

The Gendered Effects of a Graduated Sanctions Model on Probation Outcomes in Kansas

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Abstract

Although originally perceived as an evidence-based program, there has been a continual debate on the true effectiveness of the graduated sanctions model for probation. Nonetheless, what is missing in the literature is an examination of how this program may affect women under supervision differently than men. Utilizing probation violation hearing data from the Kansas Sentencing Commission (KSSC), this study examines the impact of Kansas' 2013 House Bill 2170 (HB 2170) on probation outcomes across gender. Results indicate that the use of graduated sanctions scheme through HB 2170 is associated with a higher likelihood of receiving an imprisonment disposition for women probation technical violators than men. Major findings and policy implications will be discussed.

Keywords

correctional policy, sanctions, gender bias

Since the 1970s, the U.S. criminal justice system has undergone an era of “mass incarceration” (Alexander, 2012, p. 6). The United States has the largest prison population and the highest per-capita incarceration rate with 1 in every 110 people incarcerated (Glaze & Kaeble, 2018; Liptak, 2008). Nonetheless, the majority of persons involved in the criminal justice system are under community corrections supervision (probation

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or parole). In fact, research has shown that 68% of the 6,000,000 people in the criminal justice system are under community supervision, while the remaining 32% are incarcerated (Glaze & Kaeble, 2018). This equates to 1 in every 31 adults in the United States on probation or parole (Pew Charitable Trusts, 2009). Hence, scholars suggest the United States is now entering an era of “mass probation” due to increases in the number of persons under community supervision as well (Phelps, 2017, p. 54).

By design, probation was created to serve as a viable alternative to prison. Instead of incarceration following a criminal conviction, those on probation are permitted to remain in the community under structured supervision (Stohr & Walsh, 2015). As a stipulation of this supervision, clients must refrain from committing any new crimes or technical violations. Technical violations refer to the breaking of established rules of supervision such as using drugs and/or alcohol, failing to maintain employment, or missing appointments with their assigned probation officer (M. Jones & Kerbs, 2007). Depending on the violation, the response from probation officers or the court can range from community-based sanctions (e.g., extension of supervision term or more frequent urine analyses) to revocation to prison.

The use of graduated sanctions has been proposed as a way to improve accountability and reduce the number of revocations for technical violations (Taxman et al., 1999). Graduated sanctions refers to a correctional practice whereby short incremental periods of incarceration are administered for noncompliance with community corrections supervision rules (Hawken et al., 2016). As of recently, a number of states, including Kansas, have implemented these policies (E. G. Browne, 2015; Pearsall, 2014). Although some research touts the success of these programs, which has included improved compliance with probation conditions (Hawken, 2010; Hawken & Kleiman, 2009), others have not found the same benefits (Cullen et al., 2016; Duriez et al., 2014; Shannon et al., 2015).

Moreover, little attention has been devoted to understanding gender differences in outcomes related to graduated sanctions. While the U.S. correctional population has increased substantially, the rate of women incarcerated has increased at a rate double that of men since 1980 (U.S. Sentencing Project, 2018). Prior literature indicates that the increase in women’s imprisonment is largely due to the rise in punitive sentencing policies targeting low-level offenses, which are the offense types most commonly committed by women (Boppre & Harmon, 2017; Chesney-Lind & Pasko, 2013). Thus, the purpose of this study is to examine whether the graduated sanctions model in Kansas has a differential impact on imprisonment dispositions (i.e., revocations resulting in incarceration) across gender. The results not only contribute to the growing research on graduated sanctions programs but also provide implications for gender-responsive policies.

Graduated Sanctions

Theoretical Foundation

A major foundation of the U.S. correctional system is deterrence theory (for a review, see Cullen & Jonson, 2016). Deterrence-based strategies seek to prevent future law-breaking acts through the threat of punishment. According to the theory, general

deterrence focuses broadly on the public as vicariously witnessing the punishment of others is hypothesized to prevent other persons from engaging in crime. Although deterrence-based models are widely used, there is mixed evidence to support such approaches (Pratt & Cullen, 2005; Pratt et al., 2006). A major limitation of deterrence theory and practice is that it does not take into account individual differences, life circumstances, or mental health issues that may prevent persons from rationally thinking or carefully weighing the consequences of law-breaking behavior (Cullen & Jonson, 2016). In addition, general deterrence is premised on the requirement that punishment be swift, certain, and proportionately severe (Beccaria, 1764/2009). Yet, the U.S. criminal justice system often struggles to achieve both swiftness and certainty in punishment (Paternoster, 2010; Pratt & Turanovic, 2018).

The concept of specific deterrence focuses on those who already have broken the law to prevent their recidivism. Some research suggests certain specific deterrence-based interventions (i.e., electronic monitoring, drug testing, and intensive supervision) within community corrections settings can be effective toward reducing recidivism (for a review, see Braga & Weisburd, 2012). Others argue there is a lack of consistent evidence to support the effectiveness of deterrence (Cullen & Jonson, 2016).

The use of graduated sanctions represents a form of specific deterrence. The threat of imprisonment is aimed to “scare” those on probation from violating supervision conditions. Hence, the threat of imprisonment is aimed to reduce recidivism and prison admissions. As discussed below, there is mixed evidence on whether graduated sanctions programs across the United States actually achieve this goal.

National Examples

The base model for graduated sanctions stems from Hawaii’s Opportunity Probation with Enforcement program (Project “HOPE”; Hawken & Kleiman, 2009). Implemented in 2004, Project HOPE requires those on probation to attend a warning hearing where detailed probation rules and potential sanctions, such as arrest and short jail stays, for violations are explained (Hawken, 2010). Continued noncompliance results in probation revocation to prison.

Research suggests Project HOPE is a successful graduated sanction model. For example, Hawken (2010) found that while HOPE clients’ failed drug test rate dropped by 93% at the 6-month follow-up period, those not in the program had increases in failed tests during the same timeframe. This study also indicated that HOPE clients were more likely to attend their required meetings with probation officers and were three times less likely to have their probation revoked compared to those not in the program (Hawken, 2010). Another study discovered that 61% of HOPE participants did not fail any drug tests while in the program (Hawken & Kleiman, 2009).

