

ATTACHMENT CB 2

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Similar Punishment?: Comparing Sentencing Outcomes in Domestic and Non-Domestic Violence Cases

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Abstract

Despite shifts in Western liberal democracies towards stronger criminal justice responses to domestic violence, the issue of sentencing disparity between domestic and non-domestic violence offending cases remains largely neglected. Using a population of cases sentenced in the New South Wales (Australia) lower courts between January 2009 and June 2012, we report multivariate analyses of the sentencing of domestic violence and non-domestic violence offences. Results show that when sentenced under statistically similar circumstances, domestic violence offenders are less likely than those convicted of crimes outside of domestic contexts to be sentenced to prison, although the substantive impact is small. Further, of those imprisoned, domestic violence offenders receive significantly shorter sentenced terms. Our findings also suggest that, of the age/gender/Indigenous offender subgroups, older Indigenous males most likely to be perceived as more culpable. The role of outmoded stereotypical assumptions around domestic violence in sentencing decision-making is discussed.

Keywords: sentencing, domestic violence, disparity, imprisonment

Similar Punishment?: Comparing Sentencing Outcomes in Domestic and Non-Domestic Violence Cases

Historically, domestic violence (familial and/or intimate partner abuse) was not considered a significant issue for the criminal justice system (Fradella and Fischer 2010: 25). Thought to be a private matter, this type of violence was seen as victimless because it did not affect the public order and was subsequently of little concern to the criminal justice system (Cretney and Davis 1997; Mills 1998; Hartman and Belknap 2003). However, significant lobbying and political work by feminist and domestic violence advocacy groups has theoretically generated change in how the criminal justice system responds to domestic violence perpetrators.

Over the last three decades, there have been ideological shifts in Western government discourse, legislation, criminal justice policy and practice that suggest domestic violence is now considered a serious crime with far reaching harmful consequences, especially for women and children (Mills 1998: 307). For example, we have seen legislation enacted in the United Kingdom, United States and Australia that criminalises non-physical forms of domestic violence such as harassment and stalking (United States Department of Justice 1996; Ogilvie 2000; De Fazio 2009). Legislative definitions of what constitutes domestic violence have also broadened to include offences that would not be considered violent crime outside of intimate and familial relationships. For instance in New South Wales (Australia), the following acts are defined as violent, rather than just property or public order offences, within the context of domestic relationships: destroying or threats to destroy property, entering property without lawful excuse, offensive behaviour (see *Crimes Act 1990* (NSW); *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (Ringland and Fitzgerald 2010). Further, we have seen the implementation of pro or mandatory arrest, pro-charge, pro-prosecution and no-drop

prosecution policies in Western nations (Corsilles 1994; Jones and Belknap 1999; Robbins 1999; Hoyle and Sanders 2000; Rollings and Taylor 2008; Douglas 2008; Matczak, Hatzidimitriadou and Lindsay 2011).

The use of the criminalisation of (and thus, a criminal justice response to) domestic violence has been a key governmental response to shifting domestic violence from a private concern to a public issue (Holder 2001). Although there is a growing questioning of the appropriateness of criminal justice responses to domestic violence and greater advocacy for prevention and restorative approaches (e.g. Braithwaite and Daly 1994; Shephard and Pence 1999), the involvement of legal regulation continues to be a key platform in western governments' domestic violence strategies. Thus, given the enduring dominance of criminal justice intervention, we need to better understand how the criminal justice system is treating offenders (and victims) of domestic violence in practice.

Most scholarly attention on criminal justice system responses to domestic violence has focused on police and prosecutorial decision making, the effectiveness of arrest and prosecution on recidivism, and the nature of victim experiences at these stages (Hoyle and Sanders 2000; Hartman and Belknap 2003; Cammiss 2006; Fradella and Fischer, 2010; Matczak, Hatzidimitriadou and Lindsay 2011). Of research on criminal justice interventions for domestic violence, court case dispositions have received the least empirical attention (Henning and Feder 2005; Ventura and Davis 2005). For example, while extensive research has been undertaken to examine whether police and prosecutors provide differential treatment in cases of domestic versus other violence, only a handful of studies have examined whether courts sentence these types of cases disparately (Cretney and Davis 1997; Hoyle and Sanders 2000; Ventura and Davis 2005; Cammiss 2006). This is despite increased court caseloads due to changing police

and prosecutorial responses to domestic violence (Hirschel and Hutchison 2001; Henning and Feder 2005). Its limited examination is also somewhat troubling as the types of sentences imposed (compared to other offences) could be seen as an important indicator of whether domestic violence is considered a serious crime (Cretney and Davis 1997: 152).

The relative absence of research on domestic violence sentencing likely relates to a lack of readily available data. Addressing questions about the sentencing of domestic violence-related offences is difficult as it is uncommon for administrative court data to indicate whether crimes have resulted from a domestic violence incident. However, in New South Wales (Australia), recent legislative changes (which enacted specific domestic violence offences) provide a unique opportunity for comparing the sentencing outcomes of domestic versus non-domestic violence cases (Ringland and Fitzgerald 2010).

This study examines the rather neglected question of whether cases of domestic and non-domestic violence offending are sentenced differentially. Using case-level data for a population of cases, we explore the impact of the offence type (domestic versus other violence) on two sentencing outcomes: the initial in/out sentencing decision (i.e. incarceration vs. no incarceration) and the subsequent length of term decision.

Review of Prior Research

Domestic Violence and Sentencing

A review of past research shows the limited nature of empirical examinations of the sentencing of domestic violence cases. Of the thirteen studies found, seven relied on samples of domestic violence offending only, and thus cannot contribute to our understanding of the sentencing of

domestic violence offenders relative to other offenders (see Belknap and Graham 2000; Kingsnorth *et al.* 2001; Dawson 2003; Wooldredge and Thistlewaite 2004; Henning and Feder 2005; Kern, Libkuman and Temple 2007; Fradella and Fischer 2010; Ringland and Fitzgerald 2010). Only five studies provided comparative sentencing analyses, focusing on the incarceration or length of term outcome (see Cretney and Davis 1997; Gilchrist and Blissett 2002; Dawson 2004; Gannon and Brzozowski 2004; Du Mont, Parnis and Forte 2006). Together, these studies provide equivocal evidence about disparity in the incarceration outcome, but suggest leniency towards domestic violent offenders in the length of term outcome. However, there are some significant limitations in past research that make any conclusions about sentencing disparities for domestic violence cases limited. In particular:

- there is an absence of multivariate studies of the *incarceration* decision for domestic versus non-domestic violence cases
- where comparative multivariate studies of the *length of term* decision have been conducted, these have been restricted to samples of sexual assault or homicide.

Absence of multivariate studies of the incarceration decision. Research on the incarceration (in/out) sentencing outcome has relied on bivariate analyses, suggesting possible leniency for domestic violence offenders from small samples. For example, as part of bivariate analyses of prosecutorial and conviction outcomes in Britain, Cretney and Davis (1997) found that, in a sample of 243 cases, 11% of domestic assault cases received a prison sentence compared to 15% for non-domestic assault. However, when we conducted a post hoc test of difference in proportions, we found that this difference was not significant, suggesting parity in outcomes. Similarly, Du Mont, Parnis and Forte's (2006) study of intimate partner versus sexual assault suggests parity in the likelihood of imprisonment. Du Mont, Parnis and Forte (2006) examined sentencing outcomes for 37 cases of intimate partner (compared to 149 stranger) sexual assaults

in Canada from 1993 to 2001. Although bivariate analyses of the in/out sentencing decision showed that sexual assault perpetrators who were currently, or had been previously, in an intimate relationship with the victim were less likely to be sentenced to prison than those unknown to the victim (86.5% vs 98.1%), this difference also was not statistically significant.¹

In another Canadian study, Gannon and Brzozowski, (2004)² compared the sentences handed down to a population of offenders convicted of domestic violence (namely, spousal violence, child abuse, senior abuse) and other violent offences for the years 1997 to 2002. Bivariate analyses showed that a *lower* proportion of domestic violence offenders received a sentence of incarceration than non-domestic violence offenders in this *population* for this time period. The only exceptions were for criminal harassment and child sexual abuse.

Thus far, these studies are the only published direct comparisons of *actual* incarceration outcomes for domestic versus non-domestic violence offences. Their use of bivariate techniques to address the issue of disparity in sentencing is problematic as these techniques fail to adjust for other known sentencing correlates, which may vary between domestic and non-domestic violent offenders.

Interestingly, there has been a study of judicial use of incarceration orders in domestic and non-domestic assault cases using vignettes (an under-used technique in sentencing disparity research). Gilchrist and Blissett's (2002) study of British magistrates' sentencing decisions using mock scenarios found that magistrates may be less likely to imprison domestic violence offenders. Although not statistically significant (perhaps due to the small sample size, n=67),

¹ The lack of a statistically significant difference appears to have been the reason that no multivariate analyses of the decision to imprison were conducted.

