EXAMINING THE IMPACT OF RACE AND AGE ON SENTENCING OUTCOMES IN

CASES OF SEXUAL ASSAULT AND RAPE IN VIRGINIA

by

Anamika Singh

A thesis submitted to the faculty of Radford University

in partial fulfillment of the requirements for the degree of

Master of Arts in the Department of Criminal Justice

Thesis Advisor: Dr. Lori Elis

July 2018

_____   July 17, 2018
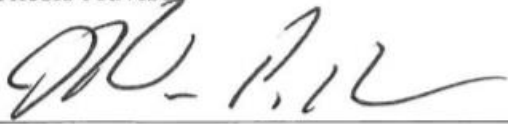Dr. Lori Elis   Date
Thesis Advisor

_____   17 July 2018
Dr. Isaac Van Patten   Date
Committee Member

_____   7/17/18
Dr. Margaret Pate   Date
Committee Member

ABSTRACT

This research responds to the existing gap in the literature to answer whether the defendant's race and age, in addition to the sentencing recommendations under the sentencing guidelines, influence the sentencing outcomes in sexual assault and rape cases among male defendants. It examines the impact of defendant's race and age on the two-step sentencing outcome: the decision to incarcerate (called in/out decision) and the decision about the length of incarceration (called sentence length decision). In this study, the secondary source of data that was utilized for the analysis includes 5 years of reported cases of sexual assault and rape in Virginia. The data was obtained from the sentencing guideline worksheets compiled by the Virginia Criminal Sentencing Commission and the Virginia Supreme Court. We employed Heckman's sample selection model to examine the additive effects of the defendant's race and age on the in/out decision and the sentence length decision. Our results indicate that race and age do not significantly affect the two sentencing decisions, which is inconsistent with much prior research on violent crimes. Our results are consistent with the prior literature on sexual assault, which suggests that the judges rely heavily on legal factors for the sentencing decisions in the sexual assault and rape cases.

Anamika Singh, M.A.

Department of Criminal Justice, 2018

Radford University

ACKNOWLEDGEMENTS

At the very outset, my profound gratitude goes to my Spiritual masters and the Almighty God for giving me the divine opportunity, wisdom, strength, guidance, and perseverance to accomplish this study. Without his blessing, it could not have been possible for me to undertake and finish this task timely.

During the course of writing this thesis, I have received the help, encouragement, and assistance from my teachers, family members, colleagues, friends, and others. My work will remain incomplete if I fail in expressing my sincere sense of gratitude to them.

First of all, I would like to express my profound gratitude to my supervisor, mentor, and guide, Dr. Lori Elis, who constantly inspired, fostered, and channelized my efforts in the right direction. She judiciously guided me at almost every step to tide over various complex situations that I was confronted with in pursuing this research work, related to my student life as well as my personal life. She not only resolved the deadlock from which I was unable to come out, but also gave me the strength to conceptualize my work in a different light. Whenever I felt hopeless and disappointed during research period, my advisor, Dr. Elis, was very kind to bring me out of such situations through her encouraging words.

I would also express my sincere gratitude and thanks to my committee members, Dr. Isaac Van Patten and Dr. Margaret Pate, for their direct and indirect support they extended to me during my research work. Their continuous support through motivation and their blessings were my supporting pillar without which this study could not have been completed. My special thanks to Dr. Van Patten who continuously paved the direction in statistical analysis and motivated me to complete this work.

Apart from this, I would be pleased to extend my sincere regards and appreciation from the bottom of my heart to the faculty members, Dr. Jack Call, Dr. Egan Kyle Green, Dr. Nicole Hendrix, Dr. Rachel Boba Santos, Dr, Shawn Smith, and Dr. Raine Bolin, who taught me during this course. My special thanks to Department Chair Dr. Stephen Owen for his support to complete this work.

I am also grateful to my colleagues Chandelier, John, Sarina, and Spenser for their support during my course work. I am also thankful to administrative staff Ms. Lynn Arnold for her assistance in fulfillment of official formalities with kind demeanor and support during my course period.

I would also express my sincere gratitude and thanks to Ms. Teresa King and Ms. Lori Roop at International Education Center for taking care of all the complex immigration issues. I am also thankful to the Graduate School staff Ms. Michele S. Ralston and Ms. Teri Hills for their active responses to my queries. Finally, I deeply appreciate Ms. Ashley Koontz for making important corrections in the thesis.

From the core of my heart, I am thankful to my dearest friends Anamika, Bharti, and Deepika for continuously guiding me in all walks of life and infusing me relentlessly with persistent self-reliance. They encouraged me to move steadily towards the accomplishment of this aim and kept cheering me through this strenuous, intricate, and seemingly interminable expedition.

Finally, I express my indebtedness to my parents, brother, and family members, who showed me their belief and made me ready to join this course for patience, constant encouragement, and enthusiastic support. The unending blessings of my parents are distinctive, and no words can enunciate my acknowledgement for them. They encouraged me throughout the

period of research work and without their blessing and support, completion of thesis was not possible. This thesis is honorably and heartily dedicated to my husband, Vireshwar Kumar, and my cute baby, Arihant. Without their continuous support and love, it was not impossible to finish this work.

TABLE OF CONTENTS

LIST OF TABLES

Chapter 1. Introduction

In the last few decades, sentencing guidelines have been implemented throughout the U.S. federal and state jurisdictions with the aim to reduce sentencing disparities, limit judicial discretion in the sentencing process, and ensure equal treatment to all defendants for the same offenses by different judges. The United States Sentencing Commission created the federal sentencing guidelines under the Sentencing Reform Act of 1984, and formally adopted them in 1987. Virginia followed with the implementation of sentencing guidelines in 1991 (*Code of Virginia* § 17.1-800 - § 17.1-806; Judicial Sentencing Guidelines Committee, 1993). In 1994, the Virginia Criminal Sentencing Commission (VCSC) was formed to further develop sentencing guidelines (VCSC, 2014). For predicting the risk of repeat offending by sex offenders, the VCSC developed a sex offender risk assessment (SORA) instrument (Ostrom, Kleiman, Cheesman, Hansen, & Kauder, 2002). This instrument was effectively incorporated into the state's sentencing guidelines in July 2001. Since then, no significant modifications have been introduced in Virginia's sentencing guidelines, except for the minor recommendations proposed by the VCSC annually (VCSC, 2017a).

As per the Virginia sentencing guidelines, judicial decision-making is considered as a two-step process (VCSC, 2014). In the first step, it is decided whether the defendant should receive an incarceration term. If the decision in the first step is that the defendant should receive an incarceration term, then in the second step, the decision about the length of incarceration is undertaken. In this research, we followed this two-step sentencing process by analyzing the first step of the decision to send the defendant to incarceration (called the in/out decision) and the second step of decision about the length of incarceration (called the sentence length decision).

Virginia's sentencing guidelines employ a scoring system that is based on the scores corresponding to legal characteristics of the defendant (e.g., prior record) and the crime (e.g., weapon utilized in crime). The scoring system is utilized to make a recommendation for incarceration that reflects the ideal of truth-in-sentencing (i.e., a higher score means a longer sentence length). Based on the total score, the judge is presented with the recommendation of range for the length of incarceration in the form of three values: a midpoint, lower end, and higher end. The higher end of the sentence length can be increased up to 300% based on the risk determined by the SORA instrument. This leads to a wide range of recommended sentence lengths. As per the sentencing guidelines, the judge may select an appropriate sentence length within the defined range (VCSC, 2014).

Furthermore, in Virginia, the sentencing guidelines are voluntary in nature, which means that the judges are not required legally to follow the guidelines. The sentencing guidelines are utilized to only assist the judge in fixing an appropriate punishment for the defendant (Kern & Farrar-Owens, 2004). The judges can freely depart from the recommendations of the guidelines and aggravate or mitigate the sentence of the defendant.

The wide range of recommended sentence length and the voluntary nature of guidelines provide flexibility to the judges to significantly alter the sentencing outcomes based on their stereotypes about the defendants' extralegal factors (e.g., gender, race, and age). Therefore, the sentencing outcomes in Virginia are prone to the unwarranted disparity. It is important to note that although the judges are required to submit a written explanation when they depart from the guidelines (*Code of Virginia* § 19.2-298.01), the defendant may not appeal the departure (Kauder & Ostrom, 2008).

Even though judges are able to depart, they may not because of concerns that departures may negatively impact their careers (Frase, 2005). Virginia is one of the two states in the United States where the judges are selected by the political class in the General Assembly. As the adherence to sentencing guidelines is encouraged by the General Assembly, the state legislators may reward/penalize the judges who are considered tough/soft on crime based on their deviations from the guidelines (King & Noble, 2004).

Considering the theoretical perspective in this context, in addition to the sentencing guidelines, the judges utilize three focal concerns while sentencing the defendants: blameworthiness of the defendant, protection of the community, and practical constraints and consequences (Steffensmeier, Ulmer, & Kramer, 1998). Since the sentencing decisions are complex and frequently constrained by time and resources, the judges make the sentencing decisions based on incomplete information about these focal concerns. Hence, the perceptual shorthand for these focal concerns is often associated with the stereotypes about the gender, race, and age of the defendants (Albonetti, 1991).

Numerous prior studies on violent crimes in different federal and state jurisdictions have found that the judicial decisions, despite the sentencing guidelines, are often biased under discretionary circumstances by the stereotypes about defendants' race, gender, and age (Crow & Bales, 2006; Frase, 2005; Freiburger, 2010; Freiburger & Hilinski, 2013; Hilinski-Rosick, Freiburger, & Verheek, 2014; Nowacki, 2015; Steffensmeier, Kramer, & Ulmer, 1995; Steffensmeier et al., 1998; Steffensmeier & Demuth, 2006; Zatz, 2000). Our extensive literature survey reveals that although the impact of the gender, race, and age on the sentencing decisions have been extensively analyzed in the cases of violent crimes as a whole, there is a dearth of research examining the impact on the sentencing decisions in specific types of violent cases.

3

Since some studies have found that there are different effects of the extralegal factors on different crime categories (Demuth & Steffensmeier, 2004; Maxwell, Robinson, & Post, 2003), it is important to exclusively analyze the effect of extralegal factors on the sentencing decisions for sex offenders.

Assessing the impact of the race of sex offenders, Hilinski-Rosick et al. (2014), Kingsnorth et al. (1998), Maxwell et al. (2003), and Spohn and Spears (1996) found that the race of the defendant did not affect the in/out decision. While Maxwell et al. (2003) and Spohn and Spears (1996) found that the sentence lengths were significantly affected by the race of the defendant, Hilinski-Rosick et al. (2014) and Kingsnorth et al. (1998) did not find any significant effect of the race on the length of the sentence. Assessing the impact on age, Spohn and Spears (1996) and Hilinski-Rosick et al. (2014) found that the defendant's age did not significantly affect either the in/out decision or the sentence length in the cases of sexual assault and rape. Overall, the results obtained in the existing literature about the role of race and age of the defendants convicted of sexual assault and rape in the sentencing outcomes are mixed and inconclusive.

In our research, we bridge the existing gap in the literature and examine the effects of the defendant's race and age on the in/out and the sentence length decisions in sexual assault and rape cases in Virginia. This research replicates the previous studies that examined the effect of extralegal factors in the other types of crimes in Virginia (Elis, 2017; Frase, 2005; Ostrom, Ostrom, Hanson, & Kleiman, 2008). We also follow the studies that investigate the role of extralegal factors in the cases of sexual assault and rape in jurisdictions other than Virginia (Hilinski-Rosick et al., 2014; Kingsnorth et al., 1998; Maxwell et al., 2003; Spohn & Spears, 1996). Our research is unique as it also examines whether race interacts with age and affects the

sentencing outcomes in the cases of sexual assault and rape among male defendants in Virginia. Our research is guided by 12 hypotheses, six each for sexual assault and rape. Among the six hypotheses for each category, the three hypotheses are associated with the likelihood of in/out decision and another three hypotheses are related to the length of incarceration. The hypotheses analyzed in this study are as follows:

H_1: Black male defendants convicted of sexual assault are more likely to be incarcerated than White male defendants.

