A LIFE LESS VALUABLE?

ADJUDICATION AND SENTENCING OUTCOMES

FOR PERPETRATORS OF CHILD HOMICIDE

by

Margarita Poteyeva

A dissertation submitted to the Faculty of the University of Delaware in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Criminology

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ABSTRACT

Killing a child almost universally galvanizes great outrage among the public. Despite this condemnation, little is known about how and if this abhorrence of killing a child translates into criminal justice practices. The issue is compounded by the fact that child homicide is a complex phenomenon, comprised of a heterogeneous body of offenses. As a society, we have come to allocate our outmost indignation for strangers who sexually prey on children. To date, there has been no published study that has systematically addressed the legal outcomes in child homicide cases using a nationally representative sample of cases. The few studies that specifically focus on the examination of criminal justice processing of child homicide cases are plagued by methodological and design problems, and consequently produce reports of great variation in adjudication and sentencing outcomes for this category of offenses.

The purpose of this dissertation is to advance our understanding about the imposition of the law in cases of child homicide. The two general research objectives of the current study are: (1) to explore whether there are any differentials in the application of the law (e.g. decisions to prosecute, probability of conviction for offenders, and sentences received) for those who kill children compared to those who kill older victims; (2) to gain insight into the moral gradation of child homicide by exploring whether certain types of child homicide or certain perpetrators of the crime are treated more harshly than others.

The study relies on a mixed-method design grounded in the goals of complimentarity and expansion. First, using nationally representative data collected

from prosecutors' offices in 33 large urban counties, this dissertation examines the differential adjudication outcomes (whether convicted and sentence imposed on those convicted) received by defendants who had allegedly killed children compared to those who had allegedly killed others. Second, the study relies on thematic and qualitative content analyses of data from the State of Maryland to systematically assess the nature and characteristics of child homicide cases that are defined as death eligible, and to explore factors that potentially contribute to state attorneys' decisions to seek capital punishment in particular cases involving child victims. Because of the overrepresentation of women among child homicide offenders, which is an exception to the general trend of limited female involvement in violent crime, the study also used a national data base of cases of women who were sentenced to the death penalty for killing a child to provide contrast to female child homicide perpetrators in Maryland.

The study found that while killing a child did not have any effect on the probability of conviction, those who killed children received significantly shorter sentences than those who killed older victims. Being a mother-offender exuded a significant influence over the sentencing decision of the courts. Analysis of a sample of child homicide cases revealed that mothers who killed their own children received shorter incarceration sentences than those for other categories of defendants.

In Maryland, death eligible cases of child homicide belonged primarily to one of two groups: cases with multiple victims and felony murder cases. The majority of death eligible cases with child victims either originated in a romantic conflict or involved a sexual assault on the child. Interestingly, there were no cases where the prosecutors offered the one aggravating factor in the Maryland death penalty statute that explicitly focuses on child victims: the murder-kidnapping of a child under the

age of 12. No definitive conclusions could be drawn about the criteria that state attorneys in Maryland considered in determining whether or not to seek capital punishment in a particular child homicide case. In fact, there were several instances where legally similar crimes and offenders received different treatment. No female defendant in the Maryland sample was tried capitally, including the two women who were mothers to their victims. Contrasting these cases with female child homicide perpetrators who were sentenced to the death penalty in other states, however, suggests that prosecutors need to overcome a number of challenges to successfully portray female defendants as death-worthy.

This research adds to the literature on how the criminal justice system reacts to offenders who fatally victimize a child, and the sentencing literature investigating differentials in case outcomes by gender and by victim-offender relationship. The focus of the study is particularly timely given the recent proliferation of the so-called 'victims' culture' in sentencing. Findings of the current study raise important questions about the status of children as "less than full persons" since they are afforded protection different from the protection granted adults, and about the equal treatment of different categories of offenders.

Chapter 1

CHILD HOMICIDE: CATEGORIES, THEORIES, AND HISTORY

In our modern culture, we are obsessed and extremely protective of our children. Multiple aspects of children's lives are problematized. Recent studies on the sociology of childhood have threatened the "erosion," "disappearance" and "obliteration" of childhood and adolescence (Lynott & Logue, 1993), and the advent of a "hurried child" model (Elkind, 2006) – one where children are pushed into adulthood too early. Simultaneously, there is a concern with children's isolation from adult spheres of life and their lack of adult lives.

Interestingly, our modern understanding of childhood, the emphasis on the distinctiveness of children, does not have a particularly long history. In Europe before the Middle Ages, the concept of childhood did not exist. Children were considered small adults. Philippe Aries in his landmark book Centuries of Childhood (1963) maintains that the development of the modern concept of childhood paralleled the development of the bourgeoisie and the nuclear family. The paternalistic, excessively protective attitude towards children in the United States did not become widespread until the 19th century. Slowly, through legal regulations and social practice the difference between children and adults was carved out, stressing the multitude of risks that children face, and devising a number of prohibitions to shield them from these dangers. Under this cultural orientation "the violent death of any one child is one death too many" (Stroud & Pritchard, 2001, p. 251).

Child homicide is almost universally viewed in extremely negative terms. Reports of child homicide regularly make front page news. Child abuse was the first form of violence within the family to gain widespread attention in American society (Finkelhor, 1997). "Discovered" in the 1960s, it became arguably one of the biggest social problems of the 20th century. Child homicide, however, has failed to generate the same scholarly attention and as a result, has not garnered as much research or organizational response (Unnithan, 1994a).

Perhaps, statistics are to blame. According to the Uniform Crime Reports, 627 children ages 0-12 were victims of homicide in 2010. In the last 15 years homicide rates of children under age 5 have remained fairly stable or declined for all racial groups (Fox & Zawitz, 2007). When juxtaposed to the high rates of homicide in general, these numbers might not seem alarming by themselves. However, it is well known that there are significant limitations in the ability of official statistics to adequately estimate actual levels of crime. Scholars examining the child homicide problem have traditionally pointed out that the incidence of this crime is underreported (Lyman, McGwin Jr., Davis, Malone, Taylor, & Brissie, 2003; Pritchard & Butler, 2003; Unnithan, 1994b; Wilczynski, 1997).

Comparing the United States' child homicide rates with rates from other developed nations illuminates the differentials that exist cross-nationally. For example, Pritchard and Butler (2003) compared the changing rates of child homicide in the United States and nine other major Western countries between the years 1974 and 1999. They concluded that while several other countries had child homicide rates

either higher or comparable to that of the United States in the 1970s[1], by the late 1990s no country came close to the rate of the United States. Between the two specified periods the United States sustained a substantial increase in infant homicide (children less than one year old) with male infant homicide rates increasing by 78% and female infant homicide rates increasing by 44%. Overall, the homicide rate for children younger than 15 years old in the United States increased by 45% (Pritchard & Butler, 2003, p. 345). According to World Health Organization Mortality Data, the United States currently ranks higher than any European country or Canada in homicide of children ages 1 to 14. This presents a paradox – why does the United States appear to care so much about children yet ranks way above other industrial nations in child homicide rates?

Very little research attention has been devoted to examining how the criminal justice system responds to cases of homicide against children. The small number of studies that do examine the topic are either based on data from other nations (Smithey, 1998; Wilczynski, 1997) or rely on a non-systematic methods and sample collection strategies. Furthermore, the findings of these studies are often contradictory. Some describe child homicide as exceptional, as eliciting extraordinary condemnation toward the offenders. Child homicide perpetrators are viewed as extreme norm breakers whose motivations cannot possibly fit any socially acceptable excuses or justifications (e.g. Margolin, 1990). Other studies have arrived at opposite conclusions. The methodological limitations of the data used in these studies are

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[1] Germany's, and England and Wales' rates of homicide of children 0 to 14 years old were slightly lower than that of the United States, whereas Japan's rate was almost 1.5 times higher than that of the United States (Pritchard & Butler, 2003, p. 346).

largely responsible for the equivocal nature of these findings. For example, The Star Ledger (New Jersey) reviewed child death cases in the files of the Division of Youth and Family Services (Alaya, 2003, August 24). The article concluded that "… in New Jersey a suspect is likely to do as much time for sticking up a convenience store as for killing a child." Of the 123 death certificates for the period of 1998-2003 that were examined, criminal charges were filed in slightly more than half of all cases, and only four people were actually convicted of murder. The average prison sentence for those convicted was 11 years, which was significantly lower than sentences for those convicted of murder in general.

The lack of agreement about the degree of law applied to child homicide perpetrators is not surprising given the complexity of the phenomenon. Unnithan (1994a) argues that the reason child homicide has failed to "crystalize as a distinct social problem" (p. 77) is because it is a "complex issue with no simple problem images and solutions that can be provided by claims-makers or the media" (p. 71). The act of killing a child takes place in different locations (e.g. at home and at school), in varying circumstances (e.g. as a result of abuse or as a culmination of a fight or child abduction scenario), and is characterized by varying degrees of intimacy between the victim and the offender. We are confronted with accounts of predatory strangers like 51-year-old Pedro Hernández who recently confessed to killing 6-year-old Etan Patz more than 30 years ago. Or, at the other end of the intimacy spectrum, but equally powerful in the symbolic imagery, we are presented with accounts of parents that killed their own children. Cases of Susan Smith and Andrea Yates have shocked our collective conscience.

The purpose of this dissertation is to advance our understanding about the imposition of the law in cases of child homicide. Using a multiple-methods approach, this research will investigate two questions. First, there is a large gap in our understanding about the differentials that exist in the application of the law (e.g. decisions to prosecute, probability of conviction for offenders, sentences received) for those who kill children compared to those who kill adults. Do children, some of the most vulnerable members of our society, receive adequate, not discounted, protection through the sentencing practices of the courts? Using data from a sample of homicide defendants from the 75 largest U.S. counties, this research examines the probability of conviction and sentence length for defendants on trial for killing children compared to those who have killed individuals from other age groups.

Second, are certain types of child homicide or certain perpetrators of the crime treated more harshly than others? Does the criminal justice system respond similarly to different categories of offenders (for example, a stranger and a mother as mentioned above)? This issue is explored primarily by examining the factors that increase the likelihood of prosecutors seeking death in cases where victims are children relying on data from a Northeastern state that imposes the death penalty. Presuming there exists a moral gradation of child homicides, examination of cases chosen for capital processing will illuminate the societal disposition to take certain types of child homicide more seriously. The inquiry is extended by exploring case characteristics of women who have been sentenced to the death penalty for killing a child in other states.

The study begins with outlining several categories of child homicide that have surfaced most prominently in the research literature. The chapter next discusses several broad theoretical approaches that have been used in the study of child

homicide. These theories are capable of providing answers to a range of important questions such as: why infants are more likely to be victimized than older children; why family members are the most likely perpetrators of child homicide; which circumstances of family life shape the risks of fatal victimization for children, and so on. Afterwards, a brief excurse in history illuminates how the act of killing a child was viewed in different societies at different points in time. The discussion largely focuses on the legal treatment of one of the subtypes of child homicide – infanticide (killing of an infant), since this subtype of child homicide has received the most widespread attention in the research literature. Of particular interest in this chapter is the experience of England, since its legal treatment of infanticide and infanticidal offenders differs markedly from the modern adjudication practices of the United States. The evolution of the legal treatment of infanticide in England also provides a context in which to understand the present debates about the legal treatment of women who kill their children. Finally, the chapter outlines the limitations of existing research on adjudication and sentencing of child homicide, and highlights the objectives and importance of current study.

The second chapter examines the prevalence of child homicide in the United States in the last three decades using data from the Federal Bureau of Investigation Supplementary Homicide Reports (SHR) for the years 1976-2004. A number of important epidemiological dynamics of child homicide are highlighted such as how child's age conditions the victimization risk, victim-offender relationship, circumstances of the offense, and demographic characteristics of victims and offenders.

Chapter 3 delves further into the intricate challenges posed by prosecuting and sentencing child homicide offenders. Research has pointed out the difficulties of qualifying child homicides as murder and the challenges they present for forensic pathologists. This is followed by an overview of existing studies alleging inconsistent criminal justice response to cases of child homicide. The chapter concludes with theoretical perspectives on judicial and prosecutorial decision making and hypotheses for the quantitative part of the study.

In the fourth chapter, the data sets utilized for this research are discussed. The operationalization of the variables and the analysis strategies used in this research are described in detail. Chapter 5 presents results of statistical analyses examining adjudication and sentencing outcomes depending on the status characteristics of the victim. Chapters 6 and 7 describe the general types of "death eligible" child homicide cases, as well as specific cases where the prosecutors decided to file the notification to seek the death penalty. Given the prominent presence of women among child homicide perpetrators, the study pays special attention to cases of females who have been sentenced to the death penalty for killing a child. Lastly, chapter 8 summarizes the findings of the present study, discusses how these findings apply more generally to research on punishment, and presents the limitations of the study, as well as possibilities for future research.

1.1 Different Types of Child Homicide

Like all homicides, child homicides are not a uniform phenomenon, but are comprised of a rather heterogeneous body of offenses. The section below is intended to provide a glimpse of the diversity of acts that fall under the general category of child homicide. The categories suggested below should in no way be interpreted as an

attempt to construct an exhaustive understanding of the complex phenomenon of child homicide. Indeed, many types of offenses (murder committed by serial killers; lethal assaults committed by youths) are omitted below. Rather, the section should serve as an illustration of the complexity of the phenomenon of child homicide. This complexity undoubtedly has ramifications for how these cases are treated by the criminal justice system.

1.1.1 Child Homicide Categorized by Age

When classifying a homicide offense based on the age of the victim, researchers generally distinguish between neonaticide and infanticide. The term *neonaticide* was coined by the psychiatrist Phillip Resnick (1970) and refers to the killing of a newborn baby. While some scholars have operationalized neonaticide as "the homicide of an infant aged one week or less" (Finkelhor & Ormrod, 2001), the majority have followed Resnick's lead and limited the age boundary of the offense to the 24 hours following the victim's birth (Alder & Polk, 2001). Infanticide has been traditionally operationalized in the research literature as the killing of a child older than one day (or week) but younger than one year old.

There is still confusion, however, with respect to how these terms are used in the literature of various disciplines. Finkelhor and Ormrod (2001), for example, in their analysis of juvenile victimizations delineate infanticide as "homicides in which recently born children are killed by relatives who do not want the child, are ill equipped to care for the child, or are suffering from a childbirth-related disturbance" (p. 2). This definition places primary focus on the victim-offender relationship and the motive instead of the age of the victim. Historians and anthropologists, however, generally subsume older age categories under the umbrella of infanticide (e.g. Hoffer

& Hull, 1981). Moreover, in certain countries infanticide comprises a specific legal offense (see sections 1.3.3 and 1.3.4).

1.1.2 Child Homicide Categorized by Victim-Offender Relationship

Existing interdisciplinary research that investigates child homicide exhibits a noticeable preoccupation with the killings of children that take place within the victim's family (e.g. Barton, 1998; Bourget & Gagne, 2002, 2005; Bourget & Bradford, 1990; Campion, James & Covan, 1988; Cavanagh, Dobash, & Dobash, 2007; Kunz & Bahr, 1996). The term *filicide* stands for the killing of a child by a biological or de facto parent or parents (Resnick, 1969). Very often the term encompasses the abovementioned categories of neonaticide and infanticide (Stanton & Simpson, 2002).

In some cases the perpetrators of fatal violence against children are not parents, acquaintances or strangers, but their own siblings. This event, termed *siblicide*, is relatively rare compared to other types of homicide (Ewing, 1997; Russell, Michalski, Shackelford, & Weekes-Shackelford, 2007). Only 10% of homicides perpetrated by a sibling involve a victim that is under 17 years of age (Russell et al., 2007; Underwood & Patch, 1999). Research has also confirmed that most of the victims and offenders of sibling homicides are males (Ewing, 1997; Russell et al., 2007).

Although oftentimes regarded as a stereotypical child homicide, the actual proportion of fatal victimization of children by strangers is very small (Finkelhor & Ormrod, 2001). In some cases stranger-perpetrated child homicides are preceded by child abduction.[2] Child abductions resulting in homicide also comprise a much

[2] It is necessary to note that "child abduction" is a complex category in itself. Depending on the context the term it may entail such diverse phenomena as parental

smaller number than instances where abducted children are eventually returned home alive[3] (Finkelhor & Hotaling, 1990). The National Incidence Studies of Missing, Abducted, Run-Away, and Throwaway Children (NISMART) reports that a little over 3% of nonfamily abductions actually end in homicide (Finkelhor & Hotaling, 1990). In another study Finkelhor, Hotaling, and Sedlak (1992) found that approximately 5% of identified 1,400 abductions where the perpetrator was not a family member resulted in homicide. Research has indicated that in extra-familial assaults in general, and child abduction cases where homicide is an outcome in particular, sexual gratification is the prevalent motive (Boudreaux, Lord, & Dutra, 1999; Cloud, 1996; Stroud & Pritchard, 2001).

1.1.3 Child Homicide Categorized by Contextual Circumstances

Arguably, one of the largest categories of cases comprising child homicide is child maltreatment deaths (Alder & Polk, 2001; Richards, 2000). In fact, the U.S. Advisory Board on Child Abuse and Neglect (ABCAN) estimated in its report that annually almost 2,000 infants and young children are victims of fatal abuse and neglect by parents and caretakers (U.S. ABCAN, 1995, p. XXIU). The report also contends that children age four and younger sustain more deaths from abuse and

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abduction, missing children, kidnapped children (Boudreaux, Lord, & Etter, 2000). There is no consensus on a commonly accepted or a legal definition of child abduction.

[3] A large proportion of child abductors are family members (60%, n=284 in Cloud, 1996; 48%, n=621 in Hanfland, Keppel, & Weis, 1997). NISMART indicates that from 163,200 to 354,100 children annually are abducted by a family member. Non-family abductions range from 3,200 to 4,600 incidents with stranger abduction comprising 62% of that number (Finkelhor & Hotaling, 1990).

neglect than from falls, suffocation, choking on food, motor vehicle accidents, residential fires and drowning taken together (p. XXV). Abuse and neglect presents a danger not just to younger children, but to older children as well (Levine, Compaan, & Freeman, 1995; Overpeck, Brenner, Trumble, Trifiletti, & Berendes, 1998; Somander & Rammer, 1991).

Arriving at accurate estimates of abuse and neglect associated deaths is difficult for a number of reasons. First, there is no single agency in the United States that is responsible for tracking child deaths. Furthermore, different jurisdictions adopt varying definitions of child abuse and neglect. Third, child abuse and neglect are two distinct and complex maltreatment categories. Researchers have, for example, distinguished between "supervision neglect" – deaths that result from the absence of a caretaker during a critical moment when a child is killed by a swiftly occurring danger; and "chronic neglect" (Ewigman et al., 1993). Finally, researchers disagree on the validity of the "continuum of violence model," which posits that various forms of violence ranging from mild physical punishment to progressively severe forms of abuse to lethal assaults form a linear continuum sharing the same patterns and explanations. While some researchers support this orientation (Daly & Wilson, 1987; Straus, Gelles, & Steinmetz, 2006) others argue that child maltreatment and child homicide should be understood "as distinct forms of behavior, each requiring a distinct explanation and theoretical formulation" (Gelles, 1991, p.69).

In some cases children are not the only victims of an intra-familial homicide. Familicide is a term used to describe an event when multiple family members are killed at the hands of one of the family members, usually the male patriarch (Alvarez & Bachman, 2003; Ewing, 1997; Websdale, 1999). In a recent Canadian study of child

homicide there were 22 cases of familicide by biological and stepparents (out of a total of 378 homicides of children under 12 perpetrated by parents or stepparents); all of these cases were perpetrated by fathers, the majority of them - genetic fathers (Harris, Hilton, Rice, & Eke, 2007). The motivational pattern sets this type of homicide apart from others. As Charles Ewing (1997) argues, men who go on to kill their families are "concerned about losing control over more than just [their] wife or family. [Their] concern is more often with losing control over all aspects of [their] life, or at least those that [they] most values. [They are men] who, in [their] own eyes, are, or are about to become, a failure" (p. 135). Although familicides typically are envisioned as a culmination of an emotional outburst, this is not always the case (Alder & Polk, 2001, p. 80). In some instances these homicides are often premeditated, with assailants going through a process of preparation for the act (e.g. buying weapons, planning).

Mass murder also represents a category of child homicide that has garnered a great deal of media attention. In the last 15 years, the United States has witnessed a series of high-profile school shootings. During this time, more than 250 students have been killed in over 320 school-associated homicide events[4] (Anderson, Kaufman, Simon, Barrios, Paulozzi, Ryan, et al., 2001; Modzeleski, Feucht, Hall, Simon, Butler, & Taylor, 2008). While this type of homicide is extremely rare, it generates intense interest, and is characterized by unique event dynamics and potential risk factors.

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[4] A school-associated homicide event is defined as the homicide of a student in which the fatal injury occurred: "(1) on the campus of a functioning public or private elementary or secondary school in the United States; (2) while the victim was attending or travelling to or from regular sessions at such a school; or (3) while the victim was attending or travelling to or from an official school-sponsored event" (Anderson et al., 2001, p. 2696).

Most of the school shootings, however, produce only one victim. For example, for the years 1994-1999, only 8% of these school shootings involved the death of multiple victims with a median of two victims per event (Anderson et al., 2001, p. 2698). The perpetrator in the majority of cases was either a student or a resident of a surrounding community.

1.2 Theories of Child Homicide

Because there is such variability across cases of child homicide, there are no universal causal theories that can explain child homicide generally. Scholars who have attempted to predict child homicide have generally limited themselves to a certain type or category of child homicide (e.g. Meyer & Oberman's, 2001, study of maternal filicide; Anderson and colleagues', 2001, research of fatal school violence). Outlined in this section are several broad approaches used to study and understand homicide of children.

1.2.1 Evolutionary Theory

Several scholars have applied an evolutionary psychology perspective to explain child homicide (e.g. Jones, 1997). One of the most prominent attempts in this area is attributed to Martin Daly and Margo Wilson. In their book Homicide they highlight the importance of "selection thinking" as an explanation of individual behavior (1988b, p. 2). "Selection thinking" predicts that individuals are bound to pursue "genetic posterity" (p. 5) – children that can pass on the genes of the parents to the next generation. Put simply – the more a person has the capacity to improve an individual's chances to have his/her genes passed along to the next generation (the better his or her "fitness" is), the more that latter individual will be valued by the

former. This hypothesis has implications for intimate relationships, for example, it predicts that a person is more inclined to kill a nonrelative before a family member. Extrapolating this hypothesis to child homicide yields predictions that a stepchild or a stranger's child will have a higher victimization risk than a biological child or a child of an acquaintance respectively.

Concern with genetic posterity also allows a number of predictions to be made regarding the gender and age of the victims. Thus, since a male's reproductive potential is greater than a female's, his fitness will potentially predispose some parents to greater parental investment into a son rather than a daughter. Similar logic explains the infanticide of physically handicapped or sick children. Evolutionary psychologists also predict that parents will appreciate an offspring increasingly with age (Daly & Wilson, 1988b, p. 74) since the parental investment is cumulative. Additionally, since a woman's reproductive capacity decreases with age, older females are expected to have a lower probability of infanticide.

Daly and Wilson also highlight the importance of competition in shaping the risks of child homicide. Thus, male perpetrators may strive to improve their own existence by eliminating a child, who places allegedly high demands (physical, emotional) on the mother. Similarly, social rivalry surfaces as a source of conflict among older children (Lord, Boudreaux, Jarvis, Waldgovel, & Weeks, 2002) when they start to compete for status-enhancing resources.

1.2.2 Developmental Theory

The risk of child homicide is not uniform across subgroups of children (Boudreaux, Lord, & Jarvis, 2001; Boudreaux et al., 1999; Finkelhor, 1994; Finkelhor & Ormrod, 2001; Hanfland et al., 1997). The victimization risks faced by toddlers, for

example, are quite different from those faced by preschoolers. A developmental theory of child homicide was originally advanced by Christoffel, Anzinger and Amari (1983), who pointed out that the risks and dynamics of victimization sustained by children of different ages vary. David Finkelhor has also proposed the term "developmental victimology" (Finkelhor, 1994; 2008) with the objective to overcome the fragmentation of approaches to studying child victimization. This holistic model argues against viewing issues associated with child victimization (e.g. missing children, bullying, child exploitation, child abuse) as distinct and isolated fields with their respective "researchers, curricula, and prevention strategies" (Finkelhor, 2008, p. 18) because it endorses a partial understanding of the problem as well as competition among proposed solutions.

Instead, developmental victimology recognizes that childhood is a very heterogeneous category, and the nature, amount and effect of the broad range of victimizations that children sustain across the span of childhood vary according to different environments, and different capabilities and activities that characterize different stages of a child's development (Finkelhor, 2008, p. 37). With childhood being an extremely heterogeneous phenomenon, childhood victimization in general, and child homicide specifically, has to be discussed with reference to age. Types of perpetrators and contextual circumstances of the homicide offense are expected to vary over the course of childhood.

1.2.3 "Lifestyles" or Routine Activities Theories

Some scholars have approached child homicide by highlighting the environments or situations that put children into increased contact with potential offenders. In the criminology field, Cohen and Felson (1979) have posited that crime

is most frequently a product of interactions between motivated offenders, accessible targets, and lack of proper guardianship to prevent that crime. While heavily borrowing from the developmental perspective on child homicide studies, the routine activities theory has brought into a sharper focus the circumstances and behaviors that increase the chances of fatal victimization of children including how social control mechanisms such as schools, friends, and family shape the routine activities of children's daily lives; how the gender of the child may affect their attractiveness as a potential victim; and how offenders choose children as victims due to particular criteria, etc. (Boudreaux et al., 2001). Finkelhor (2008), however, argues that routine activities theory has limited applicability for understanding child homicide. He contends that the theory is better suited to explain victimizations of youths who are involved in delinquency and "follow risky lifestyles" (p. 57). Moreover, when it comes to explaining child victimizations sustained at home, the theory falls short, especially since the very guardians hypothesized to be protecting children are often their killers.

1.2.4 Social Exchange Theory

Social exchange theory was utilized by Rodriguez and Smithey (1999) in their study that sought to make sense of the conditions under which infants were fatally injured. In its original formulation, social exchange theory assumed that human beings were rational and based their actions on a cost-benefit analysis (Homans, 1974). Desires to maximize profits and reduce losses guide social associations. Intimate relationships among adults are characterized by willingly doing and accepting favors from one another. Hence, intimate relationships among adults are presumably remunerative. Moreover, in adult relationships mutual obligations are for the most part

clearly defined and oftentimes finite. When disagreement emerges, adults are able to work out a mutually beneficial solution through negotiation. Should this prove impossible, the relationship may be ended.

When it comes to relationships between adults and infants the remunerative character assumes a peculiar form. While exchanges between adults and infants can be intrinsically rewarding for the former, they also can seem burdensome, because the investments adults make for the infants are not retrievable. As Rodriguez and Smithey maintain "when the adult … believes that their investment is irretrievable, the child may be viewed as expendable, setting up the possibility for extreme violence" (1999, p. 174). The situation is exacerbated by the fact that adults do not have the flexibility of walking away from the disadvantageous relationship when it comes to children. The ensuing frustration may only worsen the potential for extreme violence.

1.3 Legal Perspectives on Child Homicide across Time and Space

1.3.1 Ancient and Greco-Roman Treatment of Child Homicide

It is important to place the discussion on child homicide within the broader historical legal context. During a large part of human history, child homicide was neither illegal nor immoral. In many ancient civilizations, child homicide, particularly infanticide, was an acceptable practice that served a number of purposes. Thus, as far as 1600 BC in Phoenicia children were routinely sacrificed to the deities (DeMause, 1974). Archeological studies cite evidence of ritual sacrifices of children among a multitude of cultures – from Aztec and Germanic tribes to certain populations in Africa (Carrasco, 1999; Schwartz, Houghton, Macchiarelli, & Bondioli, 2010). In

Egypt children were placed in tombs with their dead parents to provide comfort and companionship in their life after death (DeMause, 1974).

Preference for male children accounted for a great proportion of child homicide in certain civilizations. In ancient China and India the practice of disposing of female infants was extremely pervasive for economic reasons (Schwartz & Isser, 2000). In fact, evidence of female infanticide in China dates back to 2000 BC. Primarily due to the existing dowry system and the fact that only a son could continue the family line, female infants were considered expendable, and were most often drowned after birth or abandoned. This practice continued for centuries. A similar preference for male children was shared by the Greco-Roman civilization.

A powerful rationale and justification for the killing of children was poverty. During times of famine, drought, or war, parents who could not raise their children either killed or abandoned them (Schwartz & Isser, 2000). According to early Greek and Roman laws, the father had complete control over the life of his child. The concept of *patria potestas* allowed the Roman father to decide the fate of his children even before birth. The mother did not have such authority – should she decide to dispose of the fetus she was punished by death. Ancient Greeks and Romans also commonly disposed of weak and deformed infants. In fact, this practice was sanctioned by law. The notion that the child was more like a plant rather than an animal until the seventh day after birth facilitated the acceptance of infanticide.

In contrast to the abovementioned cultures, Judaism denounced any practice of infanticide and child sacrifice (Stavrakopoulou, 2004). The horror of these aberrant acts is transmitted through the literature and folklore of this culture. According to Jewish faith, any infant may be the long awaited Messiah. Christianity followed

Jewish law in forbidding the murder of infants (Hoffer & Hull, 1981). The Roman Emperor Constantine, who converted to Christianity, declared infanticide committed by fathers a crime in 318 AD. The punishment for slaying of the child was death.

1.3.2 Child Homicide in the Middle Ages

As a result of economic stagnation and high illegitimacy rates, infanticide remained commonplace across Western Europe from the Middle Ages to the end of the 18th century. During the Middle Ages infanticide belonged to the domain of ecclesiastical courts. The most common type of cases the Church dealt with was infanticide resulting from "overlaying," wherein infants were smothered accidentally when sleeping with other family members (Hoffer & Hull, 1981). The prescribed punishment for such an act in 6th century AD was one year on bread and water followed by two more years without flesh or wine. Causing death to a child by accident was punished by three years on bread and water followed by two without flesh or wine. A major factor that contributed to the difficulty of prosecuting infanticide cases in Medieval Europe was the difficulty of distinguishing murder from other infant mortality (Hoffer & Hull, 1981).

Late 16th and the beginning of the 17th century were characterized by increasing population growth, economic change, poverty, and political unrest. The richer classes were very disturbed by the disorder and seeming sexual promiscuity of the poor. Consequently, the state impinged on the Church domain and got involved in regulating morality. The bearing of illegitimate children was one of the more prominent indicators of loose morals. The government sought to regulate sexual and reproductive behavior of women by fining the parents of illegitimate children and by severely punishing women who killed them (Oberman, 2004).

1.3.3 Treatment of Infanticide in England

In England, in 1623 the Parliament passed An Act to Prevent the Destroying and Murdering of Bastard Children, also known as the Jacobean Law of 1623. According to the provisions of this Act, an unmarried woman (referred to as "lewd") who conceals the birth of her illegitimate child (either still-born or alive) and secretly disposes of the child's body was to be punished by death unless the woman could prove that the baby had been still-born. The wording of the Act essentially reversed the presumption of innocence afforded to the defendant. Finding witnesses when unmarried women typically tried to conceal their pregnancy and hence gave birth in complete isolation, was a difficult task for many of the defendants. The trend of harshly prosecuting infanticide defendants was not limited to England but spread across Europe (Hoffer & Hull, 1981). In 1720 Prussia's King Friedrich Wilhelm I decreed that women who killed their children should be sewn into sacks and drowned.

Hoffer and Hull (1981) examined the rates and treatment of infanticide in 16th – 19th century England and concluded that in the 28 years post-Jacobean Law of 1623, there was a 225% increase in the indictment rate of infanticide compared to the 48 years prior to the Act's adoption. In contrast, homicide indictment rates for murder of adults remained relatively stable over the 76 year period. The primary target of these prosecutions were unmarried women from the working class, who for the most part, found themselves in this unfortunate situation due to being seduced or even raped by their masters or married lovers. Married women, on the other hand, enjoyed complete protection of their privacy.

Despite the surge in convictions for these crimes, there appeared to only be a relatively small deterrent effect produced by the Act. The rates of infanticide did not decline substantially in the ensuing years (Hoffer & Hull, 1981) or generally

throughout the 18th century because the social causes of this phenomenon persisted. By the end of the 17th century, the fierceness of the hunt for unwed mothers subsided. Judges and juries were increasingly reluctant to impose such harsh penalties on unfortunate defendants who appeared to be victims themselves.

During this time a number defenses focusing on lack of premeditation or intent were developed and actively used to justify the clemency of the juries and judges. One such defense – the "benefit-of-linen" – was based on the notion that if the woman had prepared for the birth of the child (i.e. bought or made linen for her infant before its birth) then she did not mean to cause harm to the child once it was born. Another defense – "want-of-help" – was effective when women could demonstrate that the child's death occurred despite their efforts to obtain the help of midwife or others. Furthermore, the burden of proving that the child was born alive incrementally started to shift to the prosecution. Rose (1986) states that by the early 18th century, juries were as likely to favor the defendant as 17th century juries had been to convict.

In 1803 the systematic undermining of the Jacobean Law from the judiciary system coupled with the mounting pressure on the British lawmakers to do away with an Act of such an anomalous and unfair nature resulted in the replacement of the 1623 statute with a new law that has irrevocably bestowed on the prosecution the burden of proving live birth. This decreased the probability of guilty verdicts even more primarily because there was a lack of forensic medicine in those times, particularly regarding the death of children. In cases where live birth could not be determined, concealment of illegitimate pregnancies was to be punished by up to two years in prison.

Another major change in the way the legal system responded to infanticide came 25 years later. In 1828 the Parliament eliminated (at least de jure) the differential treatment of women depending on their marriage status. Some scholars speculate that 19th century British privileged classes were becoming more concerned with children's welfare (Levene, 2006). Others maintain that the hypocrisy of singling out the lower classes as being the carriers of loose sexual morals had become extremely blatant. Rapaport argues that in addition to this enhanced status of children and budding alertness to hypocrisy it was about "heightened preoccupation with the maternal role against which the virtue of the female sex was increasingly to be measured" (2006, p.553). Confronted with seemingly ordinary respected women who had committed inconceivable acts, juries started to consider defenses based on the defendant's temporary insanity. Theories began to develop that psychological and physiological distress of childbirth could be responsible for infanticidal impulses. Two psychological disorders, "puerperal mania" and "lactational insanity" were often acknowledged by juries as mitigating circumstances in the 19th century (Dvorak, 1998).

The end of the 19th century saw another surge of public indignation over the crime of infanticide. In a context of urbanization the crime became more visible and provoked a wave of negative public reaction over the inadequacy of the judicial and criminal justice systems to deal with it. As a result of this public outrage, the infanticide laws sustained a number of reforms in 1872, 1874, and 1880.

Eventually, in 1922, the English Parliament had passed the Infanticide Bill for homicide of "newly born" infants.[5] The act inherently assumed that a woman who committed infanticide may have done so because "the balance of her mind is disturbed by reason of her not having fully recovered from the effect of giving birth to the child" (in Oberman, 2004, p. 18). Consequently, if the disturbance of the mind was demonstrated the defendant could only be found guilty of manslaughter even if the circumstances of the offense qualified for a murder charge. The qualifications of a "disturbance" were far less strict than the modern definition of an insanity defense, thus rendering this defense available to pretty much every woman accused of killing her infant. Furthermore, the judges were explicitly allowed discretion in sentencing, and the prosecution was not allowed to offer evidence in refutation of the defendant's claim to the disturbance of the mind.

Some scholars maintain that it still remains unclear whether the law was grounded in an actual conviction that women who killed their children suffered from a mental illness, or whether a medical model was used to rationalize the lenience these women received in the courtroom (Oberman, 2004). The provisions of the Infanticide Act had a tremendous effect on the sentences given to women who have killed their infants, thereby shaping the legacy of legal treatment that to a large extent persists into the 21st century. After the new Act was adopted, sentencing practices shifted from

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[5] In 1938 the law was amended declaring that the act's provisions concerned all infants less than 12 months of age. One of the rationalizations for this victim age cut-off was the alleged effects that lactation could have on a woman's mental state. By including the "effects of lactation" into the act the legislators were able to overcome the conundrum that postpartum illness is very short-lived and hits its peak immediately after birth but wanes soon thereafter (Rapaport, 2006).

imposition of imprisonment to probation, oftentimes with a prescription for psychiatric treatment (Gordan, 1998).

The special status afforded to infanticide in England is recognized to this day by the country's legal system. While celebrated by some, this set of legal provisions is also criticized by others. One of the critiques persistently advanced against this line of legislation is that it regarded maternal infanticide as a form of pathology, and that the act "did not recognize the existence of a link between childbirth and infanticide, but created it" (Oberman, 2004, p. 19). There was no need for female defendants to provide extensive proof of mental illness or verify that the crime resulted from a mental illness. The postpartum illness referred to in the Act, however, cannot be considered "insanity" in the sense that it excuses the mother's actions (Gardner, 1990). It is a mental element that downgrades murder to a lesser offense (manslaughter).

The United Kingdom's Criminal Appellate Court found that out of the 59 cases of infanticide recorded during the years of 1979 through 1988, not one resulted in a sentence of imprisonment (cited in Gardner, 1990). In another study of 56 women convicted of killing their infants in England and Wales during the time period 1982 to 1988, 36 of these defendants were convicted of infanticide, 20 of manslaughter, and only one for murder (cited in Oberman, 2004, p. 73). Of these 56 women, 45 were sentenced to probation, four were remanded to a hospital, and only seven were sentenced to prison.

1.3.4 International Infanticide Statutes

The second half of the 20th century has seen several attempts of various English law reform groups to reform the Infanticide Act.[6] While both supporters and opponents concur that the evidence for an association between lactation and mental disorder is extremely limited if found at all, and that mental disorder is not a major cause of infanticide, the legislation has not been repealed. Moreover, the English approach to the issue has been borrowed by many other nations.

Currently, approximately 20 nations[7] have adopted a variation of the British model and have passed legislation specifically addressing the crime of infanticide. The majority of these acts construct infanticide as an offense less severe than homicide. However, there is also variation among these nations as to what kind of act falls under the umbrella term of infanticide. The elements shared by most of the infanticide statutes include (1) the identity of the perpetrator – the mother; and (2) mental element - the killing occurred because the woman had not fully recovered from the effects of giving birth. There is also no uniform consensus about the age of the victim. While some statutes define the victim as the "newly born child" (Canada), others limit the age of the victim to 12 months (Australia), and some do not set a specific age limit

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[6] According to Rapaport (2006), in the 1970s there has been an attempt to introduce an amendment that explicitly recognized social stressors of motherhood as grounds for downgrading the charge from murder to manslaughter. The Fourteenth Report of the Criminal Law Revision Committee contended that mental disturbance could result not only from the effects of giving birth but also from the socio-economic "circumstances consequent upon birth," and recommended that the latter phrase be included in the statute. This attempt was unsuccessful. However, de facto, British courts routinely take into account such social circumstances as mitigating factors during sentencing.

[7] Some of these include Australia, Austria, Canada, Philippines, New Zealand, Colombia, Finland, Greece, India, Korea, Turkey, Hong Kong.

(New Zealand[8]). Despite being a statutory offense, infanticide is utilized by the majority of women as a defense to a charge of murder. If the prosecution introduces a charge of infanticide, it would need to prove both the *actus reus* and the disturbance of the mind to obtain a conviction. Thus it has been argued that infanticide should be introduced as a statutory defense rather than being a statutory offense (Dean, 2004).

Infanticide statutes generally specify a more lenient punishment. For example, in Canada, conviction of first or second degree murder would result in a sentence of life imprisonment. If a person is found guilty of manslaughter, he or she would be sentenced to a minimum of four years to life imprisonment. However, a mother guilty of infanticide can only be imprisoned for a maximum of five years. Canadian case law indicates that convictions of infanticide are fairly difficult to obtain. Moreover, if the woman is convicted, the maximum sentence is rarely issued or upheld (Gardner, 1990).

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[8] Section 178(1) of the Crimes Act 1961 states: "…where a woman causes the death of any child of hers under the age of 10 years in a manner that amounts to culpable homicide, and where at the time of the offense the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to that or any other child, or by the reason the effect of lactation, or by reason of any disorder consequent on childbirth or lactation, to such an extent that she should not be held fully responsible, she is guilty of infanticide, and not of murder or manslaughter, and is liable to imprisonment for a term not exceeding 3 years" (cited in Dean, 2004, p. 342).

New Zealand's statute also differs from other jurisdictions because it does not specify a necessarily biological relationship between the perpetrator and her victim. The wording of "any child of hers" has been broadly interpreted by the court, covering children who were under the legal guardianship of the defendant and treated as family members.

1.3.5 Treatment of Child Homicide in the United States

The legal history of United States bears witness both to a very tolerant response to child homicide as well as unmitigated ferocity with which child murderers have been treated by the court. On one side of the spectrum, during the 17th century in the New England states of Massachusetts and Connecticut, the parents of a rebellious child could legally put their offspring to death. However, during the puritanical colonial times, infanticide was thought to be one of the more brutal crimes. The Puritans considered it a greater sin to destroy illegitimate children than to birth them. Female perpetrators were treated with extreme harshness: "because women are closer to children biologically, infanticide is most repugnant to the public sentiment" (Bromberg (1948) in Kohm, 2002, p. 5). In 1692 Massachusetts enacted a law making the concealment of a murdered illegitimate child a capital offense.

Unlike England, infanticide in the United States was not (and is not to this day) considered a separate class of crime. Individuals who have killed children (regardless of their victim's age) are usually charged under murder or manslaughter statutes. Availability (and acceptability) of a defense based on an offender's mental state vary greatly across jurisdictions. When the typical evidentiary problems that often plague child homicide cases are added to the mix, the result is inevitably a great variation and inconsistency in sentencing (Barton, 1998; Bookwalter, 1998; Collins, 2007; Fazio & Comito 1999; Finkel, Burke, & Chavez, 2000; Gena, 2007; Gordan, 1998; Kohm, 2002; Meyer & Oberman, 2001; Oberman, 2004; Rapaport, 2006; Reece, 1991; Richards, 2000; Schwartz & Isser, 2000).

1.4 Scope and Objectives of Present Study

1.4.1 Existing Research on Child Homicide

Clearly, there are inconsistent assumptions about child homicide that affect the adjudication of these offenses. Are defendants who murder children treated more leniently by the courts than those who kill adults? What are the factors that predict adjudication outcomes in cases of child homicide today? Does the victim and offender relationship affect adjudication outcomes in cases of child homicide? The purpose of the current study is to illuminate some possible answers to these questions. Despite the fact that child homicide is not an uncommon crime in the United States, there is still limited research attention given to child homicide in the literature. The extant body of research on child homicide can be categorized into three groups:

(1) Clinical studies of populations of child homicide offenders with the sample typically consisting of a few cases treated or diagnosed by the author (e.g. Stanton, Simpson, & Wouldes, 2000);

(2) Epidemiological studies of child homicide appearing in medical or criminological literature that with varying detail examine the characteristics of the offense, profiles of victims and offenders.[9] While earlier studies in this category were characterized by small samples, and limited themselves to simple descriptive methods (e.g. Hicks & Gaughan, 1995; Lukas, Wezner, Milner, McCanne, Harris, Monroe-Posey, & Nelson, 2002), recent studies have utilized larger data sets (e.g. Federal Bureau of Investigations' Uniform Crime Report; National Violent Death Reporting

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[9] Reports of the Child Death Review Teams (state and local) may be considered as a subgroup in this category.

System) and have conducted a more thorough descriptive analysis of the data, testing some bivariate and on occasion multivariate relationships (Harris, Hilton, Rice, & Eke, 2007; Overpeck, et al., 1998);

(3) Studies appearing in Law Review journals analyzing either the implications of a particular case (e.g. the Andrea Yates case was a subject of several articles – Fisher, 2003; Resnick, 2007); the dynamics of a particular doctrine or defenses related to cases of child homicide (Griffin, 2004; Maylor, 2007); or how a particular category of child homicide is treated by the judicial system (Kohm, 2002; Lewicki, 1999; Oberman, 2004; Rapaport, 2006).

To date, however, there has been no published study that has systematically addressed the legal outcomes in child homicide cases using a representative sample of cases.[10] The vast majority of studies tend to rely on individual cases in developing their arguments. Oberman (2004) has probably conducted the most extensive study to examine sentencing decisions in infanticide cases, however, her sample consisted of case studies from the media obtained through national databases like LexisNexis. Although this approach yielded a sample of 96 cases (Oberman, 2004), the result is obviously limited in its representativeness. This approach of building a sample from news reports characterizes other child homicide studies as well (Collins, 2006; Meyer & Oberman, 2001; Richards, 2000; Schwartz & Isser, 2000).

