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## Examining Remorse in Attributions of Focal Concerns During Sentencing: A Study of Probation Officers

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### Abstract

This research, using interviews with probation officers in the United States ( $n = 151$ ) and a constant comparative method for analysis, draws from the focal concerns framework to qualitatively model a process by which probation officers use a defendant's remorse to attribute focal concerns in order to guide their sentencing recommendations in pre-sentencing reports. The model suggests that officers use expressions of remorse to make attributions about mitigated criminal intention (blameworthiness and notions of responsibility), reduced dangerousness and a high potential for reform (community protection), and organization-level effects for increasing caseload efficiency and using correctional resources (practical effects of sentencing). Then, officers appear to use attributions from two remorse-guided focal concerns (blameworthiness and community protection) to directly advise their recommendations for more lenient sentencing outcomes. Finally, as probation officers also described feeling sincerely responsible for providing critical information to the court about a defendant's background and remorse, contributions and implications of this model for criminal sentencing are discussed.

*Keywords:* remorse, probation officers, sentencing, focal concerns, qualitative

### Introduction

The focal concerns perspective uses microsocial contexts, particularly defendant characteristics, as proxy indicators of blameworthiness, community protection, and practical effects of sentencing to help explain sentencing (Steffensmeier et al., 1998). Despite interest in widely drawing from this approach, research has been most often limited to quantitative research designs that examine the extent to which a defendant's race, gender, and other characteristics collected in official court contexts and case-level data influence judicial sentencing decisions (Wellford, 2007; Lynch, 2019). Wu and DeLone (2012) argue that the larger body of sentencing research that draws from focal concerns has not yet turned its main focus "beyond these boundaries" (p. 215). Indeed, other methodological designs, sentencing stages aside from the final disposition, decision-makers involved in sentencing, and defendant characteristics that may be proxy indicators for focal concerns but are not easily collected in official court data, such as behavior or demeanor, are rarely studied using this approach (Lynch, 2019). One defendant characteristic, remorse, is considered highly relevant to sentencing as a proxy indicator of responsibility, risk, and rehabilitation (Weisman, 2014). However, to date, less attention in the literature has been paid to empirically examining it within focal concerns (Maruna & Copes, 2005; Wermink, 2014).

This study expands existing sentencing literature by applying focal concerns to probation officers in the United States (U.S.) and how they use a defendant's remorse to guide their sentencing recommendations. Ultimately, this research produces a model that shows how officers use remorse to

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make attributions of three common focal concerns and how attributions stemming from blameworthiness and community protection specifically are used by officers to inform and support recommendations for more lenient outcomes in their pre-sentencing reports.

### **Focal Concerns Approach to Sentencing**

The focal concerns approach suggests that decision-makers attempt to “balance” three focal concerns in sentencing: 1) a defendant’s blameworthiness; 2) community protection; and 3) the practical effects of sentencing (Steffensmeier et al., 1998; Steffensmeier & Demuth, 2006). Blameworthiness, reflecting the retributivist approach that the punishment should fit the crime, is influenced by factors integral to explaining and attributing a person’s responsibility for their bad actions, such as the offense’s severity, a defendant’s criminal intention, or their role in the crime (Steffensmeier et al., 1998). Community protection, echoing the utilitarian notion that punishment should prevent future offenses, is often motivated by defendant characteristics, such as the likelihood of recidivism or rehabilitation, and case characteristics, such as the use of violence (Steffensmeier et al., 1993; 1998). The third focal concern focuses on practical sentencing implications at both the defendant- (e.g., disruptions to family) and organizational- (e.g., costs for the correctional system) levels (Steffensmeier & Demuth, 2006).

Yet, during sentencing, there is seldom adequate time or satisfactory information regarding a defendant’s case and background for decision-makers to make fully informed decisions based on these focal concerns (Albonetti, 1991). In order to deal with uncertainty, sentencing decision-makers are thought to develop schema, based upon their past experiences, normative social or cultural views, courtroom norms, and stereotypes associated with defendant characteristics, as a form of “perceptual shorthand” (Hawkins, 1981). This shorthand allows them to make “imputations about [a] defendant’s character” (p. 246) and future behavior when making attributions about their blameworthiness, the risk to the community, and any practical effects of their sentencing (Steffensmeier & Demuth, 2006). In the absence of time or information, this process increases the likelihood that stereotypes based on defendant characteristics will be used to make inferences about focal concerns and influence sentencing (Albonetti, 1991; Klein, 2008). In the last several decades, an expansive body of research has found support for focal concerns as a way to help explain sentencing outcomes for defendants across demographics, with a particular focus on gender, race, age, and ethnicity (see Steffensmeier & Painter-Davis, 2017 for a review).

Assessing focal concerns is thought to be subjective and driven by causal attributions that help decision-makers explain a defendant’s past and future behavior in order to make choices during sentencing (Harris, 2009). In this process, decision-makers infer that a defendant’s criminality results from internal causes, such as demographic traits, demeanor, or personal values, or external causes, such as environmental influences (Bridges & Steen, 1998). Defendants inferred to exhibit criminality from internal causes may be seen as more responsible for their behaviors, dangerous, and less able to be managed or reformed by corrections, resulting in more severe sentencing outcomes (Huebner & Bynum, 2006). As such, causal attributions are considered the means by which focal concerns may influence sentencing (Koons-Witt, 2002).

### **Probation Officers in Sentencing Recommendations: Drawing from Focal Concerns?**

The focal concerns approach was initially developed to explain judicial decision-making, with most research still focusing on that population (Smith, 2020; Ulmer et al., 2022). However, other decision-makers are heavily involved in sentencing and have significant weight in dictating its outcomes (Leiber et al., 2018). Probation officers are critical figures in sentencing and, during the sentencing process,

provide a wide range of information about defendants to judges through their pre-sentencing reports (Hagan, 1975; Rush & Robertson, 1987). In writing these reports, officers assess a defendant's criminal record, case, social background, demeanor, and other contextual information; then, based on these assessments, they use pre-sentencing reports to implicitly and explicitly communicate their recommendations for sentencing, including any probation conditions or considerations that they believe judges should know when weighing a sentence (Walsh, 1985).

