THE IMPACT OF RAPE REFORM LEGISLATION

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THE RAPE REFORM MOVEMENT

Since the early 1970s there has been growing concern with the response of the criminal justice system to the crime of rape. Feminists, social scientists and legal scholars have questioned the special status of rape as an offense for which the victim, as well as the defendant, is put on trial. They have suggested that the laws and the rules of evidence unique to rape are at least partially responsible for the unwillingness of victims to report rapes and for the low rates of arrest, prosecution and conviction. They also have contended that these laws and rules of evidence result in pervasive skepticism of rape victims' claims and allow criminal justice officials to use legally irrelevant assessments of the victim's status, character and relationship with the defendant in making decisions regarding the processing and disposition of rape cases. They argue, in short, that "it is easy to commit rape and get away with it" (Rodabaugh and Austin, 1981: 17).

There is abundant evidence in support of these claims. Estimates of the ratio of unreported to reported rapes vary from a conservative figure of two to one (Law Enforcement Assistance Administration, 1979; McDermott, 1975) to a "probably exaggerated" figure of ten to one (McCahill, Meyer and Fischman, 1979: 84) to Brownmiller's (1975) figure of "possibly" twenty to one. Estrich (1987) argues that the validity of these figures depends on whether "simple" rapes, as well as "aggravated rapes," are counted. She contends that if the simple cases are

included--cases where a woman is forced to have sex by a man she knows who does not beat her or attack her with a gun--"then rape emerges as a far more common, vastly underreported and dramatically ignored problem" (Estrich, 1987: 10).

Researchers also have documented substantial attrition in rape cases, beginning with the police officer's decision to "unfound" the complaint and ending with the judge or jury's decision to acquit the defendant. The FBI reported that nationally 19 percent of all rape complaints were unfounded by the police in 1975 (U.S. Department of Justice, 1976). This figure has been termed "appreciably higher" for rape than for other crimes (McCahill et al., 1979). It also has been interpreted by some as proof that police are unduly skeptical of the claims of rape complainants (Brownmiller, 1975, McCahill et al, 1979) and by others as evidence that rape victims are more likely than victims of other crimes to lie (MacDonald, 1971). Even if the police decide to file charges, there is a 50 percent chance the offender will not be caught and arrested (U.S. Department of Justice, 1976). Even if an arrest is made, studies show that conviction is unlikely. An analysis of arrests for rape in Washington, D.C., for example, found that only 20 percent resulted in conviction (Williams, 1978). Similarly, only 25 percent of the arrests in New York City (Vera Institute of Justice, 1981), 32 percent of the arrests in Indiana (La Free, 1980) and 34 percent of the arrests in California (Galvin and Polk, 1983) resulted in conviction.

Feminists and social scientists have suggested that this attrition in rape arrests is due in part to the fact that

criminal justice officials use legally irrelevant evaluations of the rape victim in decisionmaking. Many researchers have commented upon the effect of extra-legal factors in rape cases. They have shown that the treatment of men accused of rape is influenced by victim "misconduct" such as hitchhiking or drinking (Bohmer, 1974; Kalven and Zeisel, 1966; LaFree, 1981; McCahill, et al., 1979; Nelson and Amir, 1975), by the victim's reputation (Amir, 1971; Feild and Bienen, 1980; Feldman-Summers and Linder, 1976; Holmstrom and Burgess, 1978; Kalven and Zeisel, 1966; McCahill, et al., 1979; Reskin and Visher, 1986) and by the victim's age, occupation and education (McCahill, et al., 1979).

Researchers also have found that the relationship between the victim and the accused has a strong effect on the outcome of sexual assault cases; rapes involving strangers are taken more seriously than rapes involving acquaintances. McCahill, et al. (1979) found that police investigate reports of rape by a stranger much more thoroughly than reports of rape by a friend or acquaintance. The prior relationship between the victim and the defendant also has been shown to affect the prosecutor's decision to file charges or not (Battelle Memorial Institute, 1977; Loh, 1980), the decision to dismiss the charges rather than prosecute fully (Vera Institute of Justice, 1981), and the likelihood that the defendant will be convicted (Battelle Memorial Institute, 1977) or incarcerated (McCahill, et al., 1979).

Evidence such as this has led a number of authors to conclude that all rapes are not treated equally (Bohmer, 1974; Estrich, 1987; Griffin, 1977; Ireland, 1978; Williams, 1984). They argue that the response of the criminal justice system is

predicated on stereotypes about rape and rape victims and that the most serious dispositions are reserved for "real rapes" involving "genuine victims." (Perhaps it has always been so. Early English common law mandated a fine of 60 shillings for the rape of a virgin, 30 shillings for the rape of a non-virgin.) Other victims (i.e., those who knew their attacker or who somehow "precipitated" the attack by their dress, behavior or reputation) must prove that they are worthy of protection under the law. As Ireland (1978: 188) notes, in these circumstances "it is the victim rather than the defendant who is placed on trial."

THE RAPE REFORM MOVEMENT

The rape reform movement emerged in the early 1970s in response both to feminists' concerns about the treatment of rape victims and to a nationwide preoccupation with "law and order." Women's groups, led by the National Organization of Women's (NOW) Task Force on Rape, lobbied state legislatures to reform antiquated rape laws "to reflect and legitimate the changing status of women in American society" (Marsh, Geist and Caplan, 1982: 3). They were joined in their efforts by crime-control advocates, notably police and prosecutors, who were alarmed by dramatic increases in rape during the late 1960s and early 1970s and who urged rape reform as a method of encouraging more victims to report rapes and to cooperate with criminal justice officials in prosecuting rapists. Together these groups formed a powerful, although perhaps ill-matched, coalition for change. By the mid-1980s nearly all states had enacted rape reform legislation.

The overall purpose of the reforms was to treat rape like

other crimes by focusing, not on the behavior or reputation of the victim, but on the unlawful acts of the offender. The intent was to "counteract the historical bias against rape victims by giving notice that the rights of the rape victim will no longer be subordinated to those of the accused" (Sasko and Sesek, 1975: 502). To accomplish this, states enacted reform statutes which vary in comprehensiveness and encompass a broad range of reforms. The most common changes are: (1) redefining rape and replacing the single crime of rape with a series of graded offenses defined by the presence or absence of aggravating conditions; (2) changing the consent standard by eliminating the requirement that the victim physically resist her attacker; (3) eliminating the requirement that the victim's testimony by corroborated; and (4) placing restrictions on the introduction of evidence of the victim's prior sexual conduct. Reformers expected that these changes would reduce both the skepticism of criminal justice officials toward the claims of rape victims and their reliance on extralegal considerations in decisionmaking. They anticipated that the reforms ultimately would lead to an increase in the number of reports of rape, and would make arrest, prosecution, and conviction for rape more likely. Each of these reforms is discussed in detail below.

Definitional Changes

Historically, rape was defined as "carnal knowledge of a woman, not one's wife, by force and against her will." Carnal knowledge included only penile-vaginal penetration. Thus, the essential elements of a traditional rape statute were (1) force, (2) absence of consent and (3) vaginal penetration. The

traditional statute did not include attacks on male victims, acts other than sexual intercourse, sexual assaults with an object, or sexual assaults by a spouse.

To remedy these deficiencies, many states replaced the single crime of rape, or the two crimes of rape and statutory rape, with a series of sex-neutral graded offenses with commensurate penalties. Typically, each crime is defined in terms of the circumstances of the offense: the seriousness of the offense (penetration vs. other sexual contact); the amount of coercion used by the offender; the degree of injury to the victim; whether the offender committed a felony in addition to the sexual assault; and the age and incapacitation of the victim. Concomitant with these changes, most states also redefined penetration. For example, the Michigan statute, considered by many to be a model rape reform law, defines sexual penetration as "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 opening of another person's body, but emission of semen not required" (Mich. Comp. Laws Ann. 750.520h). Finally, many states eliminated the term "rape," substituting sexual assault, sexual battery, or criminal sexual conduct. Michigan, for example, replaced rape and sodomy with four degrees of criminal sexual conduct. Illinois replaced rape and deviate sexual intercourse with aggravated criminal sexual assault and criminal sexual assault.

Reformers anticipated that redefining the crime and providing a range of charges would lead police to unfound fewer charges and thus make more arrests. They also believed that the reform would

increase convictions. They felt that the availability of appropriate lesser charges would enable prosecutors to obtain more convictions through plea bargaining and would discourage jury nullification by providing other options to juries reluctant to convict for forcible rape.

Consent Standard

Under traditional rape statutes, which included the phrase "by force and against her will," nonconsent by the woman was the essential element of the crime. To demonstrate her nonconsent, the victim was required to "resist to the utmost" or, at the very least, exhibit "such earnest resistance as might reasonably be expected under the circumstances" [Tex. Penal Code 21.02 (1974)(Supp. 1980)]. State appellate court opinions echoed, and in some cases strengthened, the statutory requirements. In Brown v. State, for example, the Wisconsin Supreme Court reversed a rape conviction on the grounds that the victim, who had struggled and screamed, had not resisted vociferously enough. According to the court, ". . . there must be the most vehement exercise of every physical means or faculty within the woman's power to resist the penetration of her person, and this must be shown to persist until the offense is consummated" [127 Wis. at 201, 106 N.W. at 539 (1906)].

Statutes and appellate court rulings such as these were challenged by police and rape counselors, who asserted that resistance by the victim often increased the likelihood she would be injured seriously. Feminists and legal scholars also voiced their criticisms, maintaining that the common-law consent defense "had come to mean that a woman could consent to intercourse with

strangers and acquaintances under circumstances of brutality and degredation" (Feild and Bienen, 1980: 160). They also charged that the consent standard obscured the issues in a rape case by shifting the inquiry from the offender's aggressive acts to the victim's character, behavior and sexual history.

In response to these concerns, a number of states eliminated resistance of the victim as an element of the crime to be proved by the prosecutor. Pennsylvania law states explicitly that "The alleged victim need not resist the act . . ." [Pa. Cons. Stat. Ann. 3107 (Purdon 1983)]. Other states attempted to remove the ambiguity in the consent standard and to obviate the state's burden of proving an absence of consent by specifying the circumstances which constitute force--using or displaying a weapon, committing another crime at the same time, injuring the victim, and so on. Still other states retained the concept of consent but defined it more clearly. Illinois, for example, defined consent as " . . . a freely given agreement to the act of sexual penetration or sexual conduct in question [Ill. Ann. Stat. Ch. 38, 12-17 (Smith-Hurd Supp. 1985)].

Reformers expected these changes to improve the odds of arrest, prosecution and conviction in cases where the victim, either as a result of fear or common sense, did not physically resist her attacker. Some social scientists, however, argued that these changes were largely symbolic and thus would not have a significant impact on the prosecution of rape cases. Loh (1980) asserted that most participants in the criminal justice system continue to believe stereotypes about rape and rapists; thus, the prosecutor, as a practical matter, still will have to

prove the victim's lack of consent by referring to the offender's aggression, the victim's resistance or both.

Corroboration Requirement

Traditional wisdom, reflected in common law, held that rape should be treated differently than other crimes because of the danger of false charges by vindictive or mentally disturbed women. Some argued that a woman would deliberately lie about being sexually assaulted to explain away premarital intercourse, infidelity, pregnancy or disease, or to "get even" with an ex-lover or some other man. Others maintained that women frequently have fantasies about being raped, fantasies which in the "hysterical female . . . are all too easily translated into actual belief and memory falsification" (Guttmacher and Weihofen, 1952). Coupled with these fears of deliberate lies was the notion that fabrications in rape cases would be more difficult to disprove than other unwarranted accusations. Perhaps the most oft-quoted comment about rape is Sir Matthew Hale's allegation from the 1600s that rape is a charge "easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent" (Hale, 1971).

Despite the fact that these propositions were never tested empirically, many states enacted rules which prohibited conviction for forcible rape on the uncorroborated testimony of the victim and/or which required judges, in their instructions to the jury, to read a "cautionary instruction" modeled after Lord Hale's allegation. Where corroboration is required, the prosecution is forced to produce evidence other than the word of the rape victim to support its case. The prosecutor may be

required to corroborate some or all of the essential elements of the case--identity of the accused, penetration, and nonconsent.

Critics of the corroboration requirement cited the difficulty in obtaining evidence concerning an act which typically takes place in a private place without witnesses. They suggested that "in states where a corroboration requirement is strictly enforced, the effect has been a comparatively low rate of conviction . . ." (Note. The Rape Corroboration Requirement, 1972: 1388). In the face of such criticism, a number of states eliminated corroboration requirments and special cautionary instructions, either through legislation or appellate court rulings. By 1984 only eight states retained the corroboration requirement, and two of these required it in cases of statutory rape only (Williams, S., 1984).[2] These reforms were intended to make more rape cases eligible for prosecution and thus to increase the conviction rate.

Evidence of Victim's Sexual Conduct

Under common law, evidence of the victim's sexual history was admissible to prove she had consented to intercourse and to impeach her credibility. The notion that the victim's prior sexual conduct was pertinent to whether or not she consented was based on the assumptions that chastity was a character trait and that, therefore, an unchaste woman would be more likely to agree to intercourse than a woman without premarital or extramarital experiences. Simply stated, the assumption was "if she did it once, she'd do it again" (Berger, 1977). This view was reflected in state and federal court rulings. In People v. Abbot Judge Cowen distinguished between a woman "who has already submitted

herself to the lewd embraces of another, and the coy and modest female severely chaste and instinctively shuddering at the thought of impurity" [19 Wend. 192, 195-96 (N.Y. 1838)]. As late as 1968, the U.S. Court of Appeals for the fourth circuit held that an attorney's failure to investigate the character of a complainant in a rape case constituted ineffective assistance of counsel [Coles v. Peyton, 389 F.2d 224 (4th Cir, 1968)].

Some courts also admitted evidence of the victim's lack of chastity on the issue of credibility, which they justified on the grounds that unchaste women are apt to lie. In other words, if promiscuity implies dishonesty, then "the jury should be allowed to hear general reputation evidence of the complainant's unchastity in order to weigh and credit her testimony in the context of the character of the person she is reputed to be" (Hibey, 1973: 327).

Reformers were particularly critical of this two-pronged evidentiary rule and insisted that it be eliminated or modified. Some pointed to the law's inherent double standard: nonmarital sexual activity was irrelevant to the alleged rapist's truthfulness but condemned the complainant as a liar (LeGrand, 1973). Many critics argued that the rule was archaic in light of changes in attitudes toward sexual relations and toward the role of women in society. They stressed that evidence of the victim's prior sexual behavior was of little, if any, probative worth. As Berger (1977: 57) maintained

> Ordinarily, information that the prosecuting witness sleeps with her boyfriend or goes around with married men or has borne some illegitimate children cannot help the jury decide on any reasoned factual basis whether or not she agreed to relations with <u>this</u> person on <u>this</u> occasion

or whether she perjured herself on the stand.

Confronted with arguments such as these, state legislatures quickly enacted rape shield laws designed to limit the admissibility of evidence of the victim's past sexual conduct. By 1985 the federal government and all but two states (Arizona and Utah) had jumped on the rape shield law bandwagon (Haxton, 1985). The laws range from the less restrictive, which permit sexual conduct evidence to be admitted following a showing of relevance, to the more restrictive, which prohibit such evidence except in a few narrowly defined situations. The Texas and Michigan laws are often identified as the two ends of the continuum (Berger, 1977; Davis, 1984; Haxton, 1985; Galvin, 1986). Texas does not categorically exclude any sexual conduct evidence; rather, such evidence can be admitted only if the judge finds, in an in camera evidentiary hearing, that "its inflammatory or prejudicial nature does not outweigh its probative value" [Texas Penal Code Ann. 22.065 (Vernon Supp. 1986)]. At the opposite extreme, Michigan totally prohibits the admission of the victim's prior sexual conduct, with the exception of past sexual relations with the defendant or specific instances of sexual activity to show the source of semen, pregnancy or disease; however, these two types of evidence cannot be admitted unless the judge finds the evidence is relevant and that its prejudicial effect does not outweigh its probative worth [Mich. Comp. Laws Ann. 750.520j (West Supp. 1985)].

