

CONTEXTUAL DISPARITIES IN GUIDELINES DEPARTURES: COURTROOM SOCIAL CONTEXTS, GUIDELINES COMPLIANCE, AND EXTRALEGAL DISPARITIES IN CRIMINAL SENTENCING¹

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This study examines the theoretical and empirical linkages between criminal court social contexts and the judicial use of sentences that deviate from the recommendations of sentencing guidelines. Individual sentencing data from the Pennsylvania Commission on Sentencing (PCS) are combined with county-level measures of social context to examine predictions about the role courtroom characteristics play in judicial departures. Results from hierarchical analyses suggest that the likelihood of departure varies significantly across courts, even after accounting for variations in individual case characteristics. Several measures of courtroom social context—including the size of the court, its caseload pressure and the overall guidelines compliance rate—are significantly related to the individual likelihood of receiving a departure sentence. Moreover, the social context of the court also conditions the influence of various individual-level sentencing considerations. Findings are discussed in relation to contemporary theoretical perspectives on courtroom decision making and future directions for research on contextual disparities in criminal sentencing are suggested.

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In line with changing philosophies toward crime and punishment (Feeley and Simon, 1992), the sentencing of criminal offenders has been dramatically transformed. In particular, the widespread implementation of statewide sentencing guidelines has reshaped the modern landscape of criminal sentencing (Tonry, 1987). Recent research, for instance, increasingly highlights the importance of examining sentences that depart from guideline recommendations as a critical “window of discretion” contributing to extralegal disparities in the criminal justice system (Engen, Gainey, Crutchfield and Weis, 2003; Johnson, 2003; Kramer and Ulmer, 1996). At the same time, modern sentencing research can be characterized by its continued interest in the impact that contextual factors exert on criminal sentencing outcomes (Dixon, 1995; Myers and Talarico, 1987; Ulmer and Johnson, 2004). In fact, some scholars have argued that a new appreciation for the importance of social context is one of the defining characteristics of modern research on criminal sentencing (Zatz, 1987).

Despite the growing interest in both judicial departures and courtroom social contexts, though, little is known about the potential ways judicial adherence to guidelines varies across courts. Whereas prior work has separately examined guideline departures and contextual effects in sentencing, the intersection of these two contemporary research questions offers a unique opportunity to further current knowledge on courtroom decision-making processes and outcomes. This study addresses the intersection by offering a first look at the extent to which guideline departures vary across courts and at the degree to which they are associated with different courtroom and community social characteristics. This investigation is particularly salient given that one of the explicit goals of sentencing guidelines is to provide uniformity in sentencing outcomes across judges and courts (Tonry, 1987). To the extent that guideline departures are both disproportionately applied to different categories of offenders and associated with local variations in courtroom contexts, they may result in both individual and contextual disparities in sentencing. By investigating guideline departures across courtroom contexts, then, this study holds the potential to inform modern discourse on the effectiveness of guideline sentencing practices, as well as contributing to the continued debate over the prevalence and locus of unwarranted disparities in criminal sentencing.

GUIDELINES DEPARTURES ACROSS CONTEXTS

Over the past quarter century, more than twenty-five states and the federal government have experimented with structured sentencing guidelines. Though the formal mechanics of these systems vary considerably, they share the goals of limiting judicial discretion, reducing

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unwarranted disparities and increasing uniformity in sentencing by tying sentencing recommendations to the severity of the offense and prior criminal history of the offender (Tonry, 1987). Guidelines were designed in part to ensure similar outcomes for similarly situated offenders, regardless of when, where or by whom they are sentenced (Kramer and Scirica, 1986). Despite consensus that guidelines have attenuated disparate treatment (Kramer and Lubitz, 1985; Miethe and Moore, 1985; USSC, 1991), though, little is known about cross-court variations in adherence to sentencing guidelines or about the potential consequences of such variations for exacerbating unwarranted disparities in criminal sentencing.

Research suggests that the social context of the court has an important influence on courtroom decision making. That is, judges and other courtroom actors do not make decisions in a social vacuum but are significantly influenced by their social, political and organizational environment. To the extent that they are, then, sentencing processes are likely to vary across courts. These variations can be substantial because, as Ulmer and Johnson explained, "if the sentence one receives and the grounds for that sentence depend on location, then the notions of equal justice that underlie most Western legal systems may be undermined" (2004: 137).

Evidence for the importance of social context in sentencing comes from two related sources. A number of studies provide in-depth treatments of criminal court case processing in a few jurisdictions (Eisenstein, Flemming and Nardulli, 1988; Nagel and Schulhofer, 1992; Nardulli, Eisenstein and Flemming, 1988). Meanwhile, empirical work continues to conduct large-scale statistical analyses of direct measures of courtroom contexts (for example Britt, 2000; Myers and Talarico, 1987; Ulmer and Johnson, 2004). Although specific findings are often inconsistent across studies, the collective evidence suggests that various elements of the courtroom social context matter. Recent empirical work, for instance, has reported significant findings for urbanization (Britt, 2000; Johnson, 2003; Kempf and Austin, 1986), bureaucratization (Dixon, 1995), court size (Ulmer, 1997; Ulmer and Johnson, 2004), age structure (Kramer and Steffensmeier, 1993), unemployment (Myers and Talarico, 1987), racial composition (Crawford, Chiricos and Kleck, 1998; Johnson, 2003), political party identification (Helms and Jacobs, 2002), crime rates (Crawford et al., 1998), guideline departure rates (Kautt, 2002) and courtroom resources (Mears, 1998; Ulmer and Johnson, 2004). Not only do these studies highlight the importance of a number of environmental factors, but they also suggest that the courtroom social context exerts important conditioning influences on individual decision-making processes, resulting in additional variation in criminal sentencing outcomes across county-level courts.

A largely separate vein of research has increasingly examined the importance of judicial departures from guideline recommendations in understanding extralegal differences in criminal sentencing (Albonetti, 1997; Engen et al., 2003; Frase, 1993; Johnson, 2003; Kempf-Leonard and Sample, 2001; Kramer and Steffensmeier, 1993; Kramer and Ulmer, 1996; Moore and Miethe, 1986; Mustard, 2001). Despite important differences in the ways that departures have been investigated,² this collective research not only suggests that “judicial departures” are an important source of extralegal sentencing disparity, but it has often concluded they are *the primary* source of unwarranted differences (Albonetti, 1997; Kramer and Steffensmeier, 1993; Mustard, 2001). For example, Mustard (2001: 285) recently concluded that federal “disparities are primarily generated by departures from the guidelines, rather than differential sentencing within the guidelines.” This conclusion, in concert with evidence on the important influence of contextual effects in sentencing, highlights the essential need for research examining contextual variations in the application of departure sentences across courts.

Most research on guideline departures has either not attempted to control for contextual influences (see Griswold, 1987; Moore and Miethe, 1986; Mustard, 2001) or has relied on a series of dummy variables to account for possible jurisdictional differences (see Albonetti, 1997; Engen et al., 2003; Frase, 1993). Results from the latter have proved interesting. Frase, for instance, in his evaluation of the Minnesota guidelines, reported that the largest county had significantly greater odds of dispositional departure than the rest of the state (1993). In Washington State, Engen and colleagues found that dummy variables representing the thirty superior court districts explained between 2 percent and 6 percent of the variation in their departure outcomes (2003), whereas Kramer and Ulmer (2002) concluded that five distinctive counties emerged in Pennsylvania that were about two to three times as likely as the rest of the state to grant downward departures to serious, violent offenders. Interestingly, Kramer and Ulmer (2002) noted that these counties shared some contextual features but differed on others, making it difficult to draw conclusions on the causes of these variations.

2. Research, at times, has utilized departure sentences as independent or interactive variables (Albonetti, 1997), has separately examined dispositional and durational departures (Kramer and Ulmer, 1996), has included mitigating and aggravating ranges in departure categories (Johnson, 2003), has grouped different types of departure together (Kempf-Leonard and Sample, 2001), or has focused on departure alternatives such as structured sentencing options (Engen et al., 2003). Individual discrepancies in prior research findings likely reflect these differences, as well as important variations in the standards and procedures established for utilizing departure sentences across different guidelines systems.

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Collectively, this work suggests that important differences among jurisdictions in departure sentences exist, but additional research is needed to “explore further the influence of court cultures, resources, and structural conditions that may affect the use of... departures” across courtroom contexts (Engen et al., 2003: 122).