H_2: Young male defendants convicted of sexual assault are more likely to be incarcerated than older male defendants.

H_3: Young Black male defendants convicted of sexual assault are more likely to be incarcerated than other groups (i.e., older male defendants of both races and young White male defendants).

H_4: Black male defendants convicted of sexual assault are sentenced to longer incarceration length than White male defendants.

H_5: Young male defendants convicted of sexual assault are sentenced to longer incarceration length than older male defendants.

H_6: Young Black male defendants convicted of sexual assault are sentenced to longer incarceration length than other groups.

H_7: Black male defendants convicted of rape are more likely to be incarcerated than White male defendants.

H_8: Young male defendants convicted of rape are more likely to be incarcerated than older male defendants.

H_9: Young Black male defendants convicted of rape are more likely to be incarcerated than other groups.

H_{10}: Black male defendants convicted of rape are sentenced to longer incarceration length than White male defendants.

H_{11}: Young male defendants convicted of rape are sentenced to longer incarceration length than older male defendants.

H_{12}: Young Black male defendants convicted of rape are sentenced to longer incarceration length than other groups.

Chapter 2. Literature Review

Our literature review starts with the discussion on the history of the sentencing guidelines in the U.S. We also present the details of the Virginia Sentencing Guidelines. Then, we analyze the theoretical perspective of the reasons of the dependence of the judicial decisions on the extralegal factors. Furthermore, we focus on the literature survey of the effect of a defendant's race and age on the prevailing disparities in the sentencing decisions in the cases of violent crimes. This is followed by the review of the existing studies targeted specifically at the cases of sexual assault and rape.

History of Sentencing Guidelines

Until 1975, indeterminate sentencing systems existed in every U.S. jurisdiction, which gave the judges prominent discretion in sentencing decisions (Tonry, 2016). With the idea of rehabilitation of the defendant as the primary goal, it was widely accepted to tailor sentencing decision and parole release for each defendant. There was a dispersion of power among prosecutors, judges, probation officials, parole boards, and prison authorities, which seemed to provide the required checks and balances. However, in practice, this indeterminate sentencing led to widespread unwarranted disparities in the sentencing decisions based on extralegal factors, such as gender, race, and age (Blumstein, Cohen, Martin, & Tonry, 1983). There was all-around criticism from conservatives, liberals, judges, lawyers, social scientists, and civil right activists. The judge Marvin Frankel called the indeterminate sentencing as "lawless" because of the absence of rules or standards for the judicial decisions (Frankel, 1973).

The attempts in the 1970s to improve indeterminate sentencing remained fruitless. This motivated some states to adopt determinate sentencing laws. In 1975, Maine became the first state to create determinate sentencing laws. However, most of the jurisdictions focussed their

efforts towards the concept of sentencing guidelines. In 1978, Pennsylvania and Minnesota created the first sentencing commissions that were mandated to develop sentencing guidelines systems. The most important goal of the sentencing guidelines was to reduce unwarranted disparity. The major efforts to achieve this goal included curtailing the unchecked discretion of the judges and basing sentencing guidelines only on legal factors related to the crime and defendant (e.g., severity of crime and defendant's prior record). The judges were expected to follow the sentencing guidelines. The idea was that since the guidelines did not incorporate extralegal factors, such as defendant race, gender, and age, they ideally should reduce sentencing disparities and ensure equal treatment to all defendants for same offenses in different cases by different judges. The era of the 1980s and 1990s witnessed a significant shift when different flavors of sentencing guidelines were created and implemented with different combinations of the mandatory minimum sentence, three-strikes, truth-in-sentencing, and life without parole laws (Tonry, 2016).

The U.S. Sentencing Reform Act was passed in 1984, and the U.S. Sentencing Guidelines were implemented in 1987. The judges followed the recommendations of the guidelines mandatorily to pronounce the sentence. However, in 2005 *United States v. Booker* case, the U.S. Supreme Court decided that the presumptive nature of Federal Guidelines was in violation of the 6th Amendment. After this case, the Federal Sentencing guidelines were considered advisory. In 2007 *Gall v. United States*, the U.S. Supreme Court clarified that the judges need not assume that the sentencing recommendations in the guidelines were reasonable, and they should utilize their own assessments about the facts of the case while sentencing the defendant.

At present, there are 21 different sentencing guideline systems in the U.S. jurisdictions, which can be broadly classified into two categories: presumptive/mandatory and

discretionary/voluntary (Frase, 2005; Kauder & Ostrom, 2008). In both types of guidelines, the judges are provided with the sentencing recommendations based on legal characteristics of offense and offender. While the judges are presumed to follow the recommendations in the presumptive guideline system, they have the freedom to choose either to follow the recommendation or not in the voluntary guideline system. The prevailing guideline systems in the U.S. present a wide spectrum of guidelines with leniently followed to strictly followed presumptive guidelines, and with leniently followed to strictly followed voluntary guidelines (Kauder & Ostrom, 2008). On one extreme, North Carolina follows the most strict version of the presumptive sentencing guidelines where the judge is required to impose a sentence length within the designated cell of a sentencing guidelines grid. On the other extreme, Ohio utilizes the most lenient version of voluntary sentencing guidelines where the judge is not even required to fill in the guideline worksheet. Virginia lies in the middle of the spectrum of guideline systems and follows the voluntary guidelines where the completion of guideline worksheet is mandatorily required, but the compliance with the worksheet recommendation is voluntary.

Virginia Sentencing Guidelines

In Virginia, a Governor's task force conducted a small-scale study in 1983 and found evidence of sentencing disparities in similar types of cases. To examine this issue, Virginia's Chief Justice formed a judicial committee. In 1987, after analyzing a comprehensive database of the sentencing decisions in felony cases, this committee confirmed the disparities in the sentencing process. With the aim of reducing this unwarranted sentencing disparity, the Chief Justice formed another committee that was mandated to develop sentencing guidelines for Virginia. After some pilot projects, the voluntary/discretionary sentencing guidelines were implemented throughout Virginia in January 1991 (Judicial Sentencing Guidelines Committee,

1993). In 1994, Virginia's General Assembly enacted new sentencing reform provisions to realize truth-in-sentencing in felonies committed on or after January 1, 1995 (Ostrom, Cheesman, Jones, Peterson, & Kauder, 1999). The new truth-in-sentencing laws abolished the parole system and mandated that the defendants must serve at least 85% of the length of pronounced sentence. With the goal to provide the judiciary with the discretionary sentencing recommendations under the new truth-in-sentencing laws, the Virginia Criminal Sentencing Commission (VCSC) was established in 1994 in accordance with *Code of Virginia* § 17.1-800. The VCSC was mandated to assist the judiciary by developing, implementing, and administering the sentencing guidelines as discussed in *Code of Virginia* § 17.1-801 - § 17.1-806 VCSC, 2014). The resulting guidelines developed by the VCSC based sentences on legal characteristics associated with the offense and on the criminal history of the defendant.

The VCSC also developed the SORA instrument after statistically analyzing the effect of the defendant's characteristics and prior criminal record on the recidivism of sex offenders. This instrument was incorporated into the sentencing guidelines and became effective on July 1, 2001 (VCSC, 2001) (Ostrom et al., 2002). There are two reasons to exclusively develop the SORA instrument. Firstly, sexual assaults and rape are unique and sensitive since most of these crimes are committed by males on females (Virginia State Police, 2016). Secondly, when compared with the offenders of other crimes, sex offenders are viewed more negatively in the society (Hilinski-Rosick et al., 2014). For instance, sex offenders are required to register their presence in a community as prescribed in the Sex Offender Registration and Notification Act (USA Congress, 2006).

The SORA instrument is a predictive tool for determining the risk of recidivism of the defendant. It reflects the characteristics, criminal history, and recidivism patterns of the sex

offenders in Virginia. It takes into account the defendant's age, education, employment, relationship with the victim, and prior criminal record. For most offenses, the sentencing recommendations reflect the historical pattern of sentence dispositions. However, based on the sex offender risk assessment instrument, normative adjustments are prescribed in the sentencing recommendations for certain categories of crimes. For example, based on the prior criminal record, the sentence length recommendations are enhanced up to 300% in the cases of sexual assault and rape.

Virginia sentencing guidelines lay down a broader range of recommended sentencing options than those prescribed by the Federal guidelines and many other state guidelines (Kauder & Ostrom, 2008). In Virginia, although compliance with the guidelines is voluntary, the judges are required to complete the guideline worksheets. The judges are also required to submit a written explanation when they digress from the guidelines (*Code of Virginia* § 19.2-298.01). As per the sentencing guidelines, the offenses with different Virginia Crime Codes are treated as different offenses. In the case of multiple offenses to be judged in a sentencing event, appropriate sentencing guidelines are selected by considering the most serious offense as the primary offense and other offenses as the additional offenses. Although the sentencing guidelines stipulate a recommended total sentence for the sentencing event, the judge can freely decide whether the imprisonment corresponding to the multiple offenses should run concurrently or consecutively (VCSC, 2014).

The VCSC provides 17 worksheets that deal with 15 different offense categories (VCSC, 2017b). The sentencing guidelines for each offense category are tailored for the specific category and are not interchangeable. A scoring system is utilized for the determination of punishment based on the defendant's prior criminal records and the seriousness of the crime. Within 5 days

after each sentence, the clerk of the court is required to send the completed worksheet to the VCSC. By collecting the data from all the circuit courts in Virginia, the VCSC examines the judicial compliance of the guidelines throughout Virginia and presents its findings in its comprehensive annual report. The VCSC also presents the new recommendations that are to be included in the guidelines for the upcoming year (VCSC, 2017a).

The sentencing guidelines for sexual offenses are stipulated in two different worksheets: (1) the rape and (2) other sexual assault. The rape worksheet covers the cases of forcible rape, forcible sodomy, and object sexual penetration. The sexual assault worksheet covers the incidences of aggravated sexual battery, indecent liberties by a custodian, incest offenses, non-forcible carnal knowledge, and non-forcible sodomy. Both the worksheets of sexual assault and rape utilize a scoring system where the characteristics of the crime (e.g., crime type, victim's age, injury to the victim, and usage of the weapon) and defendant (e.g., prior incarceration, education, and employment status) are evaluated to make the recommendation of punishment (Ostrom et al., 2002). The scoring system in the guidelines reflect the ideal of truth-in-sentencing (i.e., a higher score means a higher likelihood of incarceration and/or a longer sentence length).

The essence of the sentencing process in both the rape and sexual assault cases in Virginia sentencing guidelines could simply be described as follows. Each of the characteristics of the crime (e.g., primary offense, additional offense, the weapon used, victim injury, and prior felony) is scored individually in the sentencing worksheet. A total worksheet score is calculated by adding all these individual scores. The sentencing guidelines include a recommendation table that, based on the total worksheet score, presents the recommendation of range for the length of incarceration in the form of three values: a midpoint, lower end, and higher end.