Other attempts to systematically examine the American criminal justice system's response to child homicide offenders include: (1) a 20-year old study by Showers and Apolo (1986) who analyzed the criminal disposition of 72 cases of fatal

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[10] From searches in several databases including Sociological Abstract, Criminal Justice Abstracts, and Lexis Nexis.

child abuse received at one children's hospital between 1965 and 1984; and (2) a qualitative study by Unnithan (1994b) that examined the perceptions of public officials who had been involved in the processing of child homicide cases in two counties in Texas.

1.4.2 Objectives and Significance of Present Study

By providing a contemporary analysis of the factors that predict adjudication outcomes in a representative national sample of homicide cases, this study will provide invaluable information about the dynamics of child homicide sentencing. In addition, this study will contribute in important ways to several ongoing debates in the scholarship of sentencing.

First, there recently has been a call to pay more attention to how victim characteristics shape adjudication and sentencing outcomes. Second, this study will provide new insight into the literature investigating differentials in case outcomes by gender. Previous research is somewhat equivocal in determining the extent to which female offenders are treated more leniently by the judicial system than males. The category of child homicide provides an especially valuable backdrop for examining potential gender disparities in sentencing. Third, the study will expand the knowledge about whether the degree of intimacy between the victim and the offender can predict the legal responses of the courts. Prior research contends that the assumption that intimacy produces criminal justice leniency is too simplistic. Arguably, there is no relationship more intimate than that of a parent and child. This type of relationship is characterized not only by physical proximity, but by dependency of one individual on another. Violation of this "sacred bond" may potentially result in harsher penalties for child homicide offenders. Finally, the present research will examine whether the race

of the victim has any effect on adjudication outcomes. Perhaps, the lives of certain children are more valued by the criminal justice system compared to others. Before we move on, however, it is important to discuss how the term "child" will be operationally defined in the present study.

1.5 A "Child" to Protect

Delineating the meaning of the word child is not a simple matter. The category of "child" encompasses a range of special populations – babies, infants, toddlers, youths, preteens, teenagers, adolescents, juveniles, and minors. These subpopulations clearly differ in regards to their physical, developmental, and social characteristics, yet most of them are not solidly anchored to a particular age boundary. Within the child homicide literature, a variety of age cutoffs have been used to define what "child" actually means. Studies of child homicide have focused on deaths involving children under the age of 4 (Bennett et al., 2006; De Silva & Oates, 1993; Ewigman et al., 1993; McClain et al., 1994); under the age of 5 (Christoffel & Liu, 1983); under 8 (Hoffer & Hull, 1981); under 13 (Copeland, 1985; Crittenden & Craig, 1990); under 14 (Goetting, 1995; Silverman & Kennedy, 1993); under 15 (Kaplun & Reich, 1976; Strang, 1993; Somander & Rammer, 1991); and as old as those under the age of 18 (Boudreaux et al., 1999; Hutson, Anglin, & Pratts, 1994; Jason & Andereck, 1983; Kunz & Bahr, 1996).

Legally speaking, in most State statutes, an individual is considered to be a child until he or she reaches the age of 18. However, even in the legal realm, there is no clear consensus about the appropriate decision-making age in different situations (e.g. age of consent for marriage; age at which sexual intercourse without parental consent is legally considered a crime; getting a driver's license; signing contracts).

Furthermore, in regulating various crimes against children, state statutes vary in the age limit imposed on a potential victim. For example, prostitution of a child is punishable in some states if the victim is younger than 18 years old (e.g. Arkansas, Colorado, Delaware) and not punishable in others if the victim is 16 (e.g. Alaska, Connecticut, District of Columbia). Outside of the legal realm, children over 12 years of age have to pay adult fares for many forms of public transportation.

In other words, the meaning of the word "child" is determined by more than just biological age. Issues that are considered to determine the cutoff between childhood and adulthood are responsibility, the ability to make independent decisions, and the extent to which individuals are aware of the consequences of these decisions. Thus, defining who is a child becomes not just about recording an individual's age, but about how the biological and physiological maturity of children is understood and interpreted (Fernando, 2001).

James and Prout (1997) argue that childhood can best be viewed as a social construction. The meaning of childhood and the meaning of the term child are negotiated between different individuals and groups, often with conflicting interests. In other words, childhood is relative. An excellent example of the relativity of childhood is the contemporary treatment of juvenile offenders in the United States. The current trend is to treat this category of offenders as adults (Myers, 2005). Consequently, while the maximum age for original juvenile court jurisdiction varies from 15 to 17 years of age, some states do not have a minimum age at which juveniles can be transferred to adult criminal court (in other states it varies from 10 to 15 years old).

As can be seen, there is really no clear consensus on the age at which individuals are deemed to be children. In the present study, two age cutoff limits are adopted. When the epidemiology of child homicide is examined, largely drawing on the data from the Federal Bureau of Investigation Supplementary Homicide Reports, children younger than 18 years of age will be used to highlight the varying dynamics and characteristics of child homicide as they manifest themselves depending on the age category of the victim. However, when adjudication outcomes in child homicide are examined, a lower age limit is adopted. All cases where the victims were age 12 or younger will be classified as child homicides.

The rationale for the latter decision is twofold. First, because the epidemiology of homicides for all those 18 years of age and younger is extremely diverse, the cut-off of 12 was adopted to insure a relative homogeneity of cases examined by the courts. Research has shown that homicide offenses perpetrated against teenagers and older children are different on a number of dimensions from offenses perpetrated against younger children. For example, after examining different facets of childhood victimization, David Finkelhor and Richard Ormrod (2001) concluded that "[A]ge 12 is the most useful demarcation for examining homicide patterns and trends across childhood…' (p. 3). Patterns of victimization for those over the age of 12 become more similar to, and sometimes appear an extension of, adult homicides. This is also the age at which homicide rates start to increase precipitously.

The second rationale for adopting the age 12 limit when approaching the study of child homicide case outcomes deals with the constructionist nature of the definition of childhood. Our understanding and treatment of childhood and its problems are steeped in symbolic terms. Helplessness, vulnerability, purity, naïveté, being seen as

dependent, and in need of protection – these are qualities that, as a culture, we associate with childhood, and they are diluted as the child matures. By limiting the age of the victim to 12 years or younger, the symbolic properties of childhood are less likely to be diluted or tainted in the eyes of the criminal justice community or public at large.

1.6 Summary

Several key dynamics have been highlighted in this chapter. First, the complexity of the phenomenon of child homicide has obvious ramifications for research on epidemiology and the legal treatment of this body of offenses. Existing studies of adjudication and sentencing of child homicide are compartmentalized and tend to focus on a subcategory of homicides against children (e.g. school-related deaths or child murder by mothers). As a result, information on the legal treatment of a particular category of child homicide perpetrators cannot be fully evaluated because it stands in isolation, with no opportunity to assess how these individuals fare in courts relative to other categories of offenders.

Second, existing theoretical approaches to explaining child homicide either explicitly or implicitly factor in the victim's age into their propositions. As will be discussed in more detail in the next chapter, this age-graded approach to child homicide shapes the research on the epidemiology of the phenomenon under study. Similarly, chapter 3 will illustrate that the age of the victim inevitably affects the discussion of the adjudication of child homicide.

Finally, the historical section of the chapter has traced the oscillation between lenience and intolerance towards child homicide in England in particular, and internationally in general. Severe legal treatment of this offense was due not to a

concern for the victims, but rather from the desire to control women, especially poor unwed women. On the other hand, the public and the courts found it challenging to reconcile the horrible crime of killing one's offspring with the virtuous understanding of womanhood and motherhood. The answer was found in the presumption that mothers who kill their newborn children did so because of a mental disturbance. While several other countries have followed England's example in distinct legal treatment of infanticide, the United States' legal doctrine does not acknowledge such a special approach.

Chapter 2

PREVALENCE AND EPIDEMIOLOGY OF CHILD HOMICIDE

The previous chapter highlighted the heterogeneity and complexity of child homicide. Before investigating the factors that affect adjudication and sentencing, an understanding of the epidemiology of child homicide is needed. What are the characteristic features of child homicide cases? What are the contextual circumstances? Who are the likely offenders? These questions will be addressed relying on an analysis of the data from the Federal Bureau of Investigation Supplementary Homicide Reports (SHR) for the years 1976-2004.

This chapter opens with an outline of several existing national data sources that provide estimates of child homicide victimization. Next, the issue of the "dark figure" of child homicide is discussed. It has been contended that existing data collection efforts to varying degrees underestimate the incidence of child homicide. Factors that potentially affect this alleged systematic underestimation will be addressed. Next, epidemiological patterns and trends in child homicide will be explored via analysis of SHR data. The chapter concludes with a discussion of risk factors that have been identified in the literature as contributing to the killing of a child.

2.1 Sources of Data

The extent of child homicide victimization can be gleaned from a number of national and local data collection efforts. Some of these data focus on a broader range of fatal child victimization (like SHR data), while others are narrower in scope. For

example, since 1992 the Center for Disease Control and Prevention in conjunction with the U.S. Departments of Education and Justice have annually conducted systematic reviews of school associated violent deaths (SAVD). Data for these reviews are collected each year from media databases, police agencies, and school officials.

While data sources addressed in this section have a national focus, various local agencies may be delegated to collect data on child fatalities. A primary source of these data are State Child Fatality Review Teams, multi-agency, multi-disciplinary bodies who are mandated to analyze child deaths.[11]

2.1.1 Supplementary Homicide Reports

The Federal Bureau's of Investigation Supplementary Homicide Reports (SHR) currently are a leading national source of data on child homicide, relied upon by a number of studies striving to elucidate trends and patterns in child homicide (e.g. Chew, McCleary, Lew, & Wang, 1999; Rodriguez & Smithey, 1999). On a voluntary basis, participating police departments compile monthly reports as part of the Uniform Crime Reporting Program. The SHR contains data on incident-level information on every homicide occurring within the participating jurisdictions. The SHR is comprised of two data sets: the Victim file (if multiple offenders were involved, only the first offender is listed) and the Offender file. These files contain information that is

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[11] In some states (e.g. TX) these teams are required to review all child deaths regardless of the cause. In other states these teams review only selected incidents: for example, in Virginia, the focus is on "sudden, violent or unnatural deaths of children," while in West Virginia' on "deaths not classified as natural."

instrumental to criminal investigation (time and location of the homicide, precipitating event, weapon employed, victim-offender relationship, etc.).

While homicide data are thought to be more accurate than data enumerating other non-lethal forms of violence, there are several acknowledged limitations of the SHR. First, the voluntary character of participation in the UCR program, and its recording only those offenses that have been reported to the law enforcement agencies potentially result in a selection bias. In addition, since a sizable proportion of homicides remain unsolved, offender information is frequently missing. Estimating the characteristics of this missing data presents significant controversy among researchers (Pampel & Williams, 2000).

2.1.2 Vital Statistics Records

The National Center for Health Statistics compiles Vital Statistics Records (VSR), which contain mortality data from county medical examiners, and focus on information that is helpful in determining the cause of death (times and location of the incident, wound description, forensic tests, etc.). The reliability of the VSR obviously depends on the accuracy of the medical examiners' reports. In regards to child deaths, a potential limitation of VSR data is that the cause of death may be misidentified as something else but homicide. Moreover, beyond a rather detailed list of causes of death as well as categorization by age groups and race of the victim, this source of data provides little relevant information to assess the dynamics of child homicide (Chew et al., 1999, p. 156).

2.1.3 National Violent Death Reporting System

Currently 18 states[12] have funded the National Violent Death Reporting System (NVDRS), which differs from Vital Statistics in that it collects and links information from multiple sources: law enforcement, medical examiners and coroners, crime laboratories, and death certificates to obtain more details about the circumstances of violent deaths. In this NVDRS is similar to the Federal Bureau of Investigation's National Incident-Based Reporting System (NIBRS). Eventually the NDVRS will be the perfect data set to study victim offender-relationships for homicide (Bennett, Hall, Frazier, Patel, Barker, & Shaw, 2006; Moscowitz, Laraque, Doucette, & Shelov, 2005). However, since its geographical coverage is limited, presently the SHR data remain a better alternative.

2.1.4 Data Sources on Child Abuse and Neglect Fatalities

Two national level data collection efforts provide estimates of a specific type of child victimization – deaths resulting from abuse and neglect. The National Child Abuse and Neglect Data System (NCANDS) annually summarizes national data about child abuse and neglect known to child protective services (CPS) agencies. The latest NCANDS report estimated that there were an estimated 1,530 child fatalities resulting from abuse and neglect (U.S. Department of Health and Human Services, 2008).

Another effort is the National Incidence Study of Child Abuse and Neglect (NIS), which provides information on the extent of fatal injuries to children every four years. It follows a nationally representative design and includes information not only

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[12] Alaska, Colorado, Georgia, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Utah, Virginia, and Wisconsin.

on children who were investigated by CPS agencies, but it also contains data on children seen by community professionals who were not reported to CPS or who were screened out by CPS without investigation (Sedlak, Mettenburg, Basena, Petta, McPherson, Greene, & Li, 2010). The fourth NIS study done in 2005-2006 estimated that about 2,400 children died as a result of abuse or neglect , which is significantly higher than the 1,500 estimated total for the years 1993-1994.

2.1.5 Comparison and Limitations of the Sources of Data

Several studies have attempted to comparatively assess the usefulness of various data sources for studying child homicide. One study compared SHR data and VSR data for the period of 1976-1982 (Rokaw, Mercy, & Smith, 1990). While the study did discover variations in the average ratios of the frequencies of homicides contained in the two sources across age categories, the inconsistencies were minimal for children younger than age five. Another study evaluating the extent of agreement between the SHR and VSRs noted that for analysis on a smaller geographic scale, these two data systems should not be treated interchangeably. However, on a national or state scale, they showed close agreement (Wiersema, Loftin, & McDowal, 2000). Other scholars contend that a nontrivial number of child homicide incidents may be excluded from the SHR data (Christoffel, Anzinger, & Merrill, 1989; Ewigman, Kivlahan, & Land, 1993). This especially concerns maltreatment fatalities. Thus, Ewigman and colleagues (1993) found that out of 121 Missouri cases classified as definite maltreatment deaths, only 39% were reported in the UCR homicide data.

Lyman and colleagues (2004) have compared data from three sources for homicides among the same age category in Jefferson County, Alabama. The study compared data from death certificates, medical examiner reports and the UCR

Program (Lyman, McGwin, Davis, Kovanzic, King, & Vermund, 2004). Results indicated that while the death certificates and medical examiners' records data sources were "consistently in very good to perfect agreement" (p. 667), the UCR program data displayed some inconsistencies, at least when the Jefferson County was concerned. First, it suffered from underreporting of homicide in children five years old and younger. Second, for the dimensions of victim's gender and race, the UCR program data had perfect agreement with the other two sources, but it fared only moderately in regards to offender characteristics as well as victim's age. The latter could be due to the fact that UCR data rounds the victim's age whereas death certificates and medical examiner's records are very detailed in this respect (days, weeks or months if less than one year). Overall, the authors concluded that UCR is "a valuable source of child homicide data that is underutilized in public health research" (p. 667).

2.2 The "Dark Figure" of Child Homicide

It is generally maintained that the known estimates of homicide are very close to the actual number (Brookman, 2005). In other words, the police are informed about a very high proportion of this crime. Child homicide, especially infant homicide, comprises an exception to this rule (Lundstrom & Sharpe, 1991; Wilczynski, 1997). Evidence of the low reliability of child homicide statistics cited above prompted scholars to speak about the so-called "dark figure" of child homicide (Brookman & Nolan, 2006; Trocme & Lindsey, 1996; Wilczynski, 1994).

While these scholars agree that all data represent an underestimate, they disagree about magnitude of this error in estimating the prevalence of child homicide. Some claim that nearly 85% of child maltreatment deaths in the United States are misdiagnosed as accidents, injuries of undetermined intentionality, deaths from natural

causes or sudden infant death syndrome (McClain, Sacks, Ewigman, Smith, Mercy, & Sniezek, 1994). In relation to infant deaths, studies have speculated that the actual prevalence of infant homicide in the United States may be double than what the death certificate data suggest (Herman-Giddens, Brown, Verbiest, Carlson, Hooten, Howell, & Butts, 1999). Christoffel and colleagues (1989), conducting a study in Illinois of deaths classified as undetermined, concluded that 89% of cases could be attributed to maltreatment. Another study of 384 infant and preschooler deaths in Missouri found that half of the fatalities definitively identified as maltreatment fatalities had not been classified as homicide (Ewigman et al., 1993).

2.2.1 Factors Contributing to Underestimation of Child Homicide Incidence

There are a number of reasons why the official picture of child homicide fails to capture the full extent of victimization. One possible factor contributing to the dark figure of child homicide is that this category of cases is plagued with problems of detection. Many cases of child homicide are either not discovered or not labeled as such. A child's body may never be found or identified. There exists no standardized system for the investigation of infant and child deaths in the United States, although several reviews and recommended procedures have been published (e.g. Mayhem, 2007). An adequate response to child homicide that ensures accurate investigation of the case requires the involvement of numerous specialists, including medical examiners, public health officials, physicians, and personnel from agencies involved with child welfare, education, social services, law enforcement, the judicial system, and mental health. However, many jurisdictions lack the appropriately trained specialists mentioned above (the problem is especially serious with pathologists).

Furthermore, interagency collaboration that would facilitate sharing of information is oftentimes absent (Pritchard & Butler, 2003).

Cases of child homicide are extremely difficult for forensic pathologists (Cordner, Burke, Dodd, Lynch, Ranson, & Robertson, 2001; Trocme & Lindsey, 1996). Accidental explanations may be offered for single injury fatalities. Furthermore, child abuse and neglect might not be an immediate cause of child's death in some cases. For example, the immediate cause of death might be some illness or an alleged accident, however, these maladies and the resulting death may each be the result of severe neglect of the victim on the part of the caretakers (Brookman & Nolan, 2006; Wilczynski & Morris, 1993). Squirres and Busuttil (1995), after studying child deaths in household fires in Scotland, concluded that although the majority of their cases could be regarded as tragic accidents, many of them were a direct result of neglectful adult behavior (e.g. 30% of the cases resulted from a caretaker being intoxicated).

While determining whether a single injury is a result of an accident or purposefully inflicted trauma is a difficult conundrum for a pathologist to solve, and this difficulty is increased in cases where there are multiple injuries. From the law's point of view, the timing of the fatal injuries is critical. However, time in forensic pathology is very hard to measure. The science of the aging of bruise, for example, can rarely be a precise estimate.

On the other end of the spectrum, forensic pathologists may also encounter cases where natural disease is masquerading as trauma. This is especially difficult to detect with very young victims. Cordner and colleagues (2001, p. 96) cite a case where a 9-week-old boy was discovered unconscious by his father. A CT scan revealed a

large left sided subdural hemorrhage, but no other bruises. The baby died 36 hours later, and the death team became involved on the suspicion of the Shaken Baby Syndrome. During subsequent examinations, the possibility of vitamin K deficiency as the cause of hemorrhage was raised. Due to the fact that the circumstantial evidence was extremely weak, no charges were made.

Overall, the theme of the subjective nature of determining a cause of a child's death, and the inconsistent manner in which it is done, is rather developed in the literature (Bacon, 2000; Overpeck, 2003; Wilkins, 1997). A further difficulty is associated with the fact there are typically few witnesses to the event when a child gets hurt. In many cases the only witness is the person on whom the shadow of suspicion falls (Wilczynski, 1997). Under these conditions of informational vacuum, it is rather hard for a pathologist to contribute to the reconstruction of events surrounding the death of the child.

One of the most prominent contributors to the dark figure of child homicide are cases misdiagnosed as Sudden Infant Death Syndrome (SIDS). Referred to by some medical and legal scholars as a "convenient diagnostic dustbin," SIDS has been consistently identified in child homicide literature as a "mask for murder" (Barton, 1998; Goldenberg, 1999). SIDS was first identified as a disorder in 1969 by a pediatric pathologist. It represents a "sudden and unexpected death of an apparently healthy infant, typically occurring between the ages of three weeks and five months, and not explained by careful postmortem studies" and has been referred to as "a diagnosis of exclusion" (Goldenberg, 1999, p. 601). A case is assigned a label of SIDS when no other cause of death can be identified.

Experts have not come to a consensus about what percentage of SIDS cases that actually are cases of child homicide. Some claim that only a very small proportion of violent deaths are misdiagnosed as SIDS – around 1% or 2% (Reece, 1993). Other studies cite larger numbers (e.g. 10% in the study by Taylor & Emery, 1982). However, even if we adhere to conservative estimates, the figure of misdiagnosed child fatalities appears considerable. For example, approximately 2,500 infant deaths annually are diagnosed as SIDS (American SIDS Institute, n.d.). Extrapolating from this number, even a conservative estimate of misdiagnosis of 2% yields 50 undetected infant homicides a year.

For a long time the potential misdiagnoses of children homicides as SIDS were not on the legal or medical communities' radar. This legacy was a result of a medical study done by Dr. Steinschneider, who maintained that there was a connection between apnea disorders (short pauses in breathing) and SIDS. The study was so influential in the medical community that "it soon became the fashion to diagnose SIDS rather quickly, without autopsy, and without any investigation of the circumstances or death scene" (Guntheroth in Goldenberg, 1999, p. 604). Furthermore, Steinschneider's research insisted that SIDS could run in the family. It was not until the mid-1990s when a Syracuse housewife Waneta Hoyt confessed that over the course of 11 years, she had smothered five of her children that Steinschneider's findings were called into question and put the spotlight on accurate diagnosis of SIDS.

In the absence of conclusive proof that a crime has taken place, professionals might be hesitant to act proactively in cases of child fatalities. There are several reasons why professionals might feel disinclined to probe further into a child's death. Since child homicide is such an abhorrent topic, professionals might be hesitant about

subjecting the grieving family to further investigations (Mayhem, 2007; Wilczynski, 1994). They might also be reluctant to start the process and "run the risk of an inquest where their professional judgment and actions can in turn be put on trial" (Trocme & Lindsey, 1996, p. 174). Dingwall and colleagues, conducting research on child protection agencies decision-making, have discovered the prevalence of the so-called "rule of optimism," which is used to describe the fact that allegations of child maltreatment are rare (Dingwall, Eekelaar, & Murray, 1983).

2.3 Trends in Child Homicide

This section provides a brief statistical portrait of child homicide victimization. Adopting a developmental model as a structuring principle, a number of patterns that characterize child homicide perpetrators, victims, and case characteristics are discussed. The data for this analysis were obtained from the Supplementary Homicide Reports of the Uniform Crime Reporting Program for the years 1976-2004. Pooling data over a 29 year period made it possible to identify a large sample of child homicides, and more reliably examine the contextual patterns of victimization. The victim file of the data contained information on 52,973 individuals who were 17 years old and younger. The offender file of the data included information on 58,306 perpetrators.

2.3.1 Victim's Age

As suggested above, child homicide victimization varies drastically by age. There are a number of studies that have applied a developmental approach to examining the rates and patterns of child homicide (Boudreaux et al., 2001; Chew et al., 1999; Lord et al., 2002). In general, analysis of incidence rates of child homicide

conveys a picture of two peaks in victimization - in early childhood and in late adolescence. When children are young their homicide risk is primarily rooted in interfamilial dynamics (Boudreaux & Lord, 2005). Young children are physically vulnerable. They spend most of their time at home, in the company of parents and other caregivers, who they rely on for survival and wellbeing. At the same time this routine dependency for food, clothing and attention may place substantial physical and emotional burdens on caregivers.

As children become older their self-sufficiency and mobility increase (Finkelhor, 1997; Lord et al., 2002). The risk for homicide victimization starts to move outside of the home (Boudreaux et al., 2001). Despite the increased independence, children are still physically and cognitively unprepared to fully take care of themselves, which renders them vulnerable to a wider net of extra-familial perpetrators. In addition to their physical vulnerability and social naiveté, venturing outside the home oftentimes translates into a lapse in adequate guardianship, which increases the homicide victimization risks for children.

One of the problems faced by researchers who have adopted a developmental approach to studying child homicide is dividing data samples into meaningful smaller groups that relate to the various childhood development stages.[13] For the purposes of

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[13] For example, Chew and colleagues (1999) focused on four age groups: (a) infants (less that 1 year old); (b) toddlers (1-4 years); (c) primary schoolers (5-9) years; and (d) middle schoolers (10-14) years.

Boudreaux and colleagues (1999) on the other hand divided their victim sample into seven categories in their study of child abductions: (a) neonates (0-1 months); (b) infant (1-12 months); (c) toddler (13-36 months); (d) preschool (3-5 years); (e) elementary school (6-11 years); (f) middle school (12-14 years); and (g) high school (15-17 years).

the present study, the sample of child homicides obtained from the SHR is divided into six groups:

- Infant (less than 12 months old)
- Toddler (1-2 years old)
- Preschool age (3-5 years old)
- Elementary school age (6-11 years old)
- Middle school age (12-14 years old)
- High school age (15-17 years old)

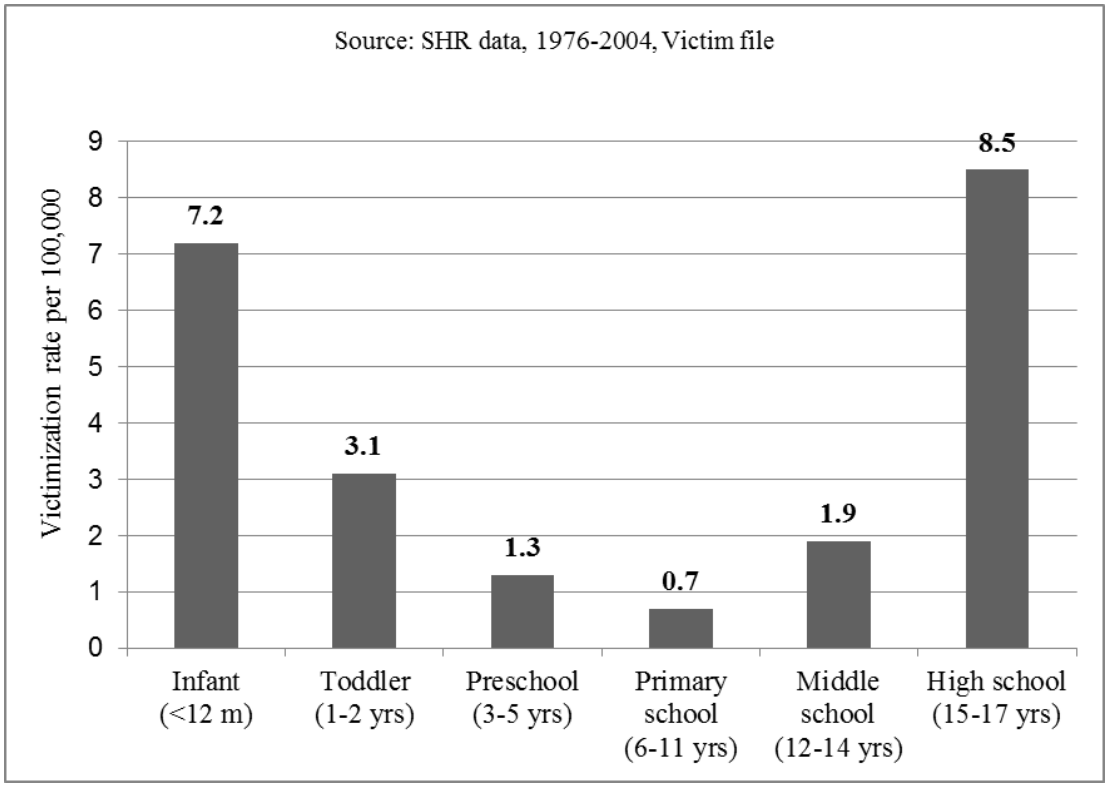

Figure 2.1: Child Homicide Victimization Rate per 100,000

Figure 2.1 presents the distribution of homicide victimization rates by age category of the victim. To calculate victimization rates for children per 100,000

population, an average annual number of homicide rate was calculated for each age group. Next, estimates from the 1990 Census for each age group were used as a population base for the denominator. The results are consistent with existing research on the epidemiology of child homicide: the risk of homicide is disproportionately greater among younger children (D'Orban, 1979; Finkelhor & Ormrod, 2001; Resnick, 1969). The risk of homicide victimization is highest in the first year of life, and then decreases until mid-teenage years when it starts to increase again (Christoffel, 1984).

2.3.2 Victim's Gender

There is a lack of clear understanding regarding the relative risk of child homicide depending on victim's gender. Some studies have found that male children are at a higher risk of being a victim of homicide than female children (Blaser, Jason, Weniger, Elsea, Finton, & Hanson, 1984; Chew et al., 1999; Christoffel, 1984; Margolin, 1990; Sorenson & Peterson, 1994). Other scholars have observed higher victimization rates for girls (Abel, 1986; Lyman et al., 2003). When it comes to fatal child abuse, several studies have found that male and female children are equally likely to be victims of fatal child abuse (De Silva & Oates, 1993; Donnelly, Cumines, & Wilczynski, 2001; Lucas et al., 2002). The equivocal nature of these findings is most likely attributed to sampling differences, and lumping together different age categories when examining fatalities.

When victims of child homicide are disaggregated by age, a clearer gender pattern emerges. Thus, Chew and colleagues (1999) examining a sample of 30,929 California homicides (including 1,498 homicides of children younger than age 15) found that while overall child victims were predominantly male (59%), infant victims were equally likely to be males as they were to be females (51.7% of victims were

male). As the age of children increased, the proportion of female victims in the respective age category decreased. Figure 2.2 illustrates the relationship between age and gender in child homicide cases in the SHR data. Unlike some of the previously cited studies (Chew et al., 1999; Kunz & Bahr, 1996), even in the Infant age category the proportion of male victims is higher. It is important to note that the relatively equal representation of males and females in the victimization data at younger ages is completely unlike any other time in the lifecourse when males are significantly more likely to become homicide victims than females.

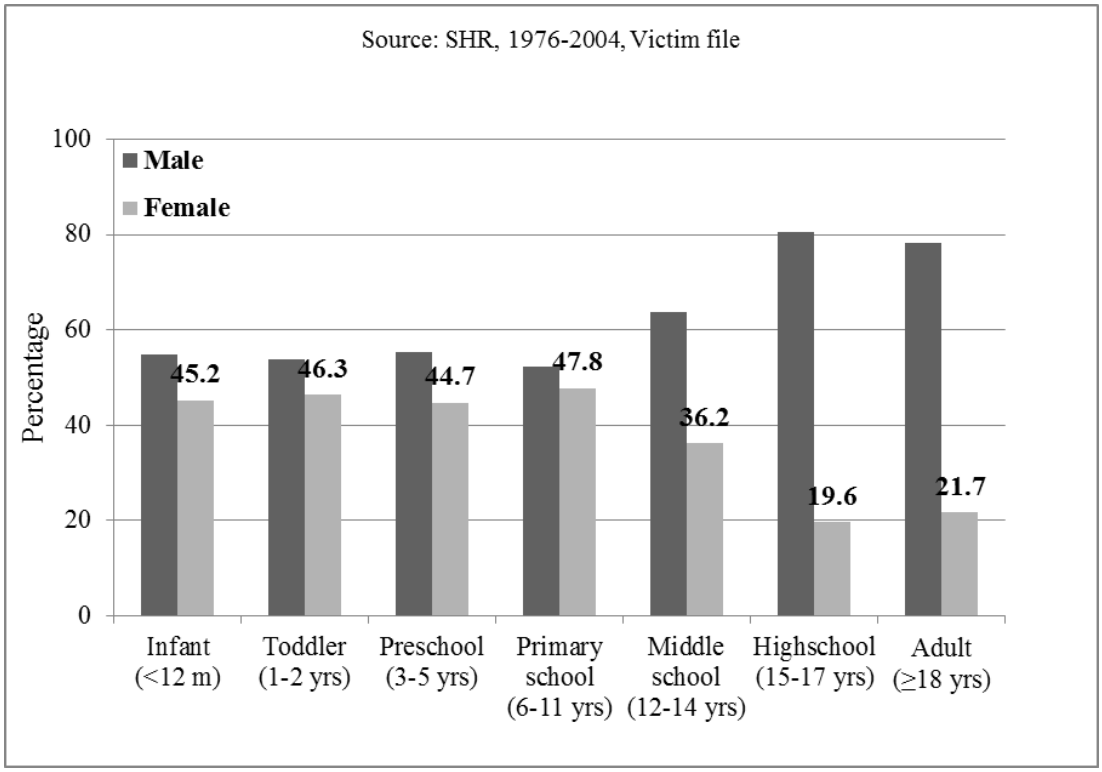

Figure 2.2: Gender of Child Homicide Victims by Age Category

2.3.3 Victim's and Offender's Race

A less contradictory body of findings pertains to child homicide victim's race. The majority of studies reveal that African-American children are at a greater risk of being killed than White children (Abel, 1986; Anderson, Ambrosino, Valentine, & Lauderdale, 1983; Christoffel, 1984; Lyman et al., 2003; Finkelhor & Ormrod, 2001; Silverman, Reidel, & Kennedy, 1990). According to NVDRS data for the years 2003 and 2004, African American children accounted for 51% of homicide victims age 4 years or younger (Bennett et al., 2006, p. 40). When the authors calculated the rate per 100,000 population, in 2003 it comprised 7.2 for African American children and 1.9 for White children of the specified age category. Black students were also more likely to be victimized in school-associated violence as well (Anderson, Kaufman, Simon, Barrios, Paulozzi, & Ryan, et al., 2001). SHR data confirms this trend (Figure 2.3).

Unfortunately, the aggregated Uniform Crime Reporting system data do not allow to "extract" the relative victimization rates for Hispanic victims. Chew and colleagues analyzing SHR data for the state of California for the time period of 1981 through 1990 found that only African-American children were overrepresented among child homicide victims (approximately 27.6% of child homicide victims were Black) relative to the composition of the general population. Hispanic victims among children younger than 15 comprised approximately 24.2% whereas their share in the general population was approximately 34% (Chew et al., 1999, p. 160). Another study (Sorenson, Richardson, & Peterson, 1993), examining homicide victimization rates of children younger than 14 in the city of Los Angeles (n=246) for the period 1980-1989 confirmed the pattern of significantly higher victimization rates for African American children as opposed to non-Hispanic Whites and Hispanics (11.84 per 100,000 population as opposed to 1.29 and 2.69 respectively).

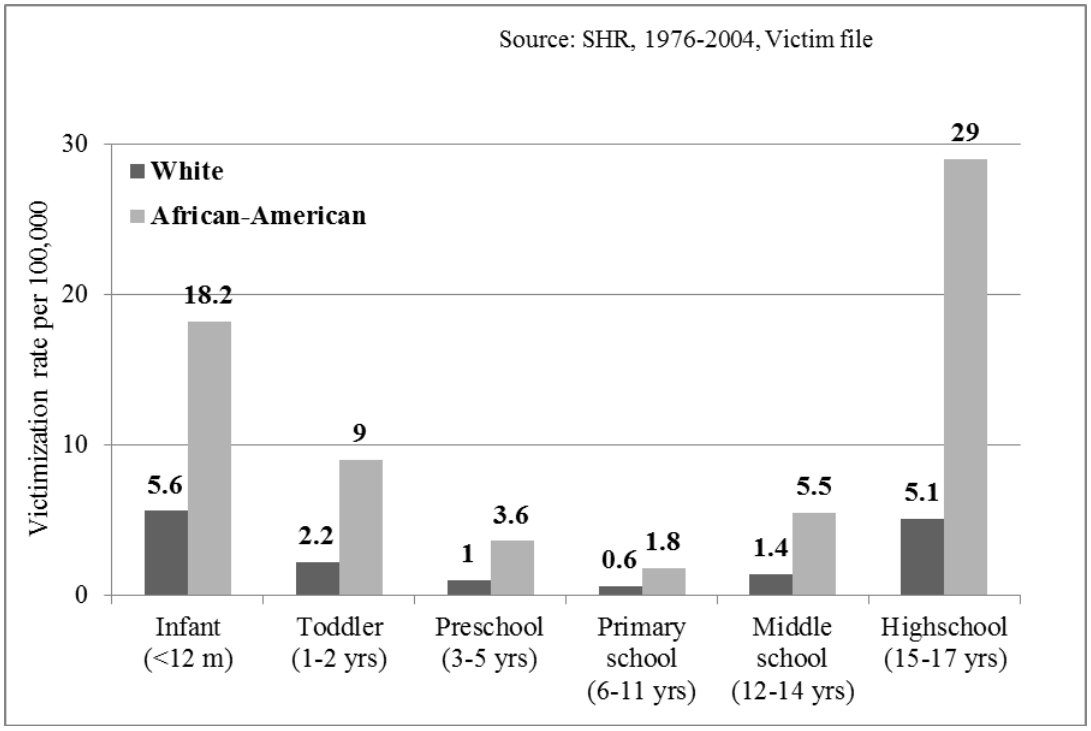

Figure 2.3: Race of Child Homicide Victims by Age Category

The racial/ethnic makeup of child homicide offenders is typically congruent with the racial/ethnic distribution of their victims (Chew et al., 1999). Thus, according to the SHR data the race of the child homicide assailant is almost evenly split between Whites (49.3%) and African Americans (48.7%). These observed differences in offenders' race, however, should be taken with great caution since in the SHR data there is a high proportion of cases (29.7%) where the race of the offender is unknown.

Some studies concordant with the prevalence of victimization of African American children have found an overrepresentation of African American offenders in their child homicide samples (Lyman et al., 2003; Lucas et al., 2002). Lyman and colleagues (2003) examined 53 cases of homicide identified through the medical

examiner's records among children younger than six years old in Jefferson County, Alabama. Two thirds of cases involved African American families. The authors cited a high degree of psychological and financial stress in these families as one possible explanation for the prevalence of lethal violence. Plass (1993) after analyzing family violence in African American families has suggested that due to a certain stigma of misfortune attached to low income minority families, social service agencies are more likely to designate a death of a child in such families as homicide as opposed to being inclined to pass it as an accident (p. 532).

2.3.4 Victim-Offender Relationship

The victim-offender relationship is one of the cornerstone elements of child homicide research. A large proportion of the studies of child homicide are organized around the categorizations of the relationship between the offender and the child victim (e.g. Anderson et al., 2001; Barton, 1998; Bourget & Gagne, 2005; Finkelhor et al., 1992). According to the developmental perspective of child homicide, different age categories are characterized by a "dominant" offender type. Thus, in very young children the relationship between the offender and the victim is characterized by great intimacy. As the age of the victim increases, the degree of intimacy generally decreases. In infant and toddler homicides the perpetrator is predominantly a parent, a stepparent or an adult who has assumed the role of the caretaker (Smithey, 1998). In cases of neonaticide, the offender is almost exclusively the mother, although in some cases she is not the sole perpetrator (Meyer & Oberman, 2001, p. 154).

As children get older, the proportion of parental assailants decreases giving place to victimizations by acquaintances and strangers (Boudreaux et al., 2001; 1999; Finkelhor, 2008). As children enter school, they spend more time outside the home,

thus altering their risks of victimization. Boudreaux and colleagues (1999) found that while preschoolers were more likely to be victimized by family members (45%) and acquaintances (41%), in elementary school, assailants were most often acquaintances (44%) and strangers (38%) with sexual motivation predominately characterizing the offense.

The SHR data in Table 2.1 presents slightly lower estimates of stranger-perpetrated homicides than previously cited in research. Typically, the reported portion of stranger-perpetrated homicides is around 10% (Bourget & Bradford, 1990; Di Maio & Di Maio, 1989; Ewigman & Kivalhan, 1989; Margolin, 1990). A few scholars, however, have indicated higher incidence rates of stranger-perpetrated child homicide. Goetting (1995) in her study of homicide in the Detroit area from 1982-1986 found that in a third of 71 cases of homicide involving children younger than fifteen, the assailant was a stranger.

Table 2.1: Relationship of Offenders to Victims of Child Homicide

	Type of Relationship					
Age group	Parent	Step-parent	Other family	Acquaintance	Stranger	Total number of victims in age category
Infant	66.3%	1.2%	4.3%	14.3%	1.1%	6,734
Toddler	42.7%	5.0%	7.0%	31.8%	2.7%	7,037
Preschooler	38.9%	4.9%	9.9%	26.4%	5.8%	4,318
Primary School	29.2%	2.5%	13.2%	25.1%	10.9%	4,545
Middle School	6.2%	1.6%	8.6%	43.1%	14.4%	5,560
High School	1.2%	.5%	3.0%	42.2%	18.1%	24,779
Total % across all age groups	21.2%	1.8%	5.7%	34.6%	11.9%	52,973

Source: Federal Bureau of Investigation Supplemental Homicide Report (SHR) statistics for the years 1976 to 2004 [Victim File]
Note: Cases where the identity of the perpetrator was unknown were omitted from the table but were included in the calculation of the percentage distributions

Interestingly, SHR data reveals that almost 32% of victimizations of toddlers occurred by the hands of acquaintances.[14] This figure most likely encompasses babysitters and mothers' paramours. Smithey (1998), in a study of homicide of children 34 months and younger in Texas between 1981 and 1991, relying on medical examiner's office data, found that about 16% of offenses were perpetrated by the mother's boyfriend and 6% were committed by a babysitter. A number of studies have shown that mothers' male romantic partners represent a considerable risk to children (Alder & Polk, 2001; Richards, 2000; Smithey, 1998). This threat exists not just for very young children, but for school-aged children as well. The middle school children age category was also primarily victimized by acquaintances (43.1%) and strangers (14.4%).

The Victim file of the SHR data is missing demographic information on a substantial proportion of offenders. It is possible that the demographic characteristics of those offenders that remain unknown may differ from those offenders for which data are known. Additionally, the SHR data contain information only on one offender. Although the majority of child homicide cases are perpetrated by a single offender, the proportion of cases with the known involvement of multiple perpetrators varies across age categories (Table 2.2). Thus, infants are primarily victimized by a single perpetrator (92.1%) whereas individuals 15 to 17 years old are increasingly more likely to be victimized by multiple assailants.

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[14] Includes the following categories originally in the SHR file: Neighbor, acquaintance, friend, employer, employee, boyfriend, girlfriend, ex-wife, ex-husband, homosexual relation, and other known.

Table 2.2: Number of Offenders in Child Homicide Cases

	Number of offenders	
Age group	Single offender	Multiple offenders
Infant	92.1%	7.9%
Toddler	89.0%	11.0%
Preschool	87.2%	12.8%
Primary School	90.8%	9.2%
Middle School	87.0%	13.0%
High School	84.3%	15.7%
Total % across all age groups	87.0%	13.0%

Source: Federal Bureau of Investigation Supplemental Homicide Report (SHR) statistics for the years 1976 to 2004 [Victim File].
Note: Cases where the identity of the perpetrator(s) was unknown were considered "Single offender" cases.

An important dimension of research on the victim-offender relationship in child homicide cases deals with the evaluation of dangerousness of biological versus de facto parents. A number of studies have indicated that non-genetically related caretakers (stepparents, adoptive parents, boyfriends of mothers, etc.) are much more likely to abuse or kill children in their care (Daly & Wilson, 1987; 1988a; Giles-Sims & Finkelhor, 1984; Wilson, Daly, & Weghorst, 1980). Giles-Sims and Finkelhor (1984) analyzed the data from the National Incidence Study of Child Abuse and Neglect and found that 24% of the cases involved step-parents. Focusing specifically on child homicide, Daly and Wilson (1988a; 1988b; 1987) have examined multiple

sources of data on child abuse and child homicide in the United States and Canada and concluded that stepchildren are consistently overrepresented both as victims of child maltreatment and as victims of child homicide. As noted in the last chapter, the authors have explained this imbalance through a Darwinian evolutionary perspective: "parental investment is a precious resource, and selection must favor those parental psyches that do not squander it on nonrelatives" (1988, p. 83). A recent Canadian study (Harris, Hilton, Rice, & Eke, 2007) utilizing a sample of 378 cases in a national register, found that homicides of children by stepparents were disproportionately common. Moreover, group comparisons revealed that stepparents were much more likely to cause death to a child by beating than genetic parents.

Other researchers have questioned the conclusion that stepparents are a source of greater danger to children. For example, Gelles and Harrop (1991) using data from the Second National Family Violence Survey (n = 6,002 households), found that non-genetically related caretakers were no more likely than biological parents to use mild, severe or very severe violence toward their children. Swedish studies using data over a period of 35 years in Sweden similarly concluded that there was no predominant overrepresentation of stepchildren as victims (Temrin, Buchmayer, & Enquist, 2000; Temrin, Nordlund, & Sterner, 2004). The SHR data reveal a distinct "spike" in stepparent perpetrated homicides for victims aged one through five years compared to infants or older children. Another interesting observation from the SHR data is the overwhelming proportion of stepfathers among the assailants (90.8%) who were stepparents, compared to stepmothers (9.2%).

2.3.5 Offender's Gender

It is widely recognized that homicide is primarily a male activity (Alvarez & Bachman, 2003; Daly & Wilson, 1988b). Child homicide, however, to an extent stands in contrast to this pattern. Research shows that homicide of children younger than one year of age is predominantly perpetrated by females (Jason, 1983; Kunz & Bahr, 1996; Sorenson & Peterson, 1994). Most often the assailant is the child's mother. However, a recent study of child abduction homicides (Boudreaux et al., 1999) reported that neonates were more likely to be abducted and victimized by female strangers. The primary motivation of this group of offenders was maternal desire - a desire to obtain a baby for themselves.