Because the goal of much research has been to control for jurisdictional differences in order to better assess the individual likelihood of departure, little is known about the causes or consequences of between-county variations in deviations from guideline recommendations. Only three extant studies of guideline departures have included contextual predictors. The first, conducted by Kramer and Ulmer (1996), suggested that judicial departures were associated with small but significant effects from percent urban and percent Republican, as well as the age composition of the county. In particular, judges in more urban counties were more likely to sentence offenders below the guidelines. In the second study, the same authors found that downward departures for serious, violent offenses were more likely to occur in medium and large courts than in small (Kramer and Ulmer, 2002), though other court characteristics were not examined. Finally, Johnson (2003) examined judicial departure decisions according to different modes of conviction and reported significant influences from additional contextual predictors, including the courtroom caseload and percent black in the community. Particularly noteworthy was the finding that courts with higher caseloads were more likely to grant downward departures and less likely to sentence offenders above the guidelines.

Although existing research offers an important backdrop for this study, it has been limited in at least one of three important ways. First, studies examining context effects in criminal sentencing generally have been limited to traditional sentencing outcomes such as the likelihood and length of incarceration. Second, research that has focused on judicial departures typically includes few if any macro-level variables and has only incorporated them as controls rather than theoretical measures of interest. Third, the limited work that includes contextual influences in departure decisions has relied on potentially problematic statistical techniques that fail to account for the nested nature of sentencing data. Although not all prior research suffers from each of these limitations, no extant study has utilized appropriate modeling techniques to investigate the importance of contextual variations in the judicial use of guideline departures across courtroom contexts. This study offers such an investigation, guided by multiple predictions drawn from several contemporary theoretical perspectives on criminal sentencing.

THEORETICAL PERSPECTIVES ON GUIDELINES DEPARTURES AND DISPARITY

FORMALLY RATIONAL GUIDELINES AND SUBSTANTIVELY RATIONAL DEPARTURES

Sentencing guidelines represent a fundamental conflict in the exercise of social control in society in that they attempt to balance the competing goals of uniformity and individualization of criminal punishment. Contemporary theorizing argues that sentencing guidelines represent “formally rational” decision-making criteria, filtered through the “substantive rationality” of individual courtroom actors (Ulmer and Kramer, 1996; Savelsberg, 1992). Formally rational law occurs when courtroom decision making is guided by legal factors governed by explicit and consistent rules of action; that is, under formally rational sentencing, “sentencing outcomes are primarily the result of legal rules and criteria applied equally to all classes and races” (Dixon, 1995: 61). Substantively rational law, on the other hand, is guided by nonlegal factors individually applied to particular cases, with a focus on outcomes rather than processes (see Savelsberg, 1992). As Ulmer and Kramer stated it, “substantive rationality in sentencing entails consideration of defendant’s particularistic circumstances, needs, or characteristics, as well as the practical consequences of sentences for individuals and organizations” (1996: 384). Because sentencing guidelines require judges to sentence within ranges specified by explicit legal criteria, they encourage uniformity in sentencing by establishing formally rationale decision-making criteria.

Although formal guideline recommendations encourage uniformity in outcomes, they do not altogether eliminate judicial discretion. A number of “serious structural and cultural impediments” (Savelsberg, 1992: 1347) prevent the wholesale and uniform adoption of formally structured sentencing processes. As Kramer and Ulmer argued, “the substantive rationality of local contexts and individual interests, concerns, ideologies and biases may tend to subvert formally rational decision-making criteria like sentencing guidelines” (2002: 902). Because courtroom actors at least partly internalize the substantive rationales of local courts, they will be reluctant to follow formal decision-making rules that conflict with existing sentencing standards. Judges in particular will be reluctant to adopt criteria that considerably limit their own autonomy. This suggests that courtroom actors are likely to search for ways to circumvent decision-making criteria that conflict with the cultural norms and organizational expectations of the court.

Arguably, the primary mechanism through which courtroom actors circumvent the formal recommendations of sentencing guidelines is

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through departure sentences that deviate from recommendations.³ Departure sentences represent an explicit rejection of formally rational sentencing criteria in favor of substantively rational considerations (Savelsberg, 1992). Judges electing to sentence outside of recommendations are increasing judicial discretion and returning to the individualized sentencing schema that guidelines were designed to constrain. In short, guideline departures reintroduce significant judicial discretion into the courtroom decision-making process, which, as discussed below, allows for the reconsideration of extralegal sentencing criteria that may result in potentially disparate treatment of similarly situated offenders.

STEREOTYPICAL ATTRIBUTIONS AND FOCAL CONCERNS

Recent perspectives on criminal sentencing emphasize the fact that judges and other courtroom actors operate under time and information constraints that prevent them from perfect assessment of the likelihood of future offender behavior. Drawing from the organizational literature, Albonetti referred to this state of constrained courtroom decision making as bounded rationality. She argued that

sentence severity is a product, in part, of judicial attempts to reduce the uncertainty of imposing a sentence that satisfies both the deterrent and just deserts goal of punishment by relying on 'patterned responses' (March and Simon, 1958; Simon, 1957) that are themselves the product of an attribution process influenced by causal judgments differentially linking specific defendant groups to future criminal involvement (1991: 797).

Under conditions of bounded rationality, then, courtroom actors rely on decision-making shortcuts, or patterned responses, that link extralegal offender characteristics to the likelihood of future criminality.

Similarly, Steffensmeier and colleagues have argued that sentencing outcomes result from judicial consideration of three primary focal concerns: blameworthiness or culpability, dangerousness and risk of future crime, and individual offender and organizational sentencing constraints (see Steffensmeier, Kramer and Ulmer, 1998; Steffensmeier and Demuth,

3. There are also other, less visible forms of guideline circumvention. For instance, prosecutorial discretion to charge bargain cases before they come to court is often utilized to adjust sentencing outcomes (Savelsberg, 1992; Nagel and Schulhoffer, 1992). Additional methods through which courtroom actors actively craft substantively rational sentencing outcomes include a variety of "structured sentencing alternatives" as well as a broad range of intermediate sanctioning options (Engen et al., 2003; Morris and Tonry, 1990) that deserve future attention but are beyond the scope of the present work.

2000; Ulmer and Johnson, 2004). Like Albonetti (1991), they posited that extralegal offender characteristics influence sentencing outcomes through courtroom actors' subjective interpretations of dangerousness and risk of recidivism. In addition, they argued that courtroom actors are also influenced by considerations of blameworthiness and, significantly, by the practical constraints and consequences associated with individual offenders, the court and the community at large. Because judges and other courtroom actors make sentencing decisions under time and information constraints, they are likely to rely on stereotypical patterned responses that tie particular offender and offense characteristics to assessments of blameworthiness and dangerousness. At the same time, courtroom decision makers are aware of and responsive to practical considerations surrounding individual offender needs and courtroom management and organizational concerns.

Although courtroom actor reliance on different focal concerns is theorized to be uniform across jurisdictions, the relative emphasis and subjective interpretation of these considerations is likely to vary across court communities (Ulmer and Johnson, 2004). This is because "the meaning, relative emphasis and priority, and situational interpretations of them is embedded in local court community culture, organizational contexts, and politics" that vary across courts (Kramer and Ulmer, 2002: 903). From this perspective, judicial departures can be understood as the result of the complex interplay between formally rational guideline recommendations and substantively rational sentencing concerns, based on varying interpretations of different focal concerns across courtroom communities. The use of judicial departures is likely to vary across courts, then, because courtroom social environments are characterized by differing resources and constraints, and by differing political, social, and organizational contexts, all of which are intricately tied to sentencing decisions (Dixon, 1995).

Moreover, variations in the interpretation of and reliance on different focal concerns should also result in differential emphasis being attached to individual-level sentencing factors. The extent to which different offender characteristics influence departure decisions is likely to vary across courts, in accordance with variations in courtroom assessments of offender culpability and dangerousness. To the extent that courtroom actor interpretations of both formal guideline recommendations and informal focal concerns are enmeshed in locally-varying courtroom community cultures, then, the overall likelihood of departure, as well as the influence of individual sentencing factors on departure decisions, should vary significantly across courts. Therefore, the following is expected:

[H1] Judicial use of guideline departures will vary significantly across courts.

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[H2] The impact of individual-level sentencing factors will vary significantly across courts.

Given that such cross-court differences in sentencing occur, the important research question becomes which theoretically relevant courtroom characteristics are salient predictors of these variations.