Some studies have found mixed results on whether pre-sentencing reports influence final sentencing dispositions (Hagan et al., 1979; Kingsnorth et al., 2002). However, more research seems to suggest that judges' sentencing decisions are most often in line with officer recommendations in pre-sentencing reports and also utilized by judges to provide insights about defendants and their backgrounds that are potentially unknown to them at sentencing (Frieburger & Hilsinki, 2011; Leiber et al., 2018). Indeed, judges may have little time to interact with defendants, while probation officers likely have more time to observe and evaluate them during sentencing (Hagan, 1975). Based on the focal concerns approach, pre-sentencing reports could help to reduce uncertainty and decrease a judge's need to rely on "perceptual shorthand" (Hagan et al., 1979; Leiber et al., 2018).

However, most often, probation officers also do not have sufficient time or information to make fully-informed sentencing recommendations. Faced with uncertainty in their decision-making, limited research suggests that officers develop their own "perceptual shorthand" and are guided by similar common focal concerns—both in field enforcement decisions and when making sentencing recommendations (Frazier et al., 1983; Freiburger & Hilinski, 2011; Huebner & Bynum, 2006; Leibner et al., 2018; Leifker & Sample, 2011). For example, Harris (2009) found that probation officers in juvenile court used attributions of blameworthiness and community protection to guide fitness reports. Bridges and Steen (1998), also analyzing narrative reports written by juvenile probation officers, found that they were more likely to use community protection concerns to guide sentencing recommendations for Black, versus White, juvenile defendants; they were also more likely to attribute criminality of Black youth to internal causes.

Despite this limited work, as well as the influence that probation officers appear to have in sentencing, more empirical attention needs to be paid to them within the focal concerns approach (Harris, 2009). Most existing work is restricted in scope to juvenile defendants and their probation officers, or has applied focal concerns to specific defendant characteristics (such as race, gender, and age) that are not "beyond the[se] boundaries" of the larger body of focal concerns research (Wu & DeLone, 2012). This is an oversight in existing work, as officers have been found to draw from a range of both legal and extra-legal characteristics related to a defendant's background (e.g., employment, criminal record), demeanor (e.g., remorse, negative attitudes), and crime (e.g., role in the offense) in order to make sentencing recommendations (Freiburger & Hilinski, 2011; Leifker & Sample, 2011). From the focal concerns perspective, Leiber et al. (2018) argue that probation officers are likely to use these defendant characteristics in their "perceptual shorthand" to make attributions of blameworthiness, community protection, and practical implications of sentencing. Therefore, it may be valuable for research to draw from the focal concerns approach to examine how probation officers use different defendant characteristics to guide their sentencing recommendations.

### **The Role of Remorse in Sentencing Outcomes**

One defendant characteristic, remorse, has been thought to strongly inform probation officers in their sentencing recommendations (Berryessa, 2022). Remorse, which can be verbally (i.e., apologies), affectively (i.e., body language), or behaviorally (i.e., giving restitution) shown, indicates that a person

appreciates and condemns their harmful acts—which then reveals their good, or their potential for good, character (Robinson et al., 2012). Literature suggests that, both culturally and in sentencing, remorse signals several normative assumptions about criminality, including that it is not indicative of a defendant’s “true self” and that mitigated responsibility for their crimes may be warranted; remorse is also thought to provide insight into a defendant’s future conduct, mainly that they may be less likely to pose a future danger and have a high potential for future rehabilitation and reform (e.g., Everett & Nienstedt, 1999; Gold & Weiner, 2000; Robinson et al., 1994; Weisman, 2009; 2014; Zhong et al., 2014).

Spencer (1984) argues that officers use remorse to make suppositions about a defendant and their bad behavior, and recent work also suggests that probation officers believe that it is crucial to incorporate remorse assessments into their pre-sentencing reports for judges to consider during sentencing (Berryessa, 2022). Officers may include information about remorse in sentencing recommendations in order to communicate to judges about any remorse displays a defendant has shown and what these displays might suggest for their sentencing (Berryessa & Balavender, 2021; Drass & Spencer, 1987; Rush & Robertson, 2018; Weisman, 2009). In fact, in prior work, probation officers have suggested that they feel it is tremendously important to communicate information about a defendant’s prior expressions of remorse or plans for showing remorse, such as community service or restitution, to judges who may never know or recognize these expressions without such reports (Berryessa, 2023a). Although data are mixed, remorse is often considered an influential factor for judges during sentencing, and they often believe it is mitigating to sentencing and expressive of good character (e.g., Rachlinski et al., 2012; Ulmer et al., 2022; van Oorschot et al., 2017; Weisman, 2009; Zhong, 2015).

To date, little empirical effort has been devoted to studying remorse in sentencing within focal concerns (Maruna & Copes, 2005; Wermink, 2014). Some existing data that draw from this approach have found support for remorse’s use in ascriptions of blameworthiness and community protection. However, such studies have only examined it in relation to specific characteristics (such as gender or race) or tangentially noted its relevance alongside broader ranges of factors that may be considered within focal concerns; further, these prior studies have not detailed how attributions related to remorse may actually affect sentencing outcomes (Ulmer & Kramer, 1996; Ulmer, 1997; van Wingerden et al., 2014; Wermink, 2014).

For example, Steffensmeier et al. (1993) found that the remorse of female defendants may guide focal concerns related to mitigated culpability and lead to downward departures. Bridges and Steen (1998) found that remorse of White juvenile defendants was viewed as evidence of rehabilitation potential, but these attributions did not extend to Black youth. Alongside a wide range of other overlapping factors such as criminal record and mental illness, a more recent study by Ulmer et al. (2022) found that trial court judges viewed a defendant’s remorse as a compelling consideration for all three focal concerns when determining blameworthiness, community protection, and practical considerations during sentencing. Indeed, Wermink (2014) argues that there remains a stark lack of research that explicitly focuses on drawing from this perspective to more thoroughly understand if and how remorse can actually impact sentencing via attributions of one or all common focal concerns.