Between these two extremes are statutes which attempt to balance the interests of the victim against the rights of the defendant by delineating a number of exceptions to the general

presumption against admission of sexual conduct evidence. Among the more common exceptions are: evidence of the complainant's prior sexual relations with the defendant; evidence of specific instances of sexual activity with third persons to show that a third person was the source of semen, pregnancy or disease; and evidence to rebut sexual conduct evidence introduced by the prosecutor. Less common are exceptions for evidence tending to show that the complainant is biased or has a motive to fabricate the charge; evidence that the complainant made false allegations of rape in the past; evidence that proves that the defendant reasonably, although mistakenly, believed the complainant consented; and evidence of prior consensual sexual relations with third parties that are substantially similar to the alleged conduct with the accused.

A number of rape shield laws expressly distinguish between evidence of past sexual conduct offered to prove consent and evidence offered to impeach the victim's credibility. Some states prohibit the first type of evidence, with a few exceptions, while other prohibit the second type, subject to some exceptions. However, as both Feild and Bienen (1980) and Galvin (1986) note, evidence of past sexual conduct cannot be neatly categorized into substantive (consent) and credibility uses. If the victim claims she did not consent, sexual history evidence which tends to prove that she did consent will simultaneously impeach her credibility. Conversely, evidence that raises questions about her veracity will at the same time cast doubt on her assertion of nonconsent.

Proponents of rape law reform hailed the enactment of shield laws and predicted that the reform would produce an increase in the proportion of victims reporting rapes to the police. They also

anticipated that the evidentiary changes, by counteracting myths about sexually active women, would eventually lead to an increase in arrests, prosecutions and convictions. Some commentators, on the other hand, were more cautious, maintaining that the reform's effects would be muted by the fact that it was designed primarily to protect the few victims whose cases went to trial (Feild and Bienen, 1980). Others asserted that the law's impact would be mitigated by a lack of consensus among judges as to what constitutes "relevant evidence," "probative worth" and "prejudicial effect." As Adler (1982: 770) noted with respect to the implementation of the shield law enacted in Great Britain, " . . . the current law effectively is that evidence of sexual history is relevant if the judge thinks that it is relevant."

Of all the reforms, the rape shield laws clearly have engendered the most controversy. Civil libertarians and legal scholars have harshly criticized the laws, especially the more restrictive ones modeled after the Michigan statute, on the grounds that they infringe on the defendant's right to confront witnesses against him and to call witnesses in his own behalf (Berger, 1977; Haxton, 1985; Herman, 1976-77; Loftus, 1982; Rudstein, 1976; Tanford and Bocchino, 1980; Williams, S., 1984). The laws have produced a lively discussion in the legal literature concerning the conflict between the defendant's rights, the rights of the victim to privacy or to the equal protection of the laws, and the state's interest in securing reports of and arrests and convictions for rape. Most scholars have concluded that while the defendant's right to present evidence is not unlimited, it is not likely that the Supreme Court would extend either the right to privacy or the

equal protection clause so far that the exclusion of relevant sexual conduct evidence would be constitutionally justified (Berger, 1977; Haxton, 1985). On the other hand, some authors maintain that the state's interests in encouraging victims to report and prosecute might justify the exclusion of evidence, if it could be shown that the shield laws actually furthered this interest. As Haxton points out, however, there is no empirical evidence which shows that shield laws encourage victims to report. Thus, "there is no sufficiently compelling governmental interest, nor any constitutional right of the complainant, that justifies the exclusion by rape shield statutes of highly probative evidence of the complainant's past sexual conduct" (Haxton, 1985: 1267-8).

The decisions of appellate courts concerning the constitutionality of the shield laws are interesting, in light of this near-universal agreement among legal scholars that the rape shield laws are constitutionally flawed. The United States Supreme Court has not ruled on the constitutionality of any rape shield law and state courts which have ruled on the constitutional issues have almost always upheld the shield laws. However, as Galvin (1986) notes, appellate courts faced with challenges to the exclusion of evidence under the various restrictive Michigan-style laws have dealt with the rigidity and underinclusiveness of the laws in two ways. Some courts have held a statute unconstitutional as applied in a particular factual situation. Others have carved out additional exceptions to the presumption of inadmissibility by interpreting the rape shield law under attack to permit the defendant to introduce evidence of the victim's sexual conduct explictly prohibited by the statute. While no rape shield law has

been struck down, then, some of the more restrictive laws have been modified by court rulings.

THE IMPACT OF RAPE LAW REFORM

Despite the fact that most states have enacted rape law reforms, there has been little empirical research on the effect of these laws. Two studies examined the impact of the 1974 Michigan criminal sexual conduct statute, the most sweeping rape law reform in the country. The most comprehensive of these analyzed monthly data from three years before and three years after the reform (Marsh, et al., 1982). Time-series analyses of these data revealed increases in the number of arrests and convictions for rape, but no change in the number of crimes reported to the police. Caringella-MacDonald (1984) compared post-reform attrition and conviction rates in Kalamazoo County, Michigan, with rates from three jurisdictions with more traditional rape laws. She concluded that the differences in these rates provided "indirect" evidence that the Michigan law had had an effect.

To determine what aspects of the Michigan reform were most effective, Marsh and her colleagues also interviewed a cross-section of criminal justice system officials. Although most prosecutors and defense attorneys reported that they had not changed their courtroom tactics, many agreed that prosecutors' chances of winning rape cases had improved. Most respondents credited this change to restrictions on sexual conduct evidence. Almost all of the respondents (82 percent) believed that the victim's experience in the system was less traumatic under the new

law.

Loh (1981) evaluated the less-sweeping rape reform statute enacted in the state of Washington in 1975. He used a simple before-and-after design to examine the effect of the law on the prosecution of rape cases in King County (Seattle) from 1972 to 1977. Loh found no change in charging decisions and concluded that prosecutors had not altered their standards for determining "convictability." He also found no change in the overall rate of conviction, although more convictions were for rape rather than some other offense such as assault. Finally, the incarceration rate declined slightly after the reform, but committment to inpatient sexual offender treatment facilities rose.

Mixed results were reported by Polk (1985), who used statewide yearly data on the processing of rape cases from 1975 to 1982 to examine the effect of rape reform statutes in California. He discovered that there had been no significant change in the police clearance rate or the conviction rate. On the other hand, he found that the percentage of arrests for rape that resulted in the filing of a felony complaint was up slightly, as was the incarceration rate for those convicted of rape.

Gilchrist and Horney (1980) used time-series analysis to evaluate the moderately reformed rape statutes enacted by Nebraska in 1975. They found no evidence of a reform-related increase in the proportion of cases reaching the courts or in the conviction rate. The data indicated a slight shift in the kinds of plea bargains being arranged, but did not support the hypothesis that the separation of two degrees of sexual assault would lead to more plea bargaining.

These empirical studies provide some evidence on the impact of rape law reforms in four jurisdictions, but leave many unanswered questions about the nationwide effect of the reforms. Design limitations in each study also limit the conclusiveness and generalizability of their results. For example, the time-series design used in the Michigan evaluation did not include controls for the "threat of history," i.e., for the possibility that events other than the legal changes could have been responsible for the effects noted. The authors, in fact, stated that "a nagging concern throughout the evaluation of the law reform derived from realization that the changes detected could have happened in the absence of the legal reform (Marsh, et al., 1982: 82).

The factor most likely to compete with the legal changes as a cause of increased arrests and convictions is the influence of the women's movenment. The activities of women's groups during the early 1970s heightened public awareness of the rape problem and of the need for greater sensitivity in the treatment of rape victims. The Michigan reform occurred at the height of this publicity and thus the effects of the two could be confounded. Both the law reform and changes in the processing of rape cases, in other words, might be reflections of changes in public attitudes. In fact, Michigan judges interviewed for the study attributed changes in jurors' willingness to convict in sexual assault cases, not to the law reform, but to changes in public attitudes and the impact of the women's movement (Marsh, et al., 1982: 56).

A further limitation of the studies is the short time span included in the analysis. None of the studies collected data for more than three years following the reform, so it is possible that

the effects detected may have been transient ones and that delayed effects may have gone undetected. Casper and Brereton (1984) have pointed out the need for extensive follow-up in legal impact studies. It is not uncommon in the criminal justice system for a reform to produce immediate changes, but for the actors in the system to revert later to old norms of behavior. In their eagerness to evaluate reforms as soon as possible, researchers may miss these changes. There is evidence for such a possibility in the Michigan experience, where total convictions for sexual assault were decreasing during the third year after the reform, at the end of the evaluation period.

Perhaps the most serious deficiency of the studies discussed above is that each was conducted in only one state; no one has compared the impact of different kinds of reforms in different jurisdictions. Each jurisdiction processes rape cases in slightly different ways and these differences could affect the implementation and impact of the reforms. Since many of the reforms are most relevant to rape cases which go to trial, their impact may be greater in jurisdictions which try a greater percentage of cases. The evidence reforms may have less impact in jurisdictions that use grand juries to return indictments, since it has been suggested that grand jury proceedings are very difficult for rape victims (Battelle Memorial Institute Law and Justice Study Center, 1978). The reforms may have greater impact when a police department or a prosecutor's office considers sexual assaults important enough to warrant setting up a special division for handling those crimes. Untangling the effects of these system variables requires a multi-jurisdiction study.

The inconclusiveness of the studies conducted thus far points to a clear need for additional empirical research on the impact of rape law reforms. The purpose of our study is to provide both breadth and depth of information about the effect of the changes. Breadth is provided by an examination of the impact of the laws on the processing and disposition of rape cases in six major jurisdictions from 1970 to 1985. Depth is provided by supplementing this longitudinial data with information from interviews with criminal justice personnel. Our intent is to provide data which will inform feminists, legal scholars, social scientists and others embroiled in the "continuing national debate about the effectiveness of rape reform legislation" (Feild and Bienen, 1980: 181).

CHAPTER 2

RAPE LAW REFORM IN SIX JURISDICTIONS

The six cities selected for this project represent jurisdictions which enacted different types of rape law reforms. Some jurisdictions embraced all of the reforms described earlier, while others enacted very limited changes. Some states enacted "strong" versions of a particular reform, others "weak" versions. A few legislatures passed comprehensive reform bills, while others adopted individual changes over a number of years. Our purpose in selecting these six jurisdictions, then, was to determine if particular changes, or particular combinations of changes, affected the processing and disposition of sexual assault cases. We also wanted to see if the effect of the reforms varied with the comprehensiveness of the changes.

We categorized the reforms in our six sites as strong, moderate or weak, depending on the types and strength of the changes adopted. Detroit and Chicago represent jurisdictions with strong reforms, Philadelphia and Houston represent states with moderate reforms, and Atlanta and Washington, D.C. represent jurisdictions with weak reforms. The types of reforms enacted in each state are summarized in Table 2.1. Differences in the reforms are summarized below.

Strong Reforms--Michigan and Illinois

Although the sexual assault laws in Michigan and Illinois are very similar, Illinois enacted changes in a more piece-meal fashion than did Michigan. The comprehensive Michigan statute enacted in 1975 is regarded by many as a model rape reform law.

The statute redefines rape and other forms of sexual assault by establishing four degrees of gender-neutral criminal sexual conduct based on the seriousness of the offense, the amount of force or coercion used, the degree of injury inflicted, and the age and incapacitation of the victim. The statute extends the reach of the sexual assault laws to acts (sexual penetration with an object) and persons (men and married persons who are legally separated) not covered by the old laws.

The Michigan law also delineates the circumstances which constitute coercion, lists the situations in which no showing of force is required (for example, when the victim is physically helpless or mentally defective), and states that the victim need not resist the accused. Since evidence of coercion is seen as tantamount to nonconsent, the law effectively eliminates the requirement that the prosecutor prove the victim resisted and therefore did not consent; the burden of proving the victim acquiesced to the act falls to the defendant. It should be noted, however, that although the law does not state that consent is an affirmative defense to sexual assault, the Michigan Court of Appeals ruled in 1982 that it was reversible error for a trial judge to fail to instruct the jury on the defense of consent when the defendant had alleged that the complainant consented [People v. Thompson 324 N.W.2d 22, 117 (Mich. App. 1982)]. The Michigan law further modifies the rules of evidence by eliminating the corroboration requirement and by prohibiting the introduction of most types of evidence of the victim's past sexual conduct. (Variations in the rape shield laws will be discussed in detail below.)

Although Illinois in 1978 implemented a strong rape shield law very similar to the law enacted in Michigan, it did not adopt definitional changes or repeal the resistance requirement until 1984. The Illinois Criminal Sexual Assault Act eliminates seven crimes (rape, deviate sexual assault, indecent liberties with a child, aggravated indecent liberties with a child, contributing to the sexual delinquency of a child, aggravated incest, and sexual abuse by a family member) from the "Sex Offenses" section of the criminal code and adds four (aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, criminal sexual abuse) to the "Bodily Harm" section. The new law defines sexual assault as forcible sexual penetration and sexual abuse as forcible sexual contact; if specified aggravating factors are present (for example, the defendant used a dangerous weapon or seriously injured the victim), the assault or abuse becomes the more serious (i.e., aggravated) offense. The law also allows prosecution for aggravated criminal sexual assault by a spouse, provided that the incident is reported within 30 days.

In contrast to the Michigan law, the Illinois statute specifically provides for a consent defense. However, the law also eliminates the resistance requirement by deleting the phrase "against her will" from the definition of sexual assault and by stating that lack of resistance resulting from the use of force or threat of force does not constitute consent. Presumably, the impact of these provisions will be to shift the burden of proving consent to the defendant.

The strong reforms enacted in Michigan and Illinois, then, redefine rape by providing for staircased sexual assault offenses

with graduated penalties and by extending the reach of the laws to acts and persons previously not included. More generally, the reforms shift the focus of inquiry from the behavior of the victim to the behavior of the accused. Under the new laws, police, prosecutors, judges and juries should be more concerned with determining whether the accused had a weapon, had an accomplice, or threatened to injure the victim than with discovering whether the victim resisted, whether her story can be corroborated, or whether she is chaste or promicuous.

Moderate Reforms--Pennsylvania and Texas

The reforms enacted in Pennsylvania and Texas are not as comprehensive as those adopted in Michigan and Illinois. Of the two states, Pennsylvania enacted the stronger reforms. In 1976 Pennsylvania passed a strong rape shield law and repealed the corroboration, prompt complaint, and resistance requirements. Three years earlier the Lord Hale cautionary instruction had been prohibited. In 1985 a provision concerning spousal sexual assault was added; spousal sexual assault is a felony of the second degree (rape and involuntary deviate sexual intercourse are felonies of the first degree) with a 90-day reporting requirement.

Although these evidentiary changes match or go beyond those adopted in Michigan and Illinois, we categorized the Pennsylvania reforms as "moderate" because Pennsylvania appellate courts have weakened the rape shield law (these decisions are discussed below) and because Pennsylvania retains traditional Model Penal Code-type definitions of rape and involuntary deviate sexual intercourse. Both definitions focus on the circumstances which

define nonconsent: forcible compulsion; threat of forcible compulsion that would prevent resistance; unconsciousness; and mental deficiency. Neither includes penetration with an object. And both crimes are first degree felonies with identical penalties.

We also classified the reforms enacted in Texas as moderate, even though the changes implemented there are closer to the weak reforms adopted in Georgia. In 1975 Texas passed a weak rape shield law. No further reforms were enacted until 1983, when definitional changes were adopted. The four crimes of rape, aggravated rape, sexual abuse, and aggravated sexual abuse were removed from the "Sexual Offenses" section of the penal code and sexual assault and aggravated sexual assault were added to the "Assaultive Offenses" section.

The old laws defined rape (penile-vaginal intercourse) and sexual abuse (oral or anal sex) in terms of the female's absence of consent and lack of resistance; nonconsent was inferred if the accused compelled the victim to submit "by force that overcomes such earnest resistance as might reasonably be expected under the circumstances" or by any threat "that would prevent resistance by a woman of ordinary resolution . . ." [Texas Penal Code 21.02 (1974)(Supp. 1980)].

The new gender-neutral laws retain the emphasis on consent, but the definition of consent focuses more on the accused's assaultive behavior than on the victim's lack of resistance. It appears that some resistance still is required, however, since the law includes within the definition of nonconsent situations where the victim is mentally or physically unable to resist. The

law also specifies that the affirmative defenses to assault include situations where the victim consented or the accused reasonably believed that the victim consented. On a more positive note, the 1983 statute eliminates the marital exemption for spouses who are living apart or legally separated. It also states that corroboration is not required if the victim informed anyone of the assault within six months; under the old law a defendant could be convicted on the uncorroborated testimony of the victim only if the victim made an immediate or prompt outcry.

Although we categorized the reforms adopted in Pennsylvania and Texas as moderate reforms, the statutory changes implemented in the two states are actually very different. The comprehensive evidentiary changes in Pennsylvania clearly might produce different effects than the weak evidentiary and definitional changes in Texas.

