AGE DIFFERENCES IN SENTENCING

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Empirical research on various aspects of aging has flourished and continues to flourish in sociology and in the social sciences generally (Riley, Foner, and Waring 1988). Criminology possesses abundant empirical research on both the age-crime and the age-victimization relationships (see review by Steffensmeier and Allan 1995). Some research also focuses on the elderly—as victims, offenders, and incarcerated inmates (Fattah and Sacco 1989; McCarthy and Langworthy 1992; Newman, Newman, and Gewertz 1984; Steffensmeier 1987; Wilbanks and Kim 1984). Yet in spite of its centrality and in contrast to other core variables such as race and gender, very little is known about the overall effects of age on judicial decisionmaking in handling criminal defendants. Virtually absent is empirical research testing the widely held assumption that "there is an obvious propensity on the part of judges to be more lenient with elderly criminals" (Champion 1987:12). Moreover, the few existing studies on the effects of age on sentencing, including advanced age, suffer from a number of shortcomings that blur any clear-cut conclusions.

In this article we examine age differences in sentencing, using statewide data from Pennsylvania for 1989-1992. We distinguish sentencing outcomes in relation to two critical stages of sentencing—whether to imprison and length of term. As we describe below, the Pennsylvania data are exceptionally well suited for assessing whether decisions concerning sentence outcomes depend on age, including whether the elderly offender receives especially lenient treatment.

PRIOR RESEARCH

We searched the literature for empirical studies that addressed 1) the effects of age as a whole on imprisonment decisions and 2) the specific effects of advanced age on such decisions. First, we could

not find even a single study that examined the overall effect of age on imprisonment decisions for adult offenders (i.e., covering the ages from young adulthood through middle and old age). Many sentencing studies exist, however, which include age as a *control* variable but do not focus on age effects (e.g., Klein, Petersilia, and Turner 1988; Kramer and Steffensmeier 1993; Myers and Talarico 1987; Peterson and Hagan 1984). These studies typically report a small or negligible linear age effect. The lack of an observed age effect, however, may be masked by a *curvilinear* relationship—if, for example, both offenders under age 20 and offenders over age 60 receive more lenient treatment than offenders between 21 and 59. In effect, the more lenient treatment for the youngest of the adult offenders would cancel out the remaining age effect occurring across the mid-twenties, the thirties, the forties, and into advanced age. It is plausible that judges would view 18; 19; and 20-year-olds as more like juveniles than like full-fledged adults, and thus would regard them as deserving more lenient treatment. If this is so, the assumption of a linear relationship between age and sentencing would lead to a misinterpretation of the absence of an age effect.

Second, we encountered a shortage of empirical research on a more specific issue: whether elderly offenders receive more lenient treatment. The assumption that the elderly offender "gets off easier" is based largely on lawyers' and judges' anecdotal impressions (Alston 1986; Feinberg and Khosla 1985; Kalvern and Zeisel 1966), on the statistical observation that the elderly percentage of all persons arrested for crimes in the United States is much larger than the elderly percentage of all persons convicted or incarcerated (Wilbanks 1988), and on the findings from a few studies showing that elderly shoplifters as well as elderly sex offenders receive more lenient treatment than their younger counterparts (Cutsall and Adams 1983; Wilbanks and Kim 1984; but see Curran 1984).

We found only two studies that compared the sentencing outcomes of elderly and younger defendants across a variety of offenses (Champion 1987, 1988; Wilbanks 1988). Wilbanks used 1980 California Offender Based Transaction System (OBTS) data to examine the sentencing outcomes of elderly felons age 60 and over (N=1,562) with those of felons age 20 to 59 (N=160,413). A wide range of violent, property, and public offenses was included. On the basis of the cross-tabulation comparisons, Wilbanks reported that elderly offenders were more likely to be convicted but less likely to be incarcerated (after conviction). Unfortunately, the data lacked important control variables such as prior record; thus the finding of more favorable treatment of the elderly in sentencing decisions is

questionable, especially because prior record and age are likely to be confounded.

Champion (1987) used conviction data from six federal circuit courts to compare the sentencing outcomes of 78 elderly felons (age 60 and over) with those of 2,287 younger felons (ages 20-59). Champion collapsed the offenses into violent and property groups, and included a measure of prior record: "no prior" versus "prior." He found significant differences in sentencing severity: "Younger offenders typically received sentences (including incarceration) two to three times as severe as do elderly offenders convicted of identical offenses and with similar prior records" (Champion 1987:12).