Given its potential role in informing their sentencing recommendations in pre-sentencing reports, Leifker and Sample (2011) suggest that applying the focal concerns framework to probation officers and how they use remorse to guide focal concerns in their sentencing recommendations may add value to the larger literature that has shown infrequent empirical attention to probation officers. Further, as interview-based studies on the views and behavior of sentencing decision-makers are thought to be valuable designs to “triangulate on the question of how sentences—and sentencing inequalities—are [actually] produced,” Lynch (2019, p. 1167) suggests that a qualitative approach could be the method to optimize the study of these issues.

## The Current Study

Stemming from this background, the current study draws from semi-structured interviews with probation officers to examine how they use a defendant's remorse to guide their recommendations in their pre-sentencing reports from a focal-concerns perspective. This work develops a model from the collected data that shows how officers may use remorse to make attributions of blameworthiness, community protection, and practical effects of sentencing—and then if and how they use these remorse-guided focal concerns to inform their sentencing recommendations. Thus, this study's goal is to link these two research questions in order to explain the relationships between them:

1. In what ways do probation officers use a defendant's remorse to make attributions of focal concerns (blameworthiness, community protection, practical effects of sentencing)?
2. In what ways do probation officers employ remorse-based focal concerns to inform their sentencing recommendations in their pre-sentencing reports?

As most sentencing research that draws from focal concerns still utilizes quantitative designs (Wellford, 2007; Wermink, 2014; Lynch, 2019), this study's qualitative design and model should uniquely contribute to this literature. Further, as probation officers are often the communicators of key information about a defendant's remorse to a judge that may then enter it into their sentencing calculus, this study helps illuminate how attributions stemming from remorse may impact later sentencing decisions.

## Method

This research uses a qualitative research design, including semi-structured interviews, and a constant comparative method for analysis. The constant comparative method has its roots in classical grounded theory as a way to bridge traditional coding and the generation of new theory, but methodological developments have expanded its use in qualitative research to adapted types of grounded theory and also beyond grounded theory itself (Boeije, 2002; Kolb, 2012; Olson et al., 2016). While most commonly drawing from coding and analytic techniques from forms of grounded theory (Strauss & Corbin, 1998), these more modern and evolved ways of using the constant comparative method can combine positivist (inductive) and interpretive (deductive) frameworks to ensure that all data are systematically analyzed and compared to each other; this allows for structuring the phenomena in the contexts being studied and, commonly based on prior knowledge, developing a thick description and interpretation of the takeaways in the data. Further, while literature reviews or comparisons of data would traditionally occur only at specific stages of analysis or data collection, adapted constant comparative methods of analysis often take place, as well as draw from prior knowledge, at any or all stages of data collection and analysis based on the researcher's understanding of the data (Fram, 2013; O'Conner et al., 2008). This is the type of constant comparative method used in this study, and similar analysis plans using adapted grounded theory and the constant comparative method have been used by Berryessa (2019, 2022, 2023a, 2023b) when building other qualitative sentencing decision-making models.

It is important to note that, in some literature, this use of constant comparative methods has been termed *interpretive grounded theory*—with a literature review and prior knowledge used to shape flexible research questions, strengthen the analysis and data comparisons based on early stages of coding, and to allow the researcher to interpret the data and results within existing knowledge (Sebastian, 2019). However, other literature has preferred to depart from the grounded theory label altogether (as there remains controversy on what constitutes true or appropriate grounded theory methodology; see Goulding, 2017), and it may refer to this same method and its analytic techniques more generally as the constant comparative method (Fram, 2013; O'Conner et al., 2008).

### ***Sample & Data Collection***

Purposeful sampling was used for this research (Suri, 2011), targeting probation officer members from the American Probation and Parole Association (APPA). APPA was chosen as a sampling frame because it is the primary professional society for probation officers and other corrections officials in the U.S. (90,000 individuals who work in probation and parole), and APPA staff were willing to send interview invitations to its email list. In September 2019, invitations, which included informed consent and study information sheets, as well as the contact information for the study, were emailed to probation officer members of the APPA. A \$20 VISA gift card was used to incentivize participation in the interviews. In total, telephone interviews with 151 probation officers were conducted. All interviews were digitally recorded and fully transcribed. Rutgers University Institutional Review Board approval for the study was received. Data from this sample have also been recently used in three other separate qualitative inquiries (Berryessa, 2022, 2023a, 2023b).

### ***Interviews & Analysis***

Interviews lasted anywhere from 30 to 45 minutes. Officers were asked questions in five categories: (1) how they assess remorse in their clients; (2) factors that they feel are important to assessments of remorse; (3) what information they include about remorse in their sentencing recommendations in their pre-sentencing reports; (4) how they use remorse in making their sentencing recommendations in their pre-sentencing reports; and (5) probation officers' basic demographics. These categories of questions were inspired by Patton's (1987) areas of questions to utilize when conducting qualitative interviews and are also detailed in Berryessa (2022).

Dedoose, the qualitative analysis software, was used to arrange and, as described above, analyze interview data via a constant comparative method and three stages of coding (Boeije, 2002; Kolb, 2012). Although the steps of coding are often called by different terms depending on the adaptation of the method (Urica, 2021), this paper uses terms used by Strauss and Corbin (1998) to describe each stage of coding. First, open coding was conducted for a random set of 20 interviews, and an independent coder developed a preliminary set of themes observed by fracturing the interviews into segments and comparing the data in each line of an interview to one another. This involved creating textual memos about comparing the individual data segments within each interview, followed by comparing themes across data segments from the entire subset of interviews.

