

Chapter 6

Dimension Effects on Sentencing: Drug Trafficking, Street Crimes and Drug Possession

The respondents' sentencing preferences examined in this chapter are concerned with some of the crimes that attract the most attention in the mass media, in the Congress, and in state legislatures. Starting off with trafficking in illegal drugs, the chapter covers the dimensions used in that crime and those used in bank robbery, other robbery crime, kidnapping, extortion, blackmail, and drug possession.

Trafficking in Illegal Drugs

Because trafficking in illegal drugs is of special interest to the Commission, this crime was more elaborately treated in this study than any other crime. By design, about 20 percent of the vignettes described a person convicted of trafficking in one or another of four illegal drugs. In addition, drug trafficking dimensions included the amount of illegal drugs involved, the role in trafficking played by the offender and the involvement of guns in the crimes.

As shown in previous chapters, drug trafficking was considered by the respondents to be one of the most serious crimes they were asked to evaluate and long sentences typically were given. Figure 6.1 shows the impact of the kind of drug being sold. The data displayed in each box-and-whisker plot are the *predicted* sentences from the multivariate model of drug trafficking; all of the vignette dimensions are included in that model. The sentence given (in years) was used as the response variable. Finally, just as in the previous chapters, outlier respondents who gave bizarre patterns of sentencing, were dropped from the analysis.

It is important to keep in mind that the *variation* in the predicted sentences in Figure 6.1 is a function of other features of the vignette, not of drug type. Figure 6.1, therefore, is not a boxplot of actual sentences given or of the residuals around the median sentence. Consequently, by comparing variation in the medians across the different levels shown on the horizontal axis to the variation implied by the distance between the whiskers or the inter-quartile range, one can get a sense of the relative importance of the dimension being graphed. The smaller the box the less influence the other dimensions exert on the predicted sentences. To help fix these ideas, we will discuss the results shown in Figure 6.1 in detail. Note also that the numbers of cases used in this and other boxplots in this chapter and Chapters 7 through 9 can be found in Appendix D.

The median predicted sentence for trafficking in marijuana is about 7.5 years. Averaging over the other features of drug trafficking, it is clear that our respondents take trafficking in marijuana very seriously. For the three other kinds of drugs — powder cocaine, crack cocaine, and heroin — the median sentences are about two years longer, or approximately 9.5 years. Therefore, in contrast to the marked distinctions that the guidelines make between trafficking in the four drugs, sentences for trafficking in powder cocaine, crack cocaine, and heroin are not much longer than those for trafficking in marijuana. Moreover, no important distinctions are made on the average between trafficking in powder cocaine, crack cocaine, or heroin. This pattern is in dramatic contrast to the way in which current guidelines treat trafficking in different drugs.

Because the variations in sentences associated with other dimension used are reflected in the sizes of the boxes and the whiskers, one can see in Figure 6.1 that the variation in sentences explained by all of the other drug trafficking dimensions combined dominate the impact of drug types. Although, on the average, drug type can alter the sentence given by no more than about two years, sentences predicted by a combination of all the other vignette dimensions can alter sentences by around 20 years. Likewise, each of four inter-quartile ranges are about five years, rather larger than the variation in the four medians. Overall, the type of drug being sold is just not very important to the respondents.

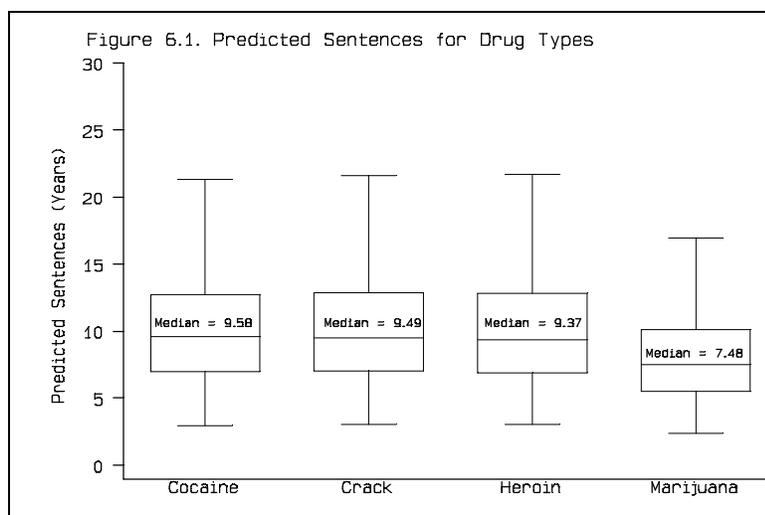


Figure 6.2 shows in a similar fashion the predicted sentences for drug trafficking as a function of the amount of drug involved. The units are in thousands of dollars of street value, each value associated with a drug amount.¹ The median sentence given for trafficking in drugs worth \$1 million on the street is about 12.5 years. The median sentence given for trafficking in drugs with \$100 is about half that, or about a little more than six years. The inter-quartile range varies from about two years to about five years, which implies the value of the drugs makes an important difference relative to the other vignette characteristics. Drug amount is certainly more important than drug type, at least for the levels of drug value used in the vignettes.

Although the discussion up to this point has focused on predicted medians as typical sentences, all of sentencing distributions overlap substantially so that the more lengthy sentences for small street values are longer than the shorter sentences for large street values. In addition, inter-quartile ranges are several years. The message is that sentences are importantly affected by the other vignette dimensions.

