

## Sentencing in Felony Domestic Violence Cases

### INTRODUCTION

Domestic violence is a significant problem in New Mexico. Each year several legislative proposals are introduced in the New Mexico State Legislature to enhance penalties for offenders who commit domestic violence. Notwithstanding public concern and legislative interest, little is known about domestic violence cases in New Mexico beyond incidence statistics. The New Mexico Interpersonal Violence Data Central Repository serves as a clearinghouse for law enforcement, service provider, and court information for the state. In 2005, the Department of Health, Office of Injury Prevention obtained funding to conduct the Survey of Violence Victimization. This survey provides more detailed information regarding the prevalence of domestic violence in New Mexico including some statistics regarding sentencing (Caponera, 2007). Sentencing in New Mexico has not been widely studied. Courts maintain an electronic record of the disposition and sentence in all cases, however other factors that may affect the outcome of a case are only maintained in paper form by other criminal justice agencies.

In 2006 the New Mexico Crime Victims Reparations Commission issued a request for proposal to award S.T.O.P. Violence Against Women Act (VAWA) Grant monies to study sentencing in felony domestic violence cases. The New Mexico Sentencing Commission (NMSC) was awarded the sub grant. One of the conditions of the grant was that an advisory group be formed to recommend and approve the approach of the study.

Since sentencing in these types of cases had not been previously studied, one of the goals of the study was to determine which criminal justice agencies had the data elements needed. With limited funding it was decided by the project's advisory group to pursue two initial approaches that focused on information maintained by District Attorneys and District Courts.

### METHODOLOGY

With regard to information available from District Attorneys, NMSC staff approached the District Attorneys in the Second District (Bernalillo county) and the Thirteenth District (Cibola, Sandoval, and Valencia counties) to seek their cooperation to review case files. Both districts agreed to participate. A data collection form was developed with assistance from the Second District Attorney Domestic Violence Division. The following variables were collected:

- Names of offender and victim
- Offender DOB
- Court filing date
- Court closing date
- Arrest characteristics
- Victim/Offender relationship
- Disposition
- Sentence
- Probation conditions
- Victim cooperation

Prior criminal history and protective order information was looked up using public resources available from the courts and the New Mexico Justice Information Sharing Council.

#### Case Selection

The purpose of the study was to determine if we could collect all the variables that we proposed from District Attorney files. To that end, cases were selected from a dataset made available to the NMSC by the New Mexico Administrative Office of the Courts, Judicial Information Division (JID). Cases with any domestic violence charge in the case were isolated. The sentencing information for the statewide data was also compiled from this file.

The dataset does not contain filing dates or disposition dates, however from the case numbers we were able to determine the year that the case was filed. For

County	Number of Cases	Percentage
Bernalillo	141	63.5%
Cibola	10	4.5%
Sandoval	52	23.4%
Valencia	19	8.6%
Total	222	100.0%

Bernalillo County, we selected cases that were filed in 2005. For Cibola, Sandoval, and Valencia counties, we selected cases that were filed in 2004 and 2005. Table 1 contains the number of cases per county.

NMSC staff traveled to offices in Albuquerque, Bernalillo and Belen to collect data from files. Cases from Cibola were included in the study although since the number of files was small (10) we did not collect data from the files.

Of the 212 cases selected in Albuquerque, Bernalillo and Belen, we collected information on 72% of cases. In some cases we were not able to obtain and review the file because it had already been archived and in other cases the office was unable to find the court case number in their information system. The list of cases was derived from court case numbers. The district attorneys maintain a separate numbering system and store the court case number as well for cross referencing proposes.

## FINDINGS

In the analysis below, we first describe the data we were able to collect on all 222 cases. We then narrow to cases for which we were able to obtain and review district attorney files.

### Charges

Table 2 reports the most serious charge in the case. The charges have been recoded into 13 categories. The types of charges vary widely. The most common charge was aggravated battery against a household member (HHM) (all subsections of NMSA 30-3-16) (35.1%) followed by aggravated assault HHM (17.6%). The most common degree of charge that offenders were charged with was a third degree felony (35.6%).