During this stage, data comparison spoke to an existing theoretical framework observed in reviews of the literature prior to analysis, and the themes that surfaced from the data were found to apply principles and knowledge from the focal concerns approach. Thus, this theoretical approach was used to organize themes from open coding and systematize them into categories during the axial coding stage. The axial coding stage, using conceptual memoing and open codes as criteria for organization, involved deconstructing and comparing data segments across the full set of interviews, reconstructing and organizing these data segments by theme, and then reducing or merging open codes and coding categories that spoke to the study's theoretical framework. This resulted in a coding scheme consisting of four axial coding categories for all 151 interviews. Interrater reliability of the total coding scheme was estimated using Dedoose, with a second individual analyzing a sample of random interview excerpts, establishing 81% agreement between coders (Belur et al., 2021).

Finally, the four axial coding categories were positioned during selective coding to theoretically develop a model that speaks to how officers may use remorse to make attributions of blameworthiness, community protection, and practical effects of sentencing, and then if and how they use these remorse-

guided focal concerns to inform their sentencing recommendations (from the study's two research questions). This process involved theoretical memoing about the meaning and relationships observed between axial coding categories, as well as dialogic engagement with two other researchers on how to conceptually outline and organize the qualitative model. The Standards for Reporting Qualitative Research guidelines were also used for this research (see O'Brien et al., 2014).

## Results

### *Demographics*

The interview sample's sample demographics ( $n = 151$ ), who all currently handle or have previously handled a caseload with clients facing criminal charges, are presented in Table 1 (from Berryessa, 2022). No themes observed in the data appeared to vary due to the sample's demographics.

**Table 1.** Demographics of 151 probation officers in the interview sample from Berryessa (2022)

Demographics		<i>n</i>
Sex	Male	70
	Female	81
Age	21 to 30 years	20
	31 to 40 years	49
	41 to 50 years	52
	51 to 60 years	22
	>61 years	7
	No response	1
U.S. State	Arizona	11
	Arkansas	1
	California	18
	Colorado	1
	Georgia	3
	Hawaii	1
	Idaho	1
	Illinois	9
	Indiana	4
	Kansas	1
	Kentucky	1
	Maryland	1
	Michigan	6
	Minnesota	2
	Mississippi	2
	Missouri	4
	Montana	1
	Nebraska	20
	New Jersey	2
	Ohio	10
Oregon	3	
Pennsylvania	9	
South Carolina	3	

(Continues)

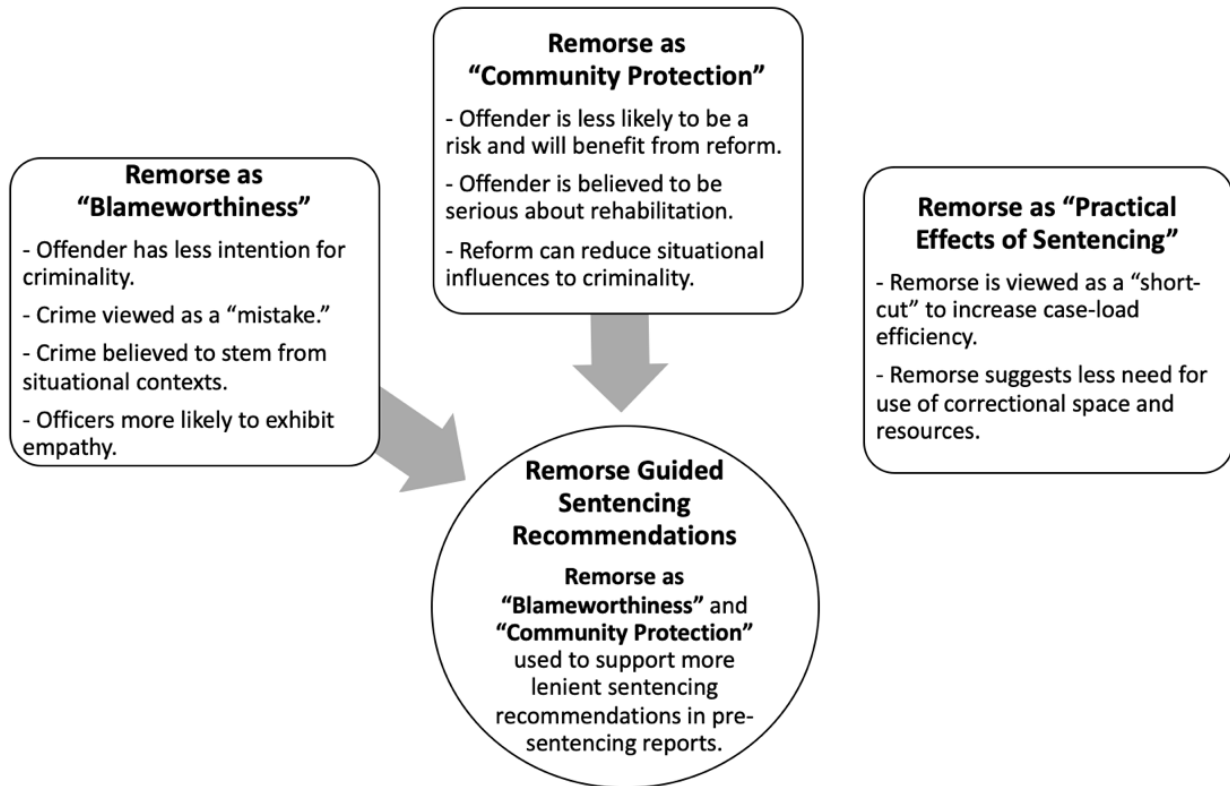
**Table 1** (Continued)