Furthermore, the characteristics of the defendant are evaluated using the SORA instrument to identify the risk of recidivism. The SORA instrument allocates scores to factors associated with the defendant's age, education, employment status, relationship with the victim, selection of the location of the crime, and prior criminal record. The total score of SORA is utilized to categorize the risk of the defendant into four levels: no adjustment, level 3, level 2, and level 1. The level of risk assessed in the SORA instrument is utilized to adjust the higher end of the sentence length. The higher end of the range of sentence length is not increased for no adjustment level and is increased by 50% for level 3, 100% for level 2, and 300% for level 1. Finally, the sentence range with the midpoint, the lower end, and the adjusted higher end are presented to the judge to assist him/her in fixing an appropriate punishment (Kern & Farrar-Owens, 2004).

However, Virginia's sentencing guidelines are voluntary in nature, which means that the judge can legally depart from the sentencing recommendation. The departures from the sentencing guidelines are divided into two categories: aggravated departures and mitigated departures. In an aggravated departure, the judge deviates from the sentencing recommendation by incarcerating the defendant to prison when the sentencing recommendation is not to incarcerate, or by pronouncing sentence length that is longer than the recommended sentence length. Some of the reasons for aggravated departures include situations when the victim dies because of the injury, or when the defendant's prior criminal record is not adequately scored in the sentencing guidelines. In a mitigated departure, the judge digresses from the sentencing recommendation by not incarcerating the defendant when the sentencing recommendation is to incarcerate, or by pronouncing sentence length that is shorter than the recommended sentence length. Some of the reasons for mitigated departures include situations when the victim had little

or no injury, or when the defendant was not the principal perpetrator of the crime. Virginia's sentencing guidelines allow for departures from the sentencing recommendation, but they require a written explanation and an entry of specific departure codes in the sentencing worksheet.

Theoretical Perspective on the Role of Extralegal Factors

The wide range of recommended sentence length and the voluntary nature of guidelines provide flexibility to the judges to significantly alter the sentencing outcomes based on their stereotypes about the defendants' extralegal factors (e.g., gender, race, and age). Numerous studies in the existing literature reveal that the sentencing decisions are affected by not only legal factors, but also by extralegal factors (e.g., gender, race, and age of the defendants). The analysis of the data of the sentencing decisions in the last decade in Virginia reveals that the judges do not comply with the sentencing guidelines in around twenty to twenty-five percent of the total felony cases (VCSC, 2017a). These noncompliant decisions bring forth the perspective of the role of extralegal factors in the sentencing decisions. In the existing literature, this perspective has been explained using two similar theories: causal attribution theory (Albonetti, 1991) and focal concern theory (Steffensmeier, Kramer, & Streifel, 1993; Steffensmeier et al., 1998).

Albonetti (1991) propounded the causal attribution theory, which suggests that the judges form their perceptions of criminal behavior based on both personal and environmental factors. The judges are prone to making simplifying causal assumptions about the defendants in their effort to make a rational sentencing decision. In the attempt to manage the uncertainty in the defendant's future behavior, the judges may rely on the stereotypes of gender, race, and age to build the perception of dangerousness of the defendant (Albonetti, 1991).

The focal concern theory propounded by Steffensmeier suggests that the sentencing decisions made by the judges are based on three focal concerns. The first focal concern is the

blameworthiness, which is associated with the defendant's culpability and the degree of harm caused to the victim. This is the most significant factor in sentencing. The second focal concern is the *protection to the community,* which is associated with predicting the defendant's future behaviors and examining the impact of the sentencing decision on the protection of the community. The third focal concern is the *practical constraints and consequence*s, which is associated with the effect of the sentencing of the defendant on his/her health conditions, the chances of recidivism, ties with the family members (specifically, children), and the cost to the criminal justice system. Since the judges cannot have the complete information about these focal concerns in most of the cases due to the constraints of time and resources, they may utilize the perceptual shorthand. Hence, their decisions are prone to be associated with the stereotypes about the gender, race, and age of the defendants (Steffensmeier et al., 1998).

Effect of Race, Age, and their Interaction in the Cases of Violent Crimes

In the existing literature (Doerner & Demuth, 2010; Steffensmeier et al.,1998), the sentencing outcome is considered as a two-step process that involves, first, the decision whether to incarcerate the defendant, called in/out decision, and second, if the incarnation is pronounced, the decision of the sentence length, called sentence length decision. The in/out decision is dichotomous and is utilized to compare the defendants sentenced to prison (in) with the defendants sentenced to probation (out). The sentence length decision is a continuous variable that measures the total sentence length in months in prison. The existing studies suggest that the extralegal factors may not affect these two sentencing decisions independently (Doerner & Demuth, 2010; Steffensmeier et al.,1998). This means that the interaction effect of the extralegal factors also needs to be analyzed to reveal the true characteristics of the sentencing decisions. Hence, in this part of our literature survey, we discuss the studies that examine the main effect of

race, the main effect of age, and/or the interaction effect of race and age on the in/out decision

and the sentence length decision in the cases of violent crimes.

Kramer and Steffensmeir (1993) analyzed the sentencing data of 61,294 cases in

Pennsylvania (with presumptive sentencing guidelines) for the years from 1985 to 1987. The

authors found that Black defendants were more likely to be incarcerated in comparison to the

White defendants. They also found that the Black defendants received longer sentence lengths

than the White defendants. Steffensmeier et al. (1995) utilized the data from 120,300 cases in

Pennsylvania from 1989 to 1992. The authors found that for both the in/out decision and the

sentence length, the effect of age presented a curvilinear or an inverted U-shaped pattern. This

means that the severity of sentencing outcomes peaked for young adult defendants (aged 21-29).

The youthful defendants (aged 18-20) received some leniency and the older defendants (above

29) received significant leniency. When the authors analyzed the sentencing decisions across

offense types, they found the old defendants received the greatest leniency in violent offenses

and smallest leniency in drug offenses. Steffensmeier et al. (1998) utilized the similar dataset of

the cases in Pennsylvania from 1989 to 1992. They confirmed that the Black defendants were

treated more harshly than the White defendants, and the curvilinear pattern of the effect of age

on both the sentencing decisions was observed. Additionally, they analyzed the interaction effect

and found that young Black defendants received harsher sentencing decisions than all other

groups (e.g., young White defendants), but the influence of race decreased with age.

Steffensmeier and Motivans (2000) analyzed the effect of the defendant's age by utilizing

the data from the Pennsylvania Commission on Sentencing. The data comprised of 174,262

convicted defendants of age greater than 21 years in the years 1990 to 1994. The authors found a

linear pattern of decreasing likelihood of incarceration and decreasing sentence length with increasing age. In this study, the race was utilized as a control variable.

Spohn and Holleran (2000) analyzed the 1993 sentencing data in three jurisdictions: 2,510 cases in Cook County, Chicago, Illinois, with determinate sentencing; 2,703 cases in Dade County, Miami, Florida, with voluntary sentencing guidelines; and 1,425 cases in Jackson County, Kansas City, Missouri, with determinate sentencing. In Chicago, both Black and Hispanic defendants were found to have higher odds of incarceration than White defendants. In Miami, Hispanic (but not Black) defendants were more likely to be incarcerated than White defendants. This study did not support the curvilinear pattern of the effect of age, but found that the young adult defendants had a significantly higher probability of harsher in/out decision than old defendants in all three jurisdictions. Considering the interaction of race and age, the authors also found that young Black and Hispanic defendants were more prone to be incarcerated. However, in all three jurisdictions, the sentence length decisions were not significantly affected by race and age of the defendants.

Ostrom et al. (2008) assessed the consistency and fairness in the sentencing decision in three states with significantly different systems: Minnesota, with strict presumptive sentencing guidelines; Michigan, with presumptive sentencing guidelines but more judicial discretion; and Virginia, with the voluntary sentencing guidelines. The authors analyzed 12,978 violent crimes in Minnesota in 2002, 32,754 violent crimes in Michigan in 2004, and 1,614 assault crimes and 1,668 burglary crimes in Virginia in 2002. This study found that old defendants were significantly more likely to be incarcerated than young defendants in Michigan. Also, Black males were given significantly longer sentence length than White males in the cases of assault in Virginia. Furthermore, in Michigan and Minnesota, young Black males had significantly greater

chance of incarceration than the young White males. Although these effects were statistically significant, the authors concluded that these effects were not "substantial" proofs of systematic discrimination because the actual differences were only marginal (less than 1%).

Doerner and Demuth (2010) utilized the data provided by Monitoring of Federal Criminal Sentences for 33,505 cases decided between October 1, 2000 to September 30, 2001. The study found that Hispanic defendants, and not Black defendants, had significantly higher likelihoods of being sent to incarceration than White defendants. Both Hispanic and Black defendants received longer sentences than White defendants. They also found the young defendants were more likely to be incarcerated and were sent to longer sentences than the old defendants. Their findings also revealed that young Hispanic defendants were the most likely to receive incarceration, and young Black defendants received the longest sentences of all racial and age subgroups.

Freiburger and Hilinski (2013) examined the sentencing decisions of felony offenders of 2,011 cases in 2006 in an urban county in Michigan that followed presumptive sentencing guidelines. The authors deviated from the conventional dichotomous measure of sentencing decision (jail/prison vs. probation) to considering a trichotomous measure of sentencing decision (jail, prison, and probation). This study found that Black defendants were less likely to receive probation than jail, but the race did not affect the sentence length decision in jail and prison. The authors also found that there was no significant effect of age on the decision between jail and probation, but when the decision is made between jail and prison, age played a significant role. Considering the interaction, this study found that the young Black defendants received significantly longer sentence length for jail as compared to other groups.

In the most recent study, Nowacki (2017) comprehensively examined the effect of the intersection of race, gender, and age on the sentence length decision. The data for this study was

obtained from the Monitoring of Federal Criminal Sentences database for all the convicted federal offenders from each of the 94 U.S. districts between 1999 to 2008. The author divided the defendants into three categories based on age: young defendants with age below 30, middle-aged defendants with age between 31 and 49, and old defendants with age above 50. To explore the effects during the period of presumptive and advisory natures of federal guidelines, the data was also separately analyzed for four time periods: the pre-PROTECT period (1999-April 2003), the post-PROTECT period (May 2003-December 2004), the post-*Booker* period (January 2005-November 2007), and the post-*Gall* period (December 2007-2008) (*Gall v. United States*, 2007; The Protect Act, 2003; *United States v. Booker*, 2005. In all four periods, the author found that young Black defendants received the longest sentence length among all the groups, consisting of the combinations of young, middle-aged and old, male and female, and Black, White, and Hispanic.

We summarize the previous discussion as follows. Analyzing the effect of the defendant's race, numerous studies found that Black defendants were more likely to receive incarceration as compared to White defendants (Doerner & Demuth, 2010; Freiburger & Hilinski, 2013; Kramer & Steffensmeir, 1993; Spohn & Beichner, 2000; Spohn & Holleran, 2000; Steffensmeier et al., 1998; Steffensmeier & Demuth, 2000; Steffensmeier & Demuth, 2001; Steffensmeier & Demuth, 2006). The researchers also found that the Black defendants received a longer sentence length in comparison to White defendants (Doerner & Demuth, 2010; Freiburger & Hilinski, 2013; Steffensmeier et al., 1998; Steffensmeier & Demuth, 2000; Steffensmeier & Demuth, 2001). Some other studies found that there was no significant effect of race on the sentence length (Demuth & Steffensmeier, 2004; Kramer & Steffensmeir, 1993; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2006). Analyzing the effect of the

defendant's age, the studies in the existing literature found that the age played a significant role for both the in/out decision and sentence length decision (Doerner & Demuth, 2010; Spohn & Holleran, 2000; Steffensmeier et al., 1995; Steffensmeier et al., 1998). Analyzing the interaction of race and age, researchers found that young Black defendants were treated significantly more harshly than other groups in terms of the in/out and sentence length decisions (Doerner & Demuth, 2010; Freiburger & Hilinski, 2013; Nowacki, 2017; Steffensmeier et al., 1998).