Table 3 looks at the overall case disposition. In 16.4% of cases, all charges were dismissed. Nearly 84% of cases resulted in a conviction meaning either a

Most Serious Charge	Number of Cases	Percentage
Battery HHM	18	8.1%
Aggravated Assault HHM	39	17.6%
Child Abuse	24	10.8%
Aggravated Battery HHM	78	35.1%
Burglary	3	1.4%
Aggravated Stalking	1	.5%
Resisting/Battery on a Peace Officer	2	.9%
CSP	5	2.3%
False Imprisonment	27	12.2%
Robbery	1	.5%
Breaking and Entering	4	1.8%
Kidnapping	9	4.1%
Other	11	5.0%
Total	222	100.0%

probation or jail/prison sentence. In 67.7% of cases offenders were placed on probation. Suspended sentences, deferred sentences and conditional discharges usually carry probation terms. The most common case disposition was a suspended sentence (32.7%). A suspended sentence occurs when a judge gives a jail or prison sentence and then suspends the entire sentence contingent on the offender's successful completion of probation for usually the same period of time. The next most common dispositions were deferred sentences (17.7%) and conditional discharges (17.3%). A deferred sentence is similar to a suspended sentence however after successfully completing probation the offender can request that the court dismiss the charge. In both a deferred and suspended sentence there is an adjudication

Case Disposition	Number of Cases	Percentage
Dismissed	36	16.4%
Conditional Discharge	38	17.3%
Deferred Sentence	39	17.7%
Suspended Sentence	72	32.7%
Jail	18	8.2%
Prison	17	7.7%
Total	220	100.0%

**Table 4. MOST SERIOUS ADJUDICATED CHARGE IN THE CASE**

Most Serious Charge	Number of Cases	Percentage
Battery HHM	51	27.4%
Aggravated Assault HHM	30	16.1%
Child Abuse	10	5.4%
Aggravated Battery HHM	55	29.6%
Resisting/Battery on a Peace Officer	2	1.1%
CSP	1	.5%
False Imprisonment	22	11.8%
Robbery	1	.5%
Breaking and Entering	2	1.1%
Kidnapping	3	1.6%
Other	9	4.8%
Total	186	100.0%

of guilt. In a conditional discharge an offender also is required to complete a term of probation, however there is no adjudication of guilt and after a successful completion of probation the charge does not appear on the offender’s record.

Nearly 16% of offenders received either a jail or a prison sentence. Eight percent of offenders received a jail sentence and 7.7% received a prison sentence.

The percentage of offenders that receive a jail/prison sentence may seem small. However, in conversations with officials from district attorney offices, sentencing an offender to probation is seen as an effective way to get an offender under the supervision of the court. If a violation occurs during the probation term an offender faces the possibility of the probation being revoked and the original sentence being imposed. Attorneys in the Second District Attorney’s office routinely add special conditions in addition to the regular probation conditions in the plea agreement that become part of the judgment and sentence. Of the 96 cases with probation sentences reviewed in Bernalillo county; 60% of the offenders were required to get anger management training, 57% were required to go to domestic violence counseling, 67% were required to be assessed and/or get alcohol or drug treatment, and 43% were required to attend any programs that Adult Probation and Parole deemed necessary.

Table 4 looks at the most serious adjudicated charge in the case. The most common convicted charge was

**Table 5. COLLAPSED OVERALL CASE DISPOSITION**

Case Disposition	Number of Cases	Percentage
Dismissed	36	16.4%
Probation	149	67.7%
Jail/Prison	35	15.9%
Total	220	100.0%

aggravated battery HHM (29.6%) followed by battery HHM (27.4%).

Table 5 lists the total number of offenders by the overall case disposition collapsed into three categories. The highest percentage of offenders received a probation term (67.7%). Approximately 16% of offenders’ cases were either dismissed or they received a jail/prison term.

#### Determinants of Overall Case Disposition

Due to the small number of cases, we were not able to create a regression model that simultaneously looked at the effect of prior criminal history, offender characteristics, incident characteristics, and sentencing characteristics. In subsequent studies we plan on creating this type of a model, but for the purposes of the current study the effect of these factors are looked at individually.