Weak Reforms--Georgia and Washington, D.C.

The reforms enacted in Georgia and Washington, D.C. are much weaker than those adopted in the other jurisdictions, particularly Michigan and Illinois. Both jurisdictions have traditional carnal knowledge statutes which define rape as carnal knowledge of a woman by force and against her will; the definition of rape has been unchanged since 1861 in Georgia and since 1901 in Washington, D.C. Both jurisdictions require penetration of the female sex organ by the male sex organ. Both require resistance by the victim. Georgia has a common-law consent defense, Washington, D.C. a statutory consent defense.

Both jurisdictions have adopted some reforms. Georgia enacted a very weak rape shield law in 1976 and eliminated the

corroboration requirement in 1978. Washington, D.C. has not amended its rape laws since 1901, but case law restricts the introduction of evidence of the victim's prior sexual history [S.R. McLean v. United States, 377 A.2d 74 (D.C. App. 1977)] and eliminates the corroboration requirement [J.E. Arnold v. United States, 358 A.2d 335 (D.C. App. 1976)]. These are, however, very modest reforms.

Rape Shield Laws

Reformers predicted that the rape shield laws would have a greater impact on the processing and disposition of sexual assault cases than would the other reforms. As Feild and Bienen (1980:103) noted, no other factor "is thought to produce more discriminatory effects in rape trials as the introduction of the victim's sexual reputation or moral character as evidence." In fact, Marsh and her colleagues (1982) found that criminal justice officials cited restrictions on the introduction of sexual history evidence as the most significant aspect of the reforms adopted in Michigan. Because shield laws clearly have the potential to affect the outcome of sexual assault cases, the differences among the laws are depicted in Table 2.2 and summarized below.

Michigan, Illinois, and Pennsylvania all have strong rape shield laws which generally prohibit the introduction of evidence of the victim's past sexual conduct. The prohibition includes evidence of specific instances of sexual activity, reputation evidence and opinion evidence. There are only very narrow exceptions to the shield. Evidence of prior sexual activity with

persons other than the defendant is inadmissible in Illinois and Pennsylvania and is admissible in Michigan only to show the source of semen, pregnancy, or disease. Recent court decision in Pennsylvania, however, have carved out additional exceptions to the shield; evidence of the victim's prior sexual conduct with third persons can be admitted to show that the victim was biased against the defendant and therefore had a motive to lie [Commonwealth v. Black, 487 A.2d 396 (Pa. Super. 1985)] or to show the source of semen, pregnancy or disease [Commonwealth v. Majorana, 503 Pa. 602, 470 A.2d 80 (1983)].

All three jurisdictions permit introduction of the victim's past sexual conduct with the defendant, but the standards for determining whether the evidence should be admitted or not vary. The Michigan statute states that the evidence can be admitted if it is material to a fact at issue (generally consent) and if its inflammatory or prejudicial nature does not outweigh its probative value. Similarly, the Pennsylvania law declares that the evidence is admissible if consent is at issue and if the evidence would otherwise be admissible under the rules of evidence. The Illinois law, on the other hand, specifies that the evidence can be admitted only if the court finds that the defense has evidence to impeach the victim in the event that the victim denies having had prior sexual conduct with the defendant.

If the shield laws enacted in Michigan, Illinois and Pennsylvania lie at the restrictive end of the continuum, the laws adopted in Texas, Georgia and the District of Columbia lie at the permissive end. Texas does not categorically exclude any sexual conduct evidence; rather, such evidence can be admitted

only if the judge finds that the evidence is material and that its inflammatory or prejudicial nature does not outweigh its probative value. As a shield, then, the Texas law is fairly permeable. Presumably, any type of evidence--specific instances of sexual activity with the defendant or with third persons, opinion evidence, or reputation evidence--could be admitted under the Texas law, as long as the judge rules that it is relevant. In fact, Weddington (1975-76) has pointed out that the Texas law actually changes very little, since prior to the reform prosecutors could use a motion in limine to suppress irrelevant or prejudicial evidence.

The statute enacted in Georgia is more restrictive than the one adopted in Texas, but still gives judges considerable discretion to admit sexual conduct evidence. The Georgia law states that evidence of the victim's past sexual behavior is inadmissible unless the court finds that the evidence concerns behavior with the accused or supports an inference that the accused reasonably could have believed that the victim consented. It is interesting that when the shield law was introduced in the Georgia legislature, it said that sexual conduct evidence was admissible only if it concerned the accused and supported an inference that the accused reasonably could have believed the victim consented. Defense attorneys in the legislature successfully lobbied to change the "and" to "or"; in doing so, they weakened the law.

Comparison of case law before and after the Georgia shield law was enacted substantiates this. The ruling case law prior to the adoption of the shield law was Lynn v. State [(231 Ga. 559,

203 SE2d 221 (1974)]. In this case the Georgia Supreme Court ruled that a rape victim may not be questioned about her prior sexual relations with men other than the defendant. In contrast, in 1981 the Georgia Court of Appeals ruled that the defendant is permitted to offer evidence of the victim's unchaste character if the evidence tends to show that the victim consented to the act [Hardy v. State, 159 Ga. App. 854, 285 SE2d 547 (1981)]. In Georgia, then, case law may have provided a greater degree of protection to rape victims than the shield law.

We noted earlier that the District of Columbia has not enacted a rape shield law. Case law, however, does limit the admission of sexual conduct evidence. In S.R. McClean v. U.S. [U.S. App. D.C. 377 A.2d 74 (1977)] it was ruled that the victim's prior sexual conduct with third persons is inadmissible; that the victim's reputation for chastity should not be admitted except in unusual situations where its probative value outweighs its prejudicial effect; and that the victim's prior sexual conduct with the defendant is admissible to rebut the government's evidence that the victim did not consent. The protections accorded the rape victim in Washington, D.C., then, are closer to those found in Texas and Georgia than to those found in Michigan, Illinois or Pennsylvania.

The procedures for determining the relevance of past sexual conduct evidence also vary somewhat among the states. The Michigan statute requires the defendant to file a written motion and offer of proof within 10 days of arraignment; the judge then may order an in camera hearing to determine whether the proffered evidence is admissible. The procedures required in Pennsylvania

and Illinois are very similar, except that the Pennsylvania law requires a written motion filed at the time of trial, while the Illinois law does not require a written motion and does not specify when the hearing must be held. Both the Texas and Georgia statutes require the defendant to notify the court prior to asking any questions about the prior sexual conduct of the victim; the court is then to conduct an in camera hearing to determine if the evidence is admissible and to limit the questions that can be asked (Texas). No procedures are specified by the case law in the District of Columbia.

The rape reform laws enacted in the six jurisdictions included in our study clearly have the potential to produce different effects on the processing and disposition of sexual assault cases. By examining the impact of these laws over time, we hope to be able to untangle the effects of the various reforms and to begin to delineate the mechanisms by which legal reforms produce changes in attitudes and behavior.

TABLE 2.1
COMPARISON OF RAPE LAWS IN SIX STATES

State	Definition of Offenses	Shield Law	Corroboration Requirement	Resistance Requirement
Michigan	Prior to 4-1-75--traditional carnal knowledge statute; rape and sodomy After 4-1-75--1st dg. criminal sexual conduct (aggravated penetration), 2nd degree criminal sexual conduct (aggravated contact), 3rd degree criminal sexual conduct (penetration), 4th degree criminal sexual conduct (contact)	4-1-75	Eliminated 4-1-75	Eliminated 4-1-75
Illinois	Prior to 7-1-84--rape, deviate sexual intercourse; emphasis on victim's nonconsent After 7-1-84--criminal sexual assault (rape and deviate sexual intercourse), aggravated criminal sexual assault, criminal sexual abuse (contact), and aggravated criminal sexual abuse; emphasis on degree of force used by accused	1-4-78	Still appears to be required	Eliminated 7-1-84
Pennsylvania	1970 to 1973--traditional carnal knowledge statute 1973--Model Penal Code statute with rape, involuntary deviate sexual intercourse	6-17-76	Repealed 6-17-76	Repealed 6-17-76
Texas	Prior to 9-1-83--rape, aggravated rape, sexual abuse, aggravated sexual abuse; emphasis on resistance of victim After 9-1-83--sexual assault (rape and sexual abuse), aggravated sexual assault (aggravated rape and aggravated sexual abuse); emphasis on victim's nonconsent	9-1-75	Not required if victim informed any person within six months 9-1-83	Definition of consent still refers to resistance
Georgia	Traditional carnal knowledge statute; rape and sodomy	7-1-76	Repealed 7-1-78	Law states carnal knowledge must be against her will
D.C.	Traditional carnal knowledge statute; rape and sodomy	9-2-77 (Case law)	Repealed 5-3-76 (Case law)	Law states carnal knowledge must be against her will

TABLE 2.2

COMPARISON OF RAPE SHIELD LAWS IN SIX STATES

State	Date	Types of Evidence Deemed Inadmissible For Any Purpose	Types of Evidence Admissible Upon Showing of Relevance	Types of Evidence Presumed Relevant--No Proof of Relevance Required	Procedure For Determining Relevance
Michigan	4-1-75	Specific instances of sexual conduct; opinion evidence; reputation evidence	Conduct with defendant; specific acts to show source of semen, pregnancy, disease	None	written motion and offer of proof within 10 days of arraingment; in camera hearing to ensure that prejudicial nature does not outweigh probative value
Illinois	1-4-78	Prior sexual activity or reputation	Conduct with defendant	None	In camera hearing to determine if defense has evidence to impeach victim in event prior sexual conduct with defendant denied
Pennsylvania	6-17-76	Specific instances of sexual conduct; opinion evidence; reputation evidence	Conduct with defendant where consent is an issue	None	Written motion and offer of proof; in camera hearing to determine if evidence admissible pursuant to rules of evidence
Texas	9-1-75	None	Specific acts of sexual activity; opinion evidence; reputation evidence	Prior felony convictions involving sexual conduct; evidence of promiscuous conduct of a child betwee 14 and 17	In camera hearing to ensure that prejudicial nature does not outweigh probative value and to limit questions
Georgia	7-1-76	None	Past sexual behavior, including marital history, mode of dress, reputation for promiscuity, non-chastity, or sexual mores contrary to community standards; past sexual behavior involving the accused	None	In camera hearing; to be admitted evidence must involve accused or support inference that accused could reasonably have believed that victim consented
D.C.	No shield but case law [S.R. McLean v. U.S. (U.S. App. D.C. 377 A.2d 74 (1977))] limiting admissibilty of evidence. Reputation evidence inadmissible except in unusaul cases where probative value outweigh prejudicial effect; evidence of prior sexual conduct with third parties inadmissible; evidence of prior sexual conduct with defendant admissible to rebut government's evidence that victim did not consent on the particular occasion.				

CHAPTER 3

STATISTICAL ANALYSIS OF THE LAW REFORMS

Rape reform advocates predicted that statutory changes in rape laws would affect the processing and disposition of rape cases. They anticipated that the reforms would lead to an increase in the number of reports of rape and would make arrest, prosecution, conviction and incarceration for rape more likely. In this chapter we examine the impact of the legal changes on reports of rape and on the outcomes of rape cases.

METHODOLOGY

Jurisdictions

Because the data on prosecution of cases are not generally available on a statewide basis, six jurisdictions were chosen to represent states with various types of law reforms. As described above, jurisdictions were chosen to represent the range of reforms enacted in states across the country. In addition, jurisdictions were selected from states that enacted reforms at one or two specific times (rather than piecemeal across several years), and at several times different from each other. Reform at limited times within a jurisdiction is important to maximize chances of detecting effects in the time-series analysis, and the reforms at different times across different jurisdictions is important to control for the threat of history to the design. Table 3.1 indicates that two

jurisdictions enacted shield laws in 1975 (one in April and the other in September), two reforms were in 1976, one jurisdiction had changes in 1977, and another reformed its laws in 1978. While Michigan and Pennsylvania enacted comprehensive changes at the time of the shield laws, Illinois and Texas made definitional changes at later dates (1984 and 1983), and Georgia and D.C. removed corroboration requirements at different times (1978 and 1976).

Another important consideration in choosing the sample jurisdictions was the number of rape cases handled. Major urban jurisdictions were necessary in order to subject the data to the appropriate statistical analysis. The number of rapes reported to the police in 1982 (according to the Uniform Crime Reports) ranged from 421 in Washington, D.C. to 1,270 in Houston.

Case Selection

In each jurisdiction data were collected on all forcible rape cases for which indictments or informations were filed for an extended time before and after the changes in the laws. In addition to forcible rape, other felony sexual assaults that were not specifically assaults on children were included. The names and definitions of these crimes varied from jurisdiction to jurisdiction; they are presented in Table 3.2. Separate analyses were performed for rape and for total sex offenses. When rape law reforms included definitional changes, the closest equivalent crimes were selected for the analysis of rapes after the legal changes. In Table 3.2, the equivalents are listed together,

separated by a hyphen. It should be noted that in some jurisdictions it was not possible to select attempted rapes because the crime was listed in the books only as "attempted felony."

For four of the jurisdictions the analysis covered a fourteen-year period, from 1970 through 1984. For the District of Columbia the analysis started with 1973 because the Superior Court of D.C. was given jurisdiction over felony cases beginning that year. The Houston analysis ends in August, 1982 because of problems with lost data after that point. The number of months before and after the reforms varied somewhat, depending on when the law was reformed in each state. The number of months after each law reform is presented in Table 3.1.

With the exception of the short follow-up period after the definitional changes in Illinois, we were able to consider relatively long periods of time after the legal changes. Casper and Brereton (1984) have pointed out the need for extensive follow-up in legal impact studies. It is not uncommon in the criminal justice system for a reform to lead to immediate changes, but for the actors in the system to later revert to old norms of behavior. In the eagerness to evaluate reforms as soon as possible, researchers may miss these changes. The previous work on rape reforms was limited in this way. Data were collected for only three years following the Michigan reform (Marsh, et.al., 1982), for two and a half years after the Washington laws were changed (Loh, 1981), and for three years after the changes in Nebraska (Gilchrist and Horney, 1980).

Data Sources

Official court records were the source of data on indicted cases, but the procedures used to obtain the data necessarily varied from jurisdiction to jurisdiction. In one jurisdiction (Atlanta) all data were obtained from court docket books in which all felony cases were entered. Data collectors looked at all felony cases from 1970 through 1984 and selected the targeted sexual assault cases. In two jurisdictions (Chicago and Houston) lists of all target cases had to be made from docket listings of all felony cases, and then the case files were pulled to obtain the necessary information. In one jurisdiction (Washington, D.C.) a listing of the target cases was obtained through the prosecutor's computerized system, and then court files were pulled to code the information. In another (Detroit), docket listings of all felony cases were used for the first six years, and after that the target cases were pulled through the court's computerized system (docket listings were not available for the remaining years). Finally, for one jurisdiction (Philadelphia) we were able to obtain all the necessary information from the court's computerized system (no docket books were available).

The data on rapes reported to the police in each jurisdiction were obtained from the FBI's Uniform Crime Reports (UCR). For Chicago, those data are not available for 1984 and 1985 because figures furnished by the state-level UCR program were not in accordance with national UCR guidelines.

Variables Coded. For each indicted case, the following information was coded:

1. Dates of offense, indictment/information, disposition
2. Four most serious offenses charged
3. Total number of charges filed
4. Type of disposition--dismissal, guilty plea, guilty or not guilty verdict, whether verdict by judge or jury
5. Four most serious conviction charges
6. Type of sentence--whether probation, jail, prison or other
7. Minimum and maximum incarceration sentence
8. Sex of victim

Analysis

The general framework for the statistical analysis was the interrupted time-series design (Campbell and Stanley, 1966). This design has a number of advantages over a simple before-and-after design. By looking at multiple observations of a dependent variable over an extended period of time both before and after some intervention, one can determine whether a change coincident with the interruption represents anything more than a long term trend, statistical regression, or normal variability. One also can determine the duration of any effects, and both level and slope changes in a time series can be detected.