Effect of Race, Age, and their Interaction in the Cases of Sexual Assault and Rape

In this part of our literature survey, we discuss the studies that examine the main effect of race, the main effect of age, and/or the interaction effect of race and age on the in/out decision and the sentence length decision in the cases of sexual assault and rape.

Spohn and Spears (1996) studied the relationship between the defendant's characteristics, the victim's characteristics, and sexual offense case outcomes. They utilized the data of 1,152 cases of sexual assaults in which the defendants were bound over for trial in Detroit Recorder's Court in Michigan from 1970 to 1984. Michigan followed indeterminate sentencing during this time. In this study, rather than considering the race of the defendant individually, the authors analyzed the effect of the race of defendant/victim dyad. They found that the race of defendant/victim dyad did not affect the in/out decision. However, the average sentence length imposed on Black defendants for sexually assaulting White victims was over 4 years longer than that imposed on White defendants for sexually assaulting White victims, and over 3 years longer than that imposed on Black defendants for sexually assaulting Black victims. They also found that a defendant's age did not significantly affect either the in/out decision or the sentence length decision.

Kingsnorth et al. (1998) studied the impact of the race on the decisions from prosecutorial intake up to sentencing outcome. They utilized the data from 365 cases of sexual offenses that were processed in the court of Sacramento County, California, from 1992 to 1994. The authors, rather than considering the additive effect of the race of the defendant and the race of the victim, analyzed the effect of the race of defendant/victim dyad. During this period, California followed determinate sentencing laws that could be considered a presumptive sentencing scheme (California's sentencing scheme is not considered a sentencing guideline system). The authors found that the racial composition of defendant/victim dyad did not significantly affect either the decision regarding the place of incarceration (jail or prison) or the sentence length decision.

Maxwell et al. (2003) analyzed the data of 40,347 felony cases provided by the State Court Processing Statistics Program. The data was collected in 1990, 1992, 1994, and 1996 from the 75 most populous counties in the U.S. The authors found that the race of the defendant did not significantly affect the in/out decision. Contrary to previous studies, this study found that the sentence lengths of Hispanic, Asian, and Black defendants of sexual assault were significantly shorter than White defendants. This study also analyzed the different crime types. When compared with the defendants convicted of sexual assault, the defendants convicted of assault were less likely, while those convicted of robbery and murder were more likely to be sent to incarceration. Also, compared with the defendants convicted of sexual assault, the sentence lengths of the defendants of assault and robbery were shorter, but those of murder were longer.

Hilinski-Rosick et al. (2014) examined the effects of legal and extralegal variables on the sentencing outcomes. Their data was collected from the investigation reports of 473 cases of sexual offenses completed from 2003 to 2007 in an urban Michigan county. Due to lack of a

sufficient number of defendants with the non-incarceration sentence, the authors analyzed the imprisonment decision (i.e., between sending to prison and sending to jail/probation) rather than the conventional in/out decision (i.e., between incarceration in jail/prison and non-incarceration). Among the legal factors, the Michigan Statutory Sentencing Guideline's 6-point measure of offense severity and a 7-point measure of prior record were utilized. This study found that the race and age of the defendant did not affect the imprisonment decision or the sentence length decision.

Overall, the results obtained in the existing literature about the role of race and age of the defendants convicted of sexual assault and rape in the sentencing outcomes are mixed and inconclusive. This suggests the need for further analyzing the interaction of race and age for their impact on the sentencing outcomes of sex offenders. Clearly, there is a dearth of research examining the impact of these extralegal factors on the sentencing outcomes in the cases of sexual assault and rape. Our research replicates the previous studies related to the sentencing outcomes in the cases of sexual assault and rape reported in Virginia. Our research also bridges the existing gap in the literature by re-examining the individual impact of defendants' race and age, and their interaction on the in/out decision and the sentence length decision.

Chapter 3: Data and Research Methods

Sample

This study was based on the secondary source of data on sexual assault and rape cases in Virginia over the period of 5 fiscal years between 2005 and 2009. The dataset was generated by merging the data obtained from the Virginia Criminal Sentencing Commission (VCSC) and the Virginia Supreme Court. All the information, except the defendant's race, was obtained from the sentencing guideline worksheets submitted to the VCSC. The Virginia Supreme Court's data was used to get the information related to the defendant's race, as it was not included in the sentencing guideline worksheets.

Data

This study focused on Black and White male defendants who were convicted of sexual assault and rape in Virginia in the fiscal years from 2005 to 2009. The initial dataset utilized in this study contained 3,671 reported cases that consisted of 2,601 cases of sexual assault (70.9%) and 1,070 cases of rape (29.1%). Considering the focus of the study, a total of 1,124 cases (30.1%) were removed from the initial dataset for the following reasons.

Since this research examined the impact of the defendant's race and age on sentencing outcomes among male defendants, those cases involving instances where the defendant's gender was unknown, or the defendant was female, were removed. This included 638 cases (17.4%) without the defendant's gender. The defendant's gender was missing due to difficulties with the matching process between the Supreme Court and Sentencing Commission data. Specifically, some jurisdictions did not turn their data into the Virginia Supreme Court because they were not required to, and in these cases, matching the datasets was not possible. There were only 85 cases

(2.3%) where the defendant was a female. This small proportion of cases was not enough to examine and extract the meaningful pattern, and hence these cases were removed.

Furthermore, this research involved only defendants who were Black or who were White. The race information in the dataset was entered by the police, usually according to the skin color, not ethnicity. For instance, Hispanics were routinely classified as Black or White. Therefore, even though there existed a category for Hispanics, the actual number of Hispanics were undercounted, as were other ethnic categories. Since the classifications were based on skin color, all categories other than White and Black were dropped from the dataset, which resulted in the removal of 116 cases (3.2%).

The trial type, such as jury trial, bench trial, or plea agreement, is an important criterion for determining the sentencing decisions. In this study, the 69 cases (1.9%) without the trial type information were removed. Additionally, in jury trials, jurors determine the sentences without following the sentencing guideline worksheets, while the judges review the sentences later. This means that the sentencing decisions in the jury trial are made quite differently than other types of trials. Hence, in this study, the 156 cases (4.2%) in which the jury trial was carried out were removed.

After close examination of the remaining data, a small number of cases were deleted because of missing/problematic data. Twenty-nine cases with missing information about SORA risk level were excluded, as were 23 cases with missing worksheet scores. Finally, seven cases were excluded from the data because of apparent data entry errors. Three involved cases with problematic defendants' ages. The final four cases were deleted due to discrepancies between sentence length and the section C score. Each case was examined and found to be an outlier in the regression analysis. A closer examination of these cases found that it was important to drop

them to avoid their undue effects on the regression model. The final dataset contained 2,547 cases (69.9% of the original sample) consisting of 1,831 cases of sexual assault and 716 cases of rape.

Independent Variables

In this work, the independent extralegal variables included the race and age of the defendant. The race variable was categorized into White (coded as 1) and Black (coded as 0). The age variable was coded into six categories: below 20, 20-29, 30-39, 40-49, 50-59, and 60 and above (Steffensmeier et al., 1998). Considering the age category of 20-29 as the base, dummy variables were created for the other categories.

The independent legal variables included the SORA risk level, the worksheet score, and the plea bargain type. Both the worksheets of sexual assault and rape utilize a scoring system where the characteristics of the defendant are evaluated using the SORA instrument to identify the risk of recidivism, and then the characteristics of the crime are evaluated in the worksheet to make the final recommendation of punishment (Ostrom et al., 2002). The SORA instrument allocates scores to factors associated with the defendant's age, education, employment status, relationship with the victim, selection of the location of the crime, and prior criminal record. The total score of SORA is utilized to categorize the risk of the defendant into four levels: level 1, level 2, level 3, and no adjustment. The SORA risk level is utilized to adjust the higher end of the sentence length with an increase of 300% for the level 1, 100% for the level 2, and 50% for the level 3. Following this categorization, in this study, the SORA risk variable was categorized into the four levels. Then, considering "no adjustment" as the base, dummy variables were created for other categories. As per theory, with higher SORA risk levels, the defendants should have a higher likelihood of imprisonment and longer sentence length.

The worksheet score is utilized to evaluate the characteristic of the crime, such as crime type, victim's age, injury to the victim, and usage of the weapon. In sexual assault cases, the total worksheet score is calculated by adding the scores in Section B and Section C of the sexual assault sentencing worksheet. In rape cases, the total worksheet score is equal to the total score in Section C of the rape sentencing worksheet. Based on the total worksheet score, the judge is presented with the recommendation of range for the length of incarceration. To take into account this legal procedure in this study, the worksheet score was utilized as the continuous independent variable. As per theory, with an increase in worksheet score, the defendants should have a higher likelihood of imprisonment and longer sentence length.

Another dichotomous variable, the plea bargain, was coded as 0 for the bench trial, and 1 for the Alford and the guilty pleas. As per theory, those who plea bargain should be treated less punitively (Brereton & Casper, 1981; Smith, 1986; Ulmer & Bradley, 2006). From the focal concern perspective, taking a plea indicates that the defendant is willing to accept responsibility for his/her behavior, and accept culpability. As a result, the defendant may be treated more leniently (i.e., he may be less likely to be sentenced to prison and receive a shorter prison sentence).

Virginia's sentencing guidelines allow for departures from the sentencing recommendation, but they require a written explanation and an entry of specific departure codes in the sentencing worksheet. The defendants with aggravated departure have a higher likelihood of imprisonment and a longer sentence length than recommended by the guidelines while the defendants with mitigated departure have a lower likelihood of imprisonment and shorter sentence length than recommended by the guidelines. To take account of these legal departures in this study, we employed a dichotomous control variable by utilizing the available departure

codes entered in the cover page of the sentencing worksheet. The cases with the codes

corresponding to aggravated departure from the sentencing guidelines were coded as 1, while the

cases with no departure codes or with codes corresponding to mitigated departure were coded as

0.

Prior research indicates that the sentencing decisions are affected by the geography

(rural/urban) of the county where the conviction was carried out (Austin, 1981; Hagan, 1977;

Myers & Talarico, 1986). We employed a dichotomous control variable for the geography of the

county. In this study, the counties with less than 50% of their total population in urban areas

were categorized as rural and coded as 0, and those with more than 50% of their total population

living in urban areas were categorized as urban and coded as 1. Our expectation in this study was

aligned with the prior research, which indicated that sentencing decisions might be less punitive

in urban areas than in rural areas (Ostrom et al., 2008).

Finally, to control for any changes in the law over time that might influence sentencing

outcomes, the fiscal year of sentencing that ranged from 2005 to 2009 was utilized as the control

variable. Considering 2005 as the base year, dummy variables were created corresponding to

other years. Theoretically, there should not be any effect of the fiscal year on the sentencing

decisions since no substantial change in the Virginia sentencing guidelines occurred during this

period.

Dependent Variables

The dependent variables for this research were the two sentencing outcomes: the in/out

decision and the sentence length decision. The sentence length decision was a continuous

dependent variable whose values were given in months. The in/out decision variable with the

decision to incarcerate to prison (i.e., when the sentence length was more than 12 months) was

coded as 1, and the decision not to incarcerate to prison (i.e., when the sentence length was less than or equal to 12 months) was coded as 0.