#### Prior Criminal History

For each offender, we looked for other court cases they had prior to this case. We only identified cases and did not determine if the offender was convicted. We grouped cases in the following crime categories: Drug, DWI, Person, Property, Violent, and Domestic Violence. Patterns did emerge with some case types and dispositional categories. Offenders with a DWI case were more likely to get a jail/prison sentence on their domestic violence case though the relationship was not statistically significant. Twenty percent of offenders with a prior DWI case got a jail/prison sentence compared to 14% who did not have a prior DWI case. Offenders with a prior person crime case were more likely to get a jail/prison sentence and the relationship was statistically significant. Nearly 30% of offenders with a person crime prior case got a jail/prison sentence compared to 10.7% of offenders who did not have a prior person crime case.

Offenders with a prior property crime or a prior domestic violence crime were less likely to get probation, however the split between having their case

Table 6. INCIDENT CHARACTERISTICS

Characteristic	Number of Cases	Percentage
Children Present	45	29.6%
Defendant present when police arrived	64	42.1%
Victim have obvious physical injuries	84	55.3%
Adult witnesses	50	32.9%

entirely dismissed and jail/prison was almost equal. There were too few offenders with drug and violent crime prior cases to analyze the impact on their current case. The impact of having any prior case was also analyzed. Offenders were grouped into two categories: those with no prior cases and those with at least one prior case. Forty percent of offenders had at least one prior case. Offenders with prior cases were more likely to receive a jail/prison sentence. Twenty-four percent of offenders with a prior case received a jail/prison sentence compared to 10.7% of offenders who did not have a prior case. This finding is statistically significant.

In almost 15% of the cases the victim was a household member not an intimate partner. The victim offender relationship was not a significant variable in

determining the case disposition. Nearly 35% of victims sought an order of protection against the offender. We did not differentiate cases where only a temporary order was sought from those that proceeded to get a permanent order of protection. Cases where an order of protection was sought were more likely to result in a jail/prison sentence. Twenty percent of cases where an order of protection was sought received a jail/prison sentence compared to 9.4% of cases where an order of protection was not sought.

#### Offender Characteristics

Eighty-seven percent of offenders were men. Male offenders were more likely to have prior cases. Forty-three percent of males had prior cases compared to 24.1% of females. Male offenders were more likely to get a jail/prison sentence with 18.3% of males receiving jail/prison sentence. No females received a jail/prison sentence. Females were more likely to receive a sentence of probation (75.9% compared to 66.5%) or to have their case dismissed (24.1% compared to 15.2%). These findings were statistically significant.

The average age of offenders was 32 years. There was no relationship between the age of the offender and overall case disposition.

Table 7. MOST SERIOUS CHARGE IN THE CASE – STATEWIDE DATA

Most Serious Charge	Number of Cases	Percentage
Aggravated Assault	48	1.8%
Aggravated Assault HHM	411	15.6%
Aggravated Battery HHM	740	28.2%
Aggravated Stalking	14	.5%
Assault HHM	59	2.2%
Battery HHM	252	9.6%
Breaking and Entering	108	4.1%
Burglary	70	2.7%
Child Abuse	138	5.3%
CSP	36	1.4%
Drug Charge	54	2.1%
DWI	23	.9%
False Imprisonment	354	13.5%
Judicial Interference	31	1.2%
Kidnapping	56	2.1%
Murder/Manslaughter	14	.5%
Other	108	4.1%
Property	24	.9%
Resisting/Battery on a Peace Officer	87	3.3%
Total	2627	100.0%

Table 8. OVERALL CASE DISPOSITION – STATEWIDE DATA

Case Disposition	Number of Cases	Percentage
Dismissed	384	14.6%
Probation	1520	57.9%
Jail/Prison	723	27.5%
Total	2627	100.0%

### Incident Characteristics

For the 152 files we reviewed at district attorney offices, we gathered the following variables regarding the incident: were children present, was the defendant present when the police arrived, did the victim have obvious physical injuries, and were there adult witnesses. Table 6 lists the number and percent of cases that had these incident characteristics. None of those incident characteristics impact the overall disposition in the case.

### Sentencing Considerations

We gathered the following variables regarding sentencing consideration: victim cooperation, admission of priors, and habitual offender. With regard to victim cooperation, although the relationship was not statistically significant, in cases where the victim was cooperative, the case was less likely to be dismissed (7.7% compared to 22.0%).