Interrupted time series analyses of monthly data were done for the variables that are listed and defined in Table 3.3. For the offenses included in "sex offenses", refer to Table 3.2. Our

unit of analysis was the indicted case (the term indictment will be used broadly to include informations filed in those jurisdictions in which the grand jury is not used). When we consider indictments as a percentage of reported rapes, we are having to use data from two sources--the UCR and our population of cases from the court files. Thus we do not have the perfect correspondence that we would have if we had been able to follow individual cases from report through court filing. Because most indictments seem to follow fairly close in time to the reports, and because there is no good model for making other assumptions, we simply divided the number of indictments filed in a given month by the number of rapes reported in that same month. In all other analyses the data are based on the indicted cases and month of indictment is used for the time variable. Thus when we calculate convictions as a percentage of indictments, we are looking at the percentage of cases indicted in a particular month that resulted in conviction. Similarly the time series of total convictions does not represent number of convictions obtained in those months but the total number of convictions obtained in the cases that were indicted in those months.

In each time-series analysis the interruption was the change in the rape laws of the particular jurisdiction. In the cases of Washington, D.C. and Atlanta, where rape shield laws were enacted (by case law in D.C.) at times different from repeal of corroboration, the impact of both changes was assessed. In

Chicago, separate analyses were done to measure impact of the rape shield law and the later changes in definitions of sexual crimes.

Each series was analyzed according to procedures specified by McCleary and Hay (1980). The initial step in the analysis is to determine the appropriate statistical model for the noise component of the time series, based on the relationship among the data points. Autocorrelations and partial autocorrelations are computed, and if these differ significantly from white noise, then there is evidence of dependence among the observations. In such a case, it must then be determined from the pattern of autocorrelations and partial autocorrelations which auto regressive moving average (ARIMA) model is appropriate for testing statisitical significance of any effects of the intervention. All analyses were done with the SAS statistical package.

As McCleary and Hay recommend, three basic models of impact were tested for each series--an abrupt, permanent change, a gradual, permanent change, and an abrupt, temporary change. Interventions are modeled with dummy variables. The simplest model, for example, represents an abrupt, permanent change by coding the dummy variable "0" for all observations before the intervention and "1" for all observations following the intervention. The same coding is used in modeling a gradual, permanent change, but a denominator factor is added to the equation representing the series. The abrupt, temporary model uses a pulse variable--one coded "0" for all observations except the observation at the time of the intervention, which is coded "1".

Controls. The major weakness of the quasi-experimental time-series design is that it does not control for the "history" threat to internal validity (Campbell and Stanley, 1986). Even though a discontinuity in the series occurs at the time of the intervention, it is quite possible that some other events occurring at about the same time actually led to the effects noted. The Michigan evaluation (Marsh, et.al., 1982) is the most comprehensive of the studies to date of rape law reform, but the time-series analyses in that study had no controls for the threat of history. The authors, in fact, stated that "a nagging concern throughout the evaluation of the law reform derived from realization that the changes detected could have happened in the absence of the legal reform" (p. 82).

The factor most likely to compete with the legal changes as a cause of increased arrests and convictions found in the Michigan study is the influence of the women's movement and its facilitation of a national awareness of the rape problem and greater sensitivity to the treatment of victims of rape. The Michigan reform occurred at the height of national publicity regarding the rape problem, and thus the effects of the two could be confounded in what Lempert (1966) calls the "history-selection interaction," with the law and any system change both being expressions of the changes in public attitudes. In fact, judges interviewed for the Michigan study who believed that jurors had become more likely to convict in sexual assault cases, did not believe the change was due to the law.

Instead they attributed it to changes in public attitudes and the impact of the women's movement (Marsh, et.al., p.56).

In order to deal with the history threat we chose to study reformed jurisdictions that made their legal changes at different times. If national attention to rape issues causes changes, these should appear at approximately the same time in all the jurisdictions. If each reform jurisdiction shows changes occurring at the time of intervention, however, the evidence for the legal reform being the cause of the changes is greatly strengthened.

Missing Data. Because the time-series analysis cannot be performed with missing observations, we had to make decisions on handling missing data. Simply omitting a month in the series when data are missing is not acceptable because the calculation of the autocorrelations would then be inaccurate, especially any seasonal autocorrelations. Thus we established rules for substituting values for missing data. In most cases data were missing not because the information was unavailable but rather because there were no cases during a month on which to base calculations or because a calculation would involve division by zero. For example, there may have been five indictments in a given month, but no convictions. All the variables based on convictions--convictions on the original charge, total incarcerations, percent incarcerated, and average sentence--would then be missing for that month. In these cases, any variables that represented totals were counted as zeroes, since if there were no convictions, there would be zero

people convicted on the original charge and zero incarcerated. For the variables representing percentages and for the average sentence variable, it is very misleading to represent those variables with values of zero. For those variables values were computed as the mean of the previous five observations.

Because of inappropriate reporting procedures and other reasons, monthly observations were occasionally missing from the Uniform Crime Reports data. In such cases, values were also computed as the mean of the previous five observations.

RESULTS

Case Processing

Table 3.4 presents descriptive data on the processing of rape cases across the six jurisdictions from 1970 through 1984. The data on reported rapes are from the FBI's Uniform Crime Reports; the number of indictments and the outcome of indicted cases are from our court records data. Table 3.4 indicates that there are considerable differences in processing of cases as well as in outcomes across the jurisdictions.

The indictment rate (indictments as a percentage of reported rapes) ranges from a low of 18.4% in Houston to a high of 46.7% in Philadelphia. The unusually high indictment rate in Philadelphia may reflect the fact that it is the only jurisdiction of the six in which the prosecutor's office has a special rape unit. Conviction rates do not correspond in a clearly predictable way to the indictment rates. Of the two jurisdictions with the lowest

indictment rates, one (Washington, D.C.) has the highest conviction rate, but the other (Houston) has one of the two lowest conviction rates. Thus it is not possible to say that jurisdictions obtain higher conviction rates by being more selective in prosecution.

Case outcomes differ markedly from jurisdiction to jurisdiction. The overall conviction rate ranges from 55.8% in Philadelphia to 75.5% in D.C. The two jurisdictions with the lowest conviction rates--Houston with 56.6% and Philadelphia with 55.8%--show very different patterns. In Philadelphia the relatively low rate seems to be the result of a policy against plea bargaining that results in a very high rate of trials and in a very low rate of tuilty pleas. In Houston, on the other hand, the trial rate is the lowest of all the jurisdictions at 23.7%, there is an intermediate rate of guilty pleas, with 38.2% pleading guilty, but there is the highest rate of dismissals, with 38% of the cases dismissed after indictment.

The two jurisdictions with the highest conviction rates have the highest rate of guilty pleas, but their trial patterns are different. In the District of Columbia the overall conviction rate is 75.5%; in that jurisdiction 38.2% of the cases go to trial and 48.4% result in guilty pleas. In Atlanta, with a conviction rate of 72.5% the trial rate is as low as that of Houston--24%--and the rate of guilty pleas is the highest of all the jurisdictions, at 54.3%.

The disposition patterns for the indicted cases vary considerably across jurisdictions. The percentage of cases going

to trial, for example, is only 23.7% in Houston but is 61.5% in Philadelphia, where the prosecutor has a policy of avoiding plea bargaining. Dismissal rates after indictment range from 13.4% in Washington, D.C. to 38% in Houston, with all the other jurisdictions dismissing between 16 and 20% of the cases. The breakdown between jury trials and bench trials also differs greatly. In Detroit, where 37.5% of all cases go to trial, only 47.2% of those are jury trials, while in D.C. with a similar overall trial rate of 38.2%, 94.6% of the trials are by jury.

There is a general pattern in which jurisdictions with the lowest rate of cases going to trial have the highest trial conviction rates. We can assume that in these jurisdictions the weaker cases are dismissed or offered plea bargains. In three jurisdictions--Chicago, Philadelphia, and D.C.--the conviction rate is higher in jury trials than in bench trials, with jury conviction rates of 79%, 63.5% and 74%, respectively, and bench conviction rates of 51%, 50.8%, and 30%. In Detroit and Houston the pattern is reversed with bench conviction rates of 64% and 87.9% and jury conviction rates of 52.9% and 77.1%.

Washington, D.C. appears to use reduction in the severity of charges the most in plea bargaining, and they have the second highest rate of guilty pleas. Atlanta, with the highest rate of guilty pleas, uses plea bargaining for sentence, and that jurisdiction has the highest percentage of convicted offenders being placed on probation.

Incarceration rates also vary widely across the jurisdictions. Of those convicted of original charges, 99.6% are incarcerated in Chicago, whereas the incarceration rate in Atlanta is 75.3%. In Chicago, prison sentences are mandatory for those convicted of rape, while in Atlanta plea bargaining on sentences and convictions under the First Offender Act apparently account for the lower incarceration rate.

Time-Series Analyses

Table 3.5 presents a summary of the results of time-series analyses on 16 variables in the six jurisdictions. Consistently significant effects were found only in the jurisdiction which enacted the most comprehensive reforms. Although some effects were found in other jurisdictions, none showed the consistent patterns of change evinced in Detroit.

Detroit. Of the jurisdictions we studied, Michigan enacted by far the most comprehensive reforms in the rape laws. In 1975 the crime of rape was redefined with four degrees of criminal sexual conduct, strong rape shield laws were implemented, and both corroboration and resistance requirements were eliminated. As indicated in Table 3.5 these changes apparently resulted in considerable impact on the processing of rape cases in Detroit. The details of these results are presented in Table 3.6 which gives the parameter values for the impact models constructed, and in Figures 1a through 11 which are plots of the monthly data for the dependent variables studied in Detroit. The months are the 180 months from

January, 1970 through December, 1984. The vertical dotted line represents the implementation of the comprehensive changes in Michigan rape laws on April 1, 1975.

Figure 1a shows the monthly totals of reported forcible rapes, according to the Uniform Crime Reports. There was a fairly steady increasing trend in reports before the 1975 law. Reports continued upward briefly after the change and then seemed to stabilize at a rather steady rate. The statistical analysis indicated a significant increase in reports of about 26 reports per month as a result of the new law. In order to compare the pattern in rape reports with general crime trends, we looked at reports of robbery and felony assault for the period 1970 through 1980. Plots of these data are presented in Figure 1b and 1c. The pattern for robbery is quite different from that of reported rapes, and a time-series analysis of reported robberies indicates no change at the time of the 1975 rape reform laws. Reported assaults follow a trend very similar to that of reported rapes, with the increasing trend before 1975 and the stabilization afterwards, but the time-series analysis showed no significant change in level at the time of the intervention. These data provide supporting evidence that the increase in reported rapes may have indeed been due to the change in rape laws and the surrounding publicity.

Figures 1d through 1l are for the rape variables measured from the court files. In Detroit, these variables are defined for the offenses of rape, sodomy and gross indecency before the 1975 legal changes and for the offenses of first and third degree criminal

sexual conduct after the changes. Second degree criminal sexual conduct (aggravated sexual contact without penetration) and fourth degree criminal sexual conduct (sexual contact without penetration) were excluded from these variables because they are crimes that would not have been defined as rape before the laws changed. The definitional changes made it impossible to achieve a perfect correspondence between the offenses before and after the reforms. Penetration with an object, for example, is criminal sexual conduct after 1975; before 1975 it could have been charged a number of different ways, and may have been charged as an offense such as assault that included a great many non-sexual crimes. Criminal sexual conduct as defined in the new laws is gender neutral whereas rape under the old common law meant there could be no male victims. Thus the new offenses are more inclusive than the old crime of rape, even when restricting the measure to first and third degree criminal sexual conduct. Comparing rape, sodomy and gross indecency charges with first and third degree criminal sexual conduct, although imperfect, seemed to be the best option available.

The pattern for total rape indictments (Figure 1d) follows a pattern similar to that of reported rapes, although the increase after the reform of the laws is even more obvious. This greater increase is reflected in the analysis for indictments as a percentage of reported rapes; a significant increase of 20% was found to follow the legal changes (see Figure 1e).

The increase in indictments for rape was also followed by an increase in total convictions (Figure 1f), but the prediction that the likelihood of conviction would increase was not borne out. Figure 1g and Table 3.6 indicate that the percentage of rape indictments that resulted in convictions did not increase. It does seem clear from the graph, however, that there was no decline in the percentage of convictions as the number and percentage of indicted cases rose.

As the number of convictions increased after the passage of the new laws, so did the number of convictions on the original charge of rape (Figure 1h). Figure 1i indicates that there was no change in the percentage of cases that resulted in a conviction on the original charge, and thus, no indication of an increase in plea bargaining. In fact the percentage of cases convicted on the original charge increased after the legislative reforms, although our statistical tests did not show a significant impact.

The legal changes resulted in more of the offenders who were convicted of rape being sentenced to prison (Figure 1j), but this impact can be attributed to the increase in convictions rather than a greater likelihood of sentencing to incarceration, because when number of incarcerations is analyzed as a percentage of convictions (Figure 1k), there is no significant impact. For those who were sentenced to prison for rape, however, the average sentence was significantly longer after the rape law reforms, with an average increase of 54 months (Figure 1l).

When time-series analyses were performed for variables that included all the major sexual assaults the results paralleled those found for rape and first and third degree CSC (Table 3.6). There were significant increases in total indictments, total convictions, total incarcerations and average sentence, but no significant changes for convictions as a percentage of indictments or for incarcerations as a percentage of convictions.

In summary, in Detroit, our analysis showed a greater number of reported rapes, a greater likelihood of indictment for the cases reported, more total indictments, convictions, and incarcerations for rape and longer sentences for those sentenced to prison for rape. There was no increase in the likelihood of conviction once indicted, and there was no significant change in whether offenders were convicted on the original charge or on lesser charges.

Chicago

The state of Illinois also enacted comprehensive rape reform legislation, but the major changes occurred several years apart. A strong rape shield law was implemented in 1978, and then in 1984 the crime of rape was redefined as criminal sexual assault and aggravated criminal sexual assault, and the resistance requirement was eliminated. The results we found in Chicago, however, were very different from those found in Detroit. The results of our time-series analyses are presented in Table 3.7, and the monthly data for our dependent variables are plotted in Figures 2a through 2p. The analyses of the impact of the rape shield law were based

on monthly data from January, 1970 through June, 1984. We excluded data from after the second legal changes (July, 1984) because effects of the later reform complicated the modeling of impact of the earlier reform. The vertical line on the plots in Figures 2a through 2j represents the rape shield law that went into effect in January, 1978. Our analyses indicate no impact of the rape shield law on total reports, indictments, convictions, or incarcerations. Similarly there was no impact on indictments as a percent of reports or on likelihood of conviction once indicted. Figures 2b, 2d, 2f and 2h show similar patterns for indictments, convictions, convictions on original charge, and incarcerations. There were increases in all these measures from 1970 up until 1975, followed by a decrease until after the rape shield legislation in 1978. Then there was another long-term increase up until about 1981 and then another decline. The level reached after the legislative changes was little if any higher than the level reached around 1975. These data tend to follow the pattern in reported rapes (Figure 2a) although the data for reports are quite variable. We are reluctant to attribute the increases after the rape law reforms to the law itself since the change is so gradual (over a three year period) and since a similar pattern also occurred before the reforms.

The only significant effect in Chicago was an increase of almost 48 months in average maximum sentence for those incarcerated for rape (Figure 2j) after the rape shield law was enacted. On the other hand, there was no increase in the incarceration rate. In

fact, the graph for incarceration rate for those convicted of rape (Figure 2i) shows almost no variability since the law in Illinois makes prison a mandatory sentence for those offenders.

Figures 2k through 2p show monthly data from January, 1970 through June, 1985, with two vertical lines to represent the rape shield law (1978) and the definitional and other changes that went into effect in July, 1984. These analyses were for all sex offenses together, but they are not really comparable offenses before and after the legal reforms. The definition of criminal sexual assault under the new law includes what was previously indecent liberties with a child and incest. We did not collect data on these offenses involving children before the 1984 change, and we were not able to separate those cases out after the reforms. The analyses indicate that after the definitional changes in the Illinois law, there was a higher conviction rate (Figure 2m), but the percentage of those convicted who were sentenced to prison decreased (Figure 2o). These last results must be evaluated cautiously because they are based on data for only twelve months after the legal changes that took place in 1984, and they may merely reflect the different composition of offenses represented.

In summary, the data for Chicago indicate that the passage of the rape shield law in 1978 led only to longer maximum sentences for those convicted of rape. The results of the 1984 definitional changes are inconclusive.