A close look at the levels of drug value indicates that the increase in drug value is much more rapid than linear: \$100, \$1,000, \$20,000, \$100,000, \$1,000,000. Yet the medians in Figure 6.2 increase in

¹ See Figure 3.1 for the dollar and dosage amounts. Because the dollar amounts are each associated with a unique dosage amount, the independent effects of dosage cannot be separated from those of dollar value.

roughly a linear fashion. This means that the predicted sentences increase at a rapidly decreasing rate for linear increases in the value of the drugs being sold. That is, the predicted sentence length increases, but at a dramatically decreasing rate as a function of linear increase in street value; punitiveness increases far more slowly than drug value. This is a pattern that will be seen in other crimes as well: sentence lengths do not increase linearly with increasing amounts of criminal economic gains.

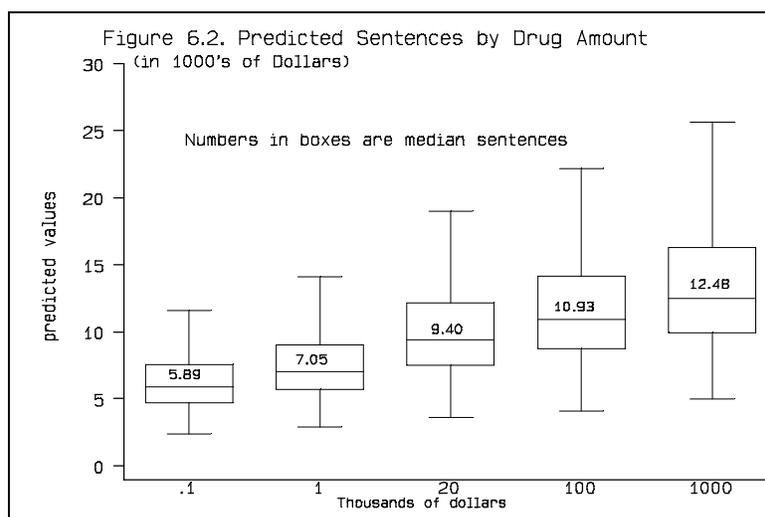
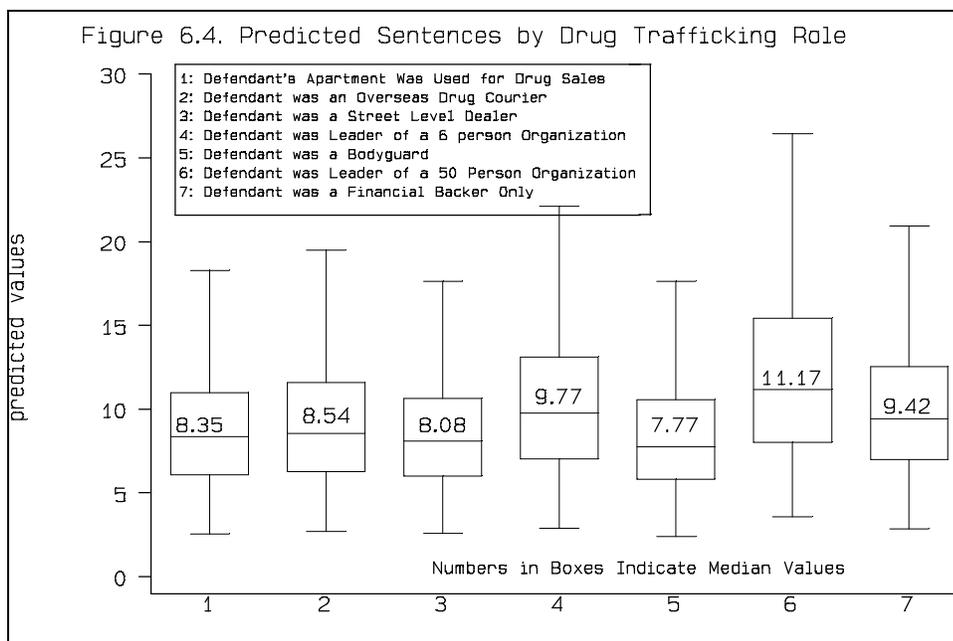
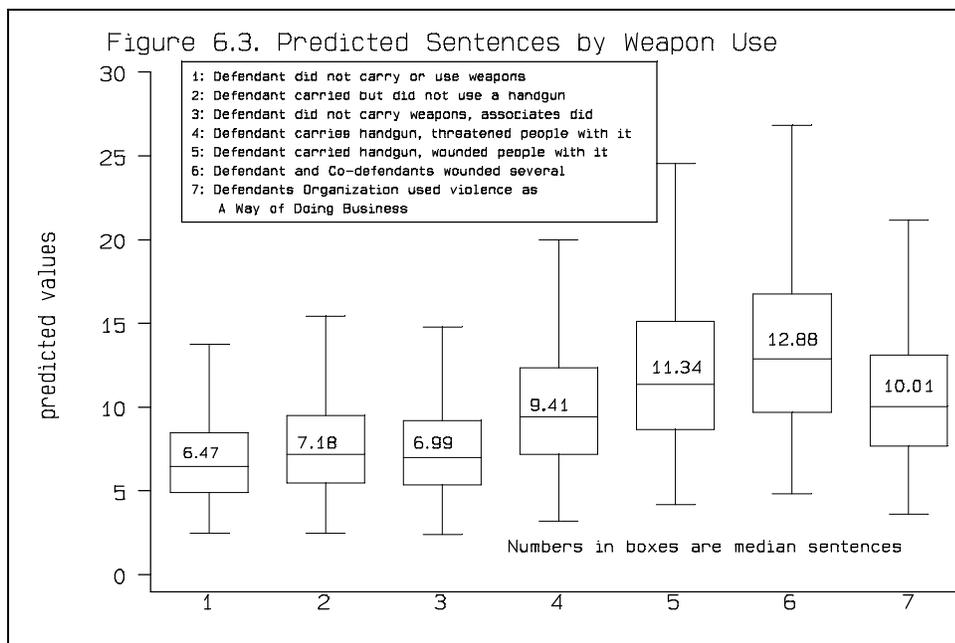


