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Sexual Assault Legislation:

An Implementation Study

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TABLE OF CONTENTS

<u>Chapter</u>	<u>Page</u>
I. Introduction	1
A. Rape law reform objectives	1
B. Research on rape law reform	7
C. Purpose of the project	11
D. Study methods	13
II. Objectives of Rape Law Reform Efforts	15
A. Measures to increase deterrence: adoption of graded offense schemes	16
B. Measures to improve the responsiveness of the criminal justice system to complainants: standards of proof and rules of evidence	18
C. Measures to increase the responsiveness of the criminal justice system: safeguards against false accusation	20
D. Measures to replace common law statutes	28
E. Implementation of reforms	36
III. Overview of the Survey	38
A. Site selection	38
B. Demographics	40
C. Case studies	41
D. Rape law models	42
E. Rape law reform models	65
IV. Survey Results	67
A. The rape shield provision	70
B. Elimination of the corroboration requirement	81
C. Redefinition of criminal acts	91
D. Redefinition of force and change in resistance standards	94
V. Perceptions of Other Reform Features	98
A. Degree structures	98
B. Mandatory sentencing	99
C. Gender neutralization of statutory language	101
D. Repeal of spousal immunity	101
E. Elimination of need for proof of nonconsent	102

Chapter

Page

VI.	Implications of Rape Law Reform	104
A.	Acceptance of rape law reform	104
B.	Impact of rape law reform on public and criminal justice system attitudes	105
C.	Impact of rape law reform on victims	107
D.	Other factors influencing reporting and criminal justice system response	108
E.	Implications for the criminal justice system	110
F.	Disposition of complaints	112
G.	Recommendations for further change	115
H.	Conclusions	119

APPENDIX

1. Tables
2. Survey Instruments
3. Codebook
4. Sexual Assault Laws:
Florida, Georgia, Michigan

TABLESPage

IV-1.	Florida Rape Law Reform: Most Important Provisions Identified by Respondents	69
IV-2.	Michigan Rape Law Reform Legislation: Most Important Provisions Identified by Respondents	70
IV-3.	Perceptions of Rape Shield Law, All Sites	71
IV-4.	Perceptions of Shield Law, All Sites	72
IV-5.	Overall Satisfaction with Rape Shield Law, All Sites	73
IV-6.	Impact of Rape Shield Law by State	75
IV-7.	Perceptions of the Rape Shield Law by State	76
IV-8.	Satisfaction with Rape Shield Law by State	77
IV-9.	Impact of Rape Shield Law by Respondent Occupation	78
IV-10.	Perception of Rape Shield Law by Respondent Occupation	80
IV-11.	Satisfaction with Rape Shield Law by Respondent Occupation	81
IV-12.	Perception of Repeal of Corroboration Requirement, All Sites	82
IV-13.	Perceptions of Repeal of Corroboration Requirement, All Sites	84
IV-14.	Satisfaction with Corroboration Requirement Repeal, All Sites	84
IV-15.	Impact of Repeal of Corroboration Requirement by State	86
IV-16.	Evaluation of Repeal of Corroboration Requirement by State	87
IV-17.	Satisfaction with Repeal of Corroboration Requirement by State	87
IV-18.	Impact of Repeal of Corroboration Requirement by Respondent Occupation	89
IV-19.	Evaluation of Repeal of Corroboration Requirement by Respondent Occupation	90
IV-20.	Satisfaction with Repeal of Corroboration Requirement by Respondent Occupation	91
IV-21.	Impact of Redefinition of Criminal Acts	92
IV-22.	Respondent Evaluation of Redefinition of Criminal Acts	93
IV-23.	Satisfaction with Redefinition of Criminal Acts	93
IV-24.	Impact of Redefinition of Force and/or Change in Resistance Standard	95
IV-25.	Respondent Evaluation of Redefinition of Force and/or Change in Resistance Standard	96
IV-26.	Satisfaction with Redefinition of Force and/or Change in Resistance Standard	96
VI-1.	Satisfaction with Rape Law Reform by Respondent Occupation, All Sites	105

CHAPTER I. INTRODUCTION

A. Rape Law Reform Objectives

The legal reforms studied in this project originated in large part during the past decade in a state by state drive to change the criminal laws applied to the crime of rape. This reform effort represents the first broadly based attempt to create a balance between preserving the rights of the accused and protecting the victims of crime within the law and the criminal justice system. As such it contributed to the concept of victim rights which emerged during the same period.

Prior to the rape law reform movement in the 1970's, there was little acceptance of the notion that victims have rights within the criminal justice system and scant recognition of the peculiar problems and needs of the victim/witness. Systemic problems, such as indifferent treatment by criminal justice personnel, lengthy delays, or lack of notification of witnesses about hearing dates, were faced by all victims of crime. But the problems of victims of sex crimes were further complicated by the nature of their victimization.¹

¹Report of the Task Force to Study the Treatment of the Victims of Sexual Assault, Prince Georges County, Maryland, March 1973.

Rape was a seriously underreported crime.² The reporting victim was likely to encounter more than indifference. Her complaint might produce suspicion or disbelief. The post-rape trauma which she experienced was likely to be misinterpreted or underestimated. Any inconsistency in the victim's story or the absence of corroborating evidence might result in dismissal of her complaint by authorities. Even in the most obvious assaults, where injury had occurred, the complainant most often found her own actions scrutinized for signs of misconduct. Frequently, she would also find her name and address appearing in the local press, jeopardizing her safety and leading to ostracism by neighbors and co-workers. The expectation of poor treatment within the criminal justice system and the community prevented many victims from reporting or caused them to withdraw their complaint after it had been made.³

For many reporting victims, the ordeal of the prosecution exacerbated and prolonged the trauma of an experience which has now come to be considered a life crisis.⁴ Delays in the process, demands to repeat details of the complaint to a variety of interviewers, and the public nature of their trial and testimony

²National Victimization Study, President's Crime Commission, 1967.

³J.B. Csida & J. Csida, "Rape: How To Avoid It and What To Do About It If You Can't," Books for Better Living, (CA: Chatsworth, 1974), pp. 92-94.

⁴A. Burgess & L. Holmstrom, "Rape: Victims of Crisis," Counseling and the Court Process, (MD: Robert J. Brady, 1974), pp. 197-219.

were simply more than many complainants could take. Each of these factors and the additional abuses and invasions of privacy experienced in the courtroom created a second crisis for the victim.

Many complainants were devastated by the effort required to prepare psychologically to relive the rape experience combined with court delays and the need to repeat their testimony at each stage of the process. As a result, some victims became poor witnesses while others lost their desire to continue cooperating with the prosecution.

The public setting of a trial may be perceived by the rape victim as stripping her of her privacy and self-respect. In front of both strangers and the accused, the intimate details of her physical violation must be related, and frequently she must explain her own behavior before, during, and after the event. This recital and the probing of the questioners can produce a sense of degradation and humiliation. Questions about the most intimate details of her personal life, attacks by the defense attorney on her character and credibility, may lead to the sense that she, rather than the accused, is on trial. For this reason, the courtroom experience has been characterized as a second assault.⁵

Before the changes in criminal justice procedure were made, there was little guarantee that going through this experience

⁵A. Burgess & L. Holmstrom, Victims of Rape: Institutional Reactions (New York: John Wiley, 1978), pp. 221-236.

would result in a conviction. A study of verdict patterns before the sexual assault law reform of the past decade found an average acquittal rate of 33 percent in all criminal cases; but a 43 percent acquittal rate in rape trials.⁶

By the early 1970's there was substantial documentation of the frequency with which victims encountered these attitudes and practices. An increasing rate of rape incidence was accompanied by an increasing "unfounding" (i.e., complaint dismissed) rate (18 percent in 1970).⁷ Criminal law continued to reflect the false reporting assumption.⁸ It was this backdrop of systemic indifference and public misconception which provided the impetus for rape law reform.⁹

The significance of the rape law reform drive of the 1970's must be viewed in relation to the situation of that time. In those years, rape victims were subjected to social ostracism. At worst, they were subjected to public belief that "good" women don't get raped and "bad" women who do get raped deserve it. At best, they were treated as if somehow defiled by the experience. Furthermore, the counseling and support services now available in every state did not exist. Rape law reform as a means of

⁶Kalven & Zeisel, The American Jury 70 (1966).

⁷F.B.I. Uniform Crime Reports (1970-1971).

⁸"The Rape Corroboration Requirement: Repeal Not Reform," 81 Yale L. J. 1365 (1972) at 1373.

⁹N. Gager and K. Schurr, Sexual Assault: Confronting Rape in America. (New York: Grosset & Dunlap, 1976).

changing social and legal opinion was not an isolated strategy. It was accompanied by efforts to establish support programs for victims and to mount public awareness campaigns.

The need for changes in rape law had long existed. Carnal knowledge statutes which derived from English common law¹⁰ were vague and presented a confusing overlap with other statutes. Certain assaultive acts were not named offenses and thus did not fall under sexual assault statutes. Judicial interpretation of the law was obviously complicated and had resulted in conflicting opinions. The carnal knowledge statutes reflected social values of a bygone era and were in direct conflict with the changing social mores of the day.

During the 1940-1960 codification of common law which occurred in many states, some attempt had been made to develop more specificity in defining the elements of the offense and to correct some of the problems existing in the standards of proof. However, in the view of some legal scholars, these efforts frequently exacerbated the problems.¹¹

In the early 1970's, several factors converged that resulted in greater pressure for legal change: growing public alarm over the increase in sexual violence, the emergence of the women's rights movement, and the increased number of women in the legal

¹⁰J. Stephen, History of the Criminal Law of England, (London: Butterworths, 1886); Clark and Marshall, A Treatise on the Law of Crimes, 7th ed. (IL: Callaghan, 1967), pp. 752-762.

¹¹"The Resistance Standard in Rape Legislation," 18 Stan. L. Rev. 680 (1966) at 682, 688.

profession. Public concern, fostered by media and press attention to the need for change, created a political climate favorable to rape law reform. Advocates came to believe that change in the treatment of rape victims by the criminal justice system must begin with the law itself. "They all said, 'It's the law.' So...we determined that [the law] was a fine place to start the process of change."¹²

The influence of women both in and out of the legal system had a profound effect on the development of new statutes and would be reflected in case law. Ultimately, however, their efforts would be made more successful both by media support and by the swelling of their ranks by a growing number of men in the criminal justice system who also supported the concept of rape law reform.

It is significant that many rape law reform proposals represented a radical departure from the legal norms in rape cases, departures not likely to have been proposed without the pressure from feminists both inside and outside the legal profession. It is equally significant that such radical proposals would not have withstood opposition from both lawmakers and the defense bar had not pro-law reform coalitions involved feminist advocates in their efforts.

¹²N. Caplan & J. Marsh, Law Reform in the Prevention and Treatment of Rape (Ann Arbor, MI: University of Michigan Institute for Social Research, 1980), NIMH Grant No. MH529532, p. 170.

By 1980, the political climate had culminated in the enactment of some measure of rape law reform in every state of the union.¹³ The process of law reform has continued as the initially limited reforms of most states are amended.

B. Research on Rape Law Reform

There has been little assessment of whether state reform measures have achieved their objectives. The rape law reform movement laid the way for further law reforms in spouse abuse, child sexual abuse, and crime victim rights. Understanding of the effects of the extensive rape law reform effort may also be useful in assessing the later law reforms which also grew out of state-level initiatives organized by reform advocates.

Michigan. Previous studies have assessed rape law reforms within single jurisdictions. The most comprehensive of these studies was done for jurisdictions in Michigan, which in 1974 was the first state to undertake sweeping reform of its rape laws.¹⁴ The study analyzed data on rape cases for three years before passage of the law reform and the three years following reform. The data indicated that there were increases in arrests and convictions as the result of reform. However, there was no change in the reporting rate for the crime.

¹³M. Lergen, "The Anti-Rape Movement Past and Present," in Rape and Sexual Assault: A Research Handbook, ed. A. Burgess, (New York: Garland, 1985), p. 10.

¹⁴Marsh & Caplan, op. cit.

Criminal justice personnel and victim advocates were interviewed in order to identify the elements of reform which they found to have the most influence on case processing. The "rape shield provision," which prohibits introduction of the victim's past sexual history, was most frequently cited as the reason that prosecutors were winning more cases. Complainant dissatisfaction with the criminal justice system was also found to be significantly less under the reform law.

California. A more limited study of rape case processing in four California counties was carried out by Mary Beard Deming in 1983.¹⁵ It evaluated the impact of California's 1975 rape shield provisions and elimination of the court's prejudicial advisement that rape is easily charged and difficult to defend against. The impact of these legal changes on the criminal justice process from law enforcement through Superior Court filing was found to be inconclusive. However, a higher proportion of those accused of rape pled guilty or were convicted, a higher proportion of cases going to trial resulted in convictions, and sentences were more substantial.

Washington. A 1981 study of prosecutions in King County, Washington by Loh¹⁶ evaluated the effectiveness of that state's sexual assault reform codes. The research found that the law

¹⁵M. B. Deming, "Rape Case Processing: Evaluation of Legal Reform" (CA: University of Southern California Social Science Research Institute, 1983). NIMH grant R01MH32677.

¹⁶W. Loh, "The Impact of Common Law and Reform Rape Statutes on Prosecution: An Empirical Study," 58 Wash. L. Rev. 129 (1980).

reform did not change the rape conviction rate. Comparison of criminal justice data before and after the law reform indicated that there was no change in the rate of charging and a slightly lower incarceration rate. Loh concluded that King County prosecutors were still using the same criteria for convictability of the defendant as they did before the law reform.

Nebraska. An unpublished study by Gilchrist and Horney in 1980 analyzed data from one county and found no evidence of a reform-related increase in the proportion of cases reaching the courts nor any increase in the conviction rate.

In 1985, University of Nebraska researchers Julie Horney and Cassie Spohn began a far more extensive study of the effect of rape law reform.¹⁷ Six jurisdictions with a variety of rape law reforms are being studied using an analysis of criminal justice data supplemented by interviews. The overall purpose of the research is to determine the degree to which rape law reforms have influenced the criminal justice system.

Through examination of data sources, the project will determine changes in reporting of rape to the police, the rate of arrests for reported crimes, the rate of filing charges for rape, the rate of convictions for persons charged with rape, and the sentencing of offenders convicted of rape. The researchers hope to differentiate the effect of the specific legal reforms from the

¹⁷J. Horney & C. Spohn, "Impact of Sexual Assault Reform Legislation." This study in progress was jointly funded by grants from the National Institute of Justice and the National Academy of Science.

effects of changes in society and its values during the same period.

The research reported here extends and builds on the studies described above in several ways. First, it separates the components of reform and identifies those components which practitioners have cited as most significant. Second, it is not limited to a single jurisdiction but covers six disparate jurisdictions in three states. Two of the states selected have comprehensive and moderate reforms while one has limited reforms. This provides the basis for determining the effect of a "total package" of reform compared with an approach based on specific reforms. The states studied here have had more years of experience under the reform laws than those reported on above which were studied shortly after their laws were changed. (The Nebraska study will also provide some more extensive post-reform experience.) It is hoped that this will provide a better basis upon which practitioners can sort out their perceptions of the impact of the reform laws. The study differs from the others also in that it is primarily based on a survey of practitioners who work with sexual assault cases.

Most previous research has attempted to evaluate rape law reform on the basis of "law and order" goals (that is, changes in patterns of arrest, prosecution, or conviction). However, the previously cited study by Marsh and Caplan of the University

of Michigan¹⁸ evaluated the significance of law reform as a part of the process of social change. The current study also recognizes the role of law reform in social change and attempts to assess its influence on a broad range of social reform goals. Besides criminal justice practitioners, it draws upon the perspectives of reform advocates themselves.

Studies of the implementation of rape law reform should be useful to advocates and policy makers considering future reform as well as to practitioners who must work with the law. The research further provides insight and guidance for victim advocates who work within the criminal justice system. Field and Bienen have commented that there is a continuing national debate about the effectiveness of rape legislation.¹⁹ It is hoped that the current study will contribute to resolving that debate.

C. Purpose of the Project

The passage of comprehensive sexual assault legislation in Michigan in 1974 was followed by legislative reform of some sort in every state. Most states have undergone substantial revision of their rape laws. The current study has been carried out in order to assess practitioners' perceptions of the impact of selected law reforms on sexual assault case reporting, processing,

¹⁸Marsh & Caplan, op. cit.

¹⁹H. S. Field and L. Bienen, Jurors and Rape (Lexington, MA: Lexington Books, 1980).

and disposition. It also explores perceptions of broader impacts of law reform on attitudes of practitioners in the criminal justice system and the general public.

Revised sexual assault statutes are intended to encourage increases in reporting of incidents. They are also directed at improving case processing methods and achieving more appropriate case dispositions.

This study examines the assumption of rape law reformers that law reform is a necessary first step in achieving long-term change in the criminal justice response to sexual assault. Under that assumption, statutory change should enhance the prosecution of cases by (1) providing the law enforcement community with more effective tools and (2) fostering social and legal climates more favorable to victims, which would result in adequate use of those tools. This assumption was tested by evaluating or assessing:

- o The degree to which the legal assumptions and social values embodied in the rape law reform concept have achieved long-term acceptance by the criminal justice community;
- o Whether victim perceptions of the criminal justice system have changed, and, if so, what effect this has had on the criminal justice system;
- o Non-legal factors which most influence reporting rates and the criminal justice response to complaints;

- o Reforms perceived by advocates and practitioners as enhancing the prosecution of cases; and
- o How principals in the criminal justice system feel their individual roles have been affected by rape law reform.

The study examines the effects of changes in sexual assault laws on six jurisdictions in three states: Florida, Georgia, and Michigan. It presents the perceptions of practitioners who work with the laws on a regular basis in the handling of sexual assault cases. Professionals in five categories -- police, prosecutors, judges, defense attorneys, and victim advocates -- were asked to assess the major elements of law reform in their state.

While several studies of relevant state laws have been conducted, this study is the first to attempt to collect data for states which have had reform legislation in effect for ten or more years. The study also isolates specific law components and determines practitioners' views regarding which laws are most essential, most effective, and most in need of further modification.

D. Study Methods

Through structured, on-site interviews, opinions of experienced practitioners were obtained regarding the reform elements of their state's sexual assault legislation. Data were collected from a sample including 151 individuals in five occupational

categories: prosecutor, defense attorney, judge, police, and victim advocate. The study was based on interviews at six sites in three states. Of the three states studied, Michigan law has undergone the most comprehensive reform, while Florida law has been subjected to "moderate" reform, and Georgia has experienced only "limited" reform.

Principals from a previous study of law reform in Michigan, Nathan Caplan and Jean Marsh, were interviewed during the development of the questionnaire used in the current study. They offered suggestions regarding survey questions in the prior study which had been difficult to administer or were unproductive. The instrument was pre-tested in Montgomery County, Maryland, and revised before implementation in the six jurisdictions studied: Atlanta and Savannah, Georgia; Jacksonville and Miami, Florida; and Detroit and Flint, Michigan. The jurisdictions studied were cities with the highest and second highest incidence of reported rape in the three states.

The questionnaire was administered by project researchers in the six locations. It was modified slightly for use at the different sites to reflect differences in state laws. Data were collected on perceived differences in case processing and changes in types of cases since passage of legal reforms. Questions also covered respondents' perceptions about the efficacy of various components of the laws. (See appendix 2 for the three survey instruments used in the survey.)

CHAPTER II. OBJECTIVES OF RAPE LAW REFORM EFFORTS

The purposes of this chapter are to describe the background of reform and its objectives and to identify the major reforms in Florida, Georgia, and Michigan, the states studied for this report.

At the outset, reform goals in these states were as diverse as the reform advocates themselves. Women's groups, the initiators of reform efforts in most states, were primarily concerned with the treatment of rape complainants in the criminal justice system. Their goal was to eliminate statutory and case law bias against female complainants to improve the treatment of victims.²⁰ Other reform advocates, primarily lawmakers and lawyers, were more concerned with effective administration of criminal justice. They desired to address vague and overlapping statutes, unrealistic standards of proof, and prohibitive rules of evidence which had long created problems in the administration of criminal law.²¹ Still a third source of encouragement for reform came from public opinion. Alarmed by increases in the incidence

²⁰C. LeGrand, "Rape and Rape Laws: Sexism in Society and Law," 61 Calif. L. R., 919 (May 1973).

²¹Battelle Law and Justice Study Center, Forcible Rape: An Analysis of Legal Issues (Columbus, OH: 1976), NILECJ Grant No. 76-NI-99-0056, pp. 2-4.

of reported rape and the poor record of the criminal justice system in arrests and convictions,²² public support for reform was primarily related to more effective deterrence.

A. Measures to Increase Deterrence: Adoption of Graded Offense Schemes

At the outset of rape law reform efforts in the early 1970's, society at large seemed more concerned with rising crime rates than with the treatment of the victim. However, the general public interest in reducing the crime rate coincided with that of advocates of victims' rights in rape law reform. The goal of reform advocates was to increase the certainty of punishment, because the threat of punishment already existing in law was considered inadequate as a deterrent to rape.²³ This belief was bolstered by research findings on juror decisionmaking²⁴ and by statistics indicating an exceedingly low arrest and conviction rate for the crime.²⁵ The traditional severity of punishment called for by laws governing the offense made it difficult to

²²Supra.

²³J. F. Ben Dor, "Justice After Rape: Legal Reform in Michigan," Sexual Assault, Ed., L. Walker & A. Brodsky (Lexington, MA: Lexington Books, 1976), pp. 149-160.

²⁴Schwartz, "The Effect in Philadelphia of Pennsylvania's Increased Penalties for Rape and Attempted Rape," 59 J. Crim. L. & C. S., 509 (1968).

²⁵Battelle Law and Justice Study Center, op. cit.

obtain convictions in rape cases.²⁶ It was believed that new statutory schemes which would more closely tailor charges and punishments to specific acts and their consequences would result in increased conviction rates. Of all of the reform goals, this one was the most speculative as there was no precedent for it in other areas of criminal law.

According to reform advocates, tailoring charges to specific circumstances of the offense would increase conviction rates by (1) increasing plea bargaining opportunities and (2) increasing the likelihood of jury convictions. States subscribing to the theory that more appropriately graded offenses would increase the deterrent power of the law were consistent in their expectations. However, there was no consensus as to the need for use of reduced sentences as a part of the grading scheme. To proponents, a system of graded offense would enhance conviction rates by overcoming juror reluctance to expose offenders in all cases to harsh punishment. To opponents, it suggested a lessening regard for the heinousness of the offense, a fact which they felt would ultimately result in still fewer convictions.

Penalty issues aside, reform advocates believed all parties would benefit from a better statutory scheme. The criminal justice system would be expected to benefit from a reduction in the time and resources necessary to process sexual assault cases. The prosecution would benefit from better administrative

²⁶Gager & Schurr, op. cit., pp. 160-166.

tools while victims were expected to benefit by the relative anonymity and speed with which their cases would be handled. Assuming the greater certainty of punishment which the grading scheme promised, the public could be expected to benefit from increased deterrence. Opposition from the defense bar was less active on this feature of rape law reform than on others. Benefits to defense were expected as well.

Graded offense schemes recognize that the majority of all criminal cases are resolved through negotiation and, in effect, propose more options for bargaining. Among reform advocates, some opposed grading schemes on the basis that plea bargaining tends to perpetrate rather than deter crime. That is, it was feared that tailoring charges might increase the practice of pleading to lower charges and result in still fewer sentences.

B. Measures to Improve the Responsiveness of the Criminal Justice System to Complainants: Standards of Proof and Rules of Evidence

Rape law reform advocates viewed legal reform as a necessary first step in improving the criminal justice responsiveness to rape complainants. It was believed that changing rules of evidence would result in improved treatment of complainants. Changing standards of proof would enlarge the scope of actionable complaints. The publicity surrounding these reform efforts was seen as improving social attitudes toward rape victims as well as victim attitudes towards prosecution.

Opponents to reform from the defense bar charged that changing rules of evidence would tend to undermine basic legal concepts, particularly the principle that, "It is better to let some guilty persons go free than to send one innocent person to jail."²⁷ Support for prosecution-oriented legal reform was dependent upon legislatures often heavily dominated by members of the defense bar. But opposition from state legislatures was frequently muted by the public popularity of the reform efforts and the careful maneuvering of legal reform advocates to press their case in election years.²⁸

If measured on the basis of simply achieving support or thwarting opposition, rape law reform efforts were unqualifiedly successful. Advocates desired to use law reform to produce social change. However, this objective would meet with mixed results.

The tasks facing legal reform advocates were formidable. Besides curtailing the discretionary powers of criminal justice professionals, the defense bar saw reforms as prosecution-oriented. In addition, proposed reforms entailed major changes in social values entrenched in centuries of law and legal tradition. According to BenDor, through changes in standards of proof and rules of evidence, reform advocates sought to substitute the subjective values of the real and potential victims of the crime

²⁷"The Impetus for Change Comes from the Women's Movement," New York Times, December 1, 1974.

²⁸Caplan & Marsh, op. cit., p. 170.

for the subjective values of the criminal justice system.²⁹ In this instance, the traditions of the criminal justice system were viewed as "a classic example of misogyny."³⁰

C. Measures to Increase the Responsiveness of the Criminal Justice System: Safeguards Against False Accusation

Traditional legal theory and practice reflected many fears and conflicting attitudes toward the crime of rape. Perhaps most of all, they reflected a belief in the prevalence of false accusations by women. At the outset of the rape law reform effort in the early 1970's, statutes and case law held such an array of "safeguards" against false accusations as to impede the criminal adjudication of many rape complaints. Throughout the development and application of these "safeguards," no legal philosophies were more influential than those of the 17th century jurist, Lord Chief Justice Matthew Hale, and the Edwardian legal scholar, John Henry Wigmore. Under the influence of these two English jurists, fear of false accusations came to permeate legal theory and practice. Hale's view that rape is "an accusation easily made, and hard to be proved, and harder to be defended by the party accused, though ever so innocent,"³¹ was reflected in American legal "safeguards" against false accusation. These

²⁹Ben Dor, op. cit., pp. 149-160.

³⁰Gager & Schurr, op. cit.

³¹M. Hale, The History of the Pleas of the Crown, 634 (1847).

are found in both jury instructions and in "resistance" standards developed to measure "nonconsent." Other safeguards reflecting this view included prompt reporting requirements and evidentiary rules requiring corroboration of the complainant's testimony.

The least adopted, but most extreme, "safeguard" has been the requirement that all rape complainants be subjected to mandatory psychiatric evaluations. The idea originated with Wigmore, who held that psychiatric examinations were necessary on the assumption that false complaints of rape frequently arise from mental disorders and therefore the truth of such an accusation could be determined only by a psychiatrist.³² The recommendation that rape complainants be subjected to psychiatric examination was endorsed by the American Bar Association's Committee on the Improvement of the Law of Evidence,³³ although it was never universally adopted by the courts.

Even in the early part of the century, most courts took the same position on this matter that the District of Columbia Court of Appeals took in 1973 when it found that mandatory psychiatric examination (1) seriously impinges upon the complainant witness's right of privacy, (2) increases the trauma experienced by the victim, (3) serves as a tool of victim harassment, and (4) deters women from reporting the crime.³⁴ Nonetheless, the

³²J. H. Wigmore, Evidence, (Chadbourn, Rev. 1970), S924A at 737.

³³Battelle Law and Justice Study Center, op. cit.

³⁴U.S. v. Benn, 476 F.2d 1127, 1131 (D.C. Cir. 1973).

fact that the concept achieved long-lived support within the legal profession suggests how distrust and in some instances the discrediting of rape complainants shaped and influenced the development of rape law.

Although psychiatric examinations of complainants was never adopted under the terms envisioned by Wigmore, the concept was applied in other forms. Prior to and even after rape law reform, many police departments and prosecutors routinely administered polygraph examinations to rape complainants as a matter of formal policy or informal practice. In some jurisdictions this practice was voluntarily halted as a result of public pressure; in others legislation was enacted to stop the practice. However, some support still remains for the concept.

Prompt reporting of the alleged rape ("immediate outcry") has been considered a major factor in complainant credibility in most jurisdictions.³⁵ Under English common law, a delayed report could justifiably create the presumption of untruth. Based on this, in some states complaints made after a specified period of time were considered unprosecutable. In other states, jurors were instructed to consider delay in reporting as a factor in assessing complainant credibility. A reverse approach was employed by a few states wherein jurors were instructed to view

³⁵Walker, "Georgia's Rape Shield Law: Aiding the Accused," GA. L. R., publication pending, at 18-19.

a prompt complaint as a form of corroboration and/or a factor in credibility. Nonetheless, whether required by statute or simple practice, a credible rape complaint was seen as one immediately reported.

In many states, rules of evidence afforded still another safeguard: the corroboration requirement. This requirement evolved through case law more than statute and reflected the fear of a miscarriage of justice.³⁶ Requirements varied by state as did the elements of the offense requiring corroboration. Acceptable corroboration has generally included physical injury to the complainant, physical evidence of intercourse, torn clothing, emotional upset and/or witnesses to the act ("immediate outcry"). Some states required corroboration of every element of the offense, while others were satisfied with corroboration of only one or more. In a few states, corroboration was not required either by statute or case law, but it generally was included in investigation of complaints.

Perhaps the most frequently applied safeguard came under the heading of establishing "proof of nonconsent." Common law required that to be considered as "rape," the act must be accomplished by force and against the will of the victim, but provided no further definition of these elements. From this omission, the "resistance standard" was born.

³⁶"The Rape Corroboration Requirement: Repeal Not Reform," 81 Yale L. J. 1365 (1972).

During the codification of common law offenses which took place in many states during the 1940's and 1950's, rape retained its common law definition, but "force" was taken to be proof of nonconsent rather than an element of the offense. Thus, an offender's use of force became significant only in relation to the victim's "consent" or "nonconsent." In determining nonconsent, many courts regarded resistance as the best evidence. There was consensus that resistance indicated nonconsent. However, there was disagreement over how much resistance would constitute nonconsent. Some states required resistance to the "utmost" (i.e., to the point of death or serious injury). However, most states tried to impose a "reasonableness standard" (i.e., considering all circumstances in the particular case). As appellate courts struggled with the problem in the 1960's, the issue of "resistance" was not resolved. But lack of resistance by the victim was found to be acceptable by the courts only if the victim was "in abject fear for her life."³⁷

Second only to concern for false accusation in its influence on rape law development was the concern that the victim could be responsible for the conduct of the accused through participation in the act. Also cited by reformers was the often expressed belief that victims in some way deserved to be victimized if it could be shown that they might have behaved immorally and/or irresponsibly.

³⁷People v. Johnson, 16 Mich. App. 765, 168 N.W.2d 634 (1969).

A related issue addressed by the reform movement was the admissibility of evidence concerning a complainant's prior sexual conduct. In common law, where a complainant was over the age of consent, prior sexual behavior could be considered admissible as evidence regarding the complainant's consent and credibility. On this basis, information about the complainant's background could be introduced at the discretion of the trial judge. In some states, a reputation for "unchaste" character or behavior was deemed relevant to show consent or to "impeach" the complainant's credibility. In other states, "specific types of conduct were taken to show a scheme, a plan, or some form of premeditation."³⁸

In the view of some rape law reform proponents, the practice of admitting background information about the accuser as evidence in trial contradicts the legal premise that all persons regardless of character or other factors are protected from forcible intercourse. The practice suggests that "some persons are outside the scope of the law's protection."³⁹ Of all elements of rape law to come under attack by law reform advocates, perhaps this one most reflects the conflict arising from traditional views of women and female sexuality, changing sexual mores, and demands for equal rights under the law.

³⁸New Responses, Inc., "Sex Offense Statutes by State," Ed. M. A. Largen, Washington, DC, 1980.

³⁹Testimony of Professor Virginia B. Nordby before the Michigan State Legislature, 1974.

The traditional safeguards against false accusation based on common law were believed by reformers to undermine the legal system. In addition, they were found to: (1) discourage reporting and victim cooperation with the criminal justice system, (2) impede the prosecution of cases, and (3) contribute to a high acquittal rate.

Legal reform proposals were directed to repeal of existing state law. Where the prompt reporting requirement existed, repeal was sought on the grounds that it was discriminatory and unrealistic. A growing body of empirical research showing a myriad of reasons for "delayed reporting" (e.g., shock, fear of retaliation, shame, family pressure, etc.) was cited. Repeal of the corroboration requirement was also sought. Arguments for repeal were based partly on grounds of discrimination toward rape complainants (i.e., raising substantial equal protection issues)⁴⁰ and partly on empirical data showing the improbable nature of such a requirement (e.g., the frequent lack of corroborating witnesses, physical injury, etc.). Further, the rule was cited as having an adverse impact on criminal conviction when applied.⁴¹

Reformers also sought to ban the judicial practice of cautionary jury instructions on the basis that it constituted denial of equal protection on the basis of sex. It was also held to represent

⁴⁰Ibid.