The Champion study exhibits important shortcomings, however. First, the small sample size of elderly offenders (N=78) restricts the comparisons to a very narrow range of both offenders and offenses, constrains the use of multivariate analysis, and limits the generalizability of the findings. Second, the controls for prior record and offense severity are imprecise. For prior record, the "no prior"-versus-"prior" dichotomy does not capture the severity of criminal history across defendants. For offense severity, the "violent"-versus' "property" dichotomy captures neither the level of severity nor the heterogeneity of offenses that constitute both the violent and the property group. The failure to control more precisely for the offense variable is particularly significant because elderly offenders are more likely to commit the less serious forms of violent (simple versus aggravated assault) or property (e.g., shoplifting versus robbery) crime (Steffensmeier 1987).

Thus, as a result of these problems, we know very little about the overall effects of age on sentencing outcomes and about the specific effects of advanced age on sentencing. On the one hand, research on the age/sentencing relationship is scarce. On the other, the findings of the few studies that have been conducted are suspect because of sampling deficiencies, primitive statistical techniques, and inadequate statistical controls for key variables such as prior record and offense severity.

THEORETICAL EXPECTATIONS

Will older defendants receive sentences similar to those given to younger defendants? Will older defendants receive harsher sentence, or, will they receive more lenient sentences? Plausible arguments can be mustered in support of each possibility.

No Age Differences

Because the American criminal justice system strongly emphasizes the ideals of treating criminal defendants impartially and

equally, it is reasonable to expect that judges will sentence strictly on the basis of what defendants allegedly have done, not who they are or how old they are. Older offenders should receive sentences as severe (or as lenient) as do younger offenders convicted of identical offenses and with similar records. This view is buttressed by the bulk of research on sentencing, which has established the overwhelming importance of legally relevant variables such as offense seriousness and prior record in sentence outcomes (see reviews in Kramer and Steffensmeier 1993; Myers and Talarico 1987).

Older Offenders Sentenced More Harshly

Because judges may believe that older offenders should know better and therefore are more culpable than younger people, it also is plausible to assume that they will impose harsher sentences on older defendants. Alternatively, judges may hold that the older person who violates the law is hopelessly incorrigible and that society has no choice but to lock him up. Also, because many older offenders may have received a break at earlier stages of police or court processing, it may be that only the most serious older offenders actually reach the sentencing stage (Fattah and Sacco 1989). In effect, earlier leniency in the system may lead to what appears to be harsh treatment by the sentencing judge.

Older Offenders Sentenced More Leniently

In spite of the arguments above, drawing from the literature on sentencing and on the sociology of age roles, we expect that older offenders will receive more lenient sentencing outcomes than their younger counterparts, net of other factors. This expectation is grounded in four main factors: age-differentiated severity of imprisonment, practicality, future criminality, and relative dangerousness. These factors overlap, but each is distinct enough to be treated separately.

Differential severity of punishment. Doing time in jail or prison may be perceived as harder on older than on younger offenders because of the perception that punishments are felt disproportionately. Time for elderly offenders is more likely to be seen as a diminishing, exhaustible resource wherein the future becomes increasingly valuable. A year of imprisonment given to an offender in his fifties or sixties takes a considerably larger proportion of that person's remaining years than does the same punishment assigned to a 25-year-old offender (Sherwin 1990). Also, older offenders may be viewed as more vulnerable to aggression by younger offenders, and in other ways may adapt less well to prison conditions.

Practicality.   Judges also may conclude that sending older offenders to prison is financially costly, is burdensome to correctional officials, and poses special problems for the prison staff (e.g., special diets, medications, various health problems). The costs to society (or the state) of incarcerating elderly offenders are potentially much greater than for younger offenders because of the special physical and psychological needs of the aged and the greater probability of death in prison.

Future criminality.   Judges (and other court officials) may believe that older persons are better able to reform themselves and that they are less likely to possess the pervasive criminal tendencies or physical skills that characterize younger offenders. Older persons also are less likely to be viewed as part of a crime-generating peer group, and their criminal behavior is more likely to be regarded as idiosyncratic. Older offenders' criminal activities, for example, may be explained away as resulting from forces outside their control, such as extreme environmental circumstances or health problems associated with advanced age. It generally appears that older offenders are viewed as less likely to transgress in the future, have a good many escape hatches for crime, and are forgiven often. Older offenders also may be more astute at swaying the sentencing judge toward a lenient sanction by showing remorse or rehabilitation (Steffensmeier forthcoming).