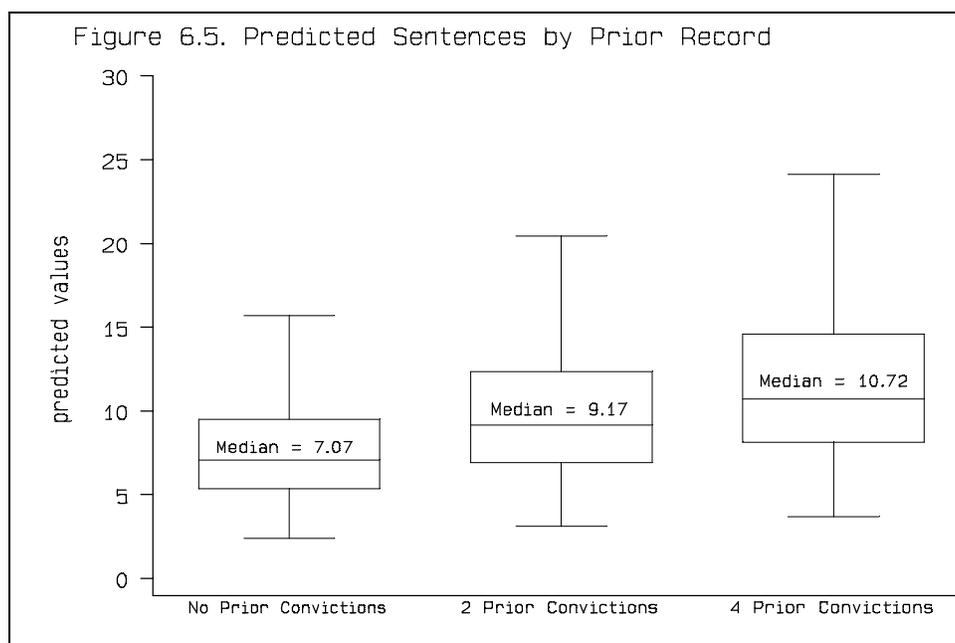
Figure 6.3 shows the impact of the use of weapons on sentences for drug trafficking. The levels ranged in the gravity of weapons use. On the “light” side were: 1) “... did not carry a gun or engage in violence;” 2) “... carried a handgun but was not known to have used a weapon or to have engaged in violence” [in this crime]; and 3) “... although the defendant did not carry a handgun, the other people he/she worked with did.” In the “moderate range” was: 4) “... carried a handgun and was known to threaten others with it.” On the heavy side of weapons use were: 5) “... carried a handgun and was known to have shot and wounded others;” 6) “the defendant and other co-defendants were known to have shot and seriously wounded several people;” and 7) the “drug dealing organization was known to use weapons and violence as a way of doing business.”

Figure 6.3 shows that sentence lengths are shortest for the three “low” levels of weapons use. Median sentences are around seven years averaging over all of the other vignette characteristics. Sentence length increases some through the moderate level to high level with the exception of the final level involving the reputation of the drug dealing organization. The median sentence for drug trafficking coupled with shooting and seriously wounding several people is about 12 years. But the median sentence drops to about ten years for the having the “reputation” of gun use. Clearly, the use of handguns makes an important difference, but primarily when a handgun is used by the defendant to actually inflict injury. Carrying a handgun is not considered much more reprehensible than not carrying one. And a “bad guy” reputation carries about the same weight in sentencing as using a handgun to make threats, both of which are a bit more serious than simply carrying a handgun.

Figure 6.4 shows how sentences respond to the role the defendant played in the drug trafficking. The roles are: 1) “...allowed his/her apartment to be used for drug sales;” 2) “...a courier...;” 3) “...a street-level dealer...;” 4) “...the leader of a drug-dealing organization that hired six people;” 5) “...a bodyguard

for a wholesale drug dealer;” 6) “...the leader of a drug-dealing organization that hired 50 people;” and 7) “... the financial backer of a drug-dealing network run by others.”





The respondents' sentencing preferences were not very responsive to differences in the drug trafficking role. The only exceptions were for the two leadership roles, which increased median sentences from about 8 years to 10 or 11 years. Note that the inter-quartile ranges are larger than the two-to-three year increase in sentence length.

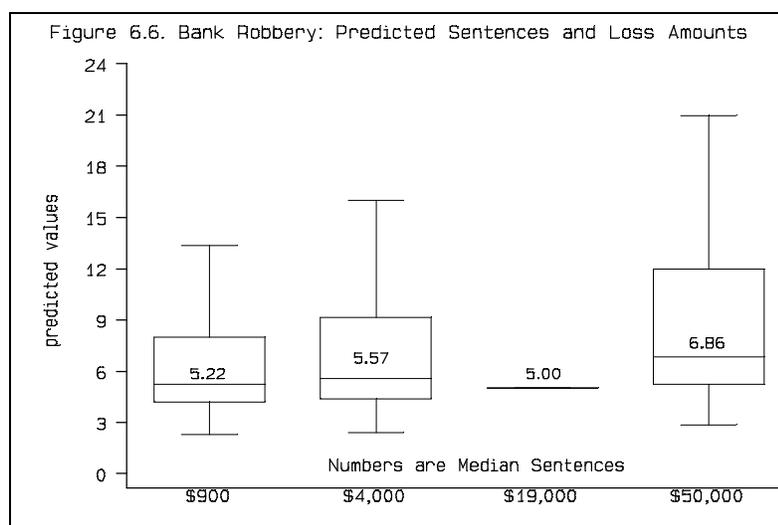
Summarizing the impact of the dimensions characterizing drug trafficking, respondents' sentencing preferences change with the kind of drug, the street-value of the drug, the use of weapons, and the role of the defendant in the drug trafficking. The biggest absolute impact was found for the difference between trafficking in drugs valued at \$100 compared to trafficking in drugs valued at \$1million. Median sentences roughly doubled from a little less than six years to about 12.5 years. Using a handgun to inflict injuries was also important, and compared to simply carrying a handgun, increased median sentences from about seven years to about 12 years. Sentencing was not very responsive to differences in the role played in trafficking. But, perhaps the most important finding is that the general public does not make important distinctions between trafficking in heroin, powder cocaine and crack cocaine, and that trafficking in marijuana is treated almost as seriously as the other three illegal drugs.

