was possible, and 2) the likelihood of receiving an upward departure instead of a standard sentence for all cases in which an upward departure

2. The Pennsylvania sentencing guidelines provide for aggravating, mitigating, and standard ranges. Although the PCS technically considers sentences within the mitigating and aggravating ranges to be standard conformity, for the purposes of this study all sentences outside of the standard recommended range are considered departures. This convention is utilized to prevent important differences in sentencing outcomes in these intermediate ranges from going undetected. Subsequent analyses treating mitigated and aggravated sentences as standard generally produced similar results, though some differences are discussed throughout the paper where relevant. These analyses are available from the author upon request.

3. For both the downward and upward analyses, the PCS allows for RIP sentences to be combined with or substituted for incarceration in the shaded portion of the grid (see Appendix). Because the sentencing commission treats these cases as conforming regardless of whether RIP or incarceration is given (Act 193, 1991), the present study does not distinguish between different types of RIP or incarceration sentences in these ranges. Still, it is worth noting the possibility that RIP sentences provide an additional "window of discretion" and as such may represent a further point of potential racial and ethnic disparity in sentencing.

was possible. Before determining whether or not a sentence was a departure, however, the guideline ranges were adjusted for both deadly weapon enhancements and mandatory minimum sentences.⁴

INDEPENDENT VARIABLES

EXTRALEGAL VARIABLES

Modes of conviction are reported to the PCS in six categories: non-negotiated plea, negotiated plea, *nolo contendere*, bench trial, jury trial, and other. Because the *nolo contendere* (a plea of no contest) and "other" categories included only a very small number of cases, and because they were not of particular substantive interest, they were not included as categories of analysis.⁵ The remaining four categories were retained for the analyses. Using non-negotiated pleas as the reference category, three dummy variables were computed consisting of negotiated pleas, bench trials, and jury trials. Ideally, negotiated pleas would have been further subdivided into different types of plea bargains (Padgett, 1985), but unfortunately these distinctions are not available in current PCS data. In the initial analyses, all of these modes of conviction are included in the same models. For the latter analyses, however, each conviction category is analyzed individually (along with a combined bench/jury trial category) in order to separate out the unique influences that different variables have for cases convicted in different ways.

Race/ethnicity is a categorical variable consisting of Whites, African Americans, and Hispanics. Whites serve as the reference category and two dummy variables represent African Americans and Hispanics. Two additional extralegal variables, age and gender, were also included in the analyses. The age of the offender at the time of sentencing is coded in

4. For example, a cell with offense gravity score (OGS) 10 and prior record score (PRS) 0 has a standard range recommendation of 30-48 months. If the offense included a deadly weapon enhancement, however, the standard range recommendation would be shifted upward 9-18 months and would become 39-66 months. This new range would then serve as the baseline for determining departures.

5. Missing cases were identified as a separate dummy category along with "nolo contendere" and "other" categories, which totaled 38,804 cases (36.9% of total cases). Including this extra dummy variable allowed cases with missing information on mode of conviction to be included in the overall analysis and it also provided a measure of mean differences between missing cases and other cases (Osgood, 2000). Separate models were also estimated examining the overall effects (analogous to Table 2) for only the cases with information on mode of conviction. These results were virtually identical to results reported in Table 2, suggesting that these missing cases do not alter general conclusions. Prior research also supports the contention that missing mode of conviction data do not affect overall results (see Steffensmeier and Demuth, 2001).

years.⁶ Gender is a dummy variable with female representing the reference category. Both of these variables have been identified in the literature as important influences on sentencing outcomes (e.g. Albonetti, 1998; Steffensmeier et al., 1993; Steffensmeier et al., 1995), so they are included in the present research both to evaluate additional sources of extralegal influence as well as to serve as important controls.

LEGAL VARIABLES

The legally prescribed variables are the offense gravity score (OGS), which measures the seriousness of the offense, and the prior record score (PRS), which measures the prior criminality of the offender. The OGS is a scale, which ranks the seriousness of the crime from one, least serious, to thirteen, most serious. The PRS is determined by all prior adult convictions for felonies and misdemeanors and certain prior juvenile adjudications. It considers both the number and severity of an offender's past convictions, and it consists of eight categories, two of which are specifically reserved for repeat felons (RFEL) and repeat violent offenders (REVOC). Together, then, the OGS and PRS provide an accurate measure of the most important legally relevant variables. The details of how the offense gravity score and prior record score are determined are specified in 204 Pa. Code §§303.3-303.7 (see also Kramer and Scirica, 1986; Steffensmeier et al., 1993; Kramer and Steffensmeier, 1993).

CONTROL VARIABLES

Research on sentencing has recently emphasized the potential importance of courtroom and county characteristics on sentencing outcomes (Dixon, 1995; Mears, 1998; Myers and Talarico, 1987). To control for these potential effects I include several indicators of county courtroom context. These measures consist of court caseload, percent black, percent Republican, percent of the population age 18-24, and percent urban. The measure of court caseload was calculated by dividing the number of criminal cases in a county by the total number of judges (Administrative Office of Pennsylvania Courts, 1998). Percent urban was calculated by dividing the total number of people living in urban areas by the total number of people in the county (United States Census Bureau, 1990). The remaining contextual variables were obtained from the County and City Metro Extra

6. Because 4,720 cases (4.3%) were missing information on offender age, mean substitution was employed to prevent the unnecessary deletion of cases. The mean offender age (29.9 years) was substituted for missing values and a subsequent dummy variable was included to control for the influence of these cases and to prevent the other coefficients in the model from being biased (Osgood, 2000).

(1999). Percent black was computed by dividing the total number of African American residents in each county by the total county population. Percent Republican was calculated by taking the percent of the county vote cast for the Republican candidate in the 1996 Presidential election. Percent age 18-24 was computed by taking the number of people in this age group in a given county and dividing it by the county population.

FINDINGS

THE DIRECT EFFECTS OF MODES OF CONVICTION AND RACE/ETHNICITY ON DOWNWARD DEPARTURES

MODES OF CONVICTION

Table 2 summarizes the descriptive statistics for the dependent and independent variables used in the analyses, and Table 3 compares multinomial logistic regression models, which include all modes of conviction, for the contrasts between downward and upward departures and standard sentences. Examination of Table 3 demonstrates the fundamental importance of both modes of conviction and race/ethnicity. As predicted by focal concerns theory (H2), offenders who go to trial receive harsher sentences than those who plead guilty. While negotiating a plea increases the odds of downward departure by 12%, conviction at bench trial decreases this odds by 68% and conviction at jury trial decreases it by a sizable 269%.⁷ As expected, bench and jury trials are associated with a lower probability of downward departures than are non-negotiated pleas. These results also highlight the usefulness of distinguishing between bench and jury trials. The penalty for going to jury trial is greater than for going to bench trial, suggesting that the organizational demands of a jury trial exert greater pressure on the court, resulting in an increased jury trial penalty.