Demographics		<i>n</i>
U.S. State	Tennessee	2
	Texas	19
	Utah	1
	Virginia	13
	Washington D.C.	2
Racial Identification	White	40
	Black	24
	Asian	6
	Hispanic	21
	Chose not to racially identify	60
Education	High School Degree	3
	Associate's Degree	10
	Bachelor's Degree	91
	Master's Degree	40
	Doctoral Degree	1
	Professional Degree (JD, MBA)	6

### ***Findings & Model***

Four primary axial coding categories (*Remorse as “Blameworthiness,” Remorse as “Community Protection,” Remorse as “Practical Effects of Sentencing,” Remorse-Guided Sentencing Recommendations*) arose from the interview data. They were positioned during the three-stage coding process described above. Results suggest the below-described model, which is also shown in Figure 1. Probation officers were found to use observations and evaluations of a defendant’s remorse to make attributions of three focal concerns: the extent to which a defendant’s remorse indicates less responsibility and less intention for their criminal acts (*Remorse as “Blameworthiness”*); the reduced need for community protection and specifically the defendant’s high potential for reform (*Remorse as “Community Protection”*); and organization-level implications of remorse related to increasing officers’ overall caseload efficiency and the use of correctional resources (*Remorse as “Practical Effects of Sentencing”*). Then, relying on these attributions, probation officers discussed how two remorse-guided focal concerns—blameworthiness and community protection—inform and guide their sentencing recommendations for more lenient outcomes in their pre-sentencing reports (*Remorse-Guided Sentencing Recommendations*). All findings reported here reached theoretical saturation in the data and were observed across the totality of the interview sample. Further, for transparency, slight amendments to grammar were also made to the interview excerpts below.





**Figure 1.** Model by which probation officers use a defendant’s remorse to make attributions of blameworthiness, community protection, and practical effects of sentencing, and how attributions stemming from two remorse-guided focal concerns (blameworthiness and community protection) are used to inform sentencing recommendations in their pre-sentencing reports.

**Remorse as “Blameworthiness.”** Probation officers viewed verbal (confessions, apologies) and affective (crying, body language) expressions of remorse as equally important in informing them about whether a defendant’s level of responsibility and intention for their criminal acts should somehow be mitigated. Officers discussed that when a defendant has shown remorse, they often question whether their criminal behavior should, at least to a degree, be viewed as a “mistake” or a “slip-up” rather than a purposeful act. One officer, describing his experience with a recent client who verbally expressed remorse for a recent burglary offense, said,

[you can tell he] just made a mistake, I do get [clients] that made a mistake and are not going to ever do it again. You can tell because they are concerned that they have hurt others and feel bad...they did not know what they were doing, they do not want to hurt somebody again (Interview 19).

Particularly, officers were more likely to focus on and describe environmental contributors to a defendant’s criminal behavior when they have shown remorse by honing in on situational contexts in a defendant’s background and experiences that may have led to their offending, such as involvement with antisocial peers or communities, substance abuse, or unemployment. Officers appeared to believe that

situational contexts can lessen a defendant's full responsibility for their behavior because officers feel that they can *understand* its root causes and *why* it happened. For example, one officer noted how one of his younger clients, who had expressed "deep remorse" for multiple property crimes, had been running with the "wrong crowd." The officer believed that this client now recognized this, describing his criminality as stemming from their bad influence:

He understands what has happened, the harm that [he has] done...he got caught up in [the wrong crowd]...[he is] recognizing, like, okay, I made a mistake. This is serious. I did not understand it in the beginning, but now that I have had time and this happened, and this is the consequence of that...This is what happens if you hang around this peer group...Now I see that. I feel like those are important items, especially as you get to know [a client]. You are able to point out, like, he gets it...You can feel that deep sense of regret and remorse and his intent to move forward away from that lifestyle (Interview 77).

In the same vein, officers appeared more likely to express empathy toward a defendant who has exhibited remorse to show their understanding of that behavior and its circumstances. Officers described, in some cases, that they even find themselves comparing their personal past experiences in which they made mistakes and had them forgiven by family, friends, and authority figures to a defendant's current situation. One officer said that he knows "the way [it feels] to beg for forgiveness" from his past experiences of making bad choices (Interview 47).

Interestingly, as long as officers used a defendant's remorse to inform them that their criminal behavior may be viewed as a potential "mistake," the type or severity of the crime did not necessarily affect the extent to which they believed remorse could be viewed as a proxy for blameworthiness or mitigated responsibility. Indeed, officers said they had used remorse to inform them about specific clients and cases in which a defendant had severely harmed another person; yet, in all these instances, the harm was not believed to be intended or deliberate. For example, one officer described how her client with past alcohol problems had hit another car in a DUI and injured a child, but that he had made a "terrible mistake" and learned from it. The officer, describing the client's remorse for injuring the child, stated that,

he is someone who has been a lifelong addict and is now sober... he said to me, I never realized how terrible what I was doing was until I [found out there was] a little kid in that car. And he did not mean to hit him, obviously. He was like, I am never going to do this again. I do believe that is true...he finally reached the point where he is taking it seriously (Interview 149).

**Remorse as "Community Protection."** Probation officers viewed specifically verbal (confessions, apologies) and, to a lesser extent, behavioral (restitution to victims, community engagement) expressions of remorse to inform them that a defendant is less likely to pose a future risk and has a high potential for reform. For officers, defendants who have shown remorse were described as having overall positive attitudes and the least likely to recidivate or be a danger to the community. As one officer put it, "Remorse is one of the number one thing that we are looking at. It shows the character [of a client] and the risk levels and all kinds of things all by itself" (Interview 89).

Most of all, however, officers described defendants who have shown remorse as those who would and can benefit most from rehabilitation. Mainly, officers viewed remorse as evidence of a defendant's seriousness and dedication to their reform and the desire to reintegrate into society successfully. As one officer said, "I think the criminal justice system usually wants to rehabilitate people, make them positive members of society. So, if I see somebody is remorseful, then I am seeing that they want to change. They

want to fit into the goals of the system” (Interview 80). Similarly, speaking about his clients, another probation officer stated that “if they have remorse, usually they are going to want to participate in trying to change their behavior. This is what we are looking for, somebody putting the work into it to start creating motivation for change” (Interview 31).