With one exception, the offenders' demographic characteristics have no important impact on the sentences given. Unmarried defendants with no dependents receive median sentences that are about six months longer than married defendants with dependents. Employment status and gender make virtually no difference whatsoever. However, as Figure 6.5 shows, prior record is quite important. Median sentences increase from about seven years to about nine years and then to about 11 years with, respectively, no prior record, two prior prison sentences, and four prior prison sentences.

Bank Robbery

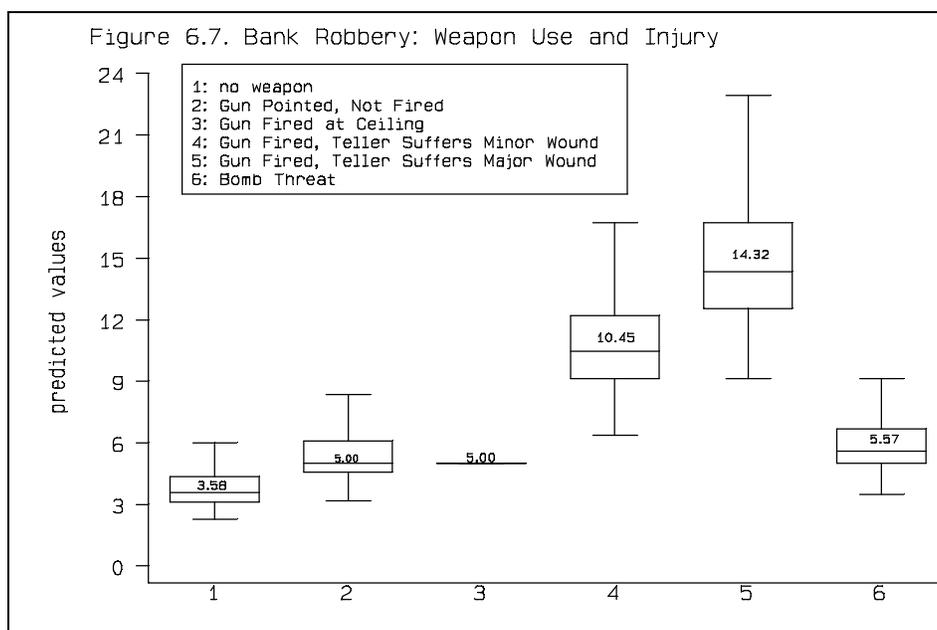
What drug trafficking crimes may represent in recent American criminal lore and legend, bank robbery may have been in an earlier era. Although it may no longer be the at the focus of public attention, bank robbery remains a common and often violent crime today. Thus, it is not surprising that, on the average, respondents took bank robbery very seriously. And, as with drug trafficking, the effects of the variations we have built into the vignettes should come as no surprise.

Figure 6.6 shows the sentences given as a function of the amount of money taken. All four median sentence are between five and seven years, somewhat lower than for drug trafficking. Probably more interesting than the typical sentence is that the median sentence is not much affected by the amount of money taken, at least for the range of values we used. This is rather surprising on its face and is quite different from the impact of the street value of drugs on the median sentences for drug trafficking. For bank robbery, the median sentence for taking \$50,000 is only about 1.5 years longer than the median sentence for taking \$900. For drug trafficking, a comparable increment in economic gain leads to an increase of about three years in the median sentence.



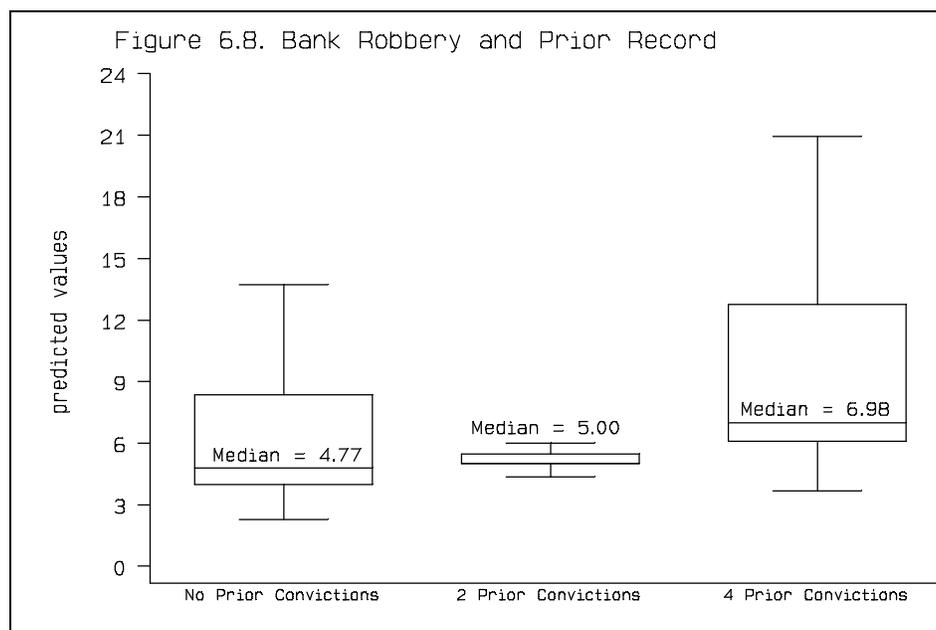
In Figure 6.6, there is no box for the loss amount of \$19,000 indicating that all of the associated predicted sentences are the same. This occurs because the majority of bank robbery vignettes describing this loss amount are “practice” vignettes in which there is no variation in the other dimensions of bank robbery and hence those dimensions cannot play roles in the sentences.