ORGANIZATIONAL CONTEXTS AND COURTROOM COMMUNITIES

According to the courtroom community perspective, the size and location of the court are among the most important determinants of courtroom actor behavior (Eisenstein et al., 1988; Nardulli et al., 1988; Ulmer, 1997). Eisenstein and his colleagues argue that the size of the court is related to a number of important organizational characteristics, including the familiarity and stability of the courtroom workgroup, the influence of sponsoring agencies and the level of bureaucratic organization. Social interaction among members of the courtroom community will therefore differ according to the size of the court, resulting in distinctive cultural norms and organizational expectations, including those that guide judicial decisions to depart from sentencing guidelines. Overall, the courtroom community perspective predicts that “sentences in larger jurisdictions will be less severe” (Eisenstein et al., 1988: 278), suggesting that downward departures may be more frequent, and upward departures less frequent, in these courts. In addition, courtroom community theory argues that, over time, cultural norms are likely to become institutionalized in courtroom normative structures. One example may be the overall guideline departure rate of the court (Kautt, 2002). Some county-level courts may develop a lower threshold of acceptability for departing from guideline recommendations, making it less of a stigma for courtroom actors in these courts to sentence outside the guidelines. From a courtroom community perspective, then, both of the following would be expected:

[H3] Large courts will be most likely to grant downward departures and least likely to impose upward departures, while the reverse will be true for small courts.

[H4] Both downward and upward departures will be most likely to occur in courts with higher overall departure rates.

Related theoretical perspectives highlight the importance of additional courtroom characteristics. For instance, the organizational efficiency perspective emphasizes the paramount importance of efficient case disposition (Dixon, 1995). As such, it highlights the need to examine the influence of caseload pressures on courtroom decision-making outcomes. As Dixon argued, “the sentencing theory that emerges from this approach

defines efficient case disposition as the operational goal that maintains a stable and orderly sentencing system” (1995: 1162). According to the organizational efficiency perspective, judges and other courtroom actors share the goal of disposing of cases and maintaining manageable caseloads. More lenient outcomes are expected to occur in courts with greater caseload pressures and lower trial rates. Heavy caseloads necessitate expedient case disposition, which may be accomplished through greater leniency at sentencing. In addition, high trial rates jeopardize courtroom efficiency and thus may result in greater severity at sentencing. Therefore courtroom efficiency theory suggests the following:

[H5] Caseload pressure will be positively related to downward departures and negatively related to upward departures.

[H6] Trial rates will be positively related to upward departures and negatively related to downward departures.

The relative influence of trial conviction may also be related to the structural characteristics of the court. From an organizational efficiency perspective, trial penalties should be greatest when courts are experiencing higher trial rates. Similarly, high caseloads should be associated with greater case efficiency concerns resulting in stiffer penalties being meted out for offenders convicted at trial. In addition, the size of the court may condition the trial effect. As courtroom community theory suggests, different sized courts are likely to adopt different case processing strategies that may result in different penalties being associated with trial conviction (Ulmer, 1997). Given expected patterns of sentencing leniency in larger courts, the trial penalty is expected to be less in these contexts. Organizational efficiency theory, in conjunction with the court community perspective, therefore predicts the following:

[H7] The trial penalty will be greater in courts with higher trial rates.

[H8] The trial penalty will be greater in courts with higher caseload pressure.

[H9] The trial penalty will be smaller in large courts.

In addition to the caseload pressure of the court, the caseload composition of the court is also likely to influence judicial departure decisions. That is, not only are the numbers of cases on the docket important, but so are the types of cases. As Emerson persuasively argued, sentencing decisions are not only the result of the immediate facts presented to the court, but also of “the makeup of the overall ‘stream of cases’” the court experiences (1983: 426). From this perspective, the caseload composition of the court “provides a background against which the classification of particular cases in organizationally relevant ways will be made” (Emerson, 1983: 426). In other words, individual sentencing

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decisions are influenced by the overall context of courtroom cases relative to the particular organizational constraints and demands of each court community. The salience of violent crime caseloads may be particularly noteworthy. Courts sentencing high volumes of violent crime may evaluate the seriousness of individual violent acts differently from courts sentencing relatively low rates of violent crime. As Eisenstein and colleagues argued, in smaller jurisdictions, serious offenses “form a smaller proportion of the court’s work” and therefore these “crimes are *relatively* more serious” (1988: 271, emphasis added). Though not a new concept, the importance of a holistic caseload approach to understanding courtroom decision making has been overlooked in many prior theoretical and empirical treatments of criminal sentencing. This work suggests the following:

[H10] The effect of a violent crime will be less in courts with larger violent crime caseloads.

One final courtroom characteristic that has theoretical import for the study of guideline departures is the availability of local courtroom resources. Courtroom resources have been identified as a crucial organizational constraint associated with the focal concerns theoretical perspective. If judges are aware of resource constraints, as suggested, then a lack of criminal justice resources may influence judicial use of departures. In particular, judges may be especially reluctant to incarcerate offenders in the absence of available jail capacity (D’Alessio and Stolzenberg, 1997), which is especially likely to manifest itself in the judicial use of downward departure sentences. Therefore the following is expected:

[H11] Available jail capacity will be inversely related to the odds of downward departure.

COMMUNITY CONTEXTS AND COURTROOM SOCIAL ENVIRONMENTS

Finally, several theoretical perspectives also suggest that sentencing outcomes are influenced by elements of the surrounding community social environment. Traditional conflict theories have long argued that individuals who do not share the class characteristics of court officials will be punished more harshly (see Chambliss and Seidman, 1971). More recently, these perspectives have been extended to the community level in the form of racial and economic threat theories that suggest criminal punishment is influenced by the level of threat associated with the relative population size of lower-class groups in the community (Blalock, 1967; Liska, 1992; Bobo and Hutchings, 1996). From this perspective, large populations of racial minorities and of the economically disadvantaged are thought to increase levels of racial and economic threat among the middle

class white majority, resulting in greater severity in criminal punishments. Group threat theories therefore suggest the following:

[H12] The percent minority in the community will be inversely related to the odds of downward departure and positively related to the odds of upward departure.

[H13] The percent unemployed in the community will be inversely related to the odds of downward departure and positively related to the odds of upward departure.

Moreover, some offenders may themselves be viewed as more dangerous in particular social settings. For instance, minority offenders may be punished more severely in social contexts characterized by greater racial threat or more conservative law-and-order punitive philosophies. If larger minority populations or more conservative political climates translate into greater racial threat, then disproportionate racial disparities may occur in communities with larger minority populations and more conservative political constituencies (Helms and Jacobs, 2002). Therefore the following is also expected:

[H14] Percent minority in the community will be inversely related to the odds of minority offenders receiving downward departures and positively related to upward departures.

[H15] Percent Republican will be inversely related to the odds of minority offenders receiving downward departures and positively related to their odds of upward departures.

DATA AND METHODS

Although Pennsylvania provides an instructive context for examining departure sentences, its sentencing guidelines are in some ways unique (see Kramer and Scirica, 1986). Unlike many other systems, these govern the sentencing of both misdemeanor and felony crimes, and are characterized by relatively frequent judicial departures, despite wide presumptive ranges compared to other states. Data on these departure decisions come from the Pennsylvania Commission on Sentencing (PCS), which systematically collects detailed information on all criminal sentencing transactions in the state, including theoretically relevant information on a broad range of offender, offense and case-processing variables. These data have been identified as one of the best sources for studying criminal sentencing outcomes at the state level (Kramer and Steffensmeier, 1993). Despite their strengths, though, they lack information on offender-victim relationships, socioeconomic offender status and information on prior stages of criminal processing—all common weaknesses shared by the vast majority of research on individual sentencing outcomes (Zatz, 2000).

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These individual-level data were extended to include various measures of courtroom and community-level social environments, obtained from a variety of sources including the U.S. Census Bureau, the City and County Metro Statistical Extra, and independently collected data from the county courts. Taken together, these data offer a unique opportunity to assess the impact of a variety of theoretically important contextual influences on judicial decisions to sentence outside of guideline recommendations. Cases in the analysis were limited to those sentenced under the 1997 Pennsylvania Sentencing Guidelines and to those providing necessary information on guidelines conformity and county identifiers. To be consistent with prior research and the sentencing commission's annual reports, the data were also restricted to include only the most serious offense per judicial transaction.