RACE/ETHNICITY

The race/ethnicity results in Table 3 are also consistent with expectations. The odds of receiving a downward departure is 25% less for blacks than for whites, and 56% less for Hispanics than for whites. All things being equal, racial minorities have a reduced likelihood of receiving a downward departure from the guidelines. This finding is in line with prior research on departures (Kramer and Ulmer, 1996; Moore and Miethe 1986; Mustard, 2001) and supports expectations grounded in focal concerns theory. If judges sometimes rely on perceptual shorthands when

7. For positive coefficients this percentage is calculated by (odds ratio -1). For negative coefficients it is calculated by ((1/odds ratio) -1). This adjustment is necessary to remove the floor effect inherent in the odds ratio.

Table 2. Descriptive Statistics — Independent and Dependent Variables

	<u>Mean</u>	<u>Std. Dev.</u>	<u>Min.</u>	<u>Max.</u>
Independent Variables:				
Offense severity	4.00	2.42	1.00	13.00
Criminal history	1.36	1.92	0.00	8.00
Offender age	29.9	9.35	14.00	96.00
Court workload	5.93	1.41	2.62	8.76
Percent urban	69.34	25.82	0.00	100.00
Percent black	9.49	12.12	0.09	43.10
Percent age 18-24	8.38	1.81	5.10	25.40
Percent Republican	41.2	10.84	16.00	59.80
	<u>Code</u>	<u>Freq.</u>	<u>%</u>	
Race/Ethnicity				
White	0	61,424	55.70	
Black	1	36,222	32.90	
Hispanic	1	6,546	6.00	
Gender				
Female	0	21,030	19.10	
Male	1	88,901	80.90	
Mode of conviction				
Non neg. guilty	0	13,925	13.02	
Neg. guilty	1	48,564	45.44	
Bench trial	1	2,465	2.29	
Jury trial	1	1,516	1.42	
Dependent Variables:				
Downward Departure Analysis				
Downward departures	1	15,906	39.18	
Standard sentences	0	19,723	48.59	
Upward departures	1	4,965	12.23	
Total cases		40,594	100.00	
Upward Departure Analysis				
Downward departures	1	15,906	14.47	
Standard sentences	0	76,091	69.22	
Upward departures	1	17,934	16.31	
Total cases		109,931	100.00	

evaluating offender-based focal concerns, then racial and ethnic statuses tied to stereotypes of offender culpability and dangerousness may negatively affect the likelihood of minorities receiving beneficial treatment at sentencing (Albonetti, 1991; Steffensmeier et al., 1998).

AGE AND GENDER

Similar perceptual shorthands, or patterned responses, appear to be associated with other extralegal variables as well. Both age and gender exert strong effects on the odds of downward departures such that older

Table 3. Multinomial Logistic Regression For Downward and Upward Departures — All Modes of Conviction

		Downward Departure vs. Standard Sentence			Upward Departure vs. Standard Sentence		
		Logit	S.E.	Odds Ratio	Logit	S.E.	Odds Ratio
Constant		-.35	.15	—***	-.68	.09	—***
Legal Variables							
Offense severity		-.01	.01	0.99*	-.03	.00	0.97***
Criminal history		.11	.01	1.11***	-.07	.01	0.93***
Extralegal Variables							
Race/Ethnicity							
	White						
	Black	-.23	.03	0.80***	.19	.02	1.21***
	Hispanic	-.44	.04	0.65***	.33	.03	1.39***
Offender Age		.01	.00	1.01***	-.01	.00	0.99***
Gender							
	Female						
	Male	-.49	.03	0.61***	.27	.02	1.31***
Modes of conviction							
	Non-neg. Plea						
	Neg. Plea	.12	.03	1.12**	-.18	.03	0.83***
	Bench Trial	-.52	.07	0.59***	-.45	.07	0.64***
	Jury Trial	-.13	.11	0.27***	.62	.06	1.85***
Control Variables							
Court workload		.31	.01	1.36***	-.05	.01	0.95***
Percent urban		.01	.00	1.01***	-.01	.00	0.99***
Percent black		.04	.00	1.04***	.02	.00	1.02***
Percent age 18-24		-.02	.01	0.98*	-.02	.00	0.98***
Percent Republican		.01	.00	1.01**	.01	.00	1.01***
N		40,594			109,931		
Model Chi-Square^a		4,758			28,010		
Model Accurate Prediction Rate		56%			70%		

* $p < .05$ ** $p < .01$ *** $p < .001$ ^a Model chi square values demonstrated that each model was significant at the .001 level

offenders and female offenders are more likely to receive sentences below the standard guideline recommendation. Specifically, a 65 year-old offender would have 71% greater odds of a downward departure than a 20 year-old offender, and a female offender would have 63% greater odds of downward departure than a male offender. Younger offenders and male offenders may be perceived by courtroom actors as being more dangerous, more culpable, and more likely to recidivate, resulting in decreased likelihood of downward departure.

LEGAL VARIABLES

In line with hypothesis 1, prior research in Pennsylvania suggests that offense severity and criminal history are the strongest predictors of sentencing outcomes (e.g. Kramer and Steffensmeier, 1993; Kramer and

Ulmer, 1996; Ulmer, 1997). The current findings, however, do not support this expectation with respect to downward departures. While both offense severity and criminal history are statistically significant, only criminal history has a relatively large effect, and its coefficient is comparatively small in relation to some of the extralegal variables.⁸ For instance, increasing criminal history by five units results in multiplying the odds of downward departure by 1.72, whereas pleading guilty outright instead of going to jury trial multiplies this odds by 3.69. Moreover, the effect is in the opposite direction one would anticipate within a focal concerns perspective. That is, more criminally experienced offenders are more likely to receive downward departures.

THE DIRECT EFFECTS OF MODES OF CONVICTION AND RACE/ETHNICITY ON UPWARD DEPARTURES

MODES OF CONVICTION

For upward departures, the expectation that trials are associated with increased severity (H2) received partial support. Conviction by jury trial increased the odds of upward departure by 85% relative to non-negotiated pleas. Conversely, negotiating a plea decreased the odds of upward departure by 20%. As expected, then, jury trial conviction decreases the odds of downward departure and increases the odds of upward departure, while negotiating a plea increases the odds of downward departure and decreases the odds of upward departure.