In dramatic contrast, Figure 6.7 shows that the prospect of violence or its actual occurrence during a bank robbery makes large differences in the median sentences. The six levels were: 1) “...did not threaten or harm...did not have a weapon..;” 2) “...pointed a handgun at the teller...gun was not fired;” 3) “... pointed a handgun at the teller... fired at the ceiling;” 4) “... minor wound...[was received by the teller];” 5) “...seriously wounded [the teller];” and 6) “...threatened to blow up the bank...no one hurt.”



Quite clearly, respondents react strongly in their sentencing to crimes that result in injury and possible loss of life. Median sentences when no one is hurt are about 4.5 years. When the teller receives a minor wound, the median sentence increases to about ten years and when the teller is seriously wounded, the sentence increases to about 14 years. These are large effects in absolute terms and also relative to the variation in sentences around the medians. Interestingly, threats of violence do not seem to count for much even when the threat is to blow up the bank! This parallels the findings for the use of violence in drug trafficking.

Once again, the background of the defendant does not matter much, with one exception. There are trivial differences in median sentences as a function of the gender, employment status, and family circumstances of the defendant. However, Figure 6.8 shows that median sentences increase with increases in prior record although the increases are modest: about six months for two prior convictions compared to no prior convictions, and about two years for four compared to two prior convictions.

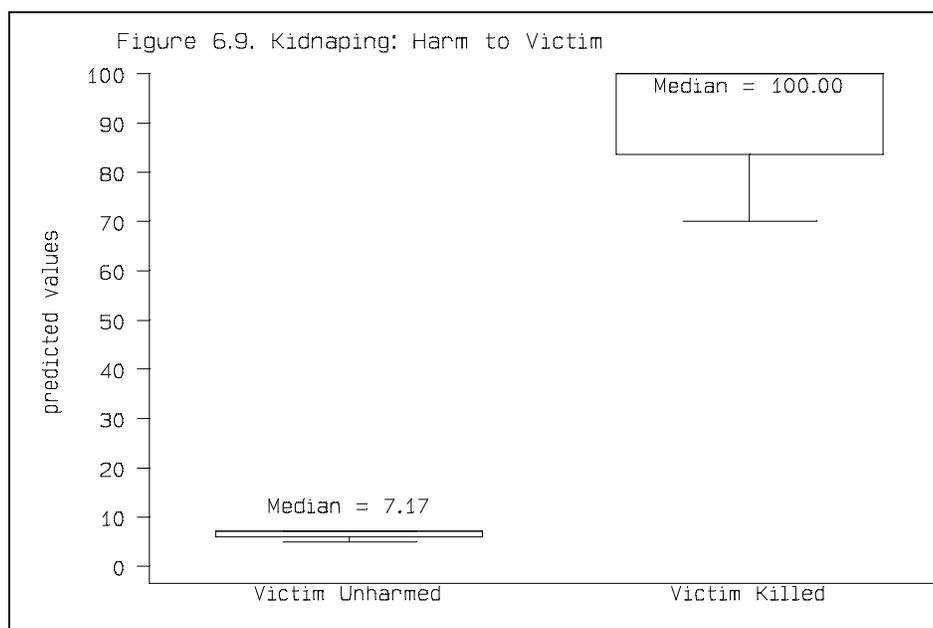


In summary, the median sentences for bank robbery are a bit shorter than for drug trafficking. However, such differences depend in part on the dimensions and levels built into the vignettes. Had we included a bank robbery coupled with the massacre of a large number of hostages, at least some bank robbery vignettes would likely elicit longer median sentences than our worst drug trafficking vignettes. Yet, our dimensions and levels were not constructed out of whole cloth. Rather, they reflect the range of crimes that, according to the staff at the Commission, constitute the bulk of the federal docket. In short, while there are, no doubt, some kinds of bank robbery that would elicit longer sentences than respondents applied to drug trafficking, it seems that “garden variety” drug trafficking crimes elicit longer median sentences than “garden variety” bank robbery.

Kidnapping

Kidnapping is a crime that is uncommon but upon occurrence receives great attention in the mass media. It is also a crime in which the victims are often persons of prominence or members of their families and is often associated with serious injury.

The only dimension used in kidnapping crimes involved the amount of harm done to the kidnapped persons, describing the victim as either “unharmful” or “killed.” Figure 6.9 shows the impact on median sentence when the kidnap victim is killed. The median sentence of about seven years when a victim is unharmed becomes a median sentence of death if the victim is killed. It is also telling that the minimum sentence when the victim is killed is life in prison. In short, the general public clearly takes a no-nonsense position on kidnapping when the victim is killed.



The other dimensions characterizing kidnapping describe the background of the defendant: gender, employment status, family circumstances, and prior record. None of these dimensions make important differences in respondent sentencing. The biggest effects are for gender and prior record. Men receive sentences that are longer by about a year and defendants with no prior record receive sentences that are shorter by about a year (compared to two or four prior prison terms.)