² Their findings were re-reported in Gannon and Mihorean (2005).

prison sentences were less frequently recommended by the magistrates in the sample for domestic violence assault scenario (compared to the non-domestic assault scenario). The advantages of mock scenarios in sentencing research are the ability to control variation among cases (e.g. details of and circumstance surrounding the offence) and the amount of information provided to judicial officers (Gilchrist and Blissett 2002: 350-351). However, the vignette method may not satisfactorily reflect the reality of the courtroom sentencing environment. For example, judicial officers (especially in less serious cases like those sentenced at the magistrates' court level) are often required to make sentencing determinations within tight time frames, with limited information about offenders and their cases. Nonetheless, Gilchrist and Blissett's (2002) presumption of leniency being extended to domestic violence offenders is in the same direction as the differences found in the bivariate research on the use of incarceration orders in domestic violent versus other violent cases.

Restricted samples in multivariate studies of the length of term decision. The length of term decision has attracted two multivariate analyses comparing domestic violence and non-domestic violence cases, finding evidence of leniency (i.e. shorter prison terms) in the cases of domestic violence offending. However, these studies have relied on samples of a single type of violent offence only (namely, sexual assault or homicide). For instance, Du Mont, Parnis, and Forte (2006) examined intimate partner *sexual assaults* in Canada. Their study found that after controlling for current offence seriousness and criminal history, "a shorter sentence was rendered in cases involving an (ex)partner than in those involving strangers" (pp.8-10). Also in Canada, Dawson (2004) considered the impact of victim-offender intimacy on length of sentenced prison term in *homicide* cases ($n=1003$) over a 23 year period (1974-1996). Five relationship types were examined including: intimate partners (i.e. current and former legal spouses, common-law partners, dating couples), family members (not including spouses),

friend, acquaintances and strangers. Controlling for criminal history, case characteristics, court processing factors (e.g. plea) and defendant characteristics (e.g. gender, race and age), Dawson (2004: 124-125) found that “defendants who shared the closest relationships with their victims—intimate partners and family members—received significantly lighter sentences than other defendants”. However, this research also found that the impact of victim-offender intimacy on sentencing dissipated over time, at least for homicide cases (Dawson 2004: 126).

Victim-Offender Relationship and Sentencing

Although studies concerned specifically with domestic violence (compared to other violence) and sentencing may be limited, there is a substantial body of work more generally concerned with the impact of victim-offender relationship on sentencing (Hessick 2007: 349-354). Compared to the scant studies on domestic violence sentencing, this research is more prolific and uses rigorous multivariate techniques to compare sentencing dispositions (in/out and length) in stranger versus non-stranger violence. Unfortunately, for our question of interest, the categorisation of non-stranger violence generally incorporates relationships beyond the intimate and familial (e.g. friends and acquaintances) (Dawson 2004).

With this caveat in mind, the evidence about the impact of victim-offender relationship on sentencing outcomes is mixed. Some studies find that, when sentenced under like circumstances (e.g. similar present and past criminality), offenders who victimise strangers are sanctioned more harshly by the courts during sentencing than those who victimise persons known to them (see Miethe 1987; Simon 1996a; Spohn and Spears 1997; McCormick *et al.* 1998; Kingsnorth, MacIntosh and Wentworth 1999). Other work provides little evidence of the victim-offender relationship impacting sentence outcomes (see Erez & Tontodonato 1990; Albonetti 1991; Simon 1996b). Dawson (2004) suggests that a reason for these equivocal

findings may stem from the dichotomous measurement of offender-victim relationships (i.e. known versus stranger). Within these broad categories of known versus stranger, there are different types of victim-offender relationships that may lead to variations in sentencing.

Sentencing Domestic Violent Offenders and the Focal Concerns Perspective

Not only is there a lack of empirical work on sentencing disparities between domestic and non-domestic violence cases, there has been minimal theoretical engagement with broader sentencing research. Most studies have been primarily concerned with establishing disparity empirically. Broadly speaking, the possible explanations for any disparity found in these studies sit within the theoretical tradition of focal concerns, although this connection has not been explicitly made.

To date, the focal concerns perspective has been used to explore sentencing disparities according to offender-level characteristics (e.g. race/ethnicity/Indigeneity, age and gender). This approach argues that sentencing is determined by judicial assessments around three focal concerns: (1) blameworthiness and harm; (2) risk (or community protection); (3) practical constraints and consequences (Steffensmeier, Ulmer and Kramer 1998; Johnson, 2003). Yet because judges do not routinely have complete and accurate information about offenders and their cases, they may rely on perceptual short-hands or stereotypes around each focal concern to make sentencing determinations (Hawkins 1981; Steffensmeier, Ulmer and Kramer 1998). It is through these short-hands that disparities can enter the decision-making process (Steffensmeier, Ulmer and Kramer 1998). For example, offender-level attributes are widely interpreted as having invoked perceptual short-hands/stereotypical imagery around risk. Thus, young 'black' men are sentenced especially harshly because they are stereotyped as being as

crime prone and dangerous (Steffensmeier, Ulmer and Kramer 1998). While previous sentencing research has tended to focus on offender conceptions that emanate from racial, age and gender differences, victim-offender relationships are also likely to invoke judicial shorthand or stereotypical scripts and images which influence sentencing (Miethe 1987; Albonetti 1991).

Blameworthiness and Harm

The focal concern of blameworthiness centres on judicial assessments of defendant culpability and the degree of harm caused by the offending (Steffensmeier, Ulmer and Kramer 1998). The seriousness of an offender's crime and their past criminal behaviour are vital to judicial appraisals of blameworthiness and harm. For example, sentencing research consistently shows a strong correlation between the seriousness of the offender's criminal history, the severity of the offender's crime(s) and sentencing outcomes (Johnson 2003; Mitchell 2005). The victim-offender relationship, especially an intimate or familial relationship, may also impact on judicial assessments of blameworthiness and harm.

First, judges may view offences in which the victim and offender have an intimate or familial relationship as being less harmful than offences committed outside these relational contexts. For example, in their mock sentencing research in Britain, Gilchrist and Blisset (2002: 360) concluded that "magistrates often minimised the severity of assault when it was committed against a partner". Other commentators have noted that the harm caused by non-domestic violence may be seen as greater than that caused by domestic violence, because the non-domestic offences impact detrimentally on the community at large not just an individual victim (McCormick *et al.* 1998; Hartman and Belknap 2003; Hessick 2007; Fradella and Fischer

2010). If these perceptions of domestic violence as a private matter between two parties (rather than a public concern) still prevail, sentencing leniency is likely.

Second, assessments of offender culpability within intimate/familial victim/offender relationships may be mitigated by assumptions about the contexts out of which domestic violence occurs. Crimes between family members and intimates are typically understood as being driven by strong emotions because they are embedded in pre-existing and complex interpersonal relationships among the parties involved (Hessick 2007: 363-365). The presence of strong emotion, especially anger, can act to decrease attributions of offender culpability because it reduces the perceived presence of intent or premeditation (Dawson 2004:107). Thus, stereotypical assumptions of domestic violence perpetrators as lacking in self-control could reduce blameworthiness and subsequent sentence severity (Dawson 2003, 2004; Hessick 2007; Kern, Libkuman and Temple 2007; Fradella and Fischer 2010).

Finally, and relatedly, judicial assumptions or stereotypes around provocation or victim fault in domestic violence cases may also impact assessments of offender blame, and in turn, sentencing severity. Research suggests that crimes between individuals known to each other are more likely to generate images of victim participation than crimes involving strangers (McCormick *et al.* 1998; Dawson 2003, 2004; Hessick 2007; Kern, Libkuman and Temple 2007). Further, although limited, some research on judicial attitudes to domestic violence suggests that judges may assume the presence of victim provocation in domestic violence incidents (Welch, 1994; Ptacek 1999), or at least see both victim and offender as responsible for the behaviour (e.g. Busch, Robertson and Lapsley 1995).

Risk (Community Protection)

The focal concern of risk (or community protection) involves judicial predictions about the future dangerousness of an offender, so it is concerned with an offender's future behaviour (Steffensmeier, Ulmer and Kramer 1998). Like blameworthiness and harm, sentencing judges make predictions about the risk offenders pose to the community based on factors such as current crime seriousness and criminal history. Attributions about future risk are particularly relevant in thinking about the handling of domestic violence cases. Non-stranger/domestic violence offenders could be perceived as less risky than stranger offenders because they pose minimal threat outside of the specific relationship in which the violence occurred (Hessick 2007).