⁴¹Battelle Law and Justice Study Center, op. cit., pp. 2-4.

judicial intrusion into the traditional role of the jury as "tryer of facts" and judge of complainant credibility.

Reformers also argued for elimination of the resistance requirement. Rape was cited as the only violent crime requiring prosecution proof of victim resistance.⁴² It was argued that this requirement imposed an obligation on victims which could further endanger their safety. Use of force, as a constituent element of the offense, was held by the reformers as sufficient to imply victim resistance.

The reformers sought rulings against introduction of information concerning a complainant's past sexual conduct as evidence. The practice of obtaining such background information during investigation was cited as a primary obstacle to improved victim treatment. It was also charged that such information was irrelevant to the case as well as prejudicial and inflammatory. Under the resulting "rape shield law," information about past conduct of the complainant would be ruled inadmissible as evidence of consent subject to certain procedural rules.

The rape shield law was vigorously opposed on grounds of abridgement of the defendant's Sixth Amendment right to confront his accuser (i.e., guaranteed right to cross examination). Proponents argued that there is no constitutional right to the introduction of irrelevant information. (In some instances, information relevant to prosecution has been ruled inadmissible

⁴²"Rape Reform Legislation: Is It the Solution?" Clev. St. L. Rev. 463 (1975).

evidence.) Advocates argued that public interest in protecting complainants and the integrity of the trial process supercedes defense interests. They argued that past defense abuses of cross examination and the trial process made policy change necessary.

Perhaps even more than statutory schemes defining criminal acts and elements of the offense, these changes in standards and rules represented a change in social values. Reform advocates held that these changes would bring the treatment of sexual assault more in line with the treatment of other felonies.

In Michigan, advocates were not unrealistic in their expectations of law reform. They recognized both the potential solutions and limitations of law reform in correcting systemic problems,⁴³ and they saw law reform as but one necessary component of a planned, total, social intervention which also included public education and support services for the victims of the crime.

D. Measures to Replace Common Law Statutes

1. Model statutory schemes. As of 1985, 38 states had repealed their common law statutes, replacing them with a new statutory scheme of graded offenses with commensurate penalties. Many of these statutory schemes have broadened the concept of rape to include acts or behaviors not included under previous statutes, to reject the presumption of exclusively male perpetrators and female victims, and to disallow spousal exemption from prose-

⁴³Ben Dor, op. cit., pp. 149-160.

cution. In a number of states the term "rape" has been replaced with terms such as "sexual assault" or "sexual battery" which stress the assaultive nature of the offenses.

There is great diversity in the nature of these new schemes. Some represent no more than a unification of previous offenses under a new label. Others retain common law offenses while incorporating some portions of the Model Penal Code.⁴⁴ Still other states are patterning their approach after the criminal circumstance model first adopted by Michigan, the assault and battery model adopted by Florida, or the resistance model adopted by Washington state. A surprising number of states adopted a mix of concepts and standards embodied in all these models.

The "criminal circumstance" and "assault and battery" models have had the greatest influence on rape law reform. Conceptually, the latter model represents an attempt to treat rape as assault and battery. The emphasis in these statutory schemes is on actual or potential physical harm to the victim. Grading of offenses is related to the degree of force used or potential harm. In some states, the standard for "personal injury" includes psychic trauma; in others, bodily injury only. Most retain an explicit or implicit "consent" standard and/or a broad "resistance" standard.

The "criminal circumstance model" represents the most radical departure from common law rape statutes. The emphasis in statutory

⁴⁴American Law Institute (1962).

schemes based on this principle is on a range of conduct considered coercive and unacceptable. That is, a "criminal circumstance" law proscribes sexual penetration or contact occurring under circumstances which presume criminal intent and lack of consent. Grading of offenses is based on a precise delineation of those circumstances and the danger which they pose to the victim. Under this statutory scheme, consent is not considered an element of the crime and the resistance standard is eliminated expressly or by omission.

Regardless of the statutory scheme adopted, the new degree structures which dictate penalties generally reflect an attempt to better tailor the punishment to fit the offense. Under common law, only crimes of carnal knowledge were punished. Other crimes against children and men were punished on a downward scale indicating a perceived lesser seriousness of the offense. Under the reformed statutory schemes, more criminal behaviors are recognized, and the degree of each offense is usually determined by aggravating factors.

Some states adopted the "Model Penal Code" approach in the creation of their degree structures. Under this approach, penalties are graded on the basis of perceived dangerousness of the offender's conduct. Aggravating factors under this approach rest almost exclusively on the real or potential harm to the victim. Other states adopted the "Michigan model" under which gradation of penalties is based, first, on the nature of the

conduct (e.g., sexual penetration vs. sexual contact) and, second, on the dangerousness of the conduct.

The redefinition of criminal acts, creation of degree structures, and gradation of penalties were intended to increase the potential for jury convictions and more effective plea bargaining. Under some statutory schemes, this was to be accomplished primarily by allowing prosecution of cases which previously would have been considered marginal. In others, this was to be achieved through penalties reduced or otherwise tailored to make them more appropriate to the offense. Some states combined these factors. The actual restructuring of the law was intended to increase the deterrent potential of the law. The actual realization of that potential would come only through proper application of the law.

2. Prompt reporting requirements. As of 1980, "prompt reporting" as a condition of prosecution had become a relatively moot issue in the law and practice of all states.⁴⁵ In most states, a statutory repeal was enacted while in a few states repeal of the corroboration rule voided the application of a prompt reporting requirement. Today, the closest approximation of a prompt reporting requirement exists in Hawaii's law prohibiting prosecution of offenses reported 90 days or more after the fact. "Prompt reporting" remains an issue only where courts have held the timing of a complaint to be a factor in juror assessment

⁴⁵New Responses, Inc., op.cit.

of complainant credibility. In Texas, corroboration may be required in statutory rape cases resulting from delayed complaints (six months after the fact).

3. Cautionary instructions. The so-called "Lord Hale Instruction" has now been abolished in every state where it previously had statutory authorization. A few states continue to follow case law guidelines permitting the issuance of instructions admonishing jurors to evaluate the complainant's testimony with special care due to the difficulty of determining truth.⁴⁶ Most states, however, now rely on standard instruction.

4. The corroboration requirement. By 1980, states with statutory requirements of corroboration had repealed the rule.⁴⁷ States without previous corroboration rules left new statutory schemes silent, carrying forward the prior case law rule that corroboration is not required. Fewer than six states have retained some formulation of a corroboration rule by case law, with such rules applied only to certain circumstances arising from charges of criminal sexual contact or statutory rape. In an unusual move to halt the custom practiced in some states despite legislative repeal of the law, a few states explicitly stated a "no corroboration rule" in their new statutes.

The degree to which the corroboration rule has been repealed represents a symbolic victory for reform. Repeal reversed a

⁴⁶Gager & Schurr, op. cit., pp. 160-166.

⁴⁷Wigmore, op. cit., Sec. 2061.

trend toward making sexual assault the only crime, other than perjury, for which corroborating evidence was necessary to support a conviction. The rule had been found by Wigmore himself to be of "miniscule practical value" in guarding against false accusations. Nonetheless, the corroboration rule symbolized most dramatically for reformers the courts' fear of false accusation. Repeal of the rule equally symbolized a dramatic rejection of the premise permitted the defense in sexual assault cases that women are less credible witnesses than men.

5. The resistance standard. As of 1980, nine states had, by statutory expression or omission, eliminated resistance as an element of prosecution proof of force or nonconsent.⁴⁸ By the same time, 26 states had adopted a relative resistance standard, while 13 still required victim resistance as proof of nonconsent.⁴⁹

Of those states adopting a "relative resistance standard," the majority find the standard satisfied when victim resistance is prevented by threats of bodily harm or threats that would "prevent resistance by a person of ordinary resolve." In some of these states, the threat can be "constructive," and threats to a third person suffice to induce submission. A few states find the standard satisfied by whatever level of resistance is reasonable under the circumstances of the offense, and others find the existence of threat sufficient to prevent resistance

⁴⁸New Responses, Inc., op. cit.

⁴⁹Ibid.

only when accompanied by the power to execute the threat. The statutes and case law of at least two states are silent on the issue of "resistance."

State actions on proposals to eliminate the resistance standard indicate a failure of victim advocates to totally redefine the concept of "criminal acts" from the victims' perspective or to impose new social values on the criminal justice system. The fundamental disparity between the victim's view of force and nonconsent and the criminal law view remains for the most part intact. The majority of the states rejected the notion that a show of force implies nonconsent. In maintaining the need for a separate showing of nonconsent, most states simply carried forward the resistance standard as a means of testing "nonconsent."

Those states that adopted a "relative" resistance standard also rejected the notion that consent begins at the moment resistance ends. Some states now find that consent induced by injury or threats of harm does not constitute legal consent to the act.⁵⁰ Others define resistance as such action that is reasonable under the circumstances. To the extent that the majority of states have now adopted a (relative or modified) standard of reasonableness which does not impose an explicit risk to victim safety, the reform goal of fairer treatment of victims has met with some success. But, the larger goal of removing sexual assault from

⁵⁰New Responses, Inc., op. cit.

its unique position as the only crime where victim consent relieves defendants from criminal charges has not yet been realized.

6. The rape shield law. On the face of it, this new rule was the most successful of all the reform efforts. It is the only reform to have been enacted by all 50 states.⁵¹

Rape shield laws have clearly reversed the common law premise that prior sexual behavior by the complainant (presumptively) constitutes admissible evidence at trial. Nonetheless, because the introduction of such evidence was usually related to the legal element of consent, the extent to which a state's shield bars evidence is shaped by the place of the consent element in each state's statute. Exceptions to shield laws range from the narrow exception of evidence concerning a prior relationship with the defendant to a broad statute permitting judicial discretion in determining admissibility. The more criminal acts are defined in terms of conduct presuming lack of consent, the more restrictive the shield law. The more criminal acts are defined in terms of force and nonconsent, the broader the exceptions to the shield.

Like the "corroboration repeal," the widespread enactment of rape shield laws was a major symbolic victory for victim advocates. Perhaps more than any other element of reform, it reflected the incorporation of less judgmental social values in public policy, and it ended the implied exclusion of the

⁵¹Ibid.

law's protection for certain classes of victims. The practical significance of the widespread adoption of rape shield laws lies in the potential for keeping trials focused on relevant issues and maintaining decorum in the courtroom.

E. Implementation of Reforms

Most elements of rape law reforms that have been enacted have served as the basis for numerous appeals to state appellate courts, although challenges have lessened in recent years. The most common challenges resulted from the newly enacted grading schemes and the rape shield laws. In the case of grading schemes, most challenges were on the grounds of unconstitutional vagueness or overly broad language. In the case of shield laws, most challenges have been based on violation of the Sixth Amendment right of confrontation. A third element of law reform resulting in numerous appeals has been the repeal of marital immunity.

To date, the courts have consistently held that the new statutory schemes meet the requirements of the due process clause and are neither unconstitutionally vague nor overbroad. Rape shield laws have been held as not constituting an abridgement of the defendant's right of confrontation, while repeal of spousal immunity has been upheld. In the latter case, courts have generally found marriage to be no bar to prosecution.

Few challenges to statutory language appear to have gone beyond the appellate court level, while challenges to rape shield statutes have now gone to the State Supreme Court in a number

of states. Most state courts have avoided the Constitutional question, focusing instead on the relevancy of evidence in the case at appeal. However, in 1984, the Michigan Supreme Court held the Michigan rape shield provision as constitutional on the face of it.⁵² This ruling is particularly significant as the Michigan shield is considered one of the most restrictive in the nation.

⁵²People v. Hackett and People v. Paquette, 421 Mich. 338, N.W.2d (1984); People v. Arenda, 416 Mich. 1, 330 N.W.2d 814 (1982).

CHAPTER III. OVERVIEW OF THE SURVEY

A. Site Selection

The research design provided for the study of two jurisdictions per state in three states. A guiding principle in selecting the three states was to provide at least one comparison of the impact of comprehensive reforms versus limited reforms. In considering potential sites, information on seven factors was reviewed:

1. The specific elements included in states' reform legislation;
2. The degree of reform (the states were classified as comprehensive, moderate, or limited for this purpose);
3. Receptiveness of local practitioners to the study;
4. Geographic location;
5. The number of reported rapes and cases filed;
6. Availability of data on sexual assault reporting and case processing; and
7. The date of passage of the rape law reforms. It was considered essential for a state to have had several years' experience under a law before assessment would be feasible.

Information on each of these factors was collected through

a review of the statutes and telephone interviews with knowledgeable individuals in the states. A group of 11 potential states was identified and final selection narrowed this group to three: Georgia, Michigan, and Florida. Michigan and Florida have enacted more comprehensive changes in their sexual assault laws. In Georgia the reforms are limited. The cities selected process the largest number of sexual assault complaints in their states.

Georgia enacted a rape shield amendment to its rape statute in 1976 and a statutory repeal of the corroboration requirement in 1978. This places Georgia among the earliest states to enact rape law reform, but the legislative reform was essentially limited to the two statutory amendments. The fact that Georgia has enacted no further amendments to its criminal code makes it easier to evaluate the processing of rape cases before and after law reform. Further, the extremely selective nature of Georgia's reform offers a unique opportunity to (1) compare the processing of rape cases under primarily common-law statutes with drastically new or amended statutes and (2) evaluate the significance of a singular, albeit major, legal reform as compared with complex, overlapping legal elements of reform.

Michigan was the first state to complete comprehensive reform of its statutes -- early in 1974. As such it has the longest period of post-reform sexual assault processing to examine. Michigan was targeted for study in part because the state's experience under the law was studied in the late 1970's, and the current research offers an opportunity to make an assessment

of the longer range influence of the law and determine whether its initial promise has been borne out.

Florida sexual assault law was also reformed in 1974. The reforms are comprehensive, and the crime is now defined as sexual battery.

In each state, the two jurisdictions with the highest number of reported sexual assaults were designated for study. The jurisdictions are:

Georgia: Atlanta/Decatur; Savannah

Florida: Miami; Jacksonville

Michigan: Detroit; Flint

B. Demographics

The data base for the project was created through a survey of 151 respondents in six counties in Georgia, Florida, and Michigan. The sample consisted of prosecutors (32), defense attorneys (31), judges (31), police officers (25), and victim advocates (32). Fifty-six percent of the respondents were male and 44 percent female. Female respondents were most heavily represented in the victim advocate category. Although the number of respondents is relatively small, in some of the cities they constituted a significant portion of the city's criminal justice personnel.

Because the study dealt with the effect of legal change, it was deemed relevant to interview some respondents with lengthy work experience. A surprisingly large proportion, 59 percent

of those surveyed, had worked six years or more on their current job. Thirty-four percent of the respondents had, in fact, handled sexual assault cases before the laws were reformed.

Most respondents had had no experience in the criminal justice system prior to their current job, but those who did were most likely to have served as defense attorneys or prosecutors. The majority of those surveyed had received no special training in the processing of sexual assault cases nor had they attended conferences on the subject.

C. Case Studies

Both the lawmaking process and features of enacted rape law reforms were of interest to early analysts. The most extensive analytical report was published by the U.S. Department of Justice in 1976.¹ Less than two years after the first legislative enactments, that report attempted to detect early patterns of success or failure and urged caution in enacting law reforms. A primary concern was the speed with which rape law reform was occurring; in addition, the report suggested that proceeding with the legislative, rather than the "more thoughtful and deliberate" common law, process would produce laws reflecting confusion and uncertainty. A backlash against rape victims was predicted, particularly in the event the law reforms were found to be unconstitutional.

Ten years have now passed, and it is possible to examine

¹Battelle Law and Justice Center, op. cit., pp. 2-4.

these concerns in the light of the decade of experience under the laws. This study looks at three rape law reform models which reflect a range of criminal laws now applied nationwide. From the experiences of these states, the validity of concerns about lawmaking process can be tested. From the substantive law differences in these models, some indications can be drawn as to the significance of substantive law in meeting generalized rape law reform goals.

The project's primary source of information on the efficacy of rape law reform is the perceptions of criminal justice practitioners and victim advocates. These respondents were asked to assess specific elements of law reform. In order to provide a basis for evaluating the survey findings presented in Chapter IV, the following section reviews current state codes covering sexual assault as well as major case law decisions in each of three states studied.

D. Rape Law Models

The three states chosen for this study represent three different rape law models: (1) a common law model, (2) a sexual battery model, and (3) a criminal circumstance model. Georgia law, the "common law" model, developed primarily through the lawmaking process of aggregate judicial opinions evolving from individual cases. Current Georgia law retains the common law elements of the offense but with a modified force and resistance standard. A legislatively enacted rape shield law and legislative

repeal of cooperation requirement rules are an adaptation of case law.

Florida law, the "sexual battery" model, developed through the legislative process producing a statutory law reflecting generalized cases. The sexual battery model is based on traditional assault and battery concepts, but shares little with those statutes except an emphasis on the degree of force applied and the potential harm resulting from the act. Current law eliminates rape as a specific crime, creating a new crime of sexual battery with common law elements. Rules of evidence are carried forward from case law. Penalties are graduated on the basis of force and potential harm.

Michigan law, the "criminal circumstance" model, also resulted from the legislative lawmaking process. This model originated with the state of Michigan and had no precedent in any other statute. Under the criminal circumstance model, rape has been redefined as sexual conduct occurring under circumstances which include criminal intent and lack of consent. The objective standard by which criminal conduct is determined is the commission of sexual penetration or contact under specified circumstances. The presumption of nonconsent voids the resistance standard and overturns the case law rule that prior sexual conduct evidence is admissible on this issue. The case law rule on corroboration is carried forward by statute, and penalties are graduated on the basis of aggravating factors.

These models do not reflect in specificity the rape law

reform features of every state. They do, however, reflect the continuum of law reform process and reform features. At the most conservative end, the Georgia model, based on a combination of legislative intervention and case law, retains common law elements of the offense with some relaxation in standards of proof. In the middle, the Florida model, also based on a combination of legislative intervention and case law, retains most common law elements, but broadens the definition of the offense. There is some relaxation in proof standards, and penalties are graduated on the basis of "dangerousness." At the opposite end of the continuum is the Michigan model, based almost exclusively on legislative intervention. This model is a major departure from common law, redefining criminal acts in a literal, rather than symbolic, fashion. Its hallmark is broader standards and more objective criteria than allowed under common law. Penalties are graduated first on the basis of conduct; second on the basis of dangerousness.

The most significant difference between the criminal circumstance model and the other models is the delineation of "criminal circumstances." Under the common law model, the crime is defined in terms of sexual intercourse, lack of consent, and criminal intent. Victim resistance, relative to force, is a standard by which nonconsent is tested. Evidence of prior sexual conduct is admissible to show inference of consent. The sexual battery model attempts to redefine sexual intercourse, but retains lack of consent and criminal intent. Resistance relative to force

is a test of nonconsent, and past sexual conduct evidence is admissible to show inference. The criminal circumstances model redefines criminal acts by the delineation of dangerous criminal circumstances wherein lack of consent is presumed. With consent no longer an element of the crime, resistance is not necessary to show nonconsent; mistake as to consent is not relevant; and prior sexual conduct becomes irrelevant and inadmissible on that issue.

1. Georgia. Georgia law remains an amalgam of both old and new legal concepts. Of the three approaches studied, Georgia law reflects most the traditional common law rules and definitions which have been abandoned by most states over the past decade.

The state of Georgia has traditionally maintained a common law definition of rape as unlawful carnal knowledge of a female by force and against her will. The crime of rape occurs when there is an application of force regardless of whether the victim is determined to be over the age of consent. The distinction between male and female under Georgia rape law is to "serve the public purpose of preventing sexual attacks upon women, with the resulting physical injury, psychological trauma, and possible pregnancy."²

The elements necessary to prove rape (i.e., penetration, force and nonconsent) have remained unchanged aspects of Georgia law; but in recent years the courts have liberally defined these

²Lamar v. State, 243 Ga. 401, 254 S.E.2d 353, appeal dismissed, 44 U.S. 803, 100 S. Ct. 23, 62 L. Ed. 2d 16 (1979).

elements. Force and penetration remain essential elements of rape. However, in 1974³ and 1981⁴ decisions, the courts held that penetration need only be slight and that emission is not required as a constituent element of rape. Further, a 1972 ruling held that actual application of force is not required in cases involving adult victims.⁵ The threat of serious bodily harm is sufficient to constitute force under Georgia law. Rulings in 1977,⁶ 1979,⁷ and 1981⁸ further broadened the definition of "force" to include intimidation and constructive force. At present, assault or assault and battery are deemed as necessarily involved in rape cases⁹ and "against her will" synonymous with "without her consent,"¹⁰ but not synonymous with "forcibly."¹¹ The element of force negates any possible mistake as to consent. Nonconsent is measured by a standard of resistance relative to the force involved in the offense.

The rule that corroborative evidence is necessary to support

³Payne v. State, 231 Ga. 755, 204 S.E.2d 128 (1974).

⁴Jackson v. State, 157 Ga. App. 604, 278 S.E.2d 5 (1981).

⁵McNeal v. State, 228 Ga. 633, 187 S.E.2d 271 (1972).

⁶Drake v. State, 239 Ga. 232, 236 S.E.2d 748 (1977).

⁷Collins v. State, 243 Ga. 291, 253 S.E.2d 729 (1979).

⁸Walker v. State, 157, Ga. App. 728, 278 S.E.2d 487 (1981).

⁹Hardy v. State, 159 Ga. App. 854, 285 S.E.2d 547 (1981).

¹⁰Ibid.

¹¹Hill v. State, 246 Ga. 402, 271 S.E.2d 802 (1980), cert. denied; 451 U.S. 923, 101 S. Ct. 2001, 68 L.Ed.2d 313 (1981).

a conviction for rape was established in 1904 by Davis v. State.¹² This corroboration requirement was incorporated into the 1968 recodification of Georgia criminal laws.¹³ However, soon after, the courts again applied a liberal interpretation to the corroboration requirement. The principle stated in Davis was that each element of the offense must be corroborated. Through numerous rulings recognizing the inapplicability and/or futility of such a rule, a "mere scintilla" of corroboration on any element of the offense was ultimately deemed sufficient. In 1978, the Georgia General Assembly formally repealed the corroboration rule on the grounds that the usual safeguards applied to other criminal cases were sufficient in rape cases.¹⁴

In some states, the rape shield law was the exclusive invention of legislators. However, the Georgia shield law actually evolved out of case law. Unlike the process in other states, in Georgia the statutory rule overturned the case law rule. In the early 1900's, Georgia adopted the English common law rule permitting the introduction of evidence concerning the character reputation of a rape complainant but not specific acts of unchaste behavior. Forty years later,¹⁵ this position was modified to allow cross

¹²Davis v. State, 120 Ga. 433, 48 S.E. 180 (1904).

¹³The corroboration requirement did not control verdicts at the trial level, but was used to facilitate reversal on appeal.

¹⁴Baker v. State, 245 Ga. 657, 266 S.E.2d 477 (1980); and Stallworth v. State, 150 Ga. App. 766, 258 S.E.2d 611 (1979).

¹⁵Andrews v. State, 196 Ga. 84, 26 S.E.2d 263, cert denied, 320 U.S. 780 (1943).

examination of the complainant on specific acts when the defense was consent. In 1951, the Georgia State Supreme Court overturned this rule¹⁶ and then reversed itself four years later.¹⁷ Finally, in 1974, the Supreme Court once again reversed itself,¹⁸ holding that evidence concerning specific acts of prior sexual behavior with any other than the accused was inadmissible to show consent or for impeachment purposes. The Court reasoned that consent in one instance did not imply consent in another, and, as a matter of policy, such evidence constituted an unwarranted confusion of the issues and was prejudicial toward the complaining witness. Lynn v. State of Georgia remained the case law in Georgia until 1976 when the Georgia General Assembly enacted a rape shield statute which overturned it.

As currently written, the Georgia rape shield law prohibits the introduction of evidence pertaining to the past sexual behavior of the complainant, including, "but not limited to," evidence concerning marital history, mode of dress, general reputation for promiscuity, nonchastity, or sexual mores contrary to the community standards. There are, however, two exceptions to this rule. Subject to the procedural rules of the statute,¹⁹

¹⁶Teague v. State, 208 Ga. 459, 67 S.E.2d 467 (1951).

¹⁷Fradv v. State, 212 Ga. 84, 90 S.E.2d 664 (1955).

¹⁸Lynn v. State, 231 Ga. at 559, 203 S.E.2d at 222 (1974).

¹⁹Procedural rules call for (1) defense notifications of the court of its intent to introduce evidence under the exceptions, (2) an in camera hearing to examine the offer of proof, (3) followed by court order as to what evidence may be present in what manner.

evidence of past sexual behavior involving participation by the accused may be offered. Likewise, past sexual behavior with others besides the accused may be introduced when it is seen as supporting an inference that the accused reasonably believed consent by the complaining witness. The statute does not specify whether past behavior with others is admissible for impeachment purposes; nor does it specify to which phases of trial the shield may be applied.

The resolution of these vagaries came through court examination of legislative history in one instance. In a 1981 case, Singleton v. State²⁰ the Georgia Court of Appeals concluded that the shield law applies to all phases of trial. The impeachment issue was resolved in 1984 after a number of conflicting rulings by the Georgia Supreme Court.²¹ In 1984, in Villafranco v. State, the court held that evidence inadmissible under the rape shield law was admissible for impeachment purposes.

Even more recently, the Supreme Court resolved still another issue of vagueness under Georgia law. The silence of the Georgia statute on the issue of marital exemption gave total discretion to local jurisdictions in deciding whether to prosecute rape of a spouse. In Warren v. State,²² the state's right to prosecute was challenged on the grounds that there exists within the statute

²⁰157 Ga. App. 192, 276 S.E.2d 686 (1984).

²¹Villafranco v. State, 252 Ga. 188, 313 S.E.2d 469 (1984).

²²Ga. Sup. Ct., Docket no. 42545 (November 6, 1985).

an implicit marital exemption that "makes it legally impossible for a husband to be found guilty of raping his wife." According to the contractual theory (proposed originally by Lord Hale), marriage is a contract under which a wife is bound to provide sex for husband.²³ After examining this belief, the court found that the Georgia statute did not include any such exemption and rejected the contractual theory as the basis for claims of marital exemption.

While Georgia has been among the very small number of states (mostly southern) to reject many of the elements of rape law reform adopted by other states, it is interesting to note that some of the concepts embodied in other states' reforms also appear in Georgia law. The state has not undertaken a redefinition of criminal acts, with its attendant creation of a degree structure. But it has redefined the element of force, which is significant to the prosecution of many rape cases. Further, while it maintains a traditional "grading scheme" of offenses (e.g., a designation of some offenses as more serious than others), conceptually this scheme is weighted on the form of the offense and the extent of force used. In this regard, Georgia law reflects the grading schemes adopted by several states in their new degree structures. The difference remains primarily in the fact that Georgia penalties remain higher than those in most of these states.

The concept of "gender neutralization" (i.e., the applicability

²³Hale, op. cit.

of a law to victims and perpetrators without regard to their sex) appears in sections of Georgia law other than the Sec. 16-6-1 rape offense. Under statutes covering sodomy, child molestation, incest, and sexual assault against persons in custody statutes, the pronouns "he" and "person" are interchangeably used to describe the actor while "person" is consistently used to describe the victim. The incest statute specifically identifies both men and women as "actors," but strangely limits the offense to one of opposite sex interaction. The most recent statute on sexual assault of persons in custody adopts the specific gender-neutral language used by other states in their sexual contact statutes.²⁴

2. Florida. Prior to 1974, rape in Florida was subject to prosecution under a carnal knowledge statute. The common law crime of rape was composed of three essential elements: carnal knowledge, force, and commission of the act without consent or against the will of a female 10 years or more of age. Force and consent were not material to statutory rape. However, conviction for statutory rape could not stand where the state failed to prove the victim was of previous chaste character.²⁵ The former law maintained the common law presumption that a male under 14 years of age was incapable of committing the crime of rape. Lesser offenses included assault with intent to rape, assault and battery,

²⁴Code 1981, Sec. 16-6-5.1, enacted by Ga. L. 1983, P. 721, Sec. 1.

²⁵Wright v. State, App. 199 So.2d 321 (1967).

and bare assault.

Penetration, however slight,²⁶ was a necessary element of "rape," although emission was not essential.²⁷ The element of force was defined as both the actual application of force and the instillation of fear sufficient to overcome resistance.²⁸ Sufficiency of intimidation was assessed on the basis of such considerations as the strength and physical development of the complainant as well as evidence or lack of evidence of injuries and other factors.²⁹ Under case law the testimony of a complainant need not be corroborated.³⁰ But jurors were cautioned to rigidly scrutinize uncorroborated testimony.³¹

Evidence concerning the complainant's character and reputation were subject to the "Williams rule" test of admissibility. Under this rule, prior sexual conduct of the complainant was admissible only if determined to be relevant to some issue of the case at trial. As applied by the Florida courts, evidence of specific acts by the complainant with others in addition to the accused were inadmissible unless the defendant alleged

²⁶Ellis v. State, 25 Fla. 702, 680o. 768 (1890).

²⁷State v. Bowden, 154 Fla. 511, 18 So.2d 478 (1944).

²⁸Drawdy v. State, 97 Fla. 367, 120 So. 844 (1929).

²⁹Lason v. State, 12 So.2d 305 (1943).

³⁰Trulock v. State, 108 So.2d 748 (1959).

³¹Newman v. State, 196 So.2d 897 (1967).

promiscuity.³² However, testimony as to the general reputation and character of the complainant was usually admitted where the defense was consent.³³

Florida trial courts have traditionally utilized standard jury instructions. It is, however, the only state in this study where attempts to invoke the "Lord Hale cautionary instructions"³⁴ were made through the higher courts. In Doyle v. State, an 1897 opinion of longstanding importance, the court determined that, "There is no rule of law that the jury must receive with more than ordinary doubt and suspicion the evidence of the prosecutrix in rape cases...."³⁵ This policy would remain in effect until the 1970's.

In 1974, the Florida State Legislature repealed the former rape and carnal knowledge statute, replacing it with a composite, gender-neutral, sexual battery law.³⁶ The statutory scheme established under the new law redefines "carnal knowledge" and includes a grading scheme of sex offenses against both adults and minors. Penalties were graduated according to the degree of force and/or injury present in each offense.

To prove sexual battery, the state must show that the victim

³²Huffman v. State, App., 301 So.2d 815 (1974).

³³Nickels v. State, 90 Fla. 659, 106 So. 479 (1926).

³⁴Hale, op. cit.

³⁵Doyle v. State, 39 Fla. 155, 22 So. 272, 63 Am. St. Rep. 159 (1897).

³⁶Fla. Stat. Ann., 794.011 to .022.

is over the age of 12 years,³⁷ did not consent, and was forced to submit to sexual penetration. Desire for sexual gratification is not a necessary element when the act is accomplished by a bodily organ,³⁸ but it is a necessary element when accomplished with a foreign object.³⁹ "Nonconsent" remains an essential element in the 1974 law determining whether a crime was committed, but the courts subsequently determined that the issue of "consent" is unique to each individual and each situation.⁴⁰ Consensual intercourse with an unchaste person under the age of 12 years is not a crime of sexual battery while marital rape is.⁴¹ The Florida statute is silent on the subject of marital rape, but a 1981 ruling that there is no common law interspousal exception⁴² was reinforced by a 1984 ruling that the fact of marriage carries with it no implied consent.⁴³

Under the new statutory rules of evidence, the testimony of the victim still need not be corroborated in a prosecution from sexual battery. Further, case law affirms the application of this rule, but cites it as limited by the proposition that

³⁷A 1984 amendment raised the age of consent from 11 to 12 years.

³⁸Monarca v. State, App. 412 So.2d 443 (1982).

³⁹Hendricks v. State, App. 360 So.2d 1119 (1979), cert. denied, 366 So.2d 881 and cert. denied, 99 S.Ct. 2411, 441 U.S. 964.

⁴⁰Hufham v. State, App. 400 So.2d 133.

⁴¹Lanier v. State, App. 3 Dist. 443 So.2d 178 (1983).

⁴²State v. Smith, App. 401 So.2d 1126 (1981).

⁴³State v. Rider, App. 3 Dist., 449 So.2d 903 (1984).

the victim's testimony must be "carefully scrutinized to avoid unmerited conviction when the victim is the sole witness to the crime." On this basis, lower court convictions can be overturned when higher courts determine the uncorroborated testimony of the victim was insufficient to establish the defendant as the perpetrator of the crime.⁴⁴

The Florida rape shield law is essentially a carryover of the case law rule from the (pre-1974) carnal knowledge statute. In general, evidence of specific consensual sexual activities between the victim and other persons is inadmissible except (1) to prove the defendant was not the source of semen, pregnancy, injury or disease; and/or (2) to establish a pattern of frequent and repetitious conduct or behavior on the part of the victim which implies consent in the current case. As with the shield laws of the other states in this study, the relevance of such evidence must first be established to the court by an in camera proceeding. Reputation evidence alone is inadmissible in a trial for sexual battery.