Observing the success of project HOPE, 18 states and over 40 jurisdictions have implemented graduated sanction programs (Pearsall, 2014). A similar model in Washington state decreased probation violation sanctioning discrepancies and recidivism rates (Hamilton et al., 2016). However, other state programs have not had the

same level of success. For example, increased probation and court staff workloads, government agency miscommunications, and client transportation difficulties due to an increased number of appointments were associated with participation in Kentucky's graduated sanctions program (Shannon et al., 2015). Furthermore, a study of four states that replicated the HOPE model found that structural differences, budget shortages, and differential needs were barriers to the same success as experienced by HOPE participants (Lattimore et al., 2016). Due to these inconsistent findings and unanticipated consequences, researchers warn that policymakers should look beyond the catchy name of project HOPE and be presented with a warning label that highlights the program's unproven results, lack of sound criminological underpinning, and the potential for ineffective application by practitioners (Cullen et al., 2016; Duriez et al., 2014).

Kansas' HB 2170 Legislation

Kansas enacted House Bill 2170 (HB 2170) on July 1, 2013, marking numerous changes to sentencing, probation, and postrelease supervision practices. The most prominent change was the use of a graduated sanctions process for those who commit technical violations. Similar to Project HOPE, provisions in this bill permit probation officers and judges to administer 2- to 3-day stays in the county jail for committing a technical violation. Commonly referred to as "quick dips," these sanctions are intended to be given immediately once a technical violation is detected (E. G. Browne, 2015). Nonetheless, this program differs from Project HOPE through the inclusion of intermediate prison sanctions. Under HB 2170, those who commit an additional technical violation after receiving a quick-dip jail sanction are eligible for a 120-day or 180-day prison sanction inside of a state correctional facility. Prison sanctions may only be imposed by a judge at a probation violation hearing. If a person commits another technical violation after receiving a quick dip and 120- or 180-day prison sanction for previous violations, they may be given another graduated sanction of either an additional short jail or prison sanction or have their probation revoked to serve their remaining underlying prison term. Thus, although Kansas' HB 2170 was based on a similar premise as Project HOPE, the two programs do have a few differences.

Women and Community Supervision

There has been a continued debate on the effectiveness of the graduated sanctions model. Nonetheless, what is missing in the literature is an examination of how this program may affect women differently than men. This is a critical limitation as approximately 85% of female defendants are sentenced to probation following a criminal conviction (Bloom et al., 2004; Fernando Rodriguez et al., 2006), which is largely attributed to the fact that the offenses that women commit are generally nonviolent and less severe than their male counterparts (Morash, 2010). The use of graduated sanctions may be a viable alternative to the current structure of probation because it provides women more opportunities to remain in the community where treatment is more accessible. However, some scholars argue that the androcentric, or male-centered, foundation of community

supervision were developed to meet the needs of men and thereby do not include essential elements for women to be successful on probation and parole (T. D. Opsal, 2009; T. Opsal & Alexander, 2019), such as strong relationships with community corrections staff and conventional others and wrap-around services tailored toward individualized care that focuses on issues unique to women (Morash, 2010).

The vast majority of women who enter the criminal justice system have histories of abuse, trauma, mental health symptoms, substance use, and financial hardship (e.g., Boppre & Boyer, 2019; Carmichael et al., 2007; DeHart, 2008; Golder et al., 2014; M. S. Jones et al., 2018; Salisbury & Van Voorhis, 2009). Women are typically considered a “low risk, high need” correctional population due to their history of trauma and low likelihood for recidivism in comparison to men (Salisbury et al., 2016, p. 233). Yet, the punitive risk-management orientation of the U.S. correctional system, even in community corrections, counters the support needed for women’s re-entry and desistance from crime (T. Opsal & Alexander, 2019). When women’s needs are not addressed in the community, it can increase the likelihood for revocations or the strengthening of conditions, especially given the increased focus on drug violations by community corrections in recent years (Morash et al., 2019; T. D. Opsal, 2009).

Thus, probation can serve as a pipeline to prison through revocations, especially for women. Studies have found that women who do not complete probation successfully are more likely to be revoked for technical violations rather than for new arrests (Chesney-Lind & Shelden, 2000; Chesney-Lind & Pasko, 2013). Adhering to probation requirements may be more challenging for women, given their distinct realities. As women are often the primary caregivers of their children, it can be difficult to find child care to meet supervision requirements, such as mandatory meetings with their supervising officer, drug testing, or treatment groups (T. Opsal & Alexander, 2019). Also, as women have less economic opportunities and more familial obligations, the common probation requirement to obtain steady employment may also be more challenging for women in comparison to men (T. D. Opsal, 2009).

The majority of prior research on graduated sanctions neglect women-centered analyses. For example, Shannon and colleagues’ (2015) study of Kentucky’s graduated sanctions program did not include any gender-specific measures in their evaluation nor did Hawken and Kleiman’s (2009) evaluation of project HOPE due to a small sample size of women. Hawken et al. (2016), however, did note that men were more likely than women (51% vs. 38%) to be transferred to HOPE probation. Owing to the lack of research, further examination is warranted to assess whether graduated sanctions programs are equitable across gender.

The Current Study

The review of prior literature suggests that minimal attention has been devoted to the gendered effects of graduated sanctions. This study intended to amend this limitation through accessing data on Kansas’ HB 2170 and examines the five state fiscal years (FYs) prior to (2009–2013) and after (2014–2018) the implementation of HB 2170. This study seeks to answer two specific research questions.

Research Question 1: How has the implementation of HB 2170 impacted probation violation hearing dispositions for clients who committed technical violations?

From a specific deterrence perspective, we would expect the imprisonment of clients to decrease after the implementation of HB 2170. Owing to the threat of incarceration, we would expect less clients on probation to violate their conditions and be sent to prison. However, given the unintended consequences of prior strict sentencing reforms and lack of consistent evidence on the effectiveness of deterrence-based approaches, the implementation of HB 2170 may actually increase the number of clients sent to prison for technical violations. Thus, this research question is exploratory, given the potential mixed results.

Research Question 2: Are there gender differences in use of imprisonment dispositions for technical violations following the passage of HB 2170?

We generally predict women on probation will be more likely to receive an imprisonment disposition following the passage of HB 2170 in comparison to men. Given the increase in strict violation sanctions, women may be less likely to receive lenient decisions in relation to potential mitigating factors as prior to the implementation of HB 2170. Also, women's needs related to desistance may not be addressed in the community, leading to increased violations. As very few studies examined gender differences in probation violation outcomes, this hypothesis remains relatively exploratory as well.