Assumptions about the motivations for domestic violence offending (e.g. loss of control in emotionally charged intimate and familial situations; role of the victim in contributing to the behaviour) may influence perceptions of risk (Hessick 2007). As noted by Simon (1996a: 95), "stranger offenders are perceived to be more dangerous, unpredictable, and indiscriminate ... compared to non-stranger offenders, who respond to the pressures of certain situations and are unlikely to recidivate". An attribution of emotional triggers linked to an intimate situation for criminal involvement is likely to decrease sentence severity, because within these contexts offenders are seen to pose little risk to the larger community (Albonetti 1991).

Practical Constraints and Consequences

The final focal concern—practical constraints and consequences—recognises that in making sentencing determinations, courts have to take into account a range of practical concerns, including: (1) organisational constraints, such as the need to ensure a regular case flow through the court (e.g. entering a guilty plea may reduce sentence severity because it speeds up the process); (2) the social costs of sentencing on the offender's family; (3) societal expectations

that may impact the court's general societal standing (Steffensmeier, Ulmer and Kramer 1998: 766-767; see also Steffensmeier and Demuth 2001).

Social costs and societal expectations may be important in understanding possible sentencing disparities for domestic violence offenders. For example, in domestic violence cases, the social costs of incarcerating the offender may include the economic hardship that will befall the victim through the loss of the major 'breadwinner' during incarceration, concern about further damaging the victim-offender relationship and the fragmentation of broader familial ties especially parent-child bonds (Hessick 2007: 386-387). These concerns may lead to more lenient sentencing outcomes, such as no prison or shorter prison terms. For instance, Hartman and Belknap (2003) found that judges rated what we can call "social costs" as an important consideration in domestic violence assault cases.

The Current Study

The current research extends our understanding of domestic violence and sentencing by addressing the two key gaps in prior research. We provide comparative multivariate analyses of the imprisonment-related sentencing outcomes for domestic versus non-domestic violence offences for all types of violent offences. In particular, we focus on two key research questions:

- (1) Does the decision to imprison differ between domestic and non-domestic violence cases when perpetrators are sentenced under similar circumstances (i.e. with comparable demographics, plea, current and prior criminality)?
- (2) Do domestic violence perpetrators receive prison terms similar to non-domestic violence offenders when they are sentenced under similar circumstances (i.e. with comparable demographics, plea, current and prior criminality)?

Based on our earlier discussion, as domestic violence cases will be perceived as less blameworthy and risky and with greater social costs, we anticipate domestic violence cases will be treated more leniently at sentencing in comparison to similar non-domestic violence cases.

The Study Site

To address these questions, we rely on New South Wales (Australia) administrative court data from 2009 to 2012. As noted earlier, New South Wales provides us with a unique site to examine the sentencing of domestic violent offenders. Recent legislative changes to criminal law introduced specific domestic violence offences. Since March 2008, over 100 forms of personal crimes (i.e. crimes against individual victims) can now be recorded as a domestic violence offence (see s.12 *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*).³ These offences include: (1) crimes that cause physical harm to victims (e.g. assault, poisoning); (2) sexual violence (e.g. rape, child sexual abuse); (3) crimes that cause psychological harm including intimidating behaviour aimed at controlling, dominating or instilling fear into victims (e.g. stalking, threats to harm, child abduction, kidnapping, property damage) (see s.4 *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*).

Upon conviction for a personal crime the courts in New South Wales can now make a direction to record an offence as a domestic violence offence. So, for example, a conviction can be

³ The purpose of the legislative reform is to provide better protections to victims of domestic violence. For example, when an offender is convicted of a domestic violence offence a court must make an Apprehended Domestic Violence Order (otherwise known as protection orders) (unless the court is satisfied the order is “not required”) (s.39 *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*). The reforms also allow for the ready identification of habitual domestic violence offenders which has implications for future criminal justice decision-making. For instance, police are obliged to make applications for apprehended domestic violence orders where there is a prior conviction for domestic violence (s.27 & 49 *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*); charges of domestic violence offences will be relevant in bail proceedings (s.12 *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*).

recorded as ‘assault occasioning actual bodily harm’ or ‘assault occasioning actual bodily harm (domestic violence)’ (see s. 59(1) *Crimes Act 1900* (NSW) and s.12 *Crimes (Domestic and Personal Violence) Act 2007* (NSW)). Alternatively, an offender could be have a conviction recorded as a *personal* offence of ‘destroy or damage property (domestic violence-related)’ if committed within a familial/intimate context (s.195(1)(a) *Crimes Act 1900* (NSW)). If outside this context, the offence of property damage remains a property crime (and is not part of this study).

To have a conviction recorded as a domestic violence offence, an intimate or familial relationship needs to exist between the victim and offender (see s.5 *Crimes (Domestic and Personal Violence) Act 2007* (NSW)). Thus, for the purposes of our analyses, we define “domestic” relationship to include both intimates as well as family members.

Data and Sample

This research relies on adult lower court data obtained from the New South Wales Bureau of Crime Statistics and Research (BOCSAR) Reoffending Database (ROD). Australian lower courts (known as Local Courts or Magistrates Courts) in their criminal jurisdiction deal with offences at the lower end of the seriousness spectrum, and thus magistrates (lower court judges) have restricted sentencing powers. For example, in New South Wales, magistrates only have the power to sentence offenders to a maximum of two years imprisonment.

Our sample includes *all* adult offenders convicted of a personal (essentially violent) offence as their principal offence (or most serious proven offence)⁴ in the New South Wales Local Courts

⁴ The New South Wales Bureau of Crime Statistics and Research defines the principal (or most serious) offence, as the charged offence receiving the most serious penalty. For further details, see New South Wales Bureau of Crime Statistics and Research (2009, pp.121, 132).

from January 2009 to June 2012. Our study period commences in January 2009 to allow sufficient time for cases to be finalised after the option to charge specific domestic violence offences became available to prosecutors. (The legislative amendment only applies to crimes committed since March 2008).

In this period, there were 64,638 cases in which an offender was convicted of a personal (violent) offence as their principal offence. Due to missing data primarily on pre-trial detention status, 437 cases (0.68%) were excluded from the analyses, leaving a final sample of 64,201 cases. Of these, 17.58% (n=11,287) involved Indigenous offenders; 18.66% (n=11,982) involved female offenders; and the average age of all offenders was 33.60 years. The most common principal offence was common assault (24.45%, n=11,449, of non-domestic violent-related; 61.93%, n=10,765, of domestic violent-related), with 27.07% (n=17,382) of all cases involving a domestic violence-related principal offence. A sentence of incarceration was imposed in 10.28% (n=6,599) of cases, with a mean length of 6.31 months (median of 6 months).

Independent Variables

The key independent variable of interest is whether the offender was convicted of a domestic violence-related offence. This was measured as a dichotomous variable, with '1' indicating that the principle offence was convicted under the domestic violence legislative provisions, and '0' any other personal (violent) offence. Our analyses also include measures that are standard in sentencing research, which can be grouped into two categories: offender social characteristics; and legal and case characteristics (see Table 1 for a description of their coding).

[Insert Table 1 about here]

Offender social characteristics. In this group, we include age of offender, sex of the offender and Indigenous status. Indigenous status is based on self-identification by the defendant (a key reason for “unknown” or “missing” values (8.62%) on Indigenous status). To retain 5,537 cases with unknown Indigenous status, we also include a missing dummy variable to minimise biasing the estimated coefficients.

Legal and case characteristics. We also include several measures of legal and case characteristics. Prior research clearly shows that criminal history and current offence seriousness are used to assess blameworthiness and risk, making them strong predictors of sentencing outcome (Mitchell 2005; Steffensmeier and Demuth 2006). To capture criminal history, we use a three-category ordinal measure of all prior proven criminal court appearance in the last 10 years from the current case, entered as dummy variables.⁵ We also include two measures of the seriousness of the current offending. The first, *the seriousness of the principal offence*, is captured by an index, based on actual and prescribed penalties developed by the Australian Bureau of Statistics (2009). This index, known, as the National Offence Index, ranks all offences in order of seriousness from 1 to 155⁶, with 1 as being the most serious and 155 being the least serious. To assist in the readability of the findings, this index was reverse-coded, so that higher values reflect more serious offences. The second measure of the seriousness of the current offending is a dummy variable that indicates whether the offender had *multiple conviction counts*.

⁵ Not surprisingly, the count of prior proven criminal court appearances is positively skewed (4.926) and highly leptokurtic (104.074), ranging from 0 prior appearances to 122 prior appearances in the last 10 years from the current case.

⁶ The index includes two final codes (156 and 157) where there is no or inadequate data.