Following the pattern established by most states, dispute over relevancy of evidence has been the source of numerous appeals since the earliest years of enactment. It was not until recent years, however, that appeals have been brought on the grounds of denial of the defendant's Sixth Amendment right to confrontation.

⁴⁴Tibbs v. State, 337 So.2d 788 (1976) appeal after reman 370 So.2d 386, affirmed 397 So.2d 1120, affirmed 102 S.Ct. 2211, 457 U.S. 31, 72 Ill.Ed.2d 652. (Disapproved by the same court in 1981).

In two cases,⁴⁵ the courts addressed themselves to the constitutional application of the shield based on relevancy of evidence but not the broader constitutional question.

Since enactment of the sexual battery law, with its statutory declaration that no corroboration is required, the dispute appears to have intensified over the issuance of jury instructions in noncorroborated sexual battery trials. Trial court judges retain the discretion to instruct jurors according to the Florida State Jury Instructions as to judging the credibility of witnesses. But at the discretion of the court or request of the defendant, the court may instruct juries to rigidly scrutinize the noncorroborated testimony of the complaining witness. Failure to offer these cautionary instructions has resulted in contrary appellate opinions. In Marr v. State, the court held that each case must rest on its own particular facts in gauging the propriety of giving a cautionary instruction.

Sexual battery is no longer a capital offense in Florida. However, by statute, it remains a life felony for conviction of the most serious of offenses. Maximum sentences for the remaining offenses decline with the perceived severity of the act. At present, statutory sentences have been replaced by standardized statewide sentencing guidelines which drastically reduce the possible maximum sentences to be served for any conviction of sexual battery.

⁴⁵Marr v. State, 85 470 So.2d 703, Fla. App. 1 Dist. (1985); Kaplan v. State, 451 So.2d 1386, 1387 Fla. 4th DCA (1984).

In 1984, the Florida legislature amended its sexual battery law in the following manner: (1) consent was dismissed as a defense in sexual battery cases involving mentally defective victims, (2) the age of consent was raised from 11 years to 12 years, (3) a first degree misdemeanor offense was created for eyewitness failure to report a sexual battery (victims and their relatives exempt), (4) penalties were increased for 1st and 2nd degree sexual battery when committed by multiple offenders, (5) the statute of limitations was extended until a child victim's 16th birthday, and (6) the chief judge of each judicial circuit was required to provide by order a limit on the number of interviews to which victims under the age of 16 can be subjected. Some of these amendments were to bring statutory law into conformity with recent court actions while others were in response to current events.

The Florida sexual battery law is a compilation of the former rape, statutory rape, and sodomy laws into a singular offense with a new label. The common law definition of rape as a nonconsensual forcible act of penetration is retained. It is simply modified to include males as both victims and perpetrators and to recognize penetration of other bodily cavities and penetration by object. The new rules of evidence are primarily adaptations of former case law rules, with the prohibitions on reputation evidence and some shield restrictions going somewhat beyond restrictions under the former rules.

Perhaps the most significant difference between the new

sexual battery statute and former law lies in the new grading scheme. Under former law, the severity of an offense was determined in equal parts by the acts committed and the age/sex of the victim. Under current law, the severity of an act is determined almost exclusively by the level of force used to accomplish the act and the ability of the victim to consent. As in Michigan, some lesser sentencing requirements were enacted in conjunction with this grading scheme, but those penalties remain relatively high compared with those of other states.

Of the three states in this study, Florida's sexual battery statute represents a "middle ground" approach to rape law reform. Like Michigan, Florida has standardized its treatment of sex offenses through the new statutory scheme. But, as in Georgia, the basic elements of the offense are only moderately changed, and consent is still a presumption. Further, Florida's rules of evidence are more comparable to Georgia's than to Michigan's; and like Georgia courts, Florida courts have been inconsistent in their interpretation of the new statute.

3. Michigan. Prior to enactment of the comprehensive criminal sexual conduct law in 1974, rape in Michigan was prosecuted under an 1857 "carnal knowledge" statute which had evolved through 117 years of case law interpretation. Under this common law statute, the distinction between rape, sodomy, and indecent liberties was based upon penetration. The crime of rape was one of forcible penetration of a female by a male. The common

law rule presuming consent in marriage was applied.

The elements necessary to prove rape under English common law were "force," "penetration," and "nonconsent." Use of force was established by evidence of victim resistance "to the utmost degree."⁴⁶ Where resistance to such a degree did not occur, the standard set forth in People v. Phillips, a 1971 case, was that of "great bodily harm" which forced compliance.⁴⁷ Proof of nonconsent also required a showing of resistance to the utmost. Neither the element of force nor nonconsent was deemed necessary for a charge of statutory rape.

Under Michigan rules of evidence prior to the introduction of reforms in rape trials, independent corroborating evidence was not required to sustain a conviction.⁴⁸ But evidence of the complainant's past sexual activity was generally admissible at the discretion of the trial judge.⁴⁹ No mandatory sentences were applied to convictions for rape, and a conviction could bring imprisonment for life or any term of years.

Rape law reform in this state would come exclusively through the enactment of legislation which repealed the former carnal knowledge law. The Criminal Sexual Conduct Statute adopted by the state legislature in 1974 was drawn by a coalition of

⁴⁶People v. Geddes, 301 Mich. 258, 3N.W.2d 226 (1942).

⁴⁷People v. Phillips, 385 Mich. 30, 187 N.W.2d (1971).

⁴⁸People v. Coffman, 45 Mich. App. 480 (1973).

⁴⁹People v. Sturgis, 35 Mich. App. 380 (1971).

law professors, women's groups, and prosecutors. It became a model for other states in the years to come.

With the enactment of the Criminal Sexual Conduct (CSC) Statute, Michigan discarded the entire concept of common law rape, replacing it with a comprehensive series of criminal sexual assault laws which define four degrees of criminal sexual conduct involving crimes of both sexual penetration and sexual contact as well as a statute covering assault with intent to commit criminal sexual conduct. This statutory scheme determines the degree of the offense based on such factors as force, penetration, injury to the victim, and circumstances of the offense. This approach is intended to permit a closer tailoring of the charge to the actual circumstances of the offense. Statutory rape offenses are embodied in the scheme, but are broadened by the CSC statute in that it covers sexual acts other than vaginal penetration. Since enactment of the CSC statute, Michigan courts have consistently held that the new grading scheme is neither unconstitutionally vague nor overbroad and that it meets the requirements of due process.⁵⁰

The CSC statute is gender neutral in application, acknowledging

⁵⁰People v. Denmark (1977) 254 N.W.2d 61, 74 Mich. App. 402; People v. Nelson (1977) 261 N.W.2d 299, 79 Mich. App. 303, affirmed in part, 281 N.W.2d 134, 406 Mich. 1020; People v. Clark (1978) 270 N.W.2d 717, 85 Mich. App. 96; People v. Love (1979) 283 N.W.2d 781, 91 Mich. App. 495; People v. Anderson (1981) 314 N.W.2d 723, 111 Mich. App. 671.

persons of either sex as actors or victims.⁵¹ Further, marriage is not a bar to prosecution where a couple is living apart and divorce proceedings are pending.⁵²

Sentences under the CSC statute are tailored to the degree of the offense for which conviction was obtained. Sentences range from a possible maximum imprisonment of 20 years for a first degree offense to a minimum imprisonment of not more than one year or a fine for fourth degree offenses. A mandatory minimum sentence is applied only to second and subsequent offenses.

The CSC statute encompasses crimes committed by either force or coercion in an attempt to resolve some of the complex issues which arose from the former law's failure to specify the dimension of the force requirement. Prior to reform, coercive situations in which the element of force was presumed to exist were defined by statute. The statute specifically described those offenses where no showing of force was required. The "resistance standard" imposed by prior law was replaced with a standard requiring only that the victim believed the actor had the ability to execute threats. (Sec. 750.520 explicitly states, "A victim need not resist the actor") To date, Michigan courts have held that the Criminal Sexual Conduct Statute is not unconstitutionally vague on the grounds that the essential

⁵¹Sex-neutral application does not apply to 1st degree murder committed in the perpetration of rape. (See People v. McDonald (1980) 293 N.W.2d 588, 409 Mich. 110.)

⁵²Affirmed. People v. Kubasiak (1980) 296 N.W.2d 298, 98 Mich. App. 529.

element of force is not in statutory language.⁵³

"Consent" is an accepted defense in Michigan, but the CSC statute explicitly states that there is no need to prove "non-consent." The rationale behind this change in consent standard was that (1) proof of a subjective state of mind is always difficult and imposes an extra and unfair burden on the prosecution, and (2) the consent of the victim does not relieve defendants of any other criminal charge. Michigan courts have since held that the statute's explicit detail as to what conduct is proscribed reduces the possibility of consent as a defense.⁵⁴

Under the new rules of evidence, corroboration of the complainant's testimony is still not required. The state continues to rely on the 1893⁵⁵ rule that no special requirement of corroboration can be imposed in rape cases ("credibility can be safely left to the jury") but the CSC statute contains explicit statutory language to that effect.

The new Michigan rape shield law is among the most restrictive to be enacted by any state. Here, all evidence (including specific instances, opinion evidence, and reputation evidence) of the complainant's past sexual conduct is barred at trial. Two narrow exceptions allow evidence of past sexual conduct with the accused

⁵³People v. Dawsey, 257 N.W.2D, 76 Mich. App. 741 (1977).

⁵⁴People v. Nelson, 261 N.W.2d 299, 79 Mich. App. 303, affirmed in part, vacated in part on other grounds, 281 N.W.2d 134, 406 Mich. 1020.

⁵⁵People v. Miller, 96 Mich. 119 (1893).

or evidence showing the source of semen, pregnancy, or disease to be introduced if the court finds such evidence to be (1) material to a fact at issue and (2) not so inflammatory or prejudicial in nature as to outweigh its probative value.

The purpose of the Michigan rape shield law is to "minimize the prior practice of trying the complainant for her character instead of defendant for his conduct, and thereby confusing the fact finder with nonrelevant matters."⁵⁶ The Michigan courts have consistently held that the rape shield law does not deny or diminish the defendant's 6th Amendment right of confrontation, stating as one court did: "Absent demonstrably relevant evidence, a court will not balance asserted state interest in promoting prosecution of sexual crimes against fundamental requirements of confrontation clause as applied to this section..."⁵⁷

In recent cases before the Michigan Supreme Court, the constitutionality of the CSC statute was upheld. In those cases, the shield law had been challenged on the grounds that exclusion of reputation evidence and evidence of conduct with third parties violates the defendant's Sixth Amendment right. The court held that the statute is "facially constitutional."

Neither the confrontation clause of the Sixth Amendment nor due process confer an unlimited right upon a defendant

⁵⁶People v. Whitfield, 228 N.W.2d 475, 58 Mich. App. 585 (1975);
People v. Thompson, 257 N.W.2d 268, 76 Mich. App. 705 (1977);
People v. Williams, 289 N.W.2d 863, 95 Mich. App. 1 (1980);
People v. LaPorte, 303 N.W.2d 222, 103 Mich. App. 444 (1981);
People v. Stull, 338 N.W.2d 403, 127 Mich. App. 14 (1983).

⁵⁷People v. Kahn, 264 N.W.2d 360, 30 Mich. App. 605 (1978).

to have all relevant evidence admitted or to cross-examine on any subject. A defendant is guaranteed a reasonable opportunity by the Sixth Amendment to test the truth of a witness' testimony. In the view of the court, the procedure rules governing application of the shield provide that opportunity.⁵⁸

Other challenges to the CSC statute were on grounds of vagueness in "personal injury" language (as applied to first degree cases). These challenges led to a recent Supreme Court ruling upholding the constitutionality of "mental anguish" as one of seven "aggravating factors" that can elevate rape to a crime punishable by life in prison. The opinion stated:

The term "mental anguish," in its ordinary and generally understood sense, means "extreme or excruciating pain, distress or suffering of the mind," and that the term, so defined, is not unconstitutionally vague.⁵⁹

And the courts have held that mental anguish need not be permanent nor substantial.⁶⁰ In other appeals, the courts have held that "fourth degree criminal sexual conduct" (sexual contact) is not a necessarily included offense of first degree CSC, but is a factually included offense of first degree.⁶¹ The courts have also rejected the right of the press to be present during the preliminary hearing stage of sexual assault trials.⁶²

⁵⁸People v. Hackett and People v. Paquette, 421 Mich. 338 N.W.2d (1984); People v. Arenda, 416 Mich. 1330 N.W.2d (1982).

⁵⁹"State Court Backs Mental Aggravation of Rape," Detroit News, January 11, 1986.

⁶⁰People v. Jenkins (1982) 328 N.W.2d 403, 121 Mich. App. 195.

⁶¹People v. Baker (1981) 304 N.W.2d 262, 103 Mich. App. 704.

⁶²Re Midland Publishing Co., 420 Mich. Rpts. 148 (Dec. 1984).

Michigan law differs most significantly from the laws of Florida and Georgia in that it spells out in great detail the circumstances under which sexual conduct is proscribed and its blanket presumption of nonconsent. Few states have moved so far in their approach to redefining the constituent elements of rape. Most have held to common law precepts even when creating new statutory schemes.

Michigan's Criminal Sexual Conduct Statute has been described by its detractors as imbalanced in favor of the prosecution. Yet Michigan courts have consistently upheld the CSC statute as providing the necessary balance between complainants' and defendants' rights. Of the three states represented in this study, Michigan rape law reform is the most innovative.

E. Rape Law Reform Models

The State of Georgia attempted to adhere to the "more thoughtful and deliberate"⁶³ common law process in modifying force and resistance standards and evidentiary rules. Legislative intervention was initiated only on the issue of "rules," following the general trend of the courts in this area, but imposing its own judgment on the issue of "specificity." Current rape law in both Florida and Michigan resulted from legislative intervention. However, Florida carried over much of the standards and rules from case law. Only in Michigan did legislative intervention represent

⁶³Battelle Law and Justice Study Center, op. cit.

a major departure from common law. In all three states, one or more feature of reform has served as the basis for numerous appeals for over a decade. However, in only one exception have the courts found the statutes in error or unconstitutional. That exception is the Georgia Supreme Court's finding that the rape shield law may be superceded by the state's impeachment rule.

CHAPTER IV. SURVEY RESULTS

In-person interviews were conducted with a total of 151 respondents. Of these, 31 percent were in Georgia, 35 percent in Florida, and 34 percent in Michigan. Surveys were distributed fairly evenly among the critical actors in the justice system. The sample included 21 percent each of prosecutors, judges, and victim advocates; 20 percent defense attorneys; and 17 percent police officers.

The survey focused primarily on seven factors in sexual assault cases: (1) police action, (2) the difficulty in prosecuting traditional and nontraditional cases, (3) the impact of selected features of each state's rape law, (4) the advantages and disadvantages of these provisions, (5) defense strategies used regarding the selected features, (6) perceptions of and satisfaction with provisions of each state's rape law, (7) suggestions for modifications of each state's rape law and overall satisfaction with the law.

The intent of the research was to obtain from respondents in each of the three selected states perceptions of the impact of various law reform features. The reform provisions studied during the survey are listed below:

- o Redefinition of criminal acts;
- o Gender neutralization of language;

- o Establishment of graded offenses (degree structure);
- o Imposition of mandatory sentences for second and subsequent offenses;
- o Repeal of corroboration requirement;
- o Change in resistance standards;
- o Redefinition of force;
- o Creation of a rape shield law;
- o Elimination of need for proof of nonconsent (Michigan only); and
- o Repeal of spousal immunity.

Given the diversity of these law reform elements in each of the states, the survey design was adapted slightly for each state. In Georgia, questions were limited to the two major reforms which have been enacted: the creation of a shield law and the repeal of the corroboration requirement. Because it was necessary to complete interviews within 30-60 minutes on average, it was not feasible to question respondents in Florida and Michigan on every provision of their laws.

Interviewees were asked to choose the three elements they perceived as the most important revisions. In Florida and Michigan, the degree of consistency among respondents' choices is interesting. The majority of respondents selected three reform features as most important (although the number of respondents who chose each provision varied slightly). As evidenced in Tables IV-1 and IV-2, respondents agreed that the three most important provisions are (1) creation of a rape shield law, (2) redefinition of criminal

acts, and (3) change in the resistance standards. Repeal of the corroboration requirement was seen as equally significant in Florida, but less significant in Michigan.

TABLE IV-1
FLORIDA RAPE LAW REFORM:
MOST IMPORTANT PROVISIONS IDENTIFIED BY RESPONDENTS

<u>RESPONSE</u>	<u>(N=154*)</u>
Creation of a rape shield law	24%
Redefinition of criminal acts	23%
Elimination of corroboration requirement	16%
Change in resistance standard	16%
Creation of a degree structure	10%
Establishment of mandatory sentences	8%
Gender neutralization of rape statute	3%

*Each respondent was asked to identify three of the most important provisions; some respondents elected to name only one or two provisions.

Table IV-2
 MICHIGAN RAPE LAW REFORM
 MOST IMPORTANT PROVISIONS IDENTIFIED BY RESPONDENTS

<u>RESPONSE</u>	<u>(N=155*)</u>
Elimination of resistance standard	27%
Creation of rape shield law	21%
Redefinition of criminal acts	18%
Creation of a degree structure	14%
Elimination of need for proof of nonconsent	8%
Repeal of corroboration requirement	6%
Creation of mandatory sentences	4%
Gender neutralization of rape statute	2%
Partial repeal of spousal immunity	--

*Each respondent was asked to identify three of the most important provisions; some respondents elected to name only one or two provisions.

A. The Rape Shield Provision

Respondents were asked a series of questions about the impact of the shield provision. For each factor queried, the majority (usually the vast majority) replied that the shield law has an impact on victims, the criminal justice system, and attitudes of officials and the general public. As shown in Table IV-3, over 90 percent of those surveyed stated that (1) the shield provision had improved the treatment of victims during cross examination by the defense at trial, (2) encouraged victims to cooperate with the prosecution, and (3) increased the likelihood

of conviction. In addition, over 80 percent perceived that it increased the likelihood that cases will be accepted for prosecution, while slightly less believed it encouraged victims to report their experiences to the police or improved the attitudes of criminal justice officials and the public toward rape victims.

Table IV-3
PERCEPTIONS OF RAPE SHIELD LAW
ALL SITES

<u>RESPONSE</u>	<u>YES</u>	<u>NO</u>
Encourages reporting (N=103)	73%	27%
Encourages cooperation with prosecution (N=108)	94%	6%
More cases accepted for prosecution (N=103)	86%	14%
Improves victims' treatment during cross examination (N=104)	93%	7%
Increases the likelihood of conviction (N=93)	90%	10%
Improves attitudes of criminal justice officials (N=97)	52%	48%
Improves public attitudes (N=97)	67%	33%

Each official surveyed was asked to assess the impact of his or her state's shield provision. Their evaluations were overwhelmingly positive. As depicted in Table IV-4, 90 percent of those surveyed believed that the shield provision was needed, 88 percent stated that it is working as intended, 85 percent perceived it as fair, while 42 percent would like it modified. It should be noted that among those who wanted to modify the provision some suggested strengthening the provision by eliminating

what were described as "loopholes" -- exceptions to the shield rule. Others desired just the opposite, that is, eliminating the provision entirely or weakening the provision by allowing more latitude in the introduction of the victim's prior criminal history or broadening the exceptions. Thus there was no uniform agreement on the direction of future reform in this area. This diversity is further affected by the fact that each state's shield law is shaped by the prescribed elements of the offense in state law.

Table IV-4
 PERCEPTIONS OF RAPE SHIELD LAW
 ALL SITES

<u>RESPONSE</u>	<u>YES</u>	<u>NO</u>
Provision is fair (N=111)	85%	15%
Provision was needed (N=110)	90%	10%
Provision works as intended (N=100)	88%	12%
Provision should be modified (N=110)	42%	58%

In general, those surveyed were very positive about the shield provision. As seen in Table IV-5, most (77 percent) stated they were satisfied or very satisfied with the provision while 23 percent expressed dissatisfaction or strong dissatisfaction.

Table IV-5
SATISFACTION WITH RAPE SHIELD LAW
ALL SITES

<u>RESPONSE</u>	<u>(N=110)</u>
Very satisfied	31%
Satisfied	46%
Not satisfied	13%
Very dissatisfied	10%

In summary, the rape shield provision was selected by practitioners as a key element of reform in Florida and Michigan (and was included in Georgia as one of the two reform elements). The majority of those surveyed found that the provision had improved the treatment of victims during trial, increased victims' willingness to cooperate with the police and prosecution, increased prosecutors' willingness to accept cases, and improved the likelihood of conviction. Slightly fewer respondents believed that it also had improved the attitudes of criminal justice officials and the public toward rape victims. Overall, the majority of those surveyed assessed the shield provision as needed, fair, and effective and were satisfied with this element of their law.

Differences Among States and Respondents. Differences and similarities in satisfaction with the shield provision were examined by state and according to the respondent's role in the criminal justice system. By state, small differences were found in the impact of the shield provision, as shown in Table IV-6. Similar proportions of those surveyed in Georgia, Florida,

and Michigan replied that the shield provision had increased the likelihood of prosecution, improved victims' treatment during cross-examination at trial by defense counsel, and encouraged victims to cooperate with the prosecutor.

Small differences emerged on other impact issues, however. Officials surveyed in Michigan more often replied that the shield provision encourages victims to report to the police than did officials in Georgia and Michigan. Respondents in Florida and Michigan more often attributed increased likelihood of conviction to the shield provision than did those in Georgia, but Georgia officials more often observed a change in the attitudes of criminal justice officials due to the shield law. However, changes in public attitudes due to the shield were more often noted in Michigan and Florida than in Georgia. It is important to note that while some differences emerged, there were more similarities than differences among the respondents in the three states. Where differences were observed, no clear pattern emerges and the differences were not large.

Table IV-6
 IMPACT OF RAPE SHIELD LAW
 BY STATE

<u>RESPONSE</u>	<u>YES</u>			<u>NO</u>		
	<u>GA</u>	<u>FL</u>	<u>MI</u>	<u>GA</u>	<u>FL</u>	<u>MI</u>
Encourages reporting	68% (27)	70% (23)	83% (25)	32% (13)	30% (10)	17% (5)
Encourages cooperation with the prosecution	90% (37)	100% (36)	94% (29)	10% (4)	-- (0)	6% (2)
Increases likelihood of prosecution	85% (34)	88% (29)	87% (26)	15% (6)	12% (4)	13% (4)
Improves victim's treatment during cross examination	93% (37)	91% (31)	97% (29)	7% (3)	9% (3)	3% (1)
Increases likelihood of conviction	83% (34)	97% (32)	95% (18)	17% (7)	3% (1)	5% (1)
Improves attitudes of criminal justice officials	60% (23)	52% (16)	39% (11)	40% (15)	48% (15)	61% (17)
Improves public attitudes	60% (24)	70% (23)	75% (18)	40% (16)	30% (10)	25% (6)

Respondents' assessments of the value of the shield law were also similar among the states. Table IV-7 illustrates that fairly equal numbers of respondents in Florida, Georgia, and Michigan found the shield law fair, effective, and needed. Again, differences among states were small and inconsistent.

Table IV-7
 IMPACT OF RAPE SHIELD LAW
 BY STATE

<u>RESPONSE</u>	<u>YES</u>			<u>NO</u>		
	<u>GA</u>	<u>FL</u>	<u>MI</u>	<u>GA</u>	<u>FL</u>	<u>MI</u>
Provision is fair	86% (36)	84% (31)	84% (27)	14% (6)	16% (6)	16% (5)
Provision was needed	91% (39)	84% (31)	97% (29)	9% (4)	16% (6)	3% (1)
Provision works as intended	82% (33)	93% (26)	91% (29)	18% (7)	7% (2)	9% (3)
Provision should be modified	45% (19)	42% (16)	37% (11)	55% (23)	58% (22)	63% (19)

More respondents in Florida and Michigan stated satisfaction with the shield provision than did those in Georgia (see Table IV-8). Caution should be exercised in interpreting these findings, however. Dissatisfaction usually resulted from two opposing concerns: (1) that the shield law did not go far enough in excluding information about the victim's past sexual conduct and (2) that the shield law went too far in excluding information about the victim's criminal history. The policy implications drawn about dissatisfaction levels are hence very different depending on the reasons for dissatisfaction.

Table IV-8
SATISFACTION WITH RAPE SHIELD LAW
BY STATE

<u>RESPONSE</u>	<u>GA</u> (N=43)	<u>FL</u> (N=36)	<u>MI</u> (N=31)
Very satisfied	23%	30%	42%
Satisfied	49%	53%	35%
Not satisfied	19%	3%	16%
Very dissatisfied	9%	14%	7%

Differences in reaction to the shield law were also examined according to the respondent's role in the criminal justice system -- prosecutor, defense attorney, judge, police officer, or victim advocate. Again, as shown in Table IV-9, only small differences occurred among the various actors in their views about the impact of the shield provision. However, there were striking differences in evaluation of the shield law. Although the number of respondents in each category is small, and caution is urged in interpreting the findings, a clear pattern emerged. Table IV-10 shows that defense attorneys are far less likely to assess the shield law as fair and needed than are prosecutors, judges, police officers, and victim advocates. More judges than other respondents stated that the shield provision is working as intended while defense attorneys were most vocal in expressing interest in modifying the shield. Given the role of defense attorneys in the advocacy system, these differences are perhaps not surprising. In fact, it is somewhat surprising that the differences are not larger.

Table IV-9
IMPACT OF RAPE SHIELD LAW BY RESPONDENT OCCUPATION

<u>YES RESPONSE</u>	<u>PROSECUTOR</u> (N=26)	<u>DEFENSE</u> <u>ATTORNEY</u> (N=28)	<u>JUDGE</u> (N=20)	<u>POLICE</u> (N=15)	<u>VICTIM</u> <u>ADVOCATE</u> (N=21)
Encourages reporting	79% (19)	61% (16)	89% (17)	61% (8)	71% (15)
Encourages cooperation with prosecution	92% (23)	96% (26)	95% (19)	100% (15)	91% (19)
Increases likelihood of prosecution	75% (18)	93% (25)	100% (18)	86% (12)	80% (16)
Improves victims' treatment during cross examination	88% (22)	96% (26)	100% (19)	93% (14)	89% (16)
Increases conviction rates	96% (21)	86% (19)	90% (17)	93% (14)	87% (13)
Improves attitudes of crim. just. officials	52% (13)	42% (11)	59% (10)	62% (8)	50% (8)
Improves public attitudes	67% (14)	64% (16)	63% (10)	67% (10)	75% (15)
<u>NO RESPONSE</u>					
Encourages reporting	21% (5)	39% (10)	11% (2)	39% (5)	29% (6)
Encourages cooperation with the prosecution	8% (2)	4% (1)	5% (1)	-- (0)	9% (2)
Increases likelihood of prosecution	25% (6)	7% (2)	-- (0)	14% (2)	20% (4)
Improves victims' treatment during cross examination	12% (3)	4% (1)	-- (0)	7% (1)	11% (2)
Increases conviction rates	4% (1)	14% (3)	10% (2)	7% (1)	13% (2)
Improves attitudes of crim. just. officials	48% (12)	58% (15)	41% (7)	38% (5)	50% (8)
Improves public attitudes	33% (7)	36% (9)	37% (6)	33% (5)	25% (5)

The contrast among respondents by role is more sharply drawn when overall satisfaction with the shield law is reviewed. As shown in Table IV-11, judges, prosecutors, and victim advocates are much more satisfied than defense attorneys with the shield provision. It should be noted that victim advocates and prosecutors who expressed dissatisfaction with the shield provision overwhelmingly stated that they were dissatisfied because they wanted a stronger shield law, not because they disapproved of the concept of the shield law.

Table IV-10
PERCEPTIONS OF RAPE SHIELD LAW BY RESPONDENT OCCUPATION

<u>YES RESPONSE</u>	<u>PROSECUTOR</u> (N=26)	<u>DEFENSE ATTORNEY</u> (N=28)	<u>JUDGE</u> (N=20)	<u>POLICE</u> (N=15)	<u>VICTIM ADVOCATE</u> (N=21)
Provision is fair	96% (24)	52% (15)	100% (21)	93% (14)	95% (20)
Provision was needed	96% (25)	67% (18)	100% (21)	100% (15)	95% (20)
Provision works as intended	80% (20)	88% (23)	100% (19)	82% (9)	90% (17)
Provision should be modified	35% (9)	57% (16)	36% (8)	36% (5)	40% (8)
<u>NO RESPONSE</u>	<u>PROSECUTOR</u> (N=26)	<u>DEFENSE ATTORNEY</u> (N=28)	<u>JUDGE</u> (N=20)	<u>POLICE</u> (N=15)	<u>VICTIM ADVOCATE</u> (N=21)
Provision is fair	4% (1)	48% (14)	-- (0)	7% (1)	5% (1)
Provision was needed	4% (1)	33% (9)	-- (0)	-- (0)	5% (1)
Provision works as intended	20% (5)	12% (3)	-- (0)	18% (2)	10% (2)
Provision should be modified	65% (17)	43% (12)	64% (14)	64% (9)	60% (12)

Table IV-11
SATISFACTION WITH RAPE SHIELD LAW
BY RESPONDENT OCCUPATION

<u>RESPONSE</u>	<u>PROSECUTOR</u> (N=26)	<u>DEFENSE</u> <u>ATTORNEY</u> (N=28)	<u>JUDGE</u> (N=20)	<u>POLICE</u> (N=15)	<u>VICTIM</u> <u>ADVOCATE</u> (N=21)
Very satisfied	54%	4%	35%	27%	38%
Satisfied	30%	36%	65%	53%	57%
Not satisfied	8%	32%	--	20%	--
Very dissatisfied	8%	28%	--	--	5%

In summary, small and inconsistent differences among individuals in Florida, Georgia, and Michigan were detected in their assessments of and satisfaction with the shield law. Defense attorneys were much more dissatisfied and negative about the shield law than were prosecutors, judges, police officers, and victim advocates.

B. Elimination of the Corroboration Requirement

Respondents were asked the same set of questions regarding the elimination of the corroboration requirement. Just as in their responses to the questions about the shield law, the majority surveyed responded that eliminating the corroboration requirement (1) increased the likelihood that the prosecutor would accept the case, (2) increased the likelihood of conviction, and (3) encouraged victims to cooperate with the prosecution. However, only half of the respondents found that removal of the corroboration requirement encouraged victims to prosecute, and fewer than

half found that it improved victims' treatment during cross examination at trial or improved the attitudes of criminal justice officials or the public toward rape victims (see Table IV-12).

Table IV-12
 PERCEPTIONS OF REPEAL OF CORROBORATION REQUIREMENT
 ALL SITES

<u>RESPONSE</u>	<u>YES</u>	<u>NO</u>
Encourages reporting (N=70)	50%	50%
Encourages cooperation with prosecution (N=70)	73%	27%
Increases likelihood of prosecution (N=72)	83%	17%
Improves victims' treatment during cross examination (N=72)	43%	57%
Increases likelihood of conviction (N=71)	83%	17%
Improves attitudes of criminal justice officials	34%	66%
Improves public attitudes (N=71)	37%	63%

It is not surprising that reactions to the repeal of the corroboration requirement would differ from reactions to the shield law in light of the different intent of the two provisions. The shield provision was designed largely to eliminate undue harassment of victims during trial, to exclude the introduction of irrelevant material, and to encourage victims to report to the police and cooperate with prosecution. Therefore, one might expect more respondents to report effects in these areas than when discussing the corroboration repeal. Nonetheless, it is

important to note that many respondents also stated that the corroboration repeal had unintended impacts. Many stated that the repeal has also encouraged victims to cooperate with the prosecutor and increased the prosecutor's willingness to accept cases because it increases the likelihood of conviction. As a result, the view that pursuing prosecution in cases without corroboration is "a waste of time" has been reduced. This appears indirectly to encourage victims to cooperate with prosecutors and prosecutors to pursue more cases.

Some respondents attributed other indirect effects to repeal of the corroboration requirement. One third of the sample stated their belief that attitudes among the public and criminal justice officials have improved because repeal of the corroboration requirement makes it clear that the crime of rape often occurs without witnesses or physical injury. Respondents stated that repeal has helped reinforce the belief that the victim's word should be given credibility in cases lacking other corroboration. These unintended effects are important to note. In the long run they may prove more far-reaching than the intended effects.

As was true for the shield provision, repeal of the corroboration requirement was assessed very favorably by survey respondents. As shown in Table IV-13, 88 percent found repeal to be fair, 86 percent said it is working as intended, 82 percent believed it is needed, and 24 percent would like to see it modified. Satisfaction with repeal was also high: 87 percent were either very satisfied or satisfied, while only 13 percent stated that

they were either very dissatisfied or dissatisfied (Table IV-14).