Analysis

We first present the descriptive information for all the variables in our analysis. We then examine the effects of racial and age factors on the in/out and sentence length decisions using Heckman's sample selection model (Bushway, Johnson, & Slocum, 2007; Heckman, 1976). In this study, the sentencing decision was considered to be a two-step process. In the first step, the in/out decision was made to determine whether to incarcerate or not incarcerate the defendant. In the second step, for the defendants who were to be incarcerated, the sentence length decision was made to determine the length of incarceration. This means that the sentence length decision was examined on the non-randomly selected subset of data with only "in" decisions. Also, the cases in the second step were selected through a process that was not independent of the outcome (i.e., the sentence length decision). Hence, in this study, the two-step Heckman method was utilized to avoid sample selection bias. In this method, the first step involved the estimation of a Probit model for selection of the cases with "in" decisions, and then the second step examined the sentence length decision using the ordinary least square (OLS) model by including a correction factor—the inverse Mills ratio, calculated from the Probit model.

In the Heckman method, the Probit model used in the first step considers that the error terms follow the standard normal distribution. The inverse Mills ratio is computed as the ratio of the probability density function and cumulative density function of the truncated normal distribution obtained after only considering "in" decisions. In the second step, the inverse Mills ratio acts as an additional explanatory variable in the OLS model. In this way, the results

presented in this study were free from any biased inferences regarding the sentence length due to

the process of non-random sample selection.

Chapter 4. Results

Descriptive Statistics for Sexual Assault Cases

Table 1 presents the descriptive statistics of the sample of defendants convicted in the cases of sexual assault. It depicts the count/mean and percentage/standard deviation for each of the dependent and independent variables. It indicates that the majority of defendants convicted in sexual assault cases were White (70.3%). The largest proportion of defendants in the sexual assault cases were in the age group 20-29 years (35.7%), followed by 30-39 years, 40-49 years, 50-59 years, and above 60 years. The defendants of the age under 20 years comprised the smallest proportion (4.6%) among all the age groups.

The SORA risk levels for more than half (59.0%) of the defendants were not adjusted. The SORA risk level 1, level 2, and level 3 were determined for around one-tenth (9.8%), one-ninth (11.5%), and one-fifth (19.7%) of the defendants, respectively. For the sexual assault cases, the minimum and maximum values of the Section-C score were 0 and 1365, respectively. The average value of the worksheet score was 34.5. Plea bargains (87.6%) were clearly more common than bench trials for the disposal of sexual assault cases.

Around one-fifth of the defendants (20.2%) had their sentences increased as a result of aggravated departures. Nearly two-thirds of the defendants (66.1%) were convicted in urban counties. The number of sexual assault cases showed a consistent increment over the years from 2005 to 2008 with a mild decrease in 2009.

Around half of the defendants of sexual assaults (51.8%) were sent to prison (i.e., convicted with the sentence length of over 12 months). Given that they were sentenced to prison, the average sentence length for defendants in sexual assault was 60 months with the minimum length equal to 12.3 months and the maximum length equal to 492 months.

Table 1. Descriptive Statistics for Sexual Assault Cases (N = 1831)

	Count (Mean)	Percentage (SD)
Independent variables		
Race (1 = White)	1285	70.2%
Age		
Under 20	84	4.6%
20-29	655	35.8%
30-39	424	23.2%
40-49	361	19.7%
50-59	185	10.1%
60 and above	122	6.7%
SORA risk		
Level 1	178	9.7%
Level 2	213	11.6%
Level 3	364	19.9%
No adjustment	1076	58.8%
Total worksheet score	(35.8)	(53.8)
Plea bargain (1 = Yes)	1605	87.7%
Aggravated departure (1 = Yes)	367	20.0%
Urban (1 = Yes)	1213	66.2%
Fiscal year		
2005	296	16.2%
2006	337	18.4%
2007	366	20.0%
2008	431	23.5%
2009	401	21.9%
Dependent variables		
In/out decision (1 = in)	954	52.1%
Sentence length (months)	(60.1)	(53.1)

Descriptive Statistics for Rape Cases

Table 2 presents the descriptive statistics of the sample of defendants convicted in the cases of rape. It indicates that defendants convicted in rape cases were more likely to be White (54.6%) than Black (45.4%). The largest percentage of the defendants in the rape cases were in the age group 20-29 years (31.3%), followed by 30-39 years, 40-49 years, 50-59 years, and above 60. Only 9.2% of the defendants belonged to the age under 20 years.

The SORA risk levels for more than half of the defendants (56.2%) in the rape cases were not adjusted. Each of the SORA risk level 2 (18.7%) and level 3 (21.2%) was determined for around one-fifth of the defendants. Only 3.8% of the defendants were convicted with SORA risk level 1. The average value of worksheet score for the rape cases was 225.9. The minimum worksheet score was 15 and the maximum score was 1183. Plea bargains (78.5%) were quite common for the rape cases.

The sentences of one-eighth of the defendants (11.7%) were aggravated because of departures in the rape cases. Nearly two-thirds of the defendants (67.7%) were convicted in urban areas. The number of rape cases was almost consistent over the years from 2005 to 2009.

Most of the defendants of rape (90.8%) were imprisoned in the rape cases. Given that they were sentenced to prison, the average sentence length for defendants of the rape cases was 222.3 months with the minimum length of 15 months and the maximum length of 1932 months.

Table 2. Descriptive Statistics for Rape Cases (N = 716)

	Count (Mean)	Percentage (SD)
Independent variables		
Race (1 = White)	391	54.6%
Age		
Under 20	66	9.2%
20-29	224	31.3%
30-39	182	25.4%
40-49	153	21.4%
50-59	66	9.2%
60 and above	25	3.5%
SORA risk		
Level 1	27	3.8%
Level 2	134	18.7%
Level 3	152	21.2%
No adjustment	403	56.3%
Total worksheet score	(225.9)	(151.1)
Plea bargain (1 = Yes)	562	78.5%
Aggravated departure (1 = Yes)	84	11.7%
Urban (1 = Yes)	485	67.7%
Fiscal year		
2005	141	19.7%
2006	146	20.4%
2007	130	18.2%
2008	149	20.8%
2009	150	20.9%
Dependent variables		
In/out decision (1 = in)	650	90.8%
Sentence length (months)	(222.3)	(221.2)

Comparison of Descriptive Statistics of Sexual Assault and Rape Cases

Tables 1 and 2 illustrate that a higher proportion of White defendants were convicted for sexual assault (70.3%) than rape (54.6%). While the proportion of defendants of age under 20 years in sexual assault cases (4.6%) was half of that in rape cases (9.2%), the proportion of defendants of age above 60 years in sexual assault cases (6.6%) was around twice of that in rape cases (3.5%). The proportions of defendants in sexual assault and rape cases in other age categories were similar.

The proportions of defendants in sexual assault and rape cases in the two lower SORA risk levels, i.e., no adjustment and level 3, were similar. While the proportion of defendants with SORA risk level 2 in sexual assault cases (11.5%) was smaller than that in rape cases (18.7%), the proportion of defendants with SORA risk level 1 in sexual assault cases (9.8%) was larger than that in rape cases (3.8%). The mean value of the worksheet score in the rape cases (225.9) was around six times that in the sexual assault cases (34.5). The proportions of defendants who utilized plea bargain in sexual assault and rape cases were similar.

The proportion of defendants with aggravated departure in sexual assault cases (20.2%) were almost two times that in rape cases (11.7%). The proportions of defendants who were convicted in urban counties in sexual assault and rape cases were similar. Although the number of sexual assault cases increased over the years between 2005 and 2008, the number of rape cases remained consistent in that period.

Further, while the defendants in only 51.8% of the sexual assaults cases were sent to prison, the defendants in 90.8% of the rape cases were sent to prison. Like the worksheet score, the mean value of the sentence length in the rape cases (202.0) was around six times that in the sexual assault cases (33.3).

Sample Selection Model for Sexual Assault

Table 3 presents the results of Heckman's sample selection model for the in/out and the sentence length decisions in the sexual assault cases. The model was found to be significant with the adjusted R^2 of 0.476.

Probit model for in/out decisions in sexual assault cases. Our results indicated that the defendant's race was not significant for the in/out decision, which was inconsistent with the hypothesis that indicated Black defendants should be more likely to be sentenced to prison than White defendants. While defendants below 20 years old had a significantly lower likelihood of imprisonment than defendants of the age group 20-29 years; defendants of age 50-59 years had a significantly higher likelihood of imprisonment than the defendants of the age group 20-29 years. The defendants in the age groups 30-39, 40-49, and above 60 years had no significant difference than the age group 20-29 years in terms of the likelihood of imprisonment. These results were inconsistent with our hypothesis, which stated that young defendants convicted of sexual assault were more likely to be incarcerated than older defendants.

In terms of the SORA risk, defendants with risk levels 2 and 3 had higher likelihoods of imprisonment than those with no adjustment, which was consistent with the expectation. However, defendants with SORA risk level 1 had a significantly lower likelihood of imprisonment, which was inconsistent with expectation. As expected, the higher worksheet score led to a significantly higher probability of incarceration. There was no significant difference in the likelihood of imprisonment whether the defendants utilized plea bargains or not, which was inconsistent with the expectation that indicated that the defendants who pled guilty were less likely to be incarcerated.

In the cases of aggravated departure, the defendant had significantly higher chances of imprisonment, which was consistent with the expectation. The geographical location of the defendant was found to be a significant predictor of the in/out decision. The defendants in the rural geography had a significantly higher likelihood of imprisonment than those in the urban geography, which was consistent with the prior literature that stated that the defendants in the rural counties had a higher likelihood of imprisonment than those in the urban counties. None of the fiscal years had any significant change in the likelihood of imprisonment when compared with 2005, which was consistent with the expectation as there had been no significant change in Virginia sentencing guidelines during this period.

OLS model (with correction) for sentence length decisions in sexual assault cases. In the model for determining the sentence length in sexual assault cases, the defendant's race was not found to be significant, which was inconsistent with the hypothesis that Black defendants were sentenced to longer lengths of incarceration than White defendants. Defendants below 20 years old were sentenced to significantly longer sentence length than defendants of the age group 20-29 years. Defendants in all the other age groups 30-39, 40-49, 50-59, and above 60 years had no significant difference than the age group 20-29 years in terms of their sentence lengths. In general, these results were inconsistent with our hypothesis that young defendants were sentenced to longer incarceration lengths than older defendants. However, the youngest group of defendants received significantly longer sentences than those in the group 20-29 years, which was partially consistent with the hypothesis.

The sentence length for defendants with SORA risk level 1 was significantly longer than those with no adjustment, which was consistent with the expectation. However, the sentence lengths for defendants with SORA risk levels 2 and 3 were not significantly different than those

with no adjustment, which was inconsistent with the expectation. As per the expectation, worksheet score played the key role in the sentence length decision and was significant in the model. An increase in section C score was related to a longer sentence length. There was no significant difference in the length of imprisonment whether the defendants utilized plea bargain or not, which was inconsistent with the expectation that the defendants who pled guilty were likely to have shorter lengths of incarceration.

As per the expectation, the lengths of the sentence in the cases of aggravated departure were significantly longer than those without departure or mitigated departure. Defendants in urban geography were found to have significantly longer sentence lengths when compared to those in rural geography, which was inconsistent with the prior literature that suggested that the defendants in rural counties were sentenced to longer incarceration lengths. None of the fiscal years had any significant change in terms of the length of imprisonment when compared with 2005, which was consistent with the fact that Virginia sentencing guidelines for sexual assault cases were not significantly altered during this period.

