

Sentencing Disparities Between Male and Female Teacher Sexual Offenders:
Do Male Offenders Receive Harsher Penalties in Arizona?

by

Christopher Simmon

A Thesis Presented in Partial Fulfillment
of the Requirements for the Degree
Master of Science

Approved November 2012 by the
Graduate Supervisory Committee:

Kristy Holtfreter, Chair
Kevin Wright
Cassia Spohn

ARIZONA STATE UNIVERSITY

December 2012

ABSTRACT

The purpose of this preliminary study is to determine if sentencing disparities exist between male and female teachers who have been convicted of sexual misconduct with a student in Maricopa County, Arizona over a ten-year period. The hypothesis is that male teachers convicted of sexual misconduct with a student will receive harsher punishment than their female counterparts. In addition, this research will analyze the sentencing decisions of Arizona judges and prosecutors through plea-bargaining when compared with the presumptive sentence set by the Arizona Legislature. Issues that will be addressed include: a brief review of gender disparities in sentencing, sex offender sentencing, Arizona's rules of criminal procedure, and a review of the Arizona Revised Statutes pertaining to sexual crimes as well as the Arizona Supreme Court sentencing guidelines. The data set consists of fifteen different Maricopa County teachers who committed a sexual offense against a student and were convicted of that offense from February 2000 through September 2009. According to the results of this study, male teachers do receive harsher penalties than their female counterparts within Maricopa County.

ACKNOWLEDGMENTS

My special thanks are extended to my family Paul, Virginia, Jennifer, Rob, Robert and Jack as well as Lisa and her family for their patient guidance, enthusiastic encouragement and useful critiques. Their advice and assistance was and will always be greatly appreciated.

TABLE OF CONTENTS

	Page
LIST OF TABLES	v
INTRODUCTION.....	1
REVIEW OF LITERATURE	3
Gender Disparity in Sentencing	3
Sex Offender Sentencing.....	10
Arizona Rules Of Criminal Procedure	14
Arizona Revised Statutes.....	14
Sentencing Guidelines Overview	15
METHODS.....	17
Purpose.....	17
Research Design	17
Sample	17
Non-Dangerous Crimes Against Children	20
Dangerous Crimes Against Children	23
Pinal County Case Overview	25
CONCLUSION	27
LIMITATIONS	30
FUTURE CONSIDERATIONS	30
REFERENCES.....	31
APPENDIX A	34
APPENDIX B	36

APPENDIX	Page
Arizona Revised Statutes	34
Sentencing Guidelines.....	36

LIST OF TABLES

Table		Page
1.	Non-Dangerous Crimes Against Children Offenders	21
2.	Dangerous Crimes Against Children Offenders.....	24
3.	Pinal County Offenders	26

INTRODUCTION

This thesis provides a preliminary study to determine if sentencing disparities exist between male and female teachers who have been convicted of sexual misconduct with a student. For this study disparity is defined as the difference in treatment or outcome that does not reflect bias or prejudice. Sexual misconduct is defined as non-consensual sexual acts performed on another person and includes sexual assault, intercourse, exploitation, harassment and intimidation. For this study, the teacher student relationship is defined as a male or female teacher entering into a sexual relationship with a student under the age of eighteen. Currently, there is much debate on whether or not male teachers receive a much harsher penalty than female teachers when they are caught engaging in a sexual relationship with their students.

For example, in the book "How do Judges Decide?" Cassia Spohn asks if there is a double standard when female teachers are found guilty of having sex with one of their students. Spohn continues by stating, "critics charge that sexual relations between female teachers and their students are viewed differently than sexual relations between male teachers and their students - and that, consequently, females receive substantially more lenient punishment than similarly situated males." (p. 144) In comparison, Jennifer Mally, a *Paradise Valley High School* teacher, was sentenced in 2007 to six months in prison for engaging in an ongoing sexual relationship with her, then, sixteen year old male student. Conversely, Thomas Krepelka, a *Shadow Mountain High School* teacher, was sentenced to four years in prison with lifetime probation for engaging in a relationship with his,

then, seventeen year old female student. Based upon the differences in these two sentencing outcomes there is clearly a probability of disparate treatment.

Furthering this debate on the possibility of sentencing disparity for this crime is that of public opinion. Readers' comments on websites such as badbadteacher.com, hotforteacher.com as well as many of the on-line news reports and blogs pertaining to such crimes seem to be in agreement that female teachers receive much more lenient sentences than their male counterparts. For example, a comment posted by "Scott" on April 9, 2008 concerning Debra Lafave's zero jail time sentence for having a sexual encounter with a 14-year old male student reads, "My beef is that women who commit sex crimes against minors get a slap on the wrist and do not suffer the same punishment as men. Women should not get special treatment and should do the same hard time as men who are convicted of sex crimes." Certainly Jennifer Mally's and Debra Lafave's sentencing outcome spark many questions including: would a male teacher receive the same punishment for the same crime and are the punishments given by the judges too lenient on teacher sex offenders in general? Unfortunately, few, if any, empirical studies have actually analyzed this small niche of offenders and answered those questions.

The purpose of this preliminary study is to determine if sentencing disparities exist between male and female teachers who have been convicted of sexual misconduct with a student in Maricopa County, Arizona over a ten-year period between 2000 and 2009. The hypothesis is that male teachers convicted of sexual misconduct with a student will receive harsher punishment than their

female counterparts. In addition, this research will analyze the sentencing decisions of Arizona judges and prosecutors through plea-bargaining when compared with the presumptive sentence set by the Arizona Legislature. In other words, this research will also examine the discrepancies between the sentence called for by the statute and the sentence imposed by the judge. This thesis will offer insight into the question do sentencing disparities exist between male and female teachers who have been convicted of sexual misconduct with an underage student. Issues that will be addressed in the following review of literature include: 1) gender disparities in sentencing, 2) sex offender sentencing, and 3) a review of the Arizona Revised Statutes pertaining to sexual crimes as well as the Arizona Supreme Court sentencing guidelines.