Conviction by bench trial, however, decreased the odds of upward departure by 56%. This finding was unexpected, so it warranted further investigation. Some scholars have noted jurisdictional variation in the use of bench trials, specifically arguing that in Philadelphia County they are used as "implicit pleas" in which sentencing leniency is exchanged for standing silent in front of the judge (Ditzen, 1997). To investigate this possibility further, the upward analysis in Table 3 was replicated after excluding cases from Philadelphia County. The findings confirmed suspicions – the odds ratios for non-negotiated pleas and jury trials remained essentially unchanged, but the effect of going to bench trial was reduced to non-significance. Apparently, going to bench trial decreases the likelihood of an offender receiving any type of departure in Philadelphia

8. Additional analyses with the mitigating ranges coded as standard sentences produced somewhat stronger legal effects, suggesting that part of the lack of strong legal findings in the present analysis may be the result of the chosen coding strategy. This indicates that legal variables may be better predictors of downward departure sentences than they are of the combined mitigating/downward departure category utilized in the present analysis, and it suggests that prior studies of guideline departures may have therefore failed to detect important extralegal differences apparent in these intermediate ranges.

County, but it doesn't have the same effect across the state. This offers supporting evidence for contentions about jurisdictional variation in bench trial usage and suggests the importance of separately examining these two distinct types of trials.

RACE/ETHNICITY

For race/ethnicity, the basic pattern of extralegal disadvantage held true for upward departures as well as for downward departures. Being black resulted in a 21% increase in the odds of upward departure, while being Hispanic resulted in a 39% increase in this odds. Minority offenders, then, are both less likely to be sentenced below guideline recommendations and more likely to be sentenced above them, relative to white offenders. As suggested by focal concerns theory, courtroom actors may employ "perceptual shorthands" that link increased offender culpability and decreased rehabilitative potential to minority offenders (Albonetti, 1991; Bridges and Steen, 1998; Steffensmeier et al., 1998).

AGE AND GENDER

Age and gender are also significant predictors of the odds of upward departures. Age exerts a significant negative effect on the likelihood of receiving an upward departure such that older offenders are less likely to receive departures above the guidelines. As with the downward analysis, the cumulative impact of several years may be great, suggesting that young age may carry certain stereotypes associated with increased dangerousness and greater likelihood of recidivism. The results for gender also demonstrated important effects. The odds of male offenders receiving departures above the guidelines is 31% greater than for female offenders. Age and gender appear to have stereotypical attributions attached to them similarly to race and ethnicity.

LEGAL VARIABLES

As with downward departures, upward departures were not affected as strongly by legal variables as hypothesis 1 predicted, and the direction of their influence was again unexpected. A one-unit increase in offense severity decreased the odds of upward departure by only 2.7%, while an equal change in criminal history decreased this odds by 7.8%. Moreover, increasing offense severity from the least serious offense level (OGS 1) to the most serious offense level (OGS 13) resulted in only a 41% decrease in the odds of upward departure, whereas going to jury trial instead of pleading guilty outright increased this odds by 85%. Extralegal factors such as race/ethnicity and mode of conviction appear to be at least as important as

legal factors, if not more important.⁹ Overall, then, the relative contribution of legal factors was less than expected, and more importantly, it was in the opposite direction predicted by focal concerns theory. Offenders convicted of more serious offenses and offenders with longer prior records were less likely to receive departures above the guidelines. As some previous research suggests, these unexpected results for legal factors may indicate that courtroom actors are responding to guideline recommendations with which they disagree by adjusting sentences to bring them in line with what they believe is more appropriate (Moore and Miethe, 1986).

Despite the surprising legal effects, these results are congruent with the emphasis of focal concerns theory that judges consider multiple factors, some of which are tied to offender stereotypes. Offenders who exercise their right to trial (especially jury trial) are generally at a disadvantage when it comes to the likelihood of receiving departures from the guidelines. Presumably this is because going to trial signifies a lack of remorse and interferes with courtroom efficiency concerns. Offenders who have racial/ethnic attributes that are tied to offender-based focal concerns, such as perceived dangerousness, increased culpability, or a lack of rehabilitative potential, are also at a disadvantage. Presumably this is because courtroom actors rely on perceptual shorthands, or patterned responses, that link these extralegal attributes to blameworthiness and predictions of future criminality. The remaining analyses examine the degree to which these patterned responses are associated with potential variations in courtroom discretion across different modes of conviction.

THE INTERACTION OF MODES OF CONVICTION AND RACE/ ETHNICITY FOR DOWNWARD DEPARTURES

Table 4 presents the descriptive statistics for each separate mode of conviction. The distribution of cases across modes of conviction reveals some interesting patterns. Offenders who go to trial have longer prior records and they tend to be convicted of more serious crimes. Interestingly, blacks and Hispanics make up greater proportions of offenders who go to bench trial (a result driven by Philadelphia County), and blacks make up a greater proportion of offenders who go to jury trial, relative to the other modes of conviction. A similar pattern is found for gender. Male offenders make up a greater proportion of bench and jury trial offenders than either negotiated or non-negotiated pleas. Examination of the descriptive

9. As with the downward analysis, though, the legal variables have somewhat different effects when mitigating and aggravating sentences are coded as standard conformity. While the effect of criminal history was weaker in these alternative analyses, the effect of offense severity for upward departures was slightly stronger and positively related to upward departures.

statistics for the dependent variable clearly demonstrates that negotiated pleas make up the majority of the total cases. This highlights the importance of considering the prosecutor's role in determining plea negotiations and making sentencing recommendations – an element of the courtroom decision-making process often overlooked in studies of sentencing outcomes.

Table 4. Descriptive Statistics for Individual Modes of Conviction

Independent Variables:	Means (Standard Deviations in Parentheses)			
	Non-neg Plea	Neg Plea	Bench Trial	Jury Trial
Offense severity	4.1 (2.4)	3.7 (2.2)	4.8 (2.6)	6.2 (3.3)
Criminal history	1.4 (2.0)	1.2 (1.8)	1.6 (2.2)	1.8 (2.2)
Offender Age	30.2 (9.6)	29.7 (9.5)	29.7 (9.9)	31.5 (10.6)
Court workload	617 (167)	597 (130)	370 (1.6)	562 (1.4)
Percent urban	74.3 (22.3)	66.5 (27.7)	95.4 (13.6)	63.8 (28.5)
Percent black	12.7 (13.6)	8.1 (10.8)	36.6 (15.1)	9.6 (12.8)
Percent age 18-24	8.3 (1.4)	8.4 (2.1)	9.3 (1.1)	8.4 (2.1)
Percent Republican	41.0 (11.9)	42.0 (10.5)	22.2 (11.1)	40.1 (11.0)
	Frequencies (Percentages in Parentheses)			
Race/Ethnicity				
White	7,222 (51.7%)	28,382 (59.3%)	647 (26.2%)	791 (51.8%)
Black	4,987 (36.4%)	15,088 (31.5%)	1,469 (59.4%)	593 (38.9%)
Hispanic	756 (5.5%)	1,948 (4.1%)	160 (6.5%)	81 (5.3%)
Gender				
Female	2,910 (21.2%)	9,065 (18.9%)	290 (11.7%)	152 (10.0%)
Male	10,797 (78.8%)	38,774 (81.1%)	2,153 (87.1%)	1,361 (89.2%)
Dependent Variables:				
Downward Departure Analysis				
Downward departures	2,640 (47.2%)	6,359 (42.4%)	434 (36.0%)	119 (12.3%)
Standard Sentences	2,453 (43.8%)	7,168 (47.8%)	649 (53.8%)	605 (62.4%)
Upward departures	504 (9.0%)	1,477 (9.8%)	124 (10.3%)	246 (25.4%)
Total cases	5,597 (100%)	15,004 (100%)	1,207 (100%)	970 (100%)
Upward Departure Analysis				
Downward departures	2,640 (19.0%)	6,359 (13.1%)	434 (17.6%)	119 (7.8%)
Standard Sentences	9,118 (65.5%)	34,896 (71.9%)	1,734 (70.3%)	969 (63.9%)
Upward departures	2,167 (15.6%)	7,309 (15.1%)	297 (12.0%)	428 (28.2%)
Total cases	13,925 (100%)	48,564 (100%)	2,465 (100%)	1,516 (100%)