DEPENDENT VARIABLES

The dependent variables in this study are divided into two dichotomous outcomes separately measuring downward and upward departures from the guidelines. Downward departure was coded 1 for all eligible offenders who received a sentence below the guideline recommendation and coded 0 for offenders who received a standard (conforming) sentence. Similarly, upward departure was coded 1 for all offenders who received a sentence above the guideline recommendation and coded 0 for offenders who received standard sentences. Because separate sets of cases are eligible for downward and upward departure, these two decisions are analyzed separately (Johnson, 2003). For certain combinations of offense severity and prior record, downward departures are not possible (that is, if the guidelines recommend restorative sanctions or intermediate punishments as the lower range boundary), but all cases are eligible to receive upward departures. This results in a total of 42,325 cases in the downward departure analysis and 143,102 in the upward.

INDIVIDUAL-LEVEL INDEPENDENT VARIABLES

The independent variables of interest include a variety of individual- and contextual-level sentencing considerations. Individual-level predictors include a multitude of offense, offender and case processing characteristics. Specifically, the sentencing year was coded 1 if the case was sentenced in 1999 and 0 if in 2000. The severity of the offense was measured by the Offense Gravity Score (OGS), which ranged in order of seriousness from 1 to 14. The prior criminality of the offender was measured by the Prior Record Score (PRS), an eight-category scale representing past convictions for misdemeanors and felonies as well as certain juvenile offenses. It ranges from 0 to 8, with the last two categories

reserved for repeat felons and repeat violent offenders. As an additional control for the formal structure of the guidelines, the presumptive sentence (the minimum number of months of incarceration recommended by the guidelines) is also included in the analyses (Engen and Gainey, 2000). The type of offense was measured with dummy variables for violent, property and other offenses, with drug offenses serving as the reference category. The use of mandatory minimums was also captured with a dummy variable, coded 1 if a mandatory sentence was applied and 0 otherwise. Collectively, these factors provide strong controls for legally prescribed courtroom considerations.

In addition to these legal variables, several extralegal variables of interest were also examined. The age of the offender was measured in years at the time of sentencing. The race/ethnicity of the offender was measured with dummy variables distinguishing among blacks, Hispanics and offenders of other races (Asian Americans, Indian Americans, and other or unknown groups), with white offenders serving as the reference. The gender of the offender was measured with a single dummy variable coded 1 if the offender was a female and 0 if male. Last, the mode of conviction was included to account for case processing differences in judicial departure decisions. It was measured with a series of dummy variables distinguishing among non-negotiated pleas, negotiated pleas and trial convictions.⁴

CONTEXTUAL-LEVEL INDEPENDENT VARIABLES

The contextual measures of interest consist of both courtroom characteristics and measures of county-level social contexts.⁵ The size of the court was measured with three dummy variables distinguishing large, medium and small courts, with medium courts serving as the reference.⁶

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4. Because of the prevalence of missing data on the mode of conviction variable, an additional dummy variable was created for missing cases (N=18,172) and included as a separate mode of conviction category. This procedure allowed information from these cases to be included when estimating other regression coefficients without biasing results for modes of conviction. In preliminary models, bench and jury trials were included as separate categories, but the low incidence of both of these conviction types in some counties required they be combined into a single trial category in order to maximize the number of counties for which a unique regression coefficient could be calculated (see Britt, 2000).
 5. Although courtroom factors and county-level factors may be substantively distinct from one another, they coexist at the same operational level of analysis, so they are included jointly as county-level factors. The sixty-seven counties in Pennsylvania are grouped into the sixty judicial districts over which the same judges preside. These judicial districts, then, serve as the county-level of analysis.
 6. Following prior research, this measure of court size was selected in lieu of alternatives (for example county-level urbanization) and is preferable on

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The caseload pressure of the court was measured as the number of total criminal cases in the county divided by the number of sentencing judges in the county (subsequently divided by 100 for ease of interpretability). Similarly, the violent caseload of the court was measured as the number of violent cases sentenced in the county divided by the total number of criminal cases in the county. The trial rate was measured as the percentage of cases convicted through jury trials in each county, while the local jail capacity was created by dividing the total number of jail beds in the county by the number of cases sentenced in the county (multiplied by 10 for ease of interpretability). This measure therefore represents the amount of local jail capacity in each county relative to the number of cases being sentenced by the court. Lastly, the guidelines departure rate was measured as the percentage of total cases in the county that were sentenced outside of the sentencing guidelines recommendation.

In addition to these courtroom characteristics, several county-level measures were also examined. Percent black and percent Hispanic were measured as the number of African Americans and Hispanic Americans in the county divided by the total county population. Percent unemployed was measured as the percent of the civilian labor force (age 16 and older) in the county that was not employed. Percent Republican was measured as the percent of the total votes cast in the county for the Republican candidate in the 2000 presidential election, and the crime-prone age composition of the county was measured as the percent of county residents between 18 and 24 years of age.⁷ Collectively, these variables capture a variety of potentially important contextual considerations in the judicial decision to depart from presumptive sentencing guidelines ranges.

ANALYTIC STRATEGY AND PROCEDURES

This study uses hierarchical linear modeling (HLM) procedures designed to account for the nested nature of criminal sentencing data. Although the details of this approach to criminal sentencing research have been discussed elsewhere (Britt, 2000; Kautt, 2002; Ulmer and Johnson,

conceptual grounds because it approximates real differences in the types of criminal courts that exist across Pennsylvania counties (Ulmer, 1997). Similar results were obtained substituting percent urban for court size.

7. Preliminary analyses also included county-level measures of the overall crime rate and percent violent, property, and drug crimes in the community. However, because these variables were highly related to one another and to fundamental courtroom characteristics like court size, they were removed from the final analyses. Percent black and percent Republican were also correlated with other county-level factors so they were examined for conditioning effects on individual-level factors where theoretically relevant, but omitted from the direct effects models.

2004), it is useful to briefly highlight its advantages, given that it has not been used to assess contextual variations in judicial departure decisions. Hierarchical modeling overcomes several methodological and conceptual difficulties inherent in much prior sentencing research. Because individual offenders are nested within county-level courts, cases sentenced in the same court are likely to share unaccounted-for similarities. Statistically, residual errors are likely to be correlated within counties, violating fundamental assumptions of OLS regression and resulting in misestimated standard errors. HLM overcomes this difficulty by incorporating a unique error term into the equation for each county-level unit of analysis (Raudenbush and Bryk, 2002).

Statistical significance tests from ordinary regression techniques also use the wrong degrees of freedom. Because OLS regression assumes that each higher-order variable operates at the individual level of analysis, it artificially inflates the number of cases for which contextual data is available. Statistical significance tests for contextual factors in prior analyses of judicial departure therefore have been erroneously based on the total number of observations instead of the number of level two units (counties). This means that statistical power is artificially inflated, making prior results biased in favor of finding significant higher-order effects on individual-level outcomes.

Hierarchical modeling properly adjusts the degrees of freedom to represent the available data, and provides additional analytical advantages, such as the ability to address both aggregation bias and heterogeneity in regression effects. Aggregation bias can occur when a variable takes on different meanings at individual and contextual levels of analysis (for example, trial conviction versus trial rate of the court). Heterogeneity in regression coefficients occurs when the effects of individual-level factors vary across aggregate units of analysis. For example, being a minority offender may have a stronger influence on departures in some counties than in others. HLM allows one to explicitly model variations in the effects of individual-level variables across courtroom contexts. Finally, these procedures also allow one to properly assess theoretically important cross-level interactions between individual-level predictors and aggregate county-level characteristics. Collectively, these analytical strengths provide several advantages over prior analyses of contextual variations in judicial departures across courts.

First, unconditional models are estimated to provide a baseline for evaluating subsequent models. Level-1 explanatory variables, centered on their grand means, are then added to assess the influence of individual offender and case characteristics, as well as the degree to which between-county variations in departure are tied to compositional differences in types of cases across courts. These models also provide important

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information on variations in the effects of individual-level predictors across county courts. Next, contextual factors, also centered on their grand means, are added to the models to assess the direct impact of different court and county-level social contexts on the odds of guideline departures.⁸ Finally, cross-level interactions are examined to further investigate the conditioning influences of contextual court measures on individual likelihoods of receiving downward and upward departures from the guidelines. Overall, each model provides additional information for better understanding the complex ways that judicial departure decisions vary across courtroom community social environments.