Table IV-13
PERCEPTIONS OF REPEAL OF CORROBORATION REQUIREMENT
ALL SITES

<u>RESPONSE</u>	<u>YES</u>	<u>NO</u>
Provision is fair (N=76)	88%	12%
Provision was needed (N=76)	82%	18%
Provision works as intended (N=63)	86%	14%
Provision should be modified (N=71)	24%	76%

Table IV-14
SATISFACTION WITH CORROBORATION REQUIREMENT REPEAL
ALL SITES

<u>RESPONSE</u>	<u>(N=75)</u>
Very satisfied	31%
Satisfied	56%
Not satisfied	5%
Very dissatisfied	8%

In summary, respondents perceived repeal of the corroboration requirement as having a favorable impact on convictions, increasing the willingness of victims to cooperate with the prosecution and the willingness of prosecutors to accept sexual abuse cases. The majority of respondents stated that the corroboration repeal had an impact on victims and the criminal justice system both directly and indirectly. As with the shield law, the vast majority

of those surveyed found the new corroboration repeal to be fair, needed, and effective and were satisfied with the provision.

Differing perceptions among individuals interviewed in Georgia, Michigan, and Florida were larger regarding the impact of the repeal of corroboration requirement than enactment of the shield provision. Table IV-15 indicates that with the exception of one item -- "increases likelihood of prosecution" -- respondents in Michigan were slightly more likely to attribute various impacts to the corroboration provision than were respondents from other states. Because Michigan law has never required corroboration, the issue in that state was less one of law reform than of criminal justice practices. In the view of most Michigan respondents, the incorporation of the "no-corroboration rule" into statutory language has effectively curbed the practice of requiring corroboration. But as it represents no change from prior law, it may be less influential in decision making. Unlike in Michigan, statutory statement of the no-corroboration rule in Georgia would require a relatively new policy decision by Georgia courts.

Again, the reader is cautioned that differences were not large and the number of respondents in each category was small. Thus, the findings should be seen as "preliminary" only and in need of further study.

Table IV-15
 IMPACT OF REPEAL OF CORROBORATION REQUIREMENT
 BY STATE

<u>RESPONSE</u>	<u>YES</u>			<u>NO</u>		
	<u>GA</u>	<u>FL</u>	<u>MI</u>	<u>GA</u>	<u>FL</u>	<u>MI</u>
Encourages reporting	47% (18)	52% (12)	56% (5)	53% (20)	48% (11)	44% (4)
Encourages cooperation with the prosecution	70% (26)	74% (17)	80% (8)	30% (11)	26% (6)	20% (2)
Increases likelihood of prosecution	87% (33)	83% (20)	70% (7)	13% (5)	17% (4)	30% (3)
Improves victim's treatment during cross examination	51% (20)	17% (4)	70% (7)	49% (19)	83% (19)	30% (3)
Increases conviction rates	79% (31)	83% (19)	100% (9)	21% (8)	17% (4)	-- (0)
Improves attitudes of crim. just. officials	33% (13)	30% (7)	44% (4)	67% (26)	70% (16)	56% (5)
Improves public attitudes	28% (11)	44% (10)	56% (5)	72% (28)	56% (13)	44% (4)

As depicted in Tables IV-16 and IV-17, all of the Michigan respondents and a majority of those in Florida and Georgia found the corroboration repeal to be fair, needed, and effective. Respondents in Michigan and Florida were more satisfied with repeal of the corroboration requirement than those in Georgia.

Table IV-16
EVALUATION OF REPEAL OF CORROBORATION REQUIREMENT
BY STATE

<u>RESPONSE</u>	<u>YES</u>			<u>NO</u>		
	<u>GA</u>	<u>FL</u>	<u>MI</u>	<u>GA</u>	<u>FL</u>	<u>MI</u>
Provision is fair	81% (34)	96% (23)	100% (10)	19% (8)	4% (1)	-- (0)
Provision was needed	76% (32)	83% (20)	100% (10)	24% (10)	17% (4)	-- (0)
Provision works as intended	84% (32)	80% (12)	100% (10)	16% (6)	20% (3)	-- (0)
Provision should be modified	26% (10)	26% (6)	11% (1)	74% (29)	74% (17)	89% (8)

Table IV-17
SATISFACTION WITH REPEAL OF CORROBORATION REQUIREMENT
BY STATE

<u>RESPONSE</u>	<u>GA</u> (N=41)	<u>FL</u> (N=24)	<u>MI</u> (N=10)
Very satisfied	24%	33%	50%
Satisfied	56%	58%	50%
Not satisfied	5%	9%	--
Very dissatisfied	15%	--	--

Some differences were found in the assessment of the impact of the corroboration repeal by occupation of respondent, as shown in Table IV-18. However, no explicit or readily explainable pattern emerged. For some items listed, one group of respondents gave affirmative answers more often while another group responded

more favorably on other items. Perhaps a larger sample would yield a clearer pattern in future research on this topic.

Table IV-18
 IMPACT OF REPEAL OF CORROBORATION REQUIREMENT
 BY RESPONDENT OCCUPATION

<u>YES RESPONSE</u>	<u>PROSECUTOR</u>	<u>DEFENSE ATTORNEY</u>	<u>JUDGE</u>	<u>POLICE</u>	<u>VICTIM ADVOCATE</u>
Encourages reporting	38% (6)	53% (8)	42% (5)	56% (5)	61% (11)
Encourages cooperation with prosecution	77% (13)	71% (10)	77% (10)	67% (6)	71% (12)
Increases likelihood of prosecution	65% (11)	87% (13)	92% (12)	100% (9)	83% (15)
Improves victims' treatment during cross examination	33% (6)	13% (2)	64% (9)	89% (8)	38% (6)
Increases conviction rates	82% (14)	80% (12)	92% (11)	89% (8)	78% (14)
Improves attitudes of crim. just. officials	29% (5)	27% (4)	46% (6)	44% (4)	29% (5)
Improves public attitudes	37% (6)	40% (6)	31% (4)	22% (2)	44% (8)
<u>NO RESPONSE</u>					
Encourages reporting	62% (10)	47% (7)	58% (7)	44% (4)	39% (7)
Encourages cooperation with the prosecution	23% (4)	29% (4)	23% (3)	33% (3)	29% (5)
Increases likelihood of prosecution	35% (6)	13% (2)	8% (1)	-- (0)	17% (3)
Improves victims' treatment during cross examination	67% (12)	87% (13)	36% (5)	11% (1)	62% (10)
Increases conviction rates	18% (3)	20% (3)	8% (1)	11% (1)	22% (4)
Improves attitudes of crim. just. officials	71% (12)	73% (11)	54% (7)	56% (5)	71% (12)
Improves public attitudes	63% (10)	60% (9)	69% (9)	78% (7)	56% (10)

As was true for the shield provision, defense attorneys were far more negative than prosecutors, judges, police officers, and victim advocates about repeal of the corroboration requirement. Tables IV-19 and IV-20 show the clear tendency of defense attorneys to assess the corroboration repeal as unfair, unnecessary, non-effective, and in need of change. Indeed, only defense attorneys stated dissatisfaction with the corroboration requirement repeal.

Table IV-19
EVALUATION OF REPEAL OF CORROBORATION REQUIREMENT
BY RESPONDENT OCCUPATION

	<u>PROSECUTOR</u>	<u>DEFENSE ATTORNEY</u>	<u>JUDGE</u>	<u>POLICE</u>	<u>VICTIM ADVOCATE</u>
<u>YES RESPONSE</u>					
Provision is fair	100% (19)	47% (7)	94% (15)	100% (8)	100% (18)
Provision was needed	83% (15)	40% (6)	94% (15)	100% (9)	94% (17)
Provision works as intended	94% (15)	58% (7)	92% (11)	87% (7)	93% (14)
Provision should be modified	18% (3)	60% (9)	13% (2)	29% (2)	6% (1)
<u>NO RESPONSE</u>					
Provision is fair	-- (0)	53% (8)	6% (1)	-- (0)	-- (0)
Provision was needed	17% (3)	60% (9)	6% (1)	-- (0)	6% (1)
Provision works as intended	6% (1)	42% (5)	8% (1)	13% (1)	7% (1)
Provision should be modified	82% (14)	40% (6)	87% (13)	71% (5)	94% (16)

Table IV-20
 SATISFACTION WITH REPEAL OF CORROBORATION REQUIREMENT
 BY RESPONDENT OCCUPATION

<u>RESPONSE</u>	<u>PROSECUTOR</u> (N=19)	<u>DEFENSE</u> <u>ATTORNEY</u> (N=14)	<u>JUDGE</u> (N=14)	<u>POLICE</u> (N=10)	<u>VICTIM</u> <u>ADVOCATE</u> (N=18)
Very satisfied	37%	7%	43%	20%	39%
Satisfied	63%	29%	57%	70%	61%
Not satisfied	--	21%	--	10%	--
Very dissatisfied	--	43%	--	--	5%

To summarize, differences among respondents in Florida, Georgia, and Michigan regarding repeal of the corroboration requirement were slightly larger than their differences regarding enactment of the rape shield provision. Michigan respondents tended to be more positive about repeal of the corroboration requirement than their counterparts in Georgia and Florida. However, caution should be exercised in interpreting the findings due to the small sample size. As in the case of the shield provision, defense attorneys were found to be significantly more negative about the repeal of the corroboration requirement than were others in the criminal justice system.

C. Redefinition of Criminal Acts

Over nine-tenths of those surveyed in Florida and Michigan found that redefining criminal acts resulted in more cases being accepted by prosecutors. Table IV-21 shows that one-half

or fewer of the respondents, depending on the issue, indicated other impacts, including: encouraging victims to report to the police (50 percent) and to cooperate with the prosecutor (48 percent) as well as the improvement of public and criminal justice officials' attitudes (43 percent and 46 percent respectively).

Table IV-21
IMPACT OF REDEFINITION OF CRIMINAL ACTS

<u>RESPONSE</u>	<u>YES</u>	<u>NO</u>
Encourages reporting by victims to police (N=60)	50%	50%
Encourages victims to cooperate with prosecution (N=60)	48%	52%
More cases accepted for prosecution (N=61)	96%	4%
Improves victims' treatment during cross-examination (N=59)	19%	81%
Increases likelihood of conviction		
Improves attitudes of criminal justice officials (N=60)	46%	54%
Improves public attitudes (N=60)	43%	57%

Table IV-22 shows that respondents largely found the redefinition of the rape law in their state to be fair, needed, and working as intended. Only 44 percent stated that they would like to see current definitions modified.

Table IV-22
 RESPONDENT EVALUATION OF REDEFINITION
 OF CRIMINAL ACTS

<u>RESPONSE</u>	<u>YES</u>	<u>NO</u>
Provision is fair (N=61)	84%	16%
Provision was needed (N=59)	96%	4%
Provision works as intended (N=51)	91%	9%
Provision should be modified (N=55)	44%	56%

Table IV-23 shows that most of those surveyed were satisfied with the redefinition of rape: 87 percent replied they were "very satisfied" or "satisfied" while only 13 percent expressed dissatisfaction.

Table IV-23
 SATISFACTION WITH REDEFINITION OF CRIMINAL ACTS

<u>RESPONSE</u>	<u>(N=60)</u>
Very satisfied	37%
Satisfied	50%
Not satisfied	4%
Very dissatisfied	9%

In summary, as in the case of the corroboration requirement and shield provision, the majority of those interviewed believed the redefinition of criminal acts had positive effects for both victims and the criminal justice system and that the provision

is fair, needed, and working as intended. Also, most were satisfied with the current definition of criminal sexual conduct (Michigan) or sexual battery (Florida).

D. Redefinition of Force and Change in Resistance Standards

Respondents in Florida and Michigan were given an opportunity to select redefinition of force and/or change in resistance standards as one of the most important provisions in their law. Table IV-24 shows that, of those selecting these elements, 92 percent found that they encourage victims to cooperate with prosecution, and 90 percent stated that they result in more cases being accepted by the prosecutor. Seventy-five percent stated that they encourage victims to report to the police, while 62 percent stated that they improve attitudes of criminal justice officials towards victims. Fifty-one percent of the respondents stated that they improve public attitudes toward rape victims. However, only 44 percent found that they improve victims' treatment during cross-examination.

Table IV-24
 IMPACT OF REDEFINITION OF FORCE
 AND/OR CHANGE IN RESISTANCE STANDARD

<u>RESPONSE</u>	<u>YES</u>	<u>NO</u>
Encourages reporting by victim to police (N=48)	75%	25%
Encourages victims to cooperate with prosecution (N=53)	92%	8%
More cases accepted for prosecution (N=55)	90%	10%
Improves victims' treatment during cross-examination (N=46)	44%	56%
Increases the likelihood of conviction (N=52)		
Improves attitudes of criminal justice officials (N=53)	62%	38%
Improves public attitudes (N=52)	51%	49%

As they did for the other provisions examined, the majority of respondents replied that these changes had positive effects. As shown in Table IV-25, 90 percent or more of the respondents felt that these changes were fair, needed, and working as intended. Only 24 percent would like to see some modifications.

Table IV-25
 RESPONDENT EVALUATION OF REDEFINITION OF FORCE
 AND/OR CHANGE IN RESISTANCE STANDARD

<u>RESPONSE</u>	<u>Yes</u>	<u>No</u>
Provision is fair (N=54)	94%	6%
Provision was needed (N=54)	89%	19%
Provision works as intended (N=47)	93%	7%
Provision should be modified (N=47)	24%	76%

Satisfaction with modified resistance and/or force standards was expressed by 88 percent of those surveyed, with 12 percent expressing dissatisfaction (Table IV-26).

Table IV-26
 SATISFACTION WITH REDEFINITION OF FORCE
 AND/OR CHANGE IN RESISTANCE STANDARD

<u>RESPONSE</u>	<u>(N=55)</u>
Very satisfied	33%
Satisfied	55%
Not satisfied	1%
Very dissatisfied	11%

In summary, the majority of respondents noted numerous impacts on victims and the criminal justice system directly or indirectly attributable to changes in force and/or resistance standards. Most respondents viewed these changes as fair, needed, and effective and were satisfied with their current standards

on force/resistance.

CHAPTER V. PERCEPTIONS OF OTHER REFORM FEATURES

While the survey found a consensus among Michigan and Florida respondents as to the three most significant reform features, there was not unanimous agreement. Almost all features of rape law reform were selected by at least some respondents in each state to be more significant than the top three chosen by the majority.

A. Degree Structures

The grading of offenses for charging and sentencing purposes was cited by both Michigan and Florida respondents as fourth in significance to those states. With a sizeable number of Michigan respondents combining the degree structure with the redefinition of criminal acts as a single choice, these combined reform features may actually constitute the single reform seen as most significant to that state.

When assessed as a single reform feature, degree structures were seen by the majority of respondents as facilitating police investigation and improving charging, plea bargaining, and sentencing options. Advantages were found to both the prosecution and the defense. Among these were: (1) more logical tailoring

of punishment to the elements of each offense, (2) clearer presentation of the law, (3) easier administration of the law, (4) narrowing of proofs early on in the process, and (5) enhanced plea bargaining options. Respondents selecting this reform feature were basically satisfied with the way it has been implemented, but several expressed concern that the proscribed penalties were insufficient punishment for certain types of crimes.

Dissatisfaction with the degree structure was minimal among respondents at the various sites, but a number of Florida respondents expressed the view that the legal definitions of crimes are still inadequate and/or that greater flexibility of law is needed for cases where the specific acts committed are not adequately reflected in the legal definition of offenses.

B. Mandatory Sentencing

Mandatory sentencing was selected by only a small number of respondents as the most significant feature of law reform. In view of the small number of respondents and differences in mandatory sentencing features among states, few generalizations can be drawn about the significance of this law reform feature. The only consensus among respondents favoring it was that mandatory minimum sentences provide some safeguard against misuse of judicial discretion in sentencing. Yet many respondents not selecting this reform feature stated their belief that mandatory minimums lead to jury pardons and, therefore, are of negligible benefit to the prosecution.

The Florida mandatory minimums for aggravated offenses were seen as increasing the likelihood that a case will go to trial and as reflecting an attempt to prevent early release of violent or repeat offenders. Higher mandatory minimums were recommended by some Florida respondents while several suggested making sexual battery an exception to the new Florida sentencing guidelines.

Michigan respondents generally saw mandatory sentencing for second and subsequent offenses as an effective attempt to prevent early release of repeat offenders. However, many respondents saw the law as being ineffectively carried out if corrections officials do not alert trial judges of the pending release of prisoners. A significant number of respondents expressed the view that mandatory minimum sentences should be effectively enforced for first offenders too.

Despite the scarcity of data obtained, information received through open-ended discussions with respondents indicate that the issue of appropriate sentencing for sex offenses remains unresolved. The early rape law reform theory that reducing sentences for rape would increase conviction rates remains untested, as does the value of mandatory sentencing in an era of prison overcrowding. The issue of appropriate sentencing and that of mandatory sentencing should be analyzed in greater depth in future studies.

C. Gender Neutralization of Statutory Language

Few respondents selected the gender neutralization of statutory language as significant in its impact on the criminal justice system. Those who did generally concurred that this reform feature was fair and needed to effect equal treatment guarantees. Beneficiaries of this reform feature were seen to vary among jurisdictions with some respondents citing male child victims as the primary beneficiaries and others citing victims of jail or correction facility assault as primary beneficiaries.

In assessing the application of the reform, it was seen as improving police response to same-sex complaints. However, except where the victim is a minor, most respondents at the Michigan and Florida sites expressed the view that prosecution of same-sex complaints is difficult. Furthermore, the impact of this reform on improving victim reporting and cooperation with criminal justice officials was found to be relatively minimal where teenage or adult victims are concerned. This lack of impact was attributed to fear of social stigma which continues to be a major factor in underreporting of offenses against males, according to victim advocates.

D. Repeal of Spousal Immunity

Very few respondents selected this feature of rape law reform as having a significant impact on the criminal justice system. Among those who did, the varying degrees to which a repeal had occurred (e.g., partial repeal versus total repeal)

were found to be of little significance in their assessments.

Respondents selecting this feature did so primarily on the basis of fairness. Among these respondents, there was a general perception that, when applied, this feature of the law was working as intended. However, 89 percent of all respondents in all states (including Georgia) expressed the conviction that spousal rape cases are very difficult to prosecute. As the result, there was a general agreement that victims living apart from their spouses were more likely to report incidents, as are spousal victims who receive serious injury during an assault. Separation and injury were seen as enhancing the likelihood of prosecution but only marginally influencing jury decisions.

These findings should have implications for both state legislatures and victim advocates. The findings seem, on the one hand, to negate the often expressed fear of legislators that allowing prosecution of marital rape would drastically increase the caseload of the courts. On the other hand, they also indicate that a wide gap still remains between the law and prevailing social standards in the attitudes of juries.

E. Elimination of Need for Proof of Nonconsent

This feature of law reform has been established only in Michigan. There it is simply a statutory restatement of the policy adopted through the redefinition of criminal acts. As such, many respondents selecting the redefinition feature of law reform saw their comments as applying equally to the statutory

restatement of policy. Nonetheless, this policy restatement was selected alone as fifth in significance by Michigan respondents.

The degree of significance varied according to respondent role. Defense attorneys selecting the reform generally felt that the elimination of the need to prove nonconsent restricts unfairly the defense of persons accused of a serious crime. However, supporters of the measure felt that prior law was unfair and unrealistic in presuming consent to a criminal act. These respondents expressed the view that sexual assault victims should not be singled out from other victims of crime by having to prove they did not consent to the crime. The primary advantage cited was that of aiding the prosecution in prohibiting the defense from confusing the jury with irrelevant issues. Disadvantages were primarily characterized in terms of increasing the potential for wrongful prosecution.

Both elimination of need for proof of nonconsent and the restatement of corroboration requirements are of equal significance. Both represent an attempt by the legislature to impress upon all concerned the intent of the new law. Given the responses from those interviewed in this study, it would appear that, as a means to ensure effective implementation of new law, this strategy has been successful.

CHAPTER VI. IMPLICATIONS OF RAPE LAW REFORM

A. Acceptance of Rape Law Reform

This study attempted to determine whether rape law reform concepts have been found acceptable by criminal justice professionals and officials in three states where they have been adopted: Florida, Georgia, and Michigan. The data collected from respondents in these states indicate that law reform need not engender the confusion, uncertainty, or antagonism predicted by some early analysts. To the contrary, reforms in these states have achieved widespread acceptance among criminal justice professionals and victim advocates.

All of the judges interviewed stated their satisfaction with the reformed laws. Similarly, 96 percent of prosecutors, 90 percent of victim advocates and 80 percent of police indicated satisfaction with current law. Not unexpectedly, defense attorneys as a group expressed less satisfaction; but a surprising 50 percent did indicate no "real" dissatisfaction with the reformed laws. This finding supports the conclusion that the legal concepts and assumptions now embodied in law in these states have achieved long-term acceptance. As many of the reforms represented radical departure from common law tradition, this finding has implications for those now engaged in efforts to bring about reform in related or comparable areas of criminal law.

Table VI-1
 SATISFACTION WITH RAPE LAW REFORM BY RESPONDENT TYPE
 ALL SITES

<u>RESPONSE</u>	<u>PROSECUTOR</u> (N=29)	<u>DEFENSE</u> <u>ATTORNEY</u> (N=30)	<u>JUDGE</u> (N=29)	<u>POLICE</u> (N=25)	<u>VICTIM</u> <u>ADVOCATE</u> (N=29)
Very satisfied	48%	13%	38%	40%	31%
Satisfied	48%	37%	62%	40%	59%
Not satisfied	--	40%	--	20%	10%
Very dissatisfied	4%	10%	--	--	--

A comparison of respondent satisfaction on a site by site basis indicates that the more comprehensive approach to law reform taken by Michigan has produced greater satisfaction than the more selective approach taken in Georgia. As a whole, Georgia (the common law model) respondents were more satisfied than dissatisfied with current (reformed) law. But only 5 percent of Georgia respondents described themselves as "very satisfied" compared with 43 percent of those in Florida (the sexual battery model) and 50 percent of Michigan (the criminal circumstance model) respondents.

B. Impact of Rape Law Reform on Public and Criminal Justice System Attitudes

The law reforms considered here were seen by survey respondents as having had some impact on both public and criminal justice

system attitudes toward the crime of rape.

At most sites there was a general consensus that public attitudes have changed considerably over the past decade, largely in favor of the victim. While a number of specific law reforms were credited with altering public perceptions, the greatest credit was given by respondents to consciousness-raising efforts by women's groups and to media attention to rape law reform. Within the major criminal justice occupations surveyed, changes in attitudes were seen as fair and needed, but many respondents expressed the belief that such change is largely superficial. These respondents felt that the "new" attitudes did not always carry over into juror decision-making. Only in Michigan were respondents fairly unanimous in crediting changes in legal standards with reducing juror bias in decision-making.

Criminal justice officials were also credited with having become less judgmental of complainants and more responsive to complaints as a result of law reform and greater public interest. However, in the case of law enforcement and criminal justice administrators, law reform was credited to a larger degree. While generally viewed as a needed change, attitude changes were not unanimously viewed as significant. A number of respondents expressed the belief that attitudinal changes within the criminal justice system were in many instances superficial. Nonetheless, victim advocates were inclined to see behavioral change as a positive step, noting that improved victim treatment may be the primary accomplishment of criminal law reform.

C. Impact of Rape Law Reform on Victims

Certain features of rape law reform were also credited with increasing victim reporting rates and victim cooperation with the criminal justice system. In this regard, the most frequently mentioned reforms were enactment of rape shield laws, repeal of corroboration requirements, and modification of resistance standards. Changes in standards of proof were also seen as contributing to increased reporting and improved cooperation. With these changes, complainants could expect to be treated in a less judgmental fashion and lack of corroborating evidence would not present a bar to prosecution of the complaint.

During open-ended discussions with respondents, other factors emerged as influencing changes in victim behavior. Many respondents stated their belief that women today are less willing to tolerate abusive behavior and are more likely to demand that the criminal justice system be responsive to their complaints than in the past. These factors, plus the reduced social stigma associated with victimization and stronger criminal laws aiding prosecution, were seen to produce changes in the characteristics of sexual assault cases.

The majority of respondents at all sites surveyed noted significant increases in the number of reported cases involving assault by an acquaintance and cases involving child sexual abuse. While many complaints of assault by an acquaintance involved "date rape" or assault by a former intimate acquaintance,

increasingly complaints were seen to involve casual acquaintances. The increasing incidence of casual acquaintance rape reports was especially emphasized by police, with some investigators reporting that these cases now constitute up to 50 percent of their caseloads. Similarly, the volume of child sexual abuse complaints was also cited by many respondents as outpacing the resources of many law enforcement and public defender units. While no consistent patterns in child sexual abuse emerged from these interviews, many police officers and prosecutors expressed the view that intrafamily incidents were more prevalent than other reported incidents.

Assaults against the elderly and spousal abuse were seen as increasing although at a lesser rate than other offenses. Similarly, complaints of assaults on men were seen as slightly increased as were incidents involving little or no corroboration of the offense. These increases were seen as part of a general increase in reporting of sexual assaults related to overall growth in the reporting of violent crimes. Despite these reporting increases, however, most respondents believe sexual assault remains a seriously underreported offense. The degree of violence and/or injury related to an incident is a major factor in victim reporting decisions.

D. Other Factors Influencing Reporting and Criminal Justice System Response

Respondents found changes in victim reporting patterns

and criminal justice system response to complaints to be influenced by a number of non-legal factors. The most frequently cited were the women's rights movement and media attention. Some respondents saw the women's movement as having encouraged greater sensitivity on the part of law enforcement and criminal justice personnel through its demands for improved victim treatment. The major change attributed to the women's movement, however, appears to be that of changing victims' attitudes toward themselves and fostering a demand for better protection under the law. Some respondents cited the women's movement as reducing the stigma of victimization, thus resulting in better victim support by family and friends. However, the reduced stigma was not seen as applying equally to all victims, and many respondents reported continued jury prejudice against victims attacked while in situations or engaged in activities of which the jurors might not approve.

Media attention was seen as the second most significant factor in victim reporting and criminal justice response. However, respondents had mixed feelings about the consequences of this attention. Many felt that it had greatly changed public perceptions of the crime and pressured the criminal justice system to be more responsive. However, concern was expressed that while the change in public perceptions had been positive, media portrayals of the criminal justice system have led to unrealistic expectations. This was particularly true in the southern states where increased reporting of acquaintance rape and other

"marginal" cases was seen as posing special problems for the criminal justice system. Still other factors cited include the current availability of victim support services and, to a lesser degree, improvement in sensitivity of the criminal justice system.

With an actual increase in violent crime being commonly perceived by the majority of all respondents, factors contributing to this increase were also explored. The most frequently mentioned factor cited was a visible increase in media violence. This was seen as producing a mass desensitization to violence among those most likely to commit it, particularly teenage males. Media violence was also seen as fostering a society more tolerant of violent crime, indirectly perpetuating violent crime by the lack of social controls. Still other factors mentioned by respondents were the breakdown of the family and "revolving door" criminal justice. The former was seen as contributing to an increase in crimes committed by juveniles, while the latter was blamed for the incidence of recidivism, specifically through the administration of light criminal sentences, probation, and early parole.

E. Implications for the Criminal Justice System

Increased reporting rates were seen to have implications for all components of the criminal justice system at all of the survey sites. Although the wider scope of Florida and Michigan law was intended to broaden the types of cases coming into the

system, Georgia respondents observed the same trends in reporting and case characteristics as did the respondents in the other states. Therefore, implications for the system were similar in a number of ways, among them increased caseloads.

Reporting volume was cited as affecting the workloads of police, public defenders, and, to a lesser degree, prosecutors. Victim counselors, whose programs serve both reporting and non-reporting victims, also experienced major caseload increases but, in this case, attributed them to routine annual increases in caseload. Of all respondents, judges were the least likely to report any significant increase in workload.

Opinions on how this increased workload might affect the criminal justice system varied by site and respondent role. In one Florida jurisdiction, for example, prosecutors were reported to be more likely to file when the complaint involved an "innocent victim" (e.g., rape committed during an armed burglary) than when the complaint involved acquaintances. The improbability of conviction in acquaintance rape cases was seen as justification for not further overcrowding the court's docket. Police in one Georgia jurisdiction cited the effect of increased workload on an understaffed office as leading to inadequate investigation and closure on many serious crimes. Ironically, this is also a charge leveled at police by some Michigan prosecutors. Still another example came from prosecutors in a number of sites where the increased caseload was seen as negatively affecting the time available to prepare victims for their roles as trial wit-

nesses. Public defenders in most, but not all, jurisdictions expressed a similar concern over lack of time for adequate trial preparation.

Although less formal in nature and unsubstantiated by official reporting statistics from jurisdictions covered in this study, these findings are nonetheless of significance. They indicate that the increased reporting of sexual assault offenses which began in the mid-1960's continues in many jurisdictions, a finding with implications for future allocation of law enforcement and criminal justice resources.

F. Disposition of Complaints

The changing characteristics of cases now coming into the criminal justice system were seen by respondents as having the greatest impact on case disposition. The majority of respondents, including those who did not share the view that case characteristics are greatly changing, expressed the belief that rape law reform has enhanced the ability of the criminal justice system to process all types of complaints, particularly those considered marginal. Complaints are seen as now moving further into the system than in the days before law reform. However, there was no across-site consensus as to whether or not more convictions are resulting from these changes.

Most respondents agreed that case disposition is often tied to such factors as problems with suspect identification or plea bargaining. However, case disposition was also seen

as being influenced by the changes in substantive law in each state. As noted in Chapter IV, for example, all of the Michigan respondents stated that redefinition of criminal acts had increased the likelihood of prosecution and conviction. Ninety-one percent of Florida respondents concurred in this view. Furthermore, the majority of respondents in Georgia as well as Florida and Michigan stated their belief that the rape shield law has increased the likelihood, if not the actuality, of conviction in their states. Yet despite these and other reform features seen as enhancing prosecution and conviction, sexual assault cases were seen by the respondents as among the more difficult cases for the criminal justice system.

When asked to assess the effect of the law on the prosecution of cases with no eyewitnesses, incomplete penetration, absence of physical injury to the victim, or the crimes of attempted rape or other sexual contact, approximately one-half of the respondents rated such cases as still (after law reform) somewhat difficult to prosecute. Some variation occurred among the sites surveyed when assessing certain of these case characteristics. In Michigan, for example, only 10 percent of respondents reported cases without physical injury as being in the "very difficult" category, compared with 22 percent of respondents in Georgia and 18 percent in Florida. The likely explanation for these differences lies in the different way the offenses are classified in these states. Under Michigan law force is treated as an aggravating factor rather than as an element of the offense

requiring proof. In cases in which penetration was incomplete, 22 percent of Michigan respondents saw prosecution as very difficult as compared with 38 percent of Georgia and 40 percent of Florida respondents.

When asked to rate the difficulty of cases with less traditional characteristics the response was about the same. Cases involving members of the same sex, intimate parties, acquaintances, and spouses were put in the "very difficult" category by most respondents. However, wide variations occurred in ratings among these cases. Forty-two percent of Michigan respondents found same sex cases to be "not difficult," while only 28 percent of Georgia and 14 percent of Florida respondents concurred. Where cases involved intimate parties, 17 percent of Michigan respondents saw them as not difficult compared with 5 percent of respondents in Georgia and 2 percent in Florida. Similarly, cases between spouses were seen as not difficult by 10 percent of Michigan respondents; but by only 4 percent of Georgia and 2 percent of Florida respondents. The likely explanation for these variations may be that under Michigan law, nonconsent is presumed while under laws of the other states it is an element of the offense requiring proof.

Cases with more than the usual evidentiary problems, such as lack of eye witnesses and those with unusual victim-offender characteristics, were rated as somewhat difficult to prosecute across sites. This indicates that changes in legal standards of proof do not magically erase the difficulty in prosecuting

sex offenses. However, differences in the degree to which cases are seen as difficult appear somewhat related to the substantive law of each site.

This proposition was borne out on a number of occasions during open-ended questioning of respondents. In discussing acquaintance rape cases, for example, there was some consensus among Georgia and Florida respondents that, in the absence of proof of nonconsent, these cases are less likely than others to go forward in the criminal justice system. Most Michigan prosecutors, on the other hand, reported themselves as more willing to go forward with an acquaintance rape case on the sole basis of complainant credibility. While the data obtained in this study do not permit a complete assessment of the impact of substantive law on case processing and disposition of "non-traditional" cases, such as acquaintance or same-sex cases, results do indicate that differences in substantive law may be more significant than formerly realized. The widespread lack of uniformity in criminal law may have consequences for the treatment of certain types of reported crime. Thus, research which attempts to evaluate the impact of law reform on the simple basis of measuring reporting and disposition statistics may be of limited value.