The SHR data reveal that a child's risk of homicide by their mother decreases with victim's age (Figure 2.4[15]). Crittenden and Craig's study (1990) found that mothers perpetrated 86% of neonatal deaths, 39% of infant deaths, 22% of toddler deaths, 23% of preschooler's deaths and 8% of school age children deaths. Subsequently, some researchers focusing on victimization of young children (particularly neonates and infants) have found that mothers commit filicide more often than fathers (Bourget & Bradford, 1990; Copeland, 1985; Jason, Carpenter, & Tyler, 1983; Kaplun & Reich, 1976; Resnick, 1969).

There is a marked difference in the profile of mothers who murder newborns versus those who victimize older children. Women who commit neonaticide are typically younger (in Oberman's, 2004, sample of women who have committed neonaticide the modal age was 17), oftentimes unmarried and not in an ongoing

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[15] Percentage calculation is based on cases where the gender of the perpetrators is known.

relationship with the father of their child. They often go through pregnancy concealing their condition, sometimes being in a state of denial even to themselves. Consequently, they often suffer from a lack of prenatal care, and do not make any plans for the care of the child once it is born (Meyer & Oberman, 2001; Oberman, 2004; Resnick, 1969; Schwartz & Isser, 2000; Wilczynski, 1997). Women who commit filicide of older children tend to be older, and often married. However, they report suffering from social isolation, high levels of stress and a lack of support and resources at the time of committing the crime. This group of women is also predominantly characterized by various forms of mental disorders and depression (Lewis & Bunce, 2003; McKee & Shea, 1998).

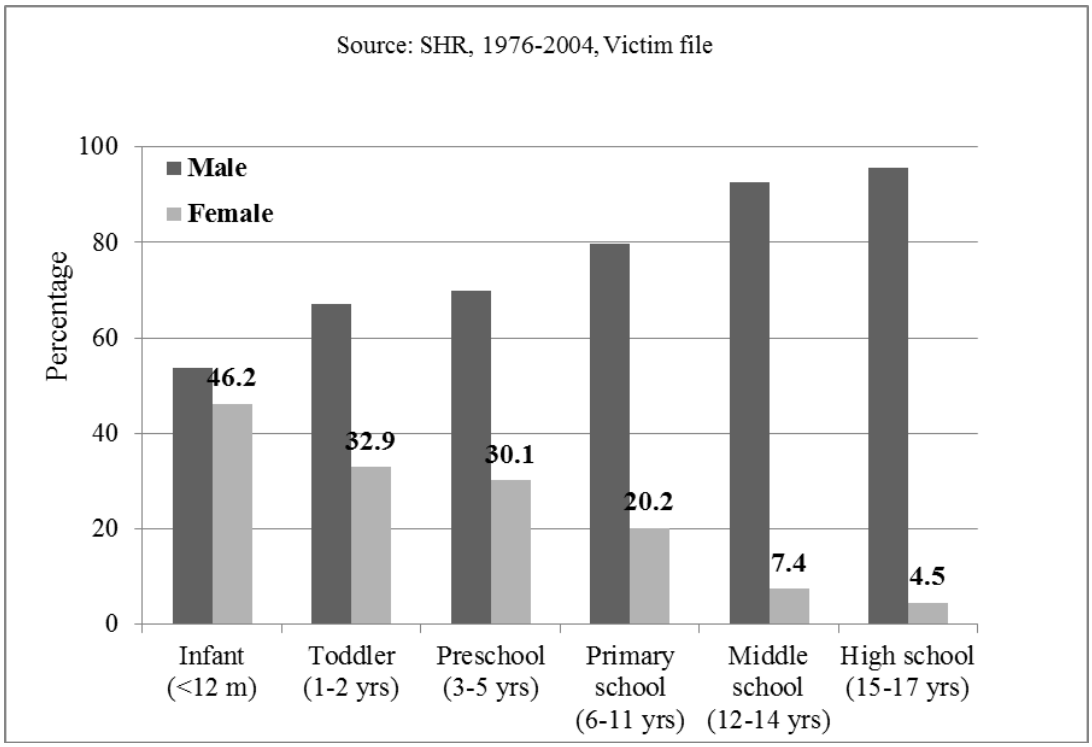

Figure 2.4: Gender of Child Homicide Perpetrators by Victim Age Category

Despite evidence that men commit filicide as often or even more often than women, research on paternal filicide[16] is not as abundant as studies of maternal filicide. Moreover, existing research on filicidal fathers is predominantly characterized by small samples,[17] limiting the generalizability of results. Some of the common findings include a high probability that the father will attempt or complete a suicide after they have killed their children (the likelihood of suicide has been found to increase if there were multiple victims); that the homicide is a culmination of a trend of child-abuse; finally, mental illness characterizes a sizable portion of paternal filicide offenders.

2.3.6 Methods of Homicide

Studies indicate that the methods used to kill children increase in their violence as the degree of intimacy decreases (Smithey, 1998). Thus, neonates are typically killed by neglect or accident (Marks & Kumar, 1993; Resnick, 1970). Female offenders, especially mothers have been reported to rarely use weapons, but rely on other means such as drowning, suffocation, and use of so-called personal weapons (hands, feet) (Cheung, 1986; Jason, 1983; Marks & Kumar, 1993). However, women suffering from severe forms of psychotic disorders have been found to use very violent means (Lewis, Baranoski, Buchanan, & Benedek, 1998).

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[16] Bourget & Gagne, 2005; Campion, James, & Covan, 1988; Cavanagh, Dobash, & Dobash, 2007; Friedman, Horwitz, & Resnick, 2005; Kaye, Borenstein & Donelly, 1990; Marleau, Pouline, Webanck, Roy, & Laporte, 1999; Palermo, 2002; Resnick, 1969; Sommander & Rammer, 1991; Wilson, Daly, & Daniele, 1995.

[17] Campion et al., 1988 (n=12); Friedman et al., 2005 (n=20); Lucas et al., 2002 (n=32); Marleau et al., 1999 (n=10); Palermo, 2002 (n=5).

Table 2.3: Methods of Homicide by Victim Age Category

Victim Age Category	Firearm	Knife	Blunt object	Personal weapon	Drowning	Asphyx./ Strangulation	Total number of victims in age category
Infant	4.0%	3.0%	5.2%	50.0%	3.6%	10.6%	6,734
Toddler	9.4%	3.1%	7.5%	53.7%	2.1%	5.2%	7,037
Pre-school	21.8%	8.3%	6.7%	31.2%	2.8%	6.7%	4,318
Primary School	41.3%	13.0%	5.8%	10.6%	1.7%	8.1%	4,545
Middle School	66.2%	12.6%	4.4%	4.5%	.4%	3.8%	5,560
High School	77.0%	12.3%	2.4%	2.4%	.1%	1.8%	24,779
Total % across all age groups	50.0%	9.6%	4.3%	18.5%	1.2%	4.5%	52,973

Source: Federal Bureau of Investigation Supplemental Homicide Report (SHR) statistics for the years 1976 to 2004 [Victim File]

Note: Cases where the method of homicide was unknown were omitted from the table but were included in the calculation of the percentage distributions

Male offenders display an inclination to use knives, guns and blunt objects to inflict lethal violence (Marks & Kumar, 1993). In a multivariate analysis using SHR data for years1976-1999 Moscowitz and colleagues (2005) reported that victims killed by strangers were more likely to be killed with a handgun. Data drawn from SHR reveals a clear pattern of younger children (infants and toddlers) being killed by a "personal weapon" (e.g. banging, hitting, throwing, etc.) whereas in older children, the risk of victimization by a firearm gets more pronounced (Table 2.3).

2.3.7 Offender Motives

Many of the attempts to develop comprehensive classifications of child homicide have relied on offenders' motives as an organizing principle. However, the majority of these attempts concerned familial, more specifically parental homicide. Thus Resnick (1969; 1970), in an important contribution to organizing the field, proposed a classification of neonaticide comprised of the following six categories: (1) altruistic – a homicide committed out of love, a sizable portion of these acts are committed to shelter the child from genuine or imagined suffering; (2) acutely psychotic – a category of cases where no adequate motive could be established; (3) unwanted child; (4) accidental – cases of fatal child abuse where there was no clear intent to kill; (5) spouse revenge – acts clearly motivated to inflict pain on the spouse.

Other classifications of filicide have attempted to rely on the origin of the intent to kill as a more objective measure. Nevertheless, these classifications retained a few of Resnick's categories. For example D'Orban (1979) in a study of female filicide distinguished between battering mothers (a sudden impulsive act to hurt the victim); mentally ill mothers; neonaticides; retaliating women; unwanted children; mercy killings.

Recent efforts at classifying filicide by motive sought to develop a typology that would transgress gender boundaries (Bourget & Gagne, 2002; Bourget & Bradford, 1990). Thus, a British study by Wilczynski (1995) classified 48 cases obtained from the Director of Public Prosecution in London into 11 categories. The majority of the cases fell into the following categories: retaliating killings (where the anger towards another person is displaced onto a child); jealousy of or rejection by the victim; unwanted child; discipline; altruistic filicide (where the killing is perceived by the offender to be in the child's best interest); psychotic parents. Whereas unwanted child, altruistic filicide, and psychotic parent motivations were disproportionately characteristic of female offenders, male offenders fell predominantly into the discipline and retaliating killings category. Other studies have been concordant with Wilczynski's distribution (Ewing, 1997; Lyman et al., 2003; Wilson, Daly, & Daniele, 1995). A recent Canadian study (Harris et al., 2007) found that biological fathers (and stepparents) most often killed out of anger or vengeance, with anger being most often directed towards the child's mothers as opposed to the victim (this was more true for fathers than for stepparents).

Motivational dynamics of child homicides perpetrated by extra-familial offenders are explored in the literature to a much lesser extent. Alder and Polk (2001) examined 90 cases of homicide of individuals under the age of 18 from files of the Office of the Coroner for the State of Victoria (Australia) and made a number of observations regarding the motives of extra-familial assailants. As stated earlier, victimizations outside the family occur primarily to school-aged children (especially middle school and high school). Alder and Polk (2001, p. 90) maintain that victimization of boys occurs in context of so-called honor contests – a type of

confrontational violence, which stems from a group dynamic of interactions among a number of males, and where honor or reputation of one of the participants becomes questioned. A related scenario resulting in fatal violence is conflict resolution, where participants (once again, typically male) are unable to come to a peaceful way of settling their differences (p. 97). This, of course, is a common contextual circumstance for homicides involving young men in general.

Lethal victimization of older girls is primarily associated with violence resulting from sexual exploitation. School-aged girls experience more independence and a lapse in vigilant guardianship to a certain degree. This increases their vulnerability to sexually motivated violence from non-familial perpetrators. Older (teenage) girls are also at risk of being victims to fatal intimate partner violence precipitated by possessive rage or jealousy of their romantic partners (Boudreaux & Lord, 2005).

2.4 Additional Risk Factors

In concordance with the recent orientation towards risk assessment in the child maltreatment literature, this section outlines a number of risk factors that are commonly identified in the child homicide studies. Some issues discussed below represent more of a cluster of risk factors rather than a singular concern. Highlighting these issues is important since they have been known to have both mitigating or aggravating effects on the adjudication of child homicide cases (Coughlin, 1994; Kelly, 2002; Unnithan, 1994b; Wilczynski, 1997).

Some of the demographic victim- and offender-related aspects have been described earlier in the chapter (e.g. victim-offender relationship; victim's age and gender, etc.). The discussion below is not an exhaustive list of risk factors identified in

the literature, but rather a synthesis of indicators that most often surface in empirical research on child homicide. Moreover, the majority of the risk factors outlined have been identified in the studies focusing primarily on filicide.

Offender age: The age of the perpetrator has been addressed in several studies of child homicide (Wilczynski, 1997). Female neonaticide offenders tend to be quite young. In Wilczynski's (1997) study of 65 cases of filicide, offenders ranged from 14 to 48 years old, with the average age being 26.8. One third of the sample was aged 21 years or younger. Male offenders predominated in the 22-34 years old age group. The average age of men was 25.9 years old, whereas the average age of women was 27.4. The women were more evenly distributed across the age spectrum.

Education and employment status: Wilczynski (1997, p. 80) has found a low level of education among the overwhelming majority of her English sample (82%). Moreover, there was a slight gender difference in regards to level of education with women being somewhat better educated than men.

Relationship status and relationship problems: Conflicts in a relationship have been cited as often accompanying child homicide. Thus, in Harris and colleagues' study, high levels of marital discord characterized filicides by genetic fathers (2007, p. 92). Several studies have found a higher rate of lone parenthood among female offenders (e.g. Daly & Wilson, 1988b, p. 63). However, Wilczynski (1997) found that the majority of filicide offenders were living with a partner or married (1997, p. 77), but the level of supportiveness of these partners was oftentimes poor (p. 78). A third of the sample of offenders had either perpetrated or been victims of domestic violence (p. 95).

Stress: The youthfulness of offenders of filicide is inextricably related to the inherent stress of being parents; these offenders typically were found to become parents at a rather young age (Wilczynski, 1997, p. 79; Holmes & Holmes, 1994, p. 47). The stress that comes with parenthood is undoubtedly compounded for parents who are young and may be emotionally less able to adjust to the increased demands on their time. The lack of parenting preparedness was found to be more prevalent among male filicide offenders compared to their female counterparts, however (Wilczynski, 1997, p. 79). Additionally, in some cases a current pregnancy or the number of children already in the care of the prospective perpetrator have been shown to be associated with subsequent child homicide (D'Orban, 1979, p. 563).

Financial and housing problems: A number of studies have drawn attention to financial problems plaguing the lives of perpetrators of child homicide (De Silva & Oates, 1993, p. 300), especially creating pressures for male offenders (Wilczynski, 1997, p. 78). One fifth of cases of child homicide in a recent Canadian study (Harris et al., 2007, n=378) were characterized by poverty or other low economic resources. Problems with housing have also been identified as a risk factor in several studies of child homicide (Anderson et al., 1983, p. 83). In Wilczynski's study two thirds of the sample experienced problems with housing accommodations (1997, p. 78).

Child-care responsibilities: In Wilczynski's study (1997) the overwhelming majority of offenders who had killed a child over one day old were living with the victim at the time of offense. This, in part, accounts for the higher proportion of female offenders in her sample. Another risk factor mentioned in the context of child caring is the child's poor health or the overall difficulty of caring for the child (De Silva & Oates, 1993). A child's incessant crying, disruptive behavior, or constant

demands prompted by his/her poor health have in some cases served as precipitating events for the killing (Harris et al., 2007, p. 92).

Prior abuse: History of prior abuse towards the victim is traditionally considered to be one of the strongest predictors of subsequent homicide victimization. However, as noted earlier (section 1.1.3), there exists a disagreement regarding the validity of the continuum of violence model, and some scholars have argued in favor of treating physical abuse and lethal assaults as distinct categories of offenses (Gelles, 1991). Among the problems plaguing this area of research is the nebulous character of child abuse definitions (for example, at what point efforts to discipline cross the threshold of abuse) and a subsequent difficulty establishing a history of prior abuse with great certainty. Wilczynski's (1997) found that over half of the cases were characterized by a history of prior abuse, however the definition of abuse used in the study was broader than those used in previous research and included "moderate and reasonable" corporal punishment (1997, p. 95) as well as threats to kill the child. Interestingly, there was a marked gender difference in prior abuse of the victim, with two thirds of the male offenders being implicated in prior violence against the child, but only a third of female assailants (p. 96).

Criminal record: The prevalence of a prior criminal record among child homicide offenders is not well-researched in the literature. Wilczynski (1997) found that neonaticide offenders were somewhat less likely to have a prior criminal record. She also observed a clear gender difference in criminal history of offenders; males were significantly more likely to have criminal convictions than females (Wilczynski, 1997, p. 80).

Offender's mental state: Psychiatric characteristics of the offender have been almost uniformly considered by studies on child homicide. However, the findings on the matter have not been conclusive. While the majority of studies agree that it is common for child homicide assailants to be suffering from some sort of mental disorder (Cheung, 1986; Crimmins, Langley, Brownstein, & Spunt, 1997), their prevalence, the distribution of specific psychiatric diagnoses, and their relative contribution to the offense have been debated (Stanton & Simpson, 2002). As with the other equivocal findings, one potential reason for inconsistent findings in this area is the varying sources of sample populations used in the studies. Some scholars have relied on medical examiner's files to gather information on offender profile (e.g. Friedman et al., 2005; Lyman et al., 2003) thus tapping into characteristics of the general population of offenders. Other studies have studied offenders found in psychiatric facilities, expectedly finding a high prevalence of psychotic and other mental disorders (e.g. Stanton, Simpson, & Wouldes, 2000), and still others have relied on correctional populations, and consequently cited lower rates of mental illness (Crimmins et al., 1997).

A diagnosis of mental illness has figured prominently in filicide studies. For example, a sizable portion of maternal filicide offenders have been identified as suffering from some mental disorder (27% in D'Orban's 1979 study; 40% in Cheung's 1986 study). Mental illness has been found to be more prevalent among older female filicide offenders (Marks, 1996; D'Orban, 1979). The most common disorders in Wilczynski's sample were psychosis and depressive disorder (1997, p. 83).

Substance abuse: Finally, alcohol and illegal drug use either immediately preceding the offense or as a long-term trend have been cited in several studies of

child homicide as a risk factor (Crimmins et al., 1997, Wilczynski, 1997, p. 84). For example, a sizable proportion (25%) of homicides committed by genetic parents and stepparents in the Harris et al. study (2007) were characterized by substance abuse or intoxication.

2.5 Summary

There is a general consensus that official statistics do not fully capture the prevalence of child homicide. Investigating child homicide and confirming that victim's death resulted from a violent act as opposed to an illness or an accident is difficult even with the current advanced state of medical science. Social workers and law enforcement officials are oftentimes reluctant to pursue child deaths as murder given the shaky state of evidentiary base. These difficulties may manifest themselves during the adjudication stage if prosecution is pursued: from affecting what crime the perpetrator will be charged with to leaving the judge or jury with more uncertainty while deciding the perpetrator's guilt.

Examination of national level data on the incidence of child homicide revealed a number of important patterns. First, there is a clear curvilinear pattern in fatal child victimization depending on the victim's age. Infants are more likely to be victimized than any other age group except high school–aged children. Second, African-American children have higher victimization rates than White children across all age groups.

Finally, there is clear association between the victim's age and the identity of the perpetrator. Younger children are much more likely to be victimized by family members, whereas teenagers are more likely to die at the hands of acquaintances. Mothers and fathers are equally likely to kill their children. Proportion of female

perpetrated child homicides decreases with victim's age. This overrepresentation of women among child homicide offenders, which is an exception to the general trend of limited female involvement in violent crime, uniquely shapes the adjudication process. Our dominant understanding of women as nurturing and parent-child relationship as a sacred bond is challenged in the courtroom when the perpetrator was a mother to her victim.

Chapter 3

LEGAL PROCESSING OF CHILD HOMICIDE CASES

This chapter examines the existing literature on the adjudication of child homicide cases. The discussion opens with an overview of various difficulties encountered by the prosecutors, as well as judges and juries while dealing with this category of offenses. These difficulties concern but are not limited to dealing with crimes committed by multiple offenders, determining the appropriate charge for the offender who has allegedly murdered a child, and proving the elements of the crime.

Next, a special category of legislative acts adopted in some states is discussed. These acts often referred to as "child homicide statutes" ease the burden of prosecutors to prove the necessary elements of the crime in certain child homicide cases. Advantages and limitations of this legislation are highlighted.

Third, the chapter discusses the extent of inconsistencies and bias present in the process of adjudication and sentencing of child homicide cases. Several potential reasons that account for the disparities in legal treatment of this category of cases are illuminated. Finally, drawing on selected studies of adjudication of child homicide cases and more general sentencing literature, the research question and hypotheses guiding the present study are presented.

3.1 Difficulties Associated with Prosecuting Child Homicide Cases

Homicides against children are among some of the most difficult to prosecute (U.S. Advisory Board on Child Abuse and Neglect, 1995). Prosecutors often have little experience dealing with child homicide cases, which makes it hard to navigate

the terrain already imbued with considerable legal difficulties of proof. As noted earlier, conflicting medical evidence may impede the prosecutors from definitively establishing the *corpus delicti* of a crime – that the crime took place, and that the perpetrator has committed the murder. If conclusive proof regarding the cause of death is absent, the criminal act cannot be proven (Phipps, 1999). On a related note, in cases of neonaticide prosecutors might have difficulty proving that the child was born alive (Barton, 1998). Pathologists on occasion struggle with establishing whether the baby had a separate existence – showed signs of life after complete extrusion from the mother's body (Wilczynski, 1994). *Corpus delicti* issues also arise when the body of the victim is never recovered. Presently, prosecution is not automatically precluded by the absence of a body as the occurrence of death can be inferred from circumstantial evidence and/ or confession.[18]

3.1.1 Multiple Defendants

Prosecutors are confronted with additional difficulties when a case involves multiple defendants. While, as discussed previously, child homicide most often occurs in the privacy of a home with no witnesses to the act, sometimes more than one person may have caused harm to the child. If two or more care givers have been involved with a child at separate times, it may be impossible to distinguish which care giver caused the fatal injury. When one of these individuals is charged with homicide, it would be reasonable in defense to allege that it was the other who caused the fatal injury. It may be impossible for a pathologist to refute this allegation. Another scenario involves a perpetrator who has hurt the child and a person who has failed to

[18] See, for example, Jones v. State, 701 N.E.2d 863 (Ind. 1998)

prevent the harm or did not seek medical treatment for the hurt child. In these scenarios prosecutors need to figure out the relative culpability of the parties involved in the case. With no witnesses, shaky forensic evidence as to the cause and time of death, and unwillingness of the parties to clarify the situation, this task is increasingly difficult (Griffin, 2004).

Current United States criminal law provides two avenues for dealing with these types of cases. Prosecutors may take advantage of the accomplice liability doctrine and charge multiple defendants with intentional or reckless homicide without necessarily differentiating between who the active and passive abusers were.[19] However, it is essential that the case provides sufficient evidence that both parties "either intended the fatal result, or because they were both present, were aware of the injury and of the risk of death and assisted in bringing it about" (Griffin, 2004, p. 18). Some states rely on the so-called "accountability statutes" to bring both parties to justice. These statutes allow prosecutors to designate the passive party as a criminally liable accomplice to the active abuser's actions if the failure to prevent child abuse is

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[19] Eugene and Mary Wong were accused of violently shaking a 3-month-old infant in their custody. Both parties supplied incomplete and contradictory statements about the circumstances of the death. According to the medical evidence, both parties were at home at the time when the violent shaking occurred. The defense argued for a dismissal of the charges since prosecution was unable to prove who was the active and who was the passive abuser. This motion was denied and both defendants were found guilty of first and second degree manslaughter, and endangering the welfare of a child. Their conviction was reversed in subsequent appeals. The New York Court of Appeals opined that there was insufficient evidence to establish who was the active and who was the passive abuser, and it was impossible to prove the guilt of the passive defendant (People v. Wong, 588 N.Y.S.2d 199 (N.Y. App. Div. 1992).

proven[20] (Liang & Macfarlane, 1999). These statutes should be distinguished from various protection and prevention statutes. The latter rely on a common law parental duty to protect the child from abuse and hold an individual criminally liable not for the actions of the active abuser but for his or her own behavior.

3.1.2 Determining the Charge

Considerable difficulties are also associated with the charging decision made by prosecutors. A person prosecuted for the killing of a child may be charged with a number of offenses – from murder charges to child abuse. American criminal law is systematized in 52 criminal codes. Due to substantial variation in the structure and language of different states' homicide statutes, after a brief description of the general charges in cases of child homicide, the subsequent discussion is going to be organized around several common law doctrines.

In many jurisdictions a person who has killed a child, and a specific intent to kill along with premeditation and deliberation can be demonstrated, can be charged with first-degree murder, the most grave of homicide offenses. Some jurisdictions specify a lesser offense of second degree murder when the element of premeditation is missing yet the act clearly demonstrates the obvious disregard or concern for human life.

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[20] Donna Raye Harless and her husband Tony Davis were prosecuted together under an accountability theory for fatally abusing Donna's 2-year-old son. Although Davis was found to be the primary abuser, Harless was convicted of injury to a minor child and manslaughter in the second degree because she failed to provide adequate medical care to her son after she found out the injuries (Harless v. State, 759 P.2d 225 (Okl. CR 1988).

An even lower degree of culpability characterizes a charge of manslaughter. The charge of voluntary manslaughter is rarely presented in child homicide cases because while the intent to cause death or serious bodily harm is present, it is mitigated by the state of mind of the actor or the circumstances of the offense (e.g. self-defense, heat of passion, provocation, diminished responsibility). The courts are unwavering in their conviction that "a child's behavior cannot provoke a fatal response from a reasonable person" (Phipps, 1999, p. 11), nor is it easy to imagine situations where the heat of the moment or unreasonable self-defense might lead to the killing of the child. The conviction of voluntary manslaughter is more probable in infanticide cases, where claims of diminished responsibility due to various post-partum disorders can be successful (Dvorak, 1998).

The verdict of involuntary manslaughter is more prevalent in child homicide cases. Literature demonstrates that while a defendant may be charged with first or second degree murder, a defendant is often convicted of a lesser charge (Dvorak, 1998; Oberman, 2004). Involuntary manslaughter generally requires only proof of criminal negligence or recklessness. Thus, there is no intent to kill or hurt the victim, rather the actor knowingly engaged in conduct that carries a "high degree of risk of death or serious bodily injury" for others, and willfully disregarded that risk.

3.1.3 Proving the Elements of the Crime

A number of problems are associated with successfully proving the elements of premeditation, deliberation, and intent in a particular child homicide case. The courts use several standards to define the mental element of murder. In some jurisdictions an act has to be committed with malice aforethought. Malice can be expressed when the perpetrator "manifested a deliberate intention unlawfully to take away the life of a

fellow creature."[21] An implied malice has a physical component (committing an act that results in dangerous to life consequences) and a mental component (the act is committed knowingly, with a conscious disregard for life).

Arcelia Chavez inflicted numerous injuries on her young niece, which proved to be fatal. Chavez was convicted of second degree murder, but she appealed arguing that there was insufficient evidence of express or implied malice. She argued that she was "out of herself" when she inflicted the injuries on her niece, thus arguing that the evidence could have only supported a finding of voluntary manslaughter grounded in heat of passion.[22] The Court of Appeals of California disagreed, finding substantial evidence of implied malice. Inflicting more than 30 separate injuries on the child as well as neglecting to seek medical attention afterwards, the court contended, attested to the physical element of implied malice. As for the mental element, Chavez acknowledged to the police that she continued her attack despite knowing that she had been hitting the victim very hard. She also attempted to resuscitate the child after feeling for a heartbeat, thus acknowledging that the victim may have been in need of medical attention. Both of these factors were interpreted by the court as sufficient evidence that the defendant was aware that her actions endangered the life of the child.

Another standard used by the courts to assess the mental state of the defendant deals with manifestation of extreme indifference to human life (Phipps, 1999). This is defined as a culpable mental state that "requires a defendant's conduct to be so wanton, morally deficient and devoid of regard for the life or lives of others as to

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[21] Cal. Penal Code §187 (a).

[22] People v. Chavez, 2003, Cal. App. Unpub. Lexis 11947.

equate in blameworthiness with those killers who intentionally cause death."[23] Tyshawn Ford was convicted by a jury of murder in the second degree after inflicting injury on an 18-month old child. On appeal he argued that the evidence did not support his conviction. The Supreme Court of New York stated that since the defendant, being responsible for a "helpless toddler," punched the child several times in the stomach "out of frustration from the child's natural act of crying," and did not seek medical help when the child became sick, "the jury could rationally conclude that this brutal assault on a vulnerable … child and the callousness and indifference surrounding defendant's action" constituted legally sufficient evidence to convict the defendant of depraved indifference murder.

Rarely will a person implicated in the killing of a child present prosecution with a full confession. Absent a confession, establishing an adequate level of criminal intent as evidenced above may be only done through inference. An Illinois Appellate court stated: "Not only can circumstantial evidence be used to prove knowledge, but absent evidence of an admission by a defendant, it is the only way to prove knowledge" (in Phipps, 1999, p. 17). Several factors are of use to the courts in inferring a defendant's intent in child homicide cases. First, as demonstrated by the two cases discussed above, partial or complete admission of the alleged conduct may be drawn upon to determine intent (e.g. Chavez confessed to the police that she knew that she was hitting her niece very hard yet continued the attack). A second inference can be made with the failure to seek out medical attention for the victim without delay or providing a fictitious story to the medical personnel about how the injuries were

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[23] People v. Tyshawn Ford, NY Slip Op 6380; 43 A.D.3d 571; 840 N.Y.S.2d 668; (N.Y. App. Div. 2007).

sustained by the victim (Phipps, 1999, p. 18) also attests to the defendant's mental state. Third, the serious nature of a child's injuries may serve as an indication that the defendant was aware of or should have been aware of the great bodily harm she/he was inflicting on the victim. It is not uncommon for the courts to uphold first degree murder convictions in cases where a child was subject to severe physical abuse that resulted in the child's death.[24] The horrifying visible injuries inflicted upon the victim have been interpreted in these cases as evidence of deliberation, premeditation and willfulness of the behavior on the part of the defendants. For example, in State v. Donald S. Wright (2002) the court stated that the jury had enough evidence to conclude the defendant's specific intent to kill or inflict great bodily harm immediately before the victim sustained fatal blows.[25] The defendant's statements about repeated hand blows the child sustained on the buttocks and legs, and use of a gun strap and a wooden board convinced the jury that he had actively intended to kill the victim or to inflict great bodily harm.

Even in cases where external signs of physical abuse are not pronounced, courts have occasionally upheld a first degree murder conviction. While cerebral hematoma might not be as easily understandable or striking in its impact for the juries and judges as a wound inflicted with a knife or suffocation, in many instances the prosecution has been successful in conveying the gravity of the trauma absent external injuries. This is especially relevant for Shaken Baby Syndrome (SBS) cases. This

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[24] People v. Oaks, 1996; State v. Rowell, 1994; Commonwealth v. Avellar, 1993; People v. Mincey, 1992; State v. Elliot, 1996 and a number of other cases cited in Phipps (1999, Footnote 71).

[25] State v. Wright, 834 So 2d 974; (La. 2002).

category of cases is especially difficult for the prosecution due to heavy reliance on medical experts for meaningful conclusions (Gena, 2007; Phipps, 1999). SBS is manifested in a triad of symptoms: brain hemorrhaging, retinal hemorrhaging and brain swelling. When a young child is being shaken (while held either by the shoulders or by the ribcage) the weak neck muscles cannot support the head properly and it moves back and forth in a violent whiplash fashion. This produces a trauma to the brain accompanied by a decrease of oxygen supply to the brain cells, which causes the brain to swell and increase the pressure within the skull. However, Gena (2007) contends that the agreement within the medical community regarding SBS and its causes is overestimated. It is possible that the abovementioned triad of symptoms be caused by factors other than a violent attack. Consequently, SBS cases oftentimes turn into "battles of experts" (Gena, 2007, p. 704).

Phipps points out that some courts are reluctant to find a premeditated intent to kill even in relatively heinous cases where serious physical injuries to the victim are blatantly visible, and often result in jury convictions to a lesser offense (Phipps, 1999, p. 9). For example, in Midgett v. State (1987) the defendant's first-degree murder conviction was reduced on appeal by the Supreme Court of Arkansas to second degree murder.[26] Despite severe fatal blows to an 8-year-old son, the Court came to a conclusion that blows with the hands cannot be compared to attacks with other "deadly weapons," which might be a better fit for finding intent to kill. The Court presupposed that the defendant wanted to keep his son around for further abuse. Striving to maintain a clear distinction between the first- and second-degree murder,

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[26] Midgett v. State, 729 S.W. 2d 41.0 (Ark. 1987).

the Court essentially found that absent a clear articulation of premeditation and deliberation, individuals cannot be convicted of first degree murder. Finally, evidence of prior injuries often serves to prove that the defendant "had the requisite mental state for the crime charged" (Phipps, 1999, p. 18).

3.2 Special Child Homicide Statutes

Due to some of the abovementioned impediments to the prosecution of child homicides, many states have adopted special legislative acts commonly referred to as "child homicide statutes." These statutes negate the requirement of proving the presence of a specific mental state in order to obtain a murder conviction in fatal child abuse cases. It is important to distinguish child homicide statutes from statutes that simply increase penalties for child abuse or felony battery that proves to be fatal. While certainly valuable for protecting children's welfare, these latter statutes do not produce a murder conviction for the perpetrator. Other categories that are similar to child homicide statutes yet need to be distinguished from them are the provisions dealing with aggravated murder. Thus, the penalty for an offense might be "upgraded" if a child is killed in the course of being kidnapped, a sexual offense, or any other offense against a child.

Child homicide statutes can be divided into two general categories. The first category includes statutes that specify a child abuse offense as an underlying felony.[27] These felony murder statutes are rather uniform in their provisions across jurisdictions

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[27] Arizona, Florida, Idaho, Indiana, Kansas, Louisiana, Mississippi, North Dakota, Oregon, Rhone Island, Tennessee, Utah – these states have variations of felony murder child homicide statutes.

- the killing of a child in the course of committing felony child abuse upon the child. Several states explicitly specify that only the mental state associated with the underlying felony needs to be proven. Thus Louisiana's Criminal Code states that "Second degree murder is the killing of a human being: (1) When the offender has a specific intent to kill or to inflict great bodily harm; or… 2(b) When the offender is engaged in the perpetration of cruelty to juveniles, even though he has no intent to kill or to inflict great bodily harm."[28]

The second category of child homicide statutes does more than simply expand an existing definition of murder. Instead it creates a completely separate offense, unrelated to other homicide offenses – that of homicide by abuse.[29] In addition to the fact that homicide must occur while the actor is engaged in child abuse or neglect, these laws require that the circumstances of the offense manifest a wanton indifference to the value of human life. Finally the victim of the abuse has to be under a certain age. The age limit is set quite low in some states: 8 in California, 11 in New York and South Carolina, and 12 in Idaho and Kansas. However, the majority of the states include age groups as old as 16-18- years old.

The mental state specified by murder by abuse statutes consist of either a manifestation of "extreme indifference to human life," acting "knowingly," or negligence or recklessness in committing the act. For example, Delaware Criminal Code states that if a person "recklessly causes the death of a child and has engaged in

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[28] La Rev. Stat. Ann. 14:30.1 (a)(2)(b).

[29] Alaska, California, Delaware, Iowa, Louisiana, Minnesota, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, Utah, Washington, West Virginia – states that have variations of homicide by abuse statutes.

an act or previous pattern of abuse and/or neglect of such child" he or she is guilty of first-degree murder by abuse or neglect.[30] The same act committed with criminal negligence will result in a conviction of second degree murder by abuse or neglect.

Several states specify an additional requirement of a connection between the victim and the perpetrator. Thus, West Virginia specifies a particular offense – death of a child by abuse,[31] where the abuse perpetrator is a parent, a guardian or a custodian of the victim. California's statute, on the other hand, specifies that any person who has the care or custody of a child and assaults said child "by means of force that to a reasonable person would be likely to produce great bodily injury, resulting in the child's death."[32] The element of custody serves as an aggravating factor in the assault committed. For example, Christopher Nichols appealed his conviction of one count of second degree murder claiming that his sentence of 25 years to life for violently shaking to death his 4-month-old daughter was greater than required for the second degree murder, despite the fact that the latter requires malice.[33] The Court of Appeals of California disagreed with the appellant's logic: "he ignores a very serious element… custody of the child upon whom the assault is committed. This element makes a death … more serious than commission of involuntary manslaughter, and also makes comparison to second degree murder inadequate" (People v. Nichols, 2002, p. 16).

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[30] Del. Code Ann. tit. 11 § 634.

[31] W.Va Code § 61-SD-2a.

[32] Cal. Penal Code § 273ab.

[33] People v. Nichols, (2002) Cal. App. Unpub. Lexis 4523.

Child homicide statutes carry tremendous importance in that they take away the traditional mental state requirements such as malice aforethought, premeditation, and intent to kill, which are so difficult to prove in child homicide cases beyond a reasonable doubt. Instead, these laws substitute these provisions with proof of recklessness or negligence, extreme indifference to the value of human life, or specify the intent connected to the underlying felony as sufficient. These statutes serve as another barrier of protection for children who are victims of homicide. The U.S. Advisory Board on Child Abuse and Neglect has recommended that more states should enact felony murder or homicide by child abuse statutes (U.S. ABCAN, 1995, p. 70). The states that have these statutes in place have "experienced increased convictions when prosecuting perpetrators" (p. 66). For example, Oregon, where a murder by abuse statute was enacted in 1989, has significantly increased its rate of criminal prosecution of fatal child abuse cases (U.S. ABCAN 1995, p. 66).

The benefits of these child homicide statutes do not automatically ward off criticisms of this type of legislation. For example, these statutes are not able to effectively deal with some of the hindrances to prosecuting child homicide cases such as easing the prosecutor's burden in proving *corpus delicti* of a crime. Furthermore, critics have pointed out that since the crime of murder is considered to be the most serious of all offenses, the specific elements and rigorous standards of proof are not capriciously put in place. This logic does not differentiate child homicide from adult homicide. As such, crucial decisions about the intent of the actor should remain in the fact-finders' domain, and should not be legislated (Phipps, 1999, p.23). On the other hand, application of a reverse logic would allow a conclusion that children are regarded as "less than full persons" since they are afforded protection different from

the protection granted adults. This line of argument rallies for improvements in the process of detection and investigation of child homicide instead of "cutting corners" in the court room.

Supporters of child homicide statutes argue that it is not uncommon for children to be afforded special protection by the criminal law in several areas (e.g. child abuse reporting laws; privacy protection for child victims laws; laws mandating criminal history background checks for employees of child care facilities). In this light, extending special protections to a particular category of children, e.g. those who are victims of fatal abuse or neglect, is not out of the ordinary, particularly since several aspects of child homicides are different from adult homicides. These unique characteristics call for a legislative recognition of the distinctive manner by which harm is imposed upon children.

3.3 Factors Related to the Inconsistencies in Sentencing Child Homicides

3.3.1 Research Alleging Inconsistent Treatment of Child Homicide Cases

One of the primary purposes of child homicide statutes was to increase the consistency of sentences in child homicide cases. One of the most prominent themes in the child homicide research deals with the staggering discrepancy in how child-killers are treated by the criminal justice system across and within state boundaries (Barton, 1998; Bookwalter, 1998; Collins, 2007; Fazio & Comito, 1999; Finkel, Burke, & Chavez, 2000; Gena, 2007; Gordan, 1998; Kohm, 2002; Meyer & Oberman, 2001; Oberman, 2002, 2004; Rapaport, 2006; Reece, 1991; Richards, 2000; Schwartz & Isser, 2000). These works, among others, illuminate the disparity in charges filed against persons accused of killing a child, the absence of uniform practices in how

these types of cases are addressed within a particular jurisdiction, and compare the adjudication outcomes across types of homicide (Schwartz & Isser 2000; Wilczynski, 1997).

Because of the methodological weaknesses inherent in much of this research, however, the conclusions therein need to be assessed with caution (Oberman, 2002; 2004). Moreover, the overwhelming majority of these studies do not have as their core objective the examination of criminal justice processing of child homicide cases. In addition, the bulk of these studies do not deal with a heterogeneous pool of child homicide offenses. Rather, they focus more narrowly on categories of neonaticide or infanticide (more narrowly - maternal infanticide). Furthermore, the majority of research either utilizes small samples to draw their conclusions or assumes a strategy of comparing and contrasting isolated, factually similar cases, which tend to yield dramatically different sentencing outcomes.

One example of this type of research was performed by Shwartz and Isser (2000), who analyzed a total of 86 cases of neonaticide, which were identified through the media. They concluded that "there are a few patterns to be found either in the charges against the neonaticidal parents or the sentences imposed" (Shwartz & Isser, 2000, p. 85). Correspondingly, Oberman (2004) constructed a dataset of neonaticide and infanticide cases via searching the Lexis Nexis database and news reports for the time period of 1988-1995. Her search yielded 96 cases almost equally split between neonaticide and infanticide (n=47). Oberman found that the array of charges brought against women who committed neonaticide varied substantially - from unlawful disposal of a body, a misdemeanor, to first degree murder (p. 31). Unfortunately, Oberman's methodology allowed her to ascertain dispositions in only 17 neonaticide

cases with sentences ranging from "intensive therapy, parenting classes, and probation to incarceration for thirty four years" (p. 32).

What Oberman (2004), Shwartz and Isser (2000) and several other scholars (Meyer & Oberman, 2001; Richards, 2000) have observed is a general pattern of leniency towards infanticide cases. In contrast, another cohort of studies present evidence that lenient treatment of these offenses is not uniform, but is often contrasted with extremely harsh court verdicts (Gordan, 1998; Kohm, 2002; Collins, 2007). These scholars argue that even in factually similar circumstances with comparable jurisdictional provisions, juries and judges can arrive at strikingly different decisions. For example, Barton (1998) extensively illustrates the leniency-harshness continuum in adjudication outcomes of infanticide cases. On one end of the spectrum she discusses cases such as Melissa Seaner's, a 17-year-old from Pennsylvania, who suffocated her baby and hid it in her gym bag after giving birth. Seaner, who pleaded guilty to manslaughter, was sentenced to four years in prison. On the other end of the spectrum, in State v. Holden (1988), the Supreme Court of North Carolina upheld a conviction for second-degree murder for the killing of a baby by a 17-year old mother.[34] Despite strong mitigating factors, such as the defendant's immaturity and limited mental capacity, she was sentenced to life imprisonment. Fazio and Comito (1999) maintain that when it comes to infanticide cases, the age of the defendant does not automatically evoke the court's sympathy. Instead, teenage mothers are often at risk of facing quite harsh penalties.[35]

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[34] State v. Holden, 365 S.E.2d 626, 631 (N.C. 1988).

[35] People v. Doss (1991) – a 15-year-old's conviction of first degree murder and 20 year prison sentence affirmed; Moffit v. Arkansas (1993) – a 17-year-old's conviction

The studies cited above unite in a conclusion that "society not only is unsure about how severely to punish …. [parents] who kill their children, but that at times, it is unsure whether to punish them at all" (Oberman, 2004, p. 60). Several themes are presented in the literature in an attempt to account for this alleged unfounded diversity in sentencing outcomes in infanticide cases. One line of reasoning focuses on the ambivalence existing among the general public and the legal community in regard to punishing infanticide.

3.3.2 Ambivalence in Punishing Infanticide

On February 4, 1997 Louise Woodward, a 19-year-old British au pair who was taking care of eight-month-old Matthew Eappen in his home in Newton, Massachusetts called 911 and told the dispatcher that the child was not breathing (Kahn, 1997, March 8). The boy was found unconscious and died five days later from a fractured skull and a subdural hematoma – damage that could be sustained only from shaking of extreme force. Woodward explained that the baby "was not himself" all day long and that she had "popped him on the bed," dropped him on the floor, and shaken him lightly once throughout the day. She confessed that she might have been "a little rough with him."

Trial on the murder charge against Woodward began on October 6, 1997. The defense argued that death occurred from a re-bleed of a clot that was formed about three weeks before February 4th. After a five day deliberation, the jury returned a

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of manslaughter and 10 year prison sentence affirmed; State v. Hopfer (1996) – a 17-year-old's conviction of murder and 15 year prison sentence affirmed (in Schwartz & Isser, 2000).

verdict of guilty of murder in the second degree. The judge imposed the statutorily mandated term of life in prison. Ten days later, after hearing Woodward's motion for post-judgment relief, the judge ruled that the jury's conviction amounted to a serious miscarriage of justice. He reduced the conviction to involuntary manslaughter, vacated the life sentence, and released Woodward sentencing her to time served. Rationalizing his decision the judge stated:

> Viewing the evidence broadly, as I am permitted to do, I believe that the circumstances in which Defendant acted were characterized by confusion, inexperience, frustration, immaturity and some anger, but not malice (in the legal sense) supporting a conviction for second-degree murder. Frustrated by her inability to quiet the crying child, she was "a little rough with him," under circumstances where another, perhaps wiser, person would have sought to restrain the physical impulse. The roughness was sufficient to start (or re-start) a bleeding that escalated fatally. ("Excerpts from Ruling Reducing Au Pair's Conviction," 1997, November 11).

Woodward's case is not an isolated example of surprising lenience of the judicial system towards child killers. Michelle Oberman argues that in child homicide cases we are bound to encounter a "dialectic of condemnation and mercy" (Oberman, 2004, p.36) As a society, we have come to allocate our utmost indignation for strangers who sexually prey on children. Beyond that embodiment of evil, the judgment vectors get somewhat more blurry. Studies consistently report that there is a mismatch between our perceptions and reality. As was shown in the previous chapter, child homicides are not an isolated occurrence. Faced with the shattering of the romantic ideal of parent love, the public at large, and the legal community specifically can find itself confused or in denial.