Officers also tied the potential benefit from rehabilitation to the perceived nature and source of a defendant’s criminality. When a defendant has shown remorse, officers appeared to be more likely to focus on situational contexts to, or sources of, their criminality and believe that it is likely to be successfully reformed by removing or mitigating its situational contexts or influences. For example, one officer talked about a client who had expressed remorse and provided restitution for a property crime he had committed to fuel a substance abuse problem. The officer said, “this guy is addicted, but he can be reached. If we can deal with his drug addiction, we can really prevent a lot of crimes because...[he] is so affected by what he did that he is going to think twice” (Interview 23). Indeed, if they have expressed remorse, officers suggested that a client is more likely to have “motivation for changing that criminal mindset” (Interview 128) that can stem from substance abuse issues, poverty, or antisocial peers.

**Remorse as “Practical Effects of Sentencing.”** Probation officers perceived verbal (confessions, apologies) and affective (crying, body language) expressions of remorse as equally instructive regarding their views on the practical effects of a defendant’s sentencing. Rather than focusing on defendant-level implications, remorse appeared to represent two main organization-level implications. First, officers described remorse as a type of “shortcut” to handle their caseloads more efficiently. Officers noted that they have a significant number of clients, with the current average being around 84 at one time. As remorse was viewed as demonstrative of positive attributes and, as mentioned above, mitigated criminal intention and potential for reform, officers felt that they most often do not need to overly scrutinize cases in which defendants have shown remorse. Instead, they felt it is better to focus their time and energy on cases involving their more difficult or complex cases and clients, particularly those who do not have the same potential for reform, representing a starker public safety risk.

Second, officers appeared to view remorse as a proxy for using correctional resources and were very cognizant of the limited capacity and financial resources of jails and prisons in their jurisdictions. In the same way that officers felt that they did not need to overly focus energy on cases in which defendants have shown remorse, they felt that these cases were also those less likely to warrant the use of limited correctional space or more restrictive punishments. As remorse was generally viewed as indicative of a high potential for reform, they also believed that defendants who have shown remorse might be successfully addressed outside incarceration, such as less restrictive probation stipulations or sentencing alternatives. For example, one officer, commenting on overcrowding in his jurisdiction, said that space really should be devoted to defendants whose behavior has shown a pattern of disregard for the community—what she referred to as “frequent flyers”—as compared to defendants who have shown real regret for their actions. She stated that,

if somebody is obviously more remorseful, [I am all about] not putting them in jail but to use rehabilitation, back in the community...jail, a lot of supervision, accountability, should be used for those frequent flyers ... it is tough to trust them with anything (Interview 64).

**Remorse-Guided Sentencing Recommendations.** Probation officers described that they feel a great responsibility to communicate both factual information on expressions of remorse that a defendant has shown (i.e., in what ways remorse has been observed or seen by officers, such as making apologies to victims or the court, crying, or paying victims a form of restitution) and their evaluations on the perceived

meaning of a defendant's remorse (i.e., what officers believe that a defendant's remorse actually means) to the court in their pre-sentencing reports. Officers said that information on remorse is essential to include in their pre-sentencing reports both because it conveys a lot about a defendant's "stage of change" (Interview 44), meaning the likelihood of them changing their thinking and behavior, and also because judges often only have a short time to observe and interact with a defendant as compared to probation officers. Officers felt that judges might not be fully aware of defendants' feelings or expressions of remorse in their limited exchanges with them. Overall, officers said that they feel they should provide judges with as much information as possible on a defendant's expressions of remorse so they are more informed about its presence and relevance to a defendant's sentencing.

Although cognizant that it can vary from case to case depending on the context, officers said that generally, if a defendant has expressed genuine verbal, affective, or behavioral expressions of remorse, these displays often suggest that they should at least consider recommending "more tempered sentencing" outcomes (Interview 71). These might include suspended sentences, less restrictive probation stipulations, sentencing alternatives like community service, or reduced periods of incarceration in cases involving more severe offenses. When discussing how and why remorse informs them that these outcomes may be appropriate, officers' responses suggested that they primarily rely on two focal concerns, blameworthiness, and community protection, inferred from their evaluations of remorse as evidence for making more lenient sentencing recommendations.

Drawing from their attributions of blameworthiness, probation officers appeared to use remorse to frame a defendant's criminal behavior as "situational" and as a "mistake" in their pre-sentencing reports, suggesting that a defendant's behavior is not necessarily indicative of their "true sense" (Interview 142) and that they may therefore have a mitigated level of responsibility for their actions. Officers said that they often include information about any direct situational influences that they believe may have contributed to criminality, such as those described in the examples above, so that judges can better understand officers' reasons for their sentencing recommendations and also to provide judges with meaningful contexts about a defendant's case, criminal behavior, and potential level of responsibility for them to consider in sentencing. While officers did appear to be more likely to express empathy toward a defendant who has shown remorse, they also said that they do not want their emotions to influence their sentencing recommendations. Yet officers, as seen in this illustrative example, still may use emotionally-charged descriptions when describing how remorse affects their sentencing recommendations:

What I have seen is if somebody is truly remorseful, I try to get them the appropriate consequence... in my reports, there will be a level of hope and that they will be given a chance that somebody else may not have been given. So I will try to recommend probation versus prison and give them the chance to really excel and show us that they are not going to do it again, and they are willing to go get treatment and all that good stuff... I think the criminal justice system is looking for that level of humaneness. Because I think with a showing of humanity, everybody can be rehabilitated. And I think that is kind of the way the system is meant to work for those who are truly remorseful (Interview 136).