Data

This study utilized the Kansas Sentencing Commission's probation revocation database to obtain demographic characteristics, information about the original conviction, and dispositions from the court following a probation violation hearing. Probation violation hearings occur when the supervising probation officer requests one following their client's noncompliance of supervision rules. Dispositions administered during this hearing range from taking no action, due to the lack of sufficient evidence that a violation occurred, to revoking a client's probation and remanding them to the department of corrections to serve their underlying prison term pursuant to the Kansas Sentencing Guidelines. Regardless of the disposition, the court is required to send the Sentencing Commission a probation violation journal entry. The data used in this study were based on probation violation hearings on technical violations held between July 1, 2008, and June 30, 2018. Kansas Department of Corrections' (KDOC) end of FY prison population totals and admission trends were also examined during the same time period.

Dependent Variable

Imprisonment disposition. Mirroring options at initial sentencing, judges at probation violation hearings have two choices: use of an imprisonment disposition (1 = *in disposition*) or one that would permit the client to remain in the community (0 = *out*

disposition). “In” dispositions included revocation to prison as well as 120- and 180-day prison stints that were part of the HB 2170 graduated sanctions scheme. All others, including no violation determined, mandatory drug treatment, quick-dip jail sanctions, extension of probation term, and modification of probation conditions, were recorded as “out” dispositions.

Independent Variables

Criminal history. A defendant’s criminal history score is one of the main elements used to determine their punishment at initial sentencing hearing and impacts those who receive probation versus imprisonment (Engen & Gainey, 2000; Wang & Mears, 2010). Criminal history scores in Kansas are based on the Kansas Sentencing Guidelines. They range in severity from A to I, with I representing no prior criminal history and A representing the most serious criminal history (three or more prior person felonies). For example, C includes 1 person felony and at least 1 nonperson felony conviction and D includes conviction for 1 person felony but no nonperson felonies, whereas E includes three or more nonperson felonies. In addition, crimes such as forgery, domestic battery, felony DUI, and animal cruelty convictions have their own sentencing structure outside of the guidelines that does not utilize criminal history scores to determine the punishment. These offenses are referred to as “nongrid” crimes.¹ In this study, the criminal history score variable was measured using the following scale: Nongrid = 0, I = 1, H = 2, G = 3, F = 4, E = 5, C = 6, D = 7, C = 8, B = 9, and A = 10. Nongrid offenses were scored as zero to reflect that prior criminal history does not affect nongrid sentencing.

Seriousness of offense. Kansas utilizes an indeterminate sentencing scheme that is divided into two grids: the felony drug grid and felony nondrug grid. The drug grid includes all felony drug crimes and range from 1 (most serious) to 5 (least serious). For example, severity level 1 includes distribution or possession with intention to distribute 1 kg or more of cocaine and severity level 5 includes cocaine possession. The nondrug grid includes all property and person felonies and ranges from 1 (most serious) to 10 (least serious). Examples of severity level 1 includes second-degree murder, whereas severity level 10 includes attempted felony theft. In this study, the severity of offense was configured into four dichotomous variables coded as “serious offense” (1 = *nondrug severity level 1–3 crimes*, 0 = *all other crimes*), “moderate offense” (1 = *nondrug severity level 4–6 crimes*, 0 = *all other crimes*), “less serious offense” (1 = *nondrug severity level 7–10 crimes*, 0 = *all other crimes*), “drug offense” (1 = *all drug grid felonies*, 0 = *all other crimes*) and “nongrid offense” (1 = *nongrid*, 0 = *all other crimes*). The less-serious offense severity category was utilized as the reference group for analysis.

Urinalysis failure. Research has highlighted that urinalysis failure, which refers to situations where illicit substances are detected in a urine sample, is among one of the most frequent technical violations committed by clients (Gray et al., 2001). This study

measured this as a dichotomous variable in which failure of urinalysis was coded as 1 and all other technical violations were coded as 0.

Community corrections. In Kansas, two entities supervise clients on felony probation. High-risk clients are supervised under KDOC's community corrections division, while lower-risk clients are supervised under Kansas' Office of Judicial Authority's court services division. This study included a dichotomous measure of the probation entity requesting the revocation hearing. Probation violation hearings of lower-risk clients supervised by court services were coded as 0 and higher-risk clients supervised by community corrections were coded 1.

Court-appointed counsel. In this study, counsel type was measured through a dichotomous variable where 1 represented clients who had a court-appointed attorney during their violation hearing and 0 represented clients with all other types of counsel (retained counsel, self-representation, or waived counsel). The majority (91%) of probationers were represented by court-appointed counsel; as such, the court-appointed counsel measure was dichotomized due to the small cell sizes in the retained, self, and waived counsel categories. This procedure mirrors that of Cohen's (2014) analysis of the Bureau of Justice Statistics' State Court Processing Statistics series.

Probation months served. Probation months served reflect the number of months a client served on supervision between their initial conviction date and current probation violation hearing date. This was a continuous variable that ranged from 0 to 242 months. As the majority of clients received a probation term of either 12, 18, or 24 months, this variable was positively highly skewed. Thus, a log transformation was performed in the analyses to normalize the distribution.

Post HB 2170. HB 2170 was the bill that imposed a graduated sanctions program to clients who commit technical violations. HB 2170 status was measured in this study by separating the five FYs (2009–2013) before implementation of HB 2170 to the five FYs after (2014–2018). This variable was measured as a dichotomous variable where probation violation hearings during the pre-HB 2170 period were coded as 0 and probation violation hearings during the post-HB 2170 period were coded as 1.

Gender. One of the main purposes of this study was to determine how the rate of incarceration for technical violations differed by gender. In this study, this was measured through a dichotomous variable where women were coded as 1 and men as 0. This variable was only included in the full model as researchers conducted analysis on female and male data sets individually.

Data Analyses

A series of logistic regression analyses were conducted with the binary dependent variable: imprisonment disposition. Three models were utilized to reflect the structure of

Kansas' prison system. Although Kansas has one overarching correctional system under KDOC, the male and female prisons have different facilities, staff, and programming. In addition, there is only one female correctional facility in the state, the Topeka Correctional Facility (TCF), compared to seven across the state for men. To properly analyze the Kansas correctional system, the first regression model examined probation violation dispositions across the entire population (both men and women) of probation technical violators. The second model assessed dispositions administered only to male probation technical violators. The final model examined dispositions administered only to female probation technical violators. Similar methods have been used in previous studies examining the impacts of sentencing reforms on incarceration decisions (Koons-Witt, 2002). Additional prison admission and end of FY population statistics from KDOC were analyzed in this study. This information was utilized to put into context the impact of probation violation hearing outcomes on Kansas' prison system.