REVIEW OF LITERATURE

Gender Disparity In Sentencing

Research on gender disparity in sentencing outcomes offers a tremendous tome of empirical knowledge and most researchers support the theory that there are noticeable differences between the incarceration rates between males and females. For example, the Bureau of Justice Statistics (2009) states that male prisoners accounted for approximately 93% of the prison population. Specifically, according to their table on "Prisoners under the jurisdiction of state or federal correctional authorities, December 31, 2000-2009" in 2009 1,500,278 males and 113,462 females were imprisoned. Moreover, the average female population for the ten-year period is approximately 6.92%. Accordingly, their summary on prisoner characteristics revealed that the rate for male incarcerations was fourteen

times higher than the female rate. And, of the female population specifically, "one in 703 black females was imprisoned, compared to about 1 in 1,987 white females and 1 in 1,356 Hispanic females." (p. 9) Unmistakably, a clear difference exists between not only the male and female incarceration rates but also among the female race incarceration rates as well.

Doerner and Demuth (2009), support the argument that there is a considerable gap in sentencing outcomes between not only gender, but also race, and age. For example, their study found that females received more lenient sentences than males, white defendants received more lenient sentences than the black and Hispanic populations and that older defendants received more lenient sentences than younger defendants. The authors conclude that, "even in a sentencing system with a relatively rigid set of formal guidelines, unexplained extralegal disparities persist and are, in many cases, quite large." (p 21)

Mustard (2001), consistent with Doerner and Demuth, also found that women receive more lenient sentences than their male counterparts and that blacks receive harsher sentences than whites. The author also found that, "departures account for 56 percent of the racial and 67 percent of the gender differences" (p 303) in his analyses of federal case outcomes. A departure occurs when a judge departs from the sentencing guideline to a greater or lesser sentence due to an aggravating or mitigating circumstance. The author noted that females were more likely to receive a downward departure and less likely to receive an upward departure. An example of a downward departure circumstance would be a defendant assisting the prosecution with the conviction of another person, such as

a culpable girlfriend giving information to the prosecution to better their case against a more blameworthy boyfriend.

Because, as shown above, females, regardless of race, will not be incarcerated as often as males there is evidence of gender disparity within court sentencing. In view of this, there are three causes of sentencing disparity that can account for the wide differences in incarceration rates and departures from the sentencing guidelines. They are inter-jurisdictional disparity, intra-jurisdictional disparity and intra-judge disparity. Briefly, inter-jurisdictional disparity occurs when sentences are decided in different jurisdictions within the same state or completely different states. This happens because the laws vary between jurisdictions and the states. Hence, the judges are bound to sentence according to their given guidelines. Intra-jurisdictional disparity occurs when judges, within the same jurisdiction, sentence according to differing perceptions of crime seriousness and previous criminal history, i.e. legally relevant factors. Intra-judge disparity occurs when judge bases his sentence on his attitude, mood or feeling toward the defendant or attorney. (Spohn, 2008) In sum, each of these will contribute to noticeable differences in sentencing outcomes by allowing judges more discretion with upward or downward departures which will cause disparity between any particular grouping of case outcomes including gender.

Three theoretical explanations that can account for gender disparity in sentencing include judicial paternalism, chivalry, and focal concerns, such as females being considered less dangerous than males. These perspectives offer insight into why gender disparity can be found, bolster why the above disparities

occur when analyzing sentencing outcomes and give some understanding as to why sentencing disparities can exist within the United States judicial system (Spohn, 2008).

Judicial paternalism can be seen when a judge, usually male, treats females less harshly than male defendants. Webster's Dictionary defines paternalism as, "a policy or practice of treating or governing people in a fatherly manner, especially by providing for their needs without giving them rights or responsibilities." Just as race, and socio-economic status are protected from discrimination, gender is a legally irrelevant factor when sentencing an offender. These factors are irrelevant to sentencing because the 14th Amendment of United States Constitution prohibit gender, racial and class discrimination under the Equal Protection clause. However, clearly race and socio-economic factors have influenced previous sentencing rulings. For example, Baldus, Woodworth and Pulaski (1990) presented a statistical study that assessed racial and other suspect factors that play a key role in the outcomes of death penalty cases. The purpose for their research was to demonstrate that discrimination, directly and indirectly, influenced the sentencing outcomes in Georgia's capital cases. If discrimination were found in the most severe cases where an offender is on trial for his life, would it not be found in lesser cases like sexual assaults and drug crimes? Furthermore, if race and socio-economic factors have been proven to be a consideration in sentencing outcomes then gender, which is far easier to detect than economic status or race, can also affect a judge's sentencing decision.

Daly (1989) interviewed twenty male and three female judges and asked about their considerations for sentencing female offenders. One-third, eight male judges responded that they would protect the female offender from incarceration and the others replied that the sentence was based off of the case specifics. However, most of the judges did consider the offender's children and if the female was the caretaker then leniency was given although the judges did modify their statements and included that males would receive the same leniency if they were the primary caretakers. Koons-Witt (2002) also found that women with children were more likely to receive a probationary sentence in lieu of a jail or prison sentence before and after sentencing guidelines were enacted. In addition, the sentence mitigation appears to be preferential and the court players are exerting their discretion by lessening the charges during the plea bargaining phase. Based on this information, one could argue that women are generally the primary caretakers in a family; *vis-à-vis* women receive more leniencies when it comes to incarceration because the general proportion of male primary caretakers is limited.

Walter Miller's (1958) Focal Concerns Theory suggests that a person's behavior, specifically lower class people, is learned through six focal points. Those points are trouble, toughness, smartness, excitement, fate, and autonomy. From these points delinquent behavior is learned through social networks and applied to the individual's daily activities. In other words, the delinquent behavior arises from environmental factors such as learning from friends and family members and the actions may not coincide with laws or social norms. Extending

this theory, Steffensmeier (1980) outlined three focal concerns important to the judicial system, which include blameworthiness, community protection and practical constraints and consequences.

Briefly, blameworthiness portrays how guilty the offender might be and how much injury the offender caused. Women, for example, are seen as less culpable and less likely to recidivate than men, which gives women an unfair advantage, especially on first time offenses, during sentencing. Community protection focuses on the deterrence of future crime by incapacitating the offender. Fear of crime and the depiction that certain races are more hostile and deviant than others spurs harsher penalties on the offender regardless of the crime. Practical consequences relates to the impact of sentencing decisions on the offender, community and the criminal justice system. For example, a jail sentence may be more harmful to a young mother than to a man because the family unit will be broken apart leaving the child at a higher risk for bad behavior that could affect the surrounding community.