Drawing from their attributions of community protection, probation officers appeared to use remorse to frame a defendant as having great potential for reform and the desire to transform in their pre-sentencing reports. As one officer said, remorse shows that a "change mentality is going on and [a client] is more prone to be willing to change. I think it is good [for me] to show that to the court" (Interview 125). In their reports, officers said they often describe how a defendant who has shown remorse is serious about their rehabilitation. As officers viewed verbal and behavioral expressions of remorse as

specifically instructive of a defendant's potential for reform, they said that they most often detail these two types of expressions for judges in their pre-sentencing reports; further, they also report if a defendant has fully admitted and confessed to their crimes, openly apologized to victims or the community, and provided restitution when appropriate—all as evidence that a defendant is “taking [their] rehabilitation seriously” (Interview 149).

Officers also said they detail recent positive choices or plans that a defendant has made as evidence of their dedication to rehabilitation. Examples that officers provided that might be incorporated into their reports include cutting off contact with friends or acquaintances that may have contributed to the offending behavior, getting a job or sending out job applications, or making plans to go back to school. They said that they detail this evidence to support their recommendations for more lenient sentencing to the court and so that judges, due to their limited time and information, are fully aware of a defendant's level of seriousness.

Although officers appeared to view remorse as instructive with regard to its effects on caseload efficiency and using correctional resources, there was no express acknowledgment nor discussion in the interviews that organizational-level constraints guide their sentencing recommendations. Data only indicated that officers use remorse to inform recommendations via attributions of a defendant's past (blameworthiness) and future (community protection) behavior.

## **Discussion**

This current study, providing much-needed empirical work that explicitly focuses on applying the focal concerns framework to remorse (Wermink, 2014), presents the first-known qualitative model to suggest how probation officers use remorse to make inferences about focal concerns during sentencing. To better understand defendants and their cases, the model suggests that probation officers use remorse to make meaningful attributions of three common focal concerns supported in the larger sentencing literature over the last several decades (Steffensmeier & Painter-Davis, 2017). For officers, remorse provided vital information on a defendant's responsibility, criminal intention, the potential for recidivism and rehabilitation, and also sentencing's implications for caseload efficiency and correctional resources—all of which are factors that have been previously used to infer blameworthiness, community protection, and practical effects of sentencing, respectively, in earlier work (Steffensmeier et al., 1998; Steffensmeier & Demuth, 2006).

However, officers in this study only appeared to use two of these remorse-guided focal concerns to inform their sentencing recommendations in their pre-sentencing reports: blameworthiness and community protection. This is similar to the findings of Harris (2009), who found that juvenile probation officers drew from attributions of blameworthiness and community protection, but not practical effects of sentencing, in the writing of their juvenile sentencing reports. In making their recommendations, officers in this study described how they use a defendant's remorse—inferring that criminal behavior may have been “situational” and that the defendant has great potential for and seriousness about rehabilitation—as evidence and support for more lenient sentencing outcomes. These attributions made by officers help to illuminate how they use remorse to develop their own “perceptual shorthand” in order to make sense of and better understand a defendant's character and future behavior for sentencing purposes (Hawkins, 1981; Steffensmeier & Demuth, 2006). Indeed, the model suggests that officers may develop a schema, at least in part, by drawing from and relying upon common cultural assumptions about remorse, and its potential significance for sentencing, in order to make ascriptions of blameworthiness and community protection to ultimately guide their recommendations (Bridges & Steen, 1998; Everett & Nienstedt, 1999; Gold & Weiner, 2000; Robinson et al., 1994; Ulmer & Kramer, 1996; Weisman, 2014; Zhong et al., 2014).

Perhaps most prominently in this “perceptual shorthand,” officers heavily focused on the importance and influence of situational contexts in understanding criminality. Officers used situational contexts to explain a defendant’s criminality as an unintended “mistake” and likely to be reformed through dedication and future positive actions. Officers also used these situational contexts to explain their choices in recommending more lenient sentencing outcomes to judges and when describing the types of information about a defendant they choose to provide to the court to support these more lenient recommendations. This suggests that officers likely utilize causal attributions as a way to infer that a defendant’s criminality is the result of external causes, which they then use to rationalize a defendant’s past (mitigated responsibility) and future behavior (high potential for rehabilitation) in order to make more lenient sentencing recommendations (Bridges & Steen, 1998; Harris, 2009). As causal attributions are viewed as the means by which focal concerns influence sentencing (Koons-Witt, 2002), these results indicate that remorse’s influence on probation officers, at least in part, may stem from their reliance on these situational contexts—and a defendant’s perceived lack of immediate control over them—when making sentencing determinations. This would be unsurprising, as scholars have already argued that the controllability of the causes of bad behavior is especially important in making decisions about responding to and evaluating criminality in sentencing, especially when assessing notions of a defendant’s responsibility (Crocker et al., 1984; Fiske & Depret, 1996).

Further, officers consistently highlighted that they choose to include information about remorse in their pre-sentencing reports because they believe that judges, compared to probation officers, do not have enough time or information to appropriately recognize the presence and importance of a defendant’s remorse for sentencing. This implies that officers may not only view their pre-sentencing reports as a way to decrease judges’ reliance on their “perceptual shorthand” that can come with limited time and resources (Hagan, 1975; Hagan et al., 1979; Leiber et al., 2018), but that officers also may feel a strong sense of responsibility in their roles during sentencing as the primary providers and communicators of information about a defendant’s remorse to the judge and court.

Even though officers appeared to rely on their own “perceptual shorthand” when making their recommendations, the model here also suggests that officers may not be fully aware of the extent to which they rely on their own “perceptual shorthand” and the influence that attributions from focal concerns are likely to have on their pre-sentencing reports (Klein, 2008). Interestingly, officers’ discussions in the interviews about using remorse as a “shortcut” to increase caseload efficiency may indicate some awareness that they do not have sufficient time for each client in their caseload. Even so, they appeared very serious about their roles in sentencing and consistently highlighted their own responsibility for providing key information to judges who cannot possess the same insights about defendants due to their limited time and resources (Frieburger & Hilsinki, 2011; Leiber et al., 2018; Rush & Robertson, 1987).