Results

Descriptive Statistics

Table 1 presents descriptive statistics for the dependent and independent variables. The data are comprised of 45,343 cases of probation violation hearings for technical violations. More than half (59%) of the probation violation hearings resulted in "out" dispositions, which as a reminder are dispositions that permit the client to remain in the community. The remaining dispositions (41%) were "in," which are imprisonment dispositions of either a revocation to prison or HB 2170 prison sanction. As for the criminal history score, the majority of clients had a score of either I (18%) or H (17%). These two scores represent the lowest criminal histories, demonstrating numbers that most probation technical violators had relatively few to no prior felony criminal convictions. In terms of offense severity, drug and less serious offenses represented 88% of these cases. This coincides with intentions of the Kansas Sentencing Guidelines in that prison is set aside for those with the most serious offenses, while probation is designated for the less serious. In terms of type of counsel, most clients were represented by court-appointed counsel (91%). Such practice highlights that a large portion of clients are of the lower socio-economic status. Moreover, in assessing the technical violation committed that prompted the probation violation hearing, descriptive statistics display that 45% of the cases ($n = 14,654$) were for failure of a urinalysis exam. This is nearly twice the percentage found in previous research (Gray et al., 2001). Finally, more cases were held during the post-HB 2170 (57%) time period than the pre-HB (43%). Such findings support Shannon et al.'s (2015) claim that use of graduated sanctions is associated with increased courtroom traffic.

Focusing on key gender differences of the descriptive statistics, 75% of the cases in this study had male clients ($n = 34,015$) and 25% ($n = 11,328$) had female clients. This is consistent with the gender breakdown of those on probation nationwide (Glaze & Kaeble, 2018). Examining the decision to imprison, descriptive statistics of the dependent variable suggest that a higher percentage of women (64%) received community-based dispositions when compared to men (57%). Another notable differences

Table 1. Descriptive Statistics.

Variable	All (N = 45,343)		Men (N = 34,015)		Women (N = 11,328)	
	N	%	N	%	N	%
Disposition decision						
Out	26,604	59	19,369	57	7,235	64
In	18,739	41	14,646	43	4,093	36
Criminal history score						
Nongrid	2,477	6	2,088	6	389	3
I	8,180	18	5,729	17	2,451	22
H	7,602	17	5,191	15	2,411	21
G	5,750	13	3,869	11	1,881	17
F	3,184	7	2,268	7	916	8
E	5,990	13	4,327	13	1,663	15
D	2,871	6	2,469	7	402	4
C	5,726	13	4,841	14	885	8
B	2,129	5	1,906	6	223	2
A	1,434	3	1,327	4	107	1
Offense severity						
Nongrid	2,484	6	2,098	6	386	3
Drug	14,126	31	10,164	30	3,962	35
Less serious	25,620	57	19,123	56	6,497	57
Moderate	2,829	6	2,367	7	462	4
Serious	284	1	263	1	21	0
Supervising agency						
Court services	8,744	19	6,327	19	2,417	21
Community corrections	36,574	81	27,672	81	8,902	79
Type of counsel						
Other	4,047	9	3,209	10	838	8
Appointed	40,276	91	30,012	90	10,264	92
Failure of Urinalysis						
No	25,149	55	19,361	57	5,788	51
Yes	20,194	45	14,654	43	5,540	49
HB 2170 implementation						
Pre	19,361	43	14,964	44	4,397	39
Post	25,982	57	19,051	56	6,931	61

Note. HB 2170 = House Bill 2170.

can be seen in criminal history score distributions. Although most clients had one of the two lowest criminal history scores (I or H), a higher percent of women (43%) had criminal histories within these lower scores than men (32%). In addition, while most men were on probation for a less serious or drug offenses (86%), nearly all women who were on probation for these offenses (92%). Moreover, a larger number of women

were sent to a violation hearing for failure of urinalysis (49%) compared to men for the same violation (43%). Finally, descriptive statistics show that the disparity in probation violation hearings from the pre-HB and post-HB 2170 era was greater for women (39% for pre to 61% post) than men (44% pre to 56% post) in the 10-year frame analyzed. This suggests that the use of graduated sanctions may have a greater impact on the women's rate of probation violation hearings compared to males.

Logistic Regression Analyses

Three logistic regression models were conducted to assess the impact of the independent variables on the decision to imprison a probation technical violator following a probation violation hearing (see Table 2). Model 1 assessed disposition decisions with all clients ($N = 45,343$). Eight of the independent variables examined displayed statistical significance: more serious criminal history, committing a nongrid offense, being supervised by community corrections probation, utilizing court-appointed counsel, failing urinalysis screening and being on probation longer were all associated with an increased likelihood of receiving an imprisonment disposition due to technical violation. In terms of key factors of this study, the negative coefficient of the gender variable ($B = -0.23, p < .001$) indicated that women were less likely to be imprisoned for a technical violation than men. Moreover, focusing on the HB 2170 implementation status, results from the model displayed that probation technical violators were more likely ($B = 0.05, p < .01$) to receive an imprisonment disposition during the post-HB 2170 era than the pre-HB 2170 era. Such finding contradicts the original intentions of graduated sanctions in that it was to result in lower levels of imprisonment for probation technical violators (Taxman et al., 1999).

In examining gender-specific findings, the results from the male model (Model 2) displayed statistical significance in five of the independent variables: more serious criminal history, committing a nongrid offense, being supervised by community corrections, utilizing court-appointed counsel, and being on probation longer were associated with an increased likelihood of receiving an imprisonment disposition due to technical violation. In the female model (Model 3), six independent variables displayed statistical significance: more serious criminal history, committing a nongrid offense, being supervised by community corrections probation, failing urinalysis screening, being on probation longer, and being sentenced post-HB 2170 were associated with an increased likelihood of receiving an imprisonment disposition due to technical violation. Moreover, a major outcome of interest was how implementation of the graduated sanctions model, which are implemented in the effort to reduce probation revocations (Taxman et al., 1999), impacted outcomes across gender. Results indicated that there was no statistical significance found in the male model ($B = 0.01; p > .05$). Contrary to the goals of graduated sanctions programs, the female model revealed that women were more likely to be imprisoned for a technical violation during the post-HB 2170 era ($B = 0.16, p < .001$) than the pre-HB 2170 era. These findings further support the contention that graduated sanctions programs may have a disparate

Table 2. Logistic Regression Models.