Table 5 presents the results for the downward departure versus standard sentencing contrast from five multinomial logistic regression models run separately for each mode of conviction (with the last model combining

Table 5. Multinomial Logistic Regression For Downward Departures vs. Standard Sentences — Individual Modes of Conviction

	Non-neg Plea			Neg Plea			Bench Trial			Jury Trial			Bench and Jury Trials		
	Logit	S.E.	Odds	Logit	S.E.	Odds	Logit	S.E.	Odds	Logit	S.E.	Odds	Logit	S.E.	Odds
Constant	-3.08	.54	—***	-4.43	.22	—***	-2.51	2.13	—	-1.89	.94	—*	-2.02	.76	—**
Legal Variables															
Offense severity	-.02	.01	0.98	.04	.01	1.05***	-.05	.03	0.96	-.06	.04	0.95	-.09	.02	0.92***
Criminal history	.08	.02	1.09***	.15	.01	1.17***	.07	.03	1.07†	-.01	.05	0.99	.03	.03	1.03
Extralegal Variables															
Race															
White	-.12	.07	0.88†	-.22	.04	0.81***	-.37	.15	0.69*	-.33	.24	0.72	-.37	.13	0.69**
Black	-.31	.11	0.74**	-.36	.08	0.70***	-.49	.27	0.61†	-.96	.63	0.38	-.56	.23	0.57*
Hispanic	.01	.00	1.01***	.01	.00	1.01***	.01	.01	1.01	.01	.01	1.01	.01	.01	1.01*
Age															
Female	-.73	.09	0.48***	-.47	.06	0.63***	-.93	.24	0.40***	-.96	.31	0.38**	-.98	.19	0.38***
Male															
Control Variables															
Court workload	.00	.00	1.00***	.00	.00	1.00***	.00	.00	1.00†	.00	.00	1.00	.00	.10	1.00*
Percent urban	.02	.00	1.02***	.01	.00	1.01***	.01	.01	1.01	.01	.01	1.01	.01	.00	1.01**
Percent black	.03	.01	1.03***	.05	.00	1.05***	.05	.03	1.05	.00	.01	1.00	.02	.01	1.02
Percent age 18-24	.02	.03	1.02	-.02	.01	0.98	-.11	.12	0.90	.07	.04	1.08†	.05	.03	1.05
Percent Republican	-.01	.01	0.99	.01	.00	1.01***	.02	.03	1.02	-.01	.02	0.99	-.01	.01	0.99
N	5,597			15,004			1,207			970			2,177		
Model Chi-Square ^a	522			1,841			72			38			214		
Model Accurate	57%			58%			56%			62%			58%		
Prediction Rate															

† $p \leq .10$ * $p < .05$ ** $p < .01$ *** $p < .001$

^a Model chi square values demonstrated that each model was significant at the .001 level, except for the jury model ($p = .03$)

bench and jury trials).¹⁰ Analyzing departure outcomes by conviction type allows one to examine the ways that mode of conviction conditions the effects of other variables in the model. The results of these models demonstrate that the direction and magnitude of various effects depend on the way the case was convicted. Consistent with the exploratory theoretical framework outlined above, this suggests that different modes of conviction may reflect the differential exercise of sentencing discretion across courtroom actors. The amount of discretion exercised, in turn, may influence the extent to which extralegal patterned responses are influential in departure decisions. Results from these models are discussed in conjunction with statistical significance tests for differences in coefficients across models (Brame et al., 1998; Paternoster et al., 1998), which are presented in Panel A of Table 6.¹¹

RACE/ETHNICITY

Trial cases, which likely reflect substantial exercise of judicial discretion and an emphasis on offender-related focal concerns, tend to be associated with reduced odds of below departures for minority offenders. Though black offenders appear to have decreased odds of receiving a downward departure in all of the models, the magnitude of the effect varies somewhat by mode of conviction. For non-negotiated pleas, the effect of being black is the smallest and it is only marginally significant. For negotiated pleas, being black decreases the odds of downward departure by 24%, and for bench and jury trials combined it reduces these odds by 43%. Overall, black offenders are less likely to receive downward departures if they go to trial rather than pleading guilty outright. This conclusion was supported by statistical significance tests for differences across models, which demonstrated that the effect of being black was significantly greater for trial cases than for non-negotiated pleas.

Hispanic offenders also appear to have reduced odds of receiving a departure below the guidelines across all modes of conviction. The results for Hispanics are similar to those for blacks. The smallest effect is found for non-negotiated pleas, where being Hispanic decreases the odds of

10. Because different sample sizes translate into differential power to detect significant relationships, and because differences in bench and jury trials were only a matter of degree, it was useful to combine bench and jury trials into a single category in order to reduce differences in sample size between trials and the two types of pleas. The discussion of findings, therefore, focuses primarily on these combined models when comparing different sentencing factors across modes of conviction. Individual bench trial and jury trial models are also presented, however, in order to allow one to assess potential differences between the two types of trials.

11. In order to limit differences in sample sizes across modes of conviction, these statistical significance tests utilize the combined bench and jury trial models.

downward departure by 36%. For negotiated pleas this effect is somewhat stronger, decreasing this odds by 43%, and for bench and jury trials this effect is the greatest, decreasing the overall odds of downward departure by 76%. Despite these differences, though, statistical tests indicated that these effects were not significantly different across modes of conviction.¹² Overall, then, the present findings offer evidence that the effect of being black on the odds of downward departure is significantly greater for cases convicted through bench and jury trials than for cases convicted through non-negotiated pleas, but they fail to demonstrate that the effect of Hispanic ethnicity is significantly different across modes of conviction.