A consistent thread that runs through filicide research is that the public (and judges and juries) finds it difficult to believe that a parent can hurt his or her own child

(Bookwalter, 1998; Collins, 2007; Kohm, 2002; Perlin, 2003; Rapaport, 2006) because "the innocence and vulnerability of children… typically arouse instincts of nurturance and protectiveness on universal level" (Crimmins et al., 1997, p. 49). As one prosecutor has said, "Juries don't want to believe parents could kill a child. They want to believe it was an accident and will look for every possible explanation but murder" (in Collins, 2007, p. 153).

It is certainly difficult to imagine the same outcome in Woodward's case had the defendant killed her friend or a child's parent. One of the paradoxes that tentatively emerges from examination of some of the child homicide cases is killing a child is not perceived in the same way as killing an adult (Bookwalter, 1998; Collins, 2007; Oberman, 2002; 2004). The roots of this puzzle are not easily detangled. Could it be that the legacy of children being seen as property still reverberates through the modern criminal justice system? Could it be that children, being different from adults, are perceived as being entitled to less protection from the criminal justice system? One prosecutor in an interview said, "Juries don't see this child as a real live human being… There's a huge forgiveness factor" (Teichroeb, 2002, November 1). Or is it that with all the varieties of violence existing, child homicide does not stir up fear in the general public since the crime is most often restricted to the family circle of the perpetrator (Rapaport, 2006).

There is an indication, however, that in the last two decades there has been an identifiable shift to more punitiveness when it comes to sentencing defendants who kill children (Perlin, 2003). Widely publicized cases such as those of Andrea Yates and Susan Smith have galvanized great outrage among the public. In fact, several scholars have contended that certain categories of offenders (teenage girls who have

committed neonaticide; filicidal mothers suffering from mental illness) have been treated with unfounded harshness by the courts (Bookwalter, 1998; Fazio & Comito, 1999; Reece, 1991).

3.3.3 Possible Defenses for Perpetrators of Child Homicide

It is beyond the scope of this research to explore all the potential defenses available to perpetrators of child homicide. Thus, the following discussion will primarily focus on defenses most commonly raised in child homicide cases.

Deana Pollard (2003) in her research on the prevalence of corporal punishment of children in the United States comments that almost half of the "death by abuse" cases invoke the discipline defense (p. 623). Parental discipline defense, while taking different forms in different states (Collins, 2007), is sometimes used in child homicide cases. The logic of the defense presupposes that a parent or a guardian could use force against a child as long as the former was intending to discipline the latter through such force and refrained from "unduly dangerous force" (Collins, 2007, p. 158).

Duress is another line of defense that has surfaced in child homicide cases. It is a common law defense traditionally used to justify crimes other than murder. Defendants alluding to this defense must demonstrate that they were under pressure, which produced "a reasonable fear of immediate (or imminent) death or serious bodily harm" (Liang & Macfarlane, 1999, p. 436). This defense, or rather, specifically, its subtype – the Battered Woman Syndrome (BWS) defense, has been recently employed in cases by women whose children were killed by their male partners. This defense is used to mitigate the women's responsibility to protect their children from harm. The courts have been reluctant to accept the BWS reasoning in child homicide cases. Thus, Shelly Mott was convicted of first degree murder for failing to report extensive abuse

of her two-and-a-half-year old daughter by her boyfriend, which eventually produced the child's death. At trial the defense claimed that Shelly, being a battered woman, was impeded in her capacity to decide to seek medical attention for her daughter. The Arizona Supreme Court held that BWS did not effectively challenge the requisite element of knowledge or intent.[36]

The next category of defenses that have been extensively mounted in neonaticide and infanticide cases deal with claims of the defendant's alleged insanity at the time of the act. Insanity defenses presuppose that the person accused of committing the crime did not have the necessary ability to reason and control his or her actions (Schwartz & Isser, 2000). Perlin refers to infanticide cases as "empathy outliers" – a "mini-universe of cases in which defendants who were, in fact, responsible were nonetheless found not guilty by reason of insanity as a kind of nullification device" (Perlin, 2003, p. 3). In other words, while in general the jurors are typically suspicious of insanity claims, infanticide defendants might have an easier chance of being successful in claiming insanity.

Insanity defenses in child homicide cases are most often associated with various forms of postpartum mental disorders (Perlin, 2003). There exists a range of postpartum disorders, classification of which is a subject of debate among the medical community (Gordan, 1998; Maier-Katkin, 1991). While "baby blues" (a mild depression and anxiety condition caused by hormonal changes and psychological stresses post-birth) are considered somewhat widespread and arguably inconsequential, a postpartum depression is considered a more serious mental disorder

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[36] State v. Mott, 931 P.2d 1046 (Ariz. 1997), cert denied, 117 S. Ct. 1832 (1997).

(Perlin, 2003, p. 15; Barton, 1998, p. 602). It affects approximately 10-15% of women and can last for weeks. The most serious disorder in this continuum is postpartum psychosis, which affects only a few in every thousand of women who have given birth (Dimino, 1990).

Neither postpartum depression nor postpartum psychosis are specifically recognized as mental conditions by the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) of the American Psychiatric Association. Postpartum disorders are instead subsumed under larger categories including Major Depressive, Manic, or Mixed Episode of Major Depressive Disorder, Bipolar I or II Disorder, and Brief Psychotic Disorder. Furthermore, the Manual limits this category of disorders with a "postpartum onset qualifier." The limitation is set within four weeks after birth. Some medical specialists have argued that postpartum disorders, being not solely biological in nature, may manifest themselves outside the specified four-week time frame (Miller in Oberman, 2004, p. 45).

Research on how widespread or effective the invocation of postpartum disorder-based insanity defenses are in child homicide cases is extremely scant. Undoubtedly, jurisdictional differences in insanity defense provisions, as well as absence of a unified agreement within the medical profession on the issue, hamper a concerted effort to assess this area. The outcomes of these cases are difficult to predict. Women relying on these defenses have received the full range of sentences – from long terms of incarceration to short sentences in treatment facilities to being acquitted on the grounds of insanity.

One of the infamous infanticide cases that put the issue of postpartum psychosis in the spotlight both for the medical and legal community was that of Sheryl

Lynn Massip. On April 29, 1987, Sheryl threw her 6-week-old son into the path of an oncoming car. After the car swerved and avoided the collision, Massip hit the baby over the head with a blunt tool, backed over him in the family car, and dumped the dead body in the trash can. In her initial questioning by the police, Massip claimed that her son was kidnapped by a red-haired woman with a gun. Her later confession to her husband set the record straight. Massip was found to have been suffering from a severe form of postpartum psychosis. She admitted to hearing voices telling her to put her son out of his misery, and that he was the devil. Despite the extensive medical expert testimony at trial, the jury found that her actions did not evidence legal insanity, and returned a verdict of guilty for second degree murder. The judge, however, overturned the jury's finding of sanity, and entered a verdict of not guilty by reason of insanity. The Court of Appeals of California affirmed this judgment.[37]

Even if a defendant is unsuccessful at mounting a postpartum disorder-based insanity defense, some jurisdictions allow for a diminished capacity defense (Gardner, 1990). The doctrine of diminished capacity can reduce a charge to a lesser offense or allow for a finding of not guilty to the charged offense. Under this doctrine, the evidence of the defendant's mental state can negate the premeditation or deliberation components required for a first degree murder conviction.

Another alternative to the insanity defense available in several states is a guilty but mentally ill (GBMI) verdict. This verdict can be reached by a jury in place of a not guilty by reason of insanity verdict. A GBMI verdict holds a defendant responsible for the crime committed, and imposes the sentence that would be given in a comparable

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[37] People v. Massip, 235 Cal. App. 3d 1884; 271 Cal Rptr. 868; (Cal App. 1990) Lexis 642.

guilty verdict. However, psychiatric care is usually offered during or after sentencing instead of regular imprisonment. A GBMI verdict "provide(s) an effective means of holding a woman responsible for the killing of her infant, while allowing her to get treatment for the mental illness that was central to her defense" (Gardner, 1990, p. 11). This "compromise" verdict can actually lead to harsh sentences for defendants. For example, Debra Gindorf was found GBMI of two counts of murder for causing her two children to ingest an overdose of sleeping pills and sentenced to life imprisonment.[38]

Since the prevailing stance on postpartum disorders in American jurisprudence and the medical field does not consistently "offer a helping hand" to a woman who is suffering from a mental disorder and is accused of killing her child, some scholars have rallied for adoption of Infanticide legislation analogous to those existing in Great Britain and other countries (Barton, 1998; Dvorak, 1998; Fazio & Comito, 1999; Finkel et al., 2000; Lang, 2005). Daniel Maier-Katkin maintains that "the challenge facing American jurisdictions is to establish a rationale for more humane treatment of a group of offenders whose emotional condition can be characterized as troubled, whose misbehavior borders on self-destructiveness, and for whom the traditional legal values of deterrence, retribution, and incapacitation are of questionable appropriateness" (Maier-Katkin, 1992, p. 280).

A number of objections have been raised, however, against such legislative reform in the United States. First, opposition is likely to come from the status quo perspective, which basically asserts that special legislation is unnecessary since

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[38] People v. Gindorf, 159 Ill. App. 3d 647; 512 N.E.2d 770; (Ill. App. 1987) Lexis 3008; 1 1 1 Ill. Dec 381.

"murder is murder" and crimes of neonaticide and infanticide are already adequately addressed in the existing murder statutes. In addition, new terminology such as "disturbed state of mind" merely is another label for the insanity defense (Dvorak, 1998). Second, the proposed reform may be inconsistent with a dominant philosophy of retribution. After all, probation with treatment might not seem like an adequate punishment for taking a life. Similarly, from the standpoint of deterrence, lenient sentences mandated by the British and other infanticide statutes can be interpreted as ineffective (Fazio & Comito, 1999). Third, for this type of legislation to be enacted, there has to be solid medical proof linking biological factors to mental disturbances. Currently this proof cannot be readily provided by the medical field. In fact, research has demonstrated that social and psychological factors are more likely to lead a mother to kill her newborn than medical disturbances (Dimino, 1990). Fourth, from a feminist standpoint, proposed legislation singles out women as "irresponsible and hormonally disturbed" (Fazio & Comito, 1999, p. 21).

Infanticide laws can also be regarded as discriminatory based on the age-limit of the victim (Gardner, 1990). Thus, a woman suffering from a postpartum disorder who kills her child after one year will be facing murder charges whereas another woman (hypothetically one less ill) who kills a child 12 months or younger will be charged with infanticide. Finally, the idea that mental illness that falls short of legal insanity cannot justify homicide "unless it negates the actual mens rea required" is firmly ingrained in American jurisprudence (Gardner, 1990, p. 13). Introducing infanticide provisions might create a slippery slope for recognizing other disorders as mitigating culpability (e.g. gambling or PMS) (Barton, 1998).

3.4 Adjudication and Sentencing of Defendants who Kill Children

The overarching research question guiding this study is to determine the factors related to adjudication and sentencing outcomes in cases of child homicide, including factors that affect the likelihood of prosecutors seeking a capital sentence in the case. As noted in the earlier sections, there have been very few systematic attempts to explore this issue.

This section first outlines several theoretical perspectives on courtroom actors' decision-making that have been prominent in sentencing research. Then the issue of prosecutorial discretion in choosing cases for capital processing is addressed. Finally, relying on insights from existing child homicide research and sentencing literature in general, the hypotheses for the quantitative component of this study are presented.

3.4.1 Theories of Judicial and Prosecutorial Decision Making

Various legal actors are important contributors in the sentencing process. Several general theories have been proposed in an attempt to account for how judges, prosecutors and other court community actors arrive at their decisions. The first theoretical approach is a structural organization perspective applied to sentencing by Albonetti (1986, 1987, 1991). Albonetti has drawn on the work of Simon, who maintained that "Human powers are very modest when compared with the complexities of the environments in which humans live … [R]eal human beings … faced with complexity and uncertainty, lacking the wits to optimize, they must be content to satisfice – to find 'good enough' solutions to their problems and good enough courses of action" (Simon, 1979, p. 3).

In such a complicated process as sentencing, court actors are forced to make highly consequential decisions with little information, and thus are constantly faced

with uncertainty. Under these conditions it is difficult for various court actors to arrive at their individual indices of success. For prosecutors, success is typically defined in terms of achieving a good "batting average," which stands for a ratio of convictions to acquittals (Albonetti, 1986, p. 626). Prosecutors and judges manage uncertainty "by relying upon a rationality that is the product of habit and social structure" (Albonetti, 1991, p. 249), they rely on routines and "develop decision rules to anticipate what will happen based upon a small set of significant dichotomies" (Ostrom, Ostrom, & Kleiman, 2004, p. 54). In other words, they develop "patterned responses."

A social psychological framework helps us understand how judges in particular develop these "patterned responses." Attribution theory highlights that judges are interested in causal processes behind a particular crime. They seek to understand the factors that led to the offense in question and how these factors are likely to play out in the future. Will they, for example, lead to another offense? Kramer and Ulmer (1996) point out that even if there is enough definitive information on the background and character of the defendant, the risk and seriousness of recidivism is never fully predictable. To reduce uncertainty and make rational decisions, court actors rely on stereotypes, and make attributions about the case and defendant. Defendant's race, gender or socio-economic status may be interpreted as cues about his or her dangerousness or rehabilitation potential.

Drawing on uncertainty avoidance theory and causal attribution theory, Steffensmeier and colleagues (1998, 2000) developed what they termed a Focal Concerns theory. It posits that courtroom actors try to balance three different considerations in their decision-making process: (1) offender blameworthiness and

victim harm, which ties into a retributive philosophy of punishment; (2) protection of the community objective, which focuses on the need to incapacitate the offender and deter other potential offenders; and (3) certain practical implications, which mostly constitute organizational efficiency concerns (organizational costs incurred by the criminal justice system) and defendant's individual characteristics. These three concerns allow for both legally relevant and extralegal factors to affect legal actors' decision making. One of the indicators of offender blameworthiness, for example, is the seriousness of the offense. Concern over community protection urges the judge to consider defendant's prior criminal record. Certain defendant's individual characteristics, such as community ties or having children, can also be accommodated under the focal concerns theory.

3.4.2 Prosecutorial Discretion in Death Penalty Cases

In jurisdictions that have the death penalty, prosecutors possess a great amount of discretion to decide which cases merit capital punishment. First, they exercise control over the charging decision, which can make certain defendants eligible for capital punishment. Second, they decide whether to file a notification to pursue the death penalty in specific cases.

A study of prosecutorial discretion and capital punishment in Missouri sought to estimate "how much 'work' the statute does in selecting capital cases from the broader universe of intentional homicide cases, and how much of that 'work' is left to prosecutorial discretion" (Barnes, Sloss, & Thaman, 2008, pp. 2-3). In that state, the death penalty statute specifies 17 aggravating factors, at least one of which has to be present in order for the homicide to be considered death eligible. The authors estimated that out of 1,046 homicide cases prosecuted between the years 1997 - 2001,

the statute "filtered out" about 24% of the cases. Prosecutors, in turn, are "doing three times as much 'work' as the statute in deciding which cases merit capital punishment, because … [they] eliminated [additional] 71% percent [of cases] by electing not to pursue capital charges" (p. 3).

Due to limited resources, prosecutors must carefully select cases in which to seek capital punishment. It is natural that they will advance death penalty notifications in cases that "show promise for successful prosecution" (Songer & Unah, 2006, p. 177). Thus, in line with uncertainty avoidance theory, for prosecutors "exercising discretion provides … a source of immediate control over the elements of uncertainty and, as such, gives … influence over later stages of processing" (Albonetti, 1987, p. 296).

The issue raised in the literature has been whether prosecutors are guided strictly by legally relevant factors in their decision-making, such as culpability of the defendant or heinousness of the crime, or whether they are also swayed by legally intolerable criteria such as race of the victim and the defendant, their gender, and environmental factors in a given geographic locale. A number of capital punishment studies have contended that "runaway discretion" and arbitrariness exists in prosecutorial decision making (Liebman, Fagan, Gelman, West, Davies, & Kiss, 2002; Nakell & Hardy, 1987; Songer & Unah, 2006).

One of the more robust findings of this line of research concerns geography: several studies have found that prosecutorial decisions to file a death penalty notification vary widely across counties (Baldus, 2002; Barnes et al., 2008; Paternoster, Brame, Bacon, & Ditchfield, 2004). This jurisdiction effect can be attributable to a number of factors. For example, local attitudes towards the death

penalty and the prevailing political ideology in the county may translate into political pressures that prosecutors, as elected officials, have to respond to. Alternatively, geographic disparities may be tied to "unequal distribution in the severity of homicides across different districts" (Songer & Unah, 2006, p. 182). Prosecutors in districts with a higher incidence of death eligible murders may be predisposed to seek capital punishment more often.

It is beyond the scope of this study to provide a detailed overview of factors that have been associated with prosecutorial decisions to seek the death penalty. Findings in regards to the influence of defendant's gender, victim's race, and victim-offender relationship will be incorporated into the discussion framing the hypotheses of the quantitative component of the current study.

3.4.3 Hypotheses of the Current Study

There are several studies that can help inform the current research. One study that focused specifically on the treatment of child homicide cases by the American judicial system sought to identify the factors various legal and law enforcement officials perceived as affecting the "career" of child homicide cases through the criminal justice system. Unnithan (1994b) conducted face-to-face or telephone interviews with district judges, attorneys in the respective prosecutors' offices, police chiefs, sheriffs, and other officials. These officials were not in agreement on how child homicide cases should be treated. For example, while child welfare agents argued that child homicide should be treated as a strict liability offense, most police chiefs and judges were opposed to this idea. A large portion of the District Attorney's office personnel expressed preference for treating the offense as manslaughter rather than murder in legal terms. Judges took the middle ground, emphasizing their personal

anger at the crime but noting at the same time that this was tempered by a realization that offenders often were in difficult circumstances. These observations lead to the first hypothesis of the study:

> [H1] Defendants who have killed a child will be treated more leniently by the courts compared to those who kill others: they will be less likely to be convicted, convicted of murder, and those convicted will receive shorter sentences than defendants with older victims.

Unnithan (1994b) also found that among the elements that went into the systemic decision-making of judicial actors was the manner of death; respondents generally agreed that the system as a whole appeared to treat deaths due to abuse more severely than deaths due to neglect. On the other hand, death as a result of disciplining a child was likely to be treated as a less serious fatality. Other situational elements mentioned were the amount of media publicity and whether the victim suffered from any disability.

A number of mitigating factors such as poverty and unemployment were admitted by respondents to be taken into consideration. Finally, although age and gender of the victim, family socio-economic status, ethnicity, and single-parent status were also mentioned, there was no consensus as to the direction in which the system leaned in handling cases involving these factors. Consequently, we have to rely on general sentencing literature for insights about how these and other demographic and case characteristics might influence the sentencing process of a child homicide case.

Prior research has rarely identified the relationship between the offender and the victim as an important factor in shaping the sentencing decisions of the courts (Dawson, 2004). Rather, victim-offender relationship has overwhelmingly been used as a control variable. The victim-offender relationship taps the relational distance or

the degree of intimacy that exists between the two (or more) individuals involved in the offense. According to Black's (1976) classic formulation, closer relational distance between parties will result in decreased degrees of law. In other words, the closer the relational distance is between the parties, the less law (probability of arrest, conviction, or sentence length) there is going to be applied to their conflict.

One of the limitations of previous studies that have examined the effects of the victim-offender relationship on adjudication outcomes is the simplified operationalization of this variable. For example, a large proportion of studies have employed a dichotomous approach "intimate/non-intimate" to assess the relationship between the victim and offender (for exception see Dawson, 2004). However, in cases of child homicide, as evidenced from the studies presented earlier in this chapter, the subtle degrees of victim offender relationship (biological parent versus step-parent; father versus mother's paramour) may have an impact on how the case is perceived by the court.

The research on the effect of the victim-offender relationship on case processing by the criminal justice system has been inconclusive. Some studies have shown that cases in which the victim and defendant are family were treated more leniently by the courts (Simon, 1996; Horney & Spohn, 1996). Other studies, however, have found that this lenient treatment is present only in some stages of the criminal justice process but not others (Felson & Pare, 2007; Miethe, 1987; Spohn & Spears, 1997). Finally, some studies have failed to find any association between the court dispositions and victim-offender relationship (Albonetti, 1991). Several studies on capital processing of defendants found that prosecutors were more likely to seek the death penalty in cases involving strangers (Bienen, Weiner, Denno, Allison, Mills,

1988; Paternoster et al., 2004; Songer & Unah, 2006; but see Paternoster, 1984 for an opposite conclusion).

Despite the media attention and public hysteria that these types of cases often attract, less than 10% of child homicides are actually committed by strangers (Alvarez & Bachman, 2003; Smithey, 1998). In Unnithan's study (1994b) all respondents unanimously reported that "stranger" child homicides were treated more seriously by the criminal justice system. Besides the fact that stranger-committed crimes "engender the most intense feeling of vulnerability and fear" (Sampson in Alvarez & Bachman, 2003, p.47) other factors might be presented to explain their harsher treatment by the criminal justice system. When parents or guardians are the perpetrators of a child homicide, the case might be burdened with evidentiary problems (as discussed in previous section of this review). Furthermore, when the perpetrator was a stranger, parents may be very vocal about the crime and the reaction of the criminal justice system, producing a media reaction, which cannot be ignored by judicial actors.

Given the above research findings, the present study hypothesizes that:

> [H2] Defendants who have killed their own biological children (parents) will be treated more leniently by the courts compared to those who killed children not related to them: biological parents will receive shorter sentences than non-familial perpetrators of child homicide.

The extant literature reveals considerable disagreement regarding the role of gender in sentencing disparity (Daly & Bordt, 1995). A number of studies have found support for the more lenient treatment of women by the criminal justice system (Daly & Bordt, 1995; Engen, Gainey, Crutchfield, & Weis, 2003; Kruttschnitt, 1984). Several studies suggest that females are more likely than males to receive downward departures in Federal courts (Everett & Nienstedt, 1999; Kempf-Leonard & Sample,

2001; Mustard, 2001), in Minnesota (Moore & Miethe, 1986), and Pennsylvania (Kramer & Ulmer, 1996). Yet other studies have found little support for the gender-based leniency hypothesis (Daly, 1994; Griffin & Wooldridge, 2006).

Theoretical explanations for the difference in treatment of men and women have gone in several directions. Gender differences in sentencing outcomes have been explained by paternalism (Curran, 1983 in Daly, 1987; Daly, 1994; Nagel & Hagan, 1982) of the society, which serves to protect women, who are unable to accept full responsibility for their actions. Another popular explanation concerns the variation of informal social control. Kruttschnitt has argued that women have more informal social control in their lives than men, and thus will be subject to a lower degree of formal social control (in Daly, 1987). Daly (1987) draws a proposition that court officials distinguish between two groups of defendants – those with family responsibilities and those without them. Since women are more likely to have such family obligations, they are seen as more deserving of court leniency. When Daly (1989) interviewed judges about their criteria for sentencing men and women, the majority confessed to using sex-based reasoning in their decisions, but they were more concerned with protecting children and families than with protecting women. Other hypotheses explaining differential treatment of women during sentencing include court chivalry, attributions of men's and women's criminality, and the practical problem of incarcerating women with children (Daly, 1987; 1994).

Studies of prosecutorial discretion to seek the death penalty have rarely incorporated defendant's gender as a predictor variable. However, two recent studies of prosecutorial decision making of South Carolina (Songer & Unah, 2006) and Durham County, North Carolina (Unah, 2009) failed to detect any gender bias.

Another common frame of reference for explaining the gender-based disparities in sentencing is a so-called "evil woman" hypothesis. It posits that women, whose crimes are "unfeminine," may receive equal or even more severe sanctions than men convicted of similar crimes (Belknap, 2001; Daly, 1989). Arguably few crimes can be considered as "unfeminine" as killing one's biological child. This logic suggests that women who kill their children might be treated more harshly than defendants who kill older victims or belong to more distant relational categories. Studies on processing of child homicide cases have indicated the opposite.

Respondents in Unnithan's study (1994b) reported that male perpetrators were perceived to be treated more severely than female perpetrators. There was also some interaction between gender of the offender and the relationship with the victim. The perpetrators who were perceived to be treated most seriously were mothers' live-in companions and non-biological fathers of child victims. Offenders perceived to receive the most lenient treatment were mothers. Some judges expressed the sentiment that many juries found it difficult to believe mothers could kill their children. It is important to note that recent scholarship on sentencing has actively supported the examination of joint effects of different offender or victim characteristics "because they often reveal effects considerably larger than any single main effect and reveal extralegal disparities that are otherwise hidden when examining only additive models" (Williams, DeMuth, & Holcomb, 2007, p. 867).

An English study conducted by Wilczynski (1997) explored 48 cases of filicide (the killing of children by their parents or parent-substitutes) and noted a markedly different perception and legal treatment of men and women who killed their children. She concluded, "men are bad and normal, women are mad and abnormal" (p. 422).

Thus, men received treatment consistent with what has been termed the 'legal' or 'punishment' model of child abuse, and women were treated in accordance with the 'welfare' or 'treatment' model. Wilczynski argued that this difference is perceptible at all stages of the criminal justice process. Women were less likely than men to be prosecuted in general or prosecuted for murder specifically. Women were also less likely to be convicted of murder than men. At the sentencing stage, women usually received psychiatric disposals such as hospital orders or non-custodial supervisory sentences such as probation orders. Women also generally received a shorter period of formal intervention - determinate sentences given to women were also much shorter than those for men.

Drawing from the above research the following two hypotheses are advanced:

> [H3] Females who have killed a child will be treated more leniently by the courts compared to males: females convicted will receive shorter sentences than male defendants of child homicide;
>
> [H4] Females who have killed their own children (mothers) will be treated more leniently by the courts compared to non-familial perpetrators of child homicide: they will receive shorter sentences than male and female defendants who killed a child not related to them.

The theoretical framework for the research in the area of racial discrimination in sentencing lies at the intersection of several perspectives. The roots are grounded in general assumptions of conflict theory, which traditionally envision minority offenders receiving more severe sentences than whites. The explanation offered is that behavior of minority subgroups threatens the economic and moral interests of more powerful groups in society. Different skin color offers a visual confirmation to the fear of offenders being culturally dissimilar and hence more 'dangerous' and 'unpredictable.'

These assumptions and practices have, according to the conflict theory, led to an active imposition of negative labels. Racial group theory (Steffensmeier & DeMuth, 2000) argues that criminal justice mechanisms of radicalized social systems such as the United States would especially be prone to manifestations of conflict interaction. Thus, criminal law and punishments may, not even consciously, act as tools for containing racial or ethnic minority groups defined as threatening by those in the position of privilege and power.

Despite the abundance of research on the role of race and ethnicity in sentencing outcomes, the results of the extant research remain equivocal. The role of race and ethnicity in sentencing disparities has been shown to vary depending on the context (Britt, 2000; Kramer & Ulmer, 1996; Ulmer, 1997), change over time (Peterson & Hagan, 1984), and intricately depend on other extralegal characteristics (Spohn & Holleran, 2000; Steffensmeier, Kramer, & Ulmer, 1998). A substantial part of research dedicated to race and gender sentencing disparities has concentrated on sentencing guidelines enacted federally and in particular states.

Race has also been the cornerstone variable in research on sentencing disparities in capital cases. While the race of the defendant has been rather weakly associated with the imposition of a death sentence, the race of the victim has surfaced as a key predictor of several outcomes in capital processing. The landmark Baldus study (1990) that examined homicide cases in Georgia between the years 1973 – 1979 found evidence of racial bias in prosecutors' decisions to pursue the death penalty. Prosecutors were much more likely to seek the death penalty against defendants who killed white victims. Other studies have confirmed this effect both at the charging stage and actual imposition of death sentences (Barnes et al., 2008; Paternoster, 1984;

Paternoster, et al., 2004; Radelet & Pierce, 1991; Williams & Holcomb, 2001; Williams et al., 2007). Drawing from this literature, it is hypothesized that:

> [H5] Defendants who have killed children who were racial or ethnic minorities will be treated more leniently by the courts compared to those who killed white children: those convicted of killing ethnic minorities will receive shorter sentences than defendants with white child victims.

3.5 Summary

The chapter has outlined multiple problems that permeate the processing of child homicide cases through the judicial system. The challenges that prosecutors face undoubtedly contribute to the great variation in adjudication and sentencing outcomes of this category of offenses that other studies have documented. The difficulties associated with the investigation of child homicide and charging decisions are compounded by a lack of uniform perception on the part of judges and juries of the gravity of the act of killing a child.

Theories of judicial and prosecutorial decision making may help in predicting how a child homicide may be processed depending on the circumstances of the murder and the persona of the offender. For example, according to the logic of focal concerns theory, if the offender is a parent, then while he or she may be regarded as highly morally blameworthy, the degree of his or her dangerousness to the community will most likely not be regarded as high. Moreover, the court might feel that the defendant has already suffered enough by losing a child. On the other hand, an offender who is a stranger or an acquaintance and who has committed a predatory attack may be regarded by the court as both highly morally blameworthy and dangerous.

Chapter 4 will provide a methodological overview of the sample and data sets utilized for this research. It will outline the strategies used for the analysis of the both

the multivariate statistical analyses of the national data on sentencing outcomes, and the more descriptive qualitative assessment of prosecutorial discretion in death eligible cases in the state of Maryland.

Chapter 4

METHODOLOGY

This study utilizes a mixed methods approach to investigate the hypotheses delineated in the last chapter. A combination of quantitative and qualitative data and methodological approaches is used to advance our understanding of the differentials that exist in the application of the law for those who kill children compared to those who kill adults. First, using nationally representative data collected from prosecutors' offices in 33 large urban counties, this dissertation examines the differential adjudication outcomes (whether convicted and sentence imposed on those convicted) received by defendants who have allegedly killed children compared to those who have allegedly killed others. Second, using qualitative methodology techniques, this study examines a sample of death eligible cases from Maryland that involved child victims. This component is intended to further the exploration of the factors that may be associated with increased harshness of criminal justice response to cases of child homicide.

The mixed-method design of this dissertation is not so much grounded in the goal of convergence or confirmation of results, but rather in the goals of complimentarity or expansion, which have been acknowledged as a valid motivation for combining methods (Greene, Caracelli, & Graham, 1989; Mark & Shotland, 1987). Both goals involve using diverse methods to assess different study components, to "extend the scope, breadth and range of inquiry by using different methods for

different inquiry components" (Greene et al., 1989, p. 269). The result ideally is a richer, more elaborated understanding of the phenomenon under study.

This chapter is organized in two sections. The first section presents a detailed description of the quantitative component of this study, including description of the data, sampling strategies, measures utilized by the analysis, and analytic strategy. The second section provides information on the data sources, and analytic plan used for the qualitative component of the study.

4.1 Murder in Large Urban Counties

4.1.1 Data

The data for this research came from a Bureau of Justice Statistics study titled "Murder in Large Urban Counties, 1988" which was part of the Prosecution of Felony Arrests project. This dataset provides extensive information on murderers, their victims, the circumstances in which they came in contact with one another, and the justice system's handling of those arrested for this most serious crime. The 33 counties surveyed in the study were chosen to represent the 75 largest counties in the United States. These 75 counties, out of the nation's 3,100 total, accounted for 37% of the U.S. population but 63% of the 22,680 murders reported to the police and 52% of all murder convictions during 1988. The original sample plan identified 34 counties, one of which declined to participate. The sampling frame was comprised of the 200 largest prosecutors' offices in the U.S., which were ranked based on a combination of the number of adult felony arrests (obtained from 1980 and 1984 UCR Part I arrests) and population data (from the 1980 Census Bureau's City County Data Book).

The top 75 counties were divided into three strata based on their size and on their status as prior participants in the Prosecution of Felony Arrests project. The first stratum, defined as prior participants with a total population of one million or more, was sampled with certainty. The sampling rates for the remaining two strata were determined by calculating the Neyman (optimum) allocation of sample using data on total stratum size and standard deviations of 1984 total UCR Part I arrests. It was essential that the overall sample contained a substantial number of counties with large cities since that is where crime and arrests for serious crimes are highly concentrated. Additionally, large jurisdictions were more likely to possess computerized systems for following felony cases from arrest to disposition, thus eliminating the necessity of hand collection of data.

Data were collected from the prosecutors' files for cases involving murder charges. The roster from which cases were ultimately sampled for the study was based on data supplied by the prosecutors' offices in the chosen 33 counties. It consisted of cases where (1) one or more defendants were arrested for murder and (2) the case was adjudicated during 1988. Cases where the most serious charge was attempted murder, negligent or involuntary manslaughter, or vehicular homicide were not eligible for sample selection. If these criteria yielded 200 or less cases for a particular county, all cases were included on a roster. Otherwise a random sample of 200 cases was drawn to be included on a roster. Only six counties had more than 200 cases.

A total of 2,539 murder cases were sampled, which provided data on 3,119 defendants and 2,655 victims. Not all defendants included in the sample were arrested on a charge of murder or manslaughter: in a small number of instances a defendant could have been arrested on a charge less serious than murder or manslaughter but the

prosecutor at a later point elevated the charges to include murder or manslaughter. Similarly, the prosecutor did not file a charge of murder or manslaughter against some defendants who were arrested on a murder or manslaughter charge. In addition, in some states with felony murder statutes, a defendant does not necessarily have to inflict the damage to be charged with felony murder.

The overwhelming majority of cases in the sample were disposed for all defendants in the case. Exceptions included 13 defendants who had not yet had their cases adjudicated at the time of study, and 25 defendants who had committed suicide or had died from other causes. There were 260 cases that were dismissed or *nolle prosequi* and 238 cases that were rejected by the courts. Among the most often cited reasons for rejection or dismissal of the case were lack of evidence (38.2% of cases did not proceed for adjudication for this reason), problem with witness (12.6%), defendant killed in self-defense (10.6%); and in the interest of justice (8%). These defendants were excluded from the sample, thus bringing the sample to 2,596 defendants.

The overwhelming majority of defendants (89.6%) were male. African-Americans comprised 60% of the sampled defendants. One fifth of defendants were younger than 20 years old when they committed the crime, 43.8% were in their twenties and 31% were adults (younger than 65). Almost 78% of defendants were arrested (indicted) on the charge of first degree murder.

A sub-sample (n=124) of strictly child homicide cases (victim 12 years old or younger) was drawn from the larger sample for the second stage of analysis.

4.1.2 Measures

4.1.2.1 Dependent Variables

There are three judicial outcomes of interest in this study: (1) whether the defendant is convicted; (2) whether the defendant is convicted of murder; (3) sentence length received for those convicted. Descriptive statistics for the dependent and independent variables in this study are presented in Table 4.1.

Both *Conviction* and *Murder Conviction* variables are dichotomous variables with values of 1 assigned when defendant was respectively convicted of any offense or convicted of murder, and a value of 0 assigned when these outcomes did not follow. Ninety percent of defendants were convicted of at least some offense. Fifty percent of defendants were convicted of murder.

The *Sentence Length* variable is the term of confinement ordered by the sentencing judge measured in months (the original variable was measured in days and was recoded). In cases of indeterminate sentencing, the sentence length was recoded at the lower limit. If a sentence was imposed with a period suspended, the latter was subtracted from the sentenced term. In the dataset there were two defendants sentenced to less than 25 days of imprisonment (2 and 7 days). These sentence terms most likely reflect pre-trial detention decisions rather than postadjudication sentencing decisions (Engen & Gainey, 2000). Thus these cases might be closer conceptually to a nonincarceration sentence. Consequently a cutoff point of 25 days was adopted as the lowest point of incarceration sentence.

Additionally, the original sentence length variable has been recoded on the upper end of the sentence length scale. There were three defendants sentenced to more than 195 years in prison, and one defendant sentenced to 124 years of incarceration.

Otherwise, the longest sentences in the data were barely short of 100 years. Additional consideration for recoding stemmed from the presence in the data of life without parole and death sentences. It was deemed important to retain these cases as the upper limit of sentence length.[39] Thus an interval-based scale was retained for the sentence length variable with life without parole and death sentences coded at the highest point (1300 months and 1317 months respectively). The mean sentence length for convicted defendants in the sample was 340 months, which translates to just over 28 years.[40]

Following the lead of prior research (Bushway & Piehl, 2001; Ulmer & Bradley, 2006) the sentence length variable was logged to reduce the positive skew in its distribution. The skew of the sentence length variable could result in the linear regression model of sentence length to have curvilinear error terms, producing inefficient standard errors and potential bias (Johnson, 2006). Additionally, logging the sentence length variable allows for a more straightforward interpretation of the results as the percentage change in the dependent variable caused by changes in the independent variable.

4.1.2.2 Independent and Control Variables

A number of legally prescribed, offender- and victim-related, and case-processing factors are used as explanatory or control variables in this study. Victim's age is a key variable of interest for this study. *Child Victim* is a dummy coded variable

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[39] Separate analyses were executed excluding defendants who received life without parole and death sentences. This exclusion did not substantively influence findings from previous analysis in terms of magnitude, direction & significance of effects.

[40] This mean includes defendants at the upper end of the sentence length scale: those sentenced to life in prison without parole and those sentenced to the death penalty.

capturing whether the victim was 12 years old or younger (coded 1). Cases with older victims were coded as 0. A little over 5% of defendants had allegedly killed a child.

Analyses of criminal justice outcomes have shown that the degree of intimacy between the defendant and victim(s) might affect the allocation of criminal justice sanctions. Some studies have found that defendants who victimize intimates are treated more leniently by the criminal justice system depending on the type of crime, gender of the defendant, and the stage of criminal justice process examined (Auerhahn, 2007; Dawson, 2004; Miethe, 1987; Spohn & Spears, 1997). Qualitative interviews with Pennsylvania judges revealed that victim-defendant relationship is factored into the decision to depart from the sentencing guidelines with more intimate relationship mitigating the blameworthiness of violent offenders (Kramer & Ulmer, 2002).

Thus, two binary variables were used to identify the relationship between the victim and offender. One was coded 1 if the defendant was accused of killing their own biological child. Another was coded 1 if defendants were accused of killing children who were not immediately related to them. Fifty four percent of defendants who have allegedly killed a child were not the victim's biological parents.

Out of concerns for collinearity, a separate set of models was run including the variable *Child Victim* and the victim-defendant relationship variables. Trichotomous coding was employed for victim-defendant relationship. Some researchers oppose dichotomization of this variable (Dawson, 2004). The dataset's original victim-defendant relationship variable was extremely detailed, with over 50 types of relationships. For the purposes of multivariate modeling the codes have been collapsed

into three categories used to construct dichotomous variables: (1) *Family*, (2) *Friends/Acquaintance* relationship; and (3) *Stranger* relationship.

Out of 128 cases that involved multiple victims only 31 were characterized by varying degrees of victim-offender relationship (e.g. defendant allegedly killed a family member and a stranger). These cases were addressed individually using a conservative coding schema. If there were only two victims in the incident, the more intimate victim-offender relationship was coded (e.g. if victims were a friend and a stranger to the defendant, then the case was assigned the friend/acquaintance category). If there were more than two victims in the incident, the prevalent victim-offender relationship was coded (e.g. defendant killed a friend and two strangers, then the case was assigned the stranger category). Fifteen percent of defendants had allegedly committed murder of their family members. Sixty two percent of defendants were acquainted with their victims and 23% of defendants were strangers to their alleged victims.

The legally relevant factors that were included in the analyses were the defendant's role in the killing, the severity of the offense, and the criminal history of the defendant.

Some of the incidents involved multiple offenders. Previous research has shown that the role the defendant played in the incident is relevant to various court outcomes (Steffensmeier, Ulmer & Kramer, 1998). If the defendant was a follower during the offense rather than an organizer or a leader, he or she might be perceived as less blameworthy. Thus, even though a person who plays a secondary role in a homicide from a legal standpoint might be indistinguishable from the primary accused, the former might receive a lesser sentence.

In the original dataset defendants were classified according to their degree of involvement in the incident as "sole," "clearly primary," "arbitrary primary," "arbitrary not primary," and "clearly not primary." The guiding question for this categorization was "What would have happened to this victim without the participation of this defendant?" Original coders have relied on comparing the charges at arrest and indictment to glean the primary or non-primary status of the defendant. In addition, cues about the defendants' responsibility for the murder could be obtained from variables concerning the circumstances of the incident: bystanders, antagonists and mediators could be detected via such route. Finally, a rejected case could be interpreted as an indication of defendant's non-primary status.

In cases where it was difficult to assess the level of involvement of a particular defendant (they seem to have been involved to the same degree and ultimately received similar dispositions), coders had to utilize their discretion and designate one of the defendants as "arbitrary primary" and the other or others as "arbitrary not primary."[41] For the purposes of current research, a dummy variable *Primary Defendant* distinguishes between secondary defendants (coded as 0) and sole and primary defendants (coded as 1). The latter category includes "arbitrary" designations from the original coding since they carry no substantive meaning and were coded as such for convenience. Ninety four percent of the defendants in the sample were either primary or sole perpetrators.

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[41] Cases where a primary defendant has been clearly identified could not contain "arbitrary not primary" defendants: all other defendants were coded as "not primary." In instances of discretionary designation of defendants' primary status, it was still possible to designate a "clearly not primary" defendant if the circumstances of the case so implied.

Two variables were used to capture the severity of the offense. First, *Multiple Victims*, a dichotomous variable that accounts for the number of victims in the incident was included in the analysis. Defendants who had allegedly killed one person were assigned a code of 0, defendants accused of killing more than one person were coded as 1. Prior research has shown that victimizing several individuals is associated with more severe sentencing outcomes (Williams & Holcomb, 2004). Four percent of defendants (n=128) in the sample had committed crime against multiple victims with the majority of those (84%) victimizing two people.

In addition, because some studies have found that use of a weapon during the offense affects criminal justice outcomes, although research findings show no consistency as to the direction of this effect (Dawson, 2004), whether a weapon was used in the murder was also controlled. While use of a firearm or a knife is more likely to be interpreted as an aggravating circumstance for offenses other than murder, use of a weapon carries particular significance for cases of child homicide. Since a large proportion of child homicide cases suffer from evidentiary problems and are not characterized by weapon use, employing a gun or knife to kill a child may be interpreted as an indicator of the defendant's resolute intent to harm the victim. *Weapon* is a dichotomous measure coded 1 when a firearm, knife or another sharp object was used to commit the killing, and 0 when the perpetrator relied on other implements of death. Seventy nine percent of defendants in the sample had used a weapon during the alleged offense.

Additionally*, Murder Conviction,* one of the dependent variables in this study was introduced in the sentencing models in order to adequately control for the effects of earlier decisions in the court process.

The original dataset provides a number of measures of a defendants' prior criminal record (the number of prior arrests in the defendant's criminal record, the number of prior violent arrests, the number of prior drug arrests; the number of prior sentences to incarceration, etc.). Since some of these variables are highly correlated with one another, and some tend to suffer from missing data problems, the number of prior convictions was chosen to measure defendants' prior criminal history. This choice is consistent with prior research where offenders' prior convictions have demonstrated a consistently strong relationship to various case processing outcomes including sentence severity (Brennan, 2006; Spears & Spohn, 1997). Because of a severe skew in the original ordinal variable, *Prior Convictions* was recoded into a dichotomous variable, coded 1 for defendants with any prior convictions, and 0 for defendants with no prior convictions. Thirty two percent of defendants in the sample have been previously convicted.

Several other case, defendant, and victim characteristics that have been shown to affect the processing of criminal cases were also included in the analysis. Demographic characteristics of the defendant included are age, gender, and race. Victim's race was also utilized in multivariate analyses.

Defendant's *Gender* was coded 1 for male defendants and 0 for female defendants. Male defendants comprised the majority of the full sample (89.6%). However, in the child homicide sample the proportion of female defendants comprised 35%.

Past research has produced inconsistent findings regarding the relationship between defendant's age and judicial outcomes. While some studies have found that certain categories of offenders (older or younger or both) may benefit from the

lenience of the courts (e.g. Curry et al., 2004; Mustard, 2001), other studies have failed to detect an effect of defendant's age on sentencing (Bushway & Piehl, 2001; Engen & Gainey, 2000). In the present study *Defendant's Age* was included as a control variable, and was measured in years.[42] Defendants' age in the sample ranged from 14 to 88 years old with a mean age of almost 30 years.