Daly and Bordts (1995) meta-analysis coded fifty cases from the 1970s through the 1990s that were held in urban, suburban and rural courts throughout the United States and analyzed the sex effects on sentencing outcomes. The authors found that urban courts were more likely to incarcerate males over females on felony charges and on misdemeanor charges the genders were equally punished. Specifically, their findings show that judges departed from the sentencing guidelines when sentencing females and identified characteristics such

as remorse, parenthood, pregnancy, and less blameworthiness as contributing factors to the lesser sentence.

In addition, Daly and Bordt state, “womens biographies were constructed more often than mens with a theme of blurred boundaries between victimization and criminalization.”(p. 163) These blurred boundaries opened the door to a more compassionate court because the female offender could be seen as less blameworthy and more apt to rehabilitation, which correlates to a lesser sentence.

Doener and Demuth (2010) found that previous criminal history and offense seriousness were the best predictors of sentencing outcomes. However, their study also found that extra-legal factors such as gender, age, race and socio-economic status played an important role in sentencing decisions. Where harsher penalties were unduly placed upon the poor, young Black or Hispanic men when compared to the penalties placed upon Caucasian men. Furthermore, women were sentenced less harshly than men.

Previous to the above study, Harlley, Maddan and Spohn (2007) also found disparity between offenders’ sentencing outcomes based on extra-legal factors but their results did not overwhelmingly support the focal concerns perspective. Specifically, they argued that there is too much overlap between the concepts of blameworthiness, community protection and practical consequences. For example the authors state, “Criminal history can be used as an indicator of both the blameworthiness and community safety concepts. More-over, the focal concern theorists leave a conceptual void by not explaining how the various concepts work together.” (p.63) Because of the theory’s shortcomings, Hartley et

al include a concept called perceptual shorthand. Perceptual shorthand is based upon previous experiences, offender characteristics such as race, gender, socioeconomic class and personality traits. Utilizing perceptual shorthand allows a judge to quickly assess an offender and determine a penalty. Because of the use of perceptual shorthand extra-legal factors have already influenced the judges' decision that leads to the sentencing disparities found between economic classes, races and genders. Although the authors' use of this concept was admittedly not based on the original concept sentencing disparities were found between races and gender.

With the understanding that gender disparity does exist in sentencing outcomes, would it still exist when the offender is a sex offender? Sex offenders are arguably given much harsher penalties than other offenders. For example, Morton Berger (*Arizona v Berger* 2006) was sentenced to 200 consecutive years of prison with no chance of parole for having twenty images of child pornography. The sentence imposed is harsher than one would receive for second-degree murder or even child molestation. Furthermore, this was Berger's first offense. The following is a review of sex offender sentencing that shows that sex offenders do receive harsher penalties.

Sex Offender Sentencing

A growing body of research examines gender disparity in criminal sentencing, child sex offenders, sex offender typologies, and treatment of sex offenders. However, the research on the sentencing outcomes of child sex

offenders and gender disparities in this niche of offenders is quite limited. Sex offenders as a whole are treated differently by the court system and society because they are subjected to stricter sentencing guidelines. Moreover, sex offenders are subject to harsher post-incarceration laws. The post incarceration laws include the passing of the Jacob Wetterling Act, Megan's Law, the Pam Lychner Act, and the Jessica Lunsford Act. These acts defined the guidelines for the sex offender registries and post-incarceration penalties adopted by each state as law. Specifically, the Jacob Wetterling Act passed in 1994 required every State to implement a sex offender registry; Megan's Law, passed in 1996, required States to implement a community notification system. The Pam Lyncher Act, also passed in 1996, required offenders convicted of certain aggravated offenses to be placed on lifetime probation. The Jessica Lunsford Act, also known as Jessica's Law, passed into Florida law in 2005. Jessica's Law created more severe penalties for specific sex crimes, made it unlawful for a convicted sex offender to live within a certain boundary of a school, and required stricter monitoring by State officials. Although the United States Congress never enacted Jessica's Law many states, including Arizona, have passed similar laws that include the same provisions. Few, if any, groups of convicted felons endure such lengthy post-incarceration regulation of their lives as the convicted sex offender. However, even with harsher penalties and stricter guidelines does disparity exist within sexual assault sentences?

Research on the sentencing outcomes of child sex offenders is quite limited. Included in this discussion are three studies that reviewed sentencing

predictors, recidivism rates, the associations between sexual interests and offending, and a review of the post-conviction laws. In addition, two studies were found that predated all of the tougher sex crime legislation.

The study done by Faller, Birdsall, Vandervort and Henry (2006) looked to “determine significant predictors of severity of sentencing” in sex crimes against children. They found that crime severity, prior record and age-of-victim all played significant roles in the sentencing outcome. Unfortunately, their research did not take into consideration all of the different sex crimes against children, which includes viewing of child pornography. Sample and Bray (2006) looked at the recidivism rates of sex offenders and child sex offenders. They found that the re-arrest rate for sex offenders is low especially for being arrested on the same charge as the original offense. Re-arrest patterns also vary between offender types. This study was well thought out and clearly written but did not account for the imposed sentence for each of the crimes committed. Smallbone and Wortley (2004) further discussed in their study concerning the associations between sexual interests and sexual and non-sexual offending, finding that child sex offenders are diverse in the crimes they commit and that “wide variation indicates important individual differences in both diversity and persistence of offending among sexual offenders.” (p 186) This study enhances the argument that sex offenders are not a homogenous group and disparity might exist.

In the mid 1980s, prior to the more stringent sex predator laws, Anthony Walsh published two studies that reviewed the “Differential sentencing patterns” (1984) and “Extralegal factors of felony sentencing.” (1985) In both studies

Walsh concluded that sex offenders overall receive more punitive sentences than even some of the worst criminals. Moreover, Walsh writes “the sex offender label is an extremely negative one that substantially influences sentencing severity” (p. 457, 1984) and that sex offenders receive much harsher sentences, which is significantly disproportionate to the sentencing of a non-sex offender. As mentioned earlier, little research has been done on the sentencing of sex offenders. In fact, Edwards and Hensley (2001) make note of the lack of analysis and research on the sentencing of sexual offenders. More specifically, the investigation and examination on the sentencing for crimes against children, which has its own guidelines, receives little attention. Leclerc (2009) who also noted the lack of knowledge on sexual offenses against children, researched the offender-victim interaction and how the interaction played into the offender’s strategies to assault. The authors state, “Sexual offenses are different from most types of crimes. The victim herself/himself, as a human being, is exploited.” (p. 598) Furthermore, when the victim is a child the offender is normally a trusted adult that uses that trust to manipulate the child into a sexual assault.