FINDINGS

Table 1 presents descriptive results for both individual- and county-level variables of interest. Consistent with prior research, downward departures occur with greater relative frequency than upward departures. Approximately 15 percent of cases eligible for downward departure were sentenced below the guidelines, whereas only 5 percent of eligible cases resulted in upward departure.⁹ Turning to the contextual factors, it is apparent that Pennsylvania counties are quite diverse on a number of theoretically important characteristics. As Kramer and Ulmer, (2002; 898) pointed out, "Pennsylvania presents a particularly instructive context in which to study guideline sentencing" because "its local courts are extremely diverse in terms of size, political contexts, socio-cultural features, and crime concerns."

Some courts have average judicial caseloads that are almost eight times that of others, while trial rates vary between 0 and 5 percent across courts. The types of cases sentenced by different courts also differ starkly, with some having relatively little violent crime and others sentencing more than one out of five cases for violent offenses. Similarly, the relative availability of jail space differs noticeably across courtroom contexts, with some jurisdictions having more than twenty-five times the relative capacity of others. This suggests that different county courts experience different case

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8. When level 1 variables are grand mean centered, the variance component associated with the model intercept represents the variance among level 2 units in adjusted means. Therefore it provides useful information regarding the amount of variation remaining in the outcome after compositional differences across courts are accounted for. The grand mean centering of the level 2 variables is also useful. When both level 1 and level 2 variables are grand mean centered, the intercept can be interpreted as the mean likelihood of departure for the average offender sentenced in an average court.
 9. In absolute terms, nearly identical numbers of offenders received downward and upward departures: 6,566 cases were sentenced below the guidelines and 7,046 above them.

Table 1. Descriptive Statistics for Variables

<i>Dependent variables</i>	<i>N</i>	<i>Mean</i>	<i>S.D.</i>	<i>Min</i>	<i>Max</i>
Downward departure	42,325	.15	.35	0.0	1.0
Upward departure	143,102	.05	.22	0.0	1.0
<i>Individual-level variables</i>					
Year of sentence (1999)		.48	.50	0.0	1.0
Offense severity		3.45	2.17	1.0	14.0
Prior criminality		1.28	1.82	0.0	8.0
Presumptive sentence		3.68	10.18	0.0	240.0
Mandatory applied		.24	.42	0.0	1.0
Offender age		31.49	10.24	12.0	99.0
Male offender (reference)		.82	.38	0.0	1.0
Female offender		.17	.37	0.0	1.0
White offender (reference)		.62	.48	0.0	1.0
Black offender		.28	.45	0.0	1.0
Hispanic offender		.06	.24	0.0	1.0
Other race/ethnicity		.01	.08	0.0	1.0
Violent offense		.13	.33	0.0	1.0
Property offense		.21	.41	0.0	1.0
Drug offense (reference)		.20	.40	0.0	1.0
Other offense		.46	.50	0.0	1.0
Non-negotiated plea (reference)		.17	.38	0.0	1.0
Negotiated plea		.65	.48	0.0	1.0
Trial		.04	.20	0.0	1.0
<i>Contextual-level variables (N=60)</i>					
Courtroom characteristics					
Court size					
Large court		.03	.18	0.0	1.0
Medium court		.23	.43	0.0	1.0
Small court		.73	.45	0.0	1.0
Guidelines departure rate		7.38	4.38	1.2	24.6
Courtroom caseload		3.79	1.54	1.1	8.2
Trial rate		1.61	1.10	0.0	5.0
Violent crime caseload		11.21	2.73	6.71	22.01
Available jailspace		18.41	12.10	2.6	68.3
County court environment					
Percent black		3.39	6.19	0.1	43.3
Percent Hispanic		1.54	1.75	0.3	7.3
Percent Republican		44.46	8.12	16.0	59.8
Percent unemployed		5.36	1.46	2.6	8.2
Percent aged 18–24		8.49	2.90	5.1	25.4

flows and are also influenced by differences in courtroom resources and organizational efficiency constraints, which may lead to important variations in overall patterns of guidelines departures. As Table 1 makes clear, some courts have total departure rates of only about 1 percent, whereas other courts depart at rates nearing one-quarter of all sentences.

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The county-level social environments surrounding the courts also differ considerably. County-level minority compositions, political makeup and socioeconomic conditions all vary markedly across counties. These descriptive findings clearly suggest that district courts in Pennsylvania are characterized by considerable diversity in both courtroom and county-level social environments. The following analyses investigate the extent to which these variations translate into differential odds of similarly situated offenders receiving departure sentences across court contexts.

THE DIRECT EFFECTS OF COURTROOM SOCIAL CONTEXTS

Table 2 presents results from the unconditional models investigating cross-court variations in the use of downward and upward departures. The significant variance components for the model intercepts indicate that the likelihood of receiving both types of departure varies significantly across courts and suggests that the magnitude of this variation is similar for both outcomes. These results provide useful information for evaluating subsequent model specifications, and they offer initial evidence that departure sentences are differentially utilized across courts. However, they do not account for differences in the types of cases sentenced across courts. The next step is therefore to investigate cross-court variations in the use of departures after accounting for compositional differences in individual case characteristics.

Table 2. HLM Unconditional Models of Downward and Upward Departure

		<i>Downward departure</i>			
Fixed effects	b	S.E.	T-Ratio	df	
Intercept	-2.28	0.10	-22.29	59	***
Random effects	Variance	S.D.	χ^2	df	
Level 2	0.55	0.74	4081.96	59	***
		<i>Upward departure</i>			
Fixed effects	b	S.E.	T-Ratio	df	
Intercept	-3.22	0.10	-33.03	59	***
Random effects	Variance	S.D.	χ^2	df	
Level 2	0.54	0.74	3826.11	59	***

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

Table 3 provides these results. The fixed effects examine the impact of individual-level factors on judicial decisions to sentence outside of guideline recommendations, and the random effects offer additional information on the variation of these effects across county courts. Consistent with prior research, a number of individual-level sentencing

factors emerge as important determinants of judicial departures. The results also indicate that a number of offender characteristics are significantly related to the likelihood of receiving a departure sentence. Older offenders, female offenders and white offenders are all more likely to be sentenced below guideline recommendations than young, male, black and Hispanic offenders. These results are mirrored for upward departures, though the coefficients for age and black failed to reach statistical significance. These findings are consistent with both structural attribution (Albonetti, 1991) and focal concerns (Steffensmeier et al., 1998) theoretical perspectives, which suggest that under decision-making constraints, courtroom actors may rely on stereotypical patterned responses that tie offender characteristics to courtroom assessments of dangerousness and culpability. Consistent with organizational efficiency expectations, offenders who exercise their right to trial are also at a considerable disadvantage for receiving both downward and upward departures. Trial conviction decreases the odds of downward departure by a substantial 210 percent, and nearly doubles the odds of upward departure.¹⁰ Going to trial likely also indicates a failure to accept responsibility and a lack of remorse for one's crime (Johnson, 2003).

Results from these individual-level analyses are consistent with prior work and suggest that judicial power to sentence outside guideline presumptions is a significant locus of individual-level disparities in sentencing. However, these level 1 predictors account for a relatively small portion of between-court variation in outcomes, explaining only 18 percent and 9 percent of intercourt variations in downward and upward departures respectively. This indicates that compositional differences in the makeup of county court caseloads accounts for a limited portion of the total courtroom variation in the judicial use of departures. Consistent with Hypothesis 1, the significant variance components for the model intercepts in Table 3 indicate that after individual factors are accounted for, the overall likelihood of departure continues to vary significantly across courtroom social contexts. Moreover, the magnitude of this variation is notable. For two-thirds of the courts examined (1 standard deviation), the estimated probability of downward departure varies between .03 and .10. Similarly, for upward departures this probability varies between .02 and .07.¹¹

10. These percentages are calculated as (odds ratio -1) for positive coefficients and ((1/odds ratio) -1) for negative coefficients. The latter adjustment is necessary to remove the floor effect in the odds ratio (see Johnson, 2003). Additional analyses examining mode of conviction effects demonstrated that offenders convicted at jury trial were especially disadvantaged. The odds of downward departure for this group of offenders was about 4.6 times less than for those convicted through non-negotiated pleas, while the odds of upward departure was about 2.9 times as great.