The original dataset contained two variables measuring race and ethnicity. Defendants were categorized as either Hispanic or of no Hispanic origin on the ethnicity variable. The original race variable was a five-category variable categorizing defendants as either white, black, American Indian/ Alaska Native; Asian/Pacific Islander, and "other" race category. A set of dummy variables have been created from the original race and ethnicity variables. Following a recoding strategy employed by Spohn and Holleran (2000) defendants originally identified as white on the race variable and non-Hispanic on the ethnicity variable were categorized as white in the new *Defendant White* variable. Twenty two percent of the defendants in the sample were white. Defendants who were identified as "black" on the race variable and non-Hispanic on the ethnicity variable were categorized as black for the purposes of the newly created *Defendant Black* variable. Sixty percent of defendants in the sample were Black. Defendants who were originally identified as white and Hispanic, or black and Hispanic, or Asian/Pacific Islander and Hispanic (3 defendants) were categorized

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42 Some researchers (Steffensmeier, Kramer, & Ulmer, 1995; Steffensmeier & Motivans, 2000) point out that modeling the effects of age as a continuous variable, assuming a linear effect, may not detect the more complex association between defendants' age and sentencing. Preliminary analysis using age categories failed to detect a potential curvilinear relationship.

as Hispanic in the newly created *Defendant Hispanic* variable. A little over 16% of the sample of defendant was Hispanic. Defendants in the three remaining race categories were combined into a single *Other* race variable, and comprised less than 1% of the sample. White defendants served as a reference category in most of the analyses.

The same recoding procedures were employed for designating the race of each victim. Since there were 128 cases that involved multiple victims, the victim race was operationalized as "one or more minority (or non-white) victims."[43] *Minority Victim* was a dichotomous measure coded as 1 if at least one of the victims was a racial or ethnic minority; and coded 0 if all victims were white. Seventy one percent of defendants have allegedly killed at least one minority victim.

Finally, an interaction effects variable – *Mother* - was created targeting the interaction of gender and victim-offender relationship. Females who were accused of murdering their own children were coded 1. This variable was used in the analyses of a sub-sample of cases including only those defendants who had been arrested for allegedly victimizing a child victim. Mothers comprised almost a third of offenders in the child homicide sample of cases.

The importance of the mode of conviction for sentencing practices has been repeatedly pointed out in the literature. A general research consensus on the subject states that offenders convicted through trial, especially jury trial, receive harsher sentences than those convicted through guilty plea (Spohn & Holleran, 2000; Steffensmeier & DeMuth, 2001; Ulmer, 1997). Studies have also pointed out that the so called "trial penalties-plea rewards" dynamics may be dependent on a variety of

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[43] Examination of the data revealed that in all but 18 cases multiple victims were of the same race/ethnicity.

factors such as the specific jurisdiction's caseload pressures and the race of the defendant (Johnson, 2005; Ulmer & Bradley, 2006). As outlined in the previous chapter, the anecdotal evidence on the association between the disposition mode and adjudication of child homicide cases is somewhat conflicting and is conditioned by victim-defendant relationship. To account for potential case processing differences in conviction and sentencing decisions, a dummy-coded variable distinguishing between the two disposition modes was created. *Plea* was coded 1 if the defendant plead guilty and 0 if the case went to trial. A little less than half of defendants in the sample had pleaded guilty either to the original charge or to a lesser offense.

Since the data is clustered by counties located in different states, there is a risk of confounding the jurisdictional differences in the processing of cases. As has been pointed out in the sentencing literature, jurisdictions may differ in terms of state laws regulating definitions of offenses, proscribed punishments, and extent of discretion afforded to judges; they may also differ in terms of organizational factors characterizing the judiciary (e.g. ratio of judges, prosecutors and defendants), as well as in terms of other social and cultural forces that may have an effect on judicial outcomes (Britt, 2000; Schlesinger, 2005; Williams, DeMuth, & Holcomb, 2007). To alleviate the bias stemming from omitting these factors, a series of dummy variables controlling for the effects of the 33 individual counties were included in the analyses.

Table 4.1: Descriptive Statistics

	Full Sample (N=2596)				Child Victim Sample (N=124)			
	Mean	SD	Min	Max	Mean	SD	Min	Max
Dependent variables								
Convicted (of any crime)	.90	.30	0	1	.92	.27	0	1
Convicted of murder	.50	.50	0	1	.44	.50	0	1
Sentence length (months)	339.9	437.9	.0	1295.1	266.5	388.3	0	1278.7
Independent variables								
Victim Characteristics								
Child victim	.05	.21	0	1	--	--	--	--
Killed own child	.02	.15	0	1	.46	.50	0	1
Killed other child	.03	.16	0	1	.54	.50	0	1
Minority victim	.71	.45	0	1	.71	.45	0	1
Defendant Characteristics								
Age	29.7	10.5	14	88	27.1	8.7	14	71
Gender (1=Male)	.90	.30	0	1	.65	.48	0	1
White	.22	.41	0	1	.30	.46	0	1
Black	.60	.49	0	1	.58	.50	0	1
Hispanic	.16	.37	0	1	.11	.32	0	1
Other	.02	.14	0	1	.01	.09	0	1
Prior convictions	.32	.47	0	1	.16	.37	0	1
Family	.15	.36	0	1	.62	.49	0	1
Acquaintance	.62	.49	0	1	.26	.44	0	1
Stranger	.23	.42	0	1	.12	.34	0	1
Mother	--	--	--	--	.30	.46	0	1
Offense Characteristics								
Multiple victims	.04	.19	0	1	.10	.30	0	1
Weapon used	.79	.40	0	1	.23	.42	0	1
Primary defendant	.94	.22	0	1	.95	.22	0	1
Plea	.48	.50	0	1	.46	.50	0	1

Missing data do not present a serious problem for this research. Seventy nine cases in the dataset were missing data on race-ethnicity of either victim or the defendant. Other variables with missing cases include victim-offender relationship (91 cases), and defendant's age (43 cases). Mean substitution was employed for defendants' age to prevent the unnecessary deletion of cases. In preliminary analyses, additional dummy variables were constructed for missing cases for the other specified variables to control for any systematic influence of the missing data on the dependent variables.

4.1.3 Data Analysis

This study employs several stages of analyses. First, case-flow analyses are presented to illuminate the progress and disposition of homicide cases with child victims. Case-flow diagrams provide a visual breakdown of the total population of defendants who were arrested on a charge of murder or non-negligent manslaughter with a number of judicial outcomes portrayed as the percentage of the total referred cases with that outcome. The key stages for the case flow diagrams are:

(1) proportion of defendants whose case proceeded to trial (as opposed to being dismissed or rejected);

(2) proportion of defendants who pleaded guilty versus went to trial;

(3) proportion of defendants convicted (additional specification of the conviction offense will be presented);

(4) proportion of defendants sentenced to incarceration (with data presented on mean sentence length).

Case flow diagrams are presented for the sample of defendants who killed an older victim, and for child homicide cases partitioned by the gender of defendant; victim-offender relationship and a combination of these factors.

Next, bivariate analyses are conducted, to examine the patterns that exist between the adjudication outcomes, the type of victim, as well as defendants' and case processing characteristics. This allows for preliminary assessment of the relationship between the dependent and explanatory variables, and for an exploration of the differences between incidents with child and with adult victims in terms of the characteristics of the incidents or the individuals involved.

Finally, multivariate analyses are performed to test the hypotheses and assess the effect of the explanatory variables on each of the three adjudication and sentencing outcomes. The processing of cases through the criminal justice system is a selective process. Multiple factors influence whether a case proceeds to the next stage, making the selection potentially non-random. Research on sentencing traditionally breaks down the sentencing of criminal defendants into a two-stage decision-making process: the decision whether to incarcerate the offenders, and the decision about sentence length for offenders who were sentenced to incarceration (e.g. Curry, Lee, & Rodriguez, 2004; Johnson, Kramer, & Ulmer, 2008). Since not all convicted defendants are incarcerated, the coefficient for sentence length can be biased.

Traditionally, sentencing scholars chose one of two approaches to deal with selection effects while modeling the decision about sentence length: estimating a Tobit model (e.g. Albonetti, 1997; Bushway & Piehl, 2001) or relying on Heckman's two-step correction where a hazard rate of nonimprisonment is included in the sentence length model (for a list of recent studies relying on this method see Bushway, Johnson,

& Slocum, 2007). These two approaches differ in terms of the assumptions regarding the causal processes that motivate the two decision stages. Tobit analysis assumes that the two decisions (i.e. to incarcerate and the decision about sentence length) are made concurrently rather than consecutively. In other words, the same set of considerations factor into both decisions.

The choice between these two approaches should be justified on theoretical grounds depending on the perception of sentencing as a sequential or a joint process. Thus, Bushway and Piehl (2001) argue that under determinate sentencing guidelines, modeling the sentencing decision as two stages is not imperative since judges have little discretion in regards to choosing either probation or prison sentences. Instead, judicial decision-making in the presence of guidelines becomes a one-stage process.

It can be argued that the nature of the offense of murder in the present inquiry severely limits judges' discretion to choose between probation and incarceration sentences. Eighty five percent of convicted defendants were convicted for murder or non-voluntary manslaughter, a verdict that essentially guarantees a term of incarceration. An additional 7% of defendants were convicted of a serious violent offense. Consequently, potential consideration of a probation sentence is afforded to a rather small pool of defendants.

Additionally, a meaningful rather than mechanistic application of Heckman's correction procedure optimally requires incorporation of so-called exclusion restrictions (Bushway et al., 2007). These are variables that affect the likelihood of being incarcerated but have no bearing on the decision regarding sentence length. In absence of exclusion restrictions there exists a risk of collinearity between the correction term and the predictors included in the second model (Stolzenberg &

Relles, 1997). Consequently it would be necessary to exclude some of the predictor variables from the sentence length model, and utilize them only as instrumental variables for the selection equation.

With the considerations specified above, Tobit regression will be employed to model the sentence outcome. Tobit regression allows handling of data censoring that takes place when the dependent variable is not observed because it falls below (or above) a certain threshold (Tobin, 1958). Logistic regression will be used to analyze the probability of conviction, and the probability of being convicted of murder. Although it is tempting to try to correct for potential selection bias while modeling each stage of adjudication using the Heckman two-step method, it has been pointed out that the latter should not be used with continuous dependent variables (Bushway et al., 2007).

Multivariate analyses will proceed in sequence. First, analyses are run on the full sample of defendants (combining those who kill children and those who killed older victims). Logistic regression models predicting the probability of conviction (or any crime) and conviction of murder are first estimated for those defendants that went to trial as opposed to pleading guilty. Next, the effects of the victim's age in combination with victim-defendant relationship (own child vs. not own child) as well as defendants' and case processing characteristics are entered in a Tobit regression model to explore sentence length for convicted defendants. Finally, Tobit regression models predicting sentence length for only the defendants convicted of killing a child are estimated.

4.2 Capital Punishment and Child Homicide

4.2.1 Maryland Death Penalty Data

The imposition of capital punishment involves four decision-making points. The first three stages are the eparchy of the state attorneys: (1) the decision to file a formal notification to seek a death sentence; (2) the decision to make the notification "stick" - to not withdraw that notification; (3) the decision to advance a death-eligible offense to a penalty trial if a conviction for first-degree murder was obtained during the guilt phase of the trial. The fourth stage involves the decision of the judge or jury to sentence a defendant to death. It is the first decision-making point that is of interest in the present research.

The dataset from which a selection of child homicide cases was obtained was constructed for a larger study on capital punishment and its variation by race and geography (Paternoster et al., 2004). The dataset included data on the 1,311 death eligible cases adjudicated and sentenced in the state of Maryland from July 1, 1978 to December 31, 1999.

The data collection procedure consisted of several stages. First, the researchers obtained a list of all first and second degree murderers sentenced to any Maryland correctional institution as well as these inmates' institutional records from the Maryland Division of Corrections. Data on these offenders, including a wealth of information on their educational, employment, social, criminal and mental health history, were entered into an initial data collection instrument. There were

approximately 6,000 first and second degree murders committed in the state of Maryland in the 1978-1999 time period.[44]

These cases were then screened to determine whether they fit the criteria of a "death eligible" case. A case was considered to be "death eligible" if the state's attorney filed a written notice of the state's intention to seek a death sentence, and of the aggravating circumstance it planned to rely on. The case was also considered "death eligible" if it met all of the following requirements that rendered a case a capital offense in Maryland:

1. The state succeeded in proving beyond a reasonable doubt that the defendant was a principal in the first degree, unless the exception to the principalship requirement applied to the defendant;

2. The defendant was 18 years of age or older at the time of offense;

3. The defendant was not mentally retarded at the time of murder, which has to be proven with a preponderance of evidence;

4. At least one statutory aggravating circumstance characterized the murder and this is proven by the state beyond a reasonable doubt.

There are ten statutory aggravating factors specified in the Maryland's death penalty statute:

1. The victim of the murder was a law enforcement officer in the course of performing his/her duties

2. The defendant committed the offense while detained in a correctional facility;

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[44] The study period spans from August 1, 1978 (when Maryland's new death penalty statute came into effect) until September 25, 1999.

3. The murder was committed while the defendant was trying to escape from or trying to avoid lawful apprehension by a law enforcement officer or an officer of a correctional facility;

4. The victim was taken in the course of an abduction or kidnapping;

5. The victim was a child abducted in violation of §3-503(a)(1) of the statute article;[45]

6. The defendant committed murder under agreement for remuneration;

7. The defendant employed another to commit murder in exchange for remuneration;

8. The defendant committed the murder being under a sentence of life imprisonment or death;

9. The defendant murdered several people in the course of one incident;

10. The defendant committed the murder while committing, or attempting to commit robbery, carjacking or armed carjacking; arson in the first degree; rape in the first degree or a sexual offense in the first degree.

There were approximately 300 homicides where the notice of intent to seek the death penalty was not filed by the state's attorney, and the researchers were not sure whether the case could be characterized as "death eligible." These cases were reviewed by panels of five to ten attorneys who had experience with death penalty cases. The panels, that included both former prosecutors and members of the defense bar, were presented with a detailed narrative of each case in question describing the facts of the case. Based on these narratives each attorney comprising the panel was

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[45] Md. Ann. Code, Crim. Law § 2-202.

asked to answer two questions: (1) "Do you think this case is 'death eligible' under Maryland law, and (2) On a scale from 1 ("not very confident at all") to 10 ("very confident") how confident do you feel in making this determination?" (Paternoster et al., 2004, p. 19). A case was categorized as death eligible if the panel answered "yes" to the first question with an average confidence rating of 5.0 or higher. Fewer than 50 cases out of approximately 300 reviewed were ultimately added to the pool of death eligible cases.

There were 37 defendants whose victim (or one of the victims) was a child 12 years old or younger. Out of the whole sample, two defendants were found innocent and four were convicted of an offense less than first degree murder. A death notice was advanced in 10 of these cases. Two offenders were sentenced to death.

To illuminate the contextual characteristics of the case, the quantified data was also supplemented by case narratives. These case narratives present extensive descriptive accounts of the homicide, putting the quantified data in context (e.g. clarifying the time sequence of events; illuminating the offender's reaction to the crime, etc.). Case narratives were obtained from two sources. First, the original paper copy of the coding instrument was examined. The coding instrument concludes with a section titled "Narrative of Homicide." Original coders were instructed to write a detailed account of the offense, the facts surrounding the case, and the evidence. These descriptions varied in their comprehensiveness, and were missing for eight of the defendants. Consequently, an attempt was made to reconstruct the circumstances of the crime and/or processing of the case by utilizing additional sources of data for this research.

First, newspaper accounts of cases were collected using the Lexis Nexis Academic Database (including several national and all local Maryland sources). Names of the defendants and victims, as well as words that conveyed certain vital characteristics of the offense (e.g. "fire," "Molotov cocktail") served as key search terms. The time period specified for each search was from the date the offense took place to two years after the sentencing date to capture all potential coverage of the case appeal (if one was filed). Because the Lexis Nexis Academic Database only contains articles published since 1995, a search of the archive of a major Maryland newspaper, The Baltimore Sun, was also conducted using the same search strategy outlined above.

4.2.2 Key Qualitative Dimensions of Interest

The purpose of this component of the dissertation is to examine the nature and characteristics of death eligible cases that involved child victims, and to explore factors that potentially contribute to the prosecutors' decision to seek capital punishment. These issues are addressed through an analysis of three areas pertinent to the case: offender characteristics, victim characteristic, and the characteristics of the offense.

The dataset contains extensive information on each of the defendants, including demographic characteristics, marital and employment status, living arrangements, defendants' role in the murder, and criminal as well as certain medical history (e.g. history of drug abuse or mental problems). The majority of defendants were male and African-American. Although education and employment information is missing for about a quarter of the sample, the more important data on criminal history

is present and includes information on both adult and juvenile record of the defendants, including any felony arrests, convictions and prior incarcerations.

In relation to the offense, the dataset provides information on whether defendants were a primary or co-equal perpetrators of the killing. All but two defendants acted alone. The state of the defendants' mind as well as motivation for killing can be gleaned from both the dataset and case narratives. In addition, the dataset contains information on the number and nature of charges and convictions the defendant sustained for the current offense. Half of the defendants were convicted of other felonies in addition to homicide.

More than half of the defendants (25 individuals) murdered more than one victim. The dataset contains information on several important victim characteristics including indicators of victims' defenselessness and vulnerability, as well as the relationship of the victims to the defendant. The dataset and case narratives provide a range of factors through which the heinousness and brutality of the crime can be assessed. Thus, there is data on whether the defendant forced his or her way into the victim's home (if that is where the homicide occurred), whether the defendant came armed, and whether the murder was planned. Mistreatment of the victim before the killing is extensively captured in the data (e.g. information on whether the victim was forced to do something against their will; the number of wounds found on the victim's body). There is also data on how the body was disposed of.

The data also provide insight into the availability and strength of evidence linking the defendant to the crime: presence of physical evidence of the defendant at the scene of the crime, fingerprints, footprints or any personal belongings left by the defendant at the scene of the crime; trace evidence found on the victim that identified

the defendant as the offender, if there were any eyewitnesses that identified the defendants as the perpetrator, etc.

4.2.3 Data Analysis

For this component of the research, analysis is primarily qualitative and descriptive in nature, although basic quantitative analysis including univariate statistics is also completed, and is done both at a group and individual case level. There are two primary exploratory objectives of this part of the dissertation: (1) to systematically assess the nature and characteristics of child homicide cases that are defined as death eligible by the state attorneys in Maryland, and (2) to explore factors that potentially contribute to state attorneys' decisions to seek capital punishment in particular cases involving child victims. Both objectives require flexibility of analytic strategies in a sense that data collected in one tradition (e.g. quantitative) be converted into the format of another tradition (qualitative). Transformations of this sort are acceptable for many mixed methods studies (Caracelli & Greene, 1993; Tashakkori & Teddlie, 1998).

The main analytic strategy for this component of the dissertation is grounded in both quantitative content analysis and manifest thematic content analysis. Quantitative content analysis is the "systematic and replicable examination of symbols of communication, which have been assigned numeric values according to valid measurement rules, and the analysis of relationships involving those values using statistical methods, in order to describe the communication, draw inferences about its meaning, or infer from the communication to its context" (Riffe, Lacy, & Fico, 2005, p.36). For the purposes of this study, data from case narratives are quantified to illuminate the frequency distribution of certain factors of interest.

A manifest level thematic content analysis is employed to meet both of the objectives of this section. The term "thematic" simply implies that the focus of analysis lies in extracting themes and concepts from the data. Manifest nature of content analysis means that the manifest content, one that resides on the surface of the data, will be primarily considered as opposed to the latent, between-the-lines content.

To meet the first objective - to develop a typology of death eligible child homicide cases - the data presented in quantified format will be supplemented with data from case narratives, to fill any gaps and clarify the nature and circumstance of events. The typology of death eligible child homicide cases is based on the intersection of three factors: (1) Whether the child was the primary, co-equal or an auxiliary target of the offense; (2) Motivations of offender for the crime (e.g. sexual gratification, revenge against former romantic partner, financial gain, etc); and (3) Certain characteristics of the offense such as victim offender relationship (e.g. parent killing a child versus stranger killing a child). A holistic narrative profile of each type is developed and represents an overall qualitative summary of many detailed pieces of information.

Narrative profile formation also takes place to meet the second objective of this research section. To examine in detail factors that are associated with seeking capital punishment in child homicide cases, data stored in quantified form is subjected to a qualitative analysis. Verbal descriptions of cases under study are constructed and merged with already existing case narratives. Next, the constructed profiles of the ten cases where state attorneys decided to seek capital punishment are analyzed for the presence of similar themes and uniting factors. To better flesh out case and defendant

characteristics that might incline the state attorneys to pursue capital processing, cases where defendants killed an older victim are utilized as comparisons.

4.2.4 National Death Penalty Data for Female Offenders

In the Maryland dataset there were only five female defendants who had killed a child. None of them received the state attorney's notification to seek capital punishment. This complicates the task of exploring what factors potentially shape the probability of capital processing of a female perpetrated child homicide. In an attempt to partially remedy this, the analysis is supplemented in two ways. First, cases of female offenders who received the death penalty notification for killing an older victim are examined for any points of commonality and divergence. Second, cases of women who were sentenced to the death penalty for killing a child in other states provide contrast to female child homicide perpetrators in Maryland.

A list of female offenders who had been sentenced to the death penalty between the years 1990-2010 was obtained from a report titled "Death penalty for female offenders" (Streib, 2012). For over a decade Victor Streib has been collecting and publishing data on death sentences for female offenders. These quarterly reports contain a list of all women sentenced to death since 1973 regardless of whether their sentences have been carried out, or whether their convictions have been subsequently reduced or commuted.

These data reveal that between 1990 and 2010, death sentences were imposed on 94 female offenders. Almost a third of these women (n=27) were tried and sentenced for killing a child. For those women who are currently under a death sentence, the reports provide a brief summary of their offense. The summaries were a first step in identifying female offenders who had killed a child. Internet search was

relied upon to identify child killers among the remaining women, who were sentenced to capital punishment between the years 1990-2010 but were not currently on death row.

Factual circumstances of the crimes as well as data on the identity of these women were reconstructed from several sources, primarily texts of appeals. Additionally, academic publications and media accounts of these high-profile crimes in national and local sources provided information on the circumstances of the offenses and their processing in court.

Information on these female defendants was collected until reaching a point of 'saturation' when descriptions were yielding the same findings. Data collected for these defendants were not as detailed as for the Maryland defendants. Furthermore, there may be possible bias in accounts – for example, that media depictions tended to represent the prosecutorial point of view. For purposes of this research, these cases were meant to provide insight on what it takes for a woman who has killed a child to be sentenced to death. As such, both the objective reality of the case and the constructionist transformation it might have undergone during trial supply useful data on how the defendant and her crime has to be portrayed to be punished with utmost severity.

4.3 Summary

To illuminate the differentials in adjudication and sentencing outcomes that exist in the application of the law for those who kill children compared to those who kill adults, this study relies on a combination of quantitative and qualitative data and methodological approaches. Pursuing the goals of complimentarity and expansion, a quantitative analysis of a nationally representative data on adjudication and sentencing

of defendants who have been charged with murder is supplemented with a qualitative component, which explores factors that are associated with advancing capital punishment in a sample of death eligible child homicide cases from the state of Maryland. Additionally, the current study uses data on female offenders who were sentenced to capital punishment across the United States in an attempt to uncover factors that condition the severity of criminal justice response to women who kill children.

Chapter 5

PREDICTING CONVICTION AND SENTENCE LENGTH FOR CHILD KILLERS

This chapter relies on nationally representative data collected from prosecutors' offices in 33 large urban counties to examine the hypotheses of this study:

(1) Defendants who have killed a child will be treated more leniently by the courts compared to those who kill others: they will be less likely to be convicted, convicted of murder, and will receive shorter sentences than defendants with older victims;

(2) Defendants who have killed their own biological children (parents) will be treated more leniently by the courts compared to those who killed children not related to them: they will receive shorter sentences than non-familial perpetrators of child homicide;

(3) Females who have killed a child will be treated more leniently by the courts compared to males: will receive shorter sentences than male defendants of child homicide;

(4) Females who have killed their own children (mothers) will be treated more leniently by the courts compared to non-familial perpetrators of child homicide: they will receive shorter sentences than male and female defendants who killed a child not related to them;

(5) Defendants who have killed children who were racial or ethnic minorities will be treated more leniently by the courts compared to those who killed white children: they will receive shorter sentences than defendants with white child victims.

Analyses in this chapter will proceed in several stages. First, case flow analyses tracking the progress and disposition of cases from referral to prosecution to sentencing is presented. For a comprehensive understanding of the progress and disposition of homicide cases with child victims, the sample of child homicide defendants is disaggregated by gender and victim-offender relationship. Second, cross-tabulation analyses is relied upon to explore if there are any differences - personal or offense related - between defendants who were charged with killing an older victim and defendants who allegedly killed a child. The chapter concludes with multivariate analyses exploring whether there are potential differentials in the application of the law at the conviction and sentencing stages depending on the status characteristics of the victim.

5.1 Case Flow Analyses

Figure 5.1 presents a case flow diagram describing the processing of individuals who were charged with murder of older victims (older than 12 years old). Prosecutorial and sentencing outcomes of cases with child victims will be then compared to this context. Out of 2,995 defendants charged with murder or non-negligent manslaughter of older victims, 82.5% were bound over for trial. The remaining cases were either dropped or dismissed. Of those defendants who went to trial, a rather small proportion were found innocent whereas 42% were convicted either by a judge or jury and 48% pleaded guilty either to the original or a lesser offense. The breakdown of conviction charges reveals that an approximately equal

proportion of defendants (28%) were convicted of first degree murder or of another murder charge including voluntary or non-negligent manslaughter. The remaining defendants were convicted of some other violent offense (14%) or a non-violent offense (2%). Only a small proportion of those convicted were not incarcerated – 91% were sentenced to some form of incarceration. There was great variation in sentence length for convicted defendants. The mean sentence length in months comprised 343.6 months (about 28.5 years).

It is insightful to compare data on the distribution of outcomes for defendants with older victims with the case flow dynamic of cases with child victims. To further illuminate the potential idiosyncrasies that characterize the processing of child homicide cases through the criminal justice system, the latter are disaggregated based on the victim offender relationship. Figure 5.2 presents the case flow diagram for defendants who were charged with killing a child who was not biologically related to them. Out of 74 people who were charged with killing a non-familial child, 90% were bound over for trial. Almost half of these defendants were convicted by either a judge or jury; a slightly smaller proportion (42%) pleaded guilty, and 9% were found innocent. The distribution of conviction charges for this group of offenders differed somewhat from conviction charges of offenders with older victims. Most notably, a higher proportion of offenders with non-familial child victims were convicted of first degree murder (36%). Compared to defendants with older victims, a similar proportion of offenders with non-familial child victims were sentenced to prison or jail (92%). Sentence length is comparable for the two groups. Mean sentence length for those convicted of child homicide comprised 346.3 months (about 29 years).

Case processing dynamics of defendants who killed their own biological children (parents) is somewhat different compared to defendants with older victims and those with biologically unrelated child victims (Figure 5.3). Out of 70 people charged with killing their own child, 81% proceeded to trial. Four people were found innocent, while slightly over half (53%) pleaded guilty, and 40% were found guilty by either a judge or jury. The percentage breakdown of the conviction charges for the group of parent-offenders differs to some extent from the breakdown for offenders with older victims and for offenders with non-familial child victims. Compared to the latter two groups, a lower proportion of parent-offenders were convicted on the charge of first degree murder (11%) and a larger proportion were convicted on non-murder charges (41.5% convicted of a violent offense and 7.5% of a nonviolent offense). Additionally, a smaller proportion of parent-offenders compared to those who killed a child not biologically related to them received an incarceration sentence (85% versus 92%). Finally, sentences for the parent of offenders tended to be significantly shorter than sentences for the latter group. Mean sentence length for parent-offenders comprised 176.1 months (about 14.5 years), which is half as long as sentences for the group of offenders with older victims and for those who had killed a child not related to them. These differences in sentence length are statistically significant at $p < .05$.

To further the inquiry, it is insightful to disaggregate by gender and victim-offender relationship the processing of defendants in child homicide cases. This will illuminate whether male and female child homicide offenders are treated equally and whether processing of defendants varies depending on victim-offender relationship. Figures 5.4 and 5.5 present case flow diagrams for female and male defendants who allegedly killed a child. Regarding gender, 77% of females and 90% of males were

bound over for trial. A comparable proportion of female and male defendants were convicted (88% and 93.5% respectively). The distribution of conviction charges revealed some differences by gender. Almost twice as many male than female offenders who were convicted of child homicide were convicted of first degree murder (15% versus 29%). While a comparable proportion was convicted on another murder charge, a much higher proportion of female offenders were convicted of another violent offense (38%) compared to 21% of males. The proportion of offenders receiving an incarceration sentence was similar across the two gender groups. The sentence length, however, tended to be significantly longer for males than for females. The mean sentence length for male defendants convicted of killing a child was roughly 30% longer than for female defendants, a statistically significant difference.

The next step of analysis explores to what extent the gender differences in prosecutorial and sentence outcomes in child homicide cases are conditioned by the victim-offender relationship. To do this, samples of female and male defendants with child victims are disaggregated into two groups - parents and non-parents. Figures 5.6 and 5.7 present case flow diagrams on defendants who were mothers and fathers to their victims. Figures 5.8 and 5.9 provide information on case processing for male and female defendants charged with killing a child not biologically related to them. Several interesting findings emerge. First, 84% of female defendants on trial for child homicide were mothers to their victim. Whereas for male perpetrators this relationship was reversed - only a quarter of males allegedly killed their own child. Second, there is a staggering difference in sentence length between mothers and females who had killed a non-biological child (although the latter group is very small). Mean sentence length for mothers is 173 months whereas for other females with child victims it is

more than double that length - 396.7 months. However, a similar sentence length distribution exists for males: fathers had a shorter mean sentence (181.3 months), whereas males who had killed a child not related to them received a mean sentence length of 340.7 months.

5.2 Bivariate Comparisons

The case flow analyses presented above illustrated some of the similarities and differences that exist in case processing across the different contextual characteristics of homicide. The trial versus plea ratio was similar for those who killed children compared to those who killed adults: 48.2% of defendants accused of killing an older victim and 46.8% of defendants in child homicide cases pleaded guilty. Of those defendants whose case was not rejected or dismissed, a similar proportion across the two comparison groups were convicted of some offense (90.1% of defendants who killed an older victim and 91.9% of defendants who killed a child). About half of defendants in both groups were convicted of murder: 49.2% of defendants with adult victims were found guilty on a charge of murder compared to 55.6% of defendants with child victims (Table 5.1). This difference in proportion is negligible (γ= -.128, p = .164, n=2,596) and not significant (χ^2= 1.943, p = .163, n=2,596).

Examining the personal characteristics of defendants comprising the two groups illuminates two notable differences. First, females were overrepresented among defendants who allegedly killed a child compared to the group of defendants with older victims. A little over a third of perpetrators of child homicide were female whereas they comprised only 9% of defendants who had allegedly killed an older victim. This relationship is sizable (γ = -.692, p = .000, n=2,596) and statistically significant (χ^2= 88.48, p = .000, n=2,596).

Table 5.1: Percentage Distribution of Case Characteristics for Defendants who Killed a Child and Defendants who Killed and Older Victim

	Killed Older Victim (n=2,472)	Killed Child (n=124)
Female defendant	9.1%	35.5%
Has prior convictions	32.9%	16.1%
Convicted of murder	50.7%	44.3%
Used a weapon	82.1%	23.4%
Acted alone	69.0%	74.2%
Multiple victims	3.6%	10.5%
Victim-offender relationship		
Family	12.7%	62.1%
Acquaintances	63.4%	25.8%
Strangers	23.9%	12.1%

Another difference between the two groups of defendants concerns their criminal history. A larger proportion of child homicide defendants (almost 84%) had no prior convictions compared to those who had killed an older victim (67.1%). This association is moderate in strength (γ = -.436, p = .000, n=2,596) and statistically significant (χ^2= 15.22, p = .000, n=2,596).

Some differences between the two groups of defendants are observed in terms of the circumstances and characteristics of the offense. Consistent with the literature, cases of child homicide are less likely to involve a weapon compared to cases with older victims: a firearm, knife or sharp object was used three times more often by

defendants who had killed an older victim than by perpetrators of child homicide (82.1% and 23.4% respectively). This difference is clearly strong (γ = -.875, p = .000, n=2,596) and statistically significant (χ^2= 248.26, p = .000, n=2,596).

Perpetrators of child homicide seemed to be slightly more likely to have acted alone (74.2%) compared to defendants who were accused of killing an older victim (69%). This association, however, is pretty weak (χ^2= 1.49, p = .222, n=2,596) and not significant (γ = -.127, p = .202, n=2,596).

Another difference between the two groups of defendants emerges in regards to the number of victims in the incident. Perpetrators of child homicide were somewhat more likely to be involved in incidents that produced multiple victims (10.5%) compared to defendants who were charged with murdering an older victim (3.6%). This association is somewhat strong (γ = -.516, p = .015, n=2,596) and significant (χ^2= 14.82, p = .000, n=2,596).

As observed in existing literature, the victim-offender relationship is vastly different for cases of child homicide compared to cases involving older victims. Whereas defendants who had killed an older person were most likely to be friends or acquaintances with their victim (63.2%) than to be related to him or her (12.7%), perpetrators of child homicide were much more likely to be a member of the victim's family (62.1%) than to be acquainted with the child (25.8%) or not know the victim at all (12.1%). This association is somewhat strong (γ = -.657, p = .000, n=2,596) and statistically significant (χ^2= 225.4, p = .000, n=2,596).

5.3 Multivariate Results

Binary logistic regression is used to examine whether killing a child affects the odds of being convicted and the odds of being convicted of murder. Results are

presented in Table 5.2. Analysis is performed only on the sample of defendants who had gone to trial as opposed to pleading guilty. Contrary to the proposed hypotheses, the young age of the victim did not affect the likelihood of conviction nor the likelihood of being convicted of murder. Results of models with disaggregated Child Victim variable are not presented here, but neither killing one's own child nor killing a child who was not biologically related had an effect on either conviction outcome. Several defendant and offense characteristics, however, did have a significant effect on the probability of conviction. Age significantly affected the conviction outcome, with an increase of one year decreasing the odds of being convicted by 2%. Having prior convictions also increased the odds of being convicted by 73%. Finally, having acted alone or being the primary defendant in a case almost quadrupled the odds of being convicted. The probability of being convicted of murder is similarly affected by the defendant's prior criminal history.

While the victim's age proved to have no effect on the probability of being convicted of murder, the relationship between the victim and the offender surfaced as a significant predictor. Killing a family member decreased the odds of being convicted of murder by 35%. Additionally, two offense characteristics influenced the likelihood of a murder conviction. Committing the crime alone, without accomplices, or having the lead role in the offense, more than doubled the odds of a murder conviction. Also, being accused of killing more than one person increased the odds of a murder conviction.

Table 5.2: Binary Logistic Regression Predicting Conviction (of Any Crime) and Murder Conviction

	Convicted			Convicted of Murder		
	b	Odds ratio	S.E.	b	Odds ratio	S.E.
Victim characteristics						
Child victim (≤12yo)	.47	1.60	.41	.43	1.54	.31
Minority victim[b]	-.28	.75	.19	-.26	.77	.15
Defendant characteristics						
Age	-.01	.98*	.01	-.01	.98*	.01
Gender (Male=1)	.42	1.53	.25	.24	1.27	.21
Prior convictions	.54	1.73**	.17	.54	1.71***	.13
Family	.11	1.11	.27	-.42	.65*	.22
Acquaintance	.10	1.11	.18	-.14	.87	.14
Offense characteristics						
Multiple victims	.71	2.04	.42	.92	2.50**	.30
Weapon	.23	1.26	.23	.17	1.19	.18
Primary defendant	1.54	4.68***	.36	1.24	3.47***	.38
Counties (not shown) [a]						
Constant	-.97	.37	1.34	-.20	.81	1.33
N	1323			1323		
Nagelkerke R^2	.16			.13		
-2 Log likelihood	1151.16			1672.30		

*p< .05; ** p < .01; *** p < .001 two-tailed

a All counties were controlled for to account for jurisdictional fluctuations in the administration of the law.

b An alternative specification of the two models was run substituting the Minority Victim variable with defendant's race variables (Black; Hispanic; Other; with White as a reference category). None of the defendant's race variables had a significant effect on the probability of conviction.

Table 5.3 presents results of two sets of Tobit regressions estimating the effects of various victim, offender and offense characteristics on the length of incarceration term. The first model includes the variable Child Victim as a predictor while the second model disaggregates the latter variable depending on the victim-offender relationship. Proportional interpretation of sentence length is possible. In line with the first hypothesis of this study, killing a child who is 12 years old or younger was associated with a substantial reduction in the length of imprisonment. Offenders with child victims received sentences that were on average 44% shorter than those of offenders with older victims.

Disaggregating the Child Victim variable reveals that both killing a biological child and killing a non-related child were associated with similar decreases in mean sentence length. The coefficient for Killed Own Child variable reaches statistical significance only at the one-tailed level ($p = .09$), which is acceptable given the directional nature of proposed hypothesis. Apart from victim's age, victim's racial or ethnic status had a negative effect on sentence length. Taking the life of a person who is a racial or ethnic minority was associated with approximately 32% reduction in mean sentence length.

Table 5.3: Tobit Regression Modeling Natural Log of Sentence Length for the Full Sample of Defendant

	Model 1		Model 2	
	b	S.E.	b	S.E.
Victim characteristics				
Child victim (≤12yo)	-.44*	.19	--	--
Killed own child (≤12yo)	--	--	-.38[b]	.27
Killed other child (≤12yo)	--	--	-.42[c]	.24
Minority victim	-.32**	.09	-.31**	.09
Offender characteristics				
Age	-.02***	.00	-.02***	.00
Gender (Male=1)	.75***	.14	.72***	.13
Prior convictions	.40***	.09	.40***	.09
Convicted of murder	2.09***	.09	2.08***	.08
Stranger	-.09	.13	--	--
Acquaintance	-.03	.11	--	--
Offense characteristics				
Multiple victims	.55**	.22	.53**	.22
Weapon	-.15	.09	-.15	.09
Primary defendant	1.10***	.18	1.10***	.17
Plea	-.90***	.09	-.90***	.09
Counties[a]				
Philadelphia	-1.10*	.48	-1.13*	.48
Orange County	-1.26*	.51	-1.29*	.51
Rochester	-1.19*	.56	-1.20*	.54
Oklahoma	1.46**	.54	1.42**	.54
Constant	3.45***	.54	3.41***	.52
N	2300		2300	
Uncensored Observations	1780		1780	
Standard error (sigma)	1.83	.03	1.82	.03
Pseudo R^2	0.12		0.12	
LR χ^2	1042.32		1041.26	
Log likelihood	-4212.35		-4212.65	

* p< .05; ** p < .01; *** p < .001 two-tailed

[a] All counties were controlled for to account for jurisdictional fluctuations in the administration of the law.

[b] p = .09

[c] p = .12

Several offender characteristics had an effect on sentence length. Offenders' age was significantly and negatively related to sentence length. Each year of age was associated with approximately 2% decrease in mean sentence length. Offender's gender also had an effect on sentence length with males receiving incarceration sentences significantly longer than those of females. Having been previously convicted of another offense in the past increased mean sentence length by 40%. Trials resulted in significantly longer sentences than guilty pleas. On average, those offenders who were found guilty by a judge or jury received sentences about 90% longer than those who pleaded guilty.

Being the sole or primary defendant in the case and being convicted of murder at current trial were both associated with significantly longer sentences. Offenders who carried out a clearly secondary role during the offense received sentences on average half the length than offenders who were the sole or primary perpetrators. Offenders who were convicted of murder at current trial were sentenced to terms approximately three times longer than offenders who were convicted of another offense. Finally, taking the life of multiple victims during a single offense was associated with roughly a 55% increase in sentence length.

Table 5.4 presents results of Tobit regression that examines the sentence length only of those defendants who have killed a child. Because of the small sample size, a less stringent criterion of statistical significance was used in these analyses ($p \leq .1$). The first model addresses three hypotheses proposed in the current study. It explores whether certain groups of defendants accused of child homicide - females, parents who kill their children, and defendants whose victim was a racial or ethnic minority -

receive comparatively lenient treatment. None of these hypotheses were supported by the data.

Table 5.4: Tobit Regression Modeling Natural Log of Sentence Length for Defendants who Killed a Child

	Model 1		Model 2	
	b	S.E.	b	S.E.
Victim characteristics				
Killed own child (≤12yo)	-.44	.53	--	--
Minority victim	-.40	.49	-.37	.47
Offender characteristics[b]				
Mother	--	--	-.80*	.47
Gender (Male=1)	.34	.53	--	--
Prior convictions	- .33	.56	-.40	.57
Convicted of murder	1.83***	.47	1.90***	.45
Offense characteristics				
Multiple victims	2.35***	.77	2.39***	.78
Weapon	-1.15*	.62	-1.18*	.61
Plea	-.47	.48	-.49	.48
Counties[a]				
Philadelphia	-1.86***	.66	-1.95***	.63
San Diego	-1.50*	.80	-1.53*	.79
Detroit	- .06	.77	- .04	.77
Constant	4.40***	.74	4.65***	.58
N	113		113	
Uncensored Observations	90		90	
Standard error (sigma)	2.13	.16	2.13	.16
Pseudo R^2	0.10		0.10	
LR χ^2	49.67		50.24	
Log likelihood	-220.73		-220.43	

* p< .1; ** p < .05; *** p < .01 Two-tailed

[a] These counties were included as controls because they had more than 10 cases with child victims

[b] The variable Primary offender was excluded because all but 4 offenders were primary in the child homicide sub-sample of cases. Offender's age was excluded because age was unknown for 4 offenders. Inclusion of offender's age as a control had virtually no impact on results presented above.

According to the results in the first model, it is the characteristics of the offense that drove sentence length in cases of child homicide and not the identity of the offender or victim characteristics. Taking the life of more than one person and being convicted of murder were associated with increased sentence length for child killers. Using a weapon surfaced as a significant predictor of sentence length but in an unexpected direction. Using a firearm, a knife or another sharp object to kill a child seems to be associated with shorter sentences. Perhaps, it is a peculiarity of this category of cases. One possible explanation is that a weapon as an implement of death might contrast "favorably" with other ways of killing that evince a higher degree of brutality (e.g. drowning, bludgeoning).

The second model's objective is to test the last hypothesis of the study regarding the law's treatment of women who kill their own children. The model includes an interaction effects variable – *Mother* – in lieu of offender's gender variable. Results confirmed the findings from the bivariate stage of analysis and indicated that mothers were treated more leniently by the courts compared to non-familial perpetrators of child homicide. Mothers who had killed their own children received sentences on average 80% shorter than male defendants and females who killed children not related to them.

Another puzzling finding concerned the effect of prior convictions. Although not significant, the coefficient has a negative sign. Further analysis revealed that among the 113 convicted perpetrators of child homicide, only 19 had prior convictions (15 males and 4 females). About half of these individuals were convicted for a violent felony and/or were incarcerated in the past. Cross-tabulation of weapon use and prior convictions variable did not reveal any problematic correlation. If the prior

convictions variable is removed from the model, the coefficient of the Mother variable decreases from -.80 (p=.09) to -.74 (p=.12).

5.4 Summary

The hypotheses of this study were only partially supported by the data. Multivariate analyses revealed that killing a child does not appear to be an influential aggravating circumstance for conviction decisions of the courts. However, offenders who had killed a child were given shorter prison sentences compared to those convicted of killing older persons.

The current study provides some support to the contention that judges and juries find it difficult to believe that a parent is capable of purposely inflicting harm on his/her child. Death of a son or a daughter may be viewed more in tragic terms with the parent-offender deserving compassion rather than condemnation. It is also possible that the factors mentioned earlier in the study, which make child homicide cases more difficult to prosecute, have had an impact on conviction and sentencing practices of the courts.

Being a mother-offender exuded a significant influence over the sentencing decision of the courts. Shorter sentences for mother offenders appear to be driving the lenience characterizing the processing of child homicide. This finding is in line with research discussed in chapter 3 that suggested the more lenient treatment of mother-offenders by the criminal justice system. Women may be perceived by the legal actors and society at large as less dangerous and less blameworthy.

The present study failed to find any evidence of racial disparities in the sentencing and conviction stages of the case processing. This finding is not inconsistent with previous research on racial disparities in sentencing, and only

highlights the need to explore the matter further. The race of the victim, however, surfaced as a significant predictor of sentence length in the full sample models. This finding may be interpreted in light of the benign neglect perspective. Racial minorities are less powerful than whites in securing the protection of the law. As a result, crimes committed against this group of the population may not be regarded as equally serious as ones committed against whites.

The findings of the present study, although insightful, should be treated with caution. There are a number of limitations to the data and the subsequent analyses. First, negative consequences stem from the small sample size of child homicide offenders. It potentially robs the analysis of some statistical power. Also, as noted above, the variation across some variables is limited.

Second, the geographical focus of the data primarily on large urban counties results in a lack of representation of rural courts. This limits the generalizability of the findings on the processing of defendants who murder children. Nevertheless, these data contained over 60% of homicides in the United States at the time. Moreover, understanding the dynamics of processing these types of cases in urban counties is of great importance, since almost 40% of the United States population resides in the counties that comprise the data. Moreover, according to the data from Supplementary Homicide Reports, over half of all reported child homicides occurred in large urban areas.