AGE AND GENDER

While the substantive variation in age effects across modes of conviction is minimal, gender effects vary considerably, but in somewhat unexpected ways. Consistent with expectations about the increased exercise of judicial discretion at trial, bench and jury cases demonstrate large gender effects; however, the smallest gender effects are associated with negotiated pleas. For trial cases, being male decreases one's odds of downward departure by 167%, whereas for negotiated pleas it decreases this odds by only 59%. As Panel A of Table 6 demonstrates, the gender effect for negotiated pleas is significantly less than for either non-negotiated pleas or trials. The effect of being a male offender appears to be somewhat attenuated by negotiating a plea, then, while it may be exacerbated by going to trial. This pattern implies that, when considering sentencing decisions, prosecutors may rely less on gender as a stereotypical attribute than do judges.

LEGAL VARIABLES

Examination of the legal variables in Table 5 and Table 6 provides further evidence for the necessity of disaggregating departure outcomes by conviction types. Significance tests demonstrated that the effect of offense severity varied noticeably across conviction type. For cases convicted through negotiated pleas, it is highly significant and has the effect of increasing the odds of downward departure by 5% for each unit change. Comparing this finding to Table 3, it becomes apparent that there is an important interaction effect. In Table 3, the overall effect of offense severity appeared to be negative; for negotiated pleas, though, this effect is

12. This lack of a significant finding may be related to the low power associated with the small number of Hispanics in the data (e.g. in the downward analysis there were only 60 Hispanics who went to jury trial (3 of whom received departures); still, these results clearly indicate that the null hypothesis of no difference across models cannot be rejected. As larger samples of Hispanic offenders become available, it will be important for future studies to further investigate this relationship.

Table 6. Z-test Comparisons of Model Coefficients Across Modes of Conviction

PANEL A		Downward Departure Comparisons		
		Non-neg/Neg Plea Z score	Non-neg/Trials Z score	Neg Plea/Trials Z score
Legal Variables				
Offense severity		-3.58***	2.58**	5.45***
Criminal history		-3.80***	1.63†	4.25***
Extralegal Variables				
Race/Ethnicity	(Black)	1.20	1.74*	1.16
	(Hispanic)	0.35	0.98	0.83
Offender age		-.05	0.03	0.07
Gender	(Male)	-2.49**	1.23	2.65**
PANEL B		Upward Departure Comparisons		
		Non-neg/Neg Plea Z score	Non-neg/Trials Z score	Neg Plea/Trials Z score
Legal Variables				
Offense severity		-2.54**	5.03***	3.73***
Criminal history		3.41***	0.85	3.48***
Extralegal Variables				
Race/Ethnicity	(Black)	-3.11***	-0.56	-2.51**
	(Hispanic)	-3.61***	1.32†	-0.94
Offender age		-1.16	-1.89*	-2.83**
Gender	(Male)	-5.43***	3.89***	1.72*

† $p \leq .10$ * $p < .05$ ** $p < .01$ *** $p < .001$
 (p-values determined by 1-tailed tests)

actually positive. While offense severity was not a significant predictor in the individual bench and jury trial models, it did reach statistical significance in the combined bench/jury model. In contrast to negotiated pleas, though, its effect was negatively related to the odds of downward departure. The influence of offense severity therefore appears to operate in distinct ways depending on whether a case is plea-bargained or convicted at trial. This may suggest that prosecutors and judges have differing opinions regarding the appropriateness of the sentencing guidelines across levels of offense severity. Whereas prosecutors are more likely to grant downward departures for serious crimes, judges are less likely to grant them as seriousness increases.

The effect of prior criminality also varies across conviction categories, though in less pronounced ways. For negotiated pleas, prior record exhibits a relatively large effect, for non-negotiated pleas the effect remains significant but declines in magnitude, and for trials it diminishes to

insignificance (though it is a marginally significant predictor for bench trials). Statistical comparisons of these coefficients across models demonstrated that criminal history effects were clearly greater for negotiated pleas compared to other modes of conviction. These findings suggest that, together, offense severity and prior record are more influential for cases convicted through negotiated pleas than cases convicted in other ways. Apparently, prosecutorial decision-making relies heavily on legal factors such that offenders convicted of more serious crimes and offenders with lengthier criminal histories have increased odds of receiving a sentence below the standard guideline recommendation. Over time, prosecutors may develop patterned responses that are linked as strongly to these legal characteristics as to other offender traits – at least when considering recommendations for downward departures under sentencing guidelines.

THE INTERACTION OF MODES OF CONVICTION AND RACE/ ETHNICITY FOR UPWARD DEPARTURES

Table 7 presents the results for the upward departure versus standard sentence contrast from five multinomial logistic regression models run separately for each mode of conviction (with the last model combining bench and jury trials). As with the downward analysis, these results are discussed in conjunction with statistical significance tests for differences across models, which are presented in Panel B of Table 6. Despite similarities with the downward departure analysis, the results suggest that the upward departure findings are in many ways unique.

RACE/ETHNICITY

Surprisingly, being black is a statistically significant predictor of the odds of upward departure for only negotiated pleas. For cases convicted in this way, being black increases the odds of upward departure by 32%. This effect is significantly greater than for either non-negotiated pleas or trials. Similarly, Hispanic ethnicity is also associated with an increase in the odds of upward departure for negotiated pleas. An Hispanic offender who negotiates a plea is 1.78 times as likely to receive a sentence above the standard range compared to a white who negotiates a plea. While this effect is significantly greater than for non-negotiated pleas, it fails to reach statistical significance when compared to trials, where Hispanic ethnicity is associated with a 49% increase in the likelihood of upward departure. While the effect of being black is clearly greatest for negotiated pleas, then, Hispanic ethnicity is significantly related to upward departures for both negotiated pleas and trials. While the downward departure analysis suggested that judges and prosecutors utilize both race and ethnicity when making departure decisions, the upward analysis indicates that prosecutors

Table 7. Multinomial Logistic Regression For Upward Departures versus Standard Sentences: Individual Modes of Conviction