G. Recommendations for Further Change

As Georgia law contains the least comprehensive reform features, respondents at sites in that state were asked to give

their opinions on the need for further law reform. Sixty-seven percent stated that gender neutralization of statutory language was a needed change, while 79 percent stated that broadening of the definition of criminal offenses was needed. Forty-one percent favored elimination of consent as an element of offense while 22 percent stated dissatisfaction with the current resistance standard. Mandatory sentences were favored by 52 percent of respondents, and 49 percent favored a change in jury instructions. Clarification of the law in regard to the prosecution of marital rape was favored by 61 percent of the respondents, but this act was accomplished by the State Supreme Court after our interviews there had been completed.

No major consensus emerged for any of the recommendations among respondents at sites in Michigan and Florida. The most frequently cited areas in need of change in Florida were: (1) change in consent standards (52 percent), (2) change in jury instructions (41 percent), (3) further change in the definition of criminal acts (38 percent), and (4) mandatory sentencing (29 percent).

There was no consensus among Michigan respondents as to further change in that state's law. The majority of respondents expressed the belief that the criminal circumstance model serves to make the system more fair and more objective with more convictions resulting from a statute covering more situations than the previous law did. Where a major consensus occurred, it was in the need for mandatory minimum sentences for all degrees

of sexual assault (defense attorneys did not, in general, join in this consensus). Some respondents wanted minor clarification of "intent" language, while others called for a change in the current mandatory sentencing provisions requiring the judge to consider intent at sentencing, rather than during the trial. Some respondents stated that the shield rule should be modified to prevent the offer and motion of proof from occurring in front of the jury while others suggested a change in the juvenile code to permit prosecution of persons over age 15 as adults. In an opinion less related to criminal law, a significant number of respondents expressed the idea that the state should pay for the forensic medical examination of victims.

In assessing recommended changes by the respondents' role in the criminal justice system, some major differences emerged. Victim advocates (100 percent) and defense attorneys (88 percent) were more likely than other respondents to want gender neutralization of statutory language. Victim advocates (79 percent) and prosecutors (79 percent) were more likely to agree on the need for more redefinition of criminal acts. Mandatory sentences were more favored by victim advocates (79 percent) and police (62 percent), while the same respondent groups were more likely to also want a change in spousal immunity. Victim advocates (43 percent) were more likely to also see the need for further change in resistance standards. Slightly half of all respondents favored a change in jury instructions; more than half, omitting defense attorneys, called for change in the prevailing consent standards.

In summary, victim advocates were most in favor of further law reform. Judges were the least likely to see the need, but close to one-half did favor gender neutralization, redefinition of criminal acts, and a change in spousal immunity. Police appeared more satisfied with current law than prosecutors but rated the need for certain reform features similarly to victim advocates. Prosecutors saw less need for mandatory sentencing and a change in resistance standards but close to half favored the other reform features. The majority favored the redefinition of criminal acts.

Defense attorneys were also less likely than other respondents to favor further law reform. The reforms which they favored were ones which they believed would most benefit their clients. These included gender neutralization, redefinition of criminal acts, and changes in jury instructions and consent standards. In regard to the latter two reforms, the actual changes favored by defense attorneys were not as substantive as those favored by the other respondents.

Due to the small numbers of persons offering opinions, no absolute conclusions can be drawn about either the need for additional reforms or the precise reforms needed. However, the data do provide some insight into attitudes toward further law reform in general. Specifically, the results show that interest in the redefinition of criminal acts remains relatively strong in states adopting the common law and sexual battery models. They also show that interest in further change in consent

standards continues to exist. The data further indicate that, on the basis of criminal justice system roles, support for further rape law reform is divided along much the same lines as at the outset of law reform efforts in the early 1970's.

H. Conclusions

The major conclusion which can be drawn from this study is that rape law reform has greatly altered perceptions of the offense of sexual assault, that it has achieved some of the intended goals of reformers, and that it has had strong positive impact on the administration of criminal law. However, need for further evaluation and consideration of rape law reform models is clearly indicated. Such evaluation should be a prerequisite to any attempts to design legislation to improve the administration of criminal justice and the deterrence potential of rape law.

Specifically, the study found that:

1. A criminal law reform initiated by private citizens, and achieved through legislative rather than the common law process, does not necessarily generate the anticipated confusion, uncertainty, or antagonism among administrators of the reformed law.
2. The concepts embodied in law reforms reflecting a major, or even radical, departure from common law theory and assumptions, have achieved long-term acceptance by law enforcement, criminal justice, and related communities.

3. The goals of rape law reform to improve the administration of criminal justice appear to have been partially realized in the three states studied. The degree to which law reform goals have been realized, however, appears to be a product of the substantive nature of each state's reform as well as application of the law in individual jurisdictions.
4. Rape law reform is generally seen as most advantageous to the prosecution but, in some respects, advantageous to all in the criminal justice system. Reform features, such as new statutory schemes, are seen as greatly facilitating investigation, charging, prosecution, and sentencing, as well as improving plea bargaining options. Modified standards of proof, and changes in evidentiary rules, are seen as accomplishing some of the above objectives as well as resulting in increased victim reporting and improved cooperation with the criminal justice system.
5. Most rape law reform features are seen as being of some great significance to the criminal justice system with some seen as more useful than others. However, a "total package" of reform appears to be of even greater significance in determining satisfaction with the law and in determining the effectiveness of the law. In this regard, satisfaction appears higher with comprehensive, rather than selective, approaches to law reform and somewhat higher with the criminal circumstance rather than the sexual battery model.
6. Interest in further rape law reform exists, remaining highest

in states with common law or sexual battery models. Those areas of new or further reform most favored are the redefinition of criminal acts and changes in consent standards. Victim advocates continue to be the greatest proponents of further law reform, with judges indicating the least favor. Police and prosecutors show some support for further reform while defense attorneys primarily favor only those reforms which they feel will restore the law to more traditional common law features or which will enhance plea bargaining and sentencing options.

7. Demonstrated interest in further law reform is borne out both by this study and by the continuing efforts of legislators. However, no consensus exists on what constitutes the most effective law, and efforts in recent years have created a lack of uniformity in criminal law treatment of offenses. Given the indications that changing social mores are bringing more and more difficult cases into the criminal justice system, laws designed with common law offenses in mind may have significant consequence for the system in the future.

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APPENDIX 1
TABLES

NCJRS

DEC 82 1986

ACQUISITIONS

ALL SITES
RESPONDENTS' DEMOGRAPHICS

<u>Respondent</u>	(N=151)
Prosecutor	21%
Defense attorney	20%
Judge	21%
Police officer	17%
Victim advocate	21%
 <u>Respondent's Sex</u>	 (N=151)
Male	56%
Female	44%
 <u>Jurisdiction</u>	 (N=151)
Atlanta	17%
Savannah	14%
Jacksonville	15%
Miami	20%
Flint	15%
Detroit	19%
 <u>Number of Years on the Job</u>	 (N=150)
5 years or less	41%
6 - 10 years	23%
11 years or more	36%
 <u>Total Number of Sexual Assault Cases Handled</u>	 (N=139)
Less than 50	25%
51 - 100	23%
101 - 200	12%
201 - 300	4%
Over 300	36%
 <u>Number of Sexual Assault Cases Handled Before Law Reform</u>	 (N=140)
None	66%
Less than 50	16%
51 - 100	3%
101 - 200	3%
201 - 300	1%
Over 300	11%
 <u>Number of Sexual Assault Cases Handled After Law Reform</u>	 (N=141)
None	1%
Less than 50	27%
51 - 100	21%
101 - 200	13%
201 - 300	7%
Over 300	31%

<u>Prior Working Experience in Another Part of Criminal Justice System</u>	(N=149)
Yes	37%
No	63%

<u>Type of Previous Experience in Criminal Justice System</u>	(N=57)
Prosecutor	37%
Defense attorney	42%
Judge	2%
Police officer	2%
Other	17%

<u>Received Special Training on Sexual Assault Cases</u>	(N=146)
Yes	32%
No	68%

<u>Attended Conferences on Sexual Assault Cases</u>	(N=145)
Yes	30%
No	70%

ALL SITES
OVERALL SATISFACTION--RAPE REFORM LEGISLATION

RESPONSE	(N=142)
Very satisfied	34%
Somewhat satisfied	49%
Not satisfied	14%
Very dissatisfied	3%

ALL SITES
 FREQUENCY WITH WHICH POLICE INVESTIGATE/
 MAKE ARRESTS IN REPORTED CASES WITH THE FOLLOWING CHARACTERISTICS

RESPONSE	<u>Most of the Time</u>	<u>Some of the Time</u>	<u>Rarely</u>
Cases without eyewitnesses (N=106)	56%	9%	5%
Cases without penetration (N=105)	54%	40%	6%
Cases without physical injury (N=106)	68%	28%	4%
Cases in which victim & assailant of same sex (N=73)	47%	32%	22%
Cases of less injurious sexual assaults (N=98)	50%	39%	11%
Cases between acquaintances (N=105)	62%	34%	4%
Cases between intimates (N=109)	34%	40%	26%
Cases between spouses (N=97)	22%	28%	50%

ALL SITES
 DIFFICULTY IN SUCCESSFULLY PROSECUTING
 THE FOLLOWING TYPES OF CASES

RESPONSE	<u>Very Difficult</u>	<u>Somewhat Difficult</u>	<u>Not Difficult</u>
Cases without eyewitnesses (N=138)	27%	43%	30%
Cases without penetration (N=137)	34%	49%	17%
Cases without physical injury (N=130)	17%	59%	14%
Cases in which victim & assailant of same sex (N=93)	44%	30%	26%
Cases of less injurious sexual assaults (N=122)	24%	50%	26%
Cases between acquaintances (N=136)	32%	46%	22%
Cases between intimates (N=138)	75%	17%	8%
Cases between spouses (N=115)	77%	17%	5%

IMPACT OF
GEORGIA'S RAPE SHIELD LAW

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting by victims (N=40)	68%	32%
Encourages cooperation with the prosecution (N=41)	90%	10%
Increases likelihood of prosecution (N=40)	85%	15%
Improves victim's treatment during cross examination (N=40)	92%	8%
Increases likelihood of conviction (N=41)	83%	17%
Improves attitudes of criminal justice officials (N=38)	61%	39%
Improves public attitudes (n=40)	60%	40%

ADVANTAGES OF GEORGIA'S RAPE SHIELD LAW

RESPONSE	(N=57*)
Keeps focus on relevant issues	32%
Victim no longer badgered during cross examination	22%
No advantages	21%
Victim more willing to prosecute	12%
More likelihood of prosecution	7%
Victim doesn't have to prove her character	4%
Promotes better understanding of nature of sexual assaults (e.g., victim may have sexual history)	2%

*Up to three advantages were coded for each respondent in the sample.

DISADVANTAGES OF GEORGIA'S RAPE SHIELD LAW

RESPONSE

	(N=46*)
No disadvantages	59%
May not allow introduction of all relevant facts	15%
Other responses	9%
May result in wrongful prosecution	7%
Due process denied/defendant's right to confront victim is violated	4%
Irrelevant issues still introduced	4%
Law ambiguous/juries confused by law	2%

*Up to three disadvantages were coded for each respondent in the sample.

DEFENSE STRATEGIES--GEORGIA'S RAPE SHIELD LAW

RESPONSE

(N=29)

No effective defense strategies	72%
Innuendo is introduced/attempt to introduce doubts' in jurors' minds	17%
Use exceptions available in the law	8%
Argue fact situation	3%

PERCEPTIONS OF GEORGIA'S RAPE SHIELD LAW

RESPONSE	<u>Yes</u>	<u>No</u>
Law is fair (N=42)	86%	14%
Law was needed (N=43)	91%	9%
Law works as intended (N=40)	82%	18%
Law should be modified (N=41)	45%	56%

OVERALL SATISFACTION--GEORGIA'S RAPE SHIELD LAW

RESPONSE

(N=43)

Very satisfied
Somewhat satisfied
Not satisfied
Very dissatisfied

23%
49%
19%
8%

EFFECT OF GEORGIA'S
CORROBORATION REQUIREMENT REPEAL

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting by victims (N=38)	47%	53%
Encourages cooperation with prosecution (N=37)	70%	30%
Increases likelihood of prosecution (N=39)	51%	49%
Improves victim's treatment during cross examination (N=38)	87%	13%
Increases likelihood of conviction (N=39)	79%	21%
Improves attitudes of criminal justice officials (N=39)	33%	67%
Improves public attitudes (N=39)	28%	72%

ADVANTAGES OF REPEAL OF GEORGIA'S
CORROBORATION REQUIREMENT

RESPONSE	(n=45*)
More prosecutions/more successful prosecutions	30%
No advantages	23%
Promotes better understanding of nature of sexual assaults (e.g., no eyewitnesses, little physical injury, etc.)	22%
Other responses	13%
Keeps focus on relevant issues	4%
Victim more willing to prosecute	4%
Victim no longer badgered during cross examination	2%
Law more specific/more charges possible	2%

*Up to three advantages were coded for each respondent in the sample.

DISADVANTAGES OF GEORGIA'S
CORROBORATION REQUIREMENT REPEAL

RESPONSE	(N=37)
No disadvantages	69%
May result in wrongful prosecution	17%
Other responses	12%
Difficult to prosecute	2%

*Up to three disadvantages were coded for each respondent in the sample.

DEFENSE STRATEGIES--GEORGIA'S CORROBORATION REPEAL

RESPONSE	(N=28)
No effective defense strategies	82%
Argue fact situation	11%
Innuendo is introduced/attempt to introduce doubts in jurors' minds	4%
Use exceptions available in the law	4%

PERCEPTIONS OF REPEAL OF
GEORGIA'S CORROBORATION REQUIREMENT

RESPONSE	<u>Yes</u>	<u>No</u>
Repeal is fair (N=42)	81%	19%
Repeal is needed (N=42)	76%	24%
Repeal works as intended (N=38)	84%	16%
Repeal should be modified (N=39)	26%	74%

OVERALL SATISFACTION WITH REPEAL OF
GEORGIA'S CORROBORATION REQUIREMENT

RESPONSE	(N=41)
Very satisfied	24%
Somewhat satisfied	56%
Not satisfied	5%
Very dissatisfied	15%

FLORIDA RAPE REFORM LEGISLATION:
THREE MOST IMPORTANT PROVISIONS IDENTIFIED BY RESPONDENTS

RESPONSE	(N=154*)
Creation of a rape shield law	24%
Redefinition of criminal acts	23%
Repeal of corroboration requirement	16%
Change in resistance standard	16%
Creation of a degree structure	10%
Establishment of mandatory sentences	8%
Gender neutralization of rape statute	3%

*Each respondent was asked to identify three of the most important provisions; some respondents elected to name only one or two provisions.

MICHIGAN
RAPE REFORM LEGISLATION:
THREE MOST IMPORTANT PROVISIONS IDENTIFIED BY RESPONDENTS

RESPONSE	(N-155*)
Elimination of resistance standard	27%
Creation of rape shield law	21%
Redefinition of criminal acts	18%
Creation of a degree structure	14%
Elimination of need for proof of nonconsent	8%
Change in resistance standard	6%
Creation of mandatory sentences	4%
Gender neutralization of rape statute	2%
Partial repeal of spousal immunity	

*Each respondent was asked to identify three of the most important provisions; some respondents elected to name only one or two provisions.

MICHIGAN
 PERCEPTIONS OF IMPACT OF REDEFINITION OF CRIMINAL ACTS UNDER
 THE CRIMINAL SEXUAL CONDUCT STATUTE

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting (N=27)	48%	52%
Encourages cooperation with prosecution (N=27)	48%	52%
Increases likelihood of prosecution (N=27)	100%	--
Improves victim's treatment during cross examination (N=26)	23%	77%
Increases likelihood of conviction		
Improves attitudes of criminal justice officials (N=26)	50%	50%
Improves public attitudes (N=26)	50%	50%

MICHIGAN
ADVANTAGES OF REDEFINING CRIMINAL ACTS UNDER
THE CRIMINAL SEXUAL CONDUCT STATUTE

RESPONSE	(N=39*)
Law more specific/more charges possible	53%
Other responses	20%
More likelihood of prosecution	13%
Victim more willing to prosecute	5%
Better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	3%
Better/more just penalties	3%
Keeps focus on relevant issues/cannot introduce victim's sexual history	3%
No advantages	3%

*Up to three identified advantages were coded for each respondent.

MICHIGAN
DISADVANTAGES OF REDEFINING CRIMINAL ACTS UNDER
THE CRIMINAL SEXUAL CONDUCT STATUTE

RESPONSE	(N=32*)
No disadvantages	41%
Other responses	34%
Difficult to prosecute	16%
May result in wrongful prosecution	9%

*Up to three identified disadvantages were coded for each respondent.

MICHIGAN
PERCEPTIONS OF THE REDEFINITION OF CRIMINAL ACTS
UNDER THE CRIMINAL SEXUAL CONDUCT STATUTE

RESPONSE	<u>Yes</u>	<u>No</u>
Provision is fair (N=26)	85%	15%
Provision was needed (N=24)	100%	--
Provision works as intended (N=27)	89%	11%
Provision should be modified (N=21)	43%	57%

MICHIGAN
DEFENSE STRATEGIES--REDEFINITION OF CRIMINAL ACTS UNDER
THE CRIMINAL SEXUAL CONDUCT STATUTE

RESPONSE	(N=16)
No effective defense strategies	75%
Use exceptions available in the law	19%
Argue fact situation	6%

MICHIGAN
SATISFACTION WITH REDEFINITION OF CRIMINAL ACTS UNDER
THE CRIMINAL SEXUAL CONDUCT STATUTE

RESPONSE	(N=26)
Very satisfied	35%
Somewhat satisfied	46%
Not satisfied	--
Very dissatisfied	19%

MICHIGAN
 PERCEPTIONS OF CRIMINAL SEXUAL CONDUCT DEGREE STRUCTURE

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting (N=18)	39%	61%
Encourages prosecution (N=21)	38%	62%
More cases accepted for prosecution (N=21)	95%	5%
Improves victim's treatment during cross-examination (N=21)	33%	67%
Increases likelihood of conviction		
Improves attitudes of criminal justice officials (N=21)	24%	76%
Improves public attitudes	25%	75%

MICHIGAN
ADVANTAGES OF CRIMINAL SEXUAL CONDUCT DEGREE STRUCTURE

RESPONSE	(N=29*)
Law more specific/more charges possible	48%
More prosecutions/more successful prosecutions	21%
Better/more just penalties	10%
Other responses	10%
Better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	3%
No advantages	2%

*Up to three identified advantages were coded for each respondent.

MICHIGAN
DISADVANTAGES OF CRIMINAL SEXUAL CONDUCT DEGREE STRUCTURE

RESPONSE	(N=32*)
No disadvantages	50%
Other responses	22%
Weakens punishment/punishment too lenient	7%
Difficult to prosecute	7%
May result in wrongful prosecution	7%
Pleabargaining undercuts intent of law	7%

*Up to three identified disadvantages were coded for each respondent.

MICHIGAN
PERCEPTIONS OF CRIMINAL SEXUAL CONDUCT DEGREE STRUCTURE

RESPONSE	<u>Yes</u>	<u>No</u>
Provision is fair (N=20)	100%	--
Provision was needed (N=20)	100%	--
Provision works as intended (N=20)	95%	5%
Provision should be modified (N=16)	25%	75%

MICHIGAN
DEFENSE STRATEGIES--CRIMINAL SEXUAL CONDUCT DEGREE STRUCTURE

RESPONSE	(N=8)
No effective defense strategies	75%
Variety of strategies identified	25%

MICHIGAN
SATISFACTION WITH CRIMINAL SEXUAL CONDUCT DEGREE STRUCTURE

RESPONSE	(N=18)
Very satisfied	44%
Somewhat satisfied	39%
Not satisfied	17%
Very dissatisfied	--

MICHIGAN
 PERCEPTIONS OF ELIMINATION OF RESISTANCE STANDARD
 IN CRIMINAL SEXUAL CONDUCT CASES

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting (N=23)	78%	22%
Encourages prosecution (N=29)	96%	4%
More cases accepted for prosecution (N=30)	87%	13%
Improves victim's treatment during cross-examination (N=23)	52%	48%
Increases likelihood of conviction		
Improves attitudes of criminal justice officials (N=29)	69%	31%
Improves public attitudes (N=27)	41%	59%

MICHIGAN
ADVANTAGES OF ELIMINATION OF RESISTANCE STANDARD
IN CRIMINAL SEXUAL CONDUCT CASES

RESPONSE	(N=44*)
Better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	39%
Victim more willing to prosecute	27%
No advantages	14%
More prosecutions/more successful prosecutions	9%
Other reponses	9%

*Up to three identified advantages were coded for each respondent.

MICHIGAN
DISADVANTAGES OF ELIMINATION OF RESISTANCE STANDARD
IN CRIMINAL SEXUAL CONDUCT CASES

RESPONSE	(N=16#)
No disadvantages	69%
May result in wrongful prosecution	19%
Difficult to prosecute	6%
Other reponses	6%

*Up to three identified disadvantages were coded for each respondent.

MICHIGAN
PERCEPTIONS OF ELIMINATION OF RESISTANCE STANDARD

RESPONSE	<u>Yes</u>	<u>No</u>
Provision is fair (N=30)	87%	13%
Provision was needed (N=29)	86%	14%
Provision works as intended (N=30)	97%	3%
Provision should be modified (N=24)	25%	75%

MICHIGAN
DEFENSE STRATEGIES--ELIMINATION OF RESISTANCE STANDARD

RESPONSE	(N=12)
No effective defense strategies	50%
Argue fact situation	33%
Innuendo is introduced/attempt to introduce doubts in jurors' minds	17%

MICHIGAN
SATISFACTION WITH RESISTANCE STANDARD

RESPONSE	(N=30)
Very satisfied	30%
Somewhat satisfied	50%
Not satisfied	3%
Very dissatisfied	17%

MICHIGAN
PERCEPTIONS OF RAPE SHIELD LAW

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting (N=29)	86%	14%
Encourages prosecution (N=31)	94%	6%
More cases accepted for prosecution (N=30)	87%	13%
Improves victim's treatment during cross-examination (N=30)	93%	7%
Increases likelihood of conviction		
Improves attitudes of criminal justice officials (N=28)	50%	50%
Improves public attitudes (N=24)	75%	25%

MICHIGAN
ADVANTAGES OF RAPE SHIELD LAW

RESPONSE	(N=39*)
Keeps focus on relevant issues/cannot introduce victim's sexual history	46%
Victim more willing to prosecute	26%
No advantages	13%
Other responses	9%
More prosecutions/more successful prosecutions	3%
Better understanding of nature of sexual assaults (e.g., no eyewitnesses; victim may not physically resist; victim may have sexual history)	3%

*Up to three identified advantages were coded for each respondent.

MICHIGAN
DISADVANTAGES OF RAPE SHIELD LAW

RESPONSE	(N=26)
No disadvantages	46%
May not allow introduction of all relevant facts	27%
May result in wrongful prosecution	12%
Due process denied/defendant's right to confront victim is violated	8%
Other responses	7%

*Up to three identified disadvantages were coded for each respondent.

MICHIGAN
PERCEPTIONS OF RAPE SHIELD LAW

RESPONSE

	<u>Yes</u>	<u>No</u>
Provision is fair (N=32)	84%	16%
Provision was needed (N=30)	97%	3%
Provision works as intended (N=32)	91%	9%
Provision should be modified (N=30)	37%	63%

MICHIGAN
DEFENSE STRATEGIES--RAPE SHIELD LAW

RESPONSE	(N=24)
Innuendo is introduced/attempt to introduce doubts in jurors' minds	46%
No effective defense strategies	38%
Use exceptions available in the law	8%
Other responses	8%

MICHIGAN
SATISFACTION WITH RAPE SHIELD LAW

RESPONSE	(N=31)
Very satisfied	42%
Somewhat satisfied	35%
Not satisfied	16%
Very dissatisfied	7%

FLORIDA
PERCEPTIONS OF IMPACT OF REDEFINITION OF
CRIMINAL ACTS

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting (N=33)	33%	67%
Encourages prosecution (N=33)	48%	52%
More cases accepted for prosecution (N=34)	91%	9%
Improves victim's treatment during cross-examination (N=33)	15%	85%
Increases likelihood of conviction (N=34)	91%	9%
Improves attitudes of criminal justice officials (N=34)	41%	59%
Improves public attitudes (N=34)	35%	65%

FLORIDA
ADVANTAGES OF REDEFINITION OF
CRIMINAL ACTS

RESPONSE	(N=48*)
Law more specific/more charges possible	18%
More prosecutions/more successful prosecutions	17%
Other responses	11%
Better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	10%
No advantages	6%
Better/more just penalties	6%
Victim more willing to prosecute	2%

*Up to three identified advantages were coded for each respondent.

FLORIDA
DISADVANTAGES OF REDEFINITION OF
CRIMINAL ACTS

RESPONSE

(N= *)

No disadvantages
Weakens punishment/punishment too lenient
Difficult to prosecute
May result in wrongful prosecution
May not allow introduction of all relevant
facts
Irrelevant material still introduced
Penalties too severe/too inflexible
Encourages over-charging by prosecutor
Law ambiguous/juries confused by law
Plea bargaining undercuts intent of law
Due process denied/defendant's right to
confront victim is violated
More cases introduced into system/new
crimes are defined
Other responses

*Up to three identified disadvantages were coded for each respondent.

FLORIDA
PERCEPTIONS OF THE REDEFINITION
OF CRIMINAL ACTS

RESPONSE	<u>Yes</u>	<u>No</u>
Provision is fair (N=35)	83%	17%
Provision was needed (N=35)	94%	6%
Provision works as intended (N=24)	92%	8%
Provision should be modified (N=34)	44%	56%

FLORIDA
DEFENSE STRATEGIES--REDEFINITION
OF CRIMINAL ACTS

RESPONSE

No effective defense strategies
Argue fact situation

(N= 8)

75%

25%

FLORIDA
SATISFACTION WITH REDEFINITION OF
CRIMINAL ACTS

RESPONSE	(N=34)
Very satisfied	38%
Somewhat satisfied	53%
Not satisfied	9%
Very dissatisfied	--

FLORIDA
 PERCEPTIONS OF IMPACT OF REPEAL
 OF CORROBORATION REQUIREMENT

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting (N=23)	52%	48%
Encourages prosecution (N=15)	67%	23%
More cases accepted for prosecution (N=24)	83%	17%
Improves victim's treatment during cross-examination (N=23)	17%	83%
Increases likelihood of conviction (N=23)	83%	17%
Improves attitudes of criminal justice officials (N=23)	30%	70%
Improves public attitudes (N=23)	43%	57%

FLORIDA
ADVANTAGES OF REPEAL OF
CORROBORATION REQUIREMENT

RESPONSE	(N=19*)
Better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	32%
More prosecutions/more successful prosecutions	26%
Other responses	26%
No advantages	16%

*Up to three identified advantages were coded for each respondent.

FLORIDA
DISADVANTAGES OF THE REPEAL OF
CORROBORATION REQUIREMENT

RESPONSE

(N=

No disadvantages
Weakens punishment/punishment too lenient
Difficult to prosecute
May result in wrongful prosecution
May not allow introduction of all relevant
facts
Irrelevant material still introduced
Penalties too severe/too inflexible
Encourages over-charging by prosecutor
Law ambiguous/juries confused by law
Pleabargaining undercuts intent of law
Due process denied/defendant's right to
confront victim is violated
More cases introduced into system/new crimes
are defined
Other responses

FLORIDA
PERCEPTIONS OF REPEAL OF THE
CORROBORATION REQUIREMENT

RESPONSE	<u>Yes</u>	<u>No</u>
Provision is fair (N=24)	96%	4%
Provision was needed (N=24)	83%	17%
Provision works as intended (N=15)	80%	20%
Provision should be modified (N=23)	26%	74%

FLORIDA
DEFENSE STRATEGIES--REPEAL OF
CORROBORATION REQUIREMENT

RESPONSE	(N= 6)
No effective defense strategies	67%
Innuendo is introduced/attempt to introduce doubts in jurors' minds	17%
Other	16%

FLORIDA
SATISFACTION WITH REPEAL OF
CORROBORATION REQUIREMENT

RESPONSE	(N=24)
Very satisfied	33%
Somewhat satisfied	58%
Dissatisfied	9%
Very dissatisfied	--

FLORIDA
PERCEPTIONS OF CHANGE IN RESISTANCE STANDARD

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting (N=25)	72%	28%
Encourages prosecution (N=24)	88%	12%
More cases accepted for prosecution (N=25)	92%	8%
Improves victim's treatment during cross-examination (N=23)	35%	65%
Increases likelihood of conviction (N=24)	96%	4%
Improves attitudes of criminal justice officials (N=24)	54%	46%
Improves public attitudes (N=25)	60%	40%

FLORIDA
ADVANTAGES OF CHANGE IN RESISTANCE STANDARD

RESPONSE	(N=21)
Better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	38%
More prosecutions/more successful prosecutions	24%
Law more specific/more charges possible	14%
Other responses	14%
No advantages	10%
Victim more willing to prosecute	1%

FLORIDA
DISADVANTAGES OF CHANGE IN RESISTANCE STANDARD

RESPONSE

No disadvantages
Weakens punishment/punishment too lenient
Difficult to prosecute
May result in wrongful prosecution
May not allow introduction of all
 relevant facts
Irrelevant material still introduced
Penalties too severe/too inflexible
Encourages over-charging by prosecutor
Law ambiguous/juries confused by law
Pleabargaining undercuts intent of law
Due process denied/defendant's right to
 confront victim is violated
More cases introduced into system/new
 crimes are defined
Other responses

FLORIDA
PERCEPTIONS OF CHANGE IN RESISTANCE STANDARD

RESPONSE	<u>Yes</u>	<u>No</u>
Provision is fair (N=24)	100%	--
Provision was needed (N=25)	92%	8%
Provision works as intended (N=17)	88%	12%
Provision should be modified (N=23)	22%	78%

FLORIDA
DEFENSE STRATEGIES--CHANGE IN RESISTANCE STANDARD

RESPONSE	(N= 6)
Argue fact situation	50%
No effective defense strategies	33%
Innuendo is introduced/attempt to introduce doubts in jurors' minds	17%

FLORIDA
SATISFACTION WITH CHANGE IN RESISTANCE STANDARD

RESPONSE	(N=25)
Very satisfied	36%
Somewhat satisfied	60%
Dissatisfied	--
Very dissatisfied	4%

FLORIDA
PERCEPTIONS OF RAPE SHIELD LAW

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting (N=33)	70%	30%
Encourages cooperation with prosecution (N=36)	100%	--
Increases likelihood of prosecution (N=33)	88%	12%
Improves victim's treatment during cross-examination (N=34)	91%	9%
Increases likelihood of conviction (N=33)	97%	3%
Improves attitudes of criminal justice officials (N=31)	52%	48%
Improves public attitudes (N=33)	70%	30%

FLORIDA
ADVANTAGES OF RAPE SHIELD LAW

RESPONSE	(N=37)
Keeps focus on relevant issues/cannot introduce victim's sexual history	43%
Victim more willing to prosecute	17%
Victim no longer badgered during cross- examination	14%
Other responses	12%
No advantages	8%
More prosecutions/more successful prosecutions	6%

FLORIDA
DISADVANTAGES OF RAPE SHIELD LAW

RESPONSE

No disadvantages
Weakens punishment/punishment too lenient
Difficult to prosecute
May result in wrongful prosecution
May not allow introduction of all
 relevant facts
Irrelevant material still introduced
Penalties too severe/too inflexible
Encourages over-charging by prosecutor
Law ambiguous/juries confused by law
Pleabargaining undercuts intent of law
Due process denied/defendant's right to
 confront victim is violated
More cases introduced into system/new
 crimes are defined
Other responses

FLORIDA
PERCEPTIONS OF RAPE SHIELD LAW

RESPONSE	<u>Yes</u>	<u>No</u>
Provision is fair (N=37)	84%	16%
Provision was needed (N=37)	84%	16%
Provision works as intended (N=28)	93%	7%
Provision should be modified (N=38)	42%	58%

FLORIDA
DEFENSE STRATEGIES--RAPE SHIELD LAW

RESPONSE

Innuendo is introduced/attempt to introduce doubts in jurors' minds	(N= 9) 56%
No effective defense strategies	33%
Argue fact situation	11%

FLORIDA
SATISFACTION WITH RAPE SHIELD LAW

RESPONSE	(N=36)
Very satisfied	31%
Somewhat satisfied	53%
Dissatisfied	3%
Very dissatisfied	13%

ALL SITES
RAPE SHIELD LAW

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting (N=103)	73%	27%
Encourages cooperation with prosecution (N=108)	94%	6%
Increases likelihood of prosecution (N=103)	86%	14%
Improves victims' treatment during cross-examination (N=104)	93%	7%
Increases likelihood of conviction (N=93)	90%	10%
Improves attitudes of criminal justice officials (N=97)	52%	48%
Improves public attitudes (N=97)	67%	33%