We have also included a measure of the presence of serious violence. Although this is not a direct measure of victim injury, this variable indicates offences which by their legal definition means that serious violent behaviour has occurred towards victim, thus increasing the likelihood of serious injury (physical or emotional) to victims (e.g. ‘serious assault resulting in injury’; ‘aggravated sexual assault’). Unfortunately, we have limited information on the context of the commission of the offence (a situation which is common in sentencing research in general: see Steffensmeier, Ulmer and Kramer 1998; Spohn and Beichner 2000; Johnson 2003; Franklin and Fearn 2010). However, given our focus on the sentencing of violent offenders, the absence of information on victim injury was concerning. Thus, although we cannot directly control for victim injury, we are able to identify offences in which serious violent behaviour towards (and thus higher likelihood of serious injury of) victims has occurred.⁷

Finally, two dichotomous case processing measures were included. Mode of conviction (i.e. whether the offender was convicted at trial) and offender’s pre-trial detention status (whether the offender was out of custody at the time of sentencing). There was just under 5 per cent (n=3,180) of cases with unknown mode of conviction, so we include a missing dummy in our models so that these cases can be retained without biasing the estimated coefficients for the variables of interest. These types of case processing measures are typical in sentencing research regardless of jurisdiction (e.g. Steffensmeier, Ulmer and Kramer 1998; Johnson 2003; Jeffries, Fletcher, and Newbold 2003; Jeffries and Bond 2009).

Dependent Variables

⁷ We also estimated our models without our measure of “serious violence involved”. The pattern of results and our substantive conclusions for the other sentencing factors remained unchanged.

As is typical in sentencing research, we treat the sentencing decision as a two-stage process (Spohn 2000; Steffensmeier and Demuth 2001). The *imprisonment* decision is measured dichotomously (1=prison sentence for the principal offence; 0=any non-prison sentence). The *length of prison term* decision is a continuous measure of the term imposed for the principal offence in months. (Suspended prison sentences are coded as a non-custodial option, as offenders are not immediately detained in custodial institutions).

Analytic Approach

To explore the effect of a domestic violence offence (compared to a non-domestic violence offence) on sentencing outcomes, we estimate a logit model of the imprisonment decision, and an ordinary least squares (OLS) model of the length of term decision.⁸⁹ There are a few issues to note.

First, we do not include a correction for sample selection bias in our models. Typically, studies of imprisonment-related outcomes include a hazard rate (commonly a form of the Heckman approach) in their models. However, recent work by Bushway, Johnson and Slocum (2007) shows that a frequent problem with correcting for selection bias is the inability to find predictors in the imprisonment model that are not included in the length of term model (i.e. omitted use of exclusion restrictions). Uncorrected estimates may well be more accurate than an inappropriately calculated hazard rate. Thus, in the absence of a sound selection model, and similar to recent sentencing research (e.g. Franklin and Fearn 2012), we present the uncorrected

⁸ Standard diagnostics indicated that multicollinearity was not a problem, with all VIFs within acceptable limits (i.e. well below 2.0).

⁹ The models were initially estimated with dummy variables for year of sentencing. However, the estimated direct effect of year of sentencing was not statistically significant at conventional levels. Further, in our models without adjusting for year of sentencing, the pattern of results for the substantive sentencing factors was essentially the same, and our substantive conclusions remained unchanged. Thus, we report the models without year of sentencing.

results. Second, in contrast to much sentencing research on the length of term which logs the dependent variable due to a skewed distribution, the length of term measure in our study did not need to be transformed to correct for this type of non-normality. As the lower courts can only imprison up to a maximum of 24 months, and our sample is restricted to personal (violent) offences, this may have mitigated the extent of positive skew. An examination of the histogram and skewness statistics confirmed that it was within acceptable limits.¹⁰ Further, as our data consists of cases, we have clustering due to repeat appearances of the same defendants. (This is particularly an issue in the lower courts where defendants are processed more quickly). Thus, in both models, robust standard errors were estimated and reported.

Findings

Table 2 reports the bivariate differences between the domestic violence and non-domestic violence cases. Domestic violence cases differ significantly from non-domestic violence cases on most characteristics (with the exceptions of pre-trial detention and mode of conviction which did not differ significantly). Compared to non-domestic violence cases, offenders in domestic violence cases are on average older (35.19 vs. 33.00 years, $p < 0.001$), more likely to be of Indigenous background (although marginally significant at $p < 0.10$, 18.05% vs 17.41%), and less likely to be female (17.33% vs 19.16%, $p < 0.001$). Domestic violence cases are also on average more serious, with higher mean seriousness scores (129.64 vs 125.97, $p < 0.001$), a greater proportion with multiple conviction counts (46.39% vs 38.89%, $p < 0.001$), and more likely to involve serious violence (33.77% vs 21.24%, $p < 0.001$).

¹⁰ The distribution of the natural log of the length of term variable had a similarly skewed, but in the opposite direction. Logging increased the magnitude of kurtosis. Diagnostics showed that the errors in the length of term model were homoskedastic. This was the case, regardless of whether we modelled length without transformation, or the naturally logged length. Homoskedasticity influences the estimated standard errors (and the estimated coefficients remain unbiased), so we calculate and report robust standard errors. We also estimated the model as a truncated regression to take account of the restriction on the range of the dependent variable. Although there were some differences in the magnitude of the estimated coefficients (larger), the direction of effects and the pattern of significance remained the same. Thus, we report the untruncated regression model as it is more conservative, and does not change our substantive interpretation.

[Insert Table 2 about here]

Judicial use of incarceration is slightly (but statistically significant) higher in domestic violence cases compared to non-domestic violence cases (10.51% vs 9.66%, $p < 0.01$). Of those cases that received a prison sentence, there was no statistically significant difference between domestic violence and non-domestic violence cases in the mean length of prison sentence (6.36 vs 6.29 months), with median length of 6 months. This suggests that domestic violence may be considered as a circumstance that aggravates sentencing outcomes, at least in the choice of sentence type. However, after adjusting for other factors known to influence sentencing outcome, does the context of domestic violence aggravate sentencing?

Table 3 summarises the results of our logit model of the decision to imprison. Fit statistics indicate that the model fits reasonably well (pseudo $R^2 = 0.522$; area under the ROC curve = 0.938). These results show that several offender, legal and case characteristics have a significant influence on the likelihood of a sentence of incarceration. Consistent with past research, Indigenous status (compared to being non-Indigenous) significantly increases (65.6%) the odds of incarceration, while being female (compared to being male) significantly reduces (56.8%) the odds of incarceration. Not surprisingly, cases with more serious past and current offending have an increased likelihood of incarceration. For instance, higher levels of prior appearances (compared to none or 1 prior appearance), the presence of multiple conviction counts, and higher seriousness scores increase the odds of an incarceration sentence. The presence of serious violence substantially increased the likelihood of prison (162.4%) as those cases without serious violence. Our case processing factors are also significantly related to the decision to imprison. Not being detained pre-trial substantially and significantly reduces

the likelihood of incarceration, with offenders released pre-trial being on average 0.024 times as likely as those detained pre-trial to receive a prison sentence. In contrast, cases going to trial, versus those not going to trial, increased the likelihood of prison.

[Insert Table 3 about here]

Finally, given our research questions, the effect of being charged with a domestic violence offence is of particular interest. As reported in Table 3, a domestic violence-related principal offence has a significant impact on the judicial use of incarceration. Compared to non-domestic violence cases, cases in which the principal offence involves domestic violence are 0.672 as likely to receive an incarceration sentence. In other words, these results show that the presence of domestic violence (versus non-domestic violence) reduces the likelihood of incarceration, even after adjusting for other demographic, legal and case characteristics. Thus, this suggests that domestic violence is not treated as seriously as crime committed outside of intimate/familial relationship contexts.

To demonstrate the substantive impact of the presence of a domestic violence offence, we calculated predicted probabilities calculated under the direct effects model shown in Table 3. Table 4 reports that change in the predicted probabilities in moving from one category (or value) to another category (or value) for each independent variable, after setting all other covariates in the model to their sample means. Recall that the observed (unadjusted) probability of an incarceration order is 10.28%. Offender background characteristics such as gender, Indigenous status and age have small effects on the probability of an incarceration order. For example, with all other factors set at their means, moving from being a male to being a female reduces the probability of an incarceration order, but the difference is 1.9%. For an average

case, in comparison to offender characteristics, legal and case factors have a larger impact. The strongest predictor of an incarceration order is being released pre-trial, where being released before trial reduced the predicted probability of incarceration by 42.9%. Finally, in the average case, changing from a non-domestic violence offence to a domestic violence offence reduces the predicted probability of incarceration by 1.01% (but this is in a context of a low use of incarceration orders).