Philadelphia

Pennsylvania enacted what we considered to be moderate rape law reforms. The rape shield law implemented in 1976 is a strong one that prohibits evidence of prior sexual activity with persons other than the defendant; recent court decisions, however, have allowed some exceptions to the shield. Pennsylvania also repealed corroboration, prompt complaint, and resistance requirements, but traditional Model Penal Code-type definitions of rape have been retained. The plots of Philadelphia time series data appear in Figures 3a through 3j, and Tables 3.8 and 3.9 summarize the statistical analyses. The Philadelphia time series data were somewhat difficult to model; thus the need for two tables to present the analyses. The series for reports (plotted in Figure 3a), indictments (Figure 3b), convictions (Figure 3d), convictions on original charge (Figure 3f), and incarcerations (Figure 3h) appeared to need differencing before identifying the model parameters. When differenced, the data indicated significant impacts of the rape law reforms, but the model parameters were very close to 1.00, indicating a possible problem with the differencing. We therefore tried to model the series without differencing; we were able to do so for all the series except total incarcerations for rape, but the series were not easily modeled. Table 3.9 shows in the section "Correct Intervention" that most of the series required two or three autoregressive parameters. With differencing, however, the analyses indicated significant impacts

of the legislation. Because the plots of the time series seemed to show increases occurring before the legal changes took place, we modeled the series again with the dummy variable for the intervention coded as if the intervention occurred in 1974 instead of 1976. With the intervention thus moved back two years, the models for the series were much more parsimonious, requiring either one or no autoregressive parameter in all except one case (which required two parameters), and the intervention parameters became even larger and had much higher t values. It seems, therefore, that in Philadelphia some factor other than the legal changes affected the number of cases in the system at least two years before the Pennsylvania statutes were changed.

The models for indictments as a percent of cases reported (plotted in Figure 3c), convictions as a percent of cases indicted (Figure 3e), and percent convicted on original charge (Figure 3g) were much more straightforward, and the analyses showed no impact of the legal changes on any of these variables. The only evidence of change in Philadelphia associated with the rape law reforms is in the area of sentencing. There was an increase in the percentage of defendants convicted of rape who were sentenced to prison (Figure 3i), and their average maximum sentences also increased by just over 10 months (Figure 3j). The analyses for all sex offenses together showed no significant impact of the legislative reforms on any of the variables.

Washington, D.C.

Figures 4a through 4l present the time series plots for Washington, D.C. The vertical lines indicate the two interventions in D.C., which were changes in case law rather than statutory changes; a 1976 case abrogated the corroboration requirement for rape cases, and a 1978 case established a rape shield provision. Results of the statistical analyses for D.C. data are summarized in Table 3.10. The only evidence we found of change in the predicted direction are the significant increases in average sentence for those incarcerated.

Two results were in a direction contrary to our predictions. A decrease in the number of reported rapes appeared after the elimination of the corroboration requirement (Figure 4a), and a decrease in total convictions was found in the analyses when either corroboration elimination or the rape shield ruling was modeled as the intervention (Figure 4d). We have no theoretical rationale to explain such decreases; we suspect that they are merely coincidental with the new laws.

Atlanta

The reforms enacted in Georgia are fairly weak. The crime of rape is traditionally defined as carnal knowledge of a woman by force and against her will and resistance by the victim is required. In 1978 the legislature did eliminate the corroboration requirement, and in 1976 a rape shield law was enacted, but that statute still gives judges considerable discretion to admit sexual

conduct evidence. The time series for Atlanta variables are plotted in Figures 5a to 5j and Table 3.11 summarizes the statistical analyses.

The initial statistical analyses indicated significant increases in total indictments, total convictions, percentage of rape indictments resulting in conviction (and the same for all sexual assaults), total convictions on the original charge, incarcerations, and average sentence. The plots for these series (Figures 5b, 5d, 5e, 5f, 5h, 5j), however, seemed to show gradual trends that actually started before implementation of the reformed rape laws. We therefore explored these effects further by coding the dummy variable for the legal intervention as "1" two years before the 1976 change in the law. Table 3.11 shows in the column labeled "Prepost-Moved Back Two Years" that the results remained significant with modeling the intervention two years earlier than it actually occurred. Thus, the original analyses for those variables seemed to be picking up trends that started well before the rape law reforms. All other variables showed no significant changes.

The plot of reported rapes shows an increase in reporting occurring around 1973 (month 36) that may be the reason for the earlier increase in total indictments and total convictions. The statistical analysis, however, did not indicate a significant increase in reports. One problem in modeling many of the time series occurs when a trend starts coincident with the change in laws. If there is an overall trend to a series it must be removed

through differencing before the ARIMA models can be identified. When trends shift in the middle of a series, however, the data are often ambiguous in indicating a need for differencing. In general, when differencing produced very large parameter values (over .90 for p or q) we tried to model the series without differencing (McCleary and Hay 1982), but sometimes that was impossible to accomplish while still meeting other criteria for an acceptable model. In the case of Atlanta, the model for reported rapes required differencing while the other variables could be modeled without differencing (see Table 3.11). Differencing makes it less likely that a significant impact of the intervention will be detected; thus, this may explain the lack of impact with reported rapes in spite of the appearance of the graph, and the significant impacts determined for the indictment and conviction variables. So it is possible that the increases in indictments and convictions measured merely followed an increase in reported rapes around 1973.

Houston

We also characterized the rape reform laws in Texas as weak, since we were not evaluating the definitional changes that were enacted in 1983. The rape shield law implemented in 1975 does not categorically exclude any sexual conduct evidence; rather, such evidence can be admitted if the judge finds that the evidence is material and that its inflammatory nature does not outweigh its prejudicial effect. The time-series plots for Houston data are presented in Figures 6a through 61 and the statistical analyses are

summarized in Table 3.12. The initial statistical analyses indicated significant increases for all variables except indictments as a percentage of reports and total incarcerations for all sex offenses. When the graphs for the variables are examined, however, it is apparent that the level for most variables remained fairly constant for several years after the Texas rape law reforms were implemented, and that increases started to show up three to four years later.

In order to determine whether the statistical analysis was reflecting those later increases, the dummy variable for the legal intervention, which is normally coded "0" before the change in law and "1" after the change, was coded "0" before the change, "1" for two years after the change, and "0" for the rest of the series. With that change the significant effects disappeared for most variables, indicating that the effects in the earlier analyses were the later occurring increases (see Table 3.12 under the column labelled "Prepost-Two Years"). Although it would not be unusual to have delayed effects in the implementation of a new law, the length of time between the legal changes in Texas and any sign of impact in Houston seems too great to justify concluding that the changes were due to reforms in the laws. One guess is that increases in our case variables may be related to general increases in crime in Houston at that time (approximately 1978 to 1980 or months 96 to 120 on the graphs). Plots of monthly reports of robberies and assaults (Figures 6b and 6c) show similar increases at that time.

Three variables still showed a significant impact even after the recoding of the dummy variable. One was percent incarcerated for all sex offenses (although significant only at the .10 level), and another was average sentence for rape, with an increase of approximately 53 months after the rape shield law was enacted (see Figure 6j). Additionally the increase in reported rapes remained significant (see Figure 6a) although the impact was modeled as a very slow gradual change. It is interesting to note that among the variables for which the later changes were indicated, indictments as a proportion of reports decreased rather than increased as might be predicted (see Figure 6e). Thus, as reports of rapes in Houston increased, the number of indictments did not keep pace.

Summary and Discussion

Interrupted time-series analyses were used to test predictions about how changes in the rape laws of six jurisdictions would affect the reporting of rape and the processing of rape cases. The only impact found across several jurisdictions was an increase in the average sentences imposed for those convicted of sex offenses. Otherwise, consistently significantly effects were found only in Detroit, the jurisdiction that enacted the most comprehensive reforms.

The increase in average sentences was found in all jurisdictions (although not attributed specifically to the law reforms in Atlanta). We suspect that this widespread finding indicates that the sentencing decision is more susceptible to

influence by legal reforms and public concern than other decisions made by criminal justice officials. The sentencing decision involves great discretion, little review, and is less dependent on factual input than other decisions. Once an offender has been convicted the law allows judges considerable latitude in determining length of sentence. The enactment of rape law reforms in each jurisdiction represented, at the very least, a public concern that rapes must be treated as very serious offenses. Even though most of the reforms were not directly aimed at increasing sentence length, the resulting increases may reflect the judges' more serious treatment of these cases.

In Detroit the analyses showed increases in reported rapes, in indictments, convictions, convictions on original charge, incarcerations, and average sentences. There was also a significant impact in the indictment rate, as measured by the number of indictments in a month divided by the number of rapes reported to the police. There were no changes in the rates of conviction, conviction on original charge or incarceration.

The Detroit results could be interpreted in different ways. First, we have to assume that the increases in absolute numbers of convictions, convictions on original charge and incarcerations were due primarily to the increase in indictments, since we did not find significant increases in the rates of these variables (i.e., convictions divided by indictments, convictions on original charge divided by convictions, or incarcerations divided by convictions).

These aspects of case processing are indeed probably the least likely to be affected by legal reforms.

Convictions, especially, would seem to be resistant to impact. Determinations of guilt or innocence are based on the mass of evidence in a case, of which the evidence affected by the rape shield laws is a tiny portion. Additionally, the rape shield laws are directed at the trial process. The fact that in many jurisdictions few defendants go to trial further reduces the chance of impact on conviction rate. Elimination of corroboration and resistance requirements, which were predicted to increase conviction rates, may not, in practice, have removed major hurdles to conviction in rape cases. In most jurisdictions the case law had reached such broad interpretations of corroboration (such as the victim's telling a third party about the incident), and had been so loose in the requirements for reasonable resistance, that these legal requirements probably were not significant factors leading to acquittals. On the other hand, when juries or judges expect corroboration or resistance, the elimination of the legal requirements does not prevent them from considering these issues in reaching their verdicts.

Some reform advocates predicted that the definitional changes enacted in Michigan would affect conviction rates by facilitating plea bargaining. Under the old laws prosecutors may have considered the difference between rape and any other charge too great to offer pleas to lesser charges. With the gradations of sexual assault and commensurate penalties under the new laws, there

might be a greater willingness to offer charge reductions, since the crimes would still be sexual assaults and carry serious penalties. These predictions were not borne out, as we found no significant impact on the rate of convictions on original charges. In fact, although the change was not statistically significant, that rate increased rather than decreased. It is possible that the stress on the seriousness of the crime of rape that permeated the reform legislation created an unwillingness to plea bargain that counteracted the facilitative effects of the definitional changes. In fact, from our Detroit interviews (see Appendix C) we learned the the Wayne County Prosecutor's Office has a plea bargaining policy for rape cases under which there are no plea bargains unless the complainant's approval is obtained. Additionally CSC 1 cases can only be negotiated down to CSC 3 charges except in unusual circumstances, and CSC 3 charges cannot be reduced.

The most important effects of the Michigan laws were the increases in reporting of rapes and in the rate of indictments. Because we had to rely on Uniform Crime Reports we know only that the number of reports increased. It is not possible to know conclusively whether this increase represented an increase in likelihood of reporting, an increase in the actual crime rate, or both. There were no victimization data available to provide other estimates of actual offense rates. Because it is possible that the law reforms coincided with an increase in offense rate, we made the comparisons with reported robberies and reported assaults as described above. The different results for reported rapes

encourage us to believe that the observed increase was not just part of a general increase in crime rates. Although it might have been predicted that reporting rates were not likely to be affected by the reforms because the public would be the least likely to know about the legal changes, the results are less surprising in Detroit than they would have been in other jurisdictions. Michigan was the first state to enact dramatic and comprehensive changes in rape laws, and the legislative changes were the result of a well-organized and highly visible effort on the part of women's groups. The changes also occurred at a time when the crime of rape was receiving considerable attention from the media across the country. These factors meant that there was considerable publicity surrounding the Michigan reforms, and therefore a greater likelihood of reporting being influenced.

The increase in indictment rate represents the major impact on the decision making of criminal justice officials. Because we do not have monthly arrest data, we cannot say conclusively whether the result represents decisions by police or by prosecutors, although it seems more likely that prosecutors would be affected since the legal changes were directed more at the factors determining likelihood of obtaining convictions at trial. We also had reports from the Detroit police that prosecutors had been refusing fewer warrants in rape cases since the passage of the laws, and a victim-witness unit respondent believed that more "date rape" cases were getting into the court system (see Appendix C).

The interpretation of the impact on indictment rate is clouded by the definitional changes that were part of the comprehensive reforms. As explained earlier, it was impossible to have perfectly comparable measures of rape before and after the laws changed. Thus it is possible that the observed results may reflect in part the greater inclusiveness of the post-reform definitions. For the measure of percent indicted we were not tracking cases but rather were dividing the number of indictments, as obtained from the court records, by the number of reports, as measured by the Uniform Crime Reports. The UCR definition of forcible rape did not change over time; Detroit police recode the post-reform charges to meet the UCR criteria. Thus in our measure of percent indicted, the denominator is based on the same kinds of cases before and after the intervention, but the numerator is based on a different mix of cases. Without more information on the cases, of the kind that would be found only in police reports, it is impossible to create perfectly equivalent numerators. By including sodomy and gross indecency with rape for the pre-reform measures, and by eliminating second and fourth degree sexual assault from the post-reform measures we believe we have come quite close to equivalent measures. Both the before and after measures include male victims, non-vaginal penetration, and non-forcible sexual penetration with minors. The offenses probably included in the post-reform measures but not in the pre-reform measures are penetration with an object and incest.

Marsh, et al. (1982), in their study of the Michigan rape law reforms, found somewhat different results from those we have reported. They found no impact on reported rapes but a significant increase in the number of convictions on original charges and a significant decrease in convictions on lesser charges. They also indicated an increase in the rate of convictions as charged (convictions as charged divided by reports). In contrast, we found an increase in reported rapes but no significant increase in the rate of convictions as charged (convictions on original charge divided by indictments). We, like Marsh, et al., found an increase in the total number of convictions on original charge, but we concluded that this result probably reflected the increase in indictments, since we found no significant increase in the rate variable. There are a number of factors that may account for the different results.

First, Marsh, et al., used statewide data from the Michigan police, whereas our data were from the Detroit Recorder's Court; thus it is possible that jurisdictional differences could account for the discrepant outcomes. Second, Marsh, et al., also used interrupted time-series analysis, but their time period was for the three years before and the three years after the reforms, whereas our analysis covered a fourteen-year period. Additionally, their results on the rate of convictions as charged was based only on seven observations of yearly rates and not on a monthly time-series analysis. Our results with 180 monthly observations indicated an increase in the rate, but not a statistically significant increase.

Third, we are not sure which offenses were included in the Marsh analyses. The offense of rape was the basis for the pre-reform measure, but their reports do not indicate which of the post-reform criminal sexual assault offenses were included. This would have no bearing on the analysis of reports, but could influence the findings on convictions.

One interpretation of our finding that major impact was limited to Detroit is that the criminal justice system can only be affected by the kind of dramatic, comprehensive changes that were made in Michigan. Detroit was our only jurisdiction in which all the major reforms were made at one time, and in which all were strong reforms. The weaker reforms in other jurisdictions or the piecemeal nature of some of the stronger reforms may have precluded the kind of broad impact on case processing that reformers predicted. From our interview data (see Appendix C) it also appears that criminal justice system officials in Detroit perceived more pressure from organized women's groups than did officials in other jurisdictions. Thus the strong reforms in Michigan were apparently accompanied by a closer monitoring of the system by the advocates of reform.

TABLE 3.1

REFORM DATES AND FOLLOWUP PERIODS

Jurisdiction	Reform and Date	Number Years after Reform
Detroit	Comprehensive-- 4-1-75	9 years 9 months
Chicago	Rape Shield-- 1-4-78	8 years
	Definitions-- 7-1-84	1 year
Philadelphia	Rape Shield-- 6-17-76	8 years 6 months
Houston	Rape Shield-- 9-1-75	8 years
Atlanta	Rape Shield-- 7-1-76	8 years 6 months
	Corroboration-- 7-1-78	6 years 6 months
D.C.	Rape Shield-- 9-2-77	7 years 4 months
	Corroboration-- 5-3-76	8 years 8 months

TABLE 3.2

OFFENSES CODED

Atlanta, Georgia

Rape
Aggravated assault with intent to rape
Aggravated sodomy

Chicago, Illinois

Rape -- aggravated criminal sexual assault, criminal sexual assault
Deviate sexual assault -- aggravated criminal sexual assault, criminal sexual assault

Detroit, Michigan

Rape -- first or third degree criminal sexual conduct
Sodomy -- first or third degree criminal sexual conduct
Gross indecency -- first or third degree criminal sexual conduct
Second degree criminal sexual conduct
Attempted rape
Attempted first or second degree criminal sexual conduct
Attempted gross indecency
Assault with intent to commit rape or sodomy
Assault with intent to commit criminal sexual conduct

Houston, Texas

Rape
Aggravated rape
Sexual abuse
Aggravated sexual abuse
Sodomy
Attempted aggravated rape
Assault with intent to rape
Burglary with intent to rape

Philadelphia, Pennsylvania

Rape
Attempted rape
Involuntary deviate sexual intercourse
Attempted involuntary deviate sexual intercourse
Assault and burglary with intent to ravish
Burglary with intent to ravish and rape
Assault with intent to commit sodomy

Washington, D.C.