Relative dangerousness.   Judges are likely to regard older offenders as posing a lesser risk of danger to the community than younger offenders. The decline in physical prowess and pugnacity accompanying advanced age leads to the expectation that older persons are less aggressive and less capable of using force to harm or threaten someone. In other areas of sentencing research, it is a well-established rule that the severity of the sentence is a function of the degree of actual or threatened physical harm in the offense (Steffensmeier 1980). Older offenders are viewed as less dangerous, and the general community simply finds them less frightening. Releasing them back into the community (in comparison with releasing younger offenders) is less likely to result in recidivating behavior that reflects badly both on the court and on the sentencing judge.

Possible Curvilinear Relationship

How does age in years, as opposed to advanced age, affect judicial decision making? Just as advanced age may be a mitigating factor that reduces sentence severity, judges also may be reluctant to sentence to prison very young "adult" offenders. For example,

18- and 19-year-old offenders are treated as adults in the criminal justice system, but they have not yet attained many of the legal rights that come with full adult status at age 21. In other ways as well, they are still viewed as juveniles. Concerns about incarcerating youthful offenders (e.g., those in their late teens) with older and supposedly more hardened inmates may tilt judges toward more lenient sentencing. Also, judges may be more forgiving toward youthful offenders than toward offenders in their twenties and thirties; their criminal involvement may be attributed to youth or to an adolescent phase that they will outgrow. In fact, until 1986 Pennsylvania had a "youthful offender" statute, whereby young adult offenders who were sentenced to incarceration went to a special institution and received an indeterminate sentence allowing release at any time. Thus both younger and older offenders may receive more lenient sentences. If this *inverted U-shaped* pattern prevails, it will help to explain the anomalous finding in statistical studies of sentencing: where age is used as a control variable, it has weak or negligible effects on sentence outcomes.

PENNSYLVANIA DATA

The Pennsylvania data are exceptionally well suited for a study of age differences in imprisonment decisions. Guidelines were enacted in 1982, and apply to all offenders convicted of a felony or serious misdemeanor. The purpose of these guidelines was to establish sentencing standards in the form of a matrix for each combination of offense severity and criminal history (Kramer and Scirica 1986).

First, the guidelines system standardized the calculation of the defendant's prior record and the presentation of the record to the court, increased the likelihood that information about prior record would be collected and recorded accurately, and ensured that sentencing judges would be informed of the defendant's prior record and conviction-offense gravity score. The provision of criminal history information at sentencing is haphazard in many states; even when prior record information is collected, it may not be presented to, or considered by, the court. Thus the Pennsylvania data are more likely to accurately reflect the effect of prior record on sentencing than would sentencing statistics from most other jurisdictions.

Second, the state's record keeping includes refined classifications not only of prior record but also of offense severity. The set of offenses is well defined, and seriousness is measured precisely. In fact, in Pennsylvania some offenses with the same statutory grade are subdivided and given different severity scores by a broad-based

panel composed of judges, legislators, defense attorneys, and district attorneys. Previous research had to rely on broadly defined statutes as the basis for classifying offenses.

Another advantage of the Pennsylvania data is that the sentencing structure based on the guidelines is comparatively "loose" and permits significant judicial discretion (Tonry 1987). Also, the criminal code endorses several sanction philosophies (for deterrence and incapacitation as well as for rehabilitation and retribution), so that case characteristics have considerable leeway to affect the sentences imposed, both within and across crime categories. Finally, the large number of cases (120,360) enables a more comprehensive, more in-depth analysis of age effects on sentencing. Small sample size prevented most prior research on age bias in sentencing from adequately exploring the role of severity and type of offense in sentencing, and from considering whether curvilinear effects exist.

Our study is a significant advance over prior research on the age-sentencing issue, but two warnings are in order. First, we examined only the sentences imposed on convicted offenders. Thus we did not address whether age bias exists in earlier stages of processing or prosecution (e.g., in charging). Nonetheless, because it is virtually impossible to account for all the selection processes (both formal and informal) that operate in the criminal justice system, some degree of uncorrected sampling bias is common in every study. Second, although we control for important contextual variables (see below), the inclusion of these variables in our analysis is far from exhaustive.