Offenders with the inclusion of an admission of priors or a habitual offender charge were more likely to get a

jail/prison sentence. No cases were dismissed that had an admission of priors or a habitual offender charge. All offenders with a habitual offender charge received a jail/prison sentence compared with 11.6% of offenders who did not have a habitual offender charge. Forty-six percent of offenders with an admission of priors received a jail/prison sentence compare to 10.9% of offenders who did not have an admission of priors. These results were statistically significant however it is important to note the small number of cases that had either an admission of priors (13), or a habitual offender charge (4).

### Statewide Data

The statewide data was used for all district courts excluding the Second District and the Thirteenth District since they were part of the pilot study. The dataset consisted of 2,627 disposed cases for the time period 2000 -2005. Consistent with the pilot study all cases with any domestic violence charge were selected even if the domestic violence charge was not the most serious charge in the case.

Aggravated Battery HHM was the most serious charge in 28.2% of cases. The second most frequent lead charge was Aggravated Assault HHM (15.6%) followed by False Imprisonment (13.5%). These were also the most frequent lead charges in the pilot study. On both the pilot and the statewide data these three charges constituted the lead charge in over 50% of the cases (65% in the pilot and 57% in the statewide data). Table 7 lists the most serious charge in the case.

Figure 1. OVERALL CASE DISPOSITION BY LEAD CHARGE - PILOT DATA

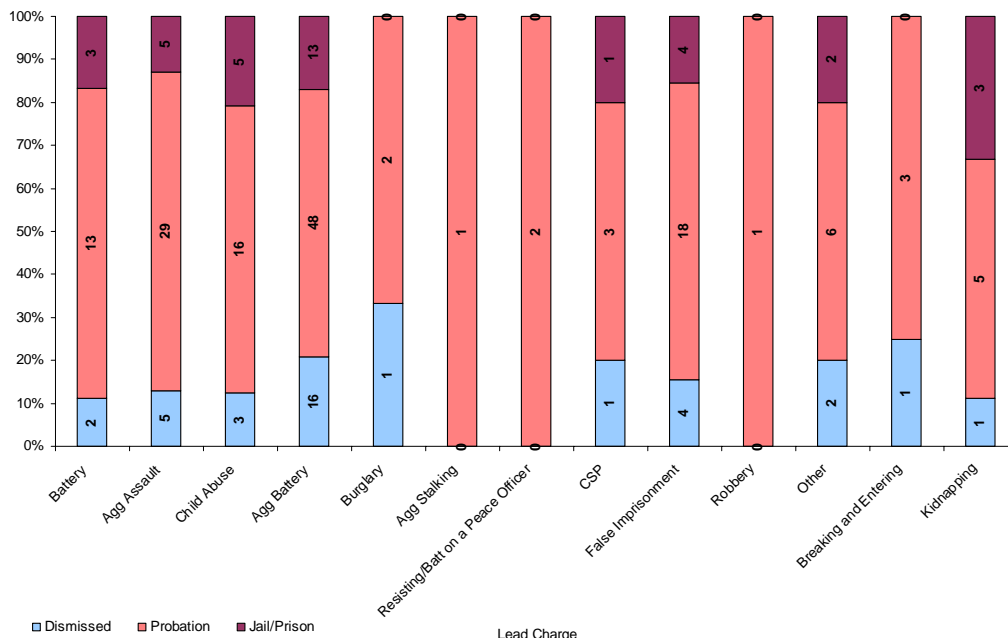
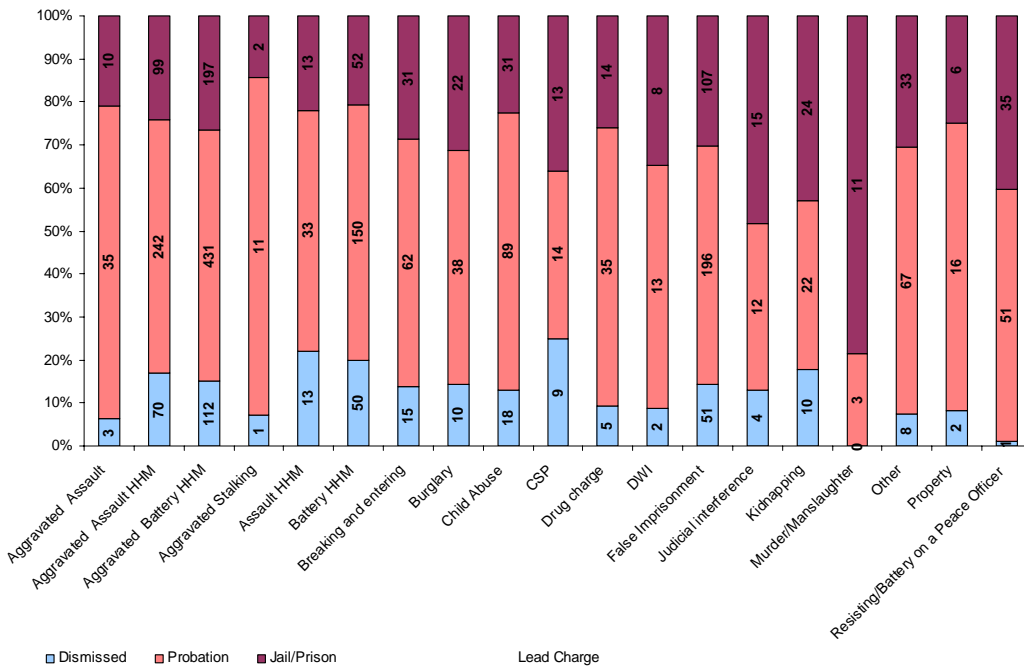