Rape
Rape while armed
Sodomy
Sodomy while armed
Assault with intent to rape while armed
Assault with intent to commit sodomy while armed
Assault with intent to rape

TABLE 3.3

DEPENDENT VARIABLES FOR THE TIME-SERIES ANALYSIS

VARIABLE	DEFINITION
RAPE	
Reports	Number of reports of forcible rape (UCR data)
Indictments	Number of defendants with rape as most serious charge on indictment or information
% Indicted	Indictments divided by reports
Convictions	Number of defendants charged with rape who were convicted on any charge
% Convicted	Convictions on any charge divided by indictments for rape
Convictions on Original Charge	Number of defendants charged with rape and convicted of rape
% Convicted on Original Charge	Convictions for rape divided by indictments for rape
Incarcerations	Number of defendants convicted of rape who were incarcerated
% Incarcerated	Incarcerations for rape divided by convictions for rape
Average Sentence	Average maximum sentence (in months) for defendants incarcerated for rape
ALL SEX OFFENSES	
Indictments	Number of defendants with a sex offense as the most serious charge on the indictment or information
Convictions	Number of defendants charged with sex offenses and convicted on any charge
% Convicted	Convictions on any charge divided by indictments for sex offenses
Incarcerations	Number of defendants convicted of sex offenses who were incarcerated
% Incarcerated	Incarcerations for sex offenses divided by convictions for sex offenses
Average Sentence	Average maximum sentence (in months) for defendants incarcerated for sex offenses

TABLE 3.4

DESCRIPTIVE DATA

DEFENDANTS CHARGED WITH RAPE[a]

	Detroit	Chicago[b]	Philadelphia	Houston[c]	Atlanta	Washington[d] D.C.
# Reports	14191	19025	8858	8964	5910	4749
# Indictments	4010	4628	4138	1653	1413	960
Indictments as % of Reports	28.3%	23.3%	46.7%	18.4%	23.9%	20.2%
Outcome of Indicted Cases						
Convicted of Original Charge	33.2%	45.7%	35.6%	41.3%	43.4%	29.2%
Convicted of Other Charge	32.8%	20.0%	20.2%	15.3%	29.1%	46.3%
Total Convicted	66.1%	65.7%	55.8%	56.6%	72.5%	75.5%
Total Not Convicted	33.9%	34.3%	44.2%	43.4%	27.5%	24.5%
Method of Disposition						
Trial	37.5%	39.5%	61.5%	23.7%	24.0%	38.2%
Guilty Plea	44.1%	43.0%	22.2%	38.2%	54.3%	48.4%
Dismissal	18.4%	17.4%	16.5%	38.0%	20.8%	13.4%
Trials						
Jury Trial	47.2%	77.0%	31.2%	75.5%	----[e]	94.6%
Bench Trial	52.3%	23.0%	68.8%	24.5%	----	5.4%
Jury Conviction Rate	52.9%	79.0%	63.5%	77.1%	----	74.0%
Bench Conviction Rate	64.0%	51.0%	50.8%	87.9%	----	30.0%
Overall Trial Conviction Rate	58.6%	57.4%	54.8%	79.7%	71.7%	71.6%

TABLE 3.4 (CONTINUED)

	Detroit	Chicago	Philadelphia	Houston	Atlanta	Washington D.C.
Guilty Pleas						
Severity of Charges Reduced	48.2%	31.3%	45.0%	29.9%	35.7%	78.9%
Number of Charges Reduced	63.8%	67.3%	93.3%	26.1%	23.5%	89.1%
Type of Sentence						
Probation	18.5%	0.1%	12.1%	19.2%	24.7%[f]	14.5%
Jail	2.8%	0.3%	0.3%	9.1%	2.6%	7.0%
Prison	78.4%	99.3%	85.6%	66.5%	72.7%	73.1%
Other	0.3%	0.2%	2.0%	5.2%	--	5.5%
Total Incarcerated	81.2%	99.6%	85.9%	75.6%	75.3%	80.1%
Length of Sentence[g]						
Convicted of Original Charge	180.0	120.0	120.0	180.0	120.0	288.0
Convicted of Other Charge	120.0	36.0	24.0	36.0	12.0	180.0

[a]In Detroit includes defendants charged with rape (before 4-1-75) or 1st or 3rd degree criminal sexual conduct (after 4-1-75). In Chicago includes rape (b 7-1-84) or aggravated criminal sexual assault and criminal assault (after 4-1-75). In Philadelphia and Atlanta includes rape. In Houston includes aggravated rape or rape. In Washington, D.C. includes armed rape and rape.

[b]For Chicago # reports, clearance rate, # indictments, % indicted (of reports) and % indicted (of cleared offenses) are based on data from 1970-1983 because UCR data were not available for 1984.

[c]For Houston all measures are based on data from 1970 through August 1982.

[d]For Washington, D.C. all measures are based on data from 1973-1984.

[e]In Atlanta, records did not distinguish between jury and bench trials.

[f]Includes those sentenced under First Offender Act.

[g]Median maximum sentence in months for those convicted of rape.

TABLE 3.5

TIME-SERIES DATA

SUMMARY OF IMPACT ANALYSIS

Variable	DETROIT	CHICAGO		PHILADELPHIA	HOUSTON	ATLANTA		WASHINGTON, D.C.	
		SHIELD	DEF			SHIELD	CORR	SHIELD	CORR
Rape									
Reports	*	—	—	—	*	—	—	—	—
Indictments	*	—	—	—	—	—	—	—	—
% Indicted	*	—	—	—	—	—	—	—	—
Convictions	*	—	—	—	—	—	—	—	—
% Convicted	—	—	—	—	—	—	—	—	—
Convictions on Original Charge	*	—	—	—	—	—	—	—	—
% Convicted on Original Charge	—	—	—	—	—	—	—	—	—
Incarcerations	*	—	—	—	—	—	—	—	—
% Incarcerated	—	—	---	*	—	—	—	—	—
Average Sentence	*	*	*	*	*	—	—	*	*
ALL SEX OFFENSES									
Indictments	*	—	—	—	—	—	—	—	—
Convictions	*	—	—	*	—	—	—	—	—
% Convicted	—	—	—	—	—	—	—	—	—
Incarcerations	*	—	—	—	—	—	—	—	—
% Incarcerated	—	—	—	—	—	—	—	—	—
Average Sentence	*	*	—	—	—	—	—	*	*

TABLE 3.6

DETROIT

SUMMARY OF INTERVENTION MODELS

Variable	Arima Model for Noise Component	Arima Parameters	Prepost
RAPE			
Reports	$(0,1,1)(0,1,1)_{12}$	MA1 = .62*** MA2 = .68***	26.53**
Indictments	(1,1,1)	MA1 = -.74*** AR1 = -.17*	8.62*
% Indicted	(0,0,3)	MA1 = -.13* MA2 = -.22*** MA3 = -.31***	.18***
Convictions	(1,1,1)	MA1 = .82*** AR1 = -.21**	5.30*
% Convicted	(0,0,0)		-2.26
Convictions on Original Charge	(0,1,1)	MA1 = .88***	5.67***
% Convicted on Original Charge	(0,1,1)	MA1 = .85***	.07
Incarcerations	(0,0,0)		9.43***
% Incarcerated	(0,1,1)	MA1 = .82***	-.15
Average Sentence	(0,0,1)	MA1 = -.18**	62.54***
ALL SEX OFFENSES			
Indictments	(0,1,1)	MA1 = .80***	11.44**
Convictions	(0,1,1)	MA1 = .88***	7.20**
% Convicted	(0,0,0)		-.56
Incarcerations	(0,0,0)		9.78***
% Incarcerations	(0,1,1)	MA1 = .82***	-.13
Average Sentence	(0,0,1)	MA1 = -.17**	72.4***

***p < .01 **p < .05 *p < .10

TABLE 3.7

CHICAGO

SUMMARY OF INTERVENTION MODELS

Variable	Arima Model for Noise Component	Arima Parameters	Prepost-Shield	Prepost-Definition
RAPE				
Reports	(2,0,0)	AR1 = .18** AR2 = .26***	.95	
Indictments	(0,1,1)	MA1 = .68***	-6.18	
% Indicted	(0,1,1)	MA1 = .84***	-.42	
Convictions	(0,1,1)	MA1 = .75***	-1.10	
% Convicted	(0,0,0)		-.16	
Convictions on Original Charge	(0,1,1)	MA1 = .79***	.75	
% Convicted on Original Charge	(0,0,0)		1.03	
Incarcerations	(0,1,1)	MA1 = .79***	.89	
% Incarcerated[a]				
Average Sentence	(0,0,0)		47.67***	
ALL SEX OFFENSES				
Indictments (logged)	(0,1,1)	MA1 = .71***	-6.68	.24
Convictions	(0,1,1)	MA1 = .76***	-1.43	6.63
% Convicted	(0,0,0)		-.27	Num =11.65** Den = -.79**
Incarcerations	(0,1,1)	MA1 = .77***	-.04	2.96
% Incarcerated	(0,0,0)		.01	-9.04***
Average Sentence	(0,0,2)	MA1 = NS MA2 = -.16**	35.74***	-4.82

[a]Time series analysis not performed because almost all values were 100%

TABLE 3.8

PHILADELPHIA

SUMMARY OF INTERVENTION MODELS

Variable	Arima Model for Noise Component	Arima Parameters	Prepost
RAPE			
Reports	(1,1,1)	MA1 = .81*** AR1 = -.30***	1.65
Indictments	(0,1,1)	MA1 = .88**	1.42
% Indicted	(0,0,0)		.04
Convictions	(0,1,1)	MA1 = -.91***	-.23
% Convicted	(0,0,0)		-1.05
Convictions on Original Charge	(0,1,1)	MA1 = .89***	1.43
% Convicted on Original Charge (logged)	(0,0,0)		.19
Incarcerations	(0,1,1)	MA1 = .86***	-.68
% Incarcerated	(0,0,0)		.07***
Average Sentence	(0,0,0)		10.35**
ALL SEX OFFENSES			
Indictments	(0,1,1)	MA1 = .83***	7.17
Convictions	(0,1,1)	MA1 = .85***	-.06
% Convicted (logged)	(0,0,0)		.05*
Incarcerations	(0,1,1)	MA1 = .88***	-.27
% Incarcerated	(0,1,1)	MA1 = .88***	.04
Average Sentence	$(0,0,0)(0,0,1)_{12}$	MA1 = -.22***	5.9

***p < .01 **p < .05 *p < .10

TABLE 3.9

PHILADELPHIA

SUMMARY OF INTERVENTION MODELS
(WITHOUT DIFFERENCING)

	Correct Intervention			Intervention Moved Back Two Years		
	Arima Model for Noise Component	Arima Parameters	Intervention	Arima Model for Noise Component	Arima Parameters	Intervention
RAPE						
Reports	(3.0.0)	AR1 = NS AR2 = .35*** AR3 = .11*	13.7***	(2,0,0)	AR1 = NS AR2 = .27***	20.07***
Indictments	(3,0,0)	AR1 = .16** AR2 = .17** AR3 = .22***	5.14**	(2,0,0)	AR1 = NS AR2 = .13*	8.55***
Convictions	(1,0,0)	AR1 = .21***	2.82***	(0,0,0)		4.77***
Convictions on Original Charge	(2,0,0)	AR1 = .20*** AR2 = .18**	1.82**	(0,0,0)		3.76***
Incarcerations	----[a]			(1,0,0)	AR1 = .13*	3.77***
ALL SEX OFFENSES						
Indictments	(3,0,0)	AR1 = .25*** AR2 = .14* AR3 = .23***	8.70***	(1,0,0)	AR1 = .19***	14.38***
Convictions	(2,0,0)	AR1 = .25*** AR2 = .15**	5.16***	(1,0,0)	AR1 = .18**	7.12***
Incarcerations	(3,0,0)	AR1 = .25*** AR2 = NS AR3 = .20***	4.82***	(0,0,0)		7.52***

[a]could not be modelled satisfactorily without differencing

TABLE 3.10

WASHINGTON, D.C.

SUMMARY OF INTERVENTION MODELS

Variable	Arima Model for Noise Component	Arima Parameters	Prepost-Shield	Prepost-Corroboration
Reports	$(0,0,0)(0,1,1)_{12}$	MA1 = .73***	-.80	-5.07**
Indictments (logged)	(0,0,0)		-.24	-.21
% Indicted	(0,0,1)	MA = .16**	.002	-.003
Convictions	(0,0,0)		-1.13**	-1.35**
% Convicted	(0,0,0)		.02	.04
Convictions on Original Charge	(0,0,0)		-.64	-.13
% Convicted on Original Charge	(0,0,0)		.01	.06
Incarcerations	(0,0,1)	MA1 = -.16**	-.16	-.01
% Incarcerated	(0,0,1)	MA1 = -.17**	.06	.08
Average Sentence				
ALL SEX OFFENSES				
Indictments (logged)	(0,0,0)		-.15	-.20*
Convictions (logged)	(0,0,0)		-.02	.00
% Convicted	(0,0,0)		.03	.05
Incarcerations (logged)	(0,0,0)		-.04	-.05
% Incarcerated	(0,1,1)	MA1 = .77***	.19	-.09
Average Sentence	(0,0,0)		69.6**	116.4***

***p < .01 **p < .05 *p < .10

TABLE 3.11

ATLANTA

SUMMARY OF INTERVENTION MODELS

Variables	Arima Model for Noise Component	Arima Parameters	Prepost-Shield	Prepost-Corroboration	Prepost-Moved Back Two Years
RAPE					
Reports	$(0,1,1)(0,1,1)_{12}$	MA1 = .85*** MA2 = .89***	-3.94	.24	----
Indictments	(0,0,0)		3.77***	3.68***	3.28***
% Indicted (logged)	(0,0,1)	MA1 = -.13*	-.09	-.05	----
Convictions	(0,0,0)		Num = .21** Den = .94***	3.37***	Num = .10** Den = .98***
% Convicted (logged)	(0,0,0)		.01***	.01**	.01***
Convictions on Original Charge	(0,0,0)		1.11***	1.05***	1.07***
% Convicted on Original Charge	(0,0,0)		-.05	-.07**	-.07**[a]
Incarcerations	(0,0,0)		1.13***	1.15***	1.11***
% Incarcerated	(0,0,0)		-.003	.01	----
Average Sentence	(0,0,2)	MA1 = NS MA2 = -.14**	29.17	42.74*	42.86*[a]
ALL SEX OFFENSES					
Indictments	(0,0,0)		4.12***	.76	3.29***
Convictions	(0,0,0)		Num = .34* Den = .92***	.87	3.31***
% Convicted (logged)	(0,0,0)		.46**	.19	.58***
Incarcerations	(0,0,0)		2.75***	.67	2.34***
% Incarcerated	(0,0,0)		8.07***	1.78	7.14**
Average Sentence	(0,0,0)		14.34	-35.00	----