Another limitation stems from an inability to address earlier stages of case processing through the criminal justice system. It is possible that both formal and informal selection processes that operate at earlier stages of case progression ultimately produce a biased sample of cases. This concern is especially salient for

child homicide cases. Recall the difficulties associated with investigation and making an arrest of the perpetrator for these types of cases that were discussed in chapter 2.

Finally, the data used for this study do not contain information on some measures that have been identified by existing research as influential for adjudication and sentencing decisions. While no data allows for exhaustive controls, it would be beneficial to have information on the type of legal representation afforded to the defendants (Auerhahn, 2007); the individual decision-maker (Britt, 2000); defendant's employment status and presence of children (Brennan, 2006; Dawson, 2004). Prior abuse of the victim, for example, might be seen as an aggravating circumstance in cases of child homicide.

Despite these limitations, however, these results have significantly added to the literature on the imposition of the law in cases of child homicide. No existing study of adjudication and sentencing of child homicide cases has relied on multivariate analysis to predict conviction, conviction of murder, and sentence length for those convicted using a national probability sample of homicide defendants. In the next two chapters, descriptive cases analyses will be presented for child homicides meeting the "death eligible" criteria in the state of Maryland, and in addition, for women who have been sentenced to death nationally.

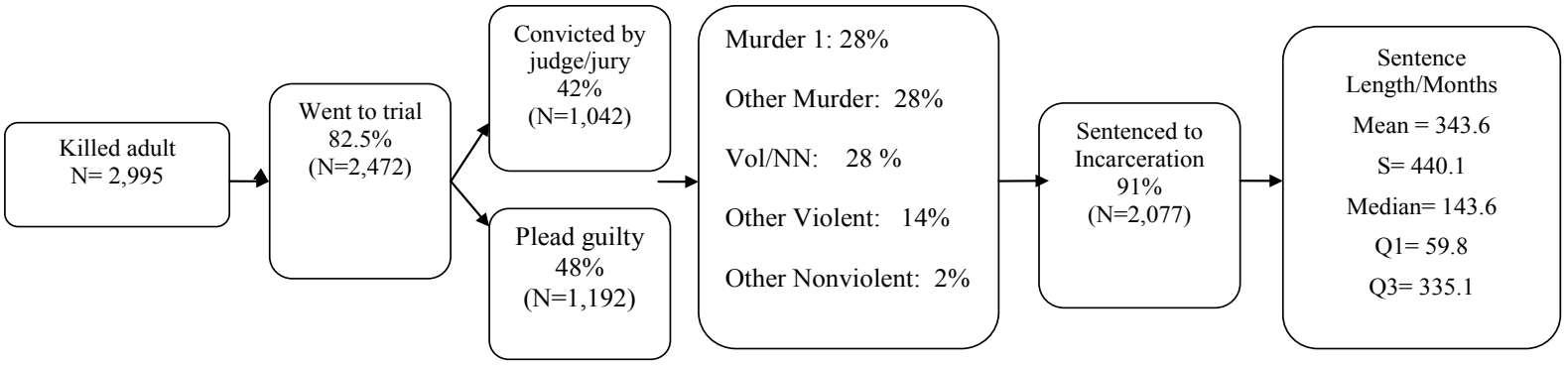

Figure 5.1: Case Flow Diagram for the Sample of Defendants with Older Victims[46]

[46] In this and following case flow diagrams sentence length statistics are calculated for defendants who were convicted.

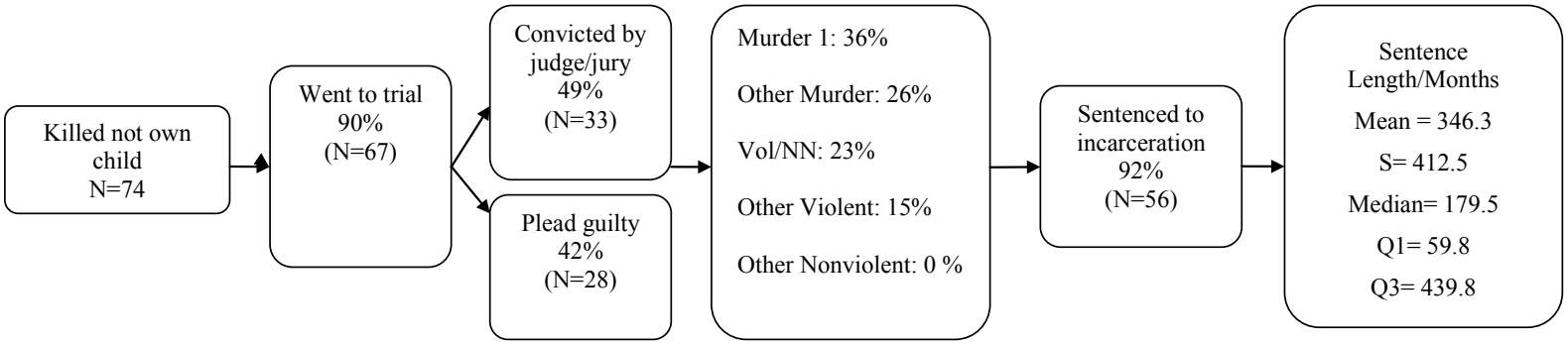

Figure 5.2: Case Flow Diagram for the Sample of Defendants with Non-Biologically Related Child Victims

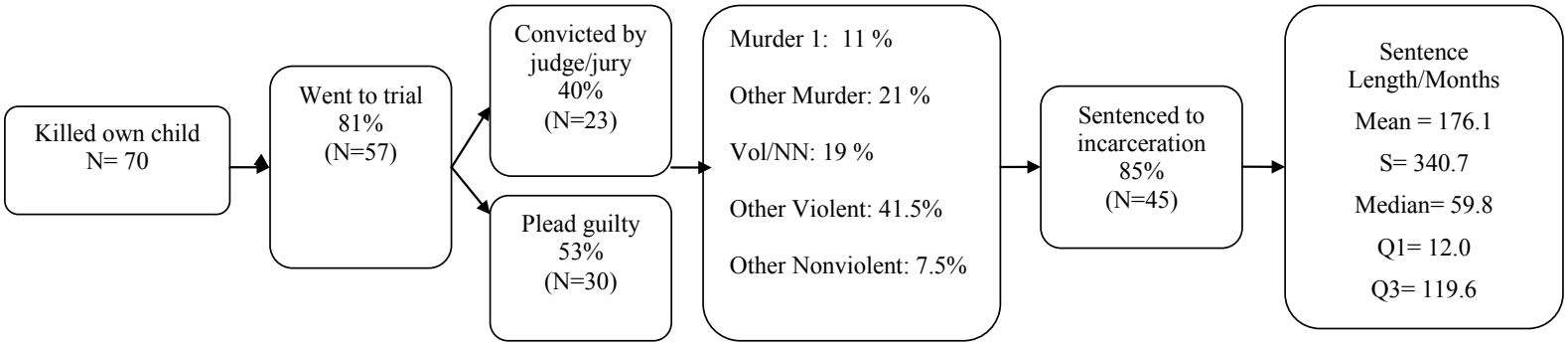

Figure 5.3: Case Flow Diagram for the Sample of Defendants with Biologically Related Child Victims (Parents)

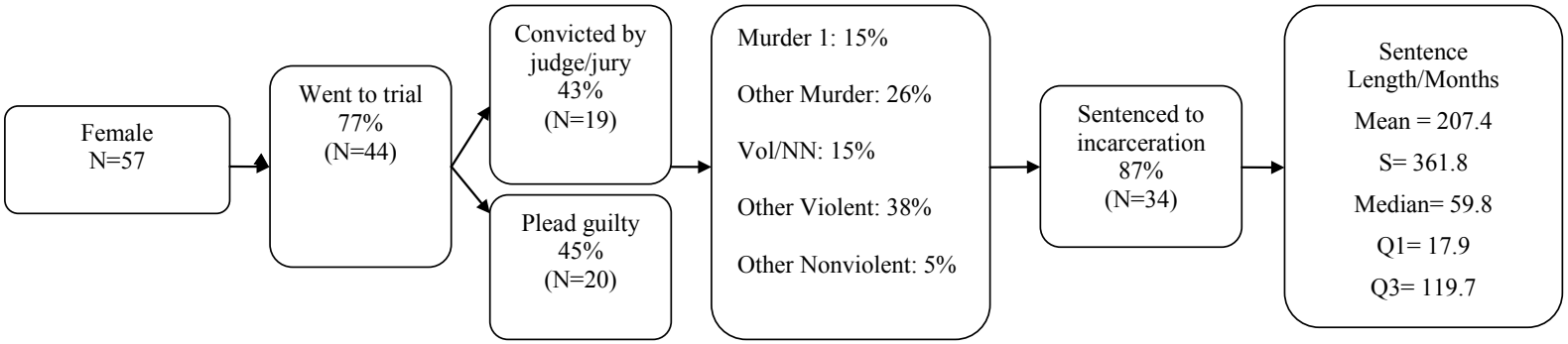

Figure 5.4: Case Flow Diagram for the Sample of Female Defendants Charged with Killing a Child (Irrespective of Victim-Offender Relationship)

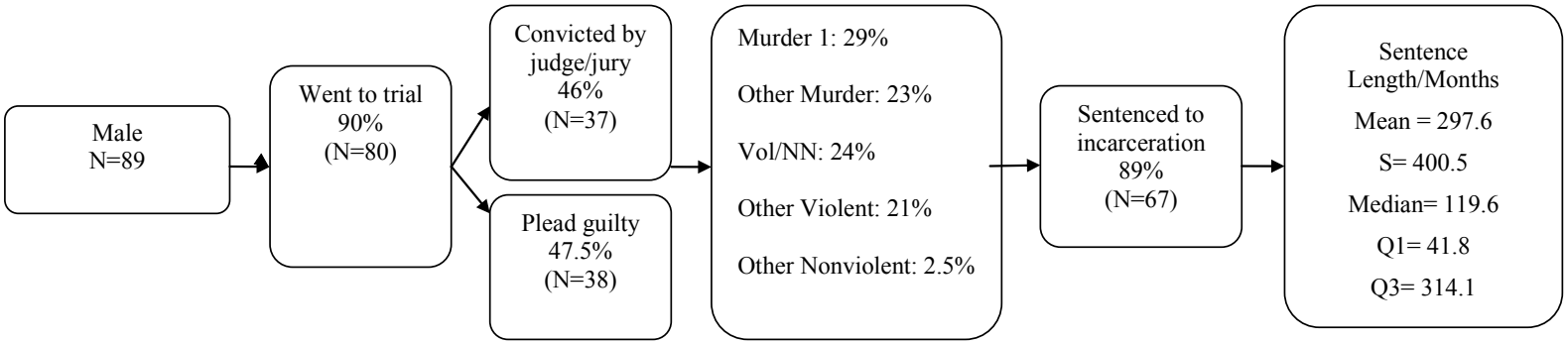

Figure 5.5: Case Flow Diagram for the Sample of Male Defendants Charged with Killing a Child (Irrespective of Victim-Offender Relationship)

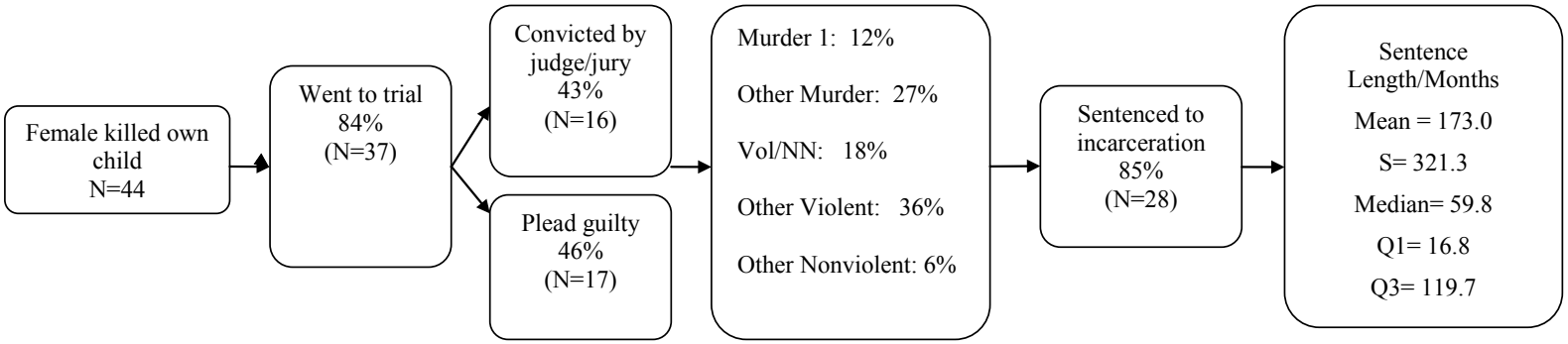

Figure 5.6: Case Flow Diagram for the Sample of Mothers Charged with Killing Their Own Child

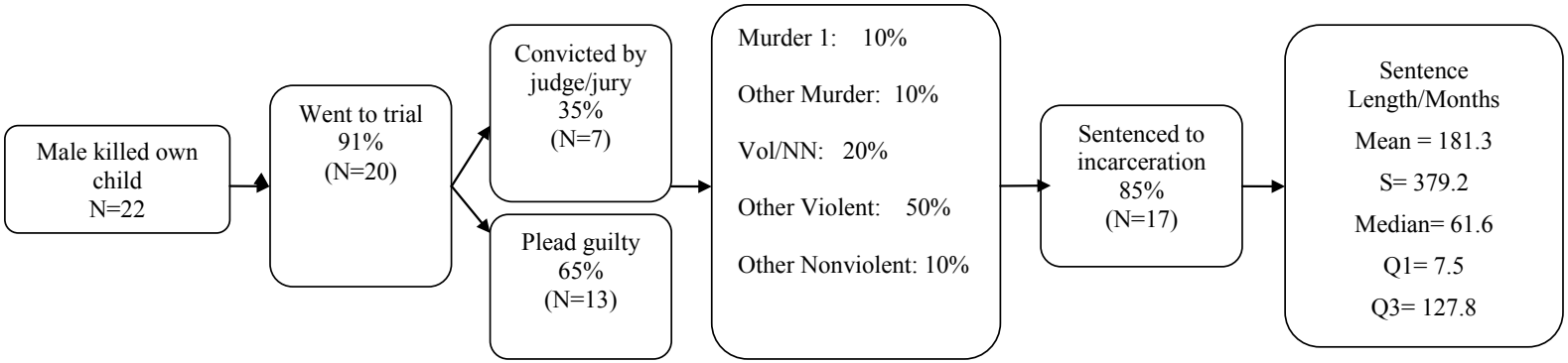

Figure 5.7: Case Flow Diagram for the Sample of Fathers Charged with Killing Their Own Child

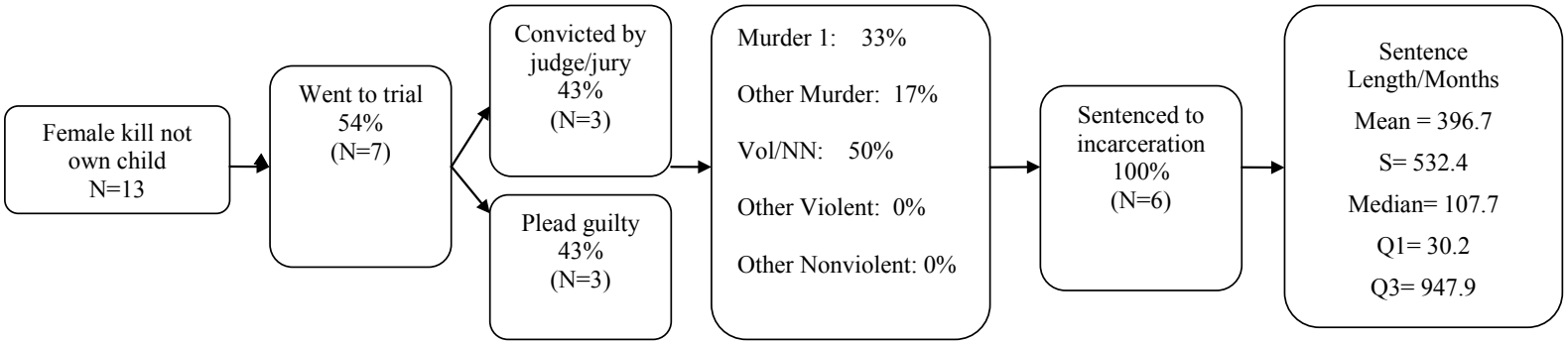

Figure 5.8: Case Flow Diagram for the Sample of Female Defendants Charged with Killing a Child not Biologically Related to Them

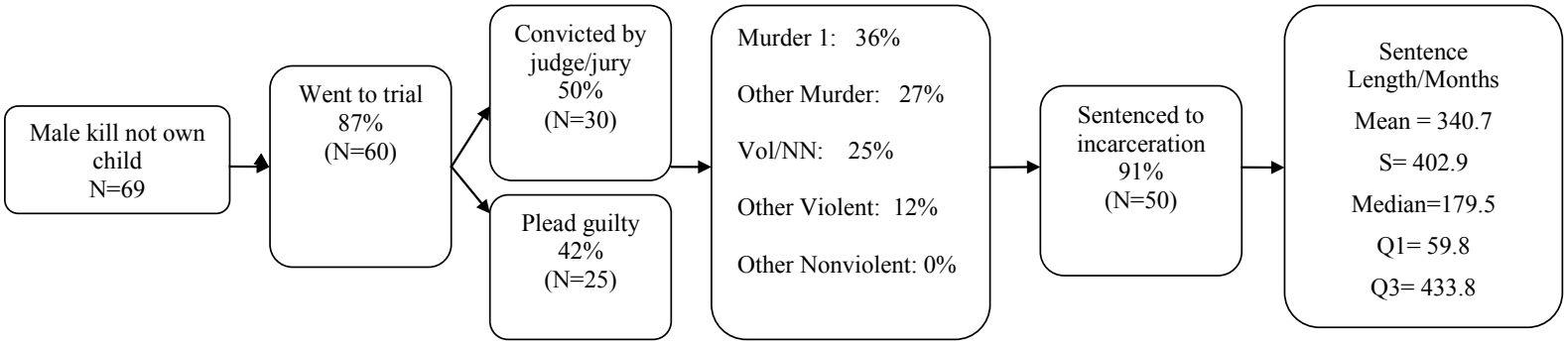

Figure 5.9: Case Flow Diagram for the Sample of Male Defendants Charged with Killing a Child not Biologically Related to Them

Chapter 6

EXAMINING DEATH ELIGIBLE CASES OF CHILD HOMICIDE

This and the following chapters focus on the nature and characteristics of death eligible cases with child victims in the state of Maryland to further examine how the criminal justice system reacts to offenders who fatally victimize a child. It is important to note that death eligible cases with child victims are not representative of the population of child homicide cases because they have to meet a number of requirements to be potentially considered a capital offense. Chapter 4 outlined the 10 aggravating circumstances for Maryland; at least one of these circumstances must be present for a case to be considered death eligible. Thus, in this sample one will find cases that have multiple victims, where a child victim was abducted or kidnapped, and murders that have been accompanied by commission of a certain felony in the first degree. Due to these legal definitional boundaries, this sample is not likely to contain cases of infanticide committed by distraught new mothers, cases where children died as a result of long-term escalating neglect, or as a result of a fight between peers, unless there were other homicide victims as well.

The first section of the chapter will present some basic descriptive statistics of the sample of death eligible cases and, where appropriate, contrast it with the data used for the quantitative analysis portion of the current study and the baseline characteristics derived from SHR data. Next, profiles of categories of death eligible cases with child victims will be identified. It is important to note that this classification will not be exhaustive. The category profiles will be based on a number of vectors, the

principal one being whether the child was a sole or primary target, co-equal target or an auxiliary target for the offender. Additionally, motivations for the crime and certain characteristics of the offense (such as victim-offender relationship) will be taken into account. Within each profile, cases of defendants against whom the state attorney decided to pursue the death penalty will be addressed only briefly since they will be discussed in detail in chapter 7.

6.1 Description of the Sample of Death Eligible Child Homicide Cases

There were 37 defendants that had killed a child and whose case circumstances satisfied the requirement of being death eligible. Two of the defendants had been entered in the dataset more than once (Bloodsworth and Butler). These defendants had filed an appeal and their convictions had been vacated. As a result, every new trial was entered into the dataset separately. However, in the current analyses the outcomes for these two defendants will be counted as one.

Table 6.1 presents selected demographic characteristics for the whole sample of defendants and for groups of defendants broken up by gender. There were 5 females accused of killing a child (this comprises about 13.5% of the whole sample). Three of the female defendants had been accused of killing a child related to them (two mothers and one grandmother). Another woman attacked her cousin and the cousin's children. The proportion of female defendants in the Murder in Large Urban Counties data ("M-33" data) examined in the previous chapter was much higher – there, women comprised 35% of defendants who were bound over for trial. Most of those women were mothers to their victims. Thus, under Maryland's law, a sizable fraction of female-perpetrated child homicide most likely does not satisfy the criteria for death eligibility.

Table 6.1: Defendants in Death Eligible Cases: Race and Age

Defendants	All n=37	Male n=32	Female n=5
Race			
White	16% 6	12.5% 4	40% 2
Black	78% 29	81% 26	60% 3
Hispanic	3% 1	3% 1	0
Other	3% 1	3% 1	0
Age			
≤ 19	8% 3	9% 3	0
20-29	49% 18	44% 14	80% 4
30-39	27% 10	31% 10	0
40-49	8% 3	9% 3	0
50-59	8% 3	6% 2	20% 1

The overwhelming majority of defendants in the sample (78%) were Black. Of the remaining, six of the defendants were White (16%); one defendant was Hispanic and one American Indian. The higher proportion of minorities relative to White defendants is found both in the M-33 data and in the SHR statistics. However, the Maryland sample is more skewed towards minority defendants than the M-33 data

where White defendants comprised 30% of the sample. Since all but two death eligible murders were intraracial, we can infer that the proportion of minority victims is higher in the death eligible sample as well.

Death eligible defendants appear to be slightly older than those in the M-33 sample. Maryland defendants' age ranged from 17 to 56 with a mean age of 30.3 years old. Almost half of all the defendants were in their twenties, including four female defendants. Three defendants were younger than 20 years old. Ten defendants were in their thirties, and the remaining six were 40 years old or older.

Table 6.2 summarizes educational attainment as well as employment and family status for male and female defendants. Almost half of the sample had either completed high school or received their GED (32%) or had some formal education, including vocational training (11%). A third of defendants either did not go beyond 9th grade or dropped out of high school. Among them, one defendant was still attending school and one did not go beyond 6th grade. For another quarter of defendants, there was no data on education level.

Employment-related data is not available for eight of the defendants. Over half of all defendants for whom employment information is known were employed either full or part time at the time of the offense. A third of the sample was not employed with four defendants being outside the labor force (on welfare or student). Almost half (46%) held unskilled jobs in the past and almost 20% held either skilled or professional employment.

Table 6.2: Defendants in Death Eligible Cases: Education, Employment and Family Status

Defendants	All n=37	Male n=32	Female n=5
Finished high school or received GED	32% 12	34% 11	20% 1
Some formal education or vocational training	11% 4	12.5% 4	0
Didn't go beyond 9th grade or dropped out of high school	30% 11	25% 8	60% 3
Employed (part- or full-time)	46% 17	50% 16	20% 1
Not employed	22% 8	22% 7	20% 1
Outside the labor force	11% 4	6% 2	40% 2
Held skilled or professional employment in the past	19% 7	19% 6	20% 1
Held unskilled jobs in the past	46% 17	50% 16	20% 1
Single	35% 13	37.5% 12	20% 1
Married or living with a partner	40.5% 15	37.5% 12	60% 3
Separated	11% 4	12.5% 4	0
Have children	51% 19	47% 15	80% 4
Never worked in the past	11% 4	6% 2	40% 2

Although a fairly small proportion of defendants were married (16%), a sizable proportion of the sample (40.5%) were living with a partner at the time of the offense (spouse or girlfriend/boyfriend), and half of defendants had children (most of them maintained contact with their kids).

Table 6.3: Defendants in Death Eligible Cases: Mean Number of Past Arrests and Convictions

Defendants	All n=37 Mean (SD)	Male n=32 Mean (SD)	Female n=5 Mean (SD)
Juvenile arrests	3.14 (2.03)	3.50 (1.97)	1.00 (.00)
Juvenile convictions	1.80 (.92)	1.87 (.99)	1.50 (.70)
Adult arrests	7.17 (7.38)	8.10 (7.79)	2.75 (1.70)
Adult convictions	4.09 (3.55)	4.57 (3.59)	1.00 (.00)
Misdemeanor arrests	5.68 (5.97)	6.5 (6.40)	2.40 (1.52)
Misdemeanor convictions	3.28 (3.33)	3.70 (3.56)	1.50 (1.00)
Felony arrests	4.00 (2.73)	4.2 (2.70)	--
Felony convictions	2.85 (1.83)	2.85 (1.83)	--
Violent felony convictions	2.55 (1.66)	2.55 (1.66)	--

There is no complete criminal history data on three of the defendants (Tables 6.3 and 6.4). It appears that death eligible defendants had somewhat more serious and/or extensive criminal histories than those in the M-33 sample where only 16% of defendants who had killed a child were previously convicted. In the Maryland sample

about a third of defendants had a juvenile record, and over half of the sample had some kind of an adult record.

Table 6.4: Defendants in Death Eligible Cases: Criminal History

Defendants	All n=37	Male n=32	Female n=5
Arrested as juveniles	38% 14	37.5% 12	40% 2
Convicted as juveniles	27% 10	25% 8	40% 2
Arrested as adults	62% 23	59% 19	80% 4
Convicted as adults	59% 22	59% 19	60% 3
Arrested for a misdemeanor	67% 25	62.5% 20	100% 5
Arrested for a felony	43% 16	47% 15	20% 1
Convicted of a misdemeanor	57% 21	53% 17	80% 4
Convicted of a felony	38% 14	44% 14	0
Convicted of a violent felony	24% 9	28% 9	0
On probation or parole at the time of the offense	24% 9	28% 9	0
Ever in a correctional institution	51% 19	50% 16	60% 3

The rate of offending for those defendants who had been arrested as adults was rather high; the mean number of adult arrests was 7. Four defendants had more than 10 arrests (one had 33). Importantly, a third of male defendants were in the past already convicted of a violent felony. Almost a quarter of the sample was either on parole or probation at the time of the offense. Over half of all defendants at some point in their lives (prior to the offense in question) were sentenced to a correctional facility (either adult or juvenile).

About half of defendants had problems with drugs and/or alcohol dependence prior to the offense (Table 6.5). History of substance abuse was especially prevalent among the female defendants. Three out of five women were either drunk or high while committing the murders. Comparatively, a quarter of male defendants claimed they were unable to control their conduct because they were under influence at the time of the offense.

For a third of defendants, it is unknown if they had been experiencing any kind of mental or emotional problems prior to the offense. However, it was determined that approximately 30% (n=11) had a history of mental illness and claimed that these problems had contributed to their offense. For those defendants whose level of intelligence is known (approximately half of the sample), seven had been borderline or mildly intellectually disabled (IQ in the range of 50-90).

Table 6.5: Defendants in Death Eligible Cases: Mental Health and Substance Abuse Problems

Defendants	All n=37	Male n=32	Female n=5
History of problems with alcohol	48% 18	40.5% 13	100% 5
No history of problems with alcohol	32% 12	37.5% 12	0
History of problems with drugs	48% 18	43.5% 14	80% 4
No history of problems with drugs	35% 13	37.5% 12	20% 1
History of mental health problems	30% 11	31% 10	20% 1
No history of mental health problems	40.5% 15	37.5% 12	60% 3
Under drug or alcohol influence at the time of the offense	30% 11	25% 8	60% 3
Mental or emotional issues contributed to the offense	30% 11	31% 10	20% 1

The overwhelming majority of death eligible defendants (67%) killed more than one victim (Table 6.6). Twenty two of these defendants killed two or three people, and the remaining three defendants took the lives of more than three people. Since killing multiple victims is one of the aggravating factors making the crime eligible for capital punishment, it is not surprising that the proportion of multiple-victim murders is much higher here than in the M-33 sample where only 10% of

defendants took the lives of multiple victims. For a single-victim homicide of a child to make it into the death eligible group of cases, it would have to satisfy some other aggravator.

Table 6.6: Defendants in Death Eligible Cases: Number of Victims Killed, Selected Case Dispositions

Defendants	All n=37	Male n=32	Female n=5
Killed 1 victim	32% 12	37.5% 12	0
Killed 2-3 victims	59% 22	59% 19	60% 3
Killed more than 3 victims	8% 3	3% 1	40% 2
Found innocent or charges *nolle prossed*	11% 4	12.5% 4	0
Pleaded guilty to or convicted of 1st degree murder	81% 30	81% 26	80% 4
Convicted of a lesser charge of homicide	8% 3	6% 2	20% 1
Convicted of additional felonies	59% 22	59% 19	60% 3

There were two defendants who were found innocent, and two whose cases were dismissed. Thirty five percent of defendants (n=13) pleaded guilty to first degree murder, and another 46% (n=17) were convicted by a judge or jury of the same offense. The remaining three defendants either pleaded to or were convicted of a lesser charge of homicide. In an overwhelming majority of cases, defendants were charged

with additional felonies (n=32), and two thirds of them (n=22) were convicted of at least one additional felony.

6.2 Typology of Death Eligible Child Homicide Cases

Attempting to group death eligible cases into clear distinguishable categories is not an easy task. The categories proposed in this section are not exhaustive and represent but one way to organize a multitude of case characteristics. Researchers of child homicide have adopted several strategies in delineating typologies of child homicide cases. Studies focusing on a specific group of offenders – for example, mothers who have killed their children – most commonly adopt a classification by motive, sometimes in combination with selected circumstances of the offense (e.g. Wilczynski, 1995). Research that explores a broader range of incidents with child victims tends to be more flexible and fluid in its classificatory approach (e.g. Alder & Polk, 2001). Characteristics of the offense, attributes of the victim and the perpetrator, and motives behind the latter's actions operate simultaneously to help extricate more general categories from a sample of individual incidents.

Basing classification just on motive is inadequate – motive is often not known. Using the gender of the offender or victim-offender relationship as an organizing principle will not allow certain dynamics or features of the offense to be uncovered, especially those that might be relevant when we are trying to problematize the issue of the degree of law applied to cases of child homicide (such as – did the perpetrator intend to kill the child or was the latter in the wrong place at the wrong time). For these reasons, several factors are taken into account in this research to produce the following group profiles. The starting point for this classificatory attempt has been figuring out whether a child victim was a primary target of the perpetrator, a target of

co-equal importance with another victim in the incident, or whether the perpetrator did not intend to hurt the child. The degree of importance of the child as a victim is clear in incidents where a child was the sole victim, but was more difficult to determine in other cases. Moreover, simply relying on this organizing principle produced categories that were too large and fairly heterogeneous. Hence, the next step was to factor in offense characteristics, victim-offender relationship, and indicators of the alleged perpetrators' motives. This allowed for a more meaningful grouping of cases.

6.2.1 Mothers

There were two female defendants in the sample who had killed their own children. Both Tonya Lucas and Renee Aulton had set fire to their homes knowing that their children were still inside. Aulton, a 26-year-old single White mother of two, set a fire in her bedroom closet with some burning paper. Lucas, a 28-year-old African American mother of seven, poured gasoline on the floor of her living room and set the house on fire.

Research on maternal filicide (e.g. Ewing, 1997; Friedman et al., 2005) indicates that women who have killed their children usually do not victimize other individuals during the same assault (in other words, it is extremely unlikely that a woman will assault both her intimate partner and her children). Consistent with this research, only the defendants' children died in the two fires. Six of Lucas' children who died in the fire ranged from 2 months old to 12 years old. Aulton's daughters were 2 and 4 years old. During Aulton's trial a Fire Captain who was on scene said that the girls were found lying "face up in their beds in a 'spread-eagle' position… unusual for fire victims" (Shatzkin, 1996, February 7). The door to their bedroom

appeared to have been blocked by a mattress placed outside. Aulton was seen standing indifferent outside her house as it was burning.

Research on filicide indicates that mothers taking the lives of multiple children are very often motivated by something akin to misguided altruism (Alder & Baker, 1997). These women, typically overburdened and struggling with the circumstances of their lives, think that their children are completely dependent on them, and since she is in despair and incapable of carrying the burden, she perceives the children will be better off if dead. While not exactly citing altruistic reasons for her actions, Aulton, claimed that she was depressed and wanted to kill both herself and her children. The prosecution tried to argue that the reason for her depression was a failing relationship with her boyfriend. At one point Aulton told the police that her boyfriend did not like her youngest daughter because she was of mixed-race.

While Aulton later admitted to her crime; Lucas maintained her innocence throughout the investigation and trial. The prosecution argued that the reasons behind her actions were two-fold. First, that the fire was set to conceal the abuse of one of her sons. Two year old Jacob, according to witness testimony during trial, weighed just 10 pounds. Second, some time prior to the offense, Lucas received an eviction notice. She told her friend that the Red Cross could find her a new place to live if her house burned down.

There are a number of similarities between the two defendants. Both women were young – in their late twenties. Both women did not work but were outside the labor force and were living on some form of social assistance. Both defendants had a history of experiencing trouble in school. Lucas was a high school dropout.

Both women also had been arrested as adults. Although neither got in any trouble with the law as juveniles, during adulthood both were arrested for misdemeanors (Aulton – twice; Lucas – once). One of Aulton's arrests resulted in a conviction. Moreover, both had a history of abusing their children. Child protective services extensively documented abuse and neglect in both women's families. There were nine abuse and/or neglect records for the Lucas household. Several orders of protective supervision were granted to several of Lucas' children at various points in time. Aulton was investigated twice by the Baltimore City Department of Social Services. Her third, oldest child, was in the custody of his grandmother at the time of the fire.

Both Aulton and Lucas also had a history of drug and alcohol abuse. Lucas started using crack cocaine at 18 years old and continued for 10 years essentially until the time of the offense. In the year prior to the offense, she reported using daily and allegedly smoked crack cocaine right before starting the fire. During trial, substance abuse problems were brought up as a mitigating factor for Aulton. Additionally, Aulton's defense argued that the defendant's low intelligence was also an exculpatory factor. For Lucas, drug addiction was cited by the prosecution as additional evidence of her being an unfit mother: she allegedly "spent more than $1,400 in government checks she received monthly on drugs instead of rent" (Apperson, 1993, October 5).

Both women were convicted by a jury of first degree murder and arson in the first degree. Both were sentenced to multiple counts of life in prison (dependent on the number of victims in the incident) to be served consecutively. The judge who sentenced Aulton was explicit that her "limited intelligence and psychological evaluations, which showed she had emotional and educational disabilities since

childhood" were taken into consideration (Shatzkin, 1996, April 13). Lucas' psychiatric evaluation failed to reveal any mental disorders that could have predisposed her to such a crime. The judge who sentenced Lucas found that particularly disturbing: "This to me highlights the callousness that you showed. It highlights the total disregard to the lives of these children. It highlights the … terrible heinous nature of this crime," (Apperson, 1993, October 5).

6.2.2 Fathers

The sample includes four cases where males had taken the lives of their biological children. In all four cases, assault on a child accompanied the killing of the spouse or girlfriend. There were no cases where a father killed only his child or several children like in the mothers' cases described above. One of the defendants (Ronald Ellis) went on a killing spree victimizing not just members of his family, but also strangers and committing rape of an acquaintance.

All four incidents were rooted in family conflict. Fatal violence was most typically triggered by separation or impeding separation, when the perpetrator felt like he was losing control over his relationship. Daniel Hanby, for example, shot his wife and 8-year-old daughter because his wife had been wanting a divorce and made several attempts to negotiate a separation agreement between them. On December 31, 1992, Hanby purchased a 12-gauge shotgun and four days later went to the place where his estranged wife and daughter lived and shot them. The remaining three cases (those of Ronald Ellis; Michael Reese and Stephen Shade) also fit this scenario of planned family annihilation fueled by rage and desire for revenge over a disintegrating relationship.

Two of the defendants were African-American (Ellis and Reese) and two were White (Hanby and Shade). They varied in age between 26 years old (Reese) to 36 years old (Hanby). All except for Shade were employed full time (Reese was a correctional officer) and, interestingly, had formerly served in the military. In fact, both Ellis and Reese received honorable discharges (Reese from the Navy).

None of the defendants were living with their spouses at the time of the offense. In all four cases murder was committed in the victims' residence, but it was not always clear if the defendant had forced his way into their homes. In three cases a shotgun was used as a murder weapon. Only Reese employed other weapons – knife and a hammer against his estranged wife and two children. His two sons, who were 3 and 7 years old, were found bound and gagged with fatal stab wounds.

Similar to the two mother defendants, none of the fathers had a history of felony arrests or convictions. In fact, three of the defendants had never been convicted or even arrested for any offense either as adults or juveniles. Only one (Hanby) had been arrested 4 times for misdemeanors but none of the arrests resulted in conviction. Three of the defendants, however, had preexisting histories of domestic violence. Ellis' wife had complained to others that she left him and took the children because he was physically abusive. There was also some indication that Reese was abusive as well. His wife at some point had applied to Department of Social Services for rental assistance citing spousal abuse, but there were no charges filed. Hanby's wife had filed a battery charge against him in June 1991, but never followed through with prosecution because Hanby agreed to seek psychiatric help. It is not known whether Shade had been previously abusive to his wife.

All men in this category of cases had reported extensive histories of either alcohol or drug abuse related problems or both. Hanby was an alcoholic and took drugs to escape his depression. According to the files, however, only one defendant (Shade) was under the influence of a substance at the time of the offense. Shade, 28 years old at the time he shot his wife and 1-month-old son, was on the hallucinogenic drug PCP. During the trial Shade testified that he did not want to hurt his family – he was shooting at "voices" that he kept hearing "after he saw the devil's face and figures in hooded robes in the apartment furnace room" (Vesey, 1982, November 24).

All of the male defendants who killed their children also suffered from some form of mental or emotional disturbances. Shade's defense counsel argued that he had a long-standing mental disorder, paranoid schizophrenia, which compounded the effect of PCP. The judge, however, was reluctant to find Shade not guilty by reason of mental insanity and concluded that Shade was exaggerating his mental illness to some degree (Vesey, 1982, November 24). Reese prior to his offense was diagnosed with an adjustment disorder with depressed mood. He was institutionalized for mental problems and received outpatient counseling. Hanby, in addition to a history of chronic depression and alcohol dependency, was diagnosed with a mixed personality disorder, causing him "to hear voices, have delusions and suffer frequent breakdowns in logical thinking" (Farabaugh, 1993, September 18). Although he had not been diagnosed with any DSM-related disorder prior to the offense, Ellis also had a history of emotional disturbance. Thus, at the time of their offenses, all of the defendants in this group suffered from some form of mental instability.

Three of the fathers had been victims of child abuse themselves. Shade and Reese had histories of being physically abused as children while Hanby was sexually abused. It is not known whether Ellis sustained any sexual or physical abuse as a child.

Two of the defendants (Hanby and Reese) had attempted to take their own lives after the offense. Hanby shot himself in the stomach right after killing his family. Reese, in a note he wrote prior to committing the killings, indicated that he was planning to kill both his family and himself, but did not follow through with the suicide on the day of the offense (Erlandson, 1993, August 21). About 10 days later he barricaded himself in the house where his childhood friend lived and stabbed himself in the chest multiple times. He did not die – police had barged in and disarmed him. Research shows that while overall homicide-suicides are fairly rare, they are somewhat more prevalent in domestic conflicts. One study focusing on four states found that out of 1,503 homicide incidents, less than 5% were followed by the perpetrator's suicide and about 1% by a nonfatal suicide attempt. However, 59% of men who had killed their female intimate partners with a firearm, also took their own life (Barber, Azrael, Hemenway, Olson, Nie, Schaechter, & Walsh, 2008).

Prosecutors had filed a notification to seek the death penalty in two cases – for Ronald Ellis and for Michael Reese. While the death notice was not retracted in Reese's case, it was retracted against Ellis, who pleaded guilty and was sentenced to five counts of life imprisonment. Hanby also pleaded guilty and was sentenced to life without parole. Reese was convicted of three counts of first degree murder as well as rape in the first degree and attempted rape and was sentenced to life. Shade was convicted by a jury of second degree murder/ manslaughter, and received a sentence

of life imprisonment (for second degree murder – the maximum sentence was 30 years, but he would be eligible for parole in 7 years).

6.2.3 Primary Target – Intimate Partner; Victim's Child –Ancillary Target

The next two categories of cases are, just like the father category above, characterized by the presence of domestic conflict. In the present category of cases, the male perpetrators' rage was originally directed at their current or former intimate partners, and by and large they did not initiate the offense with a desire to kill the mothers' children (although in two cases this cannot be ascertained with complete certainty). Unlike the previously discussed case scenarios of fathers, which for the most part were more planned to destroy the whole family, cases in this category overwhelmingly represent an intense conflict culminating in a violent outburst. Children were hurt either by extension of the perpetrators' rage or were eliminated as witnesses. More importantly, these cases were placed in a separate category from the father category not so much due to the dynamics of the offense, but because of different victim-offender relationships.

There are seven defendants in this category: Butler, Caldwell, Hill, Perry, Pittman, Sewell, and Thompson. Except for Thompson, who was White, all defendants were African American. In four cases the defendant was living with his girlfriend at the time of the offense (Butler, Hill, Perry, Sewell). Another defendant, Thompson, was married and living with his wife. All but one defendant in this category were in their twenties (Sewell was 33). All but one (Hill) were gainfully employed at the time of the offense, but Butler also had a history of unemployment.

The defendants' criminal history in this category ranged from total absence of any juvenile or adult record (Thompson and Caldwell) to moderate (Pittman was

convicted of attempted arson; Perry had 3 misdemeanor convictions) to quite extensive (Butler, Hill, Sewell). The latter three defendants had been previously convicted of felonies and spent time in a correctional facility. In addition, Perry was on probation and Pittman was on parole at the time of the offense.

Four defendants (Hill, Perry, Pittman, and Sewell) had histories of substance abuse. Hill was on crack cocaine during the offense, and was also diagnosed with antisocial personality disorder and mildly retarded. Caldwell and Perry claimed that they were under emotional duress at the time of the offense.

Compared to fathers who killed their children, this group of defendants relied on a wider repertoire of implements of death. Importantly, in all of these cases perpetrators were well aware that they were harming a child. Twenty-one year old William Caldwell came to see his girlfriend, Theresa Brooks, because he was upset over their failing relationship. If his attempt at reconciliation was unsuccessful, he did plan to kill her. Brooks was babysitting her 2-year-old niece on the evening of the offense. Caldwell and Brooks argued but did not reconcile and he shot both she and her niece, and then shot himself in the head although he did not die. Caldwell, expressing remorse for his actions, pleaded guilty to two counts of second degree murder and was sentenced to 40 years in prison.

Terrance Butler, 23-years-old at the time of the offense, was living with his girlfriend Marvis Raij Willis and her 3-year-old son. The relationship had been having problems. Willis' friend later indicated that Willis was suspecting Butler of cheating on her. The day before the offense she packed his belongings in plastic bags and ordered him to move out. Butler pleaded to stay. Little more than a day later the bodies of Willis, her brother, and her son were found inside a burning car. Willis has

been shot once and put in the trunk of the car. Her brother and her son were found in the back seat. The brother had been shot twice, and the child had been smothered. The car had been doused with gasoline and set on fire (Escobar & Sanchez, 1991, December 8).

From the start Butler maintained his innocence, and the prosecution had trouble assembling a solid case. The evidence was largely circumstantial, and he was charged only in his girlfriend's death; later even those charges were dropped. A year later, after additional evidence was located, Butler was indicted and convicted on three counts of first-degree murder and two counts of using a handgun. Butler's first conviction was overturned on appeal. The Court found that he was not properly instructed on the risks of going to trial without counsel. The second trial ended with Butler being convicted of one count of first degree murder and two counts of second degree murder and handgun violations, and sentenced to life in prison plus 100 years. The second conviction was also overturned on appeal due to jurisdictional issues (Castaneda, 1998, April 9). The third trial ended with the same convictions and sentence as the second.

In other cases, the perpetrator's assault on the child's life was more passive. Darryl Hill being high on crack cocaine, stabbed his girlfriend 27 times with four different knives. It was very likely that the murder occurred in front of her two daughters. He then tampered with the stove, turned on the gas and walked out leaving a 1-year-old and a 5-year-old to asphyxiate.

Similarly, Daniel Perry was mad at his ex-girlfriend, Donita Penn, for breaking up with him. Since he was still living with Penn and her three children, he became acutely aware that she was moving on with her life (getting a job, dating). One

day Perry became enraged when he overheard Penn contemplating becoming intimate with the man she was dating. Perry waited until later that night and set fire to the couch on the first floor and to Penn's bed on the second floor (Samuels, 1988, March 12). The fire spread quickly. Trying to escape, Perry ran into the room where her two sons were sleeping, and jumped out the window leaving them behind.