To summarize, we find once again that actions by the defendant that can lead to serious injury or death are taken very seriously by the general public. In this case, even prior record pales by comparison.

Carjacking

Until recent years, carjacking, the theft of occupied automobiles through forcing control of the vehicle by threats or actual violence occurred infrequently. Recently, carjacking has become more common and is a street crime that has generated great public outcry.

The vignettes describing carjacking contain two dimensions, one describing the way in which the robber threatened the car's occupant and the other indicating the monetary value of the car. Figure 6.10 shows how the sentences for carjacking varied with the violence threatened and/or carried out. There were seven possibilities: 1) car taken at gunpoint, but the gun was not fired and victim not hurt; 2) car taken at gunpoint, the gun was not fired but the victim suffered a minor injury (e.g., in a scuffle); 3) the car was taken at gunpoint, the gun was not fired, but the victim suffered a serious injury; 4) the car was taken at gun point, the gun was fired, but the victim was not hurt; 5) the car was taken at gunpoint, the gun was

fired, and the victim suffered a minor injury; 6) the car was taken at gunpoint, the gun was fired, and the victim suffered a serious injury; 7) the car was taken only by threatening harm, but no weapon was used.

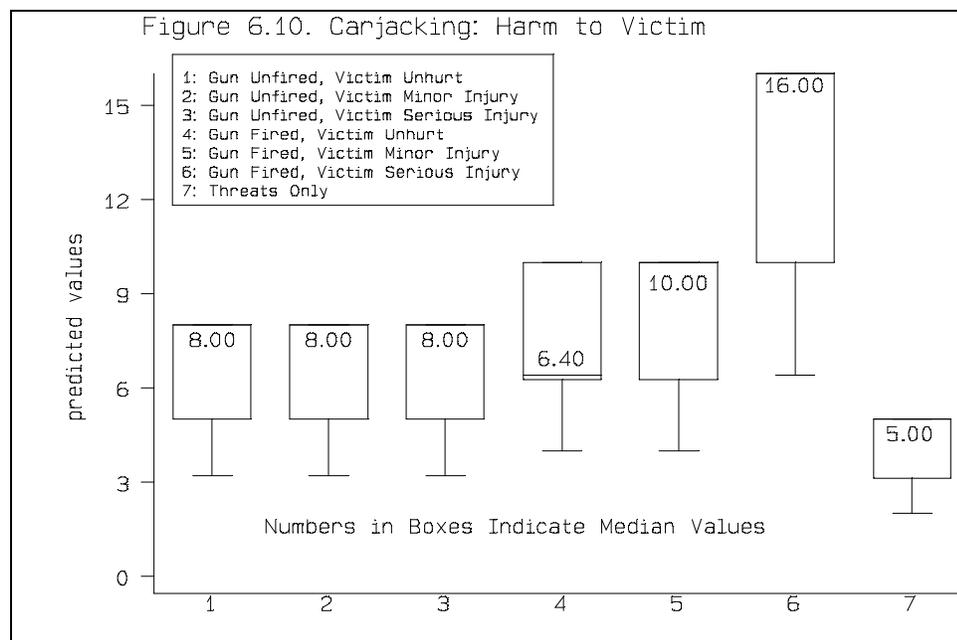
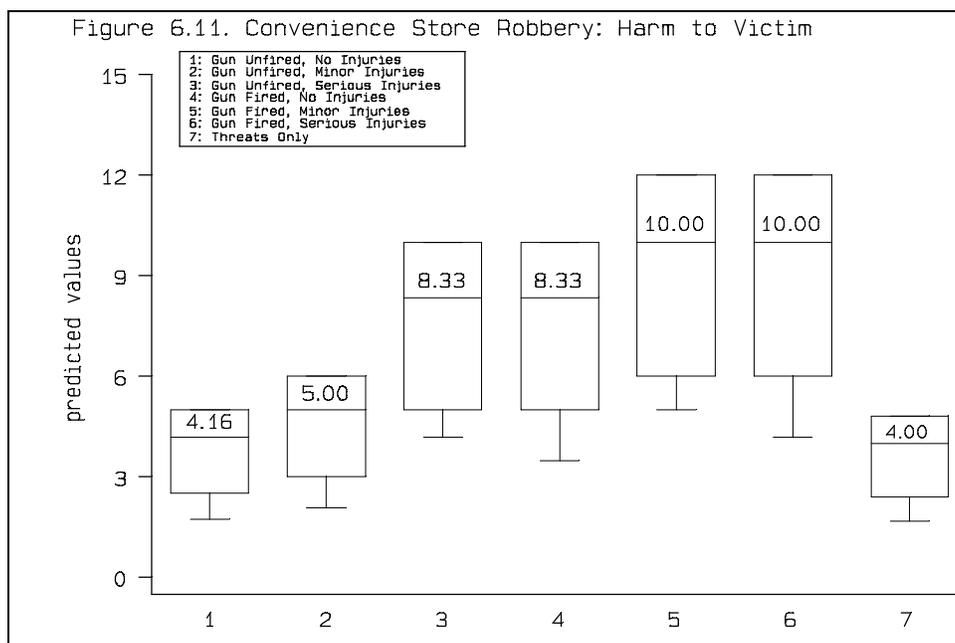


Figure 6.10 shows that when a gun is not used, the median sentence is about five years. When a gun is used but not fired, the median sentence increases to about eight years, regardless of whether the victim is injured or not. If the gun is fired with no injuries resulting, the median sentence is about 6.5 years (the difference between 6.5 years and eight years could be sampling error.) However, when firing the gun leads to a minor injury, the median sentence increases to nearly ten years, and when the victim is seriously injured, the median sentence increases to 16 years. Once again, it is physical injury to the victim that dramatically increases sentence length.