***p < .01 ** p < .05 * p < .10

[a]Moved back one year from corroboration intervention

TABLE 3.12

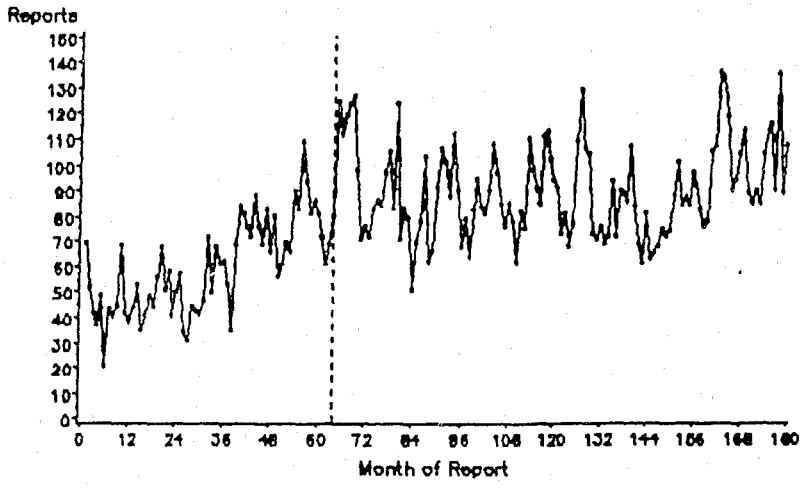
HOUSTON

SUMMARY OF INTERVENTION MODELS

Variable	Arima Model for Noise Component	Arima Parameters	Prepost	Prepost-Two Years
RAPE				
Reports	(1,0,0)	AR1 = .36***	Num =1.30*** Den = .99***	Num =1.29*** Den = .99***
Indictments	(0,0,0)		2.88***	-.03
% Indicted	(0,0,0)		-.14***	
Convictions	(0,0,0)		3.00***	-.19
% Convicted	(0,0,0)		.12***	-.01
Convictions on Original Charge	(0,0,0)		2.09***	.09
% Convicted on Original Charge	(0,0,1)	MA1 = .15*	.09***	-.04
Incarcerations	(0,0,0)		1.97***	.68
% Incarcerated	(0,0,2)	MA1 = NS MA2 = .21***	.06*	.04
Average Sentence	(0,0,0)		73.63***	52.93*
ALL SEX OFFENSES				
Indictments	(0,0,0) logged		.05	.02
Convictions	(0,0,0)		3.04***	.95
% Convicted	(0,0,0)		.11***	0.00
Incarcerations	(0,0,3)	MA1 = NS MA2 = -.18* MA3 = -.23***	3.16***	.80
% Incarcerated	(0,0,0)		.09**	.08*
Average Sentence	(0,0,0)		64.31***	24.99

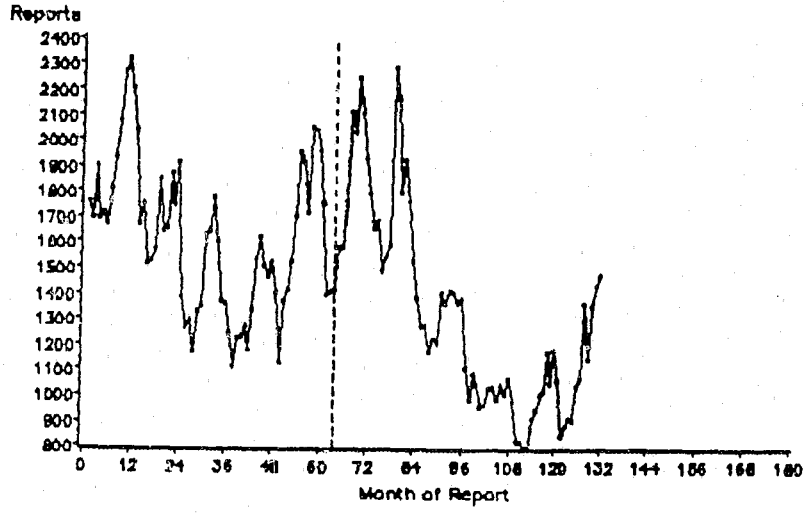
***p < .01 **p < .05 *p < .10

FIGURE 1a
Monthly Reports of Rape
Detroit, Michigan
1970–1984



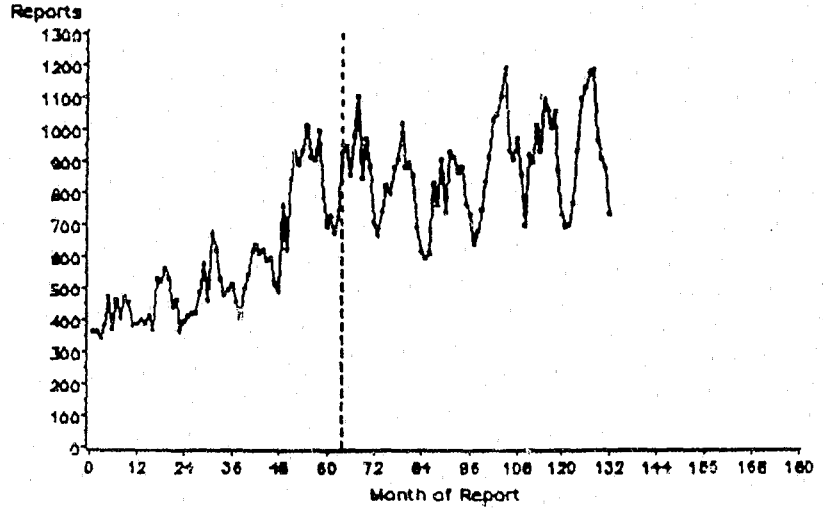
Broken line indicates date reforms implemented

FIGURE 1b
Monthly Reports of Robbery
Detroit, Michigan
1970–1984



Broken line indicates date reforms implemented

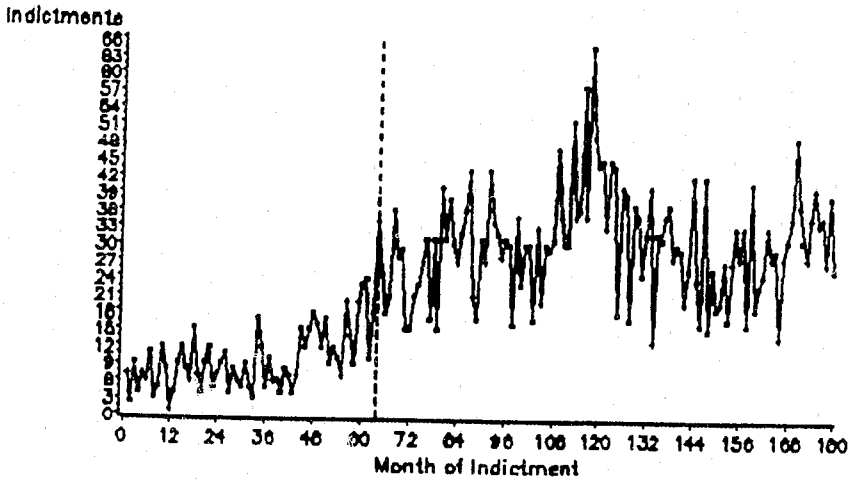
FIGURE 1c
Monthly Reports of Assaults
Detroit, Michigan
1970–1984



Broken line indicates date reforms implemented

FIGURE 1d

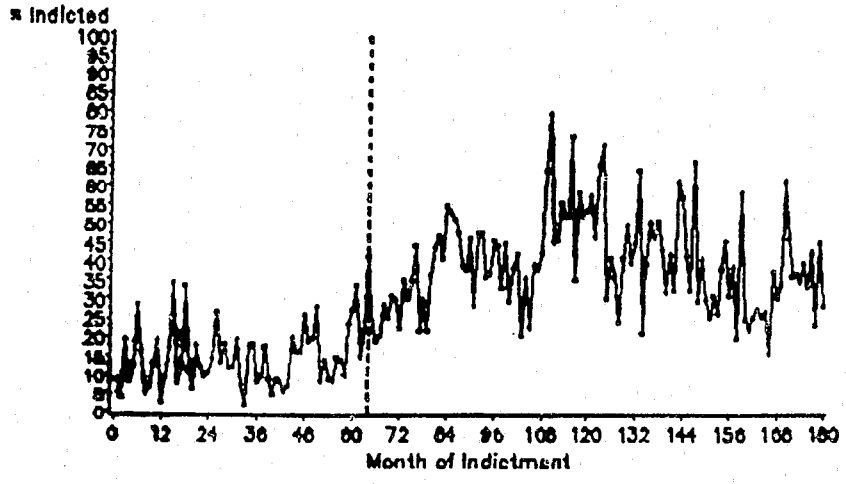
Monthly Indictments for Rape, Sodomy, Gross Indecency,
1st or 3rd Degree Criminal Sexual Conduct
Detroit, Michigan
1970–1984



Broken line indicates date reforms implemented

FIGURE 1e

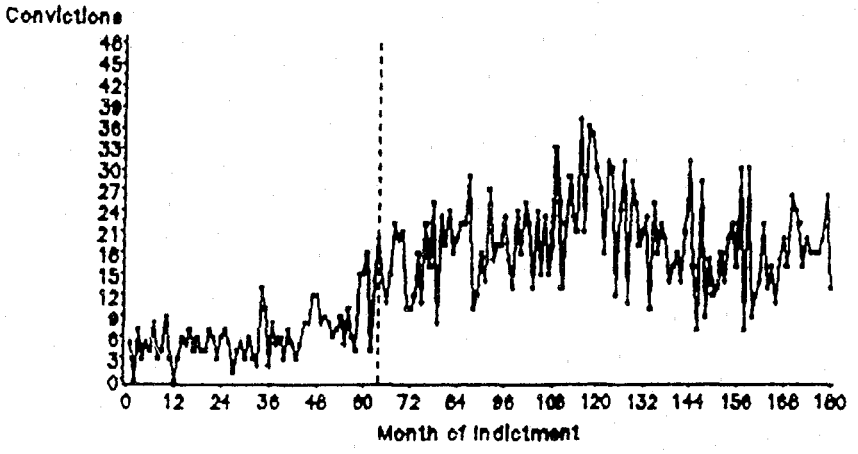
Percent Indicted Monthly for Rape, Sodomy, Gross Indecency,
1st or 3rd Degree Criminal Sexual Conduct
Detroit, Michigan
1970–1984



Broken line indicates date reforms implemented

FIGURE 1f

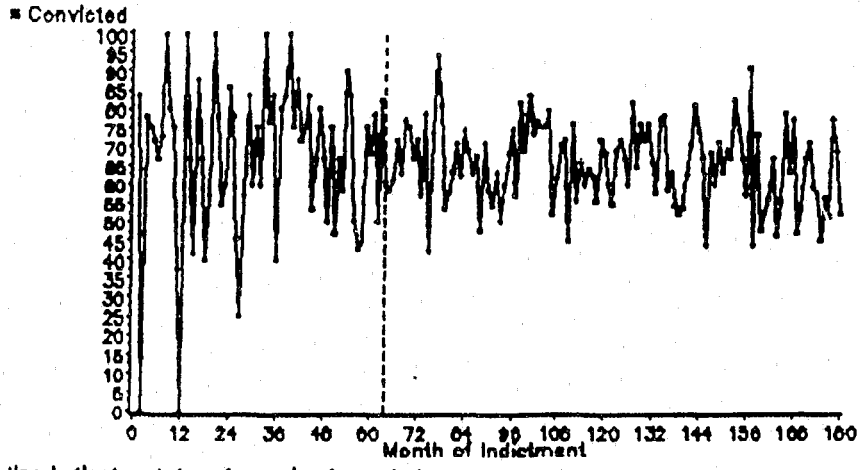
Monthly Convictions for Rape, Sodomy, Gross Indecency,
1st or 3rd Degree Criminal Sexual Conduct
Detroit, Michigan
1970–1984



Broken line indicates date reforms implemented

FIGURE 1g

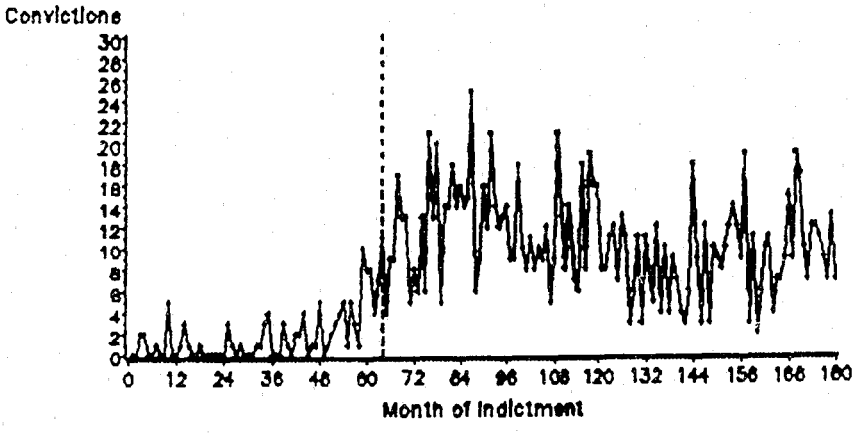
Percent Convicted Monthly for Rape, Sodomy, Gross Indecency,
1st or 3rd Degree Criminal Sexual Conduct
Detroit, Michigan
1970–1984



Broken line indicates date reforms implemented

FIGURE 1h

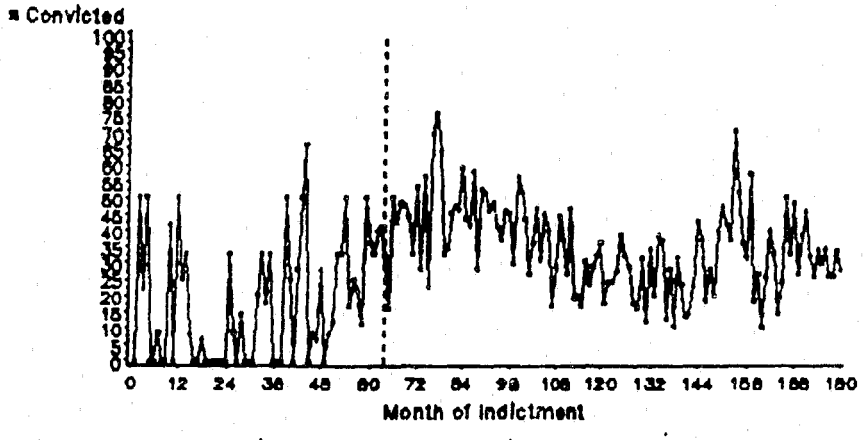
Monthly Data
Defendants Charged and Convicted of Same Sex Offense*
Detroit, Michigan
1970–1984



*Includes defendants charged with rape, sodomy, gross indecency or 1st or 3rd degree criminal sexual conduct
Broken line indicates date reforms implemented

FIGURE 1i

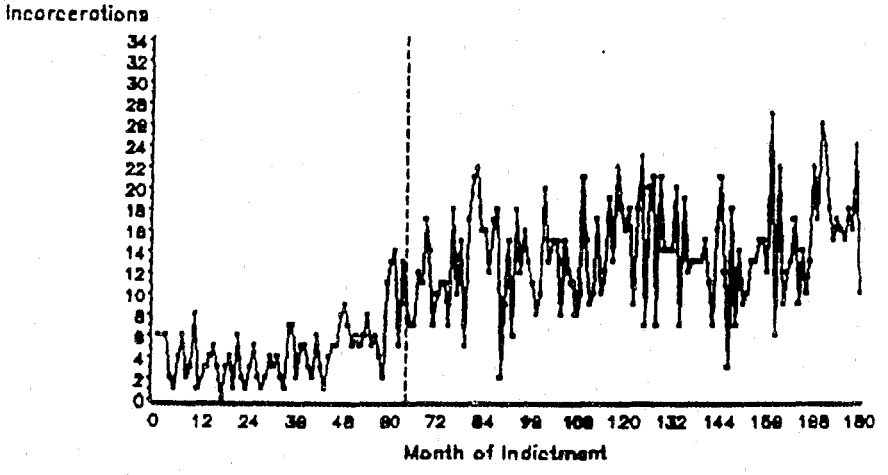
Monthly Data
Percent Charged and Convicted of Same Sex Offense*
Detroit, Michigan
1970–1984



*Includes defendants charged with rape, sodomy, gross indecency or 1st or 3rd degree criminal sexual conduct
Broken line indicates date reforms implemented

FIGURE 1j

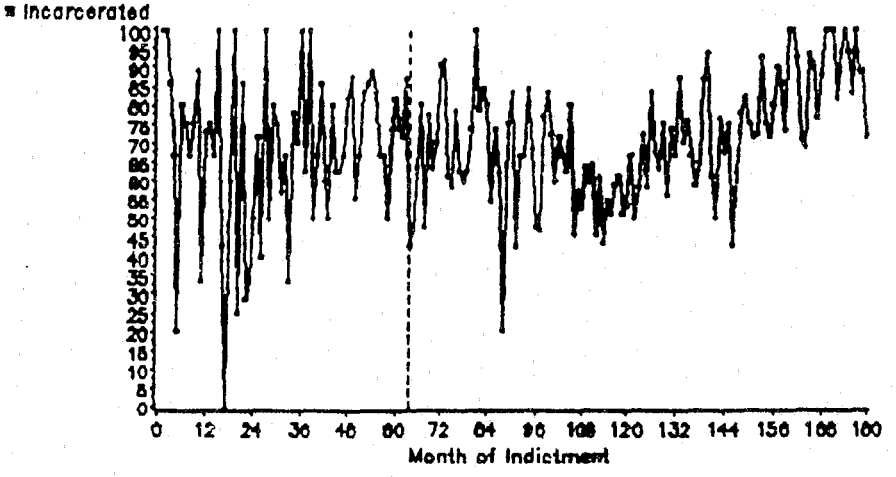
Monthly Incarcerations for Rape, Sodomy, Gross Indecency, 1st or 3rd Degree Criminal Sexual Conduct
Detroit, Michigan
1970–1984