In this category of cases, notification to seek the death penalty was filed against Pittman and Thompson. In both cases the notification was retracted in exchange for the defendants pleading guilty to two counts of first degree murder. Both were sentenced to life without parole. Both Hill and Sewell were convicted by jury of multiple counts of first degree murder, and received life without parole sentences. Perry pleaded guilty to three counts of first degree murder, arson and attempted murder. The Judge followed the prosecutor's recommendation and sentenced Perry to life (times three).

There is another case that to some degree fits the basic profile of this category where child victims were not originally the intended targets of the attack. While this case did not involve intimate partners and the offender was a female, it does represent a case of extreme rage that spilled over and kids were killed. Laschell Smith, a 23-year-old Black female, was smoking crack cocaine with her cousin at the latter's house. At some point they argued and Smith stabbed her cousin and the cousin's two sons (5 and 6 years old) multiple times. Smith pleaded guilty to first degree murder, and received two consecutive life sentences.

6.2.4 Child – Not an Intended Target

A number of cases, while also originating in a romantic conflict, are nevertheless distinguishable from the previous category. The primary target of the

defendants' aggression in the five out of six cases comprising this category was an ex-girlfriend or estranged wife, or, in one case – a former girlfriend of the defendant's boyfriend. Although the defendants in this category were also prompted by revenge or rage towards their former romantic partners, children were hurt unintentionally. Thus, what distinguishes these cases from the previous category is that in these cases, defendants did not know that a child would be hurt as a result of their actions.

All of these cases are incidents of arson. Three of the defendants in this category used Molotov cocktails to start the fire. Studies that have developed classification systems of arson behavior show that revenge or anger is the most common motive for fire-setting, accounting for as much as 40% of cases in some studies (Horley & Bowlby, 2011).

In all six cases the perpetrator was not aware (or not concerned) that other people might be in the house and might be hurt in the fire. There was no abuse or mistreatment of victims either prior or after their death. All but one case produced multiple victims (2-5) with additional people sustaining injuries as a result of the fire. Another difference from the previous categories is that child victims of these incidents were, for the most part, strangers to the defendant (other kids living in the row house) or acquaintances and not family members. In two cases, children of the defendant's girlfriend or boyfriend died in the fire.

There were five male defendants and one female (Beverly Harshberger). The youngest defendant in this category was 22 years old (Hall), while others were in their thirties and forties. Two defendants had extensive criminal histories (Johnson, Hill W), but the criminal records of three other defendants were not significant. Hall, Harshberger, and Robinson had never been convicted of a felony and were never

sentenced to a correctional facility. Nothing is known about the last defendant's (Goodwin's) criminal record.

Although public perceptions of deliberate fire setting behavior often is that perpetrators must be mentally ill in some manner, research shows that only about 10% of offenders arrested for arson have significant psychological impairment. Moreover, only 2% of arsonists who proceed to trial receive a non-criminally responsible disposition (Horley & Bowlby, 2011). In the current sample, most of the arsonists had not been found to suffer from mental or emotional problems. The two exceptions are Beverly Harshberger and Rodney Robinson.

Harshberger suspected that her boyfriend had resumed a relationship with his former girlfriend. Wanting to scare the latter into moving out, Harshberger threw a Molotov cocktail into the row house where the girlfriend lived. She was not at home but five children between 2 and 7 years old died in the fire. Harshberger, suffering from mixed personality disorder, mild intellectual disability (her IQ was between 50-70) and conduct disorder, was seen crying, laughing and smirking as the house was burning. Competency hearings lasted for over four years before the case was brought to trial. In the end, Harshberger pleaded guilty to five counts of first degree murder, arson in the first-degree, and received a sentence of life.

Robinson's case begins with an argument with his estranged wife on the doorstep of her mother's house. After she slammed the door in his face, he became enraged and returned with gasoline, poured it on the stairs and the front foyer of the house and lit a match. Two teenagers and a 4-year-old died in the fire, with four more people, including Robinson's wife, injured while trying to escape. Robinson climbed onto the roof of the building he set on fire and that is where the police arrested him.

He claimed that he did not remember setting the fire, but did remember fighting with his wife who he claimed had hit him on the head. Robinson's IQ also qualified him as mildly intellectually disabled. Additionally, he was suffering from major depression and mixed personality disorder. He was convicted of three counts of first degree murder and arson in the first degree and sentenced to life plus 30 years.

Alcohol and drugs were the precipitating factor for some defendants. Robinson was drunk and high at the time of the offense. Hall, a 22-year-old busboy, was also drunk when, at 5 in the morning, he broke into the row house where his girlfriend lived and used matches to set more than one fire on the first floor. The fire killed two children – 14 and 4 years old, and three other people were injured or burned when they had to jump from upper floors to escape the fire. Hall was convicted of two counts of first degree murder and arson in the first degree. A judge sentenced him to two life sentences and ten years.

None of the defendants in this category received a death penalty notification. One case was nolle prossed (Goodwin), and one defendant was found innocent (Hill W.). Of the remaining four defendants, all were convicted or pleaded guilty to multiple counts of first degree murder and arson in the first degree. One was convicted to life without parole (Johnson) and the rest were sentenced to life imprisonment and a term of years.

6.2.5 Wrong Place at the Wrong Time

In two cases, children were killed but were clearly not the initial targets, they just happened to be at the wrong place at the wrong time. The victims were strangers to the defendant. What distinguishes these cases from the category above (child as

auxiliary) is that in the current category the defendants knew that they were endangering or taking the life of a child.

Levon Stokes, an unemployed 20-year-old Black male, ambushed Angelo Garrison, a bail bondsman and a stranger to the defendant. Garrison was standing outside of his car with his wife near his bail bond business, two of their children – 3-year-old Angelo Garrison Jr. and an infant were in the car. Stokes fired a number of shots from a rifle, hitting Garrison twice. One bullet went through the back windshield and hit the boy through the head. The motives for Stokes' actions remained murky. While the prosecution initially hinted at a possibility of a love triangle, with time the murder became regarded as a contract kill (Apperson, 1993, April 14). Garrison was on probation for a drug conviction and was about to be tried for a drug distribution offense. Additionally, he was on a witness list for a drug trial in a federal court. Prosecution in Stokes' trial failed to convince the jury that the shooting of the child was intentional. Stokes was convicted of first degree murder, of manslaughter and of firearm use in a felony. He was sentenced to life without parole in prison.

Peter Herrera, a 17-year-old Hispanic high school student, was in the middle of a burglarizing a house, when the owner's daughter, 12 year old Kelly Blackman, returned with her classmate. When Kelly entered an upstairs bedroom, Herrera grabbed her from behind and put a hand over her mouth. He was apparently surprised by the intrusion and panicked. He knew Kelly from around the neighborhood; after she repeatedly asked Herrera to leave, he gagged her to keep her quiet. Kelly's friend, 12-year-old Nicole Marcella McCauley, was waiting for her downstairs and soon called her name. Herrera told Kelly to call Nicole upstairs, but when Kelly hesitated, he struck her twice in the face with a fist. When Nicole entered the room, Herrera

grabbed her and a struggle ensued. Nicole managed to bite Herrera in the arm, but he in turn grabbed a hairdryer cord and wrapped it around her neck choking her. When she collapsed, Herrera put one foot on the victim's back and pulled the cord until the girl stopped breathing. Herrera threatened Kelly that he would kill her too if she told anybody what happened. Herrera disposed of Nicole's body in a drainage pipe close to the house. It was Kelly who suggested that he hide the body there: she was hoping that there it would be easily discovered by someone. After Herrera left, Kelly called her mother, and soon the police were alerted. When captured, Herrera confessed to the murder, admitting that he broke into the house because he needed money to buy drugs. Herrera pleaded guilty to first degree murder, assault and battery and breaking and entering. He was sentenced to a life in prison.

6.2.6 Murder after Sexual Assault

The next group of cases is united by the fact that a child was sexually assaulted prior to being killed. There are nine cases that clearly belong to this category and one additional case that has been included provisionally. This category is also unique because a child was the sole victim in the incident. Prosecutors sought the death penalty against four defendants in this category (Bloodsworth, Dale, Horton, and Williams). The circumstances of these four crimes will be described in detail in the next chapter. This section discusses some common characteristics of all defendants in this category and sheds light on the six cases of sexual assault and murder where the death penalty notice was not advanced (Brown, Berry, Ray, Holland, Richardson, and Weigel).

All of the defendants in this group of cases were male. Except for three defendants who were 20 years old or younger, most of the defendants in this category

were 29 years old and older. Eight of the defendants were Black; one (Bloodsworth) was White, and one (Weigel) was an American Indian. Four of the victims were male as well, and six of the victims were female. Victims ranged in age from 2 to 12 years old.

While methods of death were quite diverse in this category, the common trait (aside from sexual assault on the victim) was that these offenses were overwhelmingly characterized by a high degree of brutality. In all cases, the victims were brutalized, beaten or mistreated in some other way before the assault that resulted in death. In several cases, the victims also were subjected to mistreatment after death.

There are two primary scenarios in this category, although it is not always possible to clearly distinguish between them. In the first scenario – death of the victim was a culmination of escalating abuse, with sexual assault being a part of that abuse dynamic. In another scenario, – the perpetrator killed the victim to prevent him/her from telling anyone about the abuse.

The first scenario includes the case of Alvin Richardson, 20, who victimized 2-year-old Michael Shaw. The victim was the child of Richardson's girlfriend, who was living with the defendant for about 8 months prior to the offense. On December 15, 1988, Richardson was babysitting Michael while his mother was at work. Later in the afternoon the defendant brought the unconscious child into the hospital claiming that he fell in the bathtub. Medical examination revealed that Michael sustained blunt force trauma to his face, head, neck, torso, genitalia and arms (Simon, 1991). There were multiple internal lacerations and hemorrhages. The extent of trauma was horrific, and the child died 13 hours after arriving at the emergency room.

The second scenario is well-illustrated by the case of Warren Berry, a 30-year-old convicted sex offender. Shortly after being released from prison where he served 11 years of his 15 year sentence, Berry sodomized and killed 11-year-old Michael Shawn Gasgue by stabbing him 44 times. Berry became a suspect shortly after the child's body was discovered in an abandoned shed, but due to lack of physical evidence the case was dropped. It was a year later, when Berry was arrested and tried for kidnapping and sexual assault of another teenage boy, that he confessed to the murder of Michael. Berry stated that he asked the child to help him look for his keys and thus lured him into the shed. There he sodomized the boy threatening him with a folding knife. Afterwards Michael said that he was going to tell. "He kept saying, 'I'm going to tell,' and I didn't know what to do," Berry said in his statement. "I kept telling him, 'Stop, stop, I'm not going to hurt you. I'm going to let you go.' Then after, I don't know. I don't know. I didn't mean to kill him" (Shatzkin, 1995, June 21).

More than half of the defendants in this category possessed a long history of mental or emotional disturbances. Jeffery Weigel, a 19-year-old accused of raping and murdering a 5-year-old granddaughter of his foster parent, spent a quarter of his life in mental institutions. Weigel initially pleaded not guilty for reason of insanity to the crime where the victim was found with an extension cord around her neck and was stabbed 13 times to face alone (Shatzkin, 1996, November 7). Weigel later changed his mind and pleaded guilty to first degree murder and first degree rape. He was sentenced to life in prison plus 20 years.

Identification and prosecution of murderers who also sexually abuse their victims is notoriously difficult since the perpetrators are strangers to the victim, and oftentimes there are no witnesses to the assault. In several cases the evidence against

the defendant was largely circumstantial. Thus, the case of Elliott Ray, accused of raping and murdering a 9-year-old girl was *nolle prossed* due to lack of evidence. Ebony Scott was found in a dumpster near a high-rise public housing complex, raped, sodomized and strangled. Her body was wrapped in a blue sheet. After 6 months of investigation the police arrested Ray, 45, who was subletting an apartment on the 13th floor of the building. The police claimed that there were witnesses who saw Ray by the dumpster and the one clean spot of the otherwise filthy floor of his apartment tested positive for blood (James, 1994, May 25). Furthermore, during interrogation Ray demonstrated knowledge of the victim and the circumstances of the offense that haven't been released to the media, and his roommate said that Ray's blue sheets were missing. After holding Ray in custody without bail for 14 months the charges against him of first degree murder, first degree rape and first degree sex offense were dropped. The DNA analysis revealed that the small sample of fluids found on the victim did not match Ray's.

Interestingly, with the exception of Bloodsworth, all of the offenders in this category had been previously arrested for or convicted of a felony. Half of the group was convicted of a violent felony, including either a sexual offense or an aggravated assault on a child. Three of the defendants were either on parole or probation at the time of the offense. In the current trial four defendants were sentenced to life without parole (Brown, Holland, Richardson, Williams), and the rest were given a sentence of life in prison plus a term of years (Berry, Dale, Horton, Weigel).

The case that has been included provisionally in this category because it is not totally consistent with the rest is of Shawn Brown, 29, who had been charged with first degree murder of 8-year-old Marvin Wise. No sexual assault took place before the

murder, but the incident does have sexual overtones. A month prior to Marvin's murder Brown had also killed 16-year-old Obdul Richards. Obdul's body was found at an abandoned school, and Marvin's was discovered by a security guard on the trash-strewn floor of a 12th floor vacant apartment. Brown was staying with his sister at the same apartment complex, but on the 10th floor. The youths were strangled with a cord in order, according to Brown, to get information about male-female sexuality and other topics (Penn, 1997, December 11). Prior to strangulation Brown questioned the boys about their first kisses and whether they have lost their virginity. Brown, who described himself as a "3,729-year-old immortal being," spent 9 years in New York prison as a result of an assault on two children to which he pleaded guilty. As part of a defense Brown argued that he was sexually assaulted when he was young, so his childhood was taken from him (Alvarez & Myers, 1996, March 17). He was convicted of first degree murder and sentenced to life without parole.

6.2.7 Miscellaneous Cases

There are several cases that do not fall into the above typologies. One case involves two defendants, one of whom was a father of the murdered child. This case is not placed into the father category because of the distinct motivation behind the crime - a desire to profit from the death of a child, and because it was not the father who executed the killing. Lawrence Horn hired James Perry to kill his ex-wife and severely handicapped 8-year-old son in order to inherit the money awarded to the boy in a lawsuit. Since prosecutors pursued the death penalty against both Horn and Perry, this case is described in detail in the next chapter.

There is limited information available on the remaining cases. Melvin Fowler, 36, was staying with friends when he is alleged to have set a fire in the middle of the

night that claimed the lives of 3 young children. Traces of flammable liquid clued the police that the fire was intentional. The fire occurred at 4:30 in the morning, and there were no smoke detectors in the house. The parents of the children along with Fowler suffered only smoke inhalation and burns. Fowler was found innocent of both arson and murder.

Another defendant, Bertha Conyers, 52, was under the influence of alcohol when she set her brick row house on fire by pouring a flammable liquid on the second floor hallway and stairs. Her two granddaughters, 4 and 5 years old, were in the third-floor bedroom and died in the fire, with 5 more people injured. Police said that Conyers was seen fighting with her boyfriend before the fire, while everyone was celebrating the New Year. She pleaded guilty to second-degree murder and arson in the first degree, and was sentenced to 15 years in prison.

Finally, Renford Martin, a 32-year-old illegal alien from Jamaica along with two other co-perpetrators was accused of throwing a Molotov cocktail into a row house. While most of the residents managed to escape, two children, 4 and 5 years old, died in the fire. Prosecution insisted that the motive for the crime was to send a message to a drug dealer who was a former boyfriend of the kids' mother, and who owed Martin money. Martin vehemently maintained his innocence, but was convicted of first degree murder and of second degree murder, and sentenced to life without parole.

6.3 Summary

As was stated in the beginning of this study, the crime of child homicide is a heterogeneous phenomenon. It takes place in different contexts, is executed by different types of perpetrators, who are guided by various motivations. A child's life

may be taken as a result of a calculated course of actions or be an outcome of an unpremeditated attack. Consequently, assaults leading to a death of a child are not all accorded the same gravity by the law. This chapter examined what types of cases of child homicide are deemed more heinous: who are the offenders and what are the circumstances of the incidents for which death potentially is an appropriate punishment.

The chapter has provided an overview of cases of child homicide considered to be death eligible under the law of the State of Maryland. The Maryland statute contains one aggravating factor that explicitly focuses on child victims: the murder of a child under the age of 12 who "was forcibly taken or persuaded to leave from a usual place of residence or the custody of the child's legal guardian or parent without their consent."[47] Interestingly, in the Maryland sample there were no cases where this aggravating factor was offered. There was only one perpetrator of child homicide who was charged with kidnapping his victim – Shawn Brown, but the state attorneys chose not to pursue his crime as a capital offense.

Cases of child homicide clustered around two other aggravating factors: (1) the multiple victims aggravator – when several people were killed by the perpetrator in the course of one incident; (2) the felony murder aggravator – when the murder was committed in the course of robbery, arson in the first degree, rape or a sexual offense in the first degree. Additionally, there were two offenders who were involved in a murder for hire scenario – a separate aggravating factor under the Maryland law.

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[47] Md. Ann. Code, Crim. Law §3-503(a)(1).

Death eligible cases of child homicide were grouped in several categories depending on the characteristics of the offense, the identity and motives of the perpetrator, and their intentions to hurt the child specifically. An interesting finding concerned the identity of the perpetrator. According to SHR data and in the M-33 sample, parents comprised a sizable (over 40%) proportion of child homicide perpetrators. In the Maryland sample of death eligible cases, however, there were only two mothers and five fathers (including one who did not commit the murder directly but ordered it), who together account for about 19% of the sample. This discrepancy is no doubt a function of the aggravating factors. Thus, in Maryland the law regards a single-victim killing of a child by a parent in a less serious light. In contrast, Florida's law considers murder death eligible if the perpetrator "stood in a position of familial or custodial authority over the victim,"[48] and the Washington state death penalty statute explicitly mentions "family and household members."[49] The next chapter will further the exploration of moral gradation of child homicide depending on the identity of the perpetrator and the characteristics of the offense.

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[48] Fla. Stat. §921.141(5)(m).

[49] Wash. Rev. Code Ann. §10.95.020 (14).

Chapter 7

WHEN THE PROSECUTION SEEKS THE ULTIMATE PENALTY

The death penalty is reserved for those crimes that society regards as most reprehensible. This chapter focuses on cases where the State Attorney has made a decision to file a formal notification to seek a death sentence. An effort will be made to distinguish which characteristics of child killers and their crimes lend themselves to capital processing, that is, what criteria are utilized and/or ignored by prosecutors in seeking the ultimate punishment as opposed to seeking a lesser sentence. There are cases in which a death notification was withdrawn, however, this typically occurred when the defendant agreed to a guilty plea. There will be no attempt to distinguish these latter cases from those that went to trial since it is the original death notification, as the signal of utmost condemnation, that is of importance to the current study.

The chapter starts with a description of 10 cases where a child was killed and the State Attorney filed a formal notification to seek capital punishment in Maryland during the period examined here. Next, to facilitate the abovementioned goal, cases with child victims where the death penalty notification was advanced will be examined for any points of commonality and divergence. Additionally, child homicide cases will be contrasted with older victim cases that had similarly situated defendants or similar crime characteristics and were chosen for capital processing. It is hoped that juxtaposition and comparison of selected cases will reveal something about the moral gradation of child homicide vis-à-vis the murder of other victims.

Before beginning, it is important to note that there is a high degree of prosecutorial discretion in the decision to pursue capital punishment in a particular case. As such, it is extremely difficult to make accurate comparisons between cases where the death penalty was advanced and where it was not, and arrive at definitive conclusions. There are a multitude of factors that go into the prosecutorial decision-making process (for a review of these factors, see Horowitz, 1997). Some of these include objectively legal considerations like heinousness of the crime and dangerousness of the offender, while other factors include a variety of other extralegal issues such as political pressures, personal affinities, the strength of the case, and projections of the likelihood of a victory. Unfortunately, many of these nuances cannot be gleaned from the data.

Finally, because women represent a significant number of defendants who kill their children, the chapter draws on an additional data source to uncover factors that condition the severity of treatment of female offenders who have taken a child's life. Since the original dataset for this study contained information on only five female defendants, only two of whom were mothers, supplementary data exploration was warranted. Using data on all female offenders who were sentenced to capital punishment (described in detail in chapter 4), an attempt is made to draw conclusions about the societal disposition to take certain types of child homicide more seriously.

7.1 When the Prosecution Seeks the Ultimate Penalty

There are 10 cases where the State attorney advanced a notification to seek the death penalty in Maryland. The notification was retracted in five cases in exchange for the defendant pleading guilty.

7.1.1 Lawrence Horn and James Perry

Fifty-two year old Lawrence Horn had been a record executive at Motown in the 1980s, but after being laid off 1990, he struggled as a computer consultant and accumulated substantial debt (Dean, 1995, October 20). In 1987, he had divorced his wife, Mildred, and she had custody of their 8-year-old son, Trevor, who was quadriplegic and was severely mentally handicapped as a result of hospital malpractice. Trevor required around the clock nursing care. Horn rarely visited Trevor, and in fact, owed his ex-wife over $16,000 in child support. However, his attitude toward Trevor changed radically after the family won a malpractice suit against the hospital and Trevor was awarded over one million dollars.

After the settlement, Horn devised a plan to have his son and ex-wife murdered so that he would inherit the money. Horn's cousin referred him to James Perry, whose business card read "The House of Wisdom. Dr. J. Perry. Cold Reader. Case-Buster. Spiritual Adviser. By Appointment Only" (Dean, 1995, October 20). Perry, a 44-year-old self-professed spiritual minister, had spent time in prison when he was young for robbery and aggravated assault. He agreed to the contract killing and was supposed to perform the murder in Washington DC while Horn was across the country in Los Angeles. To solidify his alibi, Horn filmed a short video the night of the murder, which included a close-shot of a television screen where the time was displayed.

James Perry broke into Mildred Horn's residence early in the morning and killed Mildred, Trevor, and Trevor's nurse, Janice Saunders. Mildred, dressed in a nightgown, and Janice were found by Trevor's bed, shot to death with a rifle at close range in the head and eyes. Trevor died of suffocation after Perry blocked his tracheotomy tube (Vick, 1996, May 4). What added publicity to this case was that Perry followed instructions from the book "Hitman: A Technical Manual for

Independent Contractors." Several characteristics of the crime appeared to have been taken directly from the book: his choice of rifle (AR-7 because "it is inexpensive and accurate"), where he shot the victims (the eye sockets), and messing up the house to make it look like a robbery, were all covered in this 138-page manual (Dean, 1995, October 20).

Phone records and records of money transfer linked Perry to Horn. Horn was found guilty on three counts of first-degree murder and one of murder conspiracy. He was sentenced to three life terms. He did not receive the death penalty because the jury believed that the aggravating factors outweighed the mitigating factors. Perry was convicted of the same offenses, and was sentenced by jury to three death sentences and a life sentence for conspiracy to commit murder. However, after an appeal wherein the defense challenged the evidence of a 22-second recording on an answering machine of a conversation between him and Horn because it violated Maryland's wiretap law, Perry's conviction was overturned. After a second trial, he received three life sentences.

7.1.2 Kirk Bloodsworth

Kirk Bloodsworth, a 24-year-old white warehouse manager, was accused of raping and killing 9-year-old Dawn Hamilton. Several witnesses testified that Bloodsworth was in the area of the offense before, during and after the incident (Hiaasen, 2000, July 30). Two kids also saw him walk away with the victim to help her find her cousin. Dawn was found with her scull crushed, a bloody rock lying nearby; she had been beaten, raped, and sodomized. A tree branch had been shoved into her vagina, and there were shoe prints on the victim's neck.

Bloodsworth's first trial ended with a conviction of first degree murder, first-degree rape and first degree sexual offense. The trial judge sentenced him to death. The defense appealed the conviction citing two reasons: that evidence was insufficient to support his conviction and that the prosecution had committed a so-called Brady violation. The appeal alleged that a police report that contained information on another suspect in the case was presented to his defense only after the guilt-innocence part of his trial. Thus, Bloodsworth's convictions were reversed and the case was remanded for a new trial. Although the second trial concluded with the same convictions, the judge's sentence was two life terms, to be served consecutively.

Throughout the trials Bloodsworth had vehemently maintained his innocence and claimed that he was railroaded by the prosecution, that what made the case was not the strength of the evidence, but publicity and emotion (Kirk Bloodsworth twice convicted of rape and murder, exonerated by DNA evidence, 2000, June 20). Bloodsworth became famous as the first person in the U.S. who was subsequently proven not guilty by DNA evidence.

7.1.3 Ronald Ellis

Ronald Ellis was a 33-year-old Black printer. Claiming domestic violence, his wife, Ingrid, a police officer, moved out of their family home and took their two daughters (4 and 12 years old). She claimed that Ellis had threatened to kill her and kids, and she told friends that she was afraid for their safety. After the separation, Ingrid and Ronald continued to fight including an incident when he tried to run over her with his car.

Ellis was eventually forced to sell the family home. During an open house, with prospective buyers coming in and out, Ingrid and the kids came to the house.

Without warning, Ronald took out a shotgun and a .38 caliber and shot his wife using both guns in the chest and in the face. He also shot his two children and three other people who were in the house at the moment, one of them a 12-year-old boy.

After reloading the gun he went to his friend's house, where he found his friend's wife, Mary Turner, and her son. He forced the child into the closet, repeatedly raped Turner, and then forced her and the child into his car. At some point Ellis confessed to Turner about the murders. Soon after she was able to escape and call the police.

Ellis was eventually captured. Although he had a history of using drugs and alcohol, there was no evidence that he was under influence at the time of the offense. He also was never diagnosed with any psychological disorder. Ellis pleaded guilty to first degree murder and manslaughter. He was sentenced to five consecutive life terms.

7.1.4 Michael Reese

When police arrived at 27-year-old Michael Reese's home on July 30th, 1993, they found his wife, Rhonda Reese, dead on the first floor. She was lying in a pool of blood, wearing only undergarments, covered with a blanket. An autopsy revealed that there were nine blunt force injuries to her head, and a stab wound through her heart. Her anal and vaginal areas had traces of semen. Police found a hammer, knife and a roll of duct tape with bloody smudges on the first floor. Two of her children's bodies were found on the second floor on the stairs' landing. Their mouths and noses were bound with duct tape, and they had been stabbed. Their bodies were covered with a bloody sheet. Blood was found in the upstairs bedroom splattered on the blinds, toys and carpet. Bloody men's clothes were lying on the floor and there was blood in the

shower. Michael Reese, Jr., 7 years old, had a single stab wound to the chest. Kenneth Reese, the younger son, sustained multiple stab wounds to the chest and abdomen.

Michael Reese's mother alerted the police that something might have happened. Michael had left a note for her that read: "The pain I was suffering was much greater than anyone could ever come to understand. I loved my wife and family and I wanted so bad for us to be together. I knew it would never be, not only because Rhonda said so but because I felt it. I have killed my family and I'm going to do the same to myself" (Erlandson, 1993, August 21).

Reese had an extensive psychiatric history, but no serious diagnoses were ever made. His problems apparently began in his service in the Navy when his suicidal thoughts resulted in a referral to the Naval hospital. Records show that he was upset about his wife's alleged infidelities and drug use. He was released in about a week, but continued outpatient counseling. He had left his wife and had moved in with his sister about a month before the offense, but occasionally went back to babysit the children (Lyons, 1993, September 15).

The aggravating factors that the prosecution relied on to seek the death penalty were that Reese committed more than one murder in the first degree during the same incident, and that a murder was committed while also attempting to commit rape in the first degree. The mitigating factors were that Reese had no major criminal history, and generally had a good character. He immediately acknowledged his guilt and it was unlikely that he would have engaged in further criminal activity. Reese's mental state also was presented as a mitigating argument – that he did not fully appreciate the criminality of his conduct. Ultimately, Reese was convicted by a jury of three counts

of first degree murder and attempted rape, rape in the first degree and an attempted sex offense. He was sentenced by judge to three consecutive life sentences.

7.1.5 Michael Thompson

Michael Thompson, a 27-year-old White police officer met Vicky Lee Austin, an exotic dancer, at a strip club that was located not far from his police station. He was married, but started an affair with Austin. When they broke up, Austin was pregnant, and, according to Thompson, started harassing him. On April 13, 1998, Thompson, carrying a 12- gauge shotgun and an AR-15 semiautomatic rifle, burst into the bathroom where Austin was bathing her daughter, 8-year-old Jessica. Austin, who was 8 months pregnant, was shot more than 20 times. Jessica was shot twice in the head. The crime scene was horrific with blood splattered on the walls.

During his trial, Thompson testified: "…nothing I say or do can change what happened. I made a big mistake, acting out of extreme anger and rage. No one knows the psychology, the head games, the torture I went through….. All she had to do was stop the threats, the harassment, calling my wife at all hours, the extortion for her to remain quiet" (Farabaugh, 1999, October 7). Regarding Austin's daughter, Thompson stated, "I guess she was at the wrong time at the wrong place."

Thompson's defense argued he deserved leniency since there was a very low probability that he represented a threat to society. Other mitigating evidence of Thompson's good character was presented trial. He had graduated near the top of his class from the police academy, and at one point was named Officer of the Month. Thompson also was a veteran of the Gulf War. In the end, Thompson pleaded guilty and received two consecutive life sentences without parole.

7.1.6 Eugene Dale

Twelve year old Andrea Perry was found October 13, 1988 on a trash-strewn slab of concrete. The girl was raped and shot in the back of the head. Eugene Dale, a 31-year-old Dunkin Donuts' employee, approached Darryl Sydnor and told him that there was a dead girl in the alley. Sydnor, along with a co-worker, found the victim's body and called the police.

Searching Dale's home three weeks later police found the .32 caliber Harrington & Richardson revolver that had been used to kill Andrea Perry. Throughout the investigation, Dale told a number of stories (Sanchez, 1990, October 11). First, that he and his cousin saw Andrea on the day of the murder; later, that he and another man saw Andrea being dragged into an alley, but didn't interfere, and finally, that two men had borrowed his gun to scare somebody. None of these stories were corroborated.

The case took almost two years to develop. When the trial finally began, Dale was already serving a sentence of life plus 20 years for the rape and murder of a 13-year-old girl who had been killed two months after the killing of Andrea (Sanchez, 1990, October 12). Dale had a record of other convictions including robbery, first degree rape, and use of a firearm in a felony. He was on parole at the time of Perry's murder.

Genetic experts testified that a DNA test of the sperm found in Andrea's body matched the DNA found in Dale's blood. However, medical experts testified that there was no trauma to the girl's body, so there was nothing to prove that Dale used force against the victim. There was also no evidence to suggest that the defendant threatened Andrea with the gun during rape. As such, he was sentenced to first degree

murder, but only second degree rape, which made him ineligible for the death penalty. Dale was sentenced to life plus 20 years.

7.1.7 Elvis Horton

Elvis Horton, a 37-year-old laborer from East Baltimore, was convicted of murdering and raping 12-year-old Walisa Ferguson, who was found in the basement of the row house where Horton was living. Horton lived with his sister-in-law and frequently babysat her two children (9 and 12 years old). The Medical Examiner determined that the girl died as a result of strangulation by hands or a broad ligature of some kind. There was also significant blunt force trauma to the right side of the victim's head, which could have contributed to death or caused death in itself.

Horton had previously been convicted of rape and assault with the intent to rape, and several other crimes including the use of a deadly weapon. He eventually confessed to the crime, and claimed insanity as a defense. Horton stated that he killed the victim because he did not want her to tell anyone that he had raped her. His defense argued that in addition to alcohol intoxication, his borderline personality disorder made it impossible for Horton to control his actions. He had also been diagnosed with a mental deficit. Horton was convicted of first degree murder, but during the penalty phase, the jury deadlocked on the issue of a death sentence and he was given two consecutive life sentences.

7.1.8 Stephone Williams

Stephone Williams, 29, became acquainted with 7-year-old Rodney Champy Jr., and his mother, Ms. Cumberbatch, approximately two weeks before he killed Rodney (James, 1992, April 16). The mother and son were struggling to carry a desk

and chair to their apartment that they had found on the curb. The defendant helped them. A couple of days later, Williams came to their apartment to fix a wobbly leg on the desk. One evening after arriving home from work, Ms. Cumberbatch came home to find her dead son in the bedroom.

An autopsy concluded that Rodney had been sodomized, choked and stabbed to death. Williams quickly developed as a suspect. At the same time, Williams had been arrested after a 10-year-old boy complained that he had robbed and fondled him. At the time, Williams also was on parole for an offense of child abuse and a second-degree sex offense against two girls ages 4 and 7. During the murder trial for Rodney Champy, Williams expressed remorse, and said that he was a victim of child abuse himself. He testified that he didn't know what came over him, he "went crazy" and sodomized the boy while "holding him around the neck" (James, 1992, April 16). Williams also stabbed the boy twice in the chest with a screwdriver. Williams escaped the death penalty by pleading guilty to first degree murder. Following the recommendation of the prosecution, the judge sentenced Williams to life without parole.

7.1.9 Don Pittman

Carol Pinder received a call at work that her ex-boyfriend, 24-year-old Don Pittman, broke into her house (United Press International, 1989, March 11). Pittman had just been released from a correctional facility where he spent 8 months for attempted arson – less than a year before the offense in question he had tried to set fire to Pinder's residence. When Ms Pinder came home, Pittman physically attacked her – threw various objects at her, pushed her, and threatened to kill her and her children. Ms. Pinder's neighbor helped restrain Pittman before the police arrived.

The police arrested Pittman and took him to the police station. The arresting officer charged Pittman only with trespassing and malicious destruction of property having a value of less than 300 dollars, both misdemeanor offenses. Consequently, given the minor nature of the offenses, the County Commissioner later that night released Pittman on his own recognizance, but told him to stay away from Ms. Pinder's residence.

Upon his release Pittman, however, went back to Ms Pinder's house. He broke in and set the house on fire. Ms Pinder was back at work, but her three children, ages 11, 4 and 2, were at home sleeping. All three died of smoke inhalation. Pittman was arrested later that night, and charged with three counts of murder in the first degree and arson in the first degree. He pleaded guilty to three counts of first degree murder, and received a sentence of life without parole.

7.2 The Worst of the Worst?

What unites these ten cases, these ten crimes against children where the prosecution chose to pursue the ultimate punishment? What characteristics of the crime or of the offender render these cases the worst of the worst? Does the age of the victim have anything to do with prosecutorial decision? Can these cases be clearly differentiated from those where notification of capital punishment was not advanced?

7.2.1 Sexual Assault

Four cases involved a sexual assault of the child. The act of rape, especially of raping a child, is horrible in itself, let alone if it is accompanied by additional torture or brutality and culminates in taking the victim's life. Notification to seek the death penalty is advanced quite often in cases involving sexual assault that results in murder

(Paternoster et al., 2004; Songer & Unah, 2006). Thus, in Maryland prosecutors sought the death penalty in half of all the cases in the sample where defendants were charged with rape in the first degree or sexual offense in the first degree, and 68% of defendants convicted of these offenses received a notification of the state attorney's intention to pursue capital punishment.

The four cases of sexual assault and murder against children varied in their degree of brutality. Nine year old Dawn Hamilton, Kirk Bloodsworth's alleged victim, was subjected to horrible torture that lasted a long time. Stephone Williams abused 7-year-old Rodney Champy for a long time as well, both prior and after his death. Taking a life in these two incidents was not about witness elimination, but a culmination to a pitiless rampage; the perpetrators clearly derived pleasure from torture. The other two cases of Eugene Dale and Elvis Horton were not characterized by the same extreme degree of brutality. What, then, could have tipped the scale for prosecutors in their decision to process these cases capitally? Could it have been the extensive violent criminal record of both offenders? Dale and Horton – just like Williams - were older offenders who had accumulated extensive violent felony records, including being convicted for rape.

What about the remaining sexual assault offenders – against whom prosecutors chose not to pursue a capital sentence? Were their crimes less brutal? Or their criminal histories less threatening? Or, perhaps, certain mitigating factors characterized these cases, allowing the prosecutors to clearly rank their heinousness or culpability lower compared to the ones where death penalty notifications were filed.

With the exception of Brown, where no sexual assault took place, it is hard to claim that the remaining five cases are somehow less reprehensible than the ones

described earlier in the chapter. In fact, some of the defendants who did not receive death notifications victimized very young children: Richardson assaulted a 2-year-old boy, Weigel's victim was a 5-year-old girl, and Holland's victim was 7 years old. Moreover, the circumstances of these cases were equally ruthless: Berry inflicted 44 stab wounds; Richardson's victim's injuries were comparable to being hit by a car; and Weigel's crime scene was characterized as "repulsive."

While Berry's prior criminal history was extensive, Weigel, Holland, and Richardson had comparatively lighter criminal records. Perhaps, that, in combination with their relative youth served as mitigating factors against the death penalty notification. It is also possible that largely circumstantial evidence in several of these cases (Richardson and Holland) decreased the likelihood of them being charged as capital crimes, however, this remains speculative at best.

7.2.2 Fathers and Boyfriends

Death penalty notification was advanced against five defendants who killed children in the context of a domestic conflict. Three of the defendants were fathers to the children they had killed (Ellis, Reese, and Horn), and two others killed their girlfriend's children (Thompson and Pittman). Horn, although the father to his victim, does not fit the pattern of domestic conflict as well as other cases do since his crime was financially motivated. Pittman's offense will be addressed in the next section. This section deals with defendants who launched a direct attack on their victims.

These three murders – Ellis', Reese's and Thompson's - were characterized by excessive brutality. Reese used a hammer and a knife attacking his wife and two sons, while Ellis and Thompson shot their victims multiple times. None of these crimes

leave any doubts regarding their premeditated and deliberate nature. None of these three defendants, however, had any criminal history.

How do the crimes of the other boyfriends and the two fathers in the sample compare to the ones where the death penalty notification was advanced? The crime scene of Shade's rampage was quite horrific, the body of his 1-month-old son ravaged by a shotgun wound. The actions of Hanby were characterized by the same degree of premeditation as those of Ellis, Reese and Thompson. However, both Shade and Hanby have had more mitigating factors going for them. For example, Shade's assault lacked the necessary premeditation and deliberation due to his judgment being severely impaired by drugs. Hanby's mental illness record was more extensive compared to other father-offenders and was claimed to have affected his judgment on the day of the offense.

Finally, actions of several defendants who killed their girlfriend's children (Butler, Caldwell, Perry, and possibly Sewell) did not rank as high in ruthlessness and brutality. Additionally, the case against Sewell was based largely on circumstantial evidence. Arguably, only Darryl Hill's attack rivals the cases that were charged as capital crimes in its display of brazen disregard for human life – 27 stab wounds inflicted on his girlfriend and leaving two small children behind to asphyxiate from a turned on stove evinces extremely depraved consciousness. However, he also may have escaped a death notification because of mitigating circumstances – his low intelligence (IQ in the 50-70 range) and being strongly under influence of drugs at the time of the offense.

7.2.3 Arson

Pittman's crime presents an interesting contrast to the dozen of cases with child victims that involved arson but did not merit capital punishment. At first glance it appears that Pittman's offense does stand out from the majority of non-noticed arson cases where children were hurt or killed. While many of the arsonists were under heavy influence of drugs or alcohol at the time of the offense or had serious mental health problems (e.g. Harshberger), Pittman's judgment was only clouded by rage. Additionally, about half of the arsonists did not intend to hurt children; they had a very vague idea who they may have been hurting aside from the intended target (most often – current or former romantic partner). Pittman, on the other hand, most likely knew that his ex-girlfriend's children were sleeping upstairs.

Further analysis of the data, however, complicates this picture. There is another case very similar to Pittman's. Kevin Johnson, then 40, broke into his ex-girlfriend's house and used an accelerant to set it on fire. The ex-girlfriend along with another adult and a toddler died in the fire. Johnson had a very extensive criminal record with five felony convictions, three of them violent. He had just been released from prison where he served several months for child abuse. Furthermore, witnesses testified that he threatened to burn down the house if his ex-girlfriend did not agree to date him again. The prosecution chose not to pursue the death penalty against Johnson.

Additional evidence of idiosyncrasy in seeking death can be found among arson cases with older victims. The State Attorneys decided to capitally try 23% of defendants (n=8) who were charged with arson in addition to murder (this includes cases both with adult and child victims). In several of these cases the victims did not die as a result of the fire, rather, arson was the coup de grace, oftentimes as a way to conceal the body (ies). For example, Charles H. Emmanuel, 31, attacked with a knife

three elderly deaf people in their home after a burglary gone wrong, and proceeded to set the house on fire. It would not be appropriate to try to draw parallels between cases like this and arson cases where child victims died as a result of the fire.

Still, several arson murders that did receive a death notification bear affinity to the arson cases involving child victims that were not capitally tried. For example, a death notification was advanced against 41-year-old Robert Brantner, who, being mad at his wife, set fire to their second floor apartment using a can of lighter fluid. Brantner's wife and two residents from an upstairs apartment died in the fire. The mitigating factors - Brantner's impaired judgment as a result of long-term chronic alcoholism, and the absence of any violent criminal history – did not preclude the prosecution from seeking death.

Twenty three year old unemployed carpenter Andreas Kleppe-Egge was accused of setting fire to a building because he had a dispute with one of the tenants. Consequently, a 72-year-old cancer stricken woman and her 50-year-old autistic son died. Prosecution chose to pursue the death penalty against Kleppe-Egge because his alleged actions took the lives of two people and their deaths occurred in the course of another felony (arson) (Lyons, 1993, February 3). But how does Kleppe-Egge's crime rank in heinousness compared to Tonya Lucas or Renee Aulton, who deliberately set fires to kill their children? Is it less heinous to kill your children compared to other innocent bystanders who were at the wrong place at the wrong time?

7.3 Females and the Death Penalty in Maryland

Because of the higher proportion of females who kill children compared to other murder, their cases warrant additional scrutiny. None of the five female defendants who killed children had a death notification advanced against them.

Nevertheless, Laschell Smith's attack on her cousin and two nephews was comparable in brutality to some of the cases described earlier in this chapter. Both Bertha Conyers and Beverly Harshberger displayed a flagrant disregard for human life in their arson-murders. The judgment of all three of these women, however, was that each was substantially impaired during the offense either by drug or alcohol or as a result of mental health issues. The two mother defendants - Renee Austin and Tonya Lucas – were lucid when they caused death to their children, which is not to say that there were no mitigating circumstances in their cases.

It is not clear if the reluctance of prosecutors to advance the death penalty against these female defendants, especially Austin and Lucas, can be attributed to these defendants' gender or was a consequence of aggravating and mitigating circumstances characterizing the crime and the offenders. Gender bias is a recurring theme in death penalty research. Several empirical studies have discovered that female offenders are less likely to have their cases capitally processed and to receive the death penalty compared to their male counterparts (Greenlee & Greenlee, 2008; Reza, 2005; Streib, 2006).While women comprise about 10% of all murder arrests annually, they account for only 2.1% of death sentences imposed at trial level (Streib, 2012). Female offenders comprise only 1.8% of the entire death row population, and only 0.9% of all executions that have taken place since 1973 (Streib, 2012).

Potential explanations for these disparities revolve around several themes. First, women commit a very small proportion of capital punishment echelon crimes. Few murders committed by females are characterized by the aggravating factors that elevate a homicide to a capital offense. In addition to these legally relevant concerns, the prosecutors may also make certain conclusions about the future dangerousness of

female offenders. The fact that a large proportion of female killers perpetrate an attack against their family members and not strangers could be interpreted as an indicator of their decreased dangerousness to other members of the community. Indeed, with the exception of Harshberger, the offenses of the women in the Maryland sample with child victims were confined to the home. Moreover, with the exception of Smith, none of the four remaining defendants engaged in a direct attack – meaning wielding a knife or pulling the trigger. In that sense they are different from some of the male predators described above. Finally, some scholars argue that women are more amenable to rehabilitation, which is also factored into the decision-making of the prosecutors to process their cases as capital (Streib, 2006).

It is illuminating to place these female child killers who did not receive a death notification within the larger context of death eligible cases with female defendants in Maryland that have merited a prosecutorial notification of the death penalty. Besides the five women who had perpetrated a crime on a child, there were 32 females who committed a capital offense. The age of these defendants ranged from 18 to 58 with a mean age of 29.5 years old. Ten women were white, the rest were African-American. In all but two cases, murder was intraracial. Furthermore, the overwhelming majority of cases were single-victim incidents. Almost half of the defendants (n=15) were charged with either robbery or armed robbery in addition to murder. Very few women (n=5) assaulted a stranger. About a third of defendants were accused of killing an intimate partner. Interestingly, eight out of ten women who perpetrated an assault on a current or former romantic partner had done so together with a co-perpetrator(s). Overall, only ten out of all death eligible female defendants (not counting the five women who have taken a child's life) acted alone.