Variables	Model 1 (All)			Model 2 (Men)			Model 3 (Women)		
	B	SE	OR	B	SE	OR	B	SE	OR
Criminal history	0.06	0.00	1.06***	0.06	0.005	1.06***	0.06	0.01	1.06***
Serious offense	0.05	0.12	1.05	0.02	0.128	1.02	0.26	0.45	1.30
Moderate offense	0.01	0.04	1.01	0.01	0.046	1.01	-0.01	0.10	0.99
Drug offense	-0.02	0.02	0.98	-0.05	0.026	0.95	0.06	0.05	1.06
Nongrid offense	0.35	0.05	1.42***	0.33	0.055	1.36***	0.40	0.13	1.50**
Community corrections	1.12	0.03	3.06***	1.04	0.035	2.82***	1.37	0.07	3.92***
Court-appointed counsel	0.49	0.04	1.64***	0.50	0.041	1.64***	0.48	0.09	1.62
Failure of Urinalysis	0.00	0.02	1.00*	-0.02	143.45	1.00	0.06	0.04	1.06***
Probation months served	0.47	0.01	1.60***	0.45	0.016	1.57***	0.53	0.03	1.69***
Post-HB 2170 status	0.05	0.02	1.05**	0.01	0.023	1.00	0.16	0.04	1.18***
Gender	-0.23	0.02	0.80***	N/A			NA		
Constant	-3.13	0.06	0.04***	-2.984	0.069	0.05***	-3.88	0.14	0.02***
-2 log likelihood	56,388.36			42,947.90			13,389.12		
Cox & Snell R square	.08			.07			.10		
Nagelkerke R square	.11			.10			.13		
Observations	45,343			34,015			11,328		

Note. OR = odds ratio; HB 2170 = House Bill 2170.

* $p < .05$. ** $p < .01$. *** $p < .001$.

impact on women compared to men, which is supported by previous research that notes the challenges of probation for women (Morash et al., 2019; T. D. Opsal, 2009).

A clear depiction of the repercussions of this gender disparity and overall ineffectiveness of HB 2170 can be observed through KDOC's end of FY prison population totals and admissions trends (see Figures 1 and 2). Overall, Kansas' end of FY prison population increased by 24% (1,921 incarcerated persons) during the 10-year time-frame of this study (FY 2009–2018). Specifically focusing on the post-HB 2170 era, the prison population increased by 4% (392 incarcerated persons) following the implementation of the graduated sanctions scheme (Chang, 2018). Such findings are somewhat expected as the post-HB 2170 era created a new “in” dispositions through HB 2170 graduated sanctions of 120-day and 180-day prison stints. However, under the deterrence theory, the inclusion of these dispositions was anticipated to coincide with a decrease in revocations to prison for technical violations. Nonetheless, a recent report published by the Kansas Sentencing Commission displayed that as the use of prison sanctions continues to increase, so does the number of those revoked to prison for technical violations and the overall prison population (Chang et al., 2019). Thus, these findings support positions from scholars who perceived that the use of graduated sanctions are ineffective in reducing probation revocations (Cullen et al., 2014; Duriez et al., 2014; Shannon et al., 2015).

The end of FY totals for the male and female prison populations display support for the findings of the gendered models. During the 10-year timeframe of this study, the

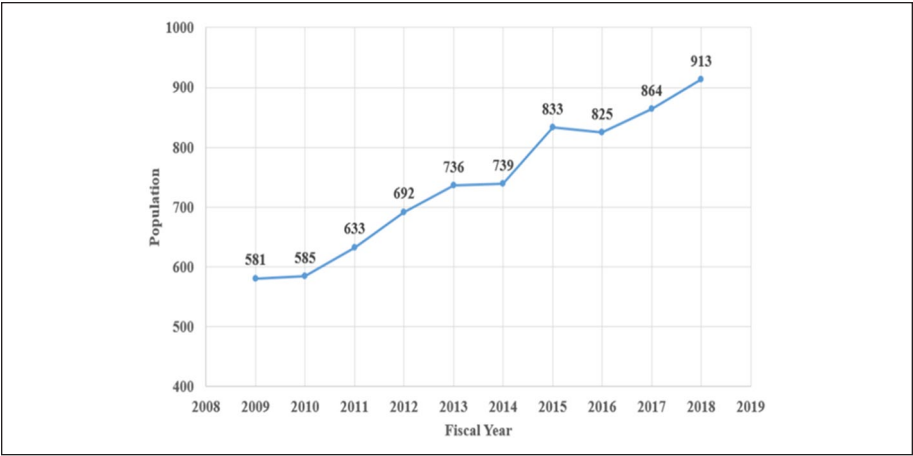


Figure 1. Kansas Female prison population 2009–2018.

Source. KDOC prison population files.

Note. KDOC = Kansas Department of Corrections.

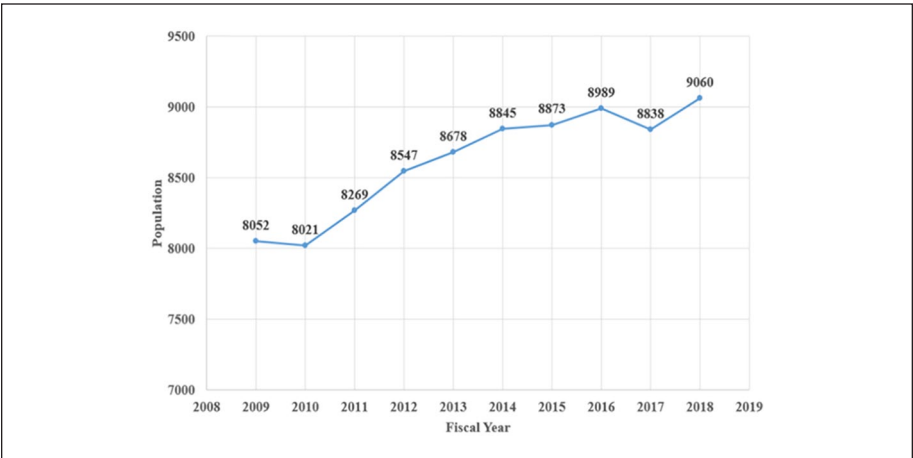


Figure 2. Kansas male prison population 2009–2018.

Source. KDOC prison population files.