PROCEDURES

In this study we analyze data on sentencing according to Pennsylvania guidelines—120,300 cases from 1989 to 1992. Cases involving several offenses with very few older defendants (e.g., terroristic threats) are excluded. We cover 15 offenses in the analysis, including property as well as violent offenses. The data for this study are based on the monitoring system developed by the Pennsylvania Commission on Sentencing. Each sentence given for a separate transaction must be reported to the commission. The Pennsylvania data offer some of the richest information available in the country for analyzing judges' decisions regarding whether to imprison and the length of prison term. Beside age, the independent variables we use in the analysis are a combination of legally prescribed variables, offender characteristics such as gender and race, and contextual factors. Coding of these variables is straightforward and is presented in Table 1.

Table 1. Description of Variables

Independent Variables	Description
Age	In years Dummy-coded groupings (see text)
Legally Prescribed Severity	Severity of the convicted offense: 10-category ordinal scale with a range of 1 (least serious) to 10 (most serious) Fifteen dummy-coded offenses[a]
History	Criminal history score: 7-category ordinal scale with a range of 0 (no prior record) to 6 (prior record)
Offender Characteristics	
Race	Binary: coded 1 if black, 0 if white
Gender	Binary: coded 1 if female, 0 if male
Contextual Factors	
Workload	No. of cases received/no. of judges in county
Type of disposition	Binary: coded 1 if trial, 0 if plea
% Urban	% of county population living in urban areas
% Black	% of county population that is black
% 15-19	% of county population age 15-19
% Republican	% of county voters/Republican
Court size	Small = 5 judges or fewer, medium = 6-15 judges, large = 16 or more judges
Dependent Variables	
Probation vs. jail/prison	Binary: coded 1 if incarcerated, 0 otherwise
Sentence length	Minimum in months

[a] The dummy offense variables are involuntary manslaughter, homicide, kidnapping, rape, (including involuntary deviate sexual intercourse), robbery, weapons offenses, aggravated assault, simple assault, arson, burglary, criminal trespass, theft, forgery, drug felony, and drug misdemeanor. Retail theft was excluded as the contrast level.

The legally prescribed variables include the severity of the convicted offense (Severity) and the criminal history score (History). We used the most serious conviction offense and combined two measures of severity: a 10-point scale developed by the commission, ranking each statutory offense on the scale, and a dummy variable procedure across the 14 offense categories. Used singly, and especially together, these measures provide a rigorous control of seriousness of offense.[1]

To measure criminal history, we used a weighted seven-category scale developed by the commission. The criminal history score measures the number and severity of the defendant's past convictions. We included misdemeanors punishable by at least one year of incarceration as well as all felonies. Misdemeanors (punishable

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[1] The two measures of offense seriousness—the offense dummy procedure and the severity scale—are not redundant. The severity scale ranges from 1 (minor theft) to 10 (murder in the second degree). The ranking of offenses on this scale is consistent with offense rankings employed in other scales of crime seriousness. Also, by way of special subdivisions of specific offenses (e.g., robbery 1 versus robbery 2), offense severity includes whether the victim was injured and the degree of injury.

by up to five years in Pennsylvania) may total no more than two points on the criminal history score; felonies are three points each, depending on their severity.

We also included a number of contextual variables that other investigators have identified as important controls in sentencing research, including urbanization and the proportion of the population that belongs to minority groups (Benson and Walker 1988). Contextual factors also may include differences in organization and caseload processing among courts, such as caseload size, court size, and type of disposition (Myers and Talarico 1987). In addition, we used percent Republican to measure conservatism of the social environment (Steffensmeier 1976). In the initial models we also included the crime rate in the county, the unemployment rate, and median income levels. These variables, however, were highly collinear and were redundant with percent urban and percent black, so we omitted them from the analysis reported here.

Sentencing is a two-stage process; it involves, first, a decision about whether to imprison and, second, if incarceration is selected, a decision about the length of sentence. Thus we employ two dependent variables: incarcerated versus not incarcerated (in/out decision) and length of prison term. Logistic regression is used to analyze the in/out decision, and ordinary least squares (OLS) regression to analyze the length-of-term decision.