	Non-neg Plea		Neg Plea		Bench Trial		Jury Trial		Bench and Jury Trials					
	Logit	S.E.	Logit	S.E.	Logit	S.E.	Logit	S.E.	Logit	S.E.				
Constant	.51	.35	-.22	.13	-.†	.94	1.54	-.61	.55	-.61	.50	—		
Legal Variables														
Offense severity	-.09	.01	0.91***	.01	0.95***	-.01	.03	0.99	.02	0.96*	.01	1.00		
Criminal history	-.05	.02	0.95***	.01	0.89***	-.02	.04	0.98	.03	0.94*	.02	0.97		
Extralegal Variables														
Race														
White	.08	.06	1.08	.28	.03	1.32***	.06	.15	1.06	.02	0.92	.01	1.01	
Black	.13	.11	1.13	.58	.06	1.78***	.51	.25	1.66*	.22	1.25	.40	1.49*	
Hispanic	-.01	.00	0.99***	-.01	.00	0.99***	-.03	.01	0.97***	-.02	0.98**	-.02	0.98***	
Age														
Gender														
Female	.01	.06	1.01	.38	.04	1.47***	.83	.25	2.30***	.61	.21	1.60*	.16	1.93***
Male														
Control Variables														
Court workload	.00	.00	1.00***	.00	.00	1.00***	.00	.00	1.00†	.00	.00	1.00	.00	1.00*
Percent urban	.00	.00	1.00	-.01	.00	0.99***	.00	.01	1.00	.00	.00	1.00	.00	1.00
Percent black	.01	.00	1.01***	.01	.00	1.01***	-.02	.02	0.98	.00	.01	1.00	-.01	0.99*
Percent age 18-24	-.19	.02	0.82***	-.02	.01	0.98**	-.07	.08	0.93	.03	.03	1.03	.00	1.00
Percent Republican	.03	.00	1.03***	.01	.00	1.01***	.01	.03	1.01	.01	.01	1.01	.01	1.01
N		13,925			48,564			2,465		1,516			3,981	
Model Chi-Square ^a		4,261			14,561			467		87			550	
Model Accurate														
Prediction Rate		69%			74%			70%		64%			67%	

† $p \leq .10$ * $p < .05$ ** $p < .01$ *** $p < .001$

^a Model chi square values demonstrated that each model was significant at the .001 level

alone employ race for upward departures, but both judges (particularly at bench trial) and prosecutors continue to make use of Hispanic ethnicity.

AGE AND GENDER

The results for age and gender follow a more predictable pattern. Differences in age effects across modes of conviction appear small but once again have the potential to be substantively large. For negotiated pleas, for instance, the odds of a 65-year-old offender receiving an upward departure would be .77 times the odds of a 20-year-old offender, whereas for bench trials the odds of a 65-year-old offender would be only .28 times the odds of a 20-year-old. Statistical tests demonstrate that the impact of age on upward departure decisions is significantly greater for trials than for pled cases. Whereas judges appeared to be somewhat reluctant to employ patterned responses that are tied to race when considering upward departures, they continue to use patterned responses tied to age.

Similar conclusions may be drawn from an examination of the gender effects in Tables 6 and 7. For non-negotiated pleas, gender is not a significant predictor of upward departure, but its effects are considerable for the other conviction categories. For negotiated pleas, being male increases the odds of upward departure by 47%, whereas for bench and jury trials the odds ratio is increased by 130% and 60% respectively. For the combined bench and jury trial category, being male increases the overall odds of upward departure by 93%. These gender effects are significantly greater for negotiated pleas compared to non-negotiated pleas, and they are significantly greater for trials compared to both negotiated and non-negotiated pleas. While age and gender tend to have relatively small effects for non-negotiated pleas, then, they have substantial effects for other cases, the largest of which tend to be associated with bench and jury trials.

LEGAL VARIABLES

Contrary to the downward departure analysis, offense severity and criminal history exert consistent influence across modes of conviction in the upward analysis (though they were not statistically significant predictors for bench trials or the combined bench/jury trial category). Increases in offense severity and criminal history both tend to be associated with decreased odds of upward departure, implying that the more serious the offense and the lengthier the criminal history the less chance the offender will receive a sentence above the standard guideline recommendation. Comparisons of these coefficients across models revealed that the effects of both offense severity and criminal history were significantly different for negotiated pleas compared to other cases, while the effect of offense severity was significantly different for non-negotiated pleas and trials as

well. Legal variables clearly had greater effects for negotiated pleas compared to trials, and although there was no significant difference between non-negotiated pleas and trials for criminal history, the effect of offense severity was significantly greater for non-negotiated pleas. Overall, then, legal factors appear to have greater effects on upward departures for cases convicted through guilty pleas than cases convicted through trials (though legal factors were significant predictors at jury trial).

While the results from the upward analysis were in some ways consistent with the downward analysis, then, they were in many ways unique. For at least some conviction types, the upward analysis supported the finding that male offenders, minority offenders, and younger offenders have increased odds of receiving sentences above the recommended range. Still, the findings for the upward analyses differed from the downward analyses in some important ways. The effect of race, for instance, was somewhat surprising. While age and gender were consistently related to the odds of upward departure, being black emerged as a statistically significant factor only for negotiated pleas, while Hispanic ethnicity was a significant factor for both negotiated pleas and trials (particularly bench trials). Apparently when judges are free to exercise increased discretion, the use of racially patterned responses is somewhat limited to downward departures, whereas when prosecutors are free to exercise increased discretion racially patterned responses are applied to both downward and upward departure decisions.

DISCUSSION

Albonetti (1991) contends that courtroom actors are often forced to make decisions based on insufficient information. In an attempt to reduce uncertainty, they rely on patterned responses that are based on past experience, stereotypes, and prejudices. Similarly, Steffensmeier et al. (1998) argue that sentencing judges must simultaneously consider numerous factors and diverse sentencing goals. Some decisions may be dominated by organizational efficiency concerns while others are influenced by offender-and-case specific attributes. When determining sentencing outcomes, judges (and other courtroom actors) may therefore consider extralegal attributes in addition to numerous other factors. To the extent that this is true, cases that reflect increased freedom for courtroom actors to exercise discretion should be associated with the greatest influence from extralegal factors. The present work set out to test this proposition by elaborating upon the focal concerns theory of sentencing to include expectations about the distribution of courtroom discretion across different modes of conviction.

The present study found mixed support for its hypotheses. According to

focal concerns theory, legal variables should dominate sentencing decisions (H1). That was not the case in the present analyses, however. While this expectation is straightforward for analyses of incarceration and sentence length, its applicability to studies of departures from the sentencing guidelines is more ambiguous. As Engen and Gainey (2000) and Ulmer (2000) pointed out, when the guideline presumptive sentence is controlled, legal variables take on a new meaning. By operationalizing departures as deviations from the presumptive sentence, the ordinarily strong effects of offense severity and prior criminal history are parceled out, making it not that surprising that their effects are overshadowed by extralegal variables such as mode of conviction and race/ethnicity.¹³ Moreover, the effects of legal variables were often observed in unexpected directions. Offenders convicted of more serious offenses and offenders with longer prior records often received beneficial treatment in terms of the likelihood of receiving both downward and upward departures.