Clearly, harsher penalties are justified for certain sexual assaults, especially when a child is involved. But what explains the difference in sentencing outcomes between Jennifer Mally and Thomas Krepelka? Also, would the sentence be different had Ms. Berger been convicted of having twenty images of indecent children instead of Mr. Berger? To better understand the answer to this question a review of the Arizona Rules of Criminal Procedure is necessary.

Arizona Rules of Criminal Procedure

According to the Arizona Rules of Criminal Procedure, a criminal case begins when a complaint is made to a law enforcement official that a crime has taken place. From there the case is investigated by the law enforcement agency and if enough cause exists the case is presented to the prosecutor's office. The second step occurs when the prosecutor reviews the case and makes a determination to proceed or decline the case for prosecution. If the case has been okayed to proceed, the prosecutor can either file a criminal complaint, because the police agency's investigation showed sufficient evidence that would support a conviction, or seek a grand jury indictment. If a grand jury is requested, the grand jurors would then determine if there was probable cause that a crime had been committed and, if so, issue a charging document. The third step occurs when the offender is, if not already in custody, is brought to the arraignment proceeding where the official charges are answered by the offender with a plea of guilt or innocence. Following these steps are the plea agreement offer, the trial, pre-sentence hearing and sentencing hearing.

Arizona Revised Statutes

The focus of this section will be on the charging document. To be clear, if the prosecutor files the charges, it is called a direct complaint and if the grand jury files the charges it is called an indictment. Both, however, utilize the Title 13, Criminal Codes in the Arizona Revised Statutes to determine and codify the criminal acts found in the charging document. Title 13 criminal codes outline the entire process that guide the Arizona criminal justice system, from policing and

defining illegal acts to sentencing and the restoration of an offender's civil rights. All of the statutes governing illegal sexual conduct in Arizona that apply to the cases in the data set are summarized in Appendix A.

Sentencing Guidelines Overview

Presumptive sentencing guidelines were enacted in 1987 where an independent sentencing commission created the guidelines. The Sentencing Guidelines Bill (1977) enacted as the Sentencing Reform Act (1984) set up the framework for the Federal Sentencing Guidelines. The Sentencing Reform Act created the U.S. Sentencing Commission, abolished release on parole, and allowed judges to make departures from the guidelines. The Supreme Court deemed it constitutional in *Mistretta v. U.S.* The guidelines are based on the "relevant conduct of the defendant" at the time of offense, a review of the crime severity and the defendant's prior record and offers more severe punishments than the State Guidelines. The State Sentencing Guidelines established a permanent sentencing commission made up of court employees, legislatures, and citizens. This workgroup studies sentencing practices in their locality, formulates recommendations, and monitors the implementation and impact of guidelines. The sentencing guideline is based on the severity of the defendant's crime, prior record and, just as with the Federal sentencing guideline, judges must comply or give a written explanation for the departure depending on the mitigating (more lenient) or aggravating (more harsh) circumstance. The goal in enacting state sentencing guidelines was to make sentencing more uniform by: increase fairness, reduce disparity, establish truth in sentencing, establish standards for appeal, and

reduce prison crowding. Unfortunately, there was still no consistency between states and *Booker v. U.S.* increased the discretion of judges on sentencing.

In 1994 Arizona adopted the Truth in Sentencing laws that were passed by Congress the same year. The Arizona Supreme Court Sentencing Guidelines classify crimes as misdemeanors and felonies. Specifically, the crimes are determined to be non-dangerous and dangerous. This means that a crime could be a felony but determined to be dangerous which would receive a harsher penalty than a non-dangerous felony. Non-dangerous, dangerous, and drug offenses are ranked one through six where one is the most serious. Within each ranking the guideline shows the minimum, presumptive and maximum sentence that can be imposed. This allows the judge to have some discretion depending on the mitigating or aggravating circumstances. Furthermore, the guideline illustrates what type of punishment can be imposed whether it is prison time, jail time, probation or a fine.

Special circumstances are also included in the guideline that includes crimes against children, dangerous crimes and repetitive crimes. Under Arizona Revised Statute 13-705, to be convicted under the crimes against children category, the defendant must be at or above the age of eighteen and commit a felonious offense against a child twelve years old or younger. In addition, dangerous crimes include the use of a deadly weapon during a crime, or the death or serious injury of another party. All of the offenders minimum, presumptive and maximum sentences that apply to the cases in the data set are summarized in Appendix B.

METHODS

Purpose

The purpose of this exploratory research is to determine if sentencing disparities exist between male and female teachers who have been convicted of sexual misconduct with a student within Maricopa County between 2000 and 2010. In addition, this research will analyze the sentencing decisions of Maricopa County judges when compared with the presumptive sentence set by the Arizona Legislature. In other words, this research will examine the discrepancies between the sentence called for by the statute and the sentence imposed. The hypothesis is that male teachers convicted of sexual misconduct with a student will receive harsher punishment than the punishment of their female counterparts. The expectation of this research is to find that males are treated more harshly than females.

Research Design

The research design will be qualitative where each case will be defined by including teacher characteristics, basic victim characteristics, charging information, how the case was adjudicated and the sentencing outcome. After each case is summarized, like cases will be compared to find out if male teachers receive harsher penalties than the penalties received by their female counterparts.

Sample

The sample for this research was obtained from a number of websites that referenced teacher-student relationships. Using these websites as a guide, detailed information such as name of offender, age, and locality as well as basic victim

information such as gender and age were obtained. After the list of teachers was obtained, their names were cross-referenced with the Supreme Court of Arizona website using the public access portal. This portal allowed access to detailed information pertaining to each criminal case, which included the charging documents, the presentence report, the plea agreements and sentencing outcomes. In addition, police reports were obtained for most of the offenders. Unfortunately, the Phoenix Police Department would not release Jennifer Mally's report and some offenders had their presentence report sealed or opted out under their attorney's advice. The Presumptive Sentence information was obtained from the plea agreement which is based on Arizona's sentencing charts found on the Arizona Supreme Court website.