FINDINGS

Table 2. Results from Logistic and OLS Regression Analysis for In/Out and Length-of-Prison-Term Decisions (Logits and Standardized OLS Coefficients in Parentheses)

Independent Variable	In/Out — Odds Ratio	In/Out — (logit)	Length of Term — b	Length of Term — (B)
Constant[a]	(−.84)		−15.00	(−)
Age				
18-19	1.06	(.056)*	−1.09	(−.02)
20-29	1.21	(.185)	1.05	(.03)
40-49	.87	(−.13)	−1.21	(−.02)
50-59	.61	(−.49)	−4.05	(−.03)
60+	.25	(−1.05)	−8.70	(−.03)
Offense Severity	1.53	(.42)	8.00	(.88)
Offense Type		b		b
History/Prior Record	1.55	(.435)	5.30	(.64)
# Conviction Charges	1.24	(.21)	2.90	(.07)
Race (Black = 1)	1.56	(.444)	2.30	(.06)
Gender (Female = 1)	.54	(−.62)	−6.50	(−.11)
Type of Disposition				
Negotiated plea	.90	(−.11)	.89	(−.02)
Bench trial	1.16	(.145)	2.85	(.037)
Jury trial	2.75	(1.02)	14.40	(−.03)
Workload	.99	(−.001)*	−.01	(−.03)*
% 15-19	1.22	(.20)	1.91	(.10)
% Republican	1.00	(.002)*	.04	(.04)
Small Court	1.13	(.12)	.61	(.02)
Large Court	.38	(−.98)	−7.00	(−.18)
Year	.98	(−.02)*	−.02	(−.001)*
Correction Factor			50.10	(.57)

Chi-square = 42326 ($p \le .0001$) $R^2 = .57$
$F = 3262$ ($p \le .0001$)
(degrees of freedom = 34)

N			
	139,528		83,890

[a] Retail theft, nonnegotiated guilty plea, medium-sized courts, and offenders age 30-39 are reference categories.
[b] Results for dummy variable are presented in the appendix.
* Sample size is so large that most coefficients are statistically significant.
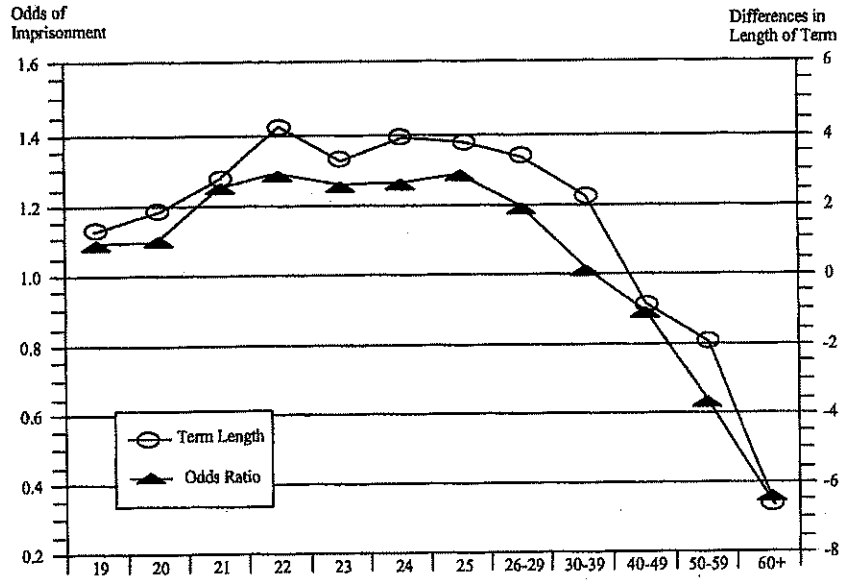* designates coefficients *not* significant at $p \le .05$.

Table 3.   Results for Logistic and OLS Regression Analysis
           for Violent, Property, and Drug Offense Groups

Age	In/Out Decision (Odds Ratio)			Length of Term (b)		
	Violent	Property	Drug	Violent	Property	Drug
18-19	1.27	1.01*	1.27	.04*	−.72*	−.60*
20-29	1.27	1.20	1.19	1.65	2.05	.36
40-49	.73	.86	.96	−1.82	−2.6	3.07
50-59	.69	.53	.74	−4.90	−7.20	−.59*
60+	.28	.32	.52	−9.80	−16.50	−2.33

* Sample size is so large that most coefficients are statistically significant.
* designates coefficients *not* significant at $p \leq .05$.

Figure 1. Age Differences in Imprisonment Odds and Length of Prison Term (in Months)[a]

Odds of Imprisonment

Differences in Length of Term

[a] Age 18 is a reference category.