The dimension describing the dollar value of the stolen car did not have any significant impact on respondents' sentencing. It apparently does not matter if the car is worth \$20,000 or \$50,000: the median sentence for both is 6.25 years.

As we found previously, neither family circumstances nor employment affect the median sentence given. However, for carjacking the median sentence for men is about two years longer than for women. Prior record also weighs in. Defendants with no prior prison terms receive median sentences of about six years. Defendants with two prior prison terms or four prior prison terms both receive median sentences of about eight years. Clearly, prior record matters, but its impact is small compared to the effect of doing physical violence to the carjacking victim.



Robbery of a Convenience Store

Convenience store robberies rarely make the evening news, at least in major metropolitan areas. They are among the most common kinds of robbery. Thus, while convenience store robberies are not likely to be a major concern to most respondents, they are nevertheless familiar.

Figure 6.11 shows the median sentences as varying with the threatened or actual violence in convenience store robberies. Just as in carjacking, there are seven kinds: 1) robbery at gunpoint, but the gun was not fired and victim not hurt; 2) robbery at gunpoint, the gun was not fired but the victim suffered a minor injury (e.g., in a scuffle); 3) robbery at gunpoint, the gun was not fired, but the victim suffered a serious injury; 4) robbery at gun point, the gun was fired, but the victim was not hurt; 5) robbery at gunpoint, the gun was fired, and the victim suffered a minor injury; 6) robbery at gunpoint, the gun was fired, and the victim suffered a serious injury; and 7) robbery only by threatening harm, but no weapon was shown.

The story in Figure 6.11 is similar to that for carjacking. Without the use of a gun and no serious injuries, the median sentence is five years or less. With the use of a gun, especially if the victim is injured, the median sentence increases to about ten years.

Very much like carjacking, the amount of money taken does not meaningfully affect the median sentence. The sentence for all three dollar amounts (*i.e.*, \$400, \$900, \$9,000) is between four and five years.

None of the defendant biographical characteristics seem to matter except for prior record. But even for prior record, the impact is small. The median sentence is about three years if the defendant has no prior imprisonments, but about five years with two or four prior prison terms. As we have come to expect, the impact is in the anticipated direction, but modest in size. In short, robbery of a convenience store is treated by our respondents much like carjacking.

Extortion and Blackmail

Extortion crimes involve threats of violence used to force victims to give over money or property of value. Blackmail is more familiar; the perpetrator threatens to reveal some information that will damage the victim and asks for money or other property of value to keep the information hidden. Although neither crime is necessarily a street crime, we have included them with street crimes because extortion, at least, includes the threat of violence.

Figure 6.12 shows the impact on median sentence of extortion compared to blackmail. The vignette for extortion involved a threat to kill a family member. The vignette for blackmail involved a threat made to a prominent person of revealing a sexual indiscretion. The median sentence for extortion was about eight years, while the sentence for blackmail was about 2.5 years. Once again, it is violence and the threat of violence that draws the longer sentence. And the difference here is substantial.

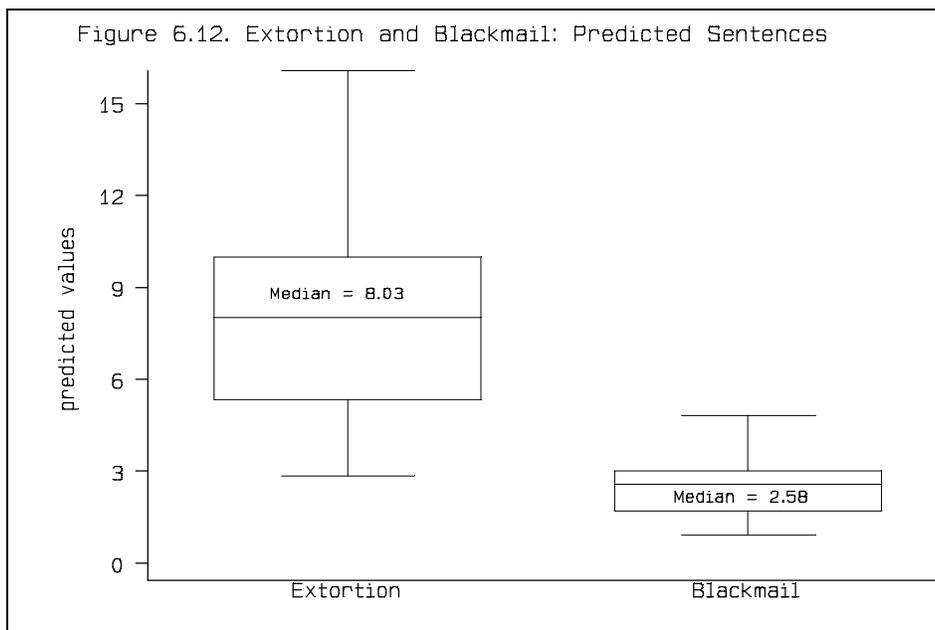
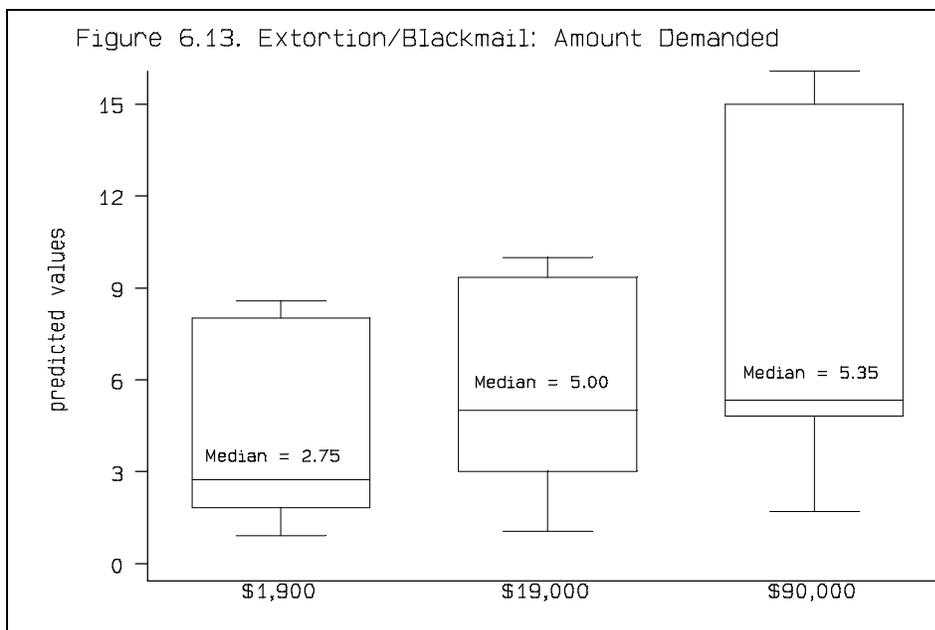
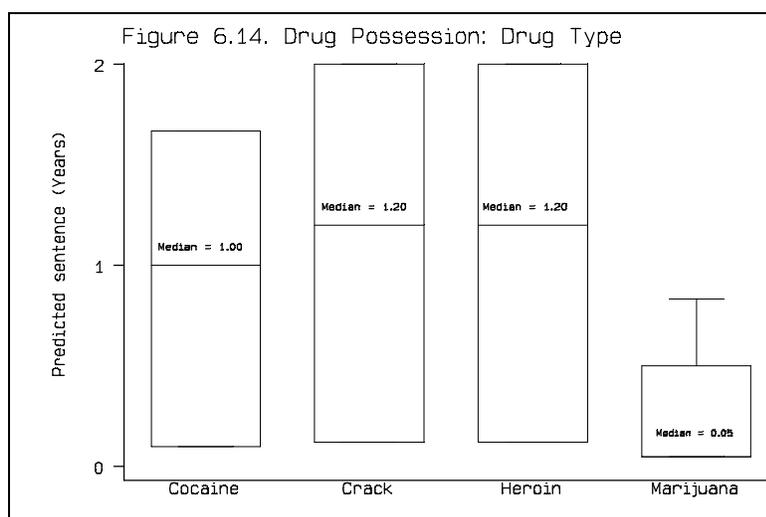