The sample includes only Maricopa County cases for two reasons. First, obtaining detailed case information from different states and different counties within Arizona can prove to be extremely time-consuming and costly because many of the case files are not "on-line". Second, the scope of this particular research is to analyze sentencing disparities within Maricopa County, the most populous county in Arizona. Arizona has fifteen counties and according to the *National Center for Education Statistics* a total teacher population of 52, 625 (FY 2008) for elementary and secondary education with Maricopa County employing approximately 32,000 of those teachers.

The data set consists of thirteen different Maricopa County teachers who committed a sexual offense against a student and were convicted of that offense from February 2000 through September 2009. Of these thirteen teachers, five are

female. The data set also includes two teachers, male and female, from Pinal County because both teachers, employed by the same school, committed a sexual offense against a sixteen-year-old female victim within six months of each other. A total of twenty-eight cases were found although fifteen were excluded because the offense took place prior to the year 2000 and/or the offense was not specifically against a student. For example, Jeri Deane Perez, a female student teacher, was convicted of a sexual offense in 2006 receiving a prison sentence of ten years. However, the victim was not her student but her friend's fourteen-year-old son. Robert Oldfield, a male science teacher, received a sentence of fifteen years for a sexual offense against his co-workers seven-year-old daughter in 2000. Also, Hite was found not guilty after going to trial and Porras' case was dismissed without prejudice because his Constitutional rights were violated during the police interrogation. Because these offenders as well as the other eleven offenders did not victimize their students, they were omitted from the analyses.

The thirteen cases presented in this part of the study include five female teachers and eleven male teachers. With the exception of Renaud, who victimized four female students who ranged between nine and twelve years old, the average victim age is fifteen and a half years old and each offender victimized only one student. The average offender age is thirty-one and a half years old. With the exception of Mally and Hernandez, all of the offender's victims were females. Five of the teachers- Rogers, Renaud, Jacobsen, Hernandez, and Schenck- were convicted under the dangerous crimes against children matrix, which carries harsher penalties; however, their victims were under the age of fifteen.

According to the court documents, none of the offenders had prior convictions so they were all considered first time offenders. Because the sentencing ranges listed in Arizona's Criminal Codes did not change between 2000 and 2009, the cases will be divided into two categories: Non-dangerous crimes against children and Dangerous crimes against children. Three diagrams have been created for each category that compiles case specific information. Each table includes: offender name and age, victim age and gender, the number of actual incidents that occurred, the number of charges on the indictment, the number of counts on the plea agreement as well as the imposed sentence and the amount of time spent in jail prior to sentencing. The incidents were calculated by reviewing the date and location an offense took place and aggregated each offense into one incident. For example, Mally was arrested on seventeen charges but only seven incidents occurred. This is because the prosecution charged Mally for each act, such as kissing, touching, and intercourse, that occurred with the victim during the same encounter. Moreover, the presentence incarceration days were added to the sentencing outcome to show the total number of days an offender was incarcerated.

Non-Dangerous Crimes Against Children

Eight cases were not deemed a dangerous crime against children. Of those eight cases, four offenders were females and only one offender victimized a male student. The sentencing data in Table 1 are represented in days. For example, if an offender is sentenced to a six-month jail term the table will show one hundred and eighty days.

Table 1: Non-Dangerous Crimes Against Children Offenders

Offender	Victim			Indictment			Plea	Sentence		Presentence		Total Sentence	
	Age	# of Victims	Age	Gender	# of Incidents	# of Charges		# of Counts	Jail/ Prison	Probation	Days Incarcerated	Days Incarcerated	Days Incarcerated
Gay Lyn Turley	40	1	16	F	1	1	1	0	10 years	275	275	275	10 years
Grace A. Gamez	24	1	17	F	3	5	2	2 mo Jail	Lifetime	414	414	474	Lifetime
Jennifer Mally	26	1	16	M	7	17	3	6 mo Pris	Lifetime	2 credit	2 credit	180	Lifetime
Susan Jayne Anderson	28	1	16	F	1	1	1	2 day Jail	Lifetime	0	0	2	Lifetime
Benjamin J. LeMere	26	1	15	F	1	1	1	3 mo Jail	Lifetime	84	84	174	Lifetime
Elliot Clark	24	1	16	F	1	5	1	6 mo Jail	Lifetime	361	361	541	Lifetime
Jeremy Ross Calvert	20	1	15	F	1	9	2	2 yr Pris	Lifetime	535 credit	535 credit	730	Lifetime
Thomas Krepelka	46	1	17	F	1	3	2	4 yr Pris	Lifetime	87 credit	87 credit	1460	Lifetime

Based upon the non-dangerous crimes against children data, the average days of incarceration for females is two hundred and thirty three days and for men it is seven hundred and twenty six days. The harshest sentences were imposed upon males, with Krepelka spending one thousand four hundred and sixty days and Calvert spending seven hundred and thirty days in jail and prison. These two offenders were given credit for presentence incarceration where they are held in jail and spent the remainder of their time in prison in accordance with their sentence. The least harsh sentences were imposed upon Anderson, who spent two days in jail and lifetime probation, and Turley who spent two hundred and seventy five days in jail and received ten years of probation. Even though Turley was incarcerated prior to her sentence, she, arguably, received the least harsh sentence because her sentence was capped at ten years of probation and the imposed sentence included zero jail time. Moreover, even with Krepelka and Calvert removed from the equation, men spent an average of three hundred and fifty seven days in jail and women, with Turley removed, spent an average of two hundred and eighteen days in jail. This means that, on average, a teacher in Maricopa County will spend two hundred and eighty seven days in jail and be placed on probation for life.

The average age of the victims is sixteen years and all but one was a female. Interestingly, the women offenders who victimized a female received harsher total penalties than Mally, who victimized a male student. Furthermore,

Mally victimized her student far more often than any other teacher with a total of seven different incidents occurring. Although, Mally did receive a prison sentence, which can be considered harsher than a jail sentence, this research focuses on the total amount of time incarcerated of which she was third in the least amount of time served with a one hundred and eighty day sentence.