It is important to mention the limitations of this inquiry. Although generalizability is not the primary goal of qualitative research (Ravitch & Carl, 2016), these results and this model may only apply to some probation officers in the U.S. This research sample is substantial for qualitative research, but responses were overrepresented from some jurisdictions. Probation officers may have also decided to participate in the interview study because of a preexisting interest. Therefore, it is unclear whether their views would have differed from those that did not participate. Future inquiries on the current issues may benefit from using other samples of probation officers and different methodological approaches that can help to provide triangulation to the current results.

This study also does not account for any indirect effects that officers’ attributions of remorse, particularly surrounding the practical effects of sentencing, may have on their sentencing recommendations. Previous work drawing from workplace organization perspectives has found that judges, like the officers in this study, are sensitive to and aware of the need for case-flow efficiency and

preserving limited correctional resources in sentencing (Steffensmeier et al., 1993; Ulmer, 1997). However, it has been suggested that decision-makers might mechanically consider “downstream consequences” such as these, but they may not directly realize their true influences on their sentencing decisions and later outcomes (Maddan & Hartley, 2017). Holtfreter (2013) contends that sentencing’s practical constraints may also work through other more direct factors, such as those associated with blameworthiness or community protection, to guide sentencing. Given that the officers in this study directly provided the data presented here via discussions about their experiences in detailed interviews about how and why remorse informs their sentencing recommendations, this model likely does not account for whether and in what ways practical effects may indirectly or even subconsciously influence their sentencing recommendations. However, future work should examine the potential indirect effects of practical constraints on officers’ recommendations involving clients who express remorse.

Further, this study does not examine or apply the focal concerns framework to how officers use remorselessness to guide sentencing recommendations. Research suggests that negative defendant attitudes, like remorselessness, may be positively associated with longer incarceration-based sentences due to increased blameworthiness and the need for community protection (Ulmer & Kramer, 1996; van Wingerden et al., 2016). Although outside this study’s scope, future inquiries should examine how remorse may interact with other defendant characteristics, such as race, gender, or criminal record, and how it may function for specific types of offenses, such as those involving violence, with regard to informing recommendations.

A final limitation that may curb the applicability or implications of these findings is that there is a great deal of practical variability in the independent nature and ultimate impact of sentencing recommendations made by probation officers across states and jurisdictions. Leifker and Sample (2011), in their findings and also in reviewing prior literature (e.g., Petersilia, 1997; Norman & Wadman, 2000), describe how officer recommendations commonly predict judges’ final dispositions in upwards of 70% of cases—sometimes as the chief or most significant predictor of their sentencing decisions. Even so, these recommendations are commonly shaped and later considered in many disparate ways across jurisdictions; indeed, in some cases, they may be seen as nothing more than ceremonial or symbolic recommendations (Kingsnorth et al., 2002; Rosecrance, 1988). Rosecrance (1985) suggests that sometimes officer recommendations are not entirely independent and may actually reflect prosecutor or judge arrangements, knowledge of stipulations set by sentencing guidelines or statutes, or shaped by convention and expectations from the courtroom workgroup in their jurisdictions. Similarly, in a study of probation officers in a county in California, Leifker and Sample (2010) found that, while officers said they still exercised a level of independence in writing their recommendations, they were still quite influenced by convention, pressure from other members of the courtroom workgroup, and other external sentencing standards in crafting their recommendations.

Thus, existing work suggests that the actual content and impact of probation officer recommendations on later sentencing outcomes likely varies depending on the jurisdiction, its organizational culture, and those working alongside officers in that courtroom workgroup. As this study relied on interviews with probation officers from a large variety of jurisdictions that probably differ across these factors as well, such differences likely impact how the sentencing recommendations made by those interviewed here are shaped and considered in their jurisdictions. Hence, the jurisdictional differences across the interview sample do limit the applicability of these findings to specific courts or even in anticipating the impact of these findings on final sentencing outcomes in those jurisdictions. Indeed, although the demographic information of the research sample did not appear to affect the model developed here, these findings provide more of a conceptual, rather than practical, understanding of how remorse may affect sentencing recommendations for probation officers. Researchers should look to integrate the

nuances of jurisdictional differences and other potential demographic factors into similar future studies to better anticipate how and why a defendant's remorse may disparately affect sentencing recommendations and final outcomes across states and courts with various organizational standards and cultures.

Ultimately, this work represents a unique addition to sentencing research that has shown infrequent empirical attention to both probation officers and how they use a defendant's characteristics when making sentencing recommendations. Further, it also answers calls for increasing the methodological diversity of this area of literature. As sentencing courts are people-oriented institutions, research on them should benefit from a "bottom-up" approach that deeply studies their decision-makers (Ulmer, 2019). Ulmer (2019) suggests that research should move away from descriptively measuring sentencing *outcomes* and, instead, toward varied research designs and analytic approaches that can deeply examine dynamic factors that influence the sentencing *process* itself. Along these lines, this study represents a valuable qualitative contribution to sentencing literature by illustrating how and the extent to which cognitions of probation officers can appreciably influence the sentencing process when remorse is expressed.

Additionally, the attributions that probation officers may make about remorse during sentencing and how they inform their support for more lenient outcomes could also significantly influence final sentencing dispositions. The results here suggest that probation officers feel a sincere sense of responsibility to relay information about a defendant's remorse to the court in their pre-sentencing reports and that they are likely to include as much information about it, and what it may signify about a defendant's past and future behavior, as they feel needed. Further, pre-sentencing reports are used to make punishment-related decisions at other stages after sentencing, such as assignment to a correctional institution or program eligibility during incarceration (Rush & Robertson, 1987). This may mean that sentencing recommendations shaped by remorse-guided focal concerns could have far-reaching implications for a defendant's trajectory in the criminal-legal system above and beyond their initial sentencing.

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