11. These probabilities are calculated using the coefficients in the fixed effects portion

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These findings also support Hypothesis 2, indicating that the effects of a number of individual-level predictors also vary significantly across county-level courts. For downward departures, the only individual effect that did not vary significantly across courts was gender. Notably, the presumptive sentence, along with offense severity and prior record, all demonstrate significant variation, suggesting that they exert differential effects on departures across courts. The large variance component for the mode of conviction is also noteworthy. Whereas gender has uniform effects on downward departures (for example, all courts are similarly likely to sentence females below the guidelines), the effect of a trial conviction varies substantially. For two-thirds of the courts (1 standard deviation), the probability of downward departure associated with trial conviction varies between .09 and .51. These findings suggest that the magnitude of the trial penalty varies starkly across courts, with some courts instituting virtually no trial tax and others levying heavy penalties for trial conviction (at least with respect to the likelihood of downward departures).¹² Similar findings emerged for upward departures, though the effect of gender also varied randomly across courts for this outcome. Collectively, these findings provide convincing evidence that the weight different jurisdictions place on various individual-level sentencing factors varies significantly across county-level courts in Pennsylvania.

To investigate these between-county variations in the use of judicial departures, several theoretically relevant contextual variables were examined. Table 4 presents the results from these analyses. As predicted in Hypothesis 3, the size of the court is a powerful predictor of judicial departure decisions. Being sentenced in a large court, relative to medium-sized courts, increases the odds of downward departure by 97 percent and decreases those of upward departure by 112 percent. Similarly, being sentenced in a small court reduces the odds of downward departure by 46 percent, though small and medium size courts are statistically indistin-

of Table 3 in conjunction with their variance components represented in the random effects. The square root of the variance equals the standard deviation which is used to calculate the range of probabilities. One standard deviation represents about two-thirds of courts (68.26 percent). Because all of the individual level variables were grand mean centered, this range of probabilities represents the variation in the overall likelihood of downward departure across courts for the average offender (at the means of the explanatory variables).

12. Because some counties utilize bench trials as slow pleas, this variation in the trial effect may be overstated due to the fact that bench and jury trials were combined in the present analysis (see footnote 3). To investigate this possibility, variation in jury trials was examined separately. Results from these supplemental analyses indicated that the effect of jury trials also varied significantly across counties ($s^2 = 0.87$; $\chi^2 = 71.9$; $df = 33$), though, as expected, this variation was less than for bench trials ($s^2 = 1.99$; $\chi^2 = 50.6$; $df = 33$).

Table 3. Hierarchical Models of Downward and Upward Departures, Individual-Level Effects

Fixed effects	<i>Downward departure</i>			<i>Upward departure</i>		
	<i>b</i>	<i>S.E.</i>	<i>Odds</i>	<i>b</i>	<i>S.E.</i>	<i>Odds</i>
Constant	-2.90	.10	— ^{***}	-3.28	.09	— ^{***}
Year of sentence	-.03	.04	.97	.09	.07	1.09
Offense severity	.41	.04	1.51 ^{***}	.04	.03	1.04
Prior criminality	.71	.05	2.03 ^{***}	-.14	.02	.87 ^{***}
Presumptive sentence	-.02	.01	.98 ^{***}	.01	.00	1.01 [*]
Mandatory applied	-.30	.19	.74	.21	.21	1.23
Offender age	.01	.00	1.01 ^{**}	.00	.00	.99
Female offender	.24	.09	1.27 ^{**}	-.41	.09	.66 ^{***}
Black offender	-.15	.07	.86 [*]	.09	.06	1.10
Hispanic offender	-.82	.18	.44 ^{***}	.26	.07	1.29 ^{***}
Other race/ethnicity	-.11	.24	.90	-.27	.19	.76
Violent offense	.27	.10	1.30 [*]	-.05	.11	.95
Property offense	.06	.06	1.07	-.01	.08	.99
Other offense	.65	.10	1.92 ^{***}	-.14	.09	.87
Negotiated plea	-.02	.09	.98	.06	.12	1.06
Trial	-1.13	.21	.32 ^{***}	.69	.11	1.99 ^{***}
Random effects	<i>Variance</i>	<i>df</i>	χ^2	<i>Variance</i>	<i>df</i>	χ^2
Level 2 intercept	.45	44	815.2 ^{***}	.50	53	1703.9 ^{***}
Offense severity (OGS)	.06	44	99.04 ^{***}	.03	53	253.40 ^{***}
Prior record (PRS)	.10	44	164.11 ^{***}	.01	53	154.30 ^{***}
Presumptive sentence	.00	44	123.15 ^{***}	.00	53	116.93 ^{***}
Violent offense	.28	44	77.50 ^{**}	.42	53	137.92 ^{***}
Property offense	.22	44	142.04 ^{***}	.19	53	126.11 ^{***}
Other offense	.25	44	180.18 ^{***}	.27	53	199.95 ^{***}
Black	.16	44	70.27 ^{**}	.11	53	87.95 ^{**}
Hispanic	.96	44	72.50 ^{**}	.09	53	75.12 [*]
Female				.28	53	219.44 ^{***}
Age	.00	44	118.80 ^{***}	.00	53	128.30 ^{***}
Negotiated plea	.17	44	112.46 ^{***}	.20	53	208.10 ^{***}
Trial	1.40	44	78.82 ^{**}	.19	53	90.17 ^{***}
Between county R ²		17.5%			8.8%	
N	42,325			143,102		

^{*} p<.05, ^{**} p<.01, ^{***} p<.001

guishable with regard to upward departures. In support of Hypothesis 4, the overall departure rate of the court was also significantly related to individual departure decisions. Offenders sentenced in courts with lower guidelines compliance were more likely to receive departures (both below and above guideline recommendations), relative to offenders sentenced in courts with high rates of compliance. Although not surprising, this result may reflect the influence of normative cultural expectations regarding the acceptability of guideline deviations. Courts with established norms of

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frequent guideline departures are more likely to sentence otherwise equivalent offenders both below and above the recommended guidelines range.

In line with Hypothesis 5, the caseload of the court is also significantly related to downward departure decisions. Courts with heavier caseload pressure are more likely to grant downward departures than are courts with lighter caseloads. From an organizational efficiency perspective, heavy caseloads necessitate expedient case disposition, so courtroom actors should be more likely to grant downward departures in order to expedite case processing. The trial rate of the court also demonstrated expected effects, though its influence was limited to upward departures. As suggested in Hypothesis 6, high trial rates were positively associated with sentences above guidelines recommendations, regardless of whether individual offenders were convicted at trial. In contrast to these results, the availability of local jail capacity exerted no significant influence on judicial departures. Very few studies have adequately examined the availability of courtroom resources like jail space, however. Future research is therefore needed to further substantiate these results.

Compared to the findings for court contexts, the influence of county-level environmental factors was less pronounced. The only significant predictor was the percent Hispanic in the community. As suggested by Hypothesis 12, offenders sentenced in counties with greater Hispanic populations were less likely to receive downward and more likely to receive upward departures. This pattern of results is congruent with racial threat perspectives that emphasize the increasing use of punishment in the presence of threatening social groups.¹³ The null findings for the other county-level predictors suggest that the same level of threat may not be reflected in socioeconomic or age distributions, though these results deserve future replication. Overall, though, the total contribution of courtroom and county-level predictors for both departure decisions was impressive. Collectively, these contextual measures explained about 42 percent of the remaining between-county variation in downward

13. Because some versions of racial group threat theory posit nonlinear relationships between percent minority and punishment severity, supplemental analyses were conducted including percent Hispanic squared in the main effects models (Table 4), as well as percent Hispanic squared and percent black squared in the interaction models involving racial threat hypotheses (Table 5). These results provided no support for the group threat proposition that as the percent minority in the community reaches a certain level it begins to have a positive rather than negative impact on criminal justice outcomes. It may be that Pennsylvania counties simply do not have large enough Hispanic populations to muster the political clout necessary to influence the criminal sentencing process, so future research is needed that further investigates the possibility of nonlinear effects with respect to group threat theories.

departures and almost 90 percent of this variation in upward departures, after individual-level influences were accounted for.¹⁴

Table 4. Hierarchical Models of Downward and Upward Departures, Contextual Level Effects