Death penalty notification was advanced against seven women who were charged with killing a victim who was not defined as a child for purposes of this research. Five of these cases involved murder in the course of a robbery. In all but one robbery-related case, perpetrators were familiar with their victims and the offense occurred in the victim's residence (or place of work). Susan King, 21, received a life sentence after pleading guilty to first degree murder of her acquaintance whom she attacked with a knife. Little more is known about the incident. Linda Weirs, 28, got into a fight with a 77-year-old male acquaintance. It is not clear what exactly transpired aside from the fact that the primary motive was robbery or burglary, that Weirs did not break in into the victim's apartment, and her actions were partially explained by self-defense. The victim was found badly beaten to death with a baseball bat. Weirs ultimately pleaded guilty to second degree murder.

Dionne Brooks, 27 years old, was accused of killing a woman who took her in from living on the streets. One day Brooks observed the victim using an ATM and memorized the access code. During the trial, the prosecution insisted on the premeditated nature of the murder. The victim was found strangled with an extension cord and struck with a bottle and a carpenter's plane. Brooks, using insanity as a defense, claimed that the conflict was spontaneous and that she was subsumed with uncontrollable rage. The jury found Brooks innocent of premeditated murder, but guilty of felony order. Brooks' absence of a violent criminal record and cooperation with the police, resulted in the judge sentencing her to life without the possibility of parole.

Another robbery perpetrator, Doris Foster, was not so fortunate. Thirty six years old at the time of the offense, Foster killed 71-year-old Josephine Dietrich, the

manager of a motel where Foster was staying with her husband. Foster's husband and daughter helped her get rid of the body, but it was Foster who lured the woman into a vacant room and stabbed her with a screwdriver seven times. Foster also had a previous conviction for attempted armed robbery. The jury found Foster guilty of felony-murder. Foster chose to be sentenced by the court, and the judge sentenced her to the death penalty. On appeal Foster's judgment was reversed and the case remanded for a new trial. The second trial ended with the same verdict as the first one, but this time it was the jury that decided that Foster deserved capital punishment.

The remaining two female-perpetrated murders where prosecutors decided to pursue capital punishment involved a brutal case of sexual assault and a murder for hire. Donna Hoffman, 19, was the only one out of 10 female defendants who killed a current or ex-partner who was capitally processed. After being married for only three months, Hoffman paid four men and her current paramour 100 dollars to help kill her husband Michael. Donna drove Michael to an isolated locale where the five men were waiting. He was shot in the head and chest, bound with wire and blocks of concrete and thrown into a creek. The jury convicted Hoffman of first degree murder and being an accessory after murder, and sentenced her to two counts of life imprisonment.

Annette Stebbing was the first woman sentenced to death penalty in the state of Maryland in the post-Furman era. Nineteen at the time of the offense, Annette was married to Bernard Stebbing, a man twice her age, alcoholic, and on probation for a sex crime. Together they attacked Dena Polis - a 19-year-old stepdaughter of Bernard's brother. Bernard intended to sexually assault Dena and brought Annette in on his plan.[50] One night the couple offered to give Dena a ride. At some point

[50] Stebbing v. Maryland, 469 U.S. 900 (1984).

Bernard, who was driving, pulled over saying he needed to check the oil. When he exited the vehicle, Annette, as was previously agreed upon, pulled Dena to the back of the van. She then sat on top of the girl, holding her down while Bernard raped her. To muffle Dena's screams Annette put her hands on Dena's neck, eventually strangling the victim. With Dena's body in the back of the van, the couple then went home. Not until the next evening, after driving the van to work, had they disposed of the body by stuffing it through a manhole into a sewer.

As can be seen, the degree of indifference towards human life is sufficiently high in all of these crimes. The question is - do these crimes merit a harsher response than cases of women who killed children? The cases described above appear premeditated and cold-blooded. Taking someone's life in order to get their money reveals a particularly depraved conscience. So does paying someone to take a life. Compared to this, at least from prosecutors' decisions, it appears that lashing out or setting a fire in the urgency of passionate anger, as Conyers, Harshberger, and Smith did, is somehow less atrocious. However, no evidence of emotional upheaval was found in the actions of the two mothers, so prosecutors' decisions not to try Aulton or Lucas capitally cannot be explained by the argument of a less culpable mental state.

7.4 Females Receiving the Ultimate Punishment Nationally

Based on the findings from the Maryland dataset, one might suspect that nationally there would be very few women deemed worthy of capital punishment for killing a child. But this is not the case. According to data compiled by Victor Streib (see chapter 4, section 4.2.4), between 1990 and 2010, death sentences were imposed on 94 female offenders. Almost a third of these women (n=27) were tried and

sentenced for killing a child. Even more surprising is that over half (n=17) of female child killers were mothers to their victims.

To illuminate these national trends, this section will briefly examine the sample of cases where female offenders received the death penalty for killing children. Who were their victims? What were the circumstances of the crime that provoked such a harsh response from the state? It is important to keep in mind that these are the cases where offenders received the ultimate punishment. Are these truly the "worst of the worst" - offenses (and offenders); heinous not just in the eyes of the prosecutors who chose to try these cases capitally, but also in the eyes of the public (if a death sentence was imposed by the jury) or the court?

In the overwhelming majority of cases (n=22) female offenders who received the death penalty were the caretakers to their victims. Besides mothers, other female offenders were a grandmother, an aunt, a babysitter, and a mother's partner. In the remaining five cases, children either happened to be at the wrong place at the wrong time, or fell victim to predatory crimes. For example, a 9-year-old girl happened to be at home when Rosie Alfaro came to burgle the house. Alfaro, being high on cocaine and heroin, stabbed the girl 57 times to eliminate a witness. Another woman, Latasha Pulliam, 19, crack addict, together with her boyfriend convinced a 6-year-old neighborhood girl to come to their apartment, where they sexually assaulted and tortured her to death.

The cases of child homicide perpetrated by female caretakers can be grouped in several categories based on motive and on the dynamics of the offense: abuse scenarios, murder as revenge against romantic partner, and unwanted child. There is one case that does not fit into any of these three groups. It involved killing for

economic advantage: Robin Lee Row insured the lives of her husband and two children for a total of 276,500 dollars. Sometime later she disabled the smoke detector and started a fire on the bottom floor of the duplex, where her estranged husband and two children died from carbon monoxide poisoning.

The largest group of cases (n=9) where the offender was the victim's caretaker involves severe child abuse. Female perpetrators, six of them – mothers to their victims, had engaged in a pattern of abuse that had lasted anywhere from weeks to years. For example, Patricia Blackmon in Alabama launched a vicious attack on her 28-month-old adopted daughter, Dominiqua, who was found lying on the floor covered in vomit, wearing only a diaper and blood-soaked socks.[51] In addition to injuries that proved to be fatal - multiple skull fractures, broken bones and an imprint of the sole of a shoe on her chest, - doctors detected many other injuries in various stages of healing.

In other cases of mistreatment, no distinct final assault took place. Rather, the cumulative effect of long-term abuse produced the child's death. The case of 7-year-old Tausha Tharp in Pennsylvania illustrates this typology well – her body was found atop a large bush in the woods of West Virginia. The girl weighed only 12 pounds. Her mother, Michelle Tharp, claimed that Tausha was suffering from a medical condition – a failure to thrive. During the trial witnesses testified that Tausha was denied food and mistreated in other ways while other Tharp children were perfectly taken care of (Silver, 2000, November 14). Michelle Tharp, despite evidence of her borderline intellectual disability, was found guilty of starving her daughter to death.

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[51] Blackmon v. State, 7 So.3d 397 (Ala. Crim. App. 2005).

The second group of female offenders ultimately sentenced to death were motivated by retaliatory sentiments. Four women killed their children in an attempt to get back at their former and/or current romantic partners. In three of these cases, the women also attempted to take their own life. Thus, Susan Eubanks, 33-year-old unemployed nursing assistant in California, killed her four sons ages 4, 6, 7, and 14. On the day of the offense, while drinking, she had a fight with her live-in boyfriend Dodson, which ended with Dodson taking her home and ending the relationship. Because Eubanks was very upset, Dodson had to contact sheriff's deputies for help in retrieving his belongings from Eubanks' residence. Afterwards, Dodson caught a ride with Susan's ex-husband who happened to stop by the house. At some point during the drive, Dodson told Eric Eubanks that Susan threatened to kill herself and her children. The two men went to a bar, where, after several hours, Eric Eubanks received a voicemail from Susan containing only two words "Say goodbye."[52]

The police found Susan on the floor bleeding from a stomach wound, but she survived. She had shot her four sons repeatedly in the heads with a .38-caliber revolver as they were watching TV or playing Nintendo. Another child, her 5-year-old nephew was found unharmed. Five letters were scattered around her bed addressed to her boyfriend Dodson, her husband and several other family members. The letter addressed to her husband read: "You betrayed me… I've lost everybody I've loved. Now, it's time for you to do the same" (Perry, 1999, August 19).

The prosecution argued that the murders were designed to get revenge on the men in Susan's life. Susan claimed that the murders were an act of love; she was

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[52] People v. Eubanks, 53 Cal.4th 110 (2011).

afraid that her children might be taken away from her and felt that they would be better off dead. The defense linked her alcoholism to pain over failed relationships and her prescription drug addiction to work-related injuries. They also presented evidence that Eubanks grew up in an abusive home, and suffered abuse at the hands of her ex-husband. Debt-ridden, broken, her mind clouded with alcohol and valium, Eubanks killed her children and attempted suicide in a moment of weakness (People v. Eubanks, 2011). The jury did not buy this and sentenced her to death.

In another California case, Sandi Nieves, mother of five, gathered her children in the kitchen for a slumber party. After the children fell asleep she poured gasoline on the carpet and set it on fire. The children apparently woke up and were gagging from the smoke but Nieves told them not to move. At some point Nieves called 911 saying she could not awaken her children. Her four daughters ages 5, 7, 11, and 12 died of smoke inhalation. The oldest child, 14, survived.

During the trial the prosecution and the defense tried to put a contrasting spin on the events of Nieves' life: her abortion; financial troubles and child support battles; an ex-husband trying to reverse his adoption of the three older children; her boyfriend ending the relationship shortly before the fire. The defense insisted that Nieves was not legally conscious at the time of the fire; that she was a good mother but the stress of being a single parent and the misfortunes she had faced all helped push her over the edge. As such, they contended, she did not represent a danger to society (Liu, 2000, August 2). The prosecution argued that she deliberately plotted to kill her children to inflict pain on the men in her life, and perhaps to relieve herself. The jury gave her the death penalty.

The third distinct category of circumstances under which women have killed children and have been sentenced to death deals with unwanted children. In the four cases in this category the prosecution had stressed that the reason these mothers killed their children was either because the latter had interfered with their lifestyles or were unwanted for other reasons. For example, during the trial in Ohio for 28-year-old Nicole Diar, the prosecution established that she was often going out to party leaving her 4-year-old son Jacob in the care of relatives and babysitters and instructing them to give the boy a mixture of codeine and acetaminophen to get him to sleep.[53] This prolonged medication caused stomach problems for Jacob. Diar started their home on fire and was convicted of first degree murder and arson even though the exact cause of the boy's death could not be determined; the only thing that the prosecution established was that the boy died before the fire was set because there was no soot in his lungs. Diar's claims that she tried to save her son from the fire were disproved.

In another case in Texas, the body of a 4-day-old infant was found in a trash bin, bound with duct tape. The infant could not be identified and for five years the case remained unsolved until another newborn child, alive, was found in a ditch on the side of the road badly bitten by ants. Through an anonymous tip it was established that the child's mother was 19-year-old Kenisha Berry, a former corrections officer and a day care worker. A DNA test established that she was also the mother of a dead infant found years earlier. Berry appeared to keep the children sired by one man and abandon the children sired by other men.[54]

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[53] State v. Diar, 120 Ohio St.3d 460, 2008-Ohio-6266.

[54] Berry v. State, 233 S.W. 3D 847 (Tex. Crim. App 2007).

As this section has shown, national level data on women who have received the ultimate punishment for killing a child contains new categories of cases. While murder in the course of predatory crimes – child killed in the course of a robbery, for financial gain or after being subjected to sexual assault - appear in the Maryland data as well, several scenarios do not. These new scenarios provide valuable insight on what types of cases with child victims are met with utmost social indignation and loathing in our society.

Murder motivated by revenge against romantic partners mirrors cases of familicide perpetrated by male offenders in the Maryland data with an important distinction – no assault was attempted on the romantic partners in these cases. Scenarios of extreme abuse or unwanted children would not appear in the Maryland data because they cannot be accommodated under any of the statutory aggravating circumstances that make a case death eligible. These crimes overwhelmingly have only one victim; are not accompanied by an additional felony (arson is the exception); and are unlikely to take place in the context of kidnapping.

7.5 Summary

This chapter attempted to untangle and elucidate the criteria that State Attorneys consider in determining whether or not to seek capital punishment in a particular child homicide case. In sum, when child homicide does come to the attention of death penalty in Maryland, it is not because of the age of the victim but because of other factors – it is accompanied by another felony such as sexual assault, is characterized by extreme violence, or is part of a multiple-victim assault.

As it was illustrated, there were instances where legally similar crimes and criminals received different treatment. Within some case categories – like assaults

perpetrated by fathers and boyfriends – prosecutorial selection of some cases for capital processing over others made more sense in light of legally relevant criteria like offense seriousness. Attacks perpetrated by defendants that received the death penalty notification were extremely brutal, premeditated and predominantly cold-blooded. In other case categories, the patterns of prosecutorial decision-making appear more random. Further idiosyncrasy in capital punishment notification becomes evident when certain cases with child victims are contrasted with factually similar cases with older victims. There is no systematic indication which features of the child homicide offense or the perpetrator tip the scale in favor of capital processing. This dynamic, stemming from the great extent of prosecutorial discretion, reveals more about the capriciousness of death penalty than about the gravity accorded to the crime of killing a child.

Since there were so few cases of females who fatally assaulted a child in the Maryland data, and none of them received the death penalty notification from the State Attorney, additional data sources were drawn upon. When prosecutors decided to seek the death penalty in Maryland against female defendants, it appears that the "deliberate, premeditated, willful" quality of the murder can be more readily inferred from these cases than cases of female child-killers, particularly Aulton and Lucas. Clear evidence of planning or robbery being the motive, the fact that physical injury was inflicted on the victims by the female perpetrator in person and that the assault took some time, - all ease the burden for prosecutors to portray defendants as death-worthy. Conversely, setting fire to your own house with your children inside might be more challenging to present the offender as sufficiently malicious and dangerous. On

the other hand, the data also reveal that prosecutors have been known to seek death in arson cases.

National data helps to illuminate what type of assaults on children perpetrated by females are regarded as sufficiently reprehensible to merit the death penalty. The data illustrate that not all crimes were very brutal, and many cases had mitigating factors, yet that did not stop the prosecutors from successfully pursuing the death penalty against these women.

The next chapter will summarize the findings of the presents study and place them in context of larger themes in the sociology of punishment literature. Drawing on the idea of punishment as an expressive institution, the chapter will discuss what the observed case processing disparities might be communicating about the victims, the offenders, and our societal understanding and treatment of child homicide. The chapter will also discuss several limitations of the present study and suggest several directions for future research.

Chapter 8

CONCLUSION

Adam's law, Megan's law, Jessica's law, Caylee's law, Ethen's law – what do these pieces of legislation have in common? They all were (un)officially named after a child victim including the abduction, sexual assault and murder of 7-year-old Megan Kanka in New Jersey, and the murders of 6-year-old Adam Walsh and 9-year-old Jessica Lunsford in Florida each provoked legislation on more stringent treatment of sex offenders. Legislators in New Jersey, following the widely publicized trial of Casey Anthony, accused of murdering her daughter Caylee, recently proposed Caylee's law, which would make it a felony not to report a death of a child or delay alerting the authorities that a child has gone missing for longer than a day. Similar legislation is pending in other states. In 2011 North Carolina passed the so-called Ethen's law, recognizing a fetus as a separate victim in a crime perpetrated against its mother. And finally, the kidnapping and murder of 12-year-old Polly Klass in California created a tidal wave that drove the Three Strikes legislation through Congress.

These laws and other pieces of legislation drafted with the goal of preventing crimes against children, as well as the barrage of media coverage that selected cases of missing children or child murders receive, might indicate that our society responds to the victimization of children with utmost gravity and condemnation. But do we really? The objective of the current study was to explore the extent to which this concern translates when we are considering punishing the worst offense against children –

taking their life? Is there any difference in the criminal justice system's response to child homicide compared to processing of cases with older murder victims? Are cases with child victims being discounted vis-à-vis cases with older victims? Are certain categories of child homicide offenders treated more harshly by the criminal justice system compared to others?

This study was conducted during a time when victim identity has become more important to penal practices. Until recently, in research examining general (not capital) criminal justice processing of cases, victim characteristics have been incorporated only marginally, largely through the victim-offender relationship configuration. The exceptions to the latter provision were studies on processing of sexual assault cases (Kingsworth, MacIntosh, & Wentworth, 1999; Spears & Spohn, 1997). There, the notion of "worthy" and "unworthy" victims, constructed primarily through victims' behavior, surfaced as a powerful predictor of case outcomes, particularly the decision of prosecutors to prosecute the case.

Unlike regular sentencing research, studies on capital punishment have stressed the importance of victim characteristics for decades. The race of the victim, in particular, has been found to be an important factor in decisions by prosecutors to seek death. Studies of different jurisdictions have repeatedly confirmed that those offenders who take the lives of White victims are more likely to be treated more harshly (Paternoster et al., 2004; Radelet & Pierce, 2011). The gender of the victim has the potential to affect capital sentencing outcomes as well. Thus, those offenders who kill women have higher odds of being tried capitally and being sentenced to the death penalty (Radelet & Pierce, 1991). In addition, the victim-offender relationship has

been shown to structure the processing of capital cases with stranger-perpetrated crimes being deemed more egregious (Songer & Unah, 2006).

Together, these findings underscore the importance of victim characteristics when examining the adjudication of the law. In fact, Shatz and Shatz (2011, p. 46) concluded that these findings, "[R]aise the troubling possibility that the identity of the victim may matter as much or more to prosecutors and juries as the nature of the crime or the character of the defendant." What we may be seeing is the emergence of the so-called victims' culture in criminal justice (Garland, 2002, p. 465; Sarat, 1999). Considerations of respect for individual rights and neutrality of justice are dislodged by an increasing allegiance that the state professes to victims. A bright illustration of the controversial character of this dynamic is the debate over the presentation of Victim Impact Evidence at capital trials. In Payne v. Tennessee (1991) the United States Supreme Court allowed the presentation of victim impact statements during the sentencing phase of capital trials,[55] essentially reversing its previous ruling in Booth v. Maryland (1987).[56] Studies have found that this opens widely the door for emotions during the penalty stage of capital trials and "lead(s) to a 'minitrial' on the victim's character encouraging the penalty jury to engage in a comparative worth analysis of the lives of the victim and of the offender" (Paternoster & Deise, 2011, p. 153).

These developments in sentencing would seem to indicate that a defendant's culpability and the harm that the defendant's crime has inflicted are impossible to

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[55] Payne v. Tennessee, 501 U.S. 808 (1991).

[56] Booth v. Maryland, 482 U.S. 496 (1987).

gauge without accounting for the identity of the victim. In light of this focus on the victim, the current study is particularly timely and appropriate.

8.1 Summary of Research Findings

Analyses of nationally representative data collected from prosecutors' offices in 33 large urban counties found some similarities and differences in the processing of cases with child homicide victims compared to defendants who killed older individuals. Those who killed children were more likely to be female; their homicides were more likely to be limited to one victim; and they were somewhat more likely to commit the crime alone, without co-perpetrators. Those who took a life of an older victim were more likely to have used a weapon and have prior criminal histories (prior convictions). However, the general contours of processing appear to be similar for both groups of defendants. The proportion of cases bound over for trial, plea versus trial ratios, as well as proportions of convicted defendants (including convicted of murder) were similar across the two groups of offenders.

Interesting findings emerged once the sample of child homicide offenders was disaggregated by victim-offender relationship and the gender of the perpetrator. The distribution of conviction charges for parents appeared to group more towards the lenient end of the offense spectrum (other violent offense and nonviolent offense as opposed to first-degree murder) than for males and females who killed a child not related to them. Almost everyone in the latter group was convicted of a manslaughter or murder offense. Consequently, the mean sentence length for familial offenders was significantly shorter than incarceration sentences for offenders with older victims and offenders who had killed a child not related to them. Furthermore, mean sentence length for non-familial female defendants was almost twice the size of the mean

sentence length for mothers who killed their own children. This pattern was present for male defendants as well; fathers' sentence length was significantly shorter than that of males who killed a child not related to them.

Multivariate analyses revealed that killing a child did not have any effect on the probability of conviction. Those who killed children were no more and no less likely to get convicted or convicted of murder than those who killed older victims. However, those who killed children received significantly shorter sentences. Offenders who were convicted of child homicide received sentences on average 44% shorter than offenders convicted of killing an older victim.

Analyses performed strictly on a sample of cases with child victims failed to confirm the hypothesis that killing your own child is associated with a significant reduction in sentence length. Although the sign of the coefficient was negative, it failed to reach statistical significance. The hypothesis that female child killers are treated more leniently by the court was partially confirmed. It was found that mothers received incarceration sentences shorter than those of other defendants (male defendants and women in non-relational categories).

The second focus of the study examined cases with child victims that evoked the harshest punishment available in the state of Maryland, capital punishment. A descriptive analysis of cases with child victims that were deemed deserving of capital processing by the state legislature was first presented. Second, this research attempted to identify factors about the offender or circumstances of the offense that were deemed death worthy by the state attorneys and consequently resulted in a notification to seek the death penalty.

There were 37 cases where a child was killed and the murder fit the criteria of being death eligible. Demographically the pool of death eligible offenders of child homicides differed from the defendants in the national dataset. Females were the perpetrators of child homicide in 35% of the cases at the national level, however, in Maryland's data there were only five death eligible cases where women took the lives of children. Four were related to their victims, with two being mothers of the children they killed. There were four father defendants who killed their children in a scenario of familicide, and another man hired someone else to kill his son and wife for insurance money. The majority of death eligible cases with child victims either originated in a romantic conflict or involved a sexual assault on the child.

Prosecutors decided to pursue the death penalty against 10 out of the 37 defendants. Chapter 7 explored whether the cases selected would reveal something about the moral gradation of cases with child victims. Unfortunately, few patterns were discovered. It was hard to definitively conclude which cases evoked the utmost indignation of the criminal justice system. At first glance, prosecutorial notifications to pursue the death penalty clustered within the sexual assault murders and familicide categories. There was also indication that prosecutors were guided by the legally relevant factors in their decisions such as defendant's prior criminal record and offense heinousness. However, a more detailed examination of other "non-noticed" cases within the same categories made it less clear why certain defendants were chosen for capital processing over others.

One of the issues that could not be fully explored through the Maryland data concerned the plight of females who killed their own children. Findings from the quantitative analyses indicated that mothers who had killed their own children were

treated more leniently by the court. Their sentences were significantly shorter than those of other categories of offenders. It would be interesting to explore whether this lenience is uniform, and extends to all mothers, even those who committed crimes that could be punishable with death. Are there some crimes committed by mothers that run counter to this trend of leniency? What are the circumstances under which mothers are treated more severely than women who have killed their children in general (as indicated by the quantitative analysis)?

Unfortunately, the Maryland dataset contained only two female defendants who killed their own children and neither of them were tried capitally. It is unclear whether prosecutors' decisions not to pursue the death penalty in these cases resulted from attributions about the victims (as not worthy enough), about the defendants (as not culpable enough), or both. While both women were burdened with a number of unfortunate life circumstances like drug addiction, financial and relationship troubles, so were several other female defendants in the Maryland sample who were tried capitally. Perhaps, the crime of a mother killing her children is seen in a special light, as not warranting a harsh response. Perhaps, Lucas and Aulton's crimes fit better with the typical, garden-variety cases of maternal filicide, which have been traditionally treated more leniently by the courts.

The cases of women who had received a capital sentence nationally for killing a child were meant to provide more insight into the matter, and serve as potential contrasts to Aulton's and Lucas' cases. In the period of 1990-2010, 18 women were sentenced to the death penalty for killing their children. There were three distinct groups of cases: (1) cases where children died as a result of severe abuse, which may have been ongoing for an extended period of time; (2) cases where women killed

children in a retaliatory attack aimed at current or former romantic partners; and (3) the so-called "unwanted child" scenarios.

While some of these killings by women sent to death row were blatantly horrific, there were a number of cases where the circumstances of the offense and the degree of culpability are comparable to the Maryland cases of Lucas and Aulton's. However, unlike Lucas and Aulton, these women passed the capital punishment muster twice – in the eyes of the prosecutors and the public.

8.2 Maternal Filicide and the "Domestic Discount"

The current study serves as another illustration of the "dialectic of condemnation and mercy" (Oberman, 2004, p. 36) that frames how filicidal mothers are treated by the criminal justice system. The quantitative analyses systematically confirmed past research's indication of lenience towards this category of offenders. Furthermore, the fact that no woman who has killed a child in Maryland within the specified period was considered for capital processing can also tentatively suggest that the law may protect women.

These findings run counter to the reasoning that adjudicating women who kill children, especially mothers who kill their own children, accords with the logic of the "evil woman" hypothesis. After all, few crimes compare to child homicide in the defiance against gendered expectations. Child homicide is probably the ultimate violation of femininity. During the trial for Rosie Alfaro, who repeatedly stabbed to death a 9-year-old-girl while burglarizing the house because she needed money for drugs, the prosecutor asked the jury to disregard the fact that Alfaro was a woman and herself a mother: "Where is that maternal instinct that all children are precious?" he asked, "It's not in Rosie Alfaro" (Pinsky, 1992, April 3). Alfaro's victim was a

stranger. Women, who kill their own children, then, have stepped off the ledge even farther regarding gender expectations.

At the same time, our cultural conception of womanhood and motherhood appears to create a force that pulls in the opposite direction, towards a more lenient treatment of women. It is very hard to believe that a mother is capable of murdering her offspring in cold blood. Thus, we may be more likely to search for and be receptive to various mitigating circumstances and explanations.

Elizabeth Rapaport (1996) coined the term "domestic discount" when she discussed the relatively lenient treatment of domestic homicides compared to other types of capital murder. She argued that there was an automatic imputation of diminished capacity in domestic homicides (whether perpetrated by men or women). As opposed to stranger-perpetrated predatory crimes, which are regarded as cold-blooded and calculated, domestic murders are seen as "mitigated by the stressors of domestic life," and as such - products of a less culpable mental state. It is likely that a similar conception is activated when mothers are brought to trial for killing their children. The burdens and frustrations of parenthood, most likely familiar to many jurors and judges, further contextualize the actions of mother offenders.

The evil woman hypothesis, however, does have its place where female perpetrated child homicide is concerned. While most female child killers might be treated more leniently by the courts, a few women were met with utmost severity. Examining the cases of women who received capital punishment provides some insight on the issue of what it takes for a mother to be sentenced to die for killing her own child.

The circumstances of the offenses of most of the women who have been sentenced to the death penalty appear to have left them with no chance of being protected by their gender. They have either launched a direct attack on their victims, acted clearly out of revenge, or the abuse of children was so brutal or long lasting that it left no doubt about the cold-bloodedness, wanton disregard for a child's life. The actions of these women simply shocked our conscience. They had no chance of being construed as worthy of lenience.

A number of cases, however, were not as clear cut in the degree of depravity or premeditation. Christina Riggs was executed in Arkansas for using undiluted potassium chloride to kill her two children. Although the prosecutors argued that the crime took place because the children were an inconvenience to Riggs, her defense insisted that Riggs was severely depressed and attempted to take her own life as well. She did not want to have the kids be split up after her death.

The circumstances of Sandi Nieves' case, who set the house on fire with her five kids all gathered in the kitchen "for a slumber party," is in some respects similar to Aulton's and Lucas' cases. However, in Nieves' case the prosecution was able to successfully argue that what was moving her on the night of the offense was a desire for revenge and not the desperation of being an overburdened, depressed, single parent. Perhaps, state attorneys in Maryland could not make an equally strong case against Aulton or Lucas.

Tierra Gobble's and Nicole Diar's murder by abuse cases also did not rank as high in heinousness as some other cases. In Diar's case the exact cause of death of her son was never determined; all that could be proven was that she set fire to her house. In contrast, Sabrina Butler, 17 years old at the time of the offense, was sentenced to

die for the murder of her 9-month-old son. After bringing him to the hospital, not breathing, with bruises and trauma to his ribs, she claimed that the trauma resulted from her resuscitation attempts. There was no other evidence of prior abuse of the infant. Yet for the prosecutors and the court, this was enough to sustain a capital punishment verdict.

8.3 Expressive Dimension of Punishment

Punishment, as a social institution, serves many different functions in society, especially when conceived broadly as "the complex of laws, processes, discourses and institutions that are involved in [the penal] sphere" (Garland, 1990, p. 16). The most obvious conception of punishment is an instrumental one – serving the purpose of crime control. Works on the sociology of punishment have identified other functions as well. Thus, punishment can be a weapon in the arsenal of political domination. It can also perform a restorative function for the victims of crime. Another dimension of punishment is the symbolic, communicative, and expressive function of penal practices. However, this dimension has not been as prominent in the literature. It has been overshadowed by the abovementioned narrow focus on punishment serving the function of crime control.

Durkheim's work is a leading example of earlier theorizing about punishment in expressive terms. For Durkheim, punishment's main function was to embody and reinforce society's collective beliefs and values. Punishment is a "moral message" of society, expressing which actions break up the conscience collective and will not be tolerated. Other scholars who have identified punishment's communicative potential include Pashukanis, Mead, and Feinberg. However, each of these scholars focused on a distinct set of messages that were being communicated, and different purposes that

that communication has served. Thus, Feinberg interpreted punishment's expressive function narrowly – as a "conventional device for expression of attitudes of resentment and indignation and of judgments of disapproval and reprobation" (Feinberg, 1994, p. 74).

Capital punishment has an absolutely separate and special place when the communicative function of punishment is considered. It sends a message of the ultimate condemnation. The expressive function is the main reason behind the death penalty. This is why we have it - to identify and punish the most horrible crimes and the most heinous offenders. The report of the [Illinois] Governor's Commission on Capital Punishment (2002) stated, "[T]hose favoring the death penalty believe it retains an important role in our punishment scheme in expressing, on behalf of the community, the strongest possible condemnation of a small number of the most heinous crimes" (p. 6).

Garland (1990) maintains that criminal law in general and penal practices in particular carry a very diverse set of meanings and messages. Penal processes and institutions carry within them messages not just about the offender and the criminal act committed, but also about authority, appropriate social relationships, and about victims. Messages about victims are inherent in penal processes. As discussed in the previous section, punishment is intrinsically connected to passing judgment on the issue of victims' worth. Through penal practices, victims' worth and status are being negotiated. The admissibility of victim impact evidence during trial can be interpreted as a "mark of esteem for victims and an institutionalized recognition of their worth" (Garland, 2009, p.430).

8.3.1 Recognizing a Child's Worth Through Law

Another way victims have been recognized is through legislation. Simon and Spaulding (1999) examined the states' development of their statutory aggravating factors schemes after the United States Supreme Court decision of Furman v. Georgia (1972).[57] In Furman v. Georgia the Court was concerned with an inconsistent application of the death penalty, likening it to "being struck by lightning" (Justice Stewart). The case led to a de-facto moratorium on capital punishment, and the states subsequently rushed to pass new death penalty statutes that would withstand the scrutiny of the Supreme Court.

The so-called "first generation" of aggravating factors were somewhat limited in scope because they were primarily concerned with crimes that hindered the operation of the government (for example, killing of a peace officer) and common-law understandings of aggravated murder. However, starting in the 1980s, the states began to expand the range of aggravating factors, adding them "like Christmas tree ornaments" (Simon & Spaulding, 1999, p. 82). These aggravators were more focused on placating the fears of private citizens. Pretenses of rationality, that the aggravators were in place to meaningfully channel juries' discretion, were dropped. The new aggravators were not meant to meaningfully restrict the scope of death penalty, they were adopted primarily "to provide symbolic recognition to this or that political constituency" (Sarat, 1999, p. 13). As such aggravators became "tokens of esteem" loaded with symbolic capital - "a kind of currency through which states seek to recognize various concerns and valorize certain kinds of subjects and situations (Simon & Spaulding, 1999, p. 81), they communicated to the societal group covered in

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[57] Furman v. Georgia, 408 U.S. 238 (1972).

a newly-passed aggravating factor: "[W]e honor you with the most symbolically potent currency we have" (Simon & Spaulding, 1999, p. 98).

It is insightful to try to apply this expressive perspective on punishment to cases involving child victims. On one hand, we see many illustrations of protecting and valuing children by the law and criminal justice system. Statutes mentioned in the introduction to this chapter are some examples. Many states also have passed the so-called child homicide statutes, discussed in chapter 3, that were meant to facilitate prosecution of child homicide.

About half of all states who have the death penalty list killing a child as a capital aggravator in their death penalty statutes. According to data from the Death Penalty Information Center, the states specify a certain age of the victim that elevates a murder to a capital offense. This age boundary varies across states. For example, in some states, victims have to be younger than 6 years old (Texas), below 12 years old (Arkansas; Florida; Indiana; Louisiana; Pennsylvania; South Carolina; Tennessee; until recently Illinois), 13 (Ohio; South Dakota), 14 (Delaware; Nevada; Oregon; Virginia; until recently New Jersey), 15 (Arizona), 16 (Connecticut), and 17 (Wyoming). The New Hampshire statute contains a more general statement - "the victim was particularly vulnerable due to old age, youth, or infirmity." Tennessee specifies as a death eligible crime killing in the course of aggravated child neglect and aggravated child abuse. As mentioned in the summary section of chapter 6, some states also underscore the relationship between perpetrators and victims (e.g. Florida and Washington).

Thus, some states have clearly signaled with law that children are protected and valued, and have granted them esteem in the death penalty statutes. As we have

seen in the current study, however, what occurs in practice might be another story. This second story is told through prosecutorial charging decisions and through sentencing decisions, through jury decisions to impose the death penalty on specific offenders.

8.3.2 Who Should be Feared?

One of the things that penalties convey is who should be feared. What types of offenders are regarded as most dangerous? Sexual victimization of children has traditionally evoked great fear. Society has been willing to go to great length to punish this category of offenders. Until recently, there has been considerable tension surrounding the issue of retaining capital punishment for the crime of raping a child.

While a number of states historically allowed capital punishment for the rape of a child, in Coker v. Georgia (1977) the United States Supreme Court declared that imposing the death penalty for rape constitutes cruel and unusual punishment.[58] The victim in the Coker case, however, was an adult woman, tentatively leaving the door open for retaining capital punishment for the rape of a child. Thus, some states embarked on a path to reinstitute the death penalty for the crime of rapes against children. For example, in 1995 Louisiana Governor Edwards signed into law provisions that allowed the imposition of the death penalty for those offenders who were convicted of raping a child (Rayburn, 2004). The Louisiana Supreme Court in State v. Wilson (1996) maintained that children were a special class that required protection: "given the appalling nature of the crime, the severity of the harm inflicted upon the victim, and the harm imposed on society, the death penalty is not an

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[58] Coker v. Georgia, 433 U.S. 584 (1977).

excessive penalty for the crime of rape when the victim is a child under 12 years of age."[59]

After Louisiana, four other states – Montana, Oklahoma and South Carolina – passed similar laws, although somewhat narrower in scope. Thus, in 2006 South Carolina passed a law that authorized imposition of capital punishment for repeat offenders of criminal sexual conduct with a minor (Kirchmeier, 2006). Georgia's statute sanctioned the death penalty for offenders who raped a child younger than 10 years old. The Texas legislature in 2004 approved a bill extending the possibility of imposing the death penalty on those who repeatedly raped children under 14 years of age (Rayburn, 2004).

A recent ruling by the U.S. Supreme Court indicates that, counter to the 1977 Coker decision, these recent statutes may be deemed constitutional. In Kennedy v. Louisiana (2008), the High Court proscribed the use of capital punishment against defendants who did not kill their victims (with the exception of crimes against state).[60] This decision involved a defendant who was sentenced to death for brutally raping his 8-year-old stepdaughter. The decision was not unanimous and drew sharp criticisms from some proponents of capital punishment and the media (Bachman, 2010). Justice Alito dissenting stated, "[In] the eyes of ordinary Americans, the very worst child rapists – predators who seek out and inflict serious physical and emotional injury on defenseless young children – are the epitome of moral depravity… It is the judgment of Louisiana lawmakers and those in an increasing number of other states that these harms justify the death penalty" (in Mancini & Mears, 2010, p. 959).

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[59] State v. Wilson, 685 So.2d 1063 (La. 1996).

[60] Kennedy v. Louisiana, 554 U.S. 407 (2008).

While crimes perpetrated by strangers are taken more seriously by the criminal justice system, the reality is that a large proportion of fatal assaults on children are perpetrated by their parents. It would appear, then, that we are afraid of being victimized by strangers, but being hurt by violent actions of our family members is apparently not so frightening. Perhaps because we believe we understand why certain domestic murders happen, we feel protected from these crimes and believe we are immune to this violence in our own safe domiciles. Thus, the law that treats felony murder as a more heinous crime than a domestic homicide may reflect rational instrumental concerns (i.e. protecting the public) rather than moral considerations. Individual blameworthiness is outweighed by considerations of the future dangerousness of the offender.

The issue of future dangerousness represents a hurdle in cases of parental filicide, especially maternal filicide. However, this challenge has been successfully overcome in many cases of women who were ultimately sentenced to capital punishment for killing a child. For example, the issue was explicitly raised during the trial in Texas of Melissa Lucio, a mother of 13 children, who was accused of murder by abuse of her 2-year-old daughter. According to Texas law, whether the offender represents a danger to society is one of the special circumstances the jury must consider for a case to be eligible for the death penalty. In Lucio's case the jury decided affirmatively. In contrast, the Texas Court of Criminal Appeals in a sharply divided 5-4 decision overturned the death sentence of Kenisha Berry, who abandoned two of her infants. While dissenting justices argued that "she is unremorseful and fails to take responsibility. [T]his evidence satisfied every measure of future dangerousness that

this court has applied," the majority ruled that the prosecution confused the jurors on the subject of her future danger to society.

8.3.3 Childism

Elizabeth Young-Bruehl, a psychologist, recently published a book titled "Childism. Confronting prejudice against children" (2012), Young-Bruehl defines childism as "a prejudice against children on the ground of a belief that they are property and can (or even should) be controlled, enslaved, or removed to serve adult needs" (p. 37). The book primarily focuses on child abuse and neglect, but also provides a lens through which we can evaluate a range of social and political arrangements in our society. From high infant mortality rates to the problem-ridden state of child protective services, from the juvenile justice system that increasingly insists on treating children as adults, to the substandard education system that is constantly threatened with budget cuts – these are all manifestations of childism. Since children are not direct political actors, they cannot change these social, legal and cultural structures.

Several studies examining the criminal justice response to child victimization have adopted a similarly critical perspective. For example, Collins (2006), in her study of prosecutorial charging decisions of parental negligence cases where children had died of hypothermia when left alone in the car, found that prosecutors were often reluctant to pursue the case because they felt that the parents had already suffered enough by losing a child. She argues that this "suffering discount" raises "the suffering of the parent over the worth of the life of the child" (p. 841).

In other related research, Pleck (1989) examined how family violence has been approached by the criminal justice system since mid-17th century to the present. She

argues that the principle of family autonomy has been supported unconditionally for centuries, oftentimes to great detriment of children. Pleck provides a fascinating account of the differences between crimes against women and crimes against children. Reformers against domestic violence (intimate partner violence) rallied for an active involvement of the police and the courts. Doctors and social workers, who were the primary moral entrepreneurs behind the child abuse problem, defined child battering in pathological terms. Child abuse was seen as a psychological illness of the parents, thus doctors and social workers did not advocate criminal justice system's involvement but saw the answer in social services and psychological treatment.

The findings of the current study can be interpreted as offering support to the childism perspective that raises important concerns about equality of treatment. The current study has shown that offenders convicted of killing children tend to receive shorter sentences than offenders who take the lives of adults, lenience that cannot be explained away by their dangerousness as measured by presence of criminal history. Furthermore, from a moral perspective parental filicide is the ultimate violation of trust. However, this is not what the punishment meted out to mothers who kill their children reflects. The lenient punishment more likely reflects various attributions about the difficulty of the parental role and presumptions about the mental state of defendants.

8.4 Limitations and Directions for Future Research

Like any research, particularly studies that rely on existing data, there are a number of limitations to the current study. First, because the national data used for the quantitative portion of the study was from the late 1980's, it may not represent current adjudication practices, particularly potential changes in punitiveness against those who

victimize children. As noted, nearly half of the states that have a juvenile aggravator in their death penalty statutes adopted it in the nineties, the decade that was also referred to as a "decade of the predatory sex offender" (Mancini & Mears, 2010, p. 959; for an excellent account of changes in policy regarding sex offenders; see also Leon, 2011).

Furthermore, it is possible that a number of very high profile cases of mothers killing their children – Andrea Yates; Susan Smith; Kaylee Anthony – have made their mark on public perceptions. As such, the leniency for mothers who kill their children that the current study uncovered may no longer apply. In the words of Meda Chesney-Lind, "There's a willingness to execute women that wasn't present two decades ago…. This kind of backlash: 'Women want equality, well, by God we'll give them equality and that includes capital punishment" (Desmon, 2003, October 21). Future research is needed to replicate the multivariate analyses presented here with more recent data.

Second, findings from the qualitative portion of the analyses are limited in their generalizability. Arguably, it is difficult to talk about the generalizability of any death penalty research – the legislative contours and application of capital punishment are very unique across states. In fact, Maryland is rather distinct on a number of dimensions. Among the states that have capital punishment, Maryland falls more on the lenient end of the spectrum (Blume, Eisenberg, & Wells, 2004). Its death sentence rate (the number of people entering death row divided by the number of murders) between the years 1977-1999 was the second lowest out of 31 states that administered the death penalty.

Maryland's list of aggravating factors is not as long compared to most other states, and the range of these aggravators is fairly restrictive. Importantly, for purposes

of this study, Maryland's capital punishment statute does not recognize the age of the victim as a special aggravator (a.k.a. the juvenile aggravator), unless the murder of the child victim was preceded by a kidnapping or other felony. This may be interpreted as telling in and of itself – as highlighting the ambiguity that the law feels about juvenile victims. Unlike an aggravating factor for killing a police officer, where there exists a fairly uniform consensus, a juvenile aggravator is not recognized by all states. However, it did represent a "doorway" to the capital processing of several mothers who killed their children and ultimately were sentenced to the death penalty nationally.

Except for Maryland, the majority of states also include among their aggravating factors the so-called "heinous, atrocious, or cruel" aggravator. While initially criticized (and even struck down) by the United States Supreme Court as being too broad, with time it has acquired more definitive contours through precedents. This aggravating factor is important for the current study because it has served as a qualifier for capital punishment eligibility in most cases where mothers killed only one victim. Thus, systematic examination of data from another state, with a broader aggravating factors scheme, might yield more cases of female-perpetrated child homicide, and provide better insights into what characteristics of crimes involving mothers killing their children condition the harshness or lenience of the criminal justice system's response.

Another possible limitation of this study concerns the issue of capital punishment being an expressive institution. The majority opinion of the United States Supreme Court in Gregg v. Georgia (1976) referred to the jury as "a significant and

reliable objective index of contemporary values."[61] The current study was focused not on juries' or judges' decision to impose death, but on the prosecutorial decision to seek the ultimate penalty. The question is whether these two decisions signify the same thing. Does the prosecutor's decision "reflect(s) values and consciousness of the community" (Cochran, 2004, p. 1442) like the jury's decision does? For the purposes of this study, we can only assume the answer is yes.

This assumption is supported by Shatz and Shatz (2011) who, after studying death penalty decisions in California, argued that there is reason to assume that the decisions of prosecutors and jurors in capital cases are closely aligned because "the main factor driving some prosecutors' decisions whether to seek the death penalty is their assessment of the likelihood of obtaining a death verdict" (p. 29). Prosecutors are considered the "supreme jurors" (Burke, 2010, p. 79), and as such, their opinions and actions can be interpreted as a proxy for prevalent cultural norms. However, there are other factors that affect prosecutors' decisions as well. The decision to pursue the death penalty in a particular case might be based not just on the gravity of the crime or characteristics of the defendant, but be guided by certain instrumental concerns that could not be measured here.

Despite these limitations, this study has significantly added to the literature on the imposition of the law in cases of child homicide. It is one of the only studies that has performed sophisticated multivariate models to predict conviction, conviction of murder, and sentence length for those convicted using a national probability sample of homicide defendants. It also represents one of the first attempts

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[61] Gregg v. Georgia, 428 U.S. 153 (1976).

to systematically explore the issue of moral gradation of child homicides – what types of child homicide are potentially considered to be worthy of capital punishment (death-eligible) and which crimes evoke the most condemnation from the courts by being chosen for capital processing. It is hoped that this research will be the catalyst for future work that examines how our society treats its most vulnerable victims.

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