ALL SITES
RAPE SHIELD LAW ADVANTAGES

RESPONSE	(N=154*)
No advantage	25%
Law more specific/more charges possible	1%
Victim doesn't have to prove her character	3%
More likelihood of prosecution	6%
Promotes better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	1%
Keeps focus on relevant issues	36%
Victim more willing to prosecute	17%
Victim no longer badgered during cross examination	11%

ALL SITES
RAPE SHIELD LAW DISADVANTAGES

RESPONSE

(N=120*)

No disadvantages	55%
Difficult to prosecute	3%
May result in wrongful prosecution	9%
Irrevelant issues still introduced	20%
Penalties too severe/too inflexible	2%
Encourages over-charging by prosecutor	2%
Pleabargaining undercuts intent of law	3%
More cases introduced into system	6%

ALL SITES
PERCEPTIONS OF RAPE SHIELD LAW

RESPONSE	<u>Yes</u>	<u>No</u>
Provision is fair (N=111)	85%	15%
Provision was needed (N=110)	90%	10%
Provision works as intended (N=100)	88%	12%
Provision should be modified (N=110)	42%	58%

ALL SITES
RAPE SHIELD LAW--DEFENSE STRATEGIES

RESPONSE	(N=67)
No effective defense strategies	52%
Innuendo is introduced/attempt to introduce doubts in jurors' minds	39%
Argue fact situation	3%
Appeal on constitutional grounds	3%
Use exceptions available in the law	3%

ALL SITES
OVERALL SATISFACTION--RAPE SHIELD LAW

RESPONSE

Very satisfied	(N=110)
Satisfied	31%
Not satisfied	46%
Very dissatisfied	13%
	10%

ALL SITES
 REPEAL OF CORROBORATION REQUIREMENT

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting (N=70)	50%	50%
Encourages cooperation with prosecution (N=70)	73%	27%
Increases likelihood of prosecution (N=72)	83%	17%
Improves victims' treatment during cross examination (N=72)	43%	57%
Increases likelihood of conviction (N=71)	83%	17%
Improves attitudes of criminal justice officials	34%	66%
Improves public attitudes (N=71)	37%	63%

ALL SITES
REPEAL OF CORROBORATION REQUIREMENT
ADVANTAGES

RESPONSE	(N=76)
Better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	36%
More prosecutions/more successful prosecutions	30%
No advantage	26%
Keeps focus on relevant issues/cannot introduce victims' sexual history	3%
Victim more willing to prosecute	3%
Law more specific/more charges possible	1%
Victim no longer badgered during cross examination	1%

ALL SITES
REPEAL OF CORROBORATION REQUIREMENT
DISADVANTAGES

RESPONSE	(N=73)
No disadvantages	71%
May result in wrongful prosecution	21%
Difficult to prosecute	3%
Other responses	3%
Irrevelant material still introduced	1%
Encourages over-charging by prosecutor	1%

ALL SITES
PERCEPTIONS OF REPEAL OF CORROBORATION REQUIREMENT

RESPONSE	<u>Yes</u>	<u>No</u>
Provision is fair (N=76)	88%	12%
Provision was needed (N=76)	82%	18%
Provision works as intended (N=63)	86%	14%
Provision should be modified (N=71)	24%	76%

ALL SITES
REPEAL OF CORROBORATION REQUIREMENT
DEFENSE STRATEGIES

RESPONSE	(N=39)
No effective defense strategies	76%
Appeal on constitutional grounds	13%
Argue fact situation	5%
Innuendo is introduced/attempt to introduce doubts in jurors' minds	3%
Use exceptions available in the law	3%

ALL SITES
REPEAL OF CORROBORATION REQUIREMENT
OVERALL SATISFACTION

RESPONSE	(N=75)
Very satisfied	31%
Satisfied	56%
Not satisfied	5%
Very dissatisfied	8%

ALL SITES
REDEFINITION OF STATUTE AND OF FORCE

RESPONSE	<u>Yes</u>	<u>No</u>
Encourages reporting	59%	41%
Encourages cooperation with the prosecution	71%	29%
Increases likelihood of prosecution	92%	8%
Improves victim's treatment during cross examination	46%	54%
Increases likelihood of conviction	92%	8%
Improves attitudes of criminal justice officials	53%	47%
Improves public attitudes	45%	55%

ALL SITES
REDEFINITION OF STATUTE AND OF FORCE

RESPONSE

(N=123)

Law more specific/more charges possible	27%
Promotes better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	24%
Increases likelihood of prosecution	20%
No advantage	14%
Victim more willing to prosecute	8%
Better/more just penalties	7%

ALL SITES
REDEFINITION OF STATUTE AND OF FORCE

RESPONSE

(N=87)

No disadvantages	75%
Difficult to prosecute	10%
May result in wrongful prosecution	9%
Irrevelant issues still introduced	2%
Pleabargaining undercuts intent of law	2%
May not allow introduction of all relevant facts	1%
Other responses	1%

ALL SITES
REDEFINITION OF STATUTE AND OF FORCE

RESPONSE	<u>Yes</u>	<u>No</u>
Provision is fair (N=94)	90%	10%
Provision was needed (N=92)	93%	7%
Provision works as intended (N=86)	90%	10%
Provision should be modified (N=81)	31%	69%

ALL SITES
REDEFINITION OF STATUTE AND OF FORCE

RESPONSE	(N=45)
No effective defense strategies	60%
Appeal on constitutional grounds	20%
Argue fact situation	13%
Innuendo is introduced/attempt to introduce doubts in jurors' minds	7%

ALL SITES
REDEFINITION OF STATUTE AND OF FORCE

RESPONSE	(N=94)
Very satisfied	36%
Satisfied	51%
Not satisfied	2%
Very dissatisfied	11%

Table IV-6
 ALL SITES
 IMPACT OF RAPE SHIELD LAW
 BY STATE

RESPONSE	<u>YES</u>			<u>NO</u>		
	<u>GA</u>	<u>FL</u>	<u>MI</u>	<u>GA</u>	<u>FL</u>	<u>MI</u>
Encourage reporting	68% (27)	70% (23)	83% (25)	32% (13)	30% (10)	17% (5)
Encourages cooperation with the prosecution	90% (37)	100% (36)	94% (29)	10% (4)	-- (0)	6% (2)
Increases likelihood of prosecution	85% (34)	88% (29)	87% (26)	15% (6)	12% (4)	13% (4)
Improves victim's treatment during cross examination	93% (37)	91% (31)	97% (29)	7% (3)	9% (3)	3% (1)
Increases conviction rates	83% (34)	97% (32)	95% (18)	17% (7)	3% (1)	5% (1)
Improves attitudes of criminal justice officials	60% (23)	52% (16)	39% (11)	40% (15)	48% (15)	61% (17)
Improves public attitudes	60% (24)	70% (23)	75% (18)	40% (16)	30% (10)	25% (6)

ALL SITES
ADVANTAGES OF RAPE SHIELD LAW
BY RESPONDENT TYPE

RESPONSE	<u>PROS</u> (N=38)	<u>DEF</u> (N=33)	<u>JUDGE</u> (N=34)	<u>POLICE</u> (N=19)	<u>V.A.</u> (N=30)
No advantage	18%	70%	12%	11%	7%
Law more specific/more charges possible	--	3%	--	--	--
Victim doesn't have to prove her character	5%	--	3%	5%	--
Increases likelihood of prosecution	3%	--	12%	11%	7%
Promotes better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	--	3%	--	5%	--
Keeps focus on relevant issues	53%	18%	47%	37%	23%
Victim more willing to prosecute	13%	3%	12%	21%	40%
Victim no longer badgered during cross examination	8%	3%	14%	10%	23%

ALL SITES
ADVANTAGES OF RAPE SHIELD LAW
BY STATE

RESPONSE	<u>GA</u> (N=56)	<u>FL</u> (N=57)	<u>MI</u> (N=44)
No advantage	21%	37%	13%
Victim doesn't have to prove her character	4%	4%	2%
Increases likelihood of prosecution	7%	5%	5%
Promotes better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	2%		2%
Keeps focus on relevant issues	32%	33%	46%
Victim more willing to prosecute	13%	12%	30%
Victim no longer badgered during cross examination	21%	9%	2%

ALL SITES
 RAPE SHIELD DISADVANTAGES
 BY RESPONDENT TYPE

	<u>PROS</u> (N=29)	<u>DEF</u> (N=32)	<u>JUDGE</u> (N=23)	<u>POLICE</u> (N=17)	<u>V.A.</u> (N=19)
RESPONSE					
No disadvantages	63%	16%	70%	71%	85%
Difficult to prosecute	10%	--	--	--	5%
May result in wrongful prosecution	8%	6%	4%	29%	5%
Irrevelant issues still introduced	10%	53%	18%	--	--
Penalties too severe/too inflexible	3%	--	--	--	5%
Encourages over-charging by prosecutor	--	6%	--	--	--
Pleabargaining undercuts intent of law	3%	3%	4%	--	--
More cases introduced into system/new crimes are defined	3%	16%	4%	--	--

ALL SITES
 RAPE SHIELD DISADVANTAGES
 BY STATE

	<u>GA</u> (N=42)	<u>FL</u> (N=43)	<u>MI</u> (N=33)
RESPONSE			
No disadvantages	64%	60%	40%
Difficult to prosecute	--	8%	3%
May result in wrongful prosecution	7%	5%	18%
Irrelevant issues still introduced	17%	13%	33%
Penalties too severe/too inflexible	5%	--	--
Encourages over-charging by prosecutor	--	4%	--
Pleabargaining undercuts intent of law	2%	4%	--
More cases introduced into system/new crimes are defined	5%	6%	6%

Table IV-7
 ALL SITES
 PERCEPTIONS OF THE RAPE SHIELD LAW
 BY STATE

RESPONSE	<u>YES</u>			<u>NO</u>		
	<u>GA</u>	<u>FL</u>	<u>MI</u>	<u>GA</u>	<u>FL</u>	<u>MI</u>
Provision is fair	86% (36)	84% (31)	84% (27)	14% (6)	16% (6)	16% (5)
Provision was needed	91% (39)	84% (31)	97% (29)	9% (4)	16% (6)	3% (1)
Provision works as intended	82% (33)	93% (26)	91% (29)	18% (7)	7% (2)	9% (3)
Provision should be modified	45% (19)	42% (16)	37% (11)	55% (23)	58% (22)	63% (19)

ALL SITES
 DEFENSE STRATEGIES--RAPE SHIELD LAW
 BY RESPONDENT TYPE

RESPONSE	<u>PROS</u> (N=11)	<u>DEF</u> (N=18)	<u>JUDGE</u> (N=18)	<u>POL</u> (N=9)	<u>V.A.</u> (N=11)
No effective defense strategies	55%	33%	83%	33%	45%
Innuendo is introduced/attempt to introduce doubts in jurors' minds	36%	45%	17%	67%	46%
Argue fact situation	--	11%	--	--	--
Appeal on constitutional grounds	--	11%	--	--	--
Use exceptions available in the law	9%	--	--	--	9%

ALL SITES
 DEFENSE STRATEGIES--RAPE SHIELD LAW
 BY STATE

	<u>GA</u> (N=27)	<u>FL</u> (N=12)	<u>MI</u> (N=28)
RESPONSE			
No effective defense strategies	78%	25%	39%
Innuendo is introduced/attempt to introduce doubts in jurors' minds	18%	67%	47%
Argue fact situation	4%	8%	--
Appeal on constitutional grounds	--	--	7%
Use exceptions available in the law	--	--	7%

Table IV-11
 ALL SITES
 SATISFACTION WITH THE RAPE SHIELD LAW
 BY RESPONDENT TYPE

RESPONSE	<u>PROS</u> (N=26)	<u>DEF</u> (N=28)	<u>JUDGE</u> (N=20)	<u>POL</u> (N=15)	<u>V.A.</u> (N=21)
Very satisfied	54%	4%	35%	27%	38%
Satisfied	30%	36%	65%	53%	57%
Not satisfied	8%	32%	--	20%	--
Very dissatisfied	8%	28%	--	--	5%

ALL SITES
SATISFACTION WITH THE RAPE SHIELD LAW
BY STATE

	<u>GA</u> (N=43)	<u>FL</u> (N=36)	<u>MI</u> (N=31)
RESPONSE			
Very satisfied	23%	30%	42%
Satisfied	49%	53%	35%
Not satisfied	19%	3%	16%
Very dissatisfied	9%	14%	7%

ALL SITES
 ADVANTAGES OF REPEAL OF CORROBORATION REQUIREMENT
 BY RESPONDENT TYPE

RESPONSE	<u>PROS</u> (N=20)	<u>DEF</u> (N=14)	<u>JUDGE</u> (N=18)	<u>POL</u> (N=8)	<u>V.A.</u> (N=16)
No advantage	20%	79%	17%	--	12%
Law more specific/more charges possible	--	--	--	13%	--
Increases likelihood of prosecution	45%	7%	22%	37%	38%
Promotes better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	25%	14%	55%	25%	50%
Keeps focus on relevant issues	5%	--	6%	--	--
Victim more willing to prosecute	--	--	--	25%	--
Victim no longer badgered during cross examination	5%	--	--	--	--

ALL SITES
 ADVANTAGES OF REPEAL OF CORROBORATION REQUIREMENT
 BY STATE

RESPONSE	<u>GA</u> (N=39)	<u>FL</u> (N=30)	<u>MI</u> (N=7)
No advantage	26%	33%	--
Law more specific/more charges possible	3%	--	--
Increases likelihood of prosecution	33%	30%	14%
Promotes better understanding of nature of sexual assaults (no eyewitnesses; victim may not physically resist)	26%	37%	86%
Keeps focus on relevant issues	5%	--	--
Victim more willing to prosecute	5%	--	--
Victim no longer badgered during cross examination	2%	--	--

ALL SITES
DISADVANTAGES OF CORROBORATION REQUIREMENT
BY RESPONDENT TYPE

RESPONSE	<u>PROS</u> (N=20)	<u>DEF</u> (N=11)	<u>JUDGE</u> (N=15)	<u>POL</u> (N=9)	<u>V.A.</u> (N=18)
No disadvantages	80%	18%	80%	67%	89%
Difficult to prosecute	10%	--	--	--	--
May result in wrongful prosecution	5%	55%	20%	33%	11%
Irrevelant issues still introduced	--	9%	--	--	--
Encourages over-charging by prosecutor	5%	--	--	--	--
Other responses	--	18%	--	--	--

ALL SITES
DISADVANTAGES OF CORROBORATION REQUIREMENT
BY STATE

RESPONSE	<u>GA</u> (N=37)	<u>FL</u> (N=27)	<u>MI</u> (N=9)
No disadvantages	78%	52%	100%
Difficult to prosecute	3%	4%	--
May result in wrongful prosecution	19%	30%	--
Irrevelant issues still introduced	--	4%	--
Encourages over-charging by prosecutor	--	3%	--
Other responses	--	7%	--

ALL SITES
 DEFENSE STRATEGIES--REPEAL OF CORROBORATION REQUIREMENT
 BY RESPONDENT TYPE

RESPONSE	<u>PROS</u> (N=10)	<u>DEF</u> (N=9)	<u>JUDGE</u> (N=11)	<u>POL</u> (N=3)	<u>V.A.</u> (N=6)
No effective defense strategies	70%	78%	73%	100%	83%
Argue type of assault fits lower degree structure	--	--	--	--	17%
Innuendo is introduced/attempt to introduce doubts in jurors' minds	10%	11%	--	--	--
Argue fact situation	20%	11%	18%	--	--
Appeal on constitutional grounds	--	--	9%	--	--

ALL SITES
 DEFENSE STRATEGIES--REPEAL OF CORROBORATION REQUIREMENT
 BY STATE

RESPONSE	<u>GA</u> (N=27)	<u>FL</u> (N=5)	<u>MI</u> (N=7)
No effective defense strategies	85%	80%	43%
Argue type of assault fits lower degree structure	--	--	14%
Innuendo is introduced/attempt to introduce doubts in jurors' minds	4%	20%	--
Argue fact situation	11%	--	29%
Appeal on constitutional grounds	--	--	14%

Table IV-20
 SATISFACTION WITH REPEAL OF CORROBORATION REQUIREMENT
 BY RESPONDENT TYPE

RESPONSE	<u>PROS</u> (N=19)	<u>DEF</u> (N=14)	<u>JUDGE</u> (N=14)	<u>POL</u> (N=10)	<u>V.A.</u> (N=18)
Very satisfied	37%	7%	43%	20%	39%
Satisfied	63%	29%	57%	70%	61%
Not satisfied	--	21%	--	10%	--
Very dissatisfied	--	43%	--	--	--

ALL SITES
SATISFACTION WITH REPEAL OF CORROBORATION REQUIREMENT
BY STATE

RESPONSE	<u>GA</u> (N=41)	<u>FL</u> (N=24)	<u>MI</u> (N=10)
Very satisfied	24%	33%	50%
Satisfied	56%	58%	50%
Not satisfied	5%	9%	--
Very dissatisfied	15%	--	--

ALL SITES
 FREQUENCY WITH WHICH POLICE INVESTIGATE/
 MAKE ARRESTS IN REPORTED CASES OF THE FOLLOWING TYPES
 BY STATE

RESPONSE	<u>Most of the Time</u>			<u>Some of the Time</u>			<u>Rarely</u>		
	<u>GA</u>	<u>FL</u>	<u>MI</u>	<u>GA</u>	<u>FL</u>	<u>MI</u>	<u>GA</u>	<u>FL</u>	<u>MI</u>
Cases without eyewitnesses	91% (30)	76% (31)	72% (23)	3% (1)	17% (7)	19% (6)	6% (2)	7% (3)	9% (3)
Cases without penetration	61% (20)	46% (18)	58% (19)	33% (11)	49% (19)	36% (12)	6% (2)	5% (2)	6% (2)
Cases without physical injury	84% (26)	61% (25)	62% (21)	16% (5)	32% (13)	35% (12)	-- (0)	7% (3)	3% (1)
Cases in which victim & assailant of same sex	42% (5)	44% (14)	52% (15)	33% (4)	34% (11)	28% (8)	25% (3)	22% (7)	20% (6)
Cases of less serious sexual assaults	55% (16)	54% (20)	41% (13)	38% (11)	32% (12)	47% (15)	7% (2)	14% (5)	12% (4)
Cases between acquaintances	64% (21)	61% (25)	61% (19)	30% (10)	37% (15)	36% (11)	6% (2)	2% (1)	3% (1)
Cases between intimates	33% (11)	34% (14)	34% (12)	46% (15)	34% (14)	43% (15)	21% (7)	32% (13)	23% (8)
Cases between spouses	-- (0)	26% (10)	33% (11)	8% (2)	33% (13)	37% (12)	92% (23)	41% (16)	30% (10)

ALL SITES
 FREQUENCY WITH WHICH POLICE INVESTIGATE/
 MAKE ARRESTS IN REPORTED CASES OF THE FOLLOWING TYPES
 BY RESPONDENT TYPE

RESPONSE	<u>Most of the Time</u>					<u>Some of the Time</u>					<u>Rarely</u>				
	<u>PROS</u>	<u>DEF</u>	<u>JUDGE</u>	<u>POL</u>	<u>V.A.</u>	<u>PROS</u>	<u>DEF</u>	<u>JUDGE</u>	<u>POL</u>	<u>V.A.</u>	<u>PROS</u>	<u>DEF</u>	<u>JUDGE</u>	<u>POL</u>	<u>V.A.</u>
Cases without eyewitnesses	86% (19)	85% (17)	58% (7)	96% (22)	65% (19)	9% (2)	15% (3)	25% (3)	-- (0)	21% (6)	5% (1)	-- (0)	17% (2)	4% (1)	14% (4)
Cases without penetration	82% (18)	55% (11)	36% (4)	58% (14)	36% (10)	18% (4)	35% (7)	55% (6)	38% (9)	57% (16)	-- (0)	10% (2)	9% (1)	4% (1)	7% (2)
Cases without physical injury	86% (19)	70% (14)	33% (4)	91% (21)	48% (14)	14% (3)	30% (6)	58% (7)	9% (2)	42% (12)	-- (0)	-- (0)	9% (1)	-- (0)	10% (3)
Cases in which victim & assailant of same sex	73% (8)	33% (5)	25% (2)	84% (16)	15% (3)	27% (3)	40% (6)	63% (5)	5% (1)	40% (8)	-- (0)	27% (4)	12% (1)	11% (2)	45% (9)
Cases of less serious sexual assault	63% (12)	55% (11)	42% (5)	68% (15)	24% (6)	37% (7)	35% (7)	33% (4)	27% (6)	56% (14)	-- (0)	10% (2)	25% (3)	5% (1)	20% (5)
Cases between acquaintances	77% (17)	63% (12)	58% (7)	67% (16)	46% (13)	23% (5)	37% (7)	42% (5)	29% (7)	43% (12)	-- (0)	-- (0)	-- (0)	4% (1)	11% (3)
Cases between intimates	44% (10)	10% (2)	46% (6)	58% (14)	17% (5)	43% (10)	45% (9)	39% (5)	25% (6)	48% (14)	13% (3)	45% (9)	15% (2)	17% (4)	35% (10)
Cases between spouses	25% (5)	-- (0)	36% (4)	33% (7)	18% (5)	35% (7)	24% (4)	46% (5)	24% (5)	21% (6)	40% (8)	76% (13)	18% (2)	43% (9)	61% (17)

ALL SITES
DIFFICULTY IN PROSECUTING THE FOLLOWING TYPES OF CASES
BY STATE

RESPONSE	<u>Very Difficult</u>			<u>Somewhat Difficult</u>			<u>Not Difficult</u>		
	<u>GA</u>	<u>FL</u>	<u>MI</u>	<u>GA</u>	<u>FL</u>	<u>MI</u>	<u>GA</u>	<u>FL</u>	<u>MI</u>
Cases without eyewitnesses	24% (10)	28% (15)	29% (13)	36% (15)	47% (24)	44% (20)	40% (17)	25% (13)	27% (12)
Cases without penetration	38% (16)	40% (20)	22% (10)	48% (20)	50% (25)	49% (22)	14% (6)	-- (5)	29% (13)
Cases without physical injury	22% (9)	18% (9)	10% (4)	54% (22)	61% (30)	60% (24)	24% (10)	21% (10)	30% (12)
Cases in which victim & assailant of same sex	66% (12)	43% (19)	32% (10)	6% (1)	43% (19)	26% (8)	28% (5)	14% (6)	42% (13)
Cases of less serious sexual assaults	23% (7)	23% (11)	26% (11)	40% (12)	59% (29)	46% (20)	37% (11)	18% (9)	28% (12)
Cases between acquaintances	31% (13)	45% (22)	20% (9)	43% (18)	37% (18)	58% (26)	26% (11)	18% (9)	22% (10)
Cases between intimates	74% (31)	86% (43)	63% (29)	21% (9)	12% (6)	20% (9)	5% (2)	2% (1)	17% (8)
Cases between spouses	86% (25)	85% (40)	62% (24)	10% (3)	13% (6)	28% (11)	4% (1)	2% (1)	10% (4)

ALL SITES
DIFFICULTY IN PROSECUTING THE FOLLOWING TYPES OF CASES
BY RESPONDENT TYPE

RESPONSE	<u>Very Difficult</u>					<u>Somewhat Difficult</u>					<u>Not Difficult</u>				
	<u>PROS</u>	<u>DEF</u>	<u>JUDGE</u>	<u>POL</u>	<u>V.A.</u>	<u>PROS</u>	<u>DEF</u>	<u>JUDGE</u>	<u>POL</u>	<u>V.A.</u>	<u>PROS</u>	<u>DEF</u>	<u>JUDGE</u>	<u>POL</u>	<u>V.A.</u>
Cases without eyewitnesses	43% (13)	32% (9)	23% (6)	4% (1)	26% (8)	40% (12)	46% (13)	39% (10)	57% (13)	35% (11)	17% (5)	22% (6)	38% (10)	39% (9)	39% (12)
Cases without penetration	32% (10)	21% (6)	36% (9)	39% (9)	40% (12)	61% (19)	57% (16)	48% (12)	26% (6)	47% (14)	7% (2)	22% (6)	16% (4)	35% (8)	13% (4)
Cases without physical injury	17% (5)	15% (4)	21% (5)	14% (3)	17% (5)	66% (19)	46% (12)	62% (15)	41% (9)	73% (21)	17% (5)	39% (10)	17% (4)	45% (10)	10% (3)
Cases in which victim & assailant of same sex	42% (8)	33% (8)	40% (4)	35% (6)	65% (15)	42% (8)	38% (9)	30% (3)	24% (4)	17% (4)	16% (3)	29% (7)	30% (3)	41% (7)	17% (4)
Cases of less serious sexual assault	25% (6)	15% (4)	32% (7)	10% (2)	36% (10)	50% (12)	37% (10)	54% (12)	57% (12)	53% (15)	25% (6)	48% (13)	14% (3)	33% (7)	11% (3)
Cases between acquaintances	52% (16)	14% (4)	36% (9)	9% (2)	46% (13)	38% (12)	45% (13)	56% (14)	56% (13)	36% (10)	10% (3)	41% (12)	8% (2)	35% (8)	18% (5)
Cases between intimates	94% (29)	52% (15)	88% (22)	57% (13)	80% (24)	6% (2)	31% (9)	12% (3)	30% (7)	10% (3)	-- (0)	17% (5)	-- (0)	13% (3)	10% (3)
Cases between spouses	85% (22)	73% (19)	88% (15)	63% (12)	78% (21)	11% (3)	27% (7)	12% (2)	21% (4)	15% (4)	4% (1)	-- (0)	-- (0)	16% (3)	7% (2)

ALL SITES
ALL VARIABLES
BY STATE

RESPONSE	<u>GA</u> (N=43)	<u>FL</u> (N=49)	<u>MI</u> (N=50)
Very satisfied	5%	43%	50%
Satisfied	65%	49%	36%
Not satisfied	25%	6%	12%
Very dissatisfied	5%	2%	2%

ALL SITES
 ALL VARIABLES
 BY RESPONDENT TYPE

RESPONSE	<u>PROS</u> (N=29)	<u>DEF</u> (N=30)	<u>JUDGE</u> (N=29)	<u>POL</u> (N=25)	<u>V. A.</u> (N=29)
Very satisfied	48%	13%	38%	40%	3 1 %
Satisfied	48%	37%	62%	40%	59%
Not satisfied	--	40%	--	20%	10%
Very dissatisfied	4%	10%	--	--	--

CHANGES RESPONDENTS WANTED IN SEXUAL ASSAULT LAW
BY STATE

RESPONSE	<u>YES</u>			<u>NO</u>		
	<u>GA</u>	<u>FL</u>	<u>MI</u>	<u>GA</u>	<u>FL</u>	<u>MI</u>
Change sexual assaults to gender neutral	67% (28)	--	--	33% (14)	--	--
Change range of sexual assault charges	79% (34)	38% (11)	--	21% (9)	62% (18)	--
Establish mandatory sentences	48% (20)	29% (8)	--	52% (22)	71% (20)	--
Change resistance requirements	22% (9)	--	--	78% (32)	--	--
Change jury instructions	49% (17)	41% (9)	--	51% (18)	59% (13)	--
Change reporting requirements	15% (6)	-- (0)	--	85% (35)	100% (1)	--
Change spousal immunity	61% (24)	--	--	39% (15)	--	--
Change consent standards	41% (15)	52% (15)	50% (1)	59% (22)	48% (14)	50% (1)
Other changes	47% (17)	36% (17)	64% (29)	53% (19)	64% (30)	36% (16)

CHANGES RESPONDENTS WANTED IN SEXUAL ASSAULT LAW
BY RESPONDENT TYPE

RESPONSE	<u>YES</u>					<u>NO</u>				
	<u>PROS</u>	<u>DEF</u>	<u>JUDGE</u>	<u>POL</u>	<u>V.A.</u>	<u>PROS</u>	<u>DEF</u>	<u>JUDGE</u>	<u>POL</u>	<u>V.A.</u>
Change sexual assaults to gender neutral	37% (3)	88% (7)	44% (4)	63% (5)	100% (9)	63% (5)	12% (1)	56% (5)	37% (3)	-- (0)
Change range of sexual assault charges	73% (11)	60% (9)	47% (7)	54% (7)	79% (11)	27% (4)	40% (6)	53% (8)	46% (6)	21% (3)
Establish mandatory sentences	20% (3)	20% (3)	23% (3)	62% (8)	79% (11)	80% (12)	80% (12)	77% (10)	38% (5)	21% (3)
Change resistance requirements	22% (2)	22% (2)	-- (0)	25% (2)	43% (3)	78% (7)	78% (7)	100% (8)	75% (6)	57% (4)
Change jury instructions	46% (6)	57% (8)	31% (4)	37% (3)	56% (5)	54% (7)	43% (6)	69% (9)	63% (5)	44% (4)
Change reporting requirements	-- (0)	11% (1)	11% (1)	29% (2)	33% (2)	100% (10)	89% (8)	89% (8)	71% (5)	67% (4)
Change spousal immunity	63% (5)	25% (2)	43% (3)	75% (6)	100% (8)	37% (3)	75% (6)	57% (4)	25% (2)	-- (0)
Change consent standards	43% (6)	57% (8)	14% (2)	58% (7)	57% (8)	57% (8)	43% (6)	86% (12)	42% (5)	43% (6)
Other changes	45% (13)	63% (17)	38% (10)	57% (12)	44% (11)	55% (16)	37% (10)	62% (16)	43% (9)	56% (14)

APPENDIX 2

SURVEY INSTRUMENTS

2.A. Georgia

2.B. Florida

3.C. Michigan

NCJRS

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ACQUISITIONS

Before we begin the interview, I would like to briefly explain the nature of the study. The research is being conducted for the National Institute of Justice on a grant to the Center for Women Policy Studies in Washington, DC. The primary objective is to explore the effects of changes in sexual assault laws in several states. Because of your experience in the criminal justice system, we are interested in your own opinions and insights that pertain to the law in your state.

The interview usually takes about a half hour. Your cooperation is greatly appreciated. While we may use some quotes from our interviews and your jurisdiction will be identified in the final report, all responses will be anonymous and all your answers will be treated confidentially.

V1. Respondent # _____ (001...)

V2. Respondent type

3. Judge

V3. Respondent's sex

1. male
2. female

V4. Site

1. Atlanta
2. Savannah

Date of Interview

V5. Month _____ (01...)

V6. Day _____ (01...)

V7. Interviewer

3. Barbara Smith
4. Barbara Gottlieb

V8. Length Interview (minutes)

_____ (001...)

V9. Have you had experience handling sexual assault cases before and after the law changed in 1976?

1. Yes [ask both pre- and post- questions].
2. No: pre- only [ask only pre- questions].
3. No: post- only [ask only post- questions].

Provision: shield law

In 1976, Georgia's rape law was changed to limit the admissibility of evidence concerning the victim's prior sexual conduct. (This is known as a "shield law.") I would like to ask you about the impact of this shield law on the prosecution of rape cases.

ALL RESPONDENTS

1. In general, would you say that this change made successful prosecution of serious sexual assaults easier/more difficult/about the same?
 - easier
 - more difficult
 - about the same

- 2a. What effect would you say this provision has on the number of arrests for serious sexual assault? Would you say it results in more/fewer/about the same number of arrests?
 - more
 - fewer
 - about the same

- 2b. What about the number of warrants issued for serious sexual assaults; Would you say this provision results in more warrants being issued/fewer/about the same?
 - more
 - fewer
 - about the same

- 2c. And prosecutions: do you think this provision results in more prosecutions for serious sexual assault cases/fewer/about the same?
 - more
 - fewer
 - about the same

- 2d. Finally, its effect on the number of convictions for serious sexual assaults: do you think this provision results in more /fewer/about the same number of convictions?
 - more
 - fewer
 - about the same

Now I would like to ask the same series of questions in regard to less serious sexual assault cases.

Provision: shield law

3. Would you say that this change made successful prosecution of less serious sexual assaults easier/more difficult/about the same?

- easier
- more difficult
- about the same

4a. Would you say this provision results in more/fewer/about the same number of arrests for less serious sexual assault charges?

- more
- fewer
- about the same

4b. What do you think the effect of this provision is on the number of warrants issued: would you say it results in more /fewer/about the same number of warrants being issued for less serious sexual assault charges?

- more
- fewer
- about the same

4c. And prosecutions: do you think this provision results in more/fewer/about the same number of prosecutions for less serious sexual assaults?

- more
- fewer
- about the same

4d. Finally, do you think this provision results in more convictions/fewer/about the same for less serious sexual assaults?

- more
- fewer
- about the same

5a. What are the advantages of having this provision in the law?

5b. What are the disadvantages?