<i>Individual variables</i>	<i>Downward departure</i>			<i>Upward departure</i>		
Constant	-3.00	.08	— ^{***}	-3.29	.04	— ^{***}
Year of sentence	-.03	.04	.97	.09	.07	1.09
Offense severity	.49	.04	1.63 ^{***}	.04	.03	1.04
Prior criminality	.80	.05	2.22 ^{***}	-.14	.02	.87 ^{***}
Presumptive sentence	-.03	.01	.97 ^{***}	.01	.00	1.01 [*]
Mandatory applied	-.29	.19	.75	.21	.21	1.23
Offender age	.01	.00	1.01 ^{**}	-.00	.00	.99
Female offender	.23	.09	1.26 ^{**}	-.39	.09	.68 ^{***}
Black offender	-.20	.07	.82 ^{**}	.10	.06	1.10
Hispanic offender	-.63	.18	.53 ^{***}	.22	.08	1.25 ^{**}
Other race/ethnicity	-.12	.24	.89	-.28	.19	.76
Violent offense	.17	.11	1.18 ^{***}	-.09	.11	.92
Property offense	-.04	.10	.96 ^{***}	.02	.07	1.02
Other offense	.57	.10	1.76 ^{***}	-.12	.09	.88
Negotiated plea	.05	.09	1.05	.03	.11	1.03
Trial	-1.19	.22	.30 ^{***}	.66	.11	1.93 ^{***}
<i>Contextual variables</i>						
<i>Courtroom characteristics</i>						
Large court	.68	.16	1.97 ^{***}	-.75	.09	.47 ^{***}
Small court	-.38	.16	.69 [*]	.08	.07	1.08
Departure rate	.08	.02	1.08 ^{***}	.14	.01	1.15 ^{***}
Courtroom caseload	.15	.03	1.16 ^{**}	-.05	.03	.96
Trial rate	-.10	.08	.90	.10	.03	1.11 ^{**}
Available jailspace	-.00	.01	.99	.00	.00	1.00
<i>County court environment</i>						
Percent unemployed	-.07	.06	.93	.01	.03	1.01
Percent Hispanic	-.07	.03	.93 [*]	.03	.01	1.03 [*]
Percent aged 18–24	-.00	.03	.99	.01	.01	1.01
Residual between-county R ²						
			41.7%			89.6%
N	42,325			143,102		

^{*} p<.05, ^{**} p<.01, ^{***} p<.001

14. These R² values are estimates based on proportion reduction in error (PRE) measures comparing the variance components from the individual level models to the remaining variance in the contextual models.

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THE CONDITIONING EFFECTS OF SOCIAL CONTEXT

In addition to positing direct influences for courtroom and county social contexts, several theoretical perspectives argue that individual effects are likely to be moderated by contextual factors. Table 5 presents results investigating these potential cross-level interactions. Grounded in organizational efficiency perspectives, Hypotheses 7, 8 and 9 predicted that the trial penalty would vary according to the case processing context of the court. For downward departures, the results indicate that the effect of trial conviction is mitigated by the trial rate of the court and exacerbated by the court caseload. Offenders convicted at trial are significantly more likely to receive downward departures in courts with higher trial rates, but less likely to receive them in courts with heavier caseloads. Though the first finding was unexpected, it may indicate that the stigma of going to trial is greater in courts with lower trial rates, resulting in reduced odds of downward departure. Alternatively, the size of the trial penalty may influence offenders' decisions regarding whether to plead guilty; offenders may be more likely to exercise their right to trial in courts that have greater odds of downward departure associated with trial conviction. This finding seems plausible given these considerations. The result for court caseload is consistent with theoretical expectations that the trial tax will be most pronounced in courts with heavier caseloads. Heavy caseloads likely increase organizational efficiency concerns that may manifest themselves in more punitive trial penalties. With respect to upward departures, results indicate that the trial penalty assessed in large courts is significantly less than in small courts. Not only are offenders less likely to be sentenced above the guidelines if convicted in larger courts, but they pay less of a trial tax as well. The influence of trial conviction is therefore in part a product of the courtroom context in which departure decisions are made.

According to Hypothesis 10, the effect of conviction for a violent crime should also be tempered by the relative frequency of violent crimes experienced by the court. The results in Table 5 provide strong support for this expectation. As the percent of cases sentenced for violent crimes increases, the likelihood of downward departure for a violent crime also increases and the likelihood of upward departure decreases. This suggests that assessments of the seriousness of violent crime are conditional on the violent crime caseload of the court. Apparently, judicial attributions of dangerousness and culpability, and their accompanying departure decisions, are at least partly a product of past experiences "made in relation to the kinds of cases regularly encountered in that particular setting" (Emerson, 1983: 428).

Finally, results investigating the interactive effects of racial group threat theory provided additional evidence for the importance of social contexts.

In line with Hypothesis 14, Hispanic offenders were less likely to receive downward departures as the percent Hispanic in the community increased, whereas blacks were more likely to receive upward departures as the percent black of the population increased. Examinations of racial interactions with the political context, as suggested in Hypothesis 15, however, were not supported. The significant interaction that emerged was substantively small and contrary to theoretical predictions. Overall, though, these results demonstrate that several individual-level effects are significantly conditioned by aggregate court characteristics; still, future theoretical and empirical work is needed to further advance our understanding of these complex and sometimes inconsistent findings.

DISCUSSION

As Savelsberg (1992) maintained, sentencing guidelines are an attempt to return to a neoclassical system of punishment that emphasizes formal, logical rules over individualized, substantive justice. However, the implementation of such formal structures is inevitably confronted with practical conflicts, such as the idiosyncratic interpretation of these rules by courtroom actors embedded in normative courtroom cultural environments. As Kramer and Ulmer argued, “local situational interpretations of sentencing’s focal concerns would seem to make departures inevitable” (2002: 926). Although sentencing guidelines can provide benchmarks for typical cases, they fail to capture all the subtleties and complexities inherent in criminal sentencing. Guideline departures therefore represent an important structural loophole for individualizing criminal punishments. However, departure sentences also increase judicial discretion substantially, which may result in greater reliance on stereotypical patterned responses and accompanying disparities in the treatment of similarly situated offenders. These results support such an interpretation. Young offenders, male offenders, minority offenders and offenders convicted at trial are less likely to receive downward departures and more likely to receive upward departures.

More important, these findings highlight the crucial role that guideline departures play in exacerbating contextual disparities in criminal sentencing. Contemporary theorizing on courtroom decision making suggests that sentencing decisions are embedded in local courtroom contexts that exert subtle but important influences on individual outcomes, including the likelihood of being sentenced outside of prescribed guideline ranges. The present results offer convincing evidence that the judicial use of departure sentences, along with the relative emphasis placed on individual sentencing considerations, varies significantly across courts. Moreover, these cross-court variations are not

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Table 5. Hierarchical Cross-Level Interaction Models of Downward and Upward Departures

	<i>Downward Departure</i>			<i>Upward Departure</i>		
	b	S.E.	Odds	b	S.E.	Odds
Courtroom trial rate						
Intercept	-3.00	.09	— ^{***}	-3.29	.04	— ^{***}
Trial rate	-.07	.07	.93	.11	.03	1.12 ^{**}
Trial	-1.31	.21	.27 ^{***}	.67	.11	1.95 ^{***}
Trial*trial rate	.37	.11	1.45 ^{***}	-.09	.06	.92
Court size						
Intercept	-3.00	.09	— ^{***}	-3.29	.04	— ^{***}
Large court	0.68	.19	1.97 ^{**}	-.64	.13	.53 ^{***}
Trial	-1.22	.24	.30 ^{***}	.70	.11	2.01 ^{***}
Trial*large court	.11	.27	1.12	-.62	.22	.54 ^{**}
Courtroom caseload						
Intercept	-3.00	.08	— ^{***}	-3.29	.04	— ^{***}
Court caseload	.14	.03	1.16 ^{***}	-.05	.03	.95
Trial	-1.18	.22	.31 ^{***}	.64	.11	1.90 ^{***}
Trial ² court caseload	-.06	.02	.94 ^{**}	.04	.04	1.04
Violent crime caseload						
Intercept	-2.99	.09	— ^{***}	-3.29	.04	— ^{***}
% violent	.02	.03	1.02	.02	.01	1.02
Violent	.10	.10	1.10	-.07	.12	.93
Violent*%violent	.06	.01	1.06 ^{***}	-.04	.01	.96 ^{***}
County racial composition						
Intercept	-2.98	.08	— ^{***}	-3.30	.04	— ^{***}
% black	.05	.01	1.05 ^{***}	.00	.01	1.00
% Hispanic	-.16	.04	.85 ^{**}	.04	.02	1.04 [*]
Black	-.20	.07	.82 [*]	.04	.08	1.04
Black*% black	-.00	.00	.99	.01	.00	1.01 ^{***}
Hispanic	-.51	.23	.60 [*]	.29	.13	1.34 [*]
Hispanic*% Hispanic	-.09	.03	.92 ^{**}	-.04	.03	.96
County political climate						
Intercept	-3.01	.08	— ^{***}	-3.29	.04	— ^{***}
% Republican	.00	.01	1.00	.00	.01	1.00
Black	-.21	.07	.81 ^{**}	.09	.07	1.10
Black*%Republican	.00	.00	1.00	.00	.00	1.00
Hispanic	-.69	.20	.50 ^{***}	.20	.09	1.22 [*]
Hispanic*%Republican	-.01	.01	.99	-.02	.00	.98 ^{***}

Note: Cross-level interaction models also include all level 1 and level 2 control variables presented in Table 4

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

random but instead appear to be the product of various structural and cultural characteristics of the courtroom environment and its surrounding community.