Offender and victim age does appear to play a factor in sentencing for men seeing that Krepelka, who received the harshest penalty, also victimized one of the oldest students. Calvert, the youngest offender in the data set, received the second harshest penalty but his sentence was aggravated due to the probability of a rape occurring. Had Calvert's sentence not been aggravated he would have most likely received a sentence ranging between two to six months. The age of the female offenders does not appear to play a factor in sentencing outcomes because Turley, the eldest, spent one hundred and ninety nine less days in jail than Gamez, the youngest of the females.

Dangerous Crimes Against Children

Table 2 illustrates the five cases that were deemed a dangerous crime against children. Of those five cases, one offender was a female and one victim was male. Because the dangerous crimes against children sentencing matrix offers harsher penalties, the sentences are represented in years rather than days.

Table 2: Dangerous Crimes Against Children Offenders

Offender	Victim		Indictment		Plea	Sentence		Presentence		Total Sentence		
	Age	# of Victims	Age	Gender		# of Incidents	# of Charges	# of Counts	Jail/ Prison	Probation	Days Incarcerated	Years Incarcerated
Alma Hernandez	26	1	14	M	1	1	1	5 yr Prison	0	660 Credit	5	0
Michael Lawrence Rogers	52	1	14	F	5	15	2	20 yr Prison	Lifetime	262	20.75	Lifetime
David M. Renaud	27	4	10 10 12	F	11	30	5	46.5 yr Prison	Lifetime	146 Credit	46.5	Lifetime
Joshua Jacobsen	29	1	13	F	2	4	2	9 mo Jail	Lifetime	401	1.8	Lifetime
Jeffrey Alan Schenck	35	1	14	F	3	4	2	12 yr Prison	Lifetime	192 Credit	12	Lifetime

Based upon the dangerous crimes against children data, the average victim's age is twelve years old. However, if Renaud is removed from the equation because he is clearly an outlier due to the fact that he assaulted multiple victims and received the longest sentence in the entire data set by twenty years, the average victim age increased to just under fourteen years old.

Among these offenders, Hernandez received only a five-year sentence with no post-incarceration penalties, which, arguably, gives her the least harsh sentence. Jacobsen did receive a shorter jail sentence, however, he was also penalized with lifetime probation. Offender age does appear to be a factor because Rogers and Schenck, the two oldest offenders, received the harshest sentences in the data set. The parole officer and defense attorney noted in the presentence investigation report that Schenck's sentence was extremely excessive and recommended one year in prison and lifetime probation.

Pinal County Case Overview

Table 3 describes the case specifics for both Pinal County offenders, Beck and Jewell. Both assaulted sixteen-year-old female students on two occasions and both were indicted on the same two charges.

Table 3: Pinal County Offenders

Offender		Victim		Age		Gender	Indictment		Plea		Sentence		Presentence		Total Sentence	
Name	Age	# of Victims	Age	Gender	# of Incidents	# of Charges	# of Counts	Jail/ Prison	Probation	Days Incarcerated	Days Incarcerated	Days Incarcerated	Days Incarcerated	Probation	Days Incarcerated	Probation
Raeanna Jewell	26	1	16	F	2	2	2	180 days*	20 years	87 Credit	87	87	20 Years			
Jason Beck	24	1	16	F	2	2	1	0	3 years	39	39	39	3 years			

*87 days credit, 93 days deferred

Clearly Jewell, the female teacher, received a much harsher sentence than Beck, the male teacher, for committing a sexual offense against two sixteen-year-old female students. Unfortunately, however, these are not similar cases only because the prosecution offered Beck a conviction of child abuse instead of sexual abuse in the plea agreement. As for Jewell, her sentence may have been aggravated because while she was victimizing her student she was also being interviewed by the police about Beck's sexual assault investigation. For example, Beck's police report shows that Jewell was interviewed on January 7, 2009 as well as January 15, 2009 and at the same time, according to Jewell's police report, Jewell and her victim and were exchanging explicit pictures of each other via text message.

CONCLUSION

According the Bureau of Justice Statistics (1996), offenders who assaulted minors had no criminal record which plays an important role in sentencing because, in theory, first time offenders should receive the least harsh sentence. Following Steffensmeier's (1980) two focal concerns, blameworthiness and practical constraints and consequences, all of the offenders in the data set were perceived as blameworthy because they were convicted of an offense. However, the third focal concern, community protection, might fail because the sentence given to some offenders in this data set might not protect the community. Throughout a few of the police reports other victims did come forward concerning previous sexual abuse but the prosecution did not act. This means that this was

not the first time the offender victimized, but rather just the first time the offender was caught.

According to this study, male teachers do receive harsher penalties than their female counterparts in all categories within Maricopa County. The age of the victim only plays a factor in the sentencing outcome when the victim is under fifteen years old because then the offense becomes a dangerous crime against children. Pinal County sentencing outcomes compared to the Maricopa County sentencing outcomes, Maricopa County's are much harsher only because Pinal County capped the probation periods.

Comparing the presumptive sentence against the imposed sentence, the female offenders received the minimum sentence while the men, with the exception of LeMere, Clark and Jacobsen, received punishments closer to the presumptive or maximum sentence. Among the non-dangerous crimes against children offenders, Mally did receive the minimum sentence of six months of jail on each of the three counts but two of those sentences ran concurrently to the first. She did receive the harshest penalty, equaling a total of six months in prison, of all of the females in this category, however, Clark, who also received six months of jail time, never had intercourse with his victim and only one incident occurred. Among the dangerous crimes against children offenders, Gamez, the only female offender, received the minimum sentence, as did Jacobsen. However, unlike Gamez, Jacobsen never had sexual intercourse with his victim.

Because most of the cases were adjudicated through a plea agreement, the prosecutors should take into account the criminal acts that were committed not the

gender of the offender. All of the offenders are blameworthy, but the criminal justice system may have failed in their given role in most cases by not protecting the community by imposing lesser sentences to females. Judges should also play a bigger role in accepting the plea agreement when reviewing sexual assault cases because teachers play a more important role in the community than the average sex offender.

Psychological research has found that most sexual assaults against minors occur when the victim is under the care of the offender as seen in the daycare, babysitting, and teacher-student settings. Eventhough the offender's motivation might not be fully known, applying the elements of Cohen and Felson's (1979) routine activity theory, which are 1) a motivated offender, 2) a suitable target, and 3) an absence of a capable guardian might offer insight on how to better detect and deter this type of offender. Although teachers may indeed play the role of capable guardians when it comes to preventing more traditional forms of school-based crimes (e.g., bullying) that is not the case with regard to sex offenders. In the case of sex offenses, teachers assume the role of motivated offenders. The students, which are suitable targets, are easily accessible and can be coerced or groomed into a sexual relationship. Effectively preventing victimization of children will require school administrators to play the role of capable guardians.