This finding contrasts with prior research on departures for serious, violent offenders in Pennsylvania (Kramer and Ulmer, 1996) but is congruent with research in other states that has found inconsistent and unexpected relationships for legal variables on departures. For instance, Moore and Miethe's (1986) study of the Minnesota guidelines similarly found that offense severity was positively related to departures below the guidelines and negatively related to dispositional departures above the guidelines. They interpreted these findings as evidence for a process of adjustment designed to "bring the actual sentence more in line with what judges and other criminal justice officials may consider an appropriate sanction for the crime or person involved" (Moore and Miethe, 1986: 269). A similar process may be occurring in Pennsylvania, especially in the wake of recent guideline changes that have increased sentencing severity for certain groups of serious offenders. The recent implementation of "3 strikes" legislation, for instance, resulted in a 10 year minimum sentence for second-time violent offenders and a 25 year minimum sentence for third-time offenders, which may be seen as unduly harsh, resulting in courtroom actor adjustments to guideline recommendations. As Savelsberg (1992) suggested, it should not be surprising that courtroom actors sometimes reject formally rational guideline recommendations in favor of substantively rational considerations, especially when the appropriateness of the

13. This conclusion, however, is somewhat contingent upon departures being defined as sentences outside the standard sentencing range which includes mitigated and aggravated ranges as departure sentences. Alternative analyses in which these intermediate ranges were coded as standard conformity resulted in somewhat stronger legal effects. It may be the case, therefore, that legal effects are more influential when courtroom actors are considering departures outside the aggravated and mitigated ranges than when they are considering departures from the standard range.

guideline recommendation is in question (see also, Ulmer and Kramer, 1998). The lack of strong findings for legal variables in the present study, then, may be related to the fact that departures inherently control for some of the effect of legal variables, or it may be an indicator of courtroom actor adjustments to guideline recommendations, as some previous research suggests, but future research is needed to further clarify this complex relationship.

Also according to focal concerns theory, offenders who go to trial should receive more severe sentences than offenders who plead guilty (H2). In addition, negotiating a plea should mitigate sentence severity. These expectations received considerable support in the present study, and were consistent with prior research on mode of conviction effects for departures (Frase, 1993; Kempf-Leonard and Sample, 2001; Kramer and Ulmer, 1996). For downward departure decisions, negotiating a plea increased the likelihood of departure, while going to bench or jury trial decreased this likelihood, relative to non-negotiated pleas. For upward departure decisions, negotiating a plea reduced the likelihood of departure while going to jury trial increased it. Going to trial likely signifies a lack of remorse and rehabilitative potential, which translates into increased severity at sentencing. However, this finding did not hold true for bench trials in the upward analysis, highlighting the importance of separately examining bench and jury trials when possible, as well as the importance of understanding contextual variation in sentencing procedures. Because bench trials are utilized as non-negotiated guilty pleas in Philadelphia County (Ditzen, 1997), they may represent a different sentencing process.

The remaining hypotheses dealt specifically with sentencing differences across modes of conviction. Because different modes of conviction likely reflect the exercise of discretion by different courtroom actors at sentencing, I hypothesized there would be noticeable differences in legal and extralegal effects for cases convicted in different ways. Table 6 demonstrated that the effects of several legal and extralegal variables did differ significantly across modes of conviction. Specifically, I expected non-negotiated pleas to be associated with relatively large legal effects and small extralegal effects relative to other conviction categories (H3). While negotiated pleas were generally influenced most strongly by legal factors, both non-negotiated and negotiated cases overall demonstrated greater legal effects than trial cases, offering some support for the hypothesis. Also in support of the hypothesis, non-negotiated pleas were consistently associated with relatively small extralegal effects, with the possible exception of gender in the downward analysis, where the effect was significantly larger than for negotiated pleas. Overall, though, non-negotiated pleas tended to be characterized by larger legal effects and smaller extralegal effects relative to trials.

Additionally, I expected negotiated pleas to be associated with large extralegal effects relative to non-negotiated pleas and large legal effects relative to trials (H4). As noted, legal effects were generally greatest for negotiated pleas and extralegal effects were often large, though they were not always statistically different for some mode of conviction contrasts. Still, as expected, negotiated pleas demonstrated strong effects for both legal and extralegal factors. My expectation that trials would be associated with relatively large extralegal effects and relatively small legal effects compared to non-negotiated pleas, though, was only partially supported by the data (H5). While race demonstrated relatively large effects for trial cases compared to non-negotiated pleas in the downward analysis, its effect was considerably less than for negotiated pleas in the upward analysis. Moreover, offense severity surprisingly had a larger effect on trials than non-negotiated pleas in the downward analysis.

Finally, I expected extralegal effects to be larger for bench trials than jury trials (H6). This expectation was grounded in the fact that jury trials tend to be characterized by more complete information (Ulmer, 1997) and therefore judges should be less constrained by "bounded rationality" and relatively less reliant on patterned responses. This hypothesis was supported in the upward departure analysis, but not in the downward analysis. Bench and jury trials demonstrated similar extralegal effects for downward departures, but extralegal factors exerted stronger effects on upward departures for bench trials. This may be the result of the use of bench trials as open pleas in some jurisdictions (Ditzen, 1997), which may serve to deflate mean extralegal influences for downward departures at bench trial. However, further research is necessary to substantiate this possibility.

Overall, the present findings demonstrated that there are important differences in the effects of both legal and extralegal variables across modes of conviction. Variations in the exercise of courtroom discretion across conviction types provide one useful theoretical framework for interpreting these differences. To the extent that negotiated pleas and trials reflect the increased exercise of courtroom actor discretion by prosecutors and judges respectively, these types of cases may tend to be characterized by greater reliance on patterned responses tied to stereotypical offender attributes. The increased prominence of patterned responses, then, are likely to influence courtroom actors' assessments of particular offender-based focal concerns, such as blameworthiness and dangerousness, resulting in differential odds of departure for certain categories of offender. While future research is needed to further specify the intricate ways that particular focal concerns are related to cases convicted in different ways, the present findings provide some tentative support that the mode of conviction provides

an important contextualizing influence over the courtroom decision-making process.

CONCLUSION

In a recent article, Kramer and Ulmer (1996) identified judicial departures as an important locus of unwarranted sentencing disparity (see also Frase, 1993; Griswold, 1987; Moore and Miethe, 1986). The present study extends their work by further detailing the subtle ways that disparate sentencing outcomes are related to courtroom discretion and the mode of conviction. Whereas Kramer and Ulmer concluded that legally prescribed factors exerted the most influence on departure decisions, the present results suggest a lesser role for legal variables, especially for downward departures, and a greater role for extralegal variables including race/ethnicity. This discrepancy may be the result of several factors. Kramer and Ulmer separately examined dispositional and durational departures whereas the present analysis conceptualizes sentencing under presumptive guidelines as a single decision (see Bushway and Piehl, 2001). Their research focused on only thirteen serious offenses whereas the present work examines all possible departure offenses. Their coding of departures did not include mitigated and aggravated sentences, and supplementary analyses suggest that legal factors may be weaker predictors of these intermediate ranges. And finally, recent sentencing guideline revisions have introduced significant changes in which sentencing ranges were narrowed, legal factors were rescaled, and weapon enhancements were altered, all of which may have resulted in courtroom actors reacting to new guideline recommendations with which they disagree by adjusting their sentencing behavior (Moore and Miethe, 1986).