Convincing evidence emerged for the importance of court size, with offenders sentenced in large courts receiving substantial sentencing leniency with regard to the likelihood of both downward and upward departures. This finding provides additional support for courtroom community perspectives that argue for the paramount importance of court size. The overall guideline compliance rate of the court also demonstrated notable influences over the individual likelihood of departure across courts. This supports the notion that formal guideline recommendations are subject to localized courtroom actor interpretations, and suggests that normative expectations regarding the acceptability of guideline deviations become institutionalized in courtroom community culture over time.

These results also lend further credence to theoretical arguments grounded in courtroom efficiency concerns. If judges and other courtroom actors share the goal of efficient case disposition, as research suggests, then the judicial use of departure sentences is likely to reflect these shared, normative courtroom considerations. This interpretation is supported by the finding that increased caseload pressure results in greater likelihood of downward departures from the guidelines. Increased trial rates were also associated with greater likelihood of upward departures, providing additional support for the importance of caseload efficiency concerns. Apparently, criminal courts are more than symbolic distributors of social justice, they are also organizations concerned with the efficient disposition of criminal caseloads and judges appear cognizant of these concerns when meting out departure sentences. Interestingly, the sizeable penalty associated with trial convictions was in many ways a product of organizational efficiency concerns as well. For at least some departure decisions, the trial tax was significantly conditioned by the size of the court as well as its caseload pressure and overall trial rate. Taken together, these findings offer compelling evidence that measures of courtroom efficiency are tied to judicial decisions to depart from guideline recommendations.

This study also suggests the importance of not only considering caseload pressure but also the role of caseload composition in courtroom decision-making processes. The utility of a holistic caseload approach to understanding guidelines departures is evidenced by the fact that the salience of a violent crime is in part a product of the violent crime caseload of the court. As Emerson (1983: 425) argued, "particular cases are in fact processed not independently of others but in ways that take into account the implications of other cases for the present one and vice versa." Very few inquiries into courtroom decision-making processes

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adequately address the role of holistic case factors. Given these findings, future research is needed that further explores these understudied influences.

Finally, the current results offer some modest support for the sociological importance of racial group threat in society. Larger Hispanic populations significantly reduced the odds of downward departure and increased the odds of upward departure. This may reflect increased levels of perceived social threat in these contexts resulting in increased severity at sentencing. Although additional evidence emerged suggesting that racial disparities may be exacerbated as minority populations increase, little support was garnered in this study for the importance of socioeconomic or political contexts. This may reflect the particular ways these constructs were measured or simply indicate that broad county-level indicators, such as percent unemployed, are too crude to capture the complex community-level dynamics that influence courtroom decision-making processes across jurisdictions. Given the limited research examining such measures, future work is necessary to disentangle these possibilities. Overall, however, these findings offer persuasive evidence that guideline departures are associated not only with individual-level sentencing disparities, but also with important contextual disparities rooted in various aspects of courtroom community social context.

It is important to note that the magnitude and significance of these context effects were often contingent upon the type of departure. These results therefore support arguments that “different substantive concerns may underlie decisions to depart above versus below guidelines” (Engen et al., 2003: 125), and extend this logic to contextual influences on judicial departure decisions. Future research on guideline departures (and courtroom decision making in general) would therefore benefit from increased theoretical attention to important distinctions among different types of guidelines departures. One promising avenue for accomplishing this theoretical development may be the further incorporation of qualitative work, such as that in recent research examining downward departures for serious, violent offenders (Kramer and Ulmer, 2002).

CONCLUSION

Research on criminal sentencing has long been devoted to better understanding the locus and extent of unwarranted disparities in the criminal justice system. Recent scholarship highlights both the continuing importance of social contexts and the emerging role of judicial departures for better understanding variations in courtroom decision-making processes and outcomes. Empirical research on contextual variations in the judicial use of departure sentences has to date remained limited. This

study therefore investigated the extent to which judicial departure decisions vary in accordance with a number of theoretically important courtroom and community-level social characteristics. Given that one of the primary goals of sentencing guidelines is to establish uniformity in the treatment of similar offenders across jurisdictions, these results raise important issues regarding the unequal treatment of convicted offenders in the criminal justice system.

As Mears argued, “sentencing outcomes are produced in organizational contexts, and it therefore is logical to expect that these contexts produce variation in sentencing” (1998: 703). This study reveals considerable evidence for this interpretation in regards to the judicial utilization of sentences that deviate from guidelines recommendations. Because judges and other courtroom actors are embedded in local courtroom communities, characterized by differing caseloads and case-processing strategies, varying cultural and behavioral expectations, and unique organizational environments, sentencing decisions are likely to vary across courtroom contexts. These variations both reflect and are reflected in differences in the relative emphasis and interpretation of key focal concerns in sentencing across courtroom social environments.

Although this study lends additional support to existing research on the role departures play in exacerbating individual-level sentencing disparities, its larger contribution is to elucidate notable contextual disparities in how judicial departures are applied. A variety of theoretical measures of courtroom social context emerged as significant predictors of departure. Perhaps most important, however, individual-level sentencing considerations were also conditioned by courtroom contextual factors. This suggests that the social context of the court exerts not only direct influences over judicial departures, but also numerous potential indirect effects, which these results only begin to enumerate. Future research on context effects in courtroom decision making is therefore needed to further unravel the intricate web of influences surrounding the judicial decision to deviate from presumptive guidelines.

In particular, future research on guidelines compliance could be substantially advanced by the incorporation of more proximate measures of courtroom social context. Direct measures of courtroom culture, such as courtroom actor attitudes and behavioral expectations, would be an important step in this direction. Future research is also needed that incorporates the characteristics of individual judges and other courtroom actors in the sentencing process. Virtually no research has examined the potentially important role that guideline departures play in contributing to inter-judge disparities in criminal sentencing. Little is known, for instance, about the extent to which intercourt variations in guidelines compliance are a function of inter-judge variations in the use of departure sentences.

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Because departure sentences reintroduce significant judicial discretion into the sentencing process, these cases are arguably the most susceptible to the influence of individual judge characteristics. Such investigations could provide new insights into the importance of judge-level factors in sentencing, while furthering our understanding of additional sources of intercourt sentencing disparities.

Future investigations of guidelines departure should also devote additional attention to investigating the variations in the length of departures across courts. This work establishes important differences in the propensity to sentence outside of standard guideline ranges, but future research is needed that also examines variations in the relative size of guideline deviations across contexts. Finally, future research should also better incorporate departure sentences into evaluative research. Although the current study raises important issues regarding the lack of uniformity in sentencing under presumptive guidelines, it does not represent a wholesale rejection of formal sentencing innovations. These results are unable to speak to the issue of whether overall disparities have increased or decreased since guideline implementation, and extant evaluations of sentencing guidelines have not fully considered the important role that judicial departures play in contributing to individual and contextual disparities in sentencing. Future research on the effectiveness of sentencing guidelines therefore needs to explicitly consider the role of departures in courtroom decision-making processes.

This issue is particularly salient in the wake of recent Supreme Court decisions that have raised fundamental questions about the constitutionality of presumptive sentencing guidelines (*Blakely v. Washington*; *U.S. v. Booker*; *U.S. v. Fanfan*). These decisions, which have transformed the federal sentencing guidelines (known for their rigidity and complexity) into a voluntary guidelines system, have far-reaching consequences for the future of criminal sentencing research. Although the full ramifications of these decisions are difficult to predict, they will likely result in significant changes in guideline compliance along with an increased prominence of judicial departures, at least in select jurisdictions. Given the present findings that departures serve as an import locus of both individual and contextual disparities in sentencing, additional studies are needed that assess the consequences of changing guideline systems across time and place. Such research holds the potential to not only enlighten pressing public policy debates surrounding the continuing implementation and adaptation of sentencing guidelines, but also offers important insights into the complex and ever-changing nature of criminal court decision making across different levels of analysis. The goal of this study was to begin a foundation for such future research.

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