Note. KDOC = Kansas Department of Corrections.

end of FY prison population for women grew from 581 in 2009 to 913 in 2018, representing an increase of 57% (332 incarcerated women). Specifically focusing on the impact of graduated sanctions, the women prison population increased from 736 inmates in 2013, the year before the passage of HB 2170, to 913 inmates in the last year of the post-HB 2170 era. This equates to an increase of 24% (177 incarcerated

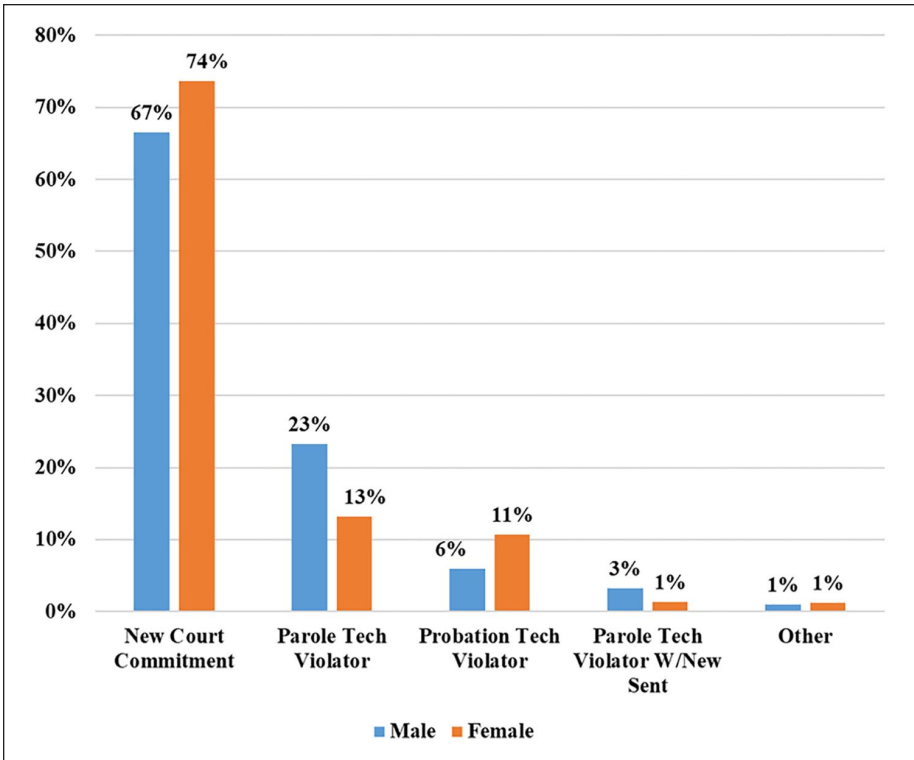


Figure 3. Kansas prison admissions pre-HB 2170.

Note. HB 2170 = House Bill 2170; KDOC = Kansas Department of Corrections.

women). Conversely, the end-of-year prison totals for men did not increase at the same rate. During the timeframe of this study, the male prison population increased from 8,052 inmates in 2009 to 9,060 in 2018. This represented an increase of 13% (1,008 incarcerated men). Specifically assessing the impact of graduated sanctions on the male population, the end of FY total was 8,678 in the year prior to the passage of HB 2170 and increased to 9,060 by the last FY of this study. This represented an increase of 4% (382 incarcerated men).

A gender disparity was also detected through the use of 120- and 180-day graduated sanctions as a response to technical violations (see Figures 3 and 4). In examining prison admissions totals, 120- and 180-day prison sanctions represented 13% of all the male admissions and an alarming 32% of all female admissions during the post-HB 2170 era. Probation technical violators, including those with 120- or 180-day prison sanctions, represented 33% of all admissions for men and 65% for women. Again, such findings suggest that there indeed may be disparate outcomes for women through the graduated sanctions process.

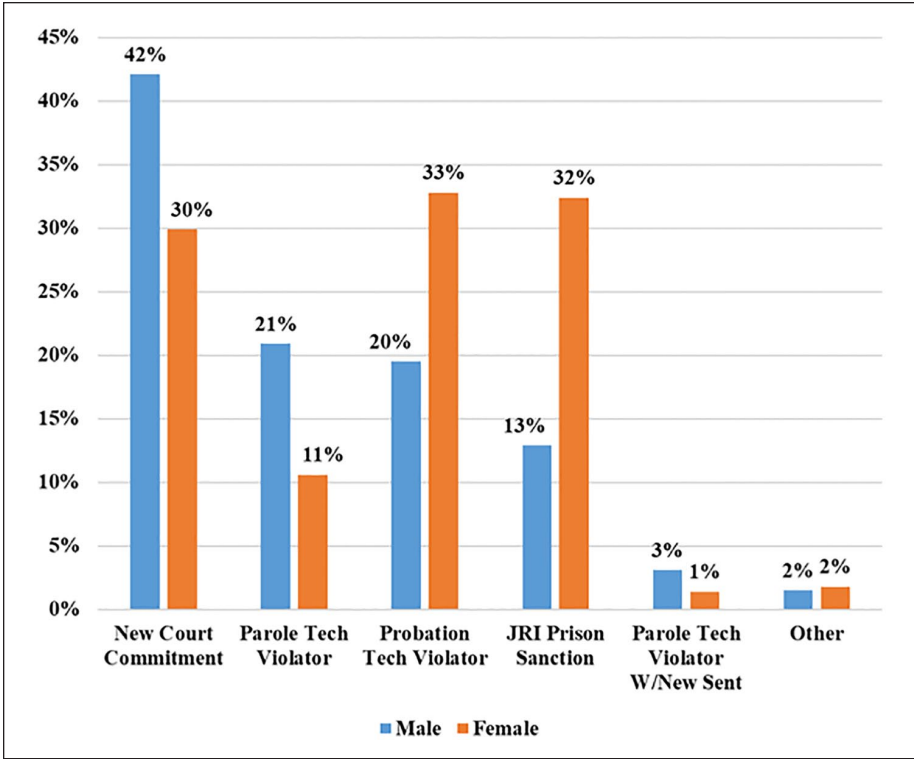


Figure 4. Kansas prison admissions post-HB 2170.
Note. HB 2170 = House Bill 2170; KDOC = Kansas Department of Corrections.

Discussion

Although there have been several studies on graduated sanctions, relatively little attention has been applied to assessing how this scheme may impact clients across gender. Accordingly, this study assesses Kansas’ graduated sanctions legislation, HB 2170, with specific focus on gender. Separating the analysis into three different models reflects the structure of Kansas’ prison system. As mentioned previously, the TCF is Kansas’ only female prison and is operated independently from the other seven male prisons. With a maximum capacity of 903 people, TCF has far less space available than the male facilities who can house a combined total of 9,013 people (Chang et al., 2019). Nevertheless, the growth rate of TCF has outpaced that of all the male facilities by nearly six times as much since implementation of HB 2170 (see Figures 1 and 2). Thus, it was imperative to divide these groups to display the independent impact of this graduated sanctions scheme on each population.