Figure 6.13 shows the impact of the amount of money demanded. As the amount increases from \$1,900 to \$19,000 to \$90,000, the median sentences increase from a little less than three years to five years to a little more than five years. Clearly, the major increase in median sentences occurs between the two lower amounts. Thus, although respondents react to the amount of money demanded, the effect is not dramatic and is bounded (at least for the money levels we used.)

The now familiar story concerning the impact of defendants' backgrounds reappears for extortion



and blackmail. There is a small increment of about a year for male defendants, but family situation and employment do not matter. Defendants with no prior prison terms receive a median sentence of nearly four years, while defendants with two or four prior prison terms receive median sentences about six years. Once again, prior record makes a difference, but in a modest way.



Drug Possession

Although illegal drug possession for personal use is not a street crime, but rather classified as a vice crime (or a crime without a victim), it is included in this chapter to provide a contrast with drug trafficking. It may not be surprising, therefore, that respondents did not typically favor long prison sentences for drug possession.

Figure 6.14 shows how the kind of drug involved affects the median sentence. Overall, the sentences are short: median sentences for possession of powder cocaine, crack cocaine and heroin are all about a year in length. The median sentence for possession of marijuana is essentially probation. In other words, there seems to be little inclination to reduce drug demand by punishing drug possession for personal use. This is a rather dramatic contrast to the stiffer sentences favored by our respondents for drug trafficking. But just like the sentences for drug trafficking, no important distinctions are made between crack cocaine, powder cocaine, and heroin. Marijuana is treated somewhat less seriously.

The only defendant background dimension that matters is prior record. But once again the impact is small. Median sentences increase from about six months to about twelve months, and then to about eighteen months as prior record increases, respectively, from no prior prison terms to two prior prison terms, and then to four prior prison terms.

Summary

The findings on the crimes considered in this chapter are easily summarized. There are some clear differences in the median sentences for the dimensions describing them. The key factor distinguishing the more serious from the less serious versions of the crimes is the risk of injury or actual injury to crime victims.

Rather surprising was the very modest and inconsistent impact of the economic gain for the perpetrator. In some crimes, the size of the economic gain had no effects, but in others, the effects on sentence length was small, even when the economic gains were very large. And in still others, there seemed to be some constraint operating; increases in economic gain increased sentence length, but only up to some point. After that point, further increases in economic gain had little effect. For certain kinds of street crimes, alternatively, there may be a marginally decreasing increase in sentences with increases in the criminals' economic gains. These issues will be considered again in the next chapter which examines white collar crimes. But one important implication is that our respondents do not seem to be subscribing to deterrence theory in how they sentence. Rather, the primary issue may be retribution, or some notion of justice, in which any economic gains from crime should be punished but, it does not matter a great deal how large those economic gains may be.

Finally, the only offender background dimension that consistently affected sentence length was prior record. As shown in Chapter 4, respondents gave much the same increment to sentences as called for in the guidelines. However, compared to the effect of the crime itself, the impact of prior record was modest. Median sentences were lengthened by no more than several years, even for the "four strike" offender. Respondent sentencing preferences would seem, therefore, to be inconsistent with past and recent habitual offender legislation.