In conclusion, it would seem that teachers would be more closely watched by school administrators, other educators, as well as parents for criminal behavior because they are in a leadership role, have easy access to their targets, and are

highly regarded within their community. Breaching their entrusted community role should bring equal if not harsher punishment.

LIMITATIONS

The limitations of this research are: 1) lack of generalizability across the United States, 2) lack of the judges' opinions for imposing the sentence, and 3) lack of the prosecutors' opinions on the plea agreement offer. These limitations could provide evidence toward some statistical error especially when analyzing the recommended sentence against the actual sentence given; however, the overall data set will offer insight into the sentencing practices of judges within Maricopa County.

FUTURE CONSIDERATIONS

This data set, although small, offers some compelling ideas for future research. One, in particular, would be a review of Pinal County prosecutorial decision-making concerning plea agreements. For example, Beck was arrested for sexual conduct with a minor and was offered a charge of child abuse in the plea agreement. Child abuse is not included in Arizona's sexual offense laws and carries no sex offender stipulations. How many other sexual assaults within Pinal County were changed to a completely different charge? Another would be to compare the sentencing outcomes contained in this data set against like cases where the offender was not a teacher victimizing a student. Do teachers receive harsher penalties than a garden-variety offender that sexually assaults a teen?

REFERENCES

- Arizona's Judicial Branch *Criminal Code Sentencing Chart*. Retrieved April 22, 2012 from <http://www.supreme.state.az.us/aoc/crimcode.htm>
- Baldus, D. C., Mackinnon, J., Woodworth, G., & Pulaski, C. A. (1990). *Equal justice and the death penalty: A legal and empirical analysis*. Upne.
- Badbadteacher*. Retrieved March 22, 2010, from <http://www.badbadteacher.com>
- Cohen, L. E., & Felson, M. (1979). Social change and crime rate trends: A routine activity approach. *American sociological review*, 588-608.
- Daly, K. (1989). Rethinking judicial paternalism: Gender, work-family relations, and sentencing. *Gender & Society*, 3(1), 9-36.
- Daly, K., & Bordt, R. L. (1995). Sex effects and sentencing: An analysis of the statistical literature. *Justice Quarterly*, 12(1), 141-175.
- Doerner, J. K., & Demuth, S. (2010). The independent and joint effects of race/ethnicity, gender, and age on sentencing outcomes in US federal courts. *Justice Quarterly*, 27(1), 1-27.
- Eastvalleytribune*. Retrieved March 24, 2010, from <http://www.eastvalleytribune.com/page/teachersex>
- Edwards, W., & Hensley, C. (2001). Restructuring sex offender sentencing: A therapeutic jurisprudence approach to the criminal justice process. *International Journal of Offender Therapy and Comparative Criminology*, 45(6), 646-662.
- Faller, K. C., Birdsall, W. C., & Vandervort, F. (2006). Can the punishment fit the crime when suspects confess child sexual abuse? *Child abuse & neglect*, 30(7), 815-827.
- Farkas, M. A., & Stichman, A. (2002). Sex offender laws: Can treatment, punishment, incapacitation, and public safety be reconciled? *Criminal Justice Review*, 27(2), 256-283.
- Greenblatt, A. (2006). Sex offenders: Will tough, new laws do more harm than good? *CQ Researcher*, 16(31), 721-724.
- Hartley, R. D., Maddan, S., & Spohn, C. C. (2007). Prosecutorial discretion: An examination of substantial assistance departures in federal crack-cocaine and powder-cocaine cases. *Justice Quarterly*, 24(3), 382-407.

- Koons-Witt, B. A. (2002). The effect of gender on the decision to incarcerate before and after the introduction of sentencing guidelines. *Criminology*, 40(2), 297-328.
- Leclerc, B., Proulx, J., Lussier, P., & Allaire, J. F. (2009). Offender-victim interaction and crime event outcomes: Modus operandi and victim effects on the risk of intrusive sexual offenses against children.
- Miller, W. B. (1958). Lower class culture as a generating milieu of gang delinquency. *Journal of social issues*, 14(3), 5-19.
- Mistretta v. United States*, 488 U.S. 361, 109 S. Ct. 647, 102 L. Ed. 2d 714 (1989).
- Mustard, D. B. (2001). Racial, Ethnic, and Gender Disparities in Sentencing: Evidence from the US Federal Courts*. *Journal of Law and Economics*, 44(1), 285-314.
- Sabol, W. J., West, H. C., & Cooper, M. (2009). Bureau of Justice Statistics Bulletin: Prisoners in 2008. *Washington, DC: US Department of Justice*.
- Sample, L. L., & Bray, T. M. (2006). Are sex offenders different? an examination of rearrest patterns. *Criminal Justice Policy Review*, 17(1), 83-102.
- Smallbone, S. W., & Wortley, R. K. (2004). Criminal diversity and paraphilic interests among adult males convicted of sexual offenses against children. *International Journal of Offender Therapy and Comparative Criminology*, 48(2), 175-188.
- Spohn, C. (2008). *How do judges decide?: the search for fairness and justice in punishment*. Sage Publications, Incorporated.
- State of Arizona Department of Public Safety (2003) *Sex Offender InfoCenter*. Retrieved April 22, 2012 from <https://az.gov/webapp/offender/main.do>
- State v. Susan Jayne Anderson- Ariz: Maricopa County Superior Court, 2008
- State v. Jason Beck- Ariz: Pinal County Superior Court, 2009
- State v. Berger 134 P. 3d 378, 212 Ariz. 473 - Ariz: Supreme Court, 2006
- State v. Jeremy Ross Calvert- Ariz: Maricopa County Superior Court, 2007
- State v. Elliot Clark- Ariz: Maricopa County Superior Court, 2003

State v. Grace A. Gamez- Ariz: Maricopa County Superior Court, 2003

State v. Alma Hernandez- Ariz: Maricopa County Superior Court, 2006

State v. Kyle M. Hite- Ariz: Maricopa County Superior Court, 2007

State v. Joshua Jacobsen- Ariz: Maricopa County Superior Court, 2006State v.