[Insert Table 4 about here]

The influence of the presence of domestic violence on the length of sentencing is also shown in Table 3. Although our model fits significantly better than the null model, it only explains approximately ten per cent of the variation in the length of term outcome. This may in part suggest that other factors (not in the model) may be important to the length decision (see later discussion). Such factors may include measures of the commission of the offence (e.g. weapon use), although their omission is not unusual in much sentencing research.

Again, a number of offender and case characteristics have a significant effect on the length of imprisonment term in ways that may be anticipated from past research. Again, as shown by the standardised coefficients, legal and cases characteristics have a stronger impact on the length of term than offender characteristics. Cases involving an Indigenous offender receive significantly longer sentences (with the average sentence length 0.401 months longer than for cases involving a non-Indigenous offender); while cases with a female offender receive significantly shorter sentences (female cases have sentences 1.080 months shorter than male cases). More serious current offending also significantly increases the average sentence length. For example, each unit increase in current offence seriousness adds on average 0.006 months

to the term. However, more extensive past offending appears to decrease the length of term: the average prison term is 0.688 months shorter for cases involving offenders with 5 or more prior court appearance (compared to cases of offenders with none or one prior court appearance) for those who had a prison sentence ordered. The presence of serious violence also increases the average length of term (2.491 months), compared to cases without the occurrence of serious violence. The involvement of serious violence was the strongest predictor of imprisonment length (standardised coefficient of 0.314).

Finally, of those cases that received a prison sentence, a domestic violence offence significantly decreases sentence length. In particular, cases with a domestic violence principal offence have average prison sentences of 0.712 months shorter than cases with other violent principal offences. (Recall the overall unadjusted median length of term is 6.31 months.) Together with the incarceration model results, this finding suggests that crimes committed in intimate/familial relationship contexts are treated more leniently in sentencing than those committed in other circumstances.

Given the direct effects of the offender's socio-demographic characteristics, we re-estimated the incarceration order model for *domestic violence-related offences only* with dummy variables for each Indigenous/gender/age subgroup, net of all other controls used in the direct effects model reported in Table 3.¹¹ Age was divided into two groups: young (offenders up to the age of 29 years) and older (offenders over the aged of 29 years). The choice of the age cut-off was based on the age categorisation used in Steffensmeier and others (1998). Table 5 reports how Indigenous status, gender and age jointly effect the decision to impose an incarceration order. Young Indigenous males were selected as the reference category, as past research

¹¹ Due to the small numbers in some subgroups, a joint effects model was not estimated for length of term.

indicates that young minority males are the offender sub-group most likely to receive a sentence of incarceration (e.g. Steffensmeier *et al.* 1998; Curry and Corral-Camacho 2008 (drug offences); Bond and Jeffries 2011 (Indigenous males, combined ages)).

[Insert Table 5 about here]

Table 5 shows that other than older Indigenous males, all other offender sub-groups have lower likelihoods of receiving an incarceration order than young Indigenous males in domestic violence cases. Non-Indigenous females, regardless of age (young: reduced the odds by 76.2%; older: reduced by 72.7%) receive the more lenient treatment than young Indigenous males. In line with other research, this suggests that there is a penalty to being an Indigenous male, after controlling for other sentencing factors (e.g. Steffensmeier *et al.* 1998). However, unlike international research with a focus on African-American and Hispanic offenders, our results may indicate that older Indigenous males may be seen as an even greater threat and less reformable at least in domestic violence cases (O.R.=1.305, $p < 0.10$ level which may reflect the impact of smaller numbers in calculating standard errors).

Clearly, the interaction between Indigenous status and gender is important to understanding sentencing of domestic violence offenders, but a fuller examination is beyond the space constraints of this paper. In particular, the intersection of Indigeneity and the context of domestic violence in sentencing needs to be situated within social and political contexts, exploring debates around domestic violence and Indigeneity in Australia. A separate study (see XXXX 2014) showed that the offenders whose violent offending occurred in a domestic context were sentenced more harshly (at least in terms of a greater likelihood of incarceration)

in non-Indigenous cases, but that there was no significant difference in the cases of Indigenous violent offenders.

Discussion and Future Directions

Domestic violence activists and researchers have long argued that perpetrators of domestic violence should be given the same punishment as offenders who are violent outside of intimate and familial contexts. Similar punishment can communicate to individual perpetrators, victims and society more broadly that this type of violence is a significant crime and will not be tolerated (Olson and Stalans 2001: 1165-1166). As argued by Hessick (2007: 398), “treating violence within relationships just as seriously as violence between strangers will reinforce the message that non-stranger violence is entirely unacceptable behavior”. This means that research on sentencing disparities in domestic violence (versus other violence) cases is essential.

Although prior comparative sentencing analyses of domestic versus non-domestic violence offending have been sparse, results suggested that domestic violence offenders were sentenced less harshly, at least for sentence length in samples of sexual assault or homicide cases. In the *first* multivariate comparative analysis of *both* the incarceration and length of term decisions for *all* types of violent offending, our results suggests some evidence of sentencing leniency. Domestic violence offenders in statistically similar circumstances were significantly less likely than those convicted of violent offences outside of familial/intimate relationship contexts to be sentenced to prison, although the substantive impact was small. The adjusted risk of incarceration for non-domestic violence offenders was 3.15%; the adjusted risk for domestic violence offenders was 2.14% (cf. an unadjusted baseline risk of incarceration of 10%). Even

though the difference in the adjusted risk of incarceration is small, once incarcerated, there is a moderate effect on length of term. Domestic violent offenders received on average 0.712 months, or approximately 21 days, shorter terms (in a context where magistrates cannot impose a prison sentence over 2 years).

This pattern of sentencing leniency, especially the moderate impact on sentence length, is consistent with a focal concerns explanation. Judicial attributions of blameworthiness, harm and risk based on stereotypical assumptions about domestic violence offending may mitigate the sentences of domestic violent offenders compared to the sentences of other violent offenders. In addition, there may be judicial concern about the social cost to victims if offenders are incarcerated as well as sensitivity to community concern around stranger violence.

If this is indeed the case, the endurance of stereotypical assumptions about domestic violence that may minimise judicial assessments of culpability, harm, risk and social costs raised considerable concerns. Although the substantive impact is small, the very presence of some evidence of leniency is troubling, given the intent around the use of criminal justice to intervene in domestic violence, as well as the symbolic functions of the sentencing process. Current knowledge about domestic violence suggests that traditional aggravating and mitigating circumstances may need to be re-thought by judges. For example, harm may need to be conceptualised more broadly than injury to the individual victim, as research suggests that the negative impact of domestic violence extends well beyond individual victims to wider society (UNICEF 2000; Walby 2004). The strong likelihood of repeat victimisation and escalation of violence (Smith-Stover 2005; Campbell *et al.* 2007; Hessick, 2007) suggests that, victims of domestic violence are more vulnerable to future harm, which should increase judicial assessments of risk (Hessick 2007). Research also indicates that the emotional context of the

domestic violence offending, and arguments about victim provocation, should not be seen as mitigating culpability. Abuse and violence in relationships has long been recognised as a means of control to obtain victim compliance (Mahony 1991; Hamberger *et al.* 1997; Johnson and Ferraro 2000; Hessick, 2007). Domestic violence perpetrators frequently blame their victims to legitimise their offending (Koss *et al.* 1994; Henning, Jones and Holdford 2005), which may obscure the perpetrator's self-interest in acting violently (Mahony 1991).

Similarly, social cost arguments around the incarceration of domestic violence perpetrators are predicated on the idea that victims will experience economic hardship if their abuser, and assumed primary breadwinner, is incarcerated, or that custodial sentences may fragment familial relationships. However, such concerns are equally relevant in non-domestic violence cases, and as such, cannot justify the lenient treatment of domestic violence offenders (Hessick 2007). In contrast to non-domestic violence, the social costs to families in cases of domestic violence may be more likely in the decision to not incarcerate. For victims of domestic violence, the incarceration of their abuser may provide a much needed respite from the violence, a sense of short-term security and an opportunity to heal.

Further, these assessments of blame and risk are shaped by the intersection of Indigeneity, gender and age. In domestic violence cases, older and younger Indigenous males were treated more harshly in sentencing, net of other sentencing factors. This pattern of findings suggests that it is not simply Indigenous status that matters, but that its influence is conditioned by other offender attributes.