Comparison of the effects on the sentencing decisions in sexual assault cases. When comparing the results of the models of in/out and sentence length decisions in sexual assault cases, Table 3 indicates that the significant variables for both the models included SORA risk level, worksheet score, the aggravated departure, and the geographical location. The defendant's race, the trial type, and the fiscal year were not found to be significant in both the models. When compared with the defendants in the age group 20-29 years, while the defendants under 20 years had a lower likelihood of imprisonment, they were found to receive significantly longer sentence lengths when imprisoned. Although the defendants in the age group 50-59 years had a higher likelihood of imprisonment than those in the age group 20-29 years, they were not found to

receive significantly different sentence lengths. Defendants with SORA risk level 1 had a lower likelihood of imprisonment, but they received longer sentence lengths when imprisoned. With higher worksheet score, the defendants had a higher likelihood of imprisonment and received a longer sentence length. Like the effect of higher worksheet score, the aggravated departure meant a higher likelihood of imprisonment and longer sentence length. While defendants in the urban areas had a lower likelihood of imprisonment, they received a longer sentence when imprisoned.

Table 3. Heckman's Sample Selection Model for Sexual Assault Cases

	In/Out Decision		Sentence Length	
	Estimate	SE	Estimate	SE
Race (1 = White)	-0.093	0.075	2.141	4.343
Age				
Under 20	-0.649***	0.163	36.116***	10.511
30-39	0.172	0.088	4.927	5.210
40-49	0.155	0.097	-0.984	5.783
50-59	0.375**	0.122	-8.354	7.298
60 and above	0.069	0.143	-0.708	8.514
SORA risk				
Level 1	-0.330**	0.119	15.340*	7.219
Level 2	0.503***	0.115	-9.572	6.866
Level 3	0.538***	0.092	-11.156	5.855
Total worksheet score	0.020***	0.001	0.182***	0.053
Plea bargain (1 = Yes)	0.016	0.101	-7.181	5.786
Aggravated departure (1 = Yes)	0.461***	0.086	34.879***	5.044
Urban (1 = Yes)	-0.240**	0.070	12.039**	4.208
Fiscal year				
2006	0.084	0.110	5.089	6.403
2007	0.166	0.110	-2.451	6.365
2008	0.023	0.107	1.688	6.194
2009	0.054	0.108	3.902	6.282
(Intercept)	-0.726***	0.152	91.393***	12.552
Multiple R^2	0.486			
Adjusted R^2	0.476			

Significance: $p < .05$ = *, $p < .01$ = **, $p < .001$ = ***

Sample Selection Model for Rape Cases

Table 4 presents the results of Heckman's sample selection model for the in/out and the sentence length decisions in the rape cases. The model was found significant with an adjusted R^2 of 0.521.

Probit model for in/out decisions in rape cases. The results indicated that the defendant's race did not significantly affect the in/out decision, which is inconsistent with the hypothesis that mentioned that Black defendants were more likely to be incarcerated than White defendants in rape cases. The defendants with age below 20 years were significantly less likely to be imprisoned than the defendant of the age 20-29 years. The defendants in the other age groups 30-39, 40-49, 50-59, and above 60 years had no significant difference than the age group 20-29 years in terms of the likelihood of imprisonment. Overall, these results were inconsistent with our hypothesis that young defendants were more likely to be incarcerated than older defendants. However, the results corresponding to the youngest age group followed the hypothesis.

In terms of the SORA risk, defendants with other risk levels had no significantly different likelihood of imprisonment than those with no adjustment, which was inconsistent with the expectation that higher SORA risk levels were likely to result in higher likelihoods of incarceration. As expected, the higher worksheet score resulted in a significantly higher likelihood of incarceration. This study did not find any significant difference in the likelihood of imprisonment whether the defendant utilized plea bargain or not, which was inconsistent with the expectation that the plea bargain led to a lower likelihood of imprisonment.

In the cases of aggravated departure, the defendant had no significantly higher chances of imprisonment, which was inconsistent with the expectation that indicated that aggravated

departure led to a higher likelihood of imprisonment. The geographical (rural/urban) location of the defendant was not found to be a significant predictor of the in/out decision, which was inconsistent with the prior literature that the defendants in rural counties were more likely to have a higher likelihood of incarceration. This study did not find any significant change in the likelihood of imprisonment over the fiscal years when compared with 2005, which was consistent with the expectation since Virginia sentencing guidelines for rape cases were not significantly altered during this period.

OLS model (with correction) for sentence length decisions in rape cases. In the model for the sentence length decision, the defendant's race was not found to be significant, which was inconsistent with the hypothesis that Black defendants convicted for rape were likely to be incarcerated for longer lengths than their White counterparts. Defendants below 20 years old were sentenced to significantly longer sentence length than defendants of the age group 20-29 years, which was somewhat consistent with our hypothesis that young defendants convicted of rape received longer sentence lengths than older defendants. However, this study did not find any significant difference in the sentence lengths sanctioned for the defendants in all the other age groups 30-39, 40-49, 50-59, and above 60 years than the age group 20-29 years. These results were inconsistent with the hypothesis.

The sentence length for defendants with SORA risk level 1 was not significantly different than those with no adjustment, which was inconsistent with the expectation. However, the sentence lengths for defendants with SORA risk levels 2 and 3 were significantly longer than those with no adjustment, which was consistent with the expectation that indicated that higher the SORA risk level, the longer was the sentence length. As per the expectation, worksheet score was found to be significant in the model, as an increase in worksheet score resulted in a

significantly longer sentence length. This study did not find any significant difference in the sentence length between the defendants who utilized plea bargain and those who did not. This was inconsistent with the expectation that the defendants with plea bargain should be sentenced to shorter sentence lengths.

As per the expectation, the lengths of the sentence in the cases of aggravated departure were significantly longer than those without departure or mitigated departure. Defendants in urban geography were not found to have significantly different sentence lengths when compared to those in rural geography, which was inconsistent with the prior literature that suggested the defendants in rural counties were incarcerated with longer sentence lengths than those in urban counties. None of the fiscal years had any significant change in terms of the length of imprisonment when compared with 2005, which was consistent with the expectation since there was no significant change in Virginia's sentencing guidelines for rape cases during this period.

Comparison of the effect on the sentencing decisions in rape cases. When comparing the results of the models of in/out and sentence length decisions in rape cases, Table 4 indicates that the defendant's race, the trial type, geography, and the fiscal year were not found to be significant in both models. When compared with the defendants in the age group 20-29 years, while the defendants under 20 years had a lower likelihood of imprisonment, they were found to receive significantly longer sentence lengths when imprisoned. However, no other differences existed across the defendant's age. Defendants with different SORA risk levels did not have a different likelihood of imprisonment, but those with risk levels 2 and 3 received longer sentence lengths when imprisoned. With higher worksheet score, the defendants had a higher likelihood of imprisonment and received longer sentence lengths. While the aggravated departure did not significantly affect the likelihood of imprisonment, it led to longer sentence lengths.

Table 4. Heckman's Sample Selection Model for Rape Cases

	In/Out Decision		Sentence Length	
	Estimate	SE	Estimate	SE
Race (1 = White)	-0.121	0.166	16.466	21.906
Age				
Under 20	-1.450***	0.221	291.210***	71.211
30-39	0.079	0.219	-10.082	27.170
40-49	-0.013	0.230	27.848	29.256
50-59	0.004	0.328	0.005	39.666
60 and above	-0.398	0.380	104.496	56.449
SORA risk				
Level 1	0.079	0.509	-43.596	56.188
Level 2	-0.283	0.216	101.573***	29.278
Level 3	-0.350	0.191	94.576***	27.461
Total worksheet score	0.003***	0.001	0.662***	0.091
Plea bargain (1 = Yes)	-0.134	0.197	28.362	25.067
Aggravated departure (1 = Yes)	-0.360	0.224	263.848***	31.470
Urban (1 = Yes)	-0.019	0.167	19.933	21.902
Fiscal year				
2006	-0.092	0.228	46.143	31.294
2007	-0.010	0.237	15.376	32.444
2008	-0.032	0.231	2.591	31.201
2009	0.233	0.247	-0.387	31.843
(Intercept)	1.361***	0.343	-7.294	47.187
Multiple R^2	0.535			
Adjusted R^2	0.521			

Significance: $p < .05$ = *, $p < .01$ = **, $p < .001$ = ***

Comparison of Models of Sexual Assault and Rape Cases

The results for sexual assault cases illustrated in Table 3 and those for rape cases in Table 4 were compared to evaluate the effect of different variables on the two sentencing decisions.

Comparison of the effect on in/out decisions in sexual assault and rape cases. In both the models for in/out decisions in sexual assault and rape cases, the defendant's race was not found to be significant. The defendants below 20 years were found to have a lower likelihood of imprisonment than those in the age group 20-29 years in sexual assault and rape cases. The defendants in the age group 50-59 years were found to have a significantly higher likelihood of imprisonment in sexual assault cases, but this effect was absent in rape cases. Defendants of all the other age groups were not found to have any significantly different likelihood of incarceration than the age group 20-29 years. The SORA risk level of the defendants significantly affected the in/out decision in sexual assault cases, but not in rape cases. Higher worksheet score led to a higher likelihood of imprisonment in both the sexual assault and rape cases. The plea bargain was not found to be significant in both these models. For the cases with aggravated departures, there was a higher likelihood of imprisonment in sexual assault cases, but no significant difference in rape cases. While the defendants in the urban counties had a lower likelihood of imprisonment in sexual assault cases, the geography did not play a role in rape cases. The fiscal year was not found to be significant in both models.

Comparison of the effect on sentence length decisions in sexual assault and rape cases. In both the models for sentence length decisions in sexual assault and rape cases, the defendant's race was not found to be significant. The defendants below 20 years received longer sentence lengths than those in the age group 20-29 years in both the sexual assault and rape cases. Defendants of all the other age groups were not found to have any significantly different

sentence lengths compared to the age group 20-29 years. When compared with the SORA risk level with no adjustment, while the defendants of sexual assault cases received longer sentence lengths when their risk level was level 1, the defendants of rape cases received longer sentences when their risk level was level 2 and level 3. Higher worksheet score led to longer sentence length in both the sexual assault and rape cases. Plea bargain did not play a role in both the sexual assault and rape cases. With aggravated departures, the defendants received longer sentence length in both the sexual assault and rape cases. While the defendants in the urban counties received longer sentence length than those in rural counties in the sexual assault cases, they did not receive any significantly different sentence length in the rape cases. The fiscal year was not found to be significant in both models.

Interactive Effect of Race and Age on Sentencing Decisions

This study found that the defendant's race did not have an impact on the likelihood of imprisonment nor on the sentence length in either sexual assault or rape cases. Furthermore, the effect of the defendant's age was not found to be significant (except for the lowest age group of defendants under 20 years old). Hence, this study did not find a valid reason to look at the interactive effect of race and age on the sentencing decisions. As a result, we did not test the hypotheses addressing the intersectionality of race and age in this research.

Chapter 5. Discussion and Conclusions

There are many studies that have examined the sentencing process in drug and violent crimes; however, it is crucial to examine how legal and extralegal factors differently influence the sentencing outcomes in the sexual assault and rape cases. The current study attempts to provide the understanding of the effect of the extralegal factors (i.e., the defendant's race and age) on the sentencing decisions in the cases of sexual assault and rape. Along with the extralegal factors, this study utilized important legal characteristics that included the SORA risk level, the worksheet score, and the trial type, along with control variables that included the departure codes, geographical location, and the fiscal year of sentencing.