State v. Raeanna Jewell- Ariz: Pinal County Superior Court, 2009

State v. Thomas Krepelka- Ariz: Maricopa County Superior Court, 2009

State v. Benjamin J. LeMere- Ariz: Maricopa County Superior Court, 2003

State v. Jennifer Mally- Ariz: Maricopa County Superior Court, 2007

State v. Robert H. Oldfield- Ariz: Maricopa County Superior Court, 2003

State v. Jeri Deanne Perez- Ariz: Maricopa County Superior Court, 2007

State v. Tom Porras, - Ariz: Maricopa County Superior Court, 2007

State v. David M. Renaud- Ariz: Maricopa County Superior Court, 2003

State v. Jeffrey Alan Schenck- Ariz: Maricopa County Superior Court, 2009

State v. Gay Lyn Turley- Ariz: Maricopa County Superior Court, 2007

U.S. Department of Education. Institute of Education Sciences, National Center for Education Statistics. Total Teacher Population (FY 2008)

United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005).

Walsh, A. (1984). Differential sentencing patterns among felony sex offenders and non-sex offenders. *Journal of Criminal Law and Criminology*, 5(2), 443-458.

Walsh, A. (1985). Extralegal factors in felony sentencing: Classes of behavior or classes of people? *Sociological Inquiry*, 55(1), 62-82.

APPENDIX A
ARIZONA REVISED STATUTES

Arizona Revised Statutes

ARS Code	Name	Short Description	Penalty
13-1402	Indecent Exposure	The showing of genitals, anus, nipples and areola in the presence of another person and the other person is offended by the act.	Class one misdemeanor unless a minor is present then the result is upgraded to a class six felony.
13-1403	Public Sexual Indecency	Intentionally or knowingly engaging in any of the following acts, if another person is present, and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act. The acts include sexual contact, oral sexual contact and intercourse as well as bestiality.	Class one misdemeanor unless a minor is present then the result is a class five felony.
13-1404	Sexual Abuse	Intentionally or knowingly engaging in sexual contact with any person who is fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast.	Class five felony unless the victim is a minor, which then results in a class three felony.
13-1405	Sexual Conduct with a Minor	Engaging in oral sex or intercourse with a person under the age of eighteen years old is in violation of this statute.	Class two felony if the victim is under fifteen years old. If the victim is fifteen years of age or older the penalty becomes a class six felony.
13-1410	Molestation of a Child	Engaging or making another person engage in a sexual act with a minor.	Class two felony.
13-304	Kidnapping	Knowledgably restraining another human being with the purpose of inflicting harm on the victim. Harm includes slavery, ransom, physical injury, sexual offenses and death. Also, seizing control of any vehicle, ship or plane is classified as kidnapping.	Class two felony unless the victim is released unharmed and in a safe place then the conviction results in a class four felony. If the offender releases the victim unharmed through a negotiation with any state authority the result is a class four felony.
13-3553	Sexual Exploitation of a Minor	Focuses on the visual imagery of a minor and encompasses recording, photographing, distributing, purchasing and possession of any picture or video of a minor participating in sexual conduct.	Class two felony.

http://www.azdps.gov/Services/Sex_Offender/Laws/

APPENDIX B
SENTENCING GUIDELINES

Sentencing Guidelines

Name	Count Description	Min	Pres	Max	Probation Available	Imposed Sentence
Non-Dangerous Crimes Against Children Offenders						
Turley	Sexual conduct with a minor	0.5	1	1.5	Yes	10 year probation
Gamez	Sexual conduct with a minor	0.5	1	1.5	Yes	Lifetime probation
	Sexual conduct with a minor	0.5	1	1.5	Yes	Lifetime probation + 2 mos Jail
Mally	Sexual conduct with a minor (15+)	0.5	1	1.5	Yes	6 months prison DOC
	Sexual conduct with a minor (15+)	0.5	1	1.5	Yes	6 months prison concurrent
	Sexual conduct with a minor (15+)	0.5	1	1.5	Yes	6 months prison concurrent
Anderson	Sexual Conduct with a minor	0.5	1	1.5	Yes	Lifetime probation + 2 day Jail
LeMere	Sexual conduct with a minor	0.5	1	1.5	Yes	Lifetime probation + 3 mos Jail
Clark	Sexual conduct with a minor	0.5	1	1.5	Yes	Lifetime probation + 6 mos Jail
Calvert	Sexual conduct with a minor	0.5	1	1.5	Yes	Lifetime probation
	Sexual conduct with a minor	0.5	1	1.5	Yes	2 years prison
Krepelka	Attempted sexual conduct with a minor (17+)	2.5	3.5	7	Yes	4 years Prison
	Attempted sexual conduct with a minor (17+)	2.5	3.5	7	Yes	Lifetime probation
Dangerous Crimes Against Children Offenders						
Hernandez	Attempted sexual conduct with a minor	5	10	15	Yes	5 years prison
Rogers	Sexual conduct with a minor	13	20	27	No	20 years prison
	Attempted sexual contact with a minor	5	10	15	Yes	Lifetime probation
	Aggravated assault	0.5	1	1.5	Yes	1.5 years prison
Renaud	Aggravated assault	0.5	1	1.5	Yes	1.5 years prison concurrent
	Molestation of a child	10	17	24	No	24 years consecutive
	Molestation of a child	10	17	24	No	21 years consecutive
	Attempted sexual exploitation of a minor	5	10	15	Yes	Lifetime probation
Jacobsen	Sexual abuse	2.5	5	7.5	Yes	Lifetime probation +6 mos Jail
	Luring a minor for sexual exploitation	5	10	15	Yes	Lifetime probation +3 mos Jail consecutive
Schenck	Attempted molestation of a child	5	10	15	Yes	12 years prison
	Attempted molestation of a child	5	10	15	Yes	Lifetime probation
Pinal County Offenders						
Jewell	Sexual conduct with a minor	0.5	1	1.5	Yes	20 years probation + 180 days jail
	Furnishing harmful materials to a minor	1.5	2.5	3	Yes	4 years probation concurrent
Beck	Child abuse	0.5	1	1.5	Yes	3 years probation + 39 days jail