However, as is the case in much sentencing research, these conclusions are tentative. First, although the majority of domestic violence cases are processed at the lower court level, these

findings may not generalise to higher court domestic violence cases. Prior work on offender-level sentencing disparities in Australia shows different patterns in sentencing outcomes for higher and lower courts (see e.g. Jeffries and Bond 2009; Bond and Jeffries 2011, Bond and Jeffries 2012; Jeffries and Bond 2012). Second, we have not been able to adjust for all contextual factors that may be known to the judge at sentencing. For example, the type of victim injury, use of weapon, and the specific nature of the offender's criminal history may all contribute to the assessments of blame and risk made by judges, which in turn, influence sentencing of domestic and non-domestic violence cases. Past sentencing research suggests that these types of factors increase the severity of sentencing. For instance, although victim injury is often not controlled for in analyses of the sentencing of general offender samples, these studies show that the presence of *physical* injury to the victim¹² increases the likelihood of an imprisonment sentence (e.g. Spohn and Cederblom 1991; Bond and Jeffries 2011). Similarly, studies of the processing of domestic violence offenders suggest that the presence of *physical* victim injury increases the level of charges filed (Kingsnorth *et al* 2001), the likelihood of prosecution (Hirschel and Hutchinson 2001 (note the reverse coding of victim injury in this study); Henning and Feder 2005), and length of term (McCormick *et al* 1998 (sexual assault sample)). However, we do not yet know whether victim injury is constructed differently by judges and magistrates in domestic violence cases compared to cases of other types of violence. Finally, we do not have any direct measures of the perceptual mechanisms predicted by the focal concerns perspective. The hypothesised attributions about blame, harm, risk and social costs remain a 'black box'.

Statistical analyses alone are not sufficient to fully understand the process of sentencing decisions in domestic violence (or any criminal) cases (Daly 1994; Jeffries and Bond 2010;

¹² Note that generally, victim injury has been conceptualised as physical injury in this research.

Jeffries and Bond 2013). While such an approach can establish *whether* a violent crime was committed within intimate and familial contexts matters to sentencing, it cannot fully explain *why* this is the case. Future research needs to go beyond numerical examinations of court administrative databases to include qualitative analyses of information contained in court files and transcripts (such as judicial sentencing remarks and pre-sentence reports), as well as interviews with judges and observational studies of the courtroom context. Such analyses would allow for a more in-depth examination of the sentencing stories in domestic versus non-domestic violence cases, and provide insight into the intersection between Indigeneity, gender and age. It would help us to gain a better understanding of how sentencing judges perceive or refer to domestic versus non-domestic violence offenders, how they interpret different relational and offender contexts in rationalising their sentencing decisions.

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References

Albonetti, C.A. (1991), 'An Integration of Theories to Explain Judicial Discretion', *Social Problems*, 38/2: 247-266.

Australian Bureau of Statistics. (2009), *National Offence Index, 2009*. Canberra: Australian Bureau of Statistics.

Australian Bureau of Statistics. (2013), *Prisoners in Australia, 2012*. Canberra: Australian Bureau of Statistics.

Belknap, J., and Graham, D.L.R. (2000), *Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and Other Variables*. Washington, DC: United States Department of Justice.

Bond, C.E.W., and Jeffries, S. (2011), 'Indigeneity and the Judicial Decision to Imprison: A Study of Western Australia's Higher Courts', *British Journal of Criminology*, 51/2: 256-277.

Bond, C.E.W., and Jeffries, S. (2012), 'Indigeneity and the Likelihood of Imprisonment in Queensland's Adult and Children's Courts', *Psychiatry, Psychology and Law*, 19/2: 169-183.

Braithwaite, J., and Daly, K. (1994), 'Masculinities, Violence and Communitarian Control', in T. Newburn and E. Stanko, eds. *Just Boys Doing Business? Men, Masculinities and Crime*. London: Routledge.

Busch, R., Robertson, N., and Lapsley, H. (1995), 'The Gap: Battered Women's Experience of the Justice System in New Zealand', *Canadian Journal of Women and the Law*, 8/1: 190-222.

Bushway, S., Johnson, B., and Slocum, L. (2007), 'Is the Magic Still There? The Use of the Heckman Two-Step Correction for Selection Bias in Criminology', *Journal of Quantitative Criminology*, 23/2: 151-178.

Cammiss, S. (2006), 'The Management of Domestic Violence Cases in the Mode of Trial Hearing: Prosecutorial Control and Marginalizing Victims', *British Journal of Criminology*, 46/4: 704-718.

Campbell, J.C., Glass, N., Sharps, P.W., Laughon, K., and Bloom, T. (2007), 'Intimate Partner Homicide: Review and Implications of Research and Policy', *Trauma, Violence and Abuse*, 8/3: 246-269.

Corsilles, A. (1994), 'No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?', *Fordham Law Review*, 63/3: 853-881.

Cretney, A., and Davis, G. (1997), 'Prosecuting Domestic Assault: Victims Failing Courts or Courts Failing Victims', *The Howard Journal*, 36/2: 146-157.

Curry, T.R., and Corral-Camacho, G. (2008), "Sentencing Young Minority Males for Drug Offences: Testing for Conditional Effects between Race/Ethnicity, Gender and Age during the U.S. War on Drugs", *Punishment and Society*, 10/3: 253-276.

Daly, K. (1994), *Gender, Crime and Punishment*. New Haven, CT: Yale University Press.

Dawson, M. (2003), 'The Cost of "Lost" Intimacy: The Effect of Relationship State on Criminal Justice Decision-Making', *British Journal of Criminology*, 43/4: 689-709.

Dawson, M. (2004), 'Rethinking the Boundaries of Intimacy at the End of the Century: The Role of Victim-Defendant Relationship in Criminal Justice Decision Making Over Time', *Law and Society Review*, 38/1: 105-138.

De Fazio, L. (2009), 'The Legal Situation on Stalking among the European Member States', *European Journal on Criminal Policy and Research*, 14/3: 229-242.

Du Mont, J., Parnis, D., and Forte, T. (2006), 'Judicial Sentencing in Canadian Intimate Partner Sexual Assault Cases', *Medicine and Law*, 25/1: 139-157.

Douglas, H. (2008), 'The Criminal Law's Response to Domestic Violence: What's Going On?', *Sydney Law Review*, 30/3: 439-469.

Erez, E., and Tontodonato, P. (1990), 'The Effect of Victim Participation in Sentencing on Sentence Outcome', *Criminology*, 28/3: 451-474.

Fradella, H.F., and Fischer, R.G. (2010), 'Factors Impacting Sentence Severity of Intimate Partner Violence Offenders and Justification for the Types of Sentencing Imposed by Mock Jurors', *Law and Psychology Review*, 34: 25-53.

Franklin, T.W., and Fearn, N.E. (2010), 'Sentencing Asian Offenders in the State Courts: The Influence of a Prevalent Stereotype', *Crime and Delinquency*, DOI: 0011128710386200.

Gannon, M., and Brzozowski, J.A. (2004), 'Sentencing in Cases of Family Violence', in J.A. Brzozowski, ed., *Family Violence in Canada: A Statistical Profile 2004*, 64-75. Ottawa: Statistics Canada.

Gannon, M., and Mihorean, K. (2005), 'Sentencing Outcomes: A Comparison of Family Violence and Non-Family Violence Cases', *JustResearch*, 12: 42-51.

Gilchrist, E., and Blissett, J. (2002), 'Magistrates' Attitudes to Domestic Violence and Sentencing Options', *The Howard Journal*, 41/4: 348-363.

Hamberger, K.L., Lohr, J.M., Bonge, D., and Tolin, D.F. (1997), 'An Empirical Classification of Motivations for Domestic Violence', *Violence Against Women*, 3/4: 401-423.

Hartman, J.L., and Belknap, J. (2003), 'Beyond the Gatekeepers: Court Professionals' Self-Reported Attitudes About and Experiences with Misdemeanor Domestic Violence Cases', *Criminal Justice and Behavior*, 30/3: 349-373.

Hawkins, D. (1981), 'Causal Attribution and Punishment for Crime', *Deviant Behavior*, 2/3: 193-215.

Henning, K., and Feder, L. (2005), 'Criminal Prosecution of Domestic Violence Offences: An Investigation of Factors Predictive of Court Outcomes', *Criminal Justice and Behavior*, 32/6: 612-642.

Henning, K., Jones, A.R., and Holdford, R. (2005), "'I Didn't Do It, But If I Did I Had a Good Reason": Minimization, Denial, and Attributions of Blame Among Male and Female Domestic Violence Offenders', *Journal of Family Violence*, 20/3: 131-139.

Hessick, C.B. (2007), 'Violence Between Lovers, Strangers and Friends', *Washington Law Review*, 85/2: 344-402.

Hirschel, D., and Hutchinson, I.W. (2001), 'The Relative Effects of Offense, Offender, and Victim Variables on the Decision to Prosecute Domestic Violence Cases', *Violence Against Women*, 7/1: 46-59.

Holder, R. (2001), *Domestic and Family Violence: Criminal Justice Interventions*. Issues Paper No.3. Canberra: Australian Domestic and Family Violence Clearinghouse.

Hoyle, C., and Sanders, A. (2000), 'Police Response to Domestic Violence', *British Journal of Criminology*, 40/1: 14-36.