Effect of Legal and Control Variables on the Sentencing Outcomes

Considering the scoring system in the SORA instrument, the likelihood of recidivism is the lowest for the defendants with SORA risk level of no adjustment, followed by level 3 and level 2, and the highest for level 1. Hence, keeping focal concern theory in mind, the likelihood of incarceration should be the lowest for the defendants with no adjustment, followed by level 3 and level 2, and the highest for those with level 1. Similarly, the sentence length should be the shortest for the defendants with no adjustment, followed by level 3 and level 2, and the longest for those with level 1. However, in this study, the results corresponding to the effect of the SORA risk level on the sentencing decisions were mixed.

In the sexual assault cases, while the defendants with level 2 and level 3 were found to have a higher likelihood of imprisonment, they were not given significantly different sentence lengths when compared with the defendants with no adjustment. These results suggested that after the decision to incarcerate, the judges were not likely to sentence the defendants with lower risk behavior for a substantially longer length in the sexual assault cases. It was possible that

practical constraints played a more important role in this sentencing process than the other factors, and the judges were inclined to avoid the cost (to the criminal justice system) associated with the effect of longer incarceration.

The findings in this study revealed that in the cases of sexual assault, the defendants with level 1 had a lower likelihood of incarceration, which was inconsistent with the expectation. To look more closely at the dataset, Table 5 presents the number of defendants with different SORA risk levels and worksheet scores. In this table, the worksheet score is divided into two categories: The first category includes the defendants with scores below the mean value of worksheet score (35.8) as shown in Table 1, and the second category includes those with scores above the mean value. The observations from Table 5 indicated that majority of defendants with SORA risk level 1 were convicted with the worksheet score lower than its mean value. This revealed that although most defendants might have a higher risk of recidivism due to their prior record (resulting in SORA level 1), their current cases of sexual assault were not very grave (resulting in low worksheet score). While making the in/out decision for these defendants, the judges gave more weight to the low worksheet score than that to the SORA risk level 1. Overall, this resulted in the lower likelihood of incarceration for the defendants with SORA risk level 1.

Table 5. Number of defendants with different SORA risk levels and worksheet score in sexual assault cases

Total worksheet score	SORA risk			
	No adjustment	Level 3	Level 2	Level 1
Below mean	686	185	88	105
Above mean	390	179	125	73

However, keeping the focal concern to provide protection to the community and the risk factor associated with their future behavior, the defendants with level 1 were predicted as more repetitive, dangerous, and concerning. Since the judges perceived the defendant with level 1 convicted of a sexual offense as relatively more dangerous, when incarcerated, they received a longer sentence length in comparison to the defendants with no adjustment to ensure the protection to the community.

In the rape cases, while none of the SORA risk levels was found significant in the model for in/out decision, the level 2 and level 3 were found to lead to longer sentence lengths for defendants. Contradictory to the result of sexual assault cases, the findings revealed an unexpected result that SORA risk levels were not significant in the in/out decision in rape cases. These findings suggested that the judges decided to incarcerate the defendants without considering the results of the SORA instrument. This may be explained by the argument that the rape was considered such a heinous crime such that 90.8% of defendants were imprisoned. Since the judges treated these cases so punitively, looking at assessments of recidivism did not further influence the in/out decision. However, as expected, the judges pronounced longer sentence lengths to the defendants with level 2 and level 3.

In the rape cases, this study found that the defendants with SORA risk level 1 had no significant difference in sentence length when compared to those with no adjustment. Table 6 presents the number of defendants with different worksheet scores, SORA risk levels and aggravated departures in rape cases. This table indicated that two opposing factors resulted in the loss of difference between the sentence lengths for defendants with no adjustment and level 1. On the one hand, the mean value of the sentence length of the defendants with no adjustment was pushed up because a subset of defendants received aggravated departure and high worksheet

score. On the other hand, there was no defendant who had a worksheet score above the mean

value (225.9 as shown in Table 2), who received aggravated departure and who had SORA risk

level 1.

Table 6. Number of defendants with different worksheet scores, SORA risk levels, and aggravated departures in rape cases

Aggravated departure	Total worksheet score	SORA risk			
		No adjustment	Level 3	Level 2	Level 1
0 = No	Below mean	257	93	55	9
	Above mean	88	48	66	16
1 = Yes	Below mean	38	7	2	2
	Above mean	20	4	11	0

With reference to the worksheet score, the results obtained in this study indicated that the

judges relied heavily on this legal variable for the sentencing decisions. This was consistent as

worksheet score was the primary legal variable utilized in the sentencing guidelines, which

helped the judge to make the sentencing decisions. The Virginia sentencing guidelines

recommend the length of sentence by determining the total score of the worksheet, which

includes a variety of scores for the offense characteristics. The total score of the worksheet is

directly proportional to the recommended sentence length (Ostrom et al., 2008). In this study, the

results in all the four models for in/out and sentence length decisions in the sexual assault and

rape cases illustrated that the sentencing decisions relied on the worksheet score. As expected, in

the models, a higher worksheet score led to a higher likelihood of incarceration and a longer

sentence length. The findings of this study were consistent with the expectation of the

guideline's scoring system, which indicated that defendants with higher scores were more likely to receive prison and received longer sentence lengths.

Regarding trial type, the findings revealed that the sentencing decisions for the defendants who pleaded not guilty and opted to take the case to bench trial, and those who went for guilty or Alford pleas, were not significantly different in all the models (i.e., the in/out and sentence length decisions in both sexual assault and rape cases). This is inconsistent with the focal concern theory that suggested that defendants who utilized plea bargain were expected to receive less incarceration and shorter sentence lengths in comparison to those who opted for a bench trial because they were seen as taking responsibility for what they had done. However, the contradictory findings in this study reflected that the objective of the sentencing guideline system was more closely followed by the judges. The Virginia sentencing guidelines, with the aim to ensure equal treatment to all defendants for same offenses, do not consider the trial type in the sentencing decisions. This meant that considering the nature of the seriousness of sexual assault and rape, the judges determined the sentencing outcomes, reflecting the ideals of truth-in-sentencing in the criminal justice system.

The aggravated departure was found significant in determining the in/out decision in sexual assault cases and sentence length in both sexual assault and rape cases. These results were consistent with the expectation that the defendants convicted with aggravated departure were more likely to be incarcerated and received longer sentence lengths by the judges. In Virginia, the discretionary nature of sentencing guidelines allowed judges to depart from the recommended sentencing decisions with written legal justifications (Kern & Farrar-Owens, 2013; Ostrom et al., 2008). Since sex offenders were regarded as more culpable than other offenders, the likelihood of aggravated departure was expected and sounded reasonable in both

sexual assault and rape cases. These results indicated that defendants in sexual assault and rape cases did not receive any benefit of a plea bargain, but they were penalized more harshly than the recommended sentence in the sentencing guidelines with legal departures.

This study found that there was some significant difference in the sentencing outcomes in the sexual assault cases between the urban and the rural counties. The defendants of the sexual assault cases in urban courts were less likely to be incarcerated than those in rural courts, which was consistent with the prior literature (Ostrom et al., 2008). This result could be attributed to the reason that the urban courts dealt with a larger number of sexual assault cases and the judges tended to be more liberal to the defendants. However, the urban courts were stricter in terms of the sentence length decision and pronounced longer sentence length in the sexual assault cases than the rural courts. This result indicated that when the urban judges decided to incarcerate the defendants, they pronounced longer sentence length considering the issue of protection to the community. The results of the sexual assault cases suggested that the goal of statewide uniformity in sentencing may be affected by the geographical beliefs as suggested by Hagan (1977). However, in the rape cases, the geography did not play a significant role neither for the on/out decision nor for the sentence length decision. This suggested that the rape cases were handled with similar care by both the urban and rural judges who followed the guidelines to sentence the defendants. This was expected since the rape cases were significantly more concerning than the sexual assault cases, and the results in this study indicated this.

Effect of Race on the Sentencing Outcomes

Among the extralegal factors, the defendant's race did not have any significant effect on the in/out decisions in sexual assault cases nor on rape cases. These finding were consistent with the findings of Hilinski-Rosick et al. (2014), Kingsnorth et al. (1998), Maxwell et al. (2003), and

Spohn and Spears (1996), who also found that the defendant's race did not significantly affect the in/out decision in the cases of sexual assault. Furthermore, the defendant's race did not have any significant effect on the sentence length decisions in sexual assault cases nor on rape cases. These findings were consistent with the findings of Hilinski-Rosick et al. (2014) and Kingsnorth et al. (1998).

It was admirable that the criminal justice system was exercising the healthy practice and fulfilling the purpose of the sentencing guidelines, which were adopted with the aim to reduce racial disparities, increase uniformity in sentencing, ensure equal treatment to all defendants, and eliminate the consideration of extralegal factors. In the era of sentencing guidelines, the judges were not relying on the stereotypes related to racial factors to build the perception of dangerousness of the defendants. The judges did not consider the race of the defendant in making their sentencing decisions, and the defendants of all races were considered equally blameworthy in the cases of sexual assault and rape.

In the prior literature, the results corresponding to the effect of race on sentencing decisions in different types of crimes were mixed. For violent crimes, Black defendants were more likely to receive incarceration as compared to White defendants (Doerner & Demuth, 2010; Freiburger & Hilinski, 2013; Kramer & Steffensmeir, 1993; Spohn & Beichner, 2000; Spohn & Holleran, 2000; Steffensmeier et al., 1998; Steffensmeier & Demuth, 2000; Steffensmeier & Demuth, 2001; Steffensmeier & Demuth, 2006). The researchers also found that the Black defendants received a longer sentence length in comparison to White defendants (Doerner & Demuth, 2010; Freiburger & Hilinski, 2013; Steffensmeier et al., 1998; Steffensmeier & Demuth, 2000; Steffensmeier & Demuth, 2001). Some other studies found that there was no significant effect of race on the length of sentence (Demuth & Steffensmeier, 2004; Kramer &

Steffensmeir, 1993; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2006). Maxwell et al. (2003) found that compared to White defendants, Black defendants were significantly more likely to be incarcerated for robbery, but less likely to be incarcerated for murder. Compared to White defendants, Black defendants were also found to receive longer sentence length for assault, robbery, and murder.

However, unlike other crimes, the consistency of the sentencing decisions and adherence to the sentencing guidelines in the cases of sexual assault and rape could be attributed to the sensitive nature of the sexual offense. It is the sensitivity of the sexual offense that led many states like Virginia to have the provision of the sex offender registry program through which the names of the sex offenders are included in the Public Notification Database. This facilitates public knowledge about offenders convicted of specific sexual offenses in their neighborhood. This also illustrates the public concern and nature of seriousness of the sexual offenses such as rape and sexual assault. This motivates the judges to follow the legal factors and the sentencing guidelines, irrespective of the defendant's race as illustrated in this study.

Effect of Age on the Sentencing Outcomes

This study found that the defendant's age generally did not significantly affect the sentencing outcomes in the sexual assault and rape cases. The findings of this research were consistent with the results of Hilinski-Rosick et al. (2014) and Spohn and Spears (1996), who also found that the defendant's age did not play a role in the sentencing outcomes in sexual assault cases. This effect could be explained by the argument that the judges treated sex offenders of different ages as equally culpable due to the sensitive nature of the sexual offense.

When looking more closely at the results related to the effect of age, this study found that defendants under age 20 years had a lower likelihood of imprisonment than the age 20-29 years

in both sexual assault and rape cases. This indicated that youthful defendants under age 20 years were considered as less culpable, less blameworthy, less responsible, more immature, less capable of reasoning, and more vulnerable in comparison to adults (Benekos & Merlo, 2008; Bernard, 1992; Bishop, 2000; Feld, 1999; Merlo, Peter, Benekos, & Cook, 1999; Scott & Grisso, 1997). Hence, they were considered as transitory, which provided space for reform and a more rehabilitative approach than punishment (Bishop, 2002). The judges believed in the legal doctrine of *parens patriae,* which advocated that the state acted as a kind, benevolent, and responsible guardian (Bishop, 2000; Feld, 1991; Mack, 1909; Merlo & Benekos, 2010). Hence, the therapeutic system for protecting and rehabilitating youth offenders played a significant role in the in/out decision, altering the philosophy of truth-in-sentencing.