Figure 2. OVERALL CASE DISPOSITION BY LEAD CHARGE - STATEWIDE DATA



When looking at the overall disposition in the case, the percentage of cases dismissed in total for the statewide data was 14.6%; slightly lower than the pilot study (16.4%). The percentage of cases that resulted in jail/prison was higher (27.5%) than the pilot study (15.9%). It is important to remember the pilot was based on a shorter time period (just 2005 for the Second Judicial District and 2003-2005 for the

Thirteenth Judicial District) so the difference in overall disposition may not be reflective of the disposition pattern for these districts for the entire time period. Table 8 lists the overall case disposition for the statewide data.

In some incidences the number of offenders in each lead charge category was small. The overall disposition and

Figure 3. AVERAGE PROBATION SENTENCES

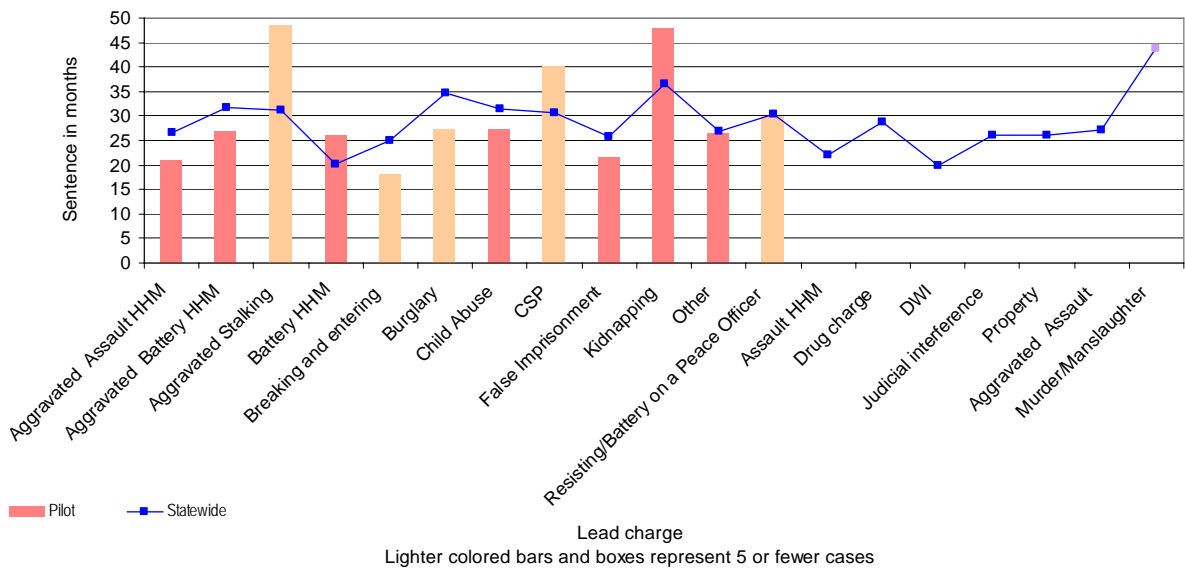
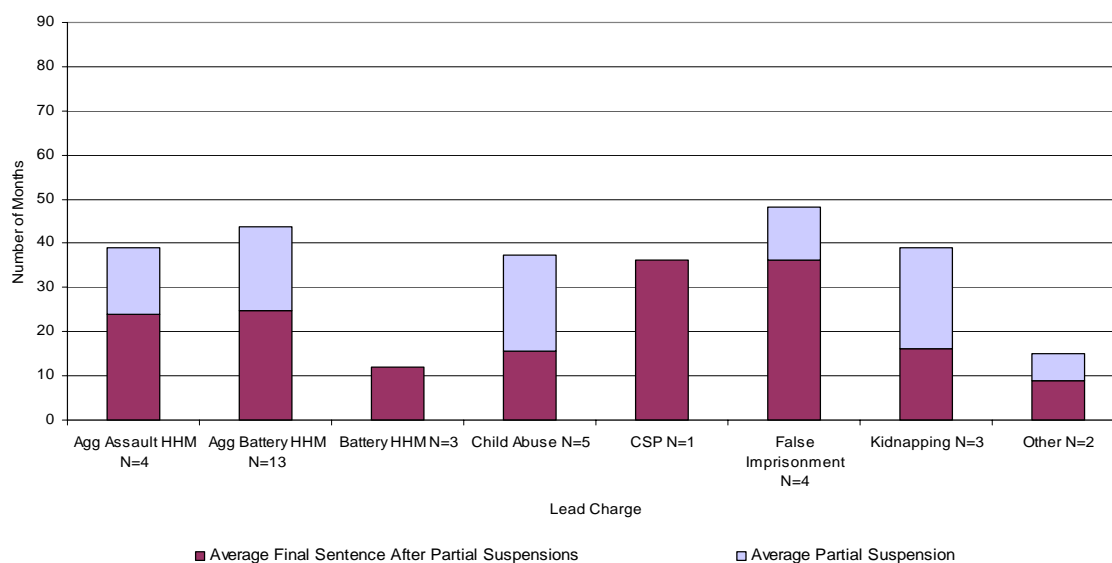


Figure 4. AVERAGE JAIL/PRISON SENTENCES - PILOT STUDY



lead charge were combined to visually illustrate the overall disposition by charge. For each disposition type, the bar is labeled with the number of cases. Figure 1 reports the disposition type for each charge for the pilot study and Figure 2 reports the same information for the statewide data.

### Sentence Lengths

The average sentence length in months for defendants who got either probation or jail/prison was calculated. The average probation sentence for all defendants who got probation was 26 months for the pilot and 28 months for the statewide data. Figure 3 compares the average probation sentence for the pilot and statewide data by lead charge. The pilot data is graphed using a bar chart and the statewide data is graphed using a line graph.

For defendants that received a jail/prison sentence, two components were looked at – the total sentence and any partial suspensions. For example a defendant may be sentenced to three years of which one year is suspended for a sentence of two years to be served in a NM Corrections facility. Partially suspending a portion of the sentence is a strategy in plea negotiations in cases where there will be jail/prison sentence and a probation term after the jail/prison sentence. If the defendant violates probation after serving the jail/prison sentence the suspended portion of the sentence could be reinstated if the defendant is found to have violated their probation. The average total sentence and partial suspensions were computed. The overall average sentence for all cases before