Despite these differences, though, the present results lend support to the growing literature that concludes that departures from sentencing guidelines serve as an important locus of extralegal sentencing disparity (Albonetti 1997; 1998; Frase, 1993; Kempf-Leonard and Sample, 2001; Kramer and Ulmer, 1996; Moore and Miethe, 1986; Mustard, 2001). The current study finds that black and Hispanic defendants have a decreased likelihood of receiving downward departures and an increased likelihood of receiving upward departures, compared to whites. Men have a decreased odds of receiving downward departures and an increased odds of receiving upward departures, in comparison to women, and younger offenders have an increased odds of upward departures and a decreased odds of downward departures in comparison to older offenders.

Although this pattern is rather consistent, the magnitude of the disadvantage is often contingent upon the mode of conviction. The effect of being black on downward departure, for instance, is significantly greater

for defendants who went to trial compared to those convicted through non-negotiated pleas. Many effects also differed markedly according to whether the departure was below or above the recommended range. Being black had notable effects on downward departure for several modes of conviction but only produced strong effects on upward departures for negotiated pleas. This suggests that the mechanisms at work when courtroom actors consider departure decisions may be different depending on whether they are contemplating increased leniency or severity. This may be related to the fact that there are different appeal processes tied to the different types of departures (e.g. defense counsel would be more likely to appeal an upward departure than a downward departure), or it may reflect the unique emphasis of different focal concerns for each decision.¹⁴ In any case, future research is needed to better understand the specific dynamics that distinguish downward and upward departure decisions. Ideally, qualitative research methods should be applied in conjunction with quantitative methods to further disentangle these subtleties, and to better understand procedural variations in the ways that formal policies are filtered through local legal cultures (Ulmer and Kramer, 1998; Salvendy, 1992).

Future research should also attempt to replicate these findings under additional specifications of sentencing models. As noted, it is possible to conceptualize departures as a two-stage decision making process, and mitigating and aggravating ranges may be defined as standard sentences (Kramer and Ulmer, 1996). Further distinctions can also be identified among different types of pleas (e.g. charge pleas, judicial pleas, sentence recommendation pleas) (Padgett, 1985), but the PCS data that I analyze only identifies non-negotiated and negotiated pleas. It would also be useful to differentiate defendants who initially pled not guilty and then subsequently changed their plea, though this information is also unavailable in the current data. To the extent that specific distinctions such as these are related to the courtroom decision-making process, then, our understanding of the conditional effects of race/ethnicity and other factors remains somewhat limited. Future research should therefore continue to investigate these and other distinctions, especially as they relate to the changing nature of sentencing processes under continually evolving guideline systems.

In sum, the relationship between sentencing disparity and departures is

14. Downward departures tend to occur with greater relative frequency (39.2% of eligible cases versus 16.3% of eligible cases for upward departures), and they are more likely to be tied to perceptions of dangerousness and predictions of future behavior (following a rehabilitation/incapacitation model of punishment) whereas upward departures are more closely tied to aspects of the offense, like the offender's role in the crime (following a just desserts or retributive model of punishment). For an elaboration, see Kramer (unpublished).

inherently complex. Prior research demonstrates the importance of investigating various interactions among different sentencing variables (e.g. Albonetti 1997; 1998; Spohn and Holleran, 2000; Steffensmeier et al., 1998). The present study furthers this research by detailing the subtle ways that different modes of conviction moderate the effects of race/ethnicity and other sentencing factors. In addition, it also highlights the importance of considering other key actors of the courtroom workgroup, such as the prosecutor, in the courtroom decision-making process. Future research should continue to explore these and other subtleties related to the sentencing of criminal offenders, for the present study suggests that ignoring them may obfuscate results and reduce one's ability to successfully interpret sentencing outcomes, especially as they relate to the exercise of courtroom discretion under presumptive sentencing guidelines.

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APPENDIX – 1994 Sentencing Guidelines Matrix
Prior Record Score

Level	Offense Gravity Score	0	1	2	3	4	5	RFEL	REVOC	AGG/MIT
LEVEL 4 Incar	13	60-120	66-120	72-120	78-120	84-120	90-120	96-120	120	+/-12
	12	54-72	54-75	60-78	66-84	72-90	78-96	84-102	120	+/-12
	11	42-60	45-63	48-66	54-72	60-78	66-84	72-96	120	+/-12
	10	30-48	33-51	36-54	42-60	48-66	54-72	60-84	120	+/-12
LEVEL 3 Incar Cnty Jail/ RIP trade	9	8-20	12-27	15-30	21-36	27-42	33-48	39-60	NA	+/-6
	8	6-18	9-21	12-24	18-30	24-36	30-42	36-48	NA	+/-6
	7	4-12	7-15	10-18	16-24	22-30	28-36	34-42	NA	+/-6
	6	3-9	6-11.5	9-15	12-18	15-21	18-24	21-27	NA	+/-3
LEVEL 2 Incar RIP RS	5	RS-6	1-6	3-9	6-11.5	9-15	12-18	15-21	NA	+/-3
	4	RS-3	RS-6	RS-9	3-9	6-11.5	9-15	12-18	NA	+/-3
	3	RS-RIP	RS-3	RS-6	RS-9	3-9	6-11.5	9-15	NA	+/-3
LEVEL 1 RS	2	RS	RS	RS-RIP	RS-3	RS-6	1-6	3-9	NA	+/-3
	1	RS	RS	RS-RIP	RS-RIP	RS-3	RS-6	RS-6	NA	+/-3

1. When an offender meets the statutory criteria for boot camp, the court should consider authorizing the offender as eligible.
2. Shaded areas of the matrix indicate restrictive intermediate punishment may be imposed as a substitute for incarceration.
3. When RIP is appropriate, the duration of the RIP program shall not exceed the guideline ranges.
4. When the range is RS through a number of months (e.g., RS-6), RIP may be appropriate.
5. When RIP is the upper limit of the recommendation (e.g., RS-RIP), the length of RIP shall not exceed 30 days.

Key:

- AGG = Aggravated Sentence Addition MIT = Mitigated Sentence Subtraction
 CNTY = County REVOC = Repeat Violent Offender Category
 INC = Incarceration RFEL = Repeat Felony I and Felony II Offender
 RS = Restorative sanctions RIP = Restrictive intermediate punishments