Interestingly, this study found that the defendants under age 20 years who received prison were more likely to receive longer sentence lengths in comparison to age group 20-29 years. Although judges see youthful defendants as more capable of reform, a subset of defendants may be seen as particularly dangerous because of the nature of their offenses. This subset of the youthful defendants was given longer sentence considering their dangerousness. Judges may also utilize the stereotype that the defendants of this age group usually had weak ties with family members and did not have any dependents (i.e., they might be unmarried and without any children). This finding could be attributed to the ideological shift in the criminal justice system from rehabilitative to retributive, from treatment to punishment, and influence of a neo-conservative philosophy, which focused on deterrence and punishment (Merlo & Benekos, 2010). Overall, the findings related to youthful defendants under age 20 years suggested a counterbalancing act, which included both punishment and rehabilitation and was accepted as the guiding principle by judges.

It was interesting to note that in the cases of sexual assault, while the defendants of age 50-59 years were more likely to be incarcerated than the defendants of age 20-29 years, their sentence lengths were not significantly different. This finding indicated that the judges were harsher on these older defendants and more inclined to send them to prison. Table 7 presents the number of defendants with different age and worksheet score in sexual assault cases. This indicated that a higher proportion of older defendants had their worksheet scores above mean as compared to the proportion of the younger defendants. This meant the defendants of age 50-59 years were convicted for more serious sexual assaults than those of age 20-29 years. Hence, the defendants of age 50-59 years were treated more harshly. The focal concern of blameworthiness, the public perception of sex offenders, and protection to children in the community might also be playing crucial roles in this judicial assessment of defendants' culpability.

Table 7. Number of defendants with different age and worksheet score in sexual assault cases

	Total worksheet score	
Age	Below mean	Above mean
Under 20	57	27
20-29	437	218
30-39	241	183
40-49	180	181
50-59	90	95
60 & above	59	63

Limitations of the Study

The results presented in this paper successfully shed more light on the role of the defendant's race and age on the sentencing decisions. However, this study had the following limitations. Firstly, the prior research suggests that the analysis of the effect of race on the

sentencing decisions should include other racial communities, which include Hispanic and Asian. However, our analysis was limited to the comparison between White and Black defendants. The analysis with all racial communities can be performed in the future with the dataset that contains the race information revealed by the defendant. Secondly, the prior research points towards the interaction between race, gender, and age of the defendants in the violent crimes. However, due to the inherent nature of sexual assault and rape and the limitation of the dataset, we could not analyze the effect of gender on the sentencing decisions in this study. The future research may focus on alleviating this limitation with a larger dataset containing the cases where the defendants were women. Thirdly, to achieve the targeted objectives in our study, our dataset had to suffer a significant loss of data (30.1%). Some of this loss was due to the missing information of race, gender, and other legal variables as some jurisdictions did not turn their data into the Virginia Supreme Court because they were not required to. Although the findings of this study are generalizable to those areas in which the jurisdictions turned in data both to the Virginia Supreme Court and the VCSC, there may be some concerns about generalizing the findings to all of Virginia.

Concluding Remarks

This study found that the judges made the sentencing decisions by closely following the sentencing guidelines and legal factors in the cases of sexual assault and rape. Also, the departures in the sentencing decisions in the cases of sexual assault and rape could be attributed to the legal factors, rather than extralegal factors. Overall, the findings of this research suggested that although Virginia followed the voluntary guideline system, the sentencing decisions of the judges were not influenced by the defendant's race and age. This study indicated that the

Virginia sentencing guidelines might have achieved their goal of enforcing equal punishments

for the defendants irrespective of their age or race.

References

Albonetti, C. A. (1991). An integration of theories to explain judicial discretion. *Social Problems*, *38*(2), 247-266.

Austin, T. L. (1981). The influence of court location on type of criminal sentence: The rural-urban factor. *Journal of Criminal Justice*, *9*(4), 305-316.

Blumstein, A., Cohen, J., Martin, S. E., & Tonry, M. H. (1983). *Research on sentencing: The search for reform, Volumes I and II*. Washington D.C.: National Academy Press.

Brereton, D., & Casper, J. D. (1981). Does it pay to plead guilty? Differential sentencing and the functioning of the criminal courts. *Law and Society Review*, *16*(1), 45-70.

Bushway, S., Johnson, B. D., & Slocum, L. A. (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.

Crow, M. S., & Bales, W. (2006). Sentencing guidelines and focal concerns: The effect of sentencing policy as a practical constraint on sentencing decisions. *American Journal of Criminal Justice*, *30*(2), 285-304.

Demuth, S., & Steffensmeier, D. (2004). Ethnicity effects on sentence outcomes in large urban courts: Comparisons among White, Black, and Hispanic defendants. *Social Science Quarterly*, *85*(4), 994-1011.

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.

Elis, L. (2017). Examining sentencing disparity in Virginia: The impact of race and sex on mitigating departures for drug offenders. *Sociology of Crime, Law and Deviance*, *22*, 115-133.

Frankel, M. E. (1973). *Criminal sentences: Law without order*. New York: Hill and Wang.

Frase, R. S. (2005). State sentencing guidelines: Diversity, consensus, and unresolved policy

issues. *Columbia Law Review*, 1190-1232.

Freiburger, T. L. (2010). The effects of gender, family status, and race on sentencing decisions.

Behavioral Sciences & the Law, *28*(3), 378-395.

Freiburger, T. L., & Hilinski, C. M. (2013). An examination of the interactions of race and

gender on sentencing decisions using a trichotomous dependent variable. *Crime &*

Delinquency, *59*(1), 59-86.

Gall v. United States, 552 U.S. 38 (2007).

Heckman, J. J. (1976). The common structure of statistical models of truncation, sample

selection and limited dependent variables and a simple estimator for such models. In *Annals*

of Economic and Social Measurement (Vol. 5, pp. 475-492). NBER.

Hilinski-Rosick, C. M., Freiburger, T. L., & Verheek, A. (2014). The effects of legal and

extralegal variables on the sentences of sex offenders. *Victims & Offenders*, *9*(3), 334-351.

Judicial Sentencing Guidelines Committee. (1993). *Voluntary Sentencing Guidelines: Report to*

the Judicial Conference of Virginia.

Kauder, N. B., & Ostrom, B. J. (2008). *State Sentencing Guidelines: Profiles and Continuum*.

Kern, R. P., & Farrar-Owens, M. (2004). Sentencing guidelines with integrated offender risk

assessment. *Federal Sentencing Reporter*, *16*(3), 165-169.

King, N. J., & Noble, R. L. (2004). Felony jury sentencing in practice: A three-state study.

Vanderbilt Law Review, *57*, 885.

Kingsnorth, R., Lopez, J., Wentworth, J., & Cummings, D. (1998). Adult sexual assault: The role

of racial/ethnic composition in prosecution and sentencing. *Journal of Criminal Justice*,

26(5), 359-371.

Kramer, J., & Steffensmeir, D. (1993). Race and imprisonment decisions. *The Sociological Quarterly*, *34*(2), 357-376.

Maxwell, C. D., Robinson, A. L., & Post, L. A. (2003). The impact of race on the adjudication of sexual assault and other violent crimes. *Journal of Criminal Justice*, *31*(6), 523-538.

Myers, M. A., & Talarico, S. M. (1986). Urban justice, rural injustice? Urbanization and its effect on sentencing. *Criminology*, *24*(2), 367-391.

Nowacki, J. S. (2015). Race, ethnicity, and judicial discretion: The influence of the United States v. Booker decision. *Crime & Delinquency*, *61*(10), 1360-1385.

Nowacki, J. S. (2017). An intersectional approach to race/ethnicity, sex, and age disparity in federal sentencing outcomes: An examination of policy across time periods. *Criminology & Criminal Justice*, *17*(1), 97-116.

Ostrom, B. J., Cheesman, F., Jones, A. M., Peterson, M., & Kauder, N. B. (1999). Truth in sentencing in Virginia: Evaluating the process and impact of sentencing reform. *National Center for State Courts, National Institute of Justice*.

Ostrom, B. J., Kleiman, M., Cheesman, F., Hansen, R. M., & Kauder, N. B. (2002). *Offender risk assessment in Virginia*. National Center for State Courts and Virginia Criminal Sentencing Commission.

Ostrom, B. J., Ostrom, C. W., Hanson, R. A., & Kleiman, M. (2008). *Assessing consistency and fairness in sentencing: A comparative study in three states*. National Center for State Courts.

Smith, D. A. (1986). The plea bargaining controversy. *The Journal of Criminal Law and Criminology*, *77*(3), 949-968.

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., & Holleran, D. (2000). The imprisonment penalty paid by young, unemployed black

and Hispanic male offenders. *Criminology*, *38*(1), 281-306.

Spohn, C., & Spears, J. (1996). The effect of offender and victim characteristics on sexual

assault case processing decisions. *Justice Quarterly*, *13*(4), 649-679.

Steffensmeier, D., & Demuth, S. (2000). Ethnicity and sentencing outcomes in US federal

courts: Who is punished more harshly? *American Sociological Review*, 705-729.

Steffensmeier, D., & Demuth, S. (2001). Ethnicity and judges' sentencing decisions: Hispanic-

Black-White comparison. *Criminology*, *39*(1), 145-178.

Steffensmeier, D., & Demuth, S. (2006). Does gender modify the effects of race–ethnicity on

criminal sanctioning? Sentences for male and female white, black, and Hispanic defendants.

Journal of Quantitative Criminology, *22*(3), 241-261.

Steffensmeier, D., Kramer, J., & Streifel, C. (1993). Gender and imprisonment decisions.

Criminology, *31*(3), 411-446.

Steffensmeier, D., Kramer, J., & Ulmer, J. (1995). Age differences in sentencing. *Justice

Quarterly*, *12*(3), 583-602.

Steffensmeier, D., & Motivans, M. (2000). Older men and older women in the arms of criminal

law: Offending patterns and sentencing outcomes. *The Journals of Gerontology Series B:

Psychological Sciences and Social Sciences*, *55*(3), S141-S151.

Steffensmeier, D., Ulmer, J., & 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.

The PROTECT Act. Pub. L. 108–21, 117 Stat. 650 (2003).

Tonry, M. (2016). Equality and human dignity: The missing ingredients in American sentencing. *Crime & Justice*, *45*(1), 459-496.

Ulmer, J. T., & Bradley, M. S. (2006). Variation in trial penalties among serious violent offenses. *Criminology*, *44*(3), 631-669.

United States v. Booker, 543 U.S. 220 (2005).

USA Congress. (2006). *Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587*.

Virginia Criminal Sentencing Commission. (2001). *Assessing risk among sex offenders in Virginia*.

Virginia Criminal Sentencing Commission. (2014). *Virginia sentencing guidelines*.

Virginia Criminal Sentencing Commission. (2017a). *Annual report*.

Virginia Criminal Sentencing Commission. (2017b). Worksheets. Retrieved February 15, 2018, from http://www.vcsc.virginia.gov/worksheets.html

Virginia State Police. (2016). *Crime in Virginia, 2016*. Retrieved from http://www.vsp.state.va.us/downloads/Crime_in_Virginia/Crime in Virginia 2016.pdf