(Provision: shield law)

9. How would your courtroom practices have changed, had this provision been in the law when you were practicing?

POST ONLY

10. How are your pretrial practices affected by this provision?

11. How are your courtroom practices affected by this provision?

BOTH PRE AND POST

12. What changes have occurred in pretrial practices as a result of this change in the law?

(provision: shield law)

13. What changes have occurred in courtroom practices as a result of this change in the law?

14. Since the law changed in 1976, have you observed changes in the characteristics of sexual assault cases handled in your jurisdiction? Specifically:

yes no

14a. Nature of relationship between defendant and complainant (probe: spouse; family member; same sex; stranger)
If yes, explain:

14b. Seriousness of offense
If yes, explain:

14c. Extent of physical injury
If yes, explain:

14d. Amount of corroborated evidence
If yes, explain:

(Provision: shield law)

yes no

14e. Other?

— —

Provision: conviction on uncorroborated evidence

In 1978, Georgia's rape law was changed to permit conviction for rape on the uncorroborated testimony of the victim. I would like to ask you about the impact of this change in the law on the prosecution of rape cases.

ALL RESPONDENTS

2/1. In general, would you say that this change made successful prosecution of serious sexual assaults easier/more difficult/about the same?

- easier
- more difficult
- about the same

2/2a. What effect would you say this provision has on the number of arrests for serious sexual assault? Would you say it results in more/fewer/about the same number of arrests?

- more
- fewer
- about the same

2/2b. What about the number of warrants issued for serious sexual assaults: Would you say this provision results in more warrants being issued/fewer/about the same?

- more
- fewer
- about the same

2/2c. And prosecutions: do you think this provision results in more prosecutions for serious sexual assault cases/fewer/about the same?

- more
- fewer
- about the same

2/2d. Finally, its effect on the number of convictions for serious sexual assaults: do you think this provision results in more /fewer/about the same number of convictions?

- more
- fewer
- about the same

(Provision: repeal of corroboration requirements)

Now I would like to ask the same series of questions in regard to less serious sexual assault cases.

2/3. Would you say that this change made successful prosecution of less serious sexual assaults easier/more difficult/about the same?

- easier
- more difficult
- about the same

2/4a. Would you say this provision results in more/fewer/about the same number of arrests for less serious sexual assault charges?

- more
- fewer
- about the same

2/4b. What do you think the effect of this provision is on the number of warrants issued: would you say it results in more /fewer/about the same number of warrants being issued for less serious sexual assault charges?

- more
- fewer
- about the same

2/4c. And prosecutions: do you think this provision results in more/fewer/about the same number of prosecutions for less serious sexual assaults?

- more
- fewer
- about the same

2/4d. Finally, do you think this provision results in more convictions/fewer/about the same for less serious sexual assaults?

- more
- fewer
- about the same

2/5a. What are the advantages of having this provision in the law?

(Provision: repeal of corroboration requirements)

2/5b. What are the disadvantages?

What is your opinion of this element of the law:

2/6a. Is it fair?

yes no

___ ___

If no, explain: _____

2/6b. Was it needed?

___ ___

2/6c. Should it be modified?

___ ___

If yes, explain: _____

2/7. Would you say you are very satisfied/satisfied/not satisfied/
very dissatisfied with this element of the law?

- ___ very satisfied
- ___ satisfied
- ___ not satisfied
- ___ very dissatisfied

PRE ONLY

2/8. How would your pretrial practices have changed, had this provision been in the law when you were practicing?

(Provision: repeal of corroboration requirements)

2/9. How would your courtroom practices have changed, had this provision been in the law when you were practicing?

POST ONLY

2/10. How are your pretrial practices affected by this provision?

2/11. How are your courtroom practices affected by this provision?

BOTH PRE AND POST

2/12. What changes have occurred in pretrial practices as a result of this change in the law?

(Provision: repeal of corroboration requirements)

2/13. What changes have occurred in courtroom practices as a result of this change in the law?

2/14. Since the law changed in 1978, have you observed changes in the characteristics of sexual assault cases handled in your jurisdiction? Specifically:

yes no

2/14a. Nature of relationship between defendant and complainant (probe: spouse; family member; same sex; stranger)
If yes, explain:

2/14b. Seriousness of offense
If yes, explain:

2/14c. Extent of physical injury
If yes, explain:

2/14d. Amount of corroborated evidence
If yes, explain:

(Provision: repeal of corroboration requirement)

2/14e. Other? _____

ALL RESPONDENTS

15. In the past 10 or 12 years, a number of states have modified their sexual assault statutes. Please tell me whether, in your opinion, successful prosecution of sexual assault would be easier or more difficult if Georgia enacted any of the following reforms:

	easier	harder
15a. Gender-neutralize sexual assault charges	_____	_____
15b. Explicitly criminalize lesser sexual assault charges (such as sexual touchings)	_____	_____
15c. Establish shorter mandatory sentences	_____	_____
15e. Repeal requirements for physical resistance	_____	_____
15f. Repeal the "Lord Hale" cautionary instructions to the jury (that "rape is a charge easy to bring and difficult to defend against")	_____	_____
15h. Repeal the prompt reporting requirement	_____	_____
15i. Repeal spousal immunity	_____	_____
15j. Reduce the standards for establishing consent	_____	_____
16. What are the major obstacles to successful prosecution of sexual assault cases in Georgia?		

17a. What changes, if any, would you like to see made in the sexual assault law?

17b. What obstacles stand in the way of these changes?

17c. What changes do you think should be made to encourage sexual assault victims to pursue prosecution?

18. Overall, how satisfied would you say you are with Georgia's sexual assault law?

very satisfied _____
somewhat satisfied _____
not satisfied _____
very dissatisfied _____

19. What special policies or procedures has your office established for handling sexual assault cases? (if written, obtain copy)

I would like to close with a few questions about your professional background.

20. How long have you been a judge?
01) 1 year or less
02) 2 years
03) 3 years or more

21. Approximately, what is the total number of sexual assault trials you have presided over? _____
22. Of this number, how many were handled before the 1976 shield law went into effect? _____
23. How many were handled since the 1976 shield law went into effect? _____
24. Have you received any special training for handling sexual assault cases? _____ yes
_____ no

If so, what? _____

25. Prior to your experience as a judge, have you worked in any other part of the criminal justice system?

1. _____ yes

2. _____ no

Specify: _____

That completes our interview. I'd like to thank you very much for your cooperation.

Before we begin the interview, I would like to briefly explain the nature of the study. The research is being conducted for the National Institute of Justice on a grant to the Center for Women Policy Studies in Washington, DC. The primary objective is to explore the effects of changes in sexual assault laws in several states. Because of your experience in the criminal justice system, we are interested in your own opinions and insights that pertain to the law in your state.

The interview usually takes about a half hour. Your cooperation is greatly appreciated. While we may use some quotes from our interviews and your jurisdiction will be identified in the final report, all responses will be anonymous and all your answers will be treated confidentially.

V1. Respondent # _____ (001...)

V2. Respondent type:

1. Prosecutor
2. Defense attorney
3. Judge
4. Police
5. Victim Advocate

V3. Respondent's sex

1. male
2. female

V4. Site

- | | | |
|-------------|-----------------|------------|
| 1. Atlanta | 3. Jacksonville | 5. Flint |
| 2. Savannah | 4. Miami | 6. Detroit |

Date of Interview:

V5. Month _____ (01...)

V6. Day _____ (01...)

V7. Interviewer

1. Mary Ann Largen .
2. Jane Chapman
3. Barbara Smith
4. Barbara Gottlieb
5. Jane BenDor

V8. Length of Interview (minutes)

_____ (001...)

V9. Have you had experience handling sexual assault cases before and after the law changed in 1974 ?

1. Yes [ask both pre- and post- questions].
2. No: pre- only [ask only pre- questions].
3. No: post- only [ask only post-questions].

Over the last 10-12 years, many states have changed or amended their sexual assault laws in order to bring into court a greater variety of assaults, to encourage sexual assault victims to prosecute, and to increase the likelihood of conviction, where appropriate. In this study, we are trying to determine whether the legislative changes enacted have achieved their intended purposes.

ALL RESPONDENTS

1. We would like to begin with two general questions about the characteristics of sexual assault cases in your jurisdiction:

1a. How often do police investigate/make arrests when victims report sexual assault (rape) cases with the following characteristics:

	Most of the time	Some of the time	Virtually never
a. Cases without witnesses	_____	_____	_____
b. Cases without medical evidence of penetration	_____	_____	_____
c. Cases without physical injury to the victim	_____	_____	_____
d. Cases involving victim and assailant of the same sex	_____	_____	_____
e. Cases involving less serious sexual assault charges	_____	_____	_____
f. Cases between acquaintances (no prior sexual history)	_____	_____	_____
g. Cases between intimates	_____	_____	_____
h. Cases between spouses	_____	_____	_____

2a. How difficult is it to successfully prosecute sexual assault (rape) cases with the following characteristics:

	Very difficult	Somewhat difficult	Not difficult
a. Cases without witnesses	_____	_____	_____
b. Cases without medical evidence of penetration	_____	_____	_____
c. Cases without physical injury to the victim	_____	_____	_____
d. Cases involving victim and assailant of the same sex	_____	_____	_____
e. Cases involving less serious sexual assault charges	_____	_____	_____
f. Cases between acquaintances (no prior sexual history)	_____	_____	_____
g. Cases between intimates	_____	_____	_____
h. Cases between spouses	_____	_____	_____

Starting in 1974, Florida's sexual assault law has undergone substantial reformulation. Please look over this list of major reforms that have been legislated in recent years, and indicate which three are the most significant. I will then ask you specific questions about each one.

→ Provision #1: _____

3. From your experience, do you think that this change has:

	<u>Yes</u>	<u>No</u>
a. Encouraged more victims to report the crime	___	___
b. Encouraged more victims to prosecute	___	___
c. Increased the likelihood that the case will be accepted for prosecution	___	___
d. Improved the way victims are treated during cross examination	___	___
e. Increased the likelihood of conviction	___	___
f. Improved the attitudes of criminal justice officials toward the victim	___	___
g. Improved public attitudes toward the victim	___	___

4a. What are the advantages of having this provision in the law?

4b. What are the disadvantages?

What is your opinion of this element of the law:

5a. Is it fair? Yes No

If no, explain: _____

5b. Was it needed? _____

If no, why not? _____

5c. Should it be modified? _____

If yes, explain: _____

6. Are you very satisfied/satisfied/not satisfied/very dissatisfied with this element of the law _____ ?

- _____ very satisfied
- _____ satisfied
- _____ not satisfied
- _____ very dissatisfied

7. What effect, if any, does the [redacted] provision have on prosecutorial or defense pretrial and trial strategies? [Prebe: challenges to provision]

Provision #2: _____

2/3. From your experience, do you think that this provision of the law _____ has:

	Yes	No
a. Encouraged more victims to report the crime	_____	_____
b. Encouraged more victims to prosecute	_____	_____
c. Increased the likelihood that the case	_____	_____

- will be accepted for prosecution
- d. Improved the way victims are treated during cross examination. — —
 - e. Increased the likelihood of conviction — —
 - f. Improved the attitudes of criminal justice officials toward the victim — —
 - g. Improved public attitudes toward the victim — —

2/4a. What are the advantages of having this provision in the law?

2/4b. What are the disadvantages?

What is your opinion of this element of the law:

2/5a. Is it fair? Yes No

If no, explain:

2/5b. Was it needed? — —

If no, why not?

2/5c. Should it be modified? — —

If yes, explain:

2/5d. Is it effective?

YES

NO

If yes, explain: _____

2/6. Are you very satisfied/satisfied/not satisfied/very dissatisfied with this element (no corroboration required) of the law?

- _____ very satisfied
- _____ satisfied
- _____ not satisfied
- _____ very dissatisfied

2/7. What effect, if any, does this element of the law have on prosecutorial or defense pretrial and trial strategies? [Probe: challenges to provision]

PRE/POST RESPONDENTS ONLY

8. Since the law was amended, _____ have you observed changes in the characteristics of sexual assault (rape) cases which result in arrests/prosecutions/convictions (e.g. nature of relationship between victim and defendant, seriousness of offense, victim's inquiry, amount of corroborated evidence)?

→ PROVISION #3

3/3. From your experience, do you think that this change has:

	<u>Yes</u>	<u>No</u>
a. Encouraged more victims to report the crime	___	___
b. Encouraged more victims to prosecute	___	___
c. Increased the likelihood that the case will be accepted for prosecution	___	___
d. Improved the way victims are treated during cross examination	___	___
e. Increased the likelihood of conviction	___	___
f. Improved the attitudes of criminal justice officials toward the victim	___	___
g. Improved public attitudes toward the victim	___	___

3/ 4a. What are the advantages of having this provision in the law?

3/ 4b. What are the disadvantages?

What is your opinion of this element of the law:

3/5a. Is it fair?

Yes

No

If no, explain: _____

3/ 5b. Was it needed? _____

If no, why not? _____

3/ 5c. Should it be modified? _____

If yes, explain: _____

3/ 6. Are you very satisfied/satisfied/not satisfied/very dissatisfied with this element of the law _____ ?

- _____ very satisfied
- _____ satisfied
- _____ not satisfied
- _____ very dissatisfied

3/ 7. What effect, if any, does the [] provision have on prosecutorial or defense pretrial and trial strategies? [Probe: challenges to provision]

PRE/POST RESPONDENTS ONLY

8. Since the law was amended, have you observed changes in the characteristics of sexual assault (rape) cases which result in arrests/prosecutions/convictions (e.g. nature of relationship between victim and defendant, seriousness of offense, victim's inquiry, amount of corroborated evidence)?

ALL RESPONDENTS

9. In the past 10 or 12 years, a number of states have amended their sexual assault statutes. Please tell me if you would like to see changes in any of the following areas: YES NO

- * Repeal statutory rape: age of consent, 11 y.o.;
"unlawful carnal intercourse w/unmarried person, of previous chaste character, under 18" Y
- b. Change the range of sexual assault crimes
In what way? _____
- c. Establish some mandatory sentences
Specify _____

- e. Change the jury instructions
In what way? _____
In what way? _____
- g. Change spousal immunity
In what way? _____

- i. Any other changes?
What? _____

10. Overall, how satisfied are you with []'s sexual assault law?

- _____ very satisfied
- _____ somewhat satisfied
- _____ not satisfied
- _____ very dissatisfied

PROSECUTORS & POLICE ONLY

11. What special policies or procedures has your office established for handling sexual assault cases? (If written, obtain copy)

ALL RESPONDENTS:

12. Are there more general societal factors that effect how rape/sexual assault cases are handled and resolved? If so, what?

VICTIM ADVOCATES ONLY

19. What services are provided to sexual assault victims in your county?

20. How long have you worked with victims of sexual assault?

21. Approximately, how many sexual assault victims have you counselled/assisted? _____

22. Approximately what percent of these victims have filed a complaint with the police? _____

23. From your experience, what are the major reasons victims give for not reporting the crime to the police? _____

24. From your experience, what are the major reasons victims give for withdrawing their cooperation from police or prosecutors?

That completes our interview.
for your cooperation.

Thank you very much

Before we begin the interview, I would like to briefly explain the nature of the study. The research is being conducted for the National Institute of Justice, U.S. Department of Justice, under a grant to the Center for Women Policy Studies in Washington, DC. Because of your experience in the criminal justice system, we are interested in your opinions and insights.

Our primary objective is to explore the impact of particular legislated changes in the law. Please note that we are inquiring about adult victims only, not child victims. Also, our inquiry concerns major sexual assaults, that is to say, in Michigan, criminal sexual conduct in the first and third degrees. The interview usually takes about a half hour. All questions are asked to all respondents, hence, you may find some more appropriate than others. While we may use some quotes from our interviews and your jurisdiction will be identified in the final report, all responses will be anonymous and all your answers will be treated confidentially. Your cooperation is greatly appreciated.

V1. Respondent # _____ (001...)

V2. Respondent type:
1. Prosecutor
2. Defense attorney
3. Judge
4. Police
5. Victim Advocate

V3. Respondent's sex
1. male
2. female

V4. Site
5. Flint
6. Detroit

Date of Interview:

V5. Month _____ (01...)

V6. Day _____ (01...)

V7. Interviewer
1. Mary Ann Largen
2. Jane Chapman
3. Barbara Smith
5. Jane BenDor

V8. Length of Interview (minutes)
_____ (001...)

- How long have you served as a criminal court judge/prosecutor/defense attorney/investigator/victim counselor/victim advocate?
- 01. 1 year or less
 - 02. 2 years
 - 03. 3 years (...etc.)

— Approximately, what is the total number of sexual assault cases that you have presided over/prosecuted/defended/investigated/handled?

V9. Of these, how many occurred prior to the law changes starting in 197_? _____

How many occurred after the law changes? _____

- 1. If before and after: ask both pre- and post- questions.
- 2. If pre- only: ask only pre- questions.
- 3. If post- only: ask only post- questions.

— Have you attended any (judges:) judicial conferences
(others:) special training
for handling sexual assault cases? ___ yes
___ no

Please describe: _____

— Prior to your experience as a judge/prosecutor/defense attorney/investigator/victim counselor or advocate, have you worked in any other capacity in the criminal justice system? ___ yes
___ no

Specify: _____

Over the last 10-12 years, many states have changed or amended their sexual assault laws in order to bring into court a greater variety of assaults, to encourage sexual assault victims to prosecute, and to increase the likelihood of conviction, where appropriate. In this study, we are trying to determine whether the legislative changes have achieved their intended purposes.

We would like to begin with two general questions about the characteristics of sexual assault cases in your jurisdiction:

1a. How often do police investigate/make arrests when victims report criminal sexual conduct (first and third degree) with the following characteristics:

	Most of the time	Some of the time	Rarely
a. Cases without eyewitnesses	_____	_____	_____
b. Cases without medical evidence of penetration	_____	_____	_____
c. Cases without additional physical injury to the victim	_____	_____	_____
d. Cases involving victim & assailant of the same sex	_____	_____	_____
e. Cases involving less serious sexual assaults	_____	_____	_____
f. Cases between acquaintances (no prior sexual history)	_____	_____	_____
g. Cases between intimates	_____	_____	_____
h. Cases between spouses	_____	_____	_____

2a. How difficult is it to successfully prosecute criminal sexual conduct (first and third degree) cases with the following characteristics:

	Very difficult	Somewhat difficult	Not difficult
a. Cases without eyewitnesses	_____	_____	_____
b. Cases without medical evidence of penetration	_____	_____	_____
c. Cases without additional physical injury to the victim	_____	_____	_____
d. Cases involving victim & assailant of the same sex	_____	_____	_____
e. Cases involving less serious sexual assaults	_____	_____	_____
f. Cases between acquaintances (no prior sexual history)	_____	_____	_____
g. Cases between intimates	_____	_____	_____
h. Cases between spouses	_____	_____	_____

Since 1974, Michigan's sexual assault law has undergone substantial reformulation. Please look over this list of the major areas where legislation has been enacted in recent years, and indicate which three are most significant. I will then ask you specific questions about each of the three.

Provision 1: _____

3a. What are the advantages of having this provision in the law?

3b. What are the disadvantages of having this provision in the law?

4. From your experience, do you think that this provision has:

	<u>Yes</u>	<u>No</u>
a. Encouraged more victims to report to police	___	___
b. Encouraged more victims to prosecute	___	___
c. Increased the likelihood that the case will be accepted for prosecution	___	___
d. Improved the way victims are treated in cross examination	___	___
e. Increased the likelihood of conviction	___	___
f. Improved the attitudes of criminal justice officials toward the victim	___	___
g. Improved public attitudes toward the victim	___	___

What is your opinion of this element of the law:

5a. Is it fair? Yes No

Explain: _____

5b. Was it needed? _____

Explain: _____

5c. Should it be modified? _____

Explain: _____

5d. Does it work as intended? _____

Explain: _____

6. Are you very satisfied/satisfied/not satisfied/very dissatisfied with this provision?

- _____ very satisfied
- _____ satisfied
- _____ not satisfied
- _____ very dissatisfied

JUDGES, PROSECUTORS & DEFENSE ATTYS ONLY:

7. Have there been any successful defense strategies to challenge this provision?

Provision 2: _____

2/3a. What are the advantages of having this provision in the law?

2/3b. What are the disadvantages of having this provision in the law?

2/4. From your experience, do you think that this provision has:

	<u>Yes</u>	<u>No</u>
a. Encouraged more victims to report to police	___	___
b. Encouraged more victims to prosecute	___	___
c. Increased the likelihood that the case will be accepted for prosecution	___	___
d. Improved the way victims are treated during cross examination	___	___
e. Increased the likelihood of conviction	___	___
f. Improved the attitudes of criminal justice officials toward the victim	___	___
g. Improved public attitudes toward the victim	___	___

What is your opinion of this element of the law:

2/5a. Is it fair?

Yes No

Explain: _____

2/5b. Was it needed? _____

Explain: _____

2/5c. Should it be modified? _____

Explain: _____

2/5d. Does it work as intended? _____

Explain: _____

2/6. Are you very satisfied/satisfied/not satisfied/very dissatisfied with this provision?

_____ very satisfied

_____ satisfied

_____ not satisfied

_____ very dissatisfied

JUDGES, PROSECUTORS & DEFENSE ATTYS ONLY:

2/7. Have there been any successful defense strategies to challenge this provision?

Provision 3: _____

3/3a. What are the advantages of having this provision in the law?

3/3b. What are the disadvantages of having this provision in the law?

3/4. From your experience, do you think that this provision has:

	<u>Yes</u>	<u>No</u>
a. Encouraged more victims to report to police	___	___
b. Encouraged more victims to prosecute	___	___
c. Increased the likelihood that the case will be accepted for prosecution	___	___
d. Improved the way victims are treated during cross examination	___	___
e. Increased the likelihood of conviction	___	___
f. Improved the attitudes of criminal justice officials toward the victim	___	___
g. Improved public attitudes toward the victim	___	___

What is your opinion of this element of the law:

3/5a. Is it fair? Yes No

Explain: _____

3/5b. Was it needed? _____

Explain: _____

3/5c. Should it be modified? _____

Explain: _____

3/5d. Does it work as intended? _____

Explain: _____

3/6. Are you very satisfied/satisfied/not satisfied/very dissatisfied with this provision?

_____ very satisfied

_____ satisfied

_____ not satisfied

_____ very dissatisfied

JUDGES, PROSECUTORS & DEFENSE ATTYS ONLY:

3/7. Have there been any successful defense strategies to challenge this provision?

PRE- AND POST- EXPERIENCE (BOTH REQUIRED)

8. Since the law was amended, have you observed changes in the characteristics of sexual assault cases entering the criminal justice system? being successfully prosecuted? (probe: nature of relationship between victim and assailant, seriousness of injury, etc.)

To what do you attribute these changes?

ALL RESPONDENTS

9. Are there any other changes that you would like to see enacted in Michigan's criminal sexual conduct law? If so, what are they?

10. Overall, how satisfied are you with Michigan's criminal sexual conduct law?

- _____ very satisfied
- _____ satisfied
- _____ not satisfied
- _____ very dissatisfied

PROSECUTORS & POLICE ONLY

11. What special policies or procedures has your office established for handling sexual assault cases? (If written, obtain copy)

ALL RESPONDENTS

12. What more general societal factors affect how rape/sexual assault cases are perceived, handled and resolved?

FOR MOST RESPONDENTS:

13. Is there anything else that I failed to ask about that you think I should know?

That completes our interview. Thank you very much for your cooperation.

VICTIM ADVOCATES ONLY. continue to next page.

VICTIM ADVOCATES ONLY

14. What criminal justice-related services do you provide to sexual assault victims? (probe: counseling, encouragement to prosecute, court escort, court-watching.)

15. Approximately what percent of the sexual assault victims with whom you have worked have filed a complaint with the police?

16. From your experience, what are the major reasons victims give for not reporting the crime to the police?

17. From your experience, what are the major reasons victims give for withdrawing their cooperation from police or prosecutors?

18. Is there anything else that I failed to ask about that you think I should know?

That completes our interview. Thank you very much for your cooperation.

APPENDIX 3

CODEBOOK

NCJRS

DEC 29 1986

ACQUISITIONS

CODEBOOK.RPE

CODEBOOK
RAPE REFORM PROJECT

<u>Variable</u>	<u>Column(s)</u>
V.1 ID # 001...999	Card 1 1-3
V.2 Respondent type 1. Prosecutor 2. Defense Attorney 3. Judge 4. Police 5. Victim Advocate	4
V.3 Respondent's sex 1. Male 2. Female	5
V.4 Site 1. Atlanta 2. Savannah 3. Jacksonville 4. Miami 5. Flint 6. Detroit	6
V.5 Years on the job 01...99	7-8
V.6 # sexual assault cases 000...999+ 998 DK	9-11
V.7 # before law reform 000...999+ 998 DK	12-14
V.8 # after law reform 000...999+ 998-DK	15-17
V.9 Special training--sexual assault cases 1. Yes 2. No 9. DK	18
V.10 Attendance at sexual assault conferences 1. Yes 2. No 9. DK	19

V.11	Worked in other part of criminal justice system	20
	1. Yes	
	2. No	
	9. DK	
V.12	Previous CJS experience	21
	0. None	
	1. Prosecutor	
	2. Defense Attorney	
	3. Judge	
	4. Police	
	5. Victim Advocate	
	6. Other	
V.13	Police---no eyewitnesses	22
	1. Most of the time	
	2. Some of the time	
	3. Rarely	
	9. Don't know/no opinion	
V.14	Police---no evidence of penetration (Same codes as above)	23
V.15	Police---no physical injury to victim (As above)	24
V.16	Police--Victim & assailant same sex (As above)	25
V.17	Police--less serious sexual assaults (As above)	26
V.18	Police--acquaintances (As above)	27
V.19	Police--intimates (As above)	28
V.20	Police--spouses (As above)	29
V.21	Prosecution--no eyewitnesses	30
	1. Very difficult	
	2. Somewhat difficult	
	3. Not difficult	
V.22	Prosecution--no evidence of penetration (As above)	31
V.23	Prosecution--no physical injury to victim (As above)	32
V.24 & V.25	Blank	

V.26	Prosecution--Victim & assailant same sex (As above)	33
V.27	Prosecution--less serious sexual assaults (As above)	34
V.28	Prosecution--acquaintances (As above)	35
V.29	Prosecution--intimates (As above)	36
V.30	Prosecution--spouses (As above)	37
V.31	Georgia--shield law--encouraged reporting 1. Yes 2. No 8. NA 9. DK	38
V.32	Georgia--shield law--encouraged prosecution (As above)	39
V.33	Georgia--shield law--accepted for prosecution (As above)	40
V.34	Georgia--shield law--improved treatment during cross (As above)	41
V.35	Georgia--shield law--increased conviction (As above)	42
V.36	Georgia--shield law--improved CJ officials' attitudes (As above)	43
V.37	Georgia--shield law--improved public attitudes (As above)	44
V.38	Georgia--shield law--Advantage 1 01. No advantage 02. Made law more specific/more charges possible/more room to bargain 03. Victim doesn't have to prove her charge 04. More prosecution/more successful 05. Better understanding of nature of sex assault(e.g., no witnesses, don't have to physically resist) 06. Change penalties/better penalties 07. Can't bring up victim's sexual history/ focus on relevant issues 08. Victim more willing to prosecute 09. Victim not resistant--prevents injuries	45-6

10.	Victim no longer badgered by defense counsel/better courtroom experience	
87.	Other	
88.	NA	
99.	DK	
V.39	Georgia--shield law--Advantage 2 (As above)	47-8
V.40	Georgia--shield law--Advantage 3 (As above)	49-50
V.41	Georgia--shield law--Disadvantage 1	51-2
01.	No disadvantage	
02.	Weakened punishment for some offenses	
03.	Difficult to prosecute/hard to prove	
04.	May result in wrongful prosecution	
05.	Intent difficult to prove	
06.	May not allow introduction of all relevant facts	
07.	Irrelevant material still introduced	
08.	Penalties too severe/lesser offenses treated same as more serious/penalties too inflexible	
09.	Encourages over-charging by pros	
10.	May confuse jury/ambiguity in law	
11.	Pleabargaining undercuts intent	
12.	Right of D to confront is violated/ due process denied	
13.	Additional cases in sytem/new crimes defined	
87.	Other	
88.	NA	
99.	DK	
V.42	Georgia--shield law--Disadvantage 2 (As above)	53-4
V.43	Georgia--shield law--Disadvantage 3 (As above)	55-6
V.44	Georgia--shield law--fair	57
1.	Yes	
2.	No	
8.	NA	
9.	DK	
V.45	Georgia--shield law needed (As above)	58
V.46	Georgia--shield law should be modified (As above)	59
V.47	Georgia--shield law effective	60

(As above)

- V.48 Georgia--shield law defense strategies 61-2
01. No effective defense strategies
 02. Argue type of assault fits lower degree structure
 03. Innuendo brought in/put doubt in jurors' minds
 04. Argue fact situation
 05. Constitutional attacks
 06. Use exceptions available in law
 87. Other
 88. NA
 99. DK
- V.49 Georgia--satisfaction with shield law 63
1. Very satisfied
 2. Satisfied
 3. Not satisfied
 4. Very dissatisfied
 8. NA
 9. DK
- V.50 Georgia--no corroboration (NC)--encouraged reporting 64
1. Yes
 2. No
 8. NA
 9. DK
- V.51 Georgia--NC--encouraged prosecution (As above) 65
- V.52 Georgia--NC--accepted for prosecution (As above) 66
- V.53 Georgia--NC--improved treatment during cross (As above) 67
- V.54 Georgia--NC--increased conviction (As above) 68
- V.55 Georgia--NC--improved CJ officials' attitudes (As above) 69
- V.56 Georgia--NC--improved public attitudes (As above) 70
- V.57 Georgia--NC--Advantage 1 CARD 2
01. No advantage 1-2
 02. Made law more specific/more charges possible/more room to bargain
 03. Victim doesn't have to prove her charge
 04. More prosecution/more successful

- 05. Better understanding of nature of sex assault (e.g., no witnesses, don't have to physically resist)
- 06. Change penalties/better penalties
- 07. Can't bring up victim's sexual history/focus on relevant issues
- 08. Victim more willing to prosecute
- 09. Victim not resistant--prevents injuries
- 10. Victim no longer badgered by defense counsel/better courtroom experience
- 87. Other
- 88. NA
- 99. DK

V.58 Georgia--NC--Advantage 2 3-4
(As above)

V.59 Georgia--NC--Advantage 3 5-6
(As above)

V.60 Georgia--NC--Disadvantage 1 7-8

- 01. No disadvantage
- 02. Weakened punishment for some offenses
- 03. Difficult to prosecute/hard to prove
- 04. May result in wrongful prosecution
- 05. Intent difficult to prove
- 06. May not allow introduction of all relevant facts
- 07. Irrelevant material still introduced
- 08. Penalties too severe/lesser offenses treated same as more serious/penalties too inflexible
- 09. Encourages over-charging by pros
- 10. May confuse jury/ambiguity in law
- 11. Pleabargaining undercuts intent
- 12. Right of D to confront is violated/ due process denied
- 13. Additional cases in sytem/new crimes defined
- 87. Other
- 88. NA
- 99. DK

V.61 Georgia--NC--Disadvantage 2 9-10
(As above)

V.62 Georgia--NC--Disadvantage 3 11-12
(As above)

V.63 Georgia--NC fair 13

- 1. Yes
- 2. No
- 8. NA
- 9. DK

V.64	Georgia--NC needed (As above)	14
V.65	Georgia--NC should be modified (As above)	15
V.66	Georgia--NC effective (As above)	16
V.67	Georgia--NC defense strategies	17-18
	01. No effective defense strategies	
	02. Argue type of assault fits lower degree structure	
	03. Innuendo brought in/put doubt in jurors' minds	
	04. Argue fact situation	
	05. Constitutional attacks	
	06. Use exceptions available in law	
	87. Other	
	88. NA	
	99. DK	
V.68	Georgia--Satisfaction with NC	19
	1. Very satisfied	
	2. Satisfied	
	3. Not satisfied	
	4. Very dissatisfied	
	8. NA	
	9. DK	
V.69	Michigan--First provision named	20
	01. Redefinition of criminal acts	
	02. Gender-neutralization of language	
	03. Creation of a degree structure	
	04. Creation of mandatory sentences	
	05. No corroboration	
	06. Elimination of resistance standards	
	07. Creation of shield provision	
	08. Elimination of nonconsent proof	
	09. Partial repeal of spousal immunity	
V.70	Michigan--Provision 1--encouraged reporting	22
	1. Yes	
	2. No	
	8. NA	
	9. DK	
V.71	Michigan--Pl--encouraged prosecution (As above)	23
V.72	Michigan--Pl--accepted for prosecution (As above)	24