Broken line indicates date reforms implemented

FIGURE 1k

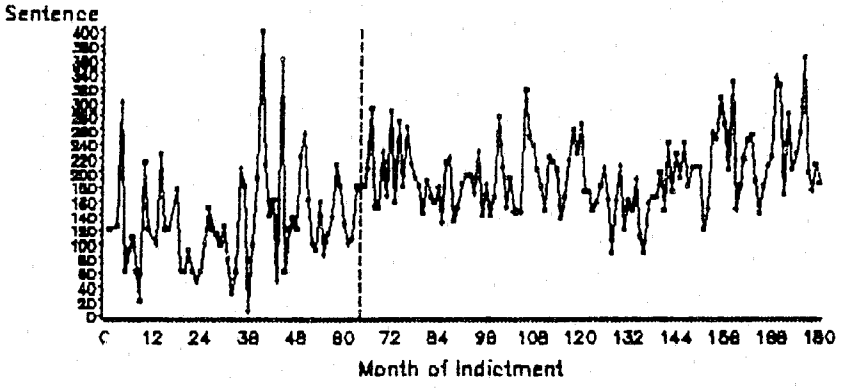
Percent Incarcerated Monthly for Rape, Sodomy, Gross Indecency, 1st or 3rd Degree Criminal Sexual Conduct
Detroit, Michigan
1970–1984



Broken line indicates date reforms implemented

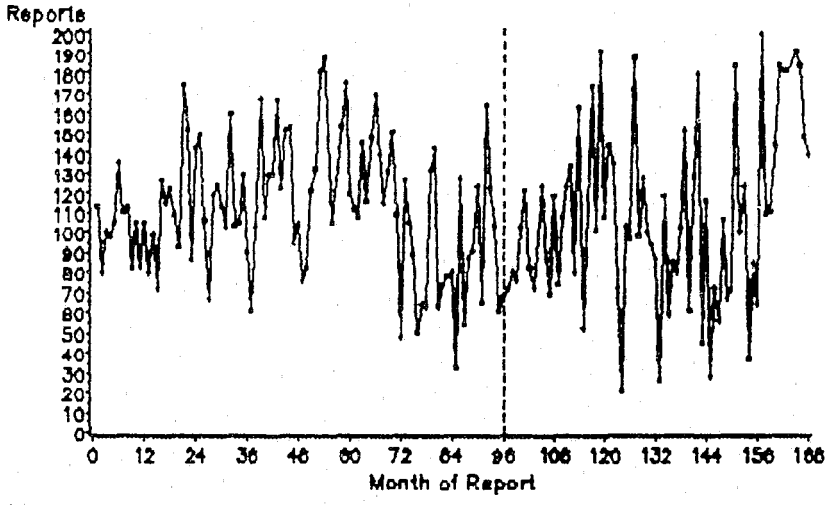
FIGURE 11

Monthly Data
Mean Prison Sentence
Defendants Incarcerated for Rape, Sodomy, Gross Indecency,
1st or 3rd Degree Criminal Sexual Conduct
Detroit, Michigan
1970–1984



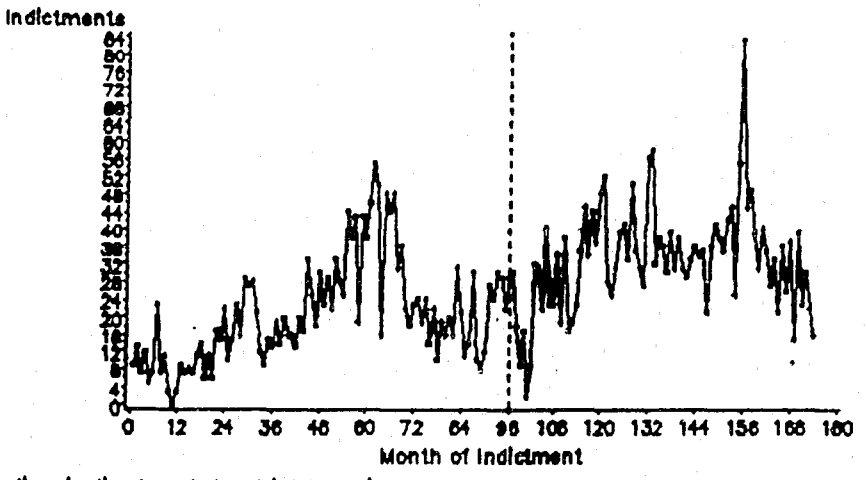
Mean prison sentence = maximum sentence in months
Broken line indicates date reforms implemented

FIGURE 2a
Monthly Reports of Rape
Chicago, Illinois
1970–1983



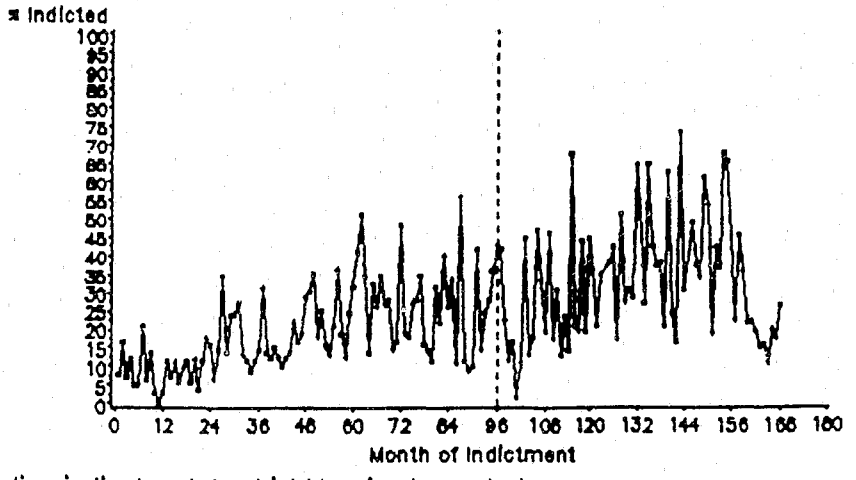
Broken line indicates date shield law implemented

FIGURE 2b
Monthly Indictments for Rape
Chicago, Illinois
1970–1984*



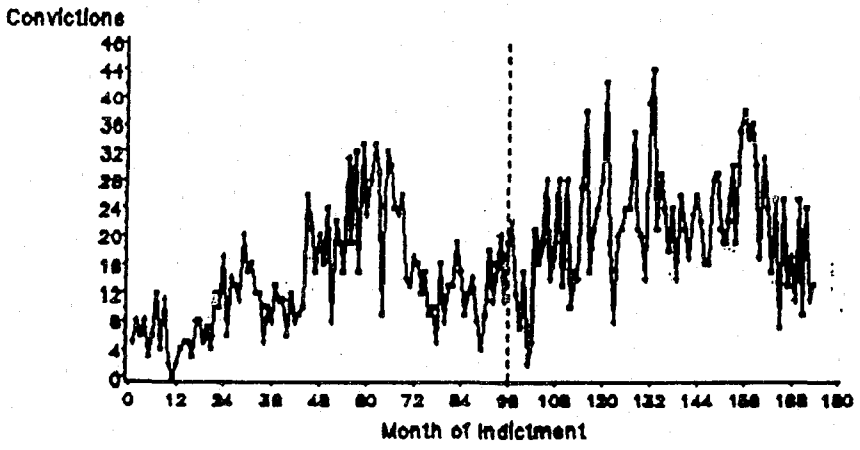
Broken line indicates date shield law implemented
*Through 6–31–84

FIGURE 2c
Percent Indicted Monthly for Rape
Chicago, Illinois
1970–1984*



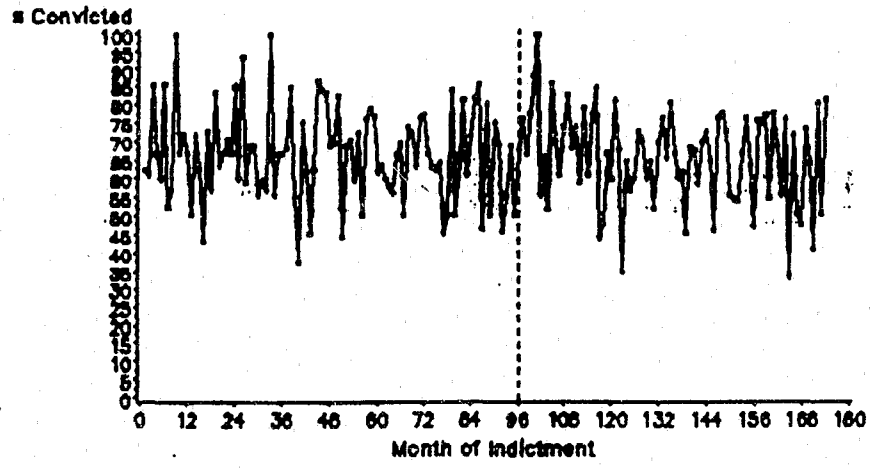
Broken line indicates date shield law implemented
*Through 6–31–84

FIGURE 2d
Monthly Convictions for Rape
Chicago, Illinois
1970–1984*



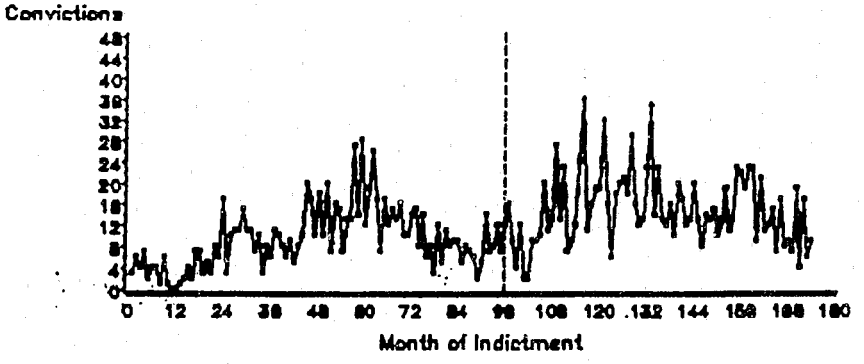
Broken line indicates date shield law implemented
*Through 6–31–84

FIGURE 2e
Percent Convicted Monthly for Rape
Chicago, Illinois
1970–1984*



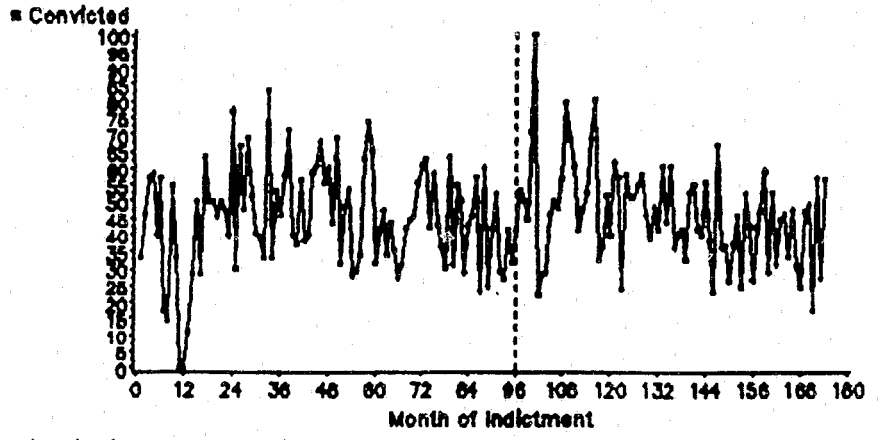
Broken line indicates date shield law implemented
*Through 6–31–84

FIGURE 2f
Monthly Data
Defendants Charged with and Convicted of Rape
Chicago, Illinois
1970–1984*



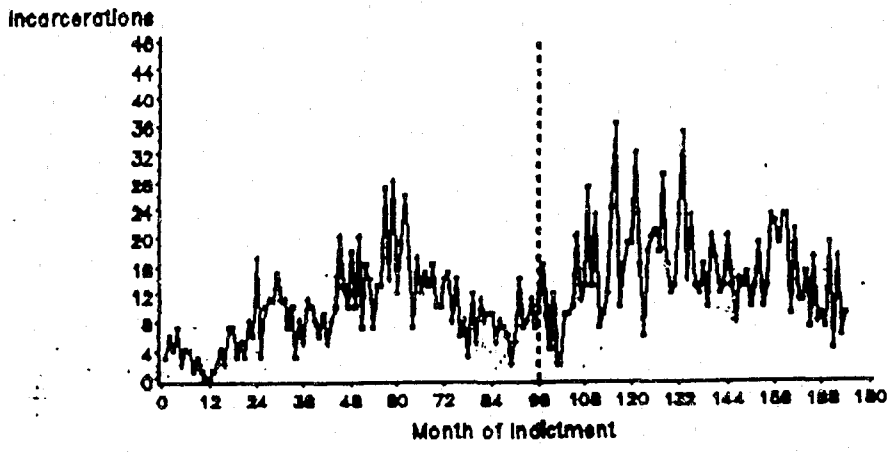
Broken line indicates date shield law implemented
*Through 6–31–84

FIGURE 2g
Monthly Data
Percent Charged with and Convicted of Rape
Chicago, Illinois
1970–1984*



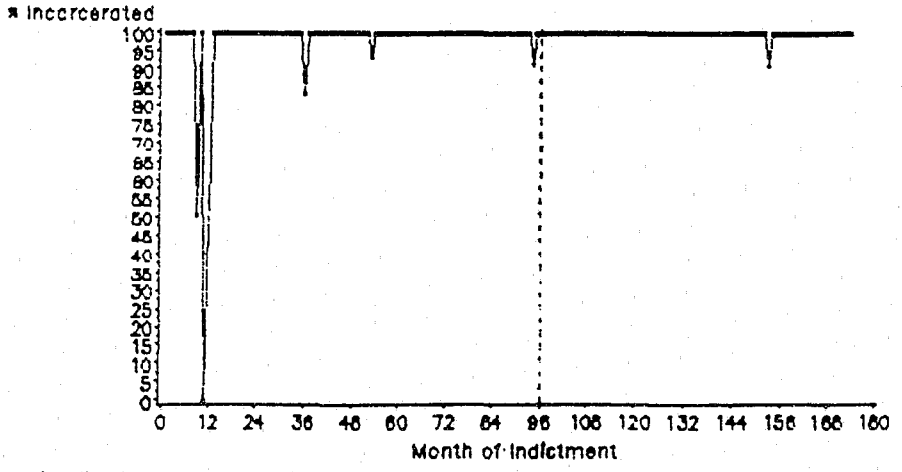
Broken line indicates date shield law implemented
*Through 6–31–84

FIGURE 2h
Monthly Incarcerations for Rape
Chicago, Illinois
1970–1984*



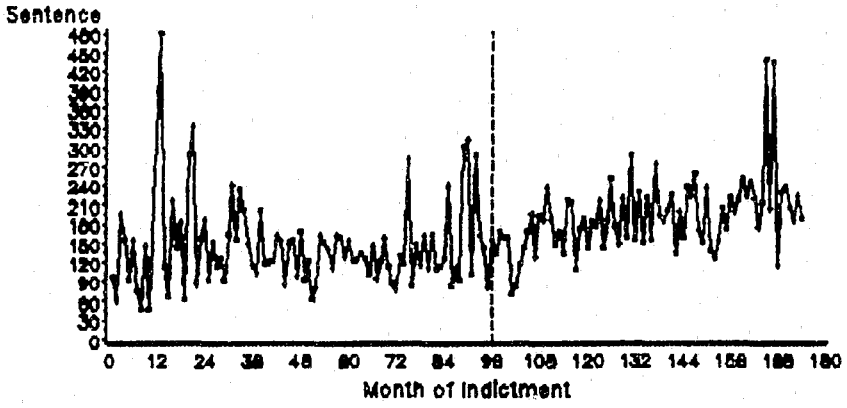
Broken line indicates date shield law implemented
*Through 6–31–84

FIGURE 2i
Percent Incarcerated Monthly for Rape
Chicago, Illinois
1970–1984*