Jeffries, S., and Bond, C.E.W. (2009), 'Does Indigeneity Matter?: Sentencing Indigenous Offenders in South Australia's Higher Courts', *Australian and New Zealand Journal of Criminology*, 42/1: 47-71.

Jeffries, S., and Bond, C.E.W. (2010), 'Narratives of Mitigation: Sentencing Indigenous Criminal Defendants in South Australia's Higher Courts', *Journal of Sociology*, 46/3: 219-237.

Jeffries, S., and Bond, C.E.W. (2012), *Indigenous Disparity in Lower Court Imprisonment Decisions: A Study of Two Australian Jurisdictions, 1998-2008*, Trends and Issues in Criminal Justice series, 447. Canberra: Australian Institute of Criminology.

Jeffries, S., and Bond, C.E.W. (2013), 'Gender, Indigeneity and the Criminal Courts: A Narrative Exploration of Women's Sentencing in Western Australia', *Women and Criminal Justice*, 23/1: 19-42.

Jeffries, S., and Bond, C.E.W. (2014), 'Taking the Problem Seriously? Sentencing Indigenous and non-Indigenous Domestic Violence Offenders'. Under review.

Jeffries, S., Fletcher, G. and Newbold, G. (2003), 'Pathways to Sex-Based Differentiation in Criminal Court Sentencing', *Criminology*, 41/2: 329–353.

Johnson, B.D. (2003), 'Racial and Ethnic Disparities in Sentencing Departures Across Modes of Conviction', *Criminology*, 41/2: 449–489.

Johnson, M.P., and Ferraro, K.J. (2000), 'Research on Domestic Violence in the 1990s: Making Distinctions', *Journal of Marriage and Family*, 62/4: 948-963.

Jones, D.A., and Belknap, J. (1999), 'Police Responses to Battering in a Progressive Pro-Arrest Jurisdiction', *Justice Quarterly*, 16/2: 249-273.

Kern, R., Libkuman, T.M., and Temple, S.L. (2007), 'Perceptions of Domestic Violence and Mock Jurors' Sentencing Decisions', *Journal of Interpersonal Violence*, 22/12: 1515-1535.

Kingsnorth, R.F., MacIntosh, R.C., Berdahl, T., Blades, C., and Rossi, S. (2001), 'Domestic Violence: The Role of Interracial/Ethnic Dyads in Criminal Court Processing', *Journal of Contemporary Criminal Justice*, 17/2: 123-141.

Kingsnorth, R.F., MacIntosh, R.C., and Wentworth, J. (1999), 'Sexual Assault: The Role of Prior Relationship and Victim Characteristics in Case Processing', *Justice Quarterly*, 16/2: 275-301.

Koss, M.P., Goodman, L.A., Brown, A., Fitzgerald, L., Puryear-Keita, G., and Felipe, N. (1994), *No Safe Haven: Male Violence Against Women at Home, at Work, and in the Community*. Washington, DC: American Psychological Association.

Mahoney, M.M. (1991), 'Legal Images of Battered Women: Redefining the Issue of Separation', *Michigan Law Review*, 90/1: 1-94.

Matczak, A., Hatzidimitriadou, E., and Lindsay, J. (2011), *Review of Domestic Violence policies in England and Wales*. London: Kingston University and St George's, University of London.

McCormick, J.S., Maric, A., Seto, M.C., and Barbaree, H.E. (1998), 'Relationship to Victim Predicts Sentence Length in Sexual Assault Cases', *Journal of Interpersonal Violence*, 13/3: 413-420.

Mills, L.G. (1998), 'Mandatory Arrest and Prosecution Policies for Domestic Violence: A Critical Review and Case for more Research to Test Victim Empowerment Approaches', *Criminal Justice and Behavior*, 25/3: 306-318.

Miethe, T.D. (1987), 'Stereotypical Conceptions and Criminal Processing: The Case of the Victim-Offender Relationship', *Justice Quarterly*, 4/4: 571-593.

Mitchell, O. (2005), 'A Meta-Analysis of Race and Sentencing Research: Explaining the Inconsistencies', *Journal of Quantitative Criminology*, 21/4: 439-466.

New South Wales Bureau of Crime Statistics and Research. (2009), *Criminal Courts Statistics 2008*. Sydney: New South Wales Bureau of Crime Statistics and Research.

Ogilvie, E. (2000), *Stalking: Legislative, Policing and Prosecution Patterns in Australia*. Canberra: Australian Institute of Criminology.

Olson, D.E., and Stalans, L.J. (2001), 'Violent Offenders on Probation: Profile, Sentence, and Outcome Differences among Domestic Violence and other Violent Probationers', *Violence Against Women*, 7/10: 1164-1185.

Ptacek, J. (1999), *Battered Women in the Court Room*. Boston, MA: Northeastern University Press.

Ringland, C., and Fitzgerald, J. (2010), *Factors which Influence the Sentencing of Domestic Violence Offenders*. Sydney: New South Wales Bureau of Crime Statistics and Research.

Robbins, K. (1999), 'No-Drop Prosecution of Domestic violence: Just Good Policy or Equal Protection Mandate?', *Stanford Law Review*, 52/1: 205-233.

Rollings, K., and Taylor, N. (2008), *Measuring Police Performance in Domestic and Family Violence*. Trends and Issues in Crime and Criminal Justice series, 367. Canberra: Australian Institute of Criminology.

Shephard, M.F., and Pence, E.L. (eds.) (1999), *Co-ordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond*. Thousand Oaks, CA: Sage.

Simon, L.M.J. (1996a), 'Legal Treatment of the Victim-Offender Relationship in Crimes of Violence', *Journal of Interpersonal Violence*, 11/1: 94-106.

Simon, L.M.J. (1996b), 'The Effect of the Victim-Offender Relationship on the Sentence Length of Violent Offenders', *Journal of Crime and Justice*, 19/1: 129-148.

Smith-Stover, C. (2005), 'Domestic Violence Research: Where Do We Go From Here?', *Journal of Interpersonal Violence*, 20/4: 448-454.

Spohn, C. (2000), *Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process. Policies, Processes, and Decisions of the Criminal Justice System series*, 3. Washington, DC: Department of Justice.

Spohn, C., Beichner, D. (2000), 'Is Preferential Treatment of Female Offenders a Thing of the Past? A Multisite Study of Gender, Race, and Imprisonment', *Criminal Justice Policy Review*, 11/2: 149-184.

Spohn, C.C., and Spears, J. (1997), 'Gender and Case Processing Decisions', *Women and Criminal Justice*, 8/3: 29-59.

Steffensmeier, D., and Demuth, S. (2001), 'Ethnicity and Judges' Sentencing Decisions: Hispanic-Black-White Comparisons', *Criminology*, 39/1: 145-178.

Steffensmeier, D., and Demuth, S. (2006), 'Does Gender Modify the Effects of Race-Ethnicity on Criminal Sanctions? Sentences for Male, Female, White, Black and Hispanic Defendants', *Journal of Quantitative Criminology*, 22/3: 763-797.

Steffensmeier, D., Ulmer, J., and Kramer, J. (1998), 'The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black and Male', *Criminology*, 36/4: 763-798.

UNICEF. (2000). *Domestic Violence Against Women and Girls*. Florence: UNICEF

United States Department of Justice. (1996), *Domestic Violence, Stalking, and Anti-Stalking Legislation: An Annual Report to Congress Under the Violence Against Women Act*. Washington, DC: United States Department of Justice.

Ventura, L.A., and Davis, G. (2005), 'Court Case Conviction and Recidivism', *Violence Against Women*, 11/2: 255-277.

Walby, S. (2004), *The Cost of Domestic Violence*. London: United Kingdom Department of Trade and Industry.

Welch, D. (1994), 'Mandatory Arrest for Domestic Abusers: Panacea or Perpetuation of the Problem of Abuse?', *DePaul Law Review*, 43: 1133-1164.

Wooldredge, J., and Thistlethwaite, A. (2004), 'Bilevel Disparities in Court Dispositions for Intimate Assault', *Criminology*, 42/2: 417-456.