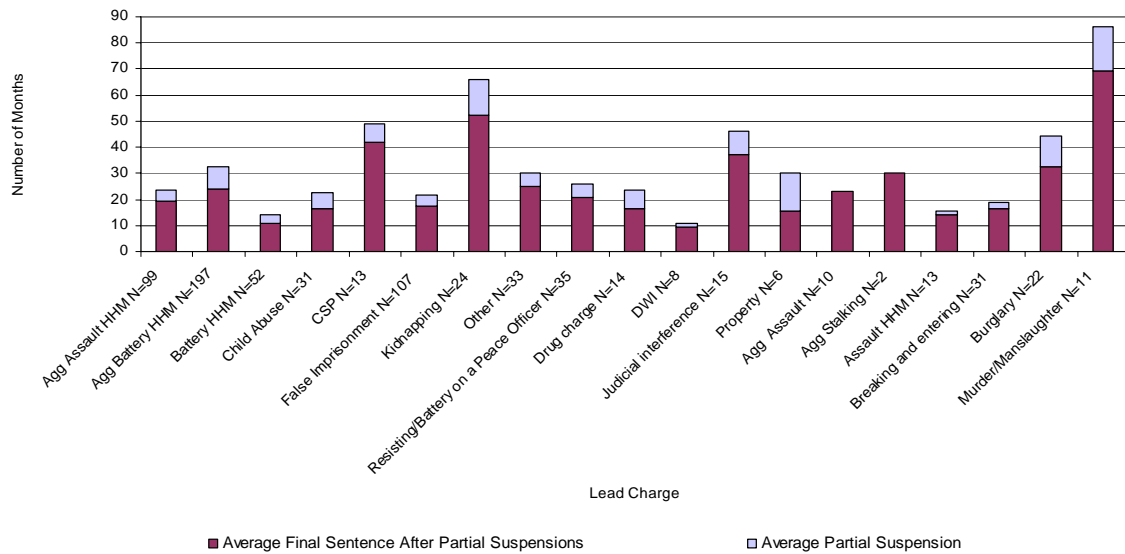
partial suspension was 38 months for the pilot study and 29 months for the statewide data. While this difference at first glance appears to be large the average sentence after partial suspensions is virtually the same for the pilot study and the statewide data (22.31 months and 22.67 months respectively).

The bars in Figures 4 and 5 illustrate the average total sentence and the average portion that defendants will serve. Since the pilot data is only for 35 cases, the average sentencing lengths should not be compared to the statewide data. The number of cases is noted after the charge. The longest average sentence is for cases where murder/manslaughter is the lead charge (86 months before partial suspensions and 69 months after). The next longest sentence is for cases where kidnapping is the lead charge (66 months before partial suspension and 52 months after). CSP cases have an average sentence of 49 months before partial suspensions and 42 months after. Figure 4 lists the average sentences for defendants in the pilot study by charge. Figure 5 lists the average sentences for defendants in the statewide data.

### NEXT STEPS

During the pilot project we learned there is not a single data source that maintains all the information needed to study sentencing in domestic violence cases. The District Attorneys have the majority of the information needed; but unfortunately it is not available in an electronic format. It is not feasible to travel to district attorney offices to collect the incident characteristics,

Figure 5. AVERAGE JAIL/PRISON SENTENCES - STATEWIDE DATA



prior criminal history, and sentencing considerations for all cases statewide. However, it is important to collect this information on a larger sample of cases to see if a sentencing model can be developed based on incident characteristics and other variables. In December 2007, the project advisory group endorsed a prospective approach to collecting this information statewide. The approach involves asking district attorney offices to fill out a data collection form provided by NMSC at the time of sentencing for every case that has a HHM crime. In talks with district attorneys, we learned that at the time of sentencing the information on the form is fresh in their minds and could be completed relatively quickly. Beginning July 1, 2008, NMSC staff will train District Attorney offices that voluntarily agree to complete the form. Additionally, NMSC will provide the district attorneys postage to send the completed forms back. The information will then be entered into a database and NMSC staff will look up offenders' prior court cases. ■

## WORKS CITED

Caponera, B. 2007. *Incidence and Nature of Domestic Violence in New Mexico VII: An Analysis of 2006 Data from the New Mexico Interpersonal Violence Data Central Repository*. Department of Health, Injury and Behavioral Epidemiology Bureau, Office of Injury Prevention, State of New Mexico.

## ACKNOWLEDGEMENTS

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