Results from the full model displayed that overall, implementation of HB 2170 increased the likelihood of a probation technical violator receiving an in-disposition

following a probation violation hearing. In addition, women were less likely to receive an imprisonment disposition than men. An examination of the gender-specific effects did not yield the same results. Findings of the female model displayed a higher likelihood in incarceration dispositions following probation violation hearings compared to the male model. In addition, statistical significance of the Post HB-2170 variable was obtained within the female model but not for the male model. The discrepancy in results of the full model compared to the gendered models may be due to the disproportionality in population size. Moreover, a review of KDOC's prison admissions trends and end of FY population totals put into context the impact of probation violation hearing outcomes. These statistics provided further support that, overall, Kansas' HB 2170 legislation was ineffective in reducing prison admission and that it had a much more detrimental impact on women. Such findings suggest that there was varying treatment of probation technical violators based on gender through the application of this sanctioning scheme.

Policy Implications

Across the United States, state and federal reforms have been enacted to downsize prison populations (Pew Charitable Trusts, 2018). However, Kansas is one of only eight states in which imprisonment rates were the highest in state history in 2018 (Vera Institute of Justice, 2019). Deterrence-based approaches follow a relatively simple rationale: to prevent future crime through the threat of punishment. Given the large number of prison admissions for technical violations, it appears the graduated sanctions model may have had the opposite effect than what was intended. Notably, Kansas state legislators recently passed Senate Bill 18 in 2019 that retracted the use of 120- and 180-day prison sanctions for technical violations (Chang et al., 2019). However, the "quick-dip" jail sanctions for technical violations are still in place. This action was taken in response to the ineffectiveness of HB 2170 as a whole (G. E. Browne, 2017). Now that prison sanctions have been removed, there is no intermediate intervention between quick dip and revocation. Future research should determine whether this policy shift will lead to an increase in revocations to prison.

The results of this study indicate that graduated sanctions may have unintended disproportionate outcomes for women. In Kansas, graduated sanctions have increased prison admissions and end of FY totals for all but at a much greater extent for women. The results highlight the need for Kansas, and other states, to adopt gender-responsive sentencing and supervision approaches. Gender-responsive approaches recognize the importance of gender differences in clients' life circumstances and account for the distinct needs of women (Bloom et al., 2003).

Sentencing reforms were enacted across the nation to increase uniformity in sentencing outcomes (Spohn, 2000). However, sentencing outcomes (i.e., sentence length and prison admissions) for women began to "equalize" to that of men's as such reforms reduce the usual discretion related to familial circumstances (Bontrager et al., 2013; Daly, 1989; Daly & Tonry, 1997; Steffensmeier & Demuth, 2000; Zingraff & Thomson, 1984). Without the consideration of mitigating factors, scholars anticipated that

women's incarceration rates would likely rise (Daly & Tonry, 1997; Koons-Witt, 2002). Recent research on state admissions reveal that structured sentencing reforms have indeed increased the number of women sentenced to prison (e.g., Boppre & Harmon, 2017; Harmon & O'Brien, 2011).

The National Association of Women Judges developed gender-specific sentencing guidelines for women to take characteristics related to their societal role into account (i.e., women are often primary caretakers and are less aggressive (Cicero & DeCostanzo, 2000)). These guidelines increased the threshold for sentencing women to prison. In addition, the United Nations (2011) developed the Bangkok Rules, which provides guidance to policymakers, legislators, sentencing authorities, and prison staff to reduce female imprisonment. Although much of the prior research has focused on initial sentencing decisions, the results of this study indicate gender-responsive principles should also be considered for disposition decisions to prevent gender disparities in prison admissions for technical violations.

Traditional androcentric approaches are typically not recommended for women given their distinct needs and extensive histories of trauma (Bloom et al., 2003; T. Opsal & Alexander, 2019). Instead, scholars recommend the use of gender-responsive correctional approaches to account for women's distinct social realities (Bloom et al., 2003; Salisbury et al., 2016). This includes gender-responsive assessments to ensure women are placed into accurate supervision and treatment levels (Salisbury et al., 2016). Various states across the United States use the Women's Risk Needs Assessment (WRNA) (Boppre & Salisbury, 2016). Kansas currently only uses the WRNA for incarcerated women and women on parole and does not use a gender-responsive assessment tool for women on probation. Relying on a gender-neutral risk assessment instruments leads to the over-classification of women as high risk, which may translate into harsher sanctions for women (Skeem et al., 2016). As such, women-centered case planning and treatment referral may help divert women in Kansas from revocation to prison.

Furthermore, supervision practices must be gender-responsive (Bloom et al., 2003). As discussed by T. D. Opsal (2009), typical supervision strategies that are focused on risk management do not take into account the distinct realities of women. Probation conditions have been found to be stereotypical and gender-biased, often centered on the presumption that employment is a necessary condition for men. However, system-involved women are underemployed, in low-income jobs, and not offered the same services relative to men (Mullany, 2002). As gainful employment has been found to be a factor that allows people on probation to successfully complete their terms and remain in the community (Rossman, 2003), policies, and initiatives must provide women with employment-related services including vocational and job training and placement services (Bloom et al., 2003).

Women often face additional barriers in the community as primary caregivers with less access to human and social capital (T. D. Opsal, 2009; Salisbury et al., 2016). Due to increased caretaking responsibilities, it may be difficult for women to meet their probation requirements, such as attending required meetings with their probation officers. As such, more provisions and services for child care are warranted, including

providing child care subsidies and meeting via technology instead of in person (Bloom et al., 2003).

Women on probation have been found to be more likely to incur technical violations (Huebner & Pleggenkuhle, 2015). This may be due in part because they are not receiving appropriate gender-responsive services (Bloom et al., 2003). In particular, substance use has been linked to technical violations and continued system-involvement for women (Olson, 2003; Salisbury & Van Voorhis, 2009). Women tend to have more comorbid substance use and other mental health concerns (i.e., anxiety and depression) stemming from trauma and abuse (Boppre & Boyer, 2019). Although women may be more amenable and successful in treatment programs than men (Marotta, 2017; Morash et al., 2019; Olson, 2003), they do not always receive gender-responsive substance use treatment needed, especially if their underlying criminal cases are not related to substance use.