Legislation

Crimes Act 1900 (New South Wales)

Crimes (Domestic and Personal Violence) Act 2007 (New South Wales)

Crimes (Sentencing Procedure) Act 1999 (New South Wales)

Table 1. Description of study variables, New South Wales lower courts, violent offences (January 2009- June 2012)

Variables	Description
<i>Dependent variables</i>	
Sentence of incarceration order	0=no, not sentenced to prison; 1=yes, sentenced to prison.
Length of incarceration order	In months. Maximum prison term possible in lower courts in this jurisdiction is 2 years.
<i>Independent variables</i>	
<u>Offender social characteristics</u>	
Age	At time of sentencing (in years).
Sex	0=mail; 1=female
Indigenous status	0=non-Indigenous; 1=Indigenous. Indigenous status is based on self-identification by the defendant.
<u>Legal and case characteristics</u>	
Prior appearances	Ordinal measure of number of all prior proven criminal court appearances in the last 10 years from current case. 0=0 to 1 prior appearance; 1=2-4 prior appearances; 2=5 or more prior appearances.
Seriousness of principal offence	Reverse coded National Offence Index (NOI).
Convicted of multiple counts	0=no; 1=yes.
Involved serious violence	0=no, offence did not involve serious (or aggravated) violence; 1=yes, offence involved serious (or aggravated) violence.
Released pre-trial	0=no; 1=yes. Refers to whether out of custody at the time of finalisation of the case.
Mode of conviction	0=no trial; 1=trial.
Domestic violence offence	0=no, not recorded as domestic violence; 1=yes, recorded as domestic violence.

Source: ROD database (NSW Bureau of Crime Research and Statistics)

Table 2. Descriptive statistics of study variables, New South Wales lower courts, violent offences (January 2009- June 2012, N=64,201)

	Total cases	Domestic violence cases	Non-Domestic violence cases	Difference
<i>Social history characteristics</i>				
% Indigenous	17.58	18.05	17.41	#
% female	18.66	17.33	19.16	***
Mean age at disposition (in yrs)	33.60 (12.02)	35.19 (11.22)	33.00 (12.26)	***
<i>Legal and case characteristics</i>				
Median number of prior appearances	2	2	2	***
Mean seriousness score of current offence	126.96 (6.20)	129.64 (2.78)	125.97 (6.79)	***
% with multiple conviction counts	44.36	46.39	38.89	***
% involving serious violence	24.63	33.77	21.24	***
% released pre-trial	89.63	89.81	89.56	n.s.
% went to trial	13.43	13.34	13.47	n.s.
% with domestic violence offence	27.07	---	---	---
<i>Sentence outcome</i>				
% with a prison sentence	10.28	10.51	9.66	**
Mean length prison term (in mths) ⁶	6.31 (3.97)	6.36 (3.85)	6.29 (4.00)	n.s.
Total number of cases	64,201	17,382	46,819	

Source: ROD database (New South Wales Bureau of Crime Research and Statistics)

p<0.10 *p<0.05 **p<0.01 ***p<0.001

Notes:

1. Means (with standard deviations in brackets) are reported for continuous variables; percentages are reported for dichotomous variables.
2. T-tests for difference between group means, and z-test for difference between group proportions, are used to test whether there is a significant difference between domestic violence and non-Indigenous cases.

3. Wilcoxon rank-sum test was used to evaluate differences in rank ordering between domestic violence and non-domestic violence cases.
4. There were 5,537 cases (8.62%) with Indigenous status unknown, and 3,180 (4.95%) with mode of conviction unknown. There were significantly more non-domestic violence cases with unknown Indigenous status (11.37% vs 2.23%; $z=40.69$, $p<0.001$). Further, the difference between proportions of unknown mode of conviction in domestic violence (5.65%) and non-domestic violence cases (4.69%) is significant ($z=4.95$, $p<0.001$).
5. Median: age (32); seriousness score (128); length (6).
6. Number of cases with an incarceration order: full (6,598); domestic violence cases (1,679); non-domestic violence cases (4,919).

Table 3. Models of sentence outcomes on key offender and case characteristics, New South Wales lower courts, violence offences (N=64,201)

	Incarceration order model				Length of term model		
	Coeff.	s.e.	O.R.	% Δ in odds	Coeff.	s.e.	Standardised coeff.
<i>Offender characteristics</i>							
Indigenous	0.505***	0.044	1.656	+65.6	0.401***	0.099	0.050
Female	-0.839***	0.066	0.432	-56.8	-1.080***	0.170	-0.073
Age at disposition	0.007***	0.002	1.007	+0.7	-0.011*	0.005	0.028
<i>Legal and case characteristics</i>							
2-4 (vs 0-1) prior appearances	0.644***	0.067	1.903	+90.3	-0.472#	0.248	-0.048
5 or more (vs 0-1) prior appearances	1.673***	0.066	5.326	+432.6	-0.688**	0.236	-0.077
Seriousness of principal offence	0.027***	0.005	1.028	+2.8	0.006***	0.010	-0.011
Involved serious violence	0.965***	0.058	2.624	+162.4	2.491***	0.127	0.314
Multiple conviction counts	0.744***	0.042	2.105	+110.5	0.108	0.113	0.011
Released pre-trial	-3.710***	0.041	0.024	-97.6	-0.112	0.107	-0.012
Trial	0.300***	0.054	1.349	+34.9	0.683***	0.139	0.063
Domestic violence offence	-0.398***	0.046	0.672	-32.8	-0.712***	0.109	-0.078
Constant	-9.600***	0.661			6.095***	1.337	
Pseudo R ² / Adjusted R ²		0.522				0.103	
N		64,201				6,598	

Source: ROD database (New South Wales Bureau of Crime Research and Statistics)

p<0.10; * p<0.05; **p<0.01; ***p<0.001

Notes:

1. Robust standard errors are provided to take account of the clustering due to repeat appearances of the same offender on new matters. There were 58,627 clusters of repeat defendants in the imprisonment model, and 5,736 in the length of term model. Fit statistics are based on the unclustered model for technical reasons. Similarly, the standardised coefficients rely on the unadjusted standard errors.
2. For the incarceration model, the area under the ROC curve for the incarceration model is 0.938 ($\chi^2=22,210.78(13)$, $p<0.05$). For the length of term model, $F(13, 6584)=59.22$, $p<0.05$.
3. Recall the models include missing dummy variables for Indigenous status and mode of conviction. The missing dummy variables were not significant at $p<0.05$ in both models, with and without clustering.

Table 4. Change in predicted probability of an incarceration order, New South Wales lower courts, violence offences (N=64,201)

Variables	Adjusted predicted probability for an average case		
	No (%)	Yes (%)	% Δ
Indigenous	2.61	4.24	+1.63
Female	3.31	1.46	-1.85
Has 2 to 4 (vs 0 to 1) prior appearances	2.27	4.24	+1.97
Has 5 or more (vs 0 to 1) prior appearances	1.85	9.13	+7.28
Serious violence present	2.25	5.71	+3.46
Multiple counts	2.06	4.24	+2.18
Released pre-trial	44.84	1.95	-42.89
Trial	2.73	3.65	+0.92
Domestic violence offence	3.15	2.14	-1.01
	20 years (%)	50 years (%)	% Δ
Age	2.58	3.19	0.61
	Sample min (%)	Sample max (%)	% Δ
Offence seriousness	0.68%	5.94%	5.26
Unadjusted observed probability of an incarceration order	10.28%		

Source: ROD database (New South Wales Bureau of Crime Research and Statistics)

Notes:

1. The predicted probabilities were calculated from the logit model shown in Table 3. For each calculation, the other variables in the model were at their sample means.

Table 5. Joint effects of Indigenous status, sex and age on sentencing outcomes, net of other controls, New South Wales lower courts, domestic violence-related offences only (N=17,382)

Sub-group	Incarceration order			
	Coeff.	s.e.	O.R.	% Δ in odds
Young Indigenous males	---	---	---	---
Young Non-Indigenous males	-0.664***	0.136	0.515	48.5
Young Indigenous females	-0.831**	0.339	0.436	56.4
Young Non-Indigenous females	-1.437***	0.310	0.238	-76.2
Older Indigenous males	0.266#	0.140	1.305	+30.5
Older Non-Indigenous males	-0.473***	0.125	0.623	-37.7
Older Indigenous females	-0.490#	0.284	0.613	-38.7
Older Non-Indigenous females	-1.300***	0.258	0.273	-72.7
Pseudo R ²		0.569		
N		17,382		

Source: ROD database (New South Wales Bureau of Crime Research and Statistics)

p<0.10; * p<0.05; **p<0.01; ***p<0.001

Notes:

1. The model includes all the variables used in the main effects model (see Table 3), except for the missing dummy variables for Indigenous status and mode of conviction. As the missing dummy variables were not statistically significant at p<0.05 in the main effects models, these variables have not been included in the interactive model.
2. Robust standard errors are provided to take account of the clustering due to repeat appearances of the same offender on new matters. There were 16,849 clusters of repeat defendants in the imprisonment model, and 1,856 in the length of term model. Fit statistics (and the standardised coefficient in the OLS model) are based on the unclustered model for technical reasons.
3. The reference group is young Indigenous males.
4. For the incarceration model, the area under the ROC curve for the incarceration model is 0.954 ($\chi^2=6282.01(14)$, p<0.05).