V.73	Michigan--Pl--improved treatment during cross (As above)	25
V199	Michigan--Pl--increased conviction (As above)	26
V.74	Michigan--Pl--improved CJ officials' attitudes (As above)	27
V.75	Michigan--Pl--improved public attitudes (As above)	28
V.76	Michigan--Pl--Advantage 1	29-30
	01. No advantage	
	02. Made law more specific/more charges possible/more room to bargain	
	03. Victim doesn't have to prove her charge	
	04. More prosecution/more successful	
	05. Better understanding of nature of sex assault(e.g., no witnesses, don't have to physically resist)	
	06. Change penalties/better penalties	
	07. Can't bring up victim's sexual history/ focus on relevant issues	
	08. Victim more willing to prosecute	
	09. Victim not resistant--prevents injuries	
	10. Victim no longer badgered by defense counsel/better courtroom experience	
	87. Other	
	88. NA	
	99. DK	
V.77	Michigan--Pl--Advantage 2 (As above)	31-32
V.78	Michigan--Pl--Advantage 3 (As above)	33-4
V.79	Michigan--Pl--Disadvantage 1	35-6
	01. No disadvantage	
	02. Weakened punishment for some offenses	
	03. Difficult to prosecute/hard to prove	
	04. May result in wrongful prosecution	
	05. Intent difficult to prove	
	06. May not allow introduction of all relevant facts	
	07. Irrelevant material still introduced	
	08. Penalties too severe/lesser offenses treated same as more serious/penalties too inflexible	
	09. Encourages over-charging by pros	
	10. May confuse jury/ambiguity in law	
	11. Pleabargaining undercuts intent	
	12. Right of D to confront is violated/	

due process denied	
13. Additional cases in sytem/new crimes defined	
87. Other	
88. NA	
99. DK	
V.80 Michigan--Pl--Disadvantage 2 (As above)	37-8
V.81 Michigan--Pl--Disadvantage 3 (As above)	39-40
V.82 Michigan--Pl fair	41
1. Yes	
2. No	
8. NA	
9. DK	
V.83 Michigan--Pl needed (As above)	42
V.84 Michigan--Pl should be modified (As above)	43
V.85 Michigan--Pl works as intended (As above)	44
V.86 Michigan--Pl defense strategies	45-6
01. No effective defense strategies	
02. Argue type of assault fits lower degree structure	
03. Innuendo brought in/put doubt in jurors' minds	
04. Argue fact situation	
05. Constitutional attacks	
06. Use exceptions available in law	
87. Other	
88. NA	
99. DK	
V.87 Michigan--satisfaction with Pl	47
1. Very satisfied	
2. Satisfied	
3. Not satisfied	
4. Very dissatisfied	
8. NA	
9. DK	
V.88 Michigan--Second provision named	48-49
01. Redefinition of criminal acts	
02. Gender-neutralization of language	
03. Creation of a degree structure	
04. Creation of mandatory sentences	

- 05. No corroboration
- 06. Elimination of resistance standards
- 07. Creation of shield provision
- 08. Elimination of nonconsent proof
- 09. Partial repeal of spousal immunity

V.89	Michigan--P2--encouraged reporting	50
	1. Yes	
	2. No	
	8. NA	
	9. DK	
V.90	Michigan--P2--encouraged prosecution (As above)	51
V.91	Michigan--P2--accepted for prosecution (As above)	52
V.92	Michigan--P2--improved treatment during cross (As above)	53
V.93	Michigan--P2--increased conviction (As above)	54
V.94	Michigan--P2--improved CJ officials' attitudes (As above)	55
V.95	Michigan--P2--improved public attitudes (As above)	56
V.96	Michigan--P2--Advantage 1	57-8
	01. No advantage	
	02. Made law more specific/more charges possible/more room to bargain	
	03. Victim doesn't have to prove her charge	
	04. More prosecution/more successful	
	05. Better understanding of nature of sex assault(e.g., no witnesses, don't have to physically resist)	
	06. Change penalties/better penalties	
	07. Can't bring up victim's sexual history/ focus on relevant issues	
	08. Victim more willing to prosecute	
	09. Victim not resistant--prevents injuries	
	10. Victim no longer badgered by defense counsel/better courtroom experience	
	87. Other	
	88. NA	
	99. DK	
V.97	Michigan--P2--Advantage 2 (As above)	59-60
V.98	Michigan--P2--Advantage 3 (As above)	61-2

V.99 (Blank)	
V100 Michigan--P2--Disadvantage 1 (See V.79)	63-4
V101 Michigan--P2--Disadvantage 2 (As above)	65-6
V102 Michigan--P2--Disadvantage 3 (As above)	67-8
V103 Michigan--P2 fair	69
1. Yes	
2. No	
8. NA	
9. DK	
V104 Michigan--P2 needed (As above)	70
	CARD 3
V105 Michigan--P2 should be modified (As above)	1
V106 Michigan--P2 works as intended (As above)	2
V107 Michigan--P2 defense strategies	3-4
01. No effective defense strategies	
02. Argue type of assault fits lower degree structure	
03. Innuendo brought in/put doubt in jurors' minds	
04. Argue fact situation	
05. Constitutional attacks	
06. Use exceptions available in law	
87. Other	
88. NA	
99. DK	
V108 Michigan--satisfaction with P2	5
1. Very satisfied	
2. Satisfied	
3. Not satisfied	
4. Very dissatisfied	
8. NA	
9. DK	
V109 Michigan--third provision named	6-7
01. Redefinition of criminal acts	
02. Gender-neutralization of language	
03. Creation of a degree structure	
04. Creation of mandatory sentences	
05. No corroboration	
06. Elimination of resistance standards	
07. Creation of shield provision	
08. Elimination of nonconsent proof	

09. Partial repeal of spousal immunity

V110	Michigan--P3--encouraged reporting	8
	1. Yes	
	2. No	
	8. NA	
	9. DK	
V111	Michigan--P3 encouraged prosecution (As above)	9
V112	Michigan--P3--accepted for prosecution (As above)	10
V113	Michigan--P3--improved treatment during cross (As above)	11
V114	Michigan--P3--increased conviction (As above)	12
V115	Michigan--P3--improved CJ officials' attitudes (As above)	13
V116	Michigan--P3--improved public attitudes (As above)	14
V117	Michigan--P3--Advantage 1	15-16
	01. No advantage	
	02. Made law more specific/more charges possible/more room to bargain	
	03. Victim doesn't have to prove her charge	
	04. More prosecution/more successful	
	05. Better understanding of nature of sex assault(e.g., no witnesses, don't have to physically resist)	
	06. Change penalties/better penalties	
	07. Can't bring up victim's sexual history/ focus on relevant issues	
	08. Victim more willing to prosecute	
	09. Victim not resistant--prevents injuries	
	10. Victim no longer badgered by defense counsel/better courtroom experience	
	87. Other	
	88. NA	
	99. DK	
V118	Michigan--P3--Advantage 2 (As above)	17-18
V119	Michigan--P3--Advantage 3 (As above)	19-20
V120	Michigan--P3--Disadvantage 1	21-2
	01. No disadvantage	

02. Weakened punishment for some offenses
03. Difficult to prosecute/hard to prove
04. May result in wrongful prosecution
05. Intent difficult to prove
06. May not allow introduction of all relevant facts
07. Irrelevant material still introduced
08. Penalties too severe/lesser offenses treated same as more serious/penalties too inflexible
09. Encourages over-charging by pros
10. May confuse jury/ambiguity in law
11. Pleabargaining undercuts intent
12. Right of D to confront is violated/ due process denied
13. Additional cases in sytem/new crimes defined
87. Other
88. NA
99. DK

V121 Michigan--P3--Disadvantage 2 (As above)	23-4
V122 Michigan--P3--Disadvantage 3 (As above)	25-6
V123 Michigan--P3 fair 1. Yes 2. No 8. NA 9. DK	27
V124 Michigan--P3 needed (As above)	28
V125 Michigan--P3 should be modified (As above)	29
V126 Michigan--P3 works as intended (As above)	30
V127 Michigan--P3 defense strategies 01. No advantage 02. Made law more specific/more charges possible/more room to bargain 03. Victim doesn't have to prove her charge 04. More prosecution/more successful 05. Better understanding of nature of sex assault(e.g., no witnesses, don't have to physically resist) 06. Change penalties/better penalties 07. Can't bring up victim's sexual history/ focus on relevant issues	31-32

- 08. Victim more willing to prosecute
- 09. Victim not resistant--prevents injuries
- 10. Victim no longer badgered by defense counsel/better courtroom experience
- 87. Other
- 88. NA
- 99. DK

V128	Michigan--satisfaction with P3	33
	1. Very satisfied	
	2. Satisfied	
	3. Not satisfied	
	4. Very dissatisfied	
	8. NA	
	9. DK	
V129	Florida--First provision named	34-5
	01. Gender neutral	
	02. Sex battery	
	03. Limited grading	
	04. Mandatory sentences	
	05. Corroboration	
	06. Physical resistance	
	07. Shield provision	
	88. NA	
	99. DK	
V130	Florida--Pl--encouraged reporting	36
	1. Yes	
	2. No	
	8. NA	
	9. DK	
V131	Florida--Pl--encouraged prosecution (As above)	37
V132	Florida--Pl--accepted for prosecution (As above)	38
V133	Florida--Pl--improved treatment during cross (As above)	39
V134	Florida--Pl--increased conviction (As above)	40
V135	Florida--Pl--improved CJ officials' attitudes (As above)	41
V136	Florida--Pl--improved public attitudes (As above)	42
V137	Florida--Pl--Advantage 1	43-4
	01. No advantage	
	02. Made law more specific/more charges	

- possible/more room to bargain
- 03. Victim doesn't have to prove her charge
- 04. More prosecution/more successful
- 05. Better understanding of nature of sex assault (e.g., no witnesses, don't have to physically resist)
- 06. Change penalties/better penalties
- 07. Can't bring up victim's sexual history/ focus on relevant issues
- 08. Victim more willing to prosecute
- 09. Victim not resistant--prevents injuries
- 10. Victim no longer badgered by defense counsel/better courtroom experience
- 87. Other
- 88. NA
- 99. DK

V138	Florida--Pl--Advantage 2 (As above)	45-6
V139	Florida--Pl--Advantage 3 (As above)	47-8
V140	Florida--Pl fair 1. Yes 2. No 8. NA 9. DK	49
V141	Florida--Pl needed (As above)	50
V142	Florida--Pl should be modified (As above)	51
V143	Florida--Pl works as intended (As above)	52
V144	Florida--Pl defense strategies 01. No effective defense strategies 02. Argue type of assault fits lower degree structure 03. Innuendo brought in/put doubt in jurors' minds 04. Argue fact situation 05. Constitutional attacks 06. Use exceptions available in law 87. Other 88. NA 99. DK	53-4
V145	Florida--satisfaction with Pl 1. Very satisfied 2. Satisfied	55

- 3. Not satisfied
- 4. Very dissatisfied
- 8. NA
- 9. DK

V146	Florida--Second provision named	56-7
	01. Gender neutral	
	02. Sex battery	
	03. Limited grading	
	04. Mandatory sentences	
	05. Corroboration	
	06. Physical resistance	
	07. Shield provision	
	88. NA	
	99. DK	
V147	Florida--P2 encouraged reporting	58
	1. Yes	
	2. No	
	8. NA	
	9. DK	
V148	Florida--P2 encouraged prosecution (As above)	59
V149	Florida--P2 accepted for prosecution (As above)	60
V150	Florida--P2--improved treatment during cross (As above)	61
V151	Florida--P2--increased conviction (As above)	62
V152	Florida--P2--improved CJ officials' attitudes (As above)	63
V153	Florida--P2--improved public attitudes (As above)	64
V154	Florida--P2--Advantage 1	65-6
	01. No advantage	
	02. Made law more specific/more charges possible/more room to bargain	
	03. Victim doesn't have to prove her charge	
	04. More prosecution/more successful	
	05. Better understanding of nature of sex assault(e.g., no witnesses, don't have to physically resist)	
	06. Change penalties/better penalties	
	07. Can't bring up victim's sexual history/ focus on relevant issues	
	08. Victim more willing to prosecute	
	09. Victim not resistant--prevents injuries	

- 10. Victim no longer badgered by defense counsel/better courtroom experience
- 87. Other
- 88. NA
- 99. DK

V155	Florida--P2--Advantage 2 (As above)	67-8
V156	Florida--P2--Advantage 3 (As above)	69-70
V157	Florida--P2 fair 1. Yes 2. No 8. NA 9. DK	CARD 4 1
V158	Florida--P2 needed (As above)	2
V159	Florida--P2 should be modified	3
V160	Florida--P2 works as intended (As above)	4
V161	Florida--P2 defense strategies 01. No effective defense strategies 02. Argue type of assault fits lower degree structure 03. Innuendo brought in/put doubt in jurors' minds 04. Argue fact situation 05. Constitutional attacks 06. Use exceptions available in law 87. Other 88. NA 99. DK	5-6
V162	Florida--satisfaction with P2 1. Very satisfied 2. Satisfied 3. Not satisfied 4. Very dissatisfied 8. NA 9. DK	7
V163	Florida--Third provision named 01. Gender neutral 02. Sex battery 03. Limited grading 04. Mandatory sentences 05. Corroboration 06. Physical resistance	8-9

- 07. Shield provision
- 88. NA
- 99. DK

V164	Florida--P3--encouraged reporting	10
	1. Yes	
	2. No	
	8. NA	
	9. DK	
V165	Florida--P3--encouraged prosecution (As above)	11
V166	Florida--P3--accepted for prosecution (As above)	12
V167	Florida--P3--improved treatment during cross (As above)	13
V168	Florida--P3--increased conviction (As above)	14
V169	Florida--P3--improved CJ officials' attitudes (As above)	15
V170	Florida--P3--improved public attitudes (As above)	16
V171	Florida--P3--Advantage 1	17-18
	01. No advantage	
	02. Made law more specific/more charges possible/more room to bargain	
	03. Victim doesn't have to prove her charge	
	04. More prosecution/more successful	
	05. Better understanding of nature of sex assault(e.g., no witnesses, don't have to physically resist)	
	06. Change penalties/better penalties	
	07. Can't bring up victim's sexual history/ focus on relevant issues	
	08. Victim more willing to prosecute	
	09. Victim not resistant--prevents injuries	
	10. Victim no longer badgered by defense counsel/better courtroom experience	
	87. Other	
	88. NA	
	99. DK	
V172	Florida--P3--Advantage 2 (As above)	19-20
V173	Florida--P3--Advantage 3 (As above)	21-2

V174 Florida--P3 fair	23
1. Yes	
2. No	
8. NA	
9. DK	
V175 Florida--P3 needed (As above)	24
V176 Florida--P3 should be modified (As above)	25
V177 Florida--P3 works as intended (As above)	26
V178 Florida--P3 defense strategies	27-8
01. No effective defense strategies	
02. Argue type of assault fits lower degree structure	
03. Innuendo brought in/put doubt in jurors' minds	
04. Argue fact situation	
05. Constitutional attacks	
06. Use exceptions available in law	
87. Other	
88. NA	
99. DK	
V179 Florida--satisfaction with P3	29
1. Very satisfied	
2. Satisfied	
3. Not satisfied	
4. Very dissatisfied	
8. NA	
9. DK	
V180 Change sexual assaults to gender neutral	30
1. Yes	
2. No	
8. NA	
9. DK	
V181 Change range of sexual assault charges (As above)	31
V182 Establish mandatory sentences (As above)	32
V183 Change resistance requirements (As above)	33
V184 Change jury instructions (As above)	34

V185	Change reporting requirements (As above)	35
V186	Change spousal immunity (As above)	36
V187	Change consent standards (As above)	37
V188	Other changes (As above)	38
V189	Overall satisfaction	39
	1. Very satisfied	
	2. Satisfied (somewhat satisfied)	
	3. Not satisfied	
	4. Very dissatisfied	
V190	P1 Florida--Disadvantage 1	40-1
	01. No disadvantage	
	02. Weakened punishment for some offenses	
	03. Difficult to prosecute/hard to prove	
	04. May result in wrongful prosecution	
	05. Intent difficult to prove	
	06. May not allow introduction of all relevant facts	
	07. Irrelevant material still introduced	
	08. Penalties too severe/lesser offenses treated same as more serious/penalties too inflexible	
	09. Encourages over-charging by pros	
	10. May confuse jury/ambiguity in law	
	11. Pleabargaining undercuts intent	
	12. Right of D to confront is violated/ due process denied	
	13. Additional cases in sytem/new crimes defined	
	87. Other	
	88. NA	
	99. DK	
V191	P1 Florida--Disadvantage 2 (As above)	42-3
V192	P1 Florida--Disadvantage 3 (As above)	44-5
V193	P2 Florida--Disadvantage 1 (As above)	46-7
V194	P2 Florida--Disadvantage 2 (As above)	48-9
V195	P2 Florida--Disadvantage 3	50-1

(As above)

V196 P3 Florida--Disadvantage 1 (As above)	52-3
V197 P3 Florida--Disadvantage 2 (As above)	54-5
V198 P3 Florida--Disadvantage 3 (As above)	56-7

APPENDIX 4
SEXUAL ASSAULT STATUTES

A. OFFICIAL CODE OF GEORGIA ANNOTATED
CRIMES AND OFFENSES
CHAPTER 6
Sexual Offenses

1. Statute

Sec. 16-6-1. Rape.

(a) A person commits the offense of rape when he has carnal knowledge of a female forcibly and against her will. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ.

(b) A person convicted of the offense of rape shall be punished by death, by imprisonment for life, or by imprisonment for not less than one nor more than 20 years.

Sec. 16-6-2. Sodomy; aggravated sodomy.

(a) A person commits the offense of sodomy when he performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another. A person commits the offense of aggravated sodomy when he commits sodomy with force and against the will of the other person.

(b) A person convicted of the offense of sodomy shall be punished by imprisonment for not less than one nor more than 20 years. A person convicted of the offense of aggravated sodomy shall be punished by imprisonment for life or by imprisonment for not less than one nor more than 20 years.

Sec. 16-6-3. Statutory rape.

(a) A person commits the offense of statutory rape when he engages in sexual intercourse with any female under the age of 14 years and not his spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the female.

(b) A person convicted of the offense of statutory rape shall be punished by imprisonment for not less than one nor more than 20 years.

Sec. 16-6-4. Child molestation; aggravated child molestation.

(a) A person commits the offense of child molestation when he does any immoral or indecent act to or in the presence of or with any child under the age of 14 years with the intent to arouse or satisfy the sexual desires of either the child or the person.

(b) A person convicted of the offense of child molestation shall be punished by imprisonment for not less than one nor more than 20 years. Upon a first conviction, the judge may probate the sentence upon the special condition that the defendant undergo a mandatory period of counseling administered by a licensed psychiatrist or a licensed psychologist. If probation is not imposed, defendant sentenced to imprisonment for first offense

shall receive counseling from the Department of Offender Rehabilitation. For a second or third conviction, the defendant shall be punished by imprisonment for not less than five years. For a fourth or subsequent conviction, the defendant shall be punished by imprisonment for 20 years. No sentence suspended, probated, deferred, or withheld for conviction of a third, fourth, or subsequent offense.

(c) A person commits the offense of aggravated child molestation when he commits an offense of child molestation which results in physical injury to the child or involves an act of sodomy.

(d) A person convicted of the offense of aggravated child molestation shall be punished by imprisonment for not less than one nor more than 30 years.

Sec. 16-6-5. Enticing a child for indecent purposes.

Sec. 16-6-22. Incest.

(a) A person commits the offense of incest when he engages in sexual intercourse with a person to whom he knows he is related by either blood or by marriage as follows:

- (1) Father and daughter or stepdaughter;
- (2) Mother and son or stepson;
- (3) Brother and sister of the whole blood or of the half blood;
- (4) Grandparent and grandchild;
- (5) Aunt and nephew; or
- (6) Uncle and niece

(b) A person convicted of the offense of incest shall be punished by imprisonment for not less than one nor more than 20 years.

Sec. 16-6-5-1. Sexual assault against persons in custody.

(a) As used in this Code section, the term:

- (1) "Actor" means a person accused of sexual assault.
- (2) "Intimate parts" means the genital area, groin, inner thighs, buttocks, or breasts of a person.
- (3) "Sexual contact" means any contact for the purpose of sexual gratification of the actor with the intimate parts of a person not married to the actor.

(b) A person commits sexual assault when he engages in sexual contact with another person who is in the custody of law or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person. A person convicted of sexual assault shall be punished by imprisonment for not less than one nor more than three years.

Sec. 16-6-23. Publication of name or identity of female raped or assaulted with intent to commit rape.

Held unconstitutional by U.S. Supreme Court in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 95 S. Ct. 1029, 43 L.Ed.2d 328 1975.

Sec. 24-2-3. Complainant's past sexual behavior not admissible in rape prosecution; exception; in camera hearing; court order.

(a) In any prosecution for rape, evidence relating to the past sexual behavior of the complaining witness shall not be admissible, either as direct evidence or on cross examination of the complaining witness or other witnesses, except as provided in this Code section. For the purposes of this Code section, evidence of past sexual behavior includes, but is not limited to, evidence of the complaining witness's marital history, mode of dress, general reputation for promiscuity, nonchastity, or sexual mores contrary to the community standards.

(b) In any prosecution for rape, evidence relating to the past sexual behavior of the complaining witness may be introduced if the court, following the procedure described in subsection (c) of this Code section, finds that the past sexual behavior directly involved the participation of the accused or finds that the evidence expected to be introduced supports an inference that the accused could have reasonably believed that the complaining witness consented to the conduct complained of in the prosecution.

(c) The procedure for introducing evidence as described in subsection (b) of this Code section shall be as follows:

(1) At the time the defense shall seek to introduce evidence which would be covered by subsection (b) of this Code section, the defense shall notify the court of such intent, whereupon the court shall conduct an in camera hearing to examine into the defendant's offer of proof.

(2) At the conclusion of the hearing, if the court finds that any of the evidence introduced at the hearing is admissible under subsection (b) of this Code section, the court shall by order state what evidence may be introduced by the defense at the trial of the case and in what manner the evidence may be introduced.

(3) The defense may then introduce evidence pursuant to the order of the court.

B. FLORIDA STATUTES ANNOTATED
CHAPTER 194
Sexual Battery

Sec. 794.011. Sexual Battery

- (1) Definitions:
- (a) The term "consent" means intelligent, knowing, and voluntary consent and shall not be construed to include coerced submission.
 - (b) The term "mentally defective" mean that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her own conduct.
 - (c) The term "mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered to that person without his or her consent or due to any other act committed upon that person without his or her consent.
 - (d) The term "offender" means a person accused of a sexual offense.
 - (e) The term "physically helpless" means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.
 - (f) The term "retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.
 - (g) The term "serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.
 - (h) The term "sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.
 - (i) The term "victim" means the person alleging to have been the object of a sexual offense.
- (2) A person 18 years of age or older who commits sexual battery upon, or injures the sexual organs of, a person less than 12 years of age in an attempt to commit sexual battery upon such person commits a capital felony, punishable as provided in ss. 775.082 and 921.141. If the offender is under the age of 18, that person is guilty of a life felony, punishable as provided in s. 775.082, s.775.083, or s.775.084.

- (3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury is guilty of a life felony, punishable as provided in s.775.082, s.775.083, or s.775.084:
- (a) When the victim is physically helpless to resist.
 - (b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.
 - (c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.
 - (d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.
 - (e) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.
- (5) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses physical force and violence not likely to cause serious personal injury is guilty of a felony of the second degree, punishable as provided in s.775.082, s.775.083, or s.775.084.
- (6) Evidence of the victim's mental incapacity or defect is admissible to prove that the consent was not intelligent, knowing, or voluntary; and the court shall instruct the jury accordingly.

Sec. 794.021. Ignorance or belief as to victim's age no defense.

Sec. 794.022. Rules of evidence.

- (1) The testimony of the victim need not be corroborated in a prosecution under s.794.011.
- (2) Specific instances of prior consensual sexual activity between the victim and any person other than the offender shall not be admitted into evidence in a prosecution under s.794.011. However, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence may prove that the defendant

was not the source of semen, pregnancy, injury, or disease; or when consent by the victim is at issue, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of the victim which is so similar to the conduct or behavior in the case it is relevant to the issue of consent.

- (3) Notwithstanding any other provision of law, reputation evidence relating to a victim's prior sexual conduct shall not be admitted into evidence in a prosecution under s.794.011.

Sec. 794.023. Sexual battery by multiple perpetrators; enhanced penalties.

- (1) The Legislature finds that an act of sexual battery, when committed by more than one person, present a great danger to the public and is extremely offensive to civilized society. It is therefore the intent of the Legislature to provide enhanced penalties for acts of sexual battery committed by more than one person.
- (2) The penalty for a violation of s.794.011 shall be increased as provided in this subsection if it is charged and proven by the prosecution that, during the same criminal transaction or episode, more than one person committed an act of sexual battery on the same victim:
 - (a) A felony of the second degree shall be punishable as if it were a felony of the first degree.
 - (b) A felony of the first degree shall be punishable as if it were a life felony.

This subsection does not apply to life felonies or capital felonies.

Sec. 794.027. Duty to report sexual battery; penalties.
(TYPIST WILL FILL IN.)

Sec. 794.03. Unlawful to publish or broadcast information identifying sexual offense victim.

[HELD UNCONSTITUTIONAL BY U.S. SUPREME COURT IN Cox Broadcasting Corporation v. Cohn, 1975, 95 S.Ct. 1029, 420 U.S. 459, 43 L.Ed.2d 328].

B. FLORIDA STATUTES ANNOTATED
CHAPTER 194
Sexual Battery

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- (b) The term "mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her own conduct.
- (c) The term "mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered to that person without his or her consent or due to any other act committed upon that person without his or her consent.
- (d) The term "offender" means a person accused of a sexual offense.
- (e) The term "physically helpless" means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.
- (f) The term "retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.
- (g) The term "serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.
- (h) The term "sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.
- (i) The term "victim" means the person alleging to have been the object of a sexual offense.

- (2) A person 18 years of age or older who commits sexual battery upon, or injures the sexual organs of, a person less than 12 years of age in an attempt to commit sexual battery upon such person commits a capital felony, punishable as provided in ss. 775.082 and 921.141. If the offender is under the age of 18, that person is guilty of a life felony, punishable as provided in s. 775.082, s.775.083, or s.775.084.

- (3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury is guilty of a life felony, punishable as provided in s.775.082, s.775.083, or s.775.084:
- (a) When the victim is physically helpless to resist.
 - (b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.
 - (c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.
 - (d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.
 - (e) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.
- (5) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses physical force and violence not likely to cause serious personal injury is guilty of a felony of the second degree, punishable as provided in s.775.082, s.775.083, or s.775.084.
- (6) Evidence of the victim's mental incapacity or defect is admissible to prove that the consent was not intelligent, knowing, or voluntary; and the court shall instruct the jury accordingly.

Sec. 794.021. Ignorance or belief as to victim's age no defense.

Sec. 794.022. Rules of evidence.

- (1) The testimony of the victim need not be corroborated in a prosecution under s.794.011.
- (2) Specific instances of prior consensual sexual activity between the victim and any person other than the offender shall not be admitted into evidence in a prosecution under s.794.011. However, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence may prove that the defendant

was not the source of semen, pregnancy, injury, or disease; or when consent by the victim is at issue, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of the victim which is so similar to the conduct or behavior in the case it is relevant to the issue of consent.

- (3) Notwithstanding any other provision of law, reputation evidence relating to a victim's prior sexual conduct shall not be admitted into evidence in a prosecution under s.794.011.

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- (1) The Legislature finds that an act of sexual battery, when committed by more than one person, present a great danger to the public and is extremely offensive to civilized society. It is therefore the intent of the Legislature to provide enhanced penalties for acts of sexual battery committed by more than one person.
- (2) The penalty for a violation of s.794.011 shall be increased as provided in this subsection if it is charged and proven by the prosecution that, during the same criminal transaction or episode, more than one person committed an act of sexual battery on the same victim:
 - (a) A felony of the second degree shall be punishable as if it were a felony of the first degree.
 - (b) A felony of the first degree shall be punishable as if it were a life felony.

This subsection does not apply to life felonies or capital felonies.

Sec. 794.027. Duty to report sexual battery; penalties.

A person who observes the commission of the crime of sexual battery and who:

- (1) Has reasonable grounds to believe that he has observed the commission of a sexual battery;
 - (2) Has the present ability to seek assistance for the victim or victims by immediately reporting such offense to a law enforcement officer;
 - (3) Fails to seek such assistance;
 - (4) Would not be exposed to any threat of physical violence for seeking such assistance;
 - (5) Is not the husband, wife, parent, grandparent, child, grandchild, brother, or sister of the offender or victim, by consanguinity or affinity; and
 - (6) Is not the victim of such sexual battery
- is guilty of a misdemeanor of the first degree, punishable

as provided in s. 775.082 or s. 775.083.

Sec. 794.03. Unlawful to publish or broadcast information identifying sexual offense victim.

[HELD UNCONSTITUTIONAL BY U.S. SUPREME COURT IN Cox Broadcasting Corporation v. Cohn, 1975, 95 S.Ct. 1029, 420 U.S. 469, 43 L.Ed.2d 328].

C. MICHIGAN COMPILED LAWS ANNOTATED
SUPPLEMENTAL PAMPHLET
1968-1984

CRIMINAL SEXUAL CONDUCT

750.520a. Definitions

Sec. 520a. As used in sections 520a to 5201:

- (a) "Actor" means a person accused of criminal sexual conduct.
- (b) "Developmental disability" means an impairment of general intellectual functioning or adaptive behavior which meets the following criteria:
 - (i) It originated before the person became 18 years of age.
 - (ii) It has continued since its origination or can be expected to continue indefinitely.
 - (iii) It constitutes a substantial burden to the impaired person's ability to perform in society.
 - (iv) It is attributable to one or more of the following:
 - (A) Mental retardation, cerebral palsy, epilepsy, or autism.
 - (B) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.
- (c) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.
- (d) "Mental illness" means a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
- (e) Mentally disabled means that a person has a mental illness, is mentally regarded, or has a developmental disability.
- (f) Mentally incapable means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.
- (g) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.
- (h) "Mentally retarded" means significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.
- (i) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.
- (j) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.

(k) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.

(l) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(m) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

750.520b. First degree criminal sexual conduct.

Sec. 520b. (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) The actor is related to the victim by blood or affinity to the fourth degree.

(iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(c) Sexual penetration occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by one or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in subdivision

(f) (i) to (v).

(e) The actor is armed with a weapon or any article used or fashioned in a manner to accomplish sexual penetration. Force or coercion includes but is not limited to any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute the threats.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the extreme against the victim,

or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

(v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

(f) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(g) That other person is mentally incapable, mentally incapacitated, physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to cause the victim to submit.

(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment in the state prison for life or for any term of years.

750.520c. Second degree criminal sexual conduct.

Sec. 520 c. (1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) The actor is related by blood or affinity to the fourth degree to the victim.

(iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

(c) Sexual contact occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in sections 520b(1)(f)(i) to (v).

(e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and

force or coercion is used to accomplish the sexual conduct. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (v).

(g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated or physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years.

750.520d. Third degree criminal sexual conduct.

Sec. 520d. (1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is at least 13 years of age and under 16 years of age.

(b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (v).

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.

750.520e. Fourth degree criminal sexual conduct.

Sec. 520e. (1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if either of the following circumstances exists:

(a) Force or coercion is used to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (iv).

(b) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years, or by a fine of not more than \$500.00, or both.

750.520f. Second or subsequent offenses.

Sec. 520f. (1) If a person is convicted of a second or subsequent offense under section 520b, 520c, or 520d, the sentence imposed under those sections for the second or subsequent offense shall provide for a mandatory minimum sentence of at least 5 years.

(2) For purposes of this section, an offense is considered a second or subsequent offense if, prior to conviction of the

second or subsequent offense, the actor has at any time been convicted under section 520b, 520c, or 550d or under any similar statute of the United States or any state for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or any attempt to commit such an offense.

750.520g. Assault with intent to commit criminal sexual conduct.

Sec. 520g. (1) Assault with intent to commit criminal sexual conduct involving sexual penetration shall be a felony punishable by imprisonment for not more than 10 years.

(2) Assault with intent to commit criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 5 years.

750.520h. Corroboration of victim's testimony.

Sec. 520h. The testimony of a victim need not be corroborated in prosecution under sections 520b to 520g.

750.520i. Resistance.

Sec. 520i. A victim need not resist the actor in prosecution under sections 520b to 520g.

750.520j. Admissibility of evidence.

Sec. 520j. (1) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admitted under sections 520b to 520g unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) Evidence of the victim's past sexual conduct with the actor.

(b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

(2) If the defendant proposes to offer evidence described in subsection (1)(a) or (b), the defendant within 10 days after the arraignment on the information shall file a written motion and offer of proof. The court may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1). If new information is discovered during the course of the trial that may make the evidence described in subsection (1)(a) or (b) admissible, the judge may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1).

750.520k. Suppression of names and details.

Sec. 520k. Upon request of the counsel or the victim or actor in a prosecution under sections 520b to 520g the magistrate before whom any person is brought on a charge of having committed an offense under sections 520b to 520g shall order that the names of the victim and actor and details of the alleged offense be suppressed until such time as the actor is arraigned on the information, the charge is dismissed, or the case is otherwise