Another potential reason for women incurring more technical violations and harsher sentencing once violations have been committed may be due to the relationship between the probationer and probation officer. Probation officers, who may view women probationers as more difficult to supervise (Seng & Lurigio, 2005) and are disappointed when they are unable to live up to their hegemonic expectations (Gaarder et al., 2004), are the ones charged with making recommendations to the courts during probation violation hearings and at other stages in the legal process. These recommendations have a direct impact on women's sentences and correctional experiences. As such, it is essential to provide probation officers with resources to more effectively meet the needs of their clients. One way to accomplish this is by establishing specialized supervision units for women, whereby probation officers volunteer to work with women-only caseloads and receive specialized training that properly prepares them to respond to women probationers' needs, including being cognizant of how social structure differentially impacts their life, compassionately responding to their emotional needs, and interacting with their clients in a manner that coordinates more directly with their life circumstances (Seng & Lurigio, 2005). Initiatives like this will not only provide more gender-responsive community care, but may also limit their prison contact.

It is also important to distinguish between the types of technical offenses (Morash et al., 2019) to ensure that supervision and treatment is assigned based on risk level and treatment needs (Andrews & Bonta, 2010). The least restrictive supervision and interventions are appropriate for low-risk clients and inverse is advised for high-risk clients (Andrews & Bonta, 2010). Correctional responses should seek to reduce harm to the community and individual. These realities are especially important to consider for women as a low-risk, high-need population (Salisbury et al., 2016). Extensive fees, additional community service, or even days incarcerated add to the stressors that lead to continued system-involvement (Middlemass, 2017). Collaborations with social service agencies are essential to help address the underlying issues, such as substance use, poverty, and parenting stresses that are related to the technical violations and recidivism, particularly for women (Sered & Norton-Hawk, 2014).

Moreover, the use of a gender-responsive specialty court system may be a practical response to the disparate treatment of women who commit technical violations. Specialty courts, such as drug and domestic violence courts, take into consideration underlying issues surrounding a defendant's involvement in criminality and apply treatment-based interventions rather than punitive sanctions (Lloyd, 2015). Several studies have found that women tend to fair better than men in regular specialty courts (Latessa et al., 2002; O'Connell et al., 1999; Spohn et al., 2001), and gender-responsive specialty courts may be even more effective in meeting the needs of women (Lloyd, 2015). Instituting similar programs in probation violation hearings would likely provide a better response to technical violations than receiving a graduated sanction or any other disposition option.

Adopting gender-responsive principles that assess and appropriately account for women's risk levels, needs, and strengths and respond with treatment rather than punishment will help provide probation officers in Kansas with the most effective responses specifically for women. As discussed by Bloom and colleagues (2003), women must be given access to wrap-around services that holistically address trauma, mental health, and substance use. Given the large number of urinalyses violations for women, such services are vital to divert women from prison in Kansas.

Increased female incarceration has immense social consequences not only for women themselves but also the families left behind. More than 60% of women in state prisons have children under the age of 18 (U.S. Sentencing Project, 2018), with one-third of them reaching the age of maturity before their mothers are released (Glaze & Maruschak, 2010). Women are often the primary caregivers of their children, and maternal incarceration has higher adverse effects (e.g., mental health issues, conduct disorder, and intergenerational incarceration) on children in comparison to paternal incarceration (Burgess-Proctor et al., 2016). As there is only one female prison located in the northeastern corner of the state, additional barriers exist for families to visit women in prison. The Annie E. Casey Foundation (2016) found that over 45,000 children in the state of Kansas reported having a parent incarcerated. Moreover, the growing number of children in foster care in Kansas may be correlated with increases of mothers being incarcerated. In fact, the Kansas Department of Child and Families reported a 23% increase in children in foster care during the post-HB 2170 era (Carpenter, 2019). Future research must explore the collateral consequences of women's incarceration.

Limitations

This study had several limitations. One of the main pitfalls was the lack of demographic data. Owing to missing data, race and ethnicity variables were not included in this study. Such a limitation is critical because studies have shown that women of color are subject to harsher sanctions in comparison to their white counterparts (Boppre & Harmon, 2017; Harmon & Boppre, 2016). Future research should include intersectional analyses to determine potential variation in outcomes within gender-specific subgroups.

In addition, the inclusion of probation outcomes may be helpful. Solely relying on probation violation hearing dispositions does not necessarily indicate success or failure of probation. Although one may be admitted to prison for a 120- or 180-day graduated sanction, they may then successfully complete probation once back in the community. Furthermore, indication of the defendant's graduated sanction history prior to the current violation may permit more advanced analysis. Taking such measure would allow controls for a stratified sample to determine how receiving a previous jail sanction impacted probation violation hearing outcomes. Moreover, an indication of the specific types of technical violations committed would help clarify the findings further. The inclusion of this information may be beneficial in the future.

Finally, more advanced statistical methods would further help to understand the impacts of graduated sanctions. For example, future research could use propensity score matching to compare outcomes across similarly situated clients. A comparison group of clients who were not impacted by the graduated sanctions model would also provide insight into the quasi-experimental impacts, which was not possible in this study. Also, future research could use advanced time-series analyses to determine the impacts of graduated sanctions on prison populations longitudinally.

In sum, addressing the limitations would strengthen research in this area. Nevertheless, the findings of this study still provide useful conclusions about the impacts of graduated sanctions in Kansas. Further research should amend the limitations presented and continue to examine these findings in other states as well.

Conclusion

At present time, in the U.S. correctional approaches, interventions can have unintended consequences, including increased incarceration rates (Clear & Frost, 2015; Cullen & Jonson, 2016). The goal of this study was to conduct a preliminary examination of Kansas HB 2170 legislation with a focus on outcomes following probation violation hearings. Although community alternatives are aimed to keep persons out of prison, results from this study indicate that such approaches may not work uniformly across gender.

The results of this study highlight the importance of examining outcomes across gender. The main findings reveal that use of the graduated sanctions scheme is associated with a higher likelihood of receiving an imprisonment disposition for women probation technical violators than men. Although women constitute a small proportion of the prison population nationally (about 9%), their numbers have grown rapidly in recent years due to shifts in punishment approaches (Chesney-Lind & Pasko, 2013; Walmsley, 2015). Future research must further examine the impacts of community supervision approaches on women.

Author's Note

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Note

1. Nongrid offenses each contain specific penalties and other provisions within their respective statutes. Convicted defendants are only subject to a maximum confinement of up to 1 year in county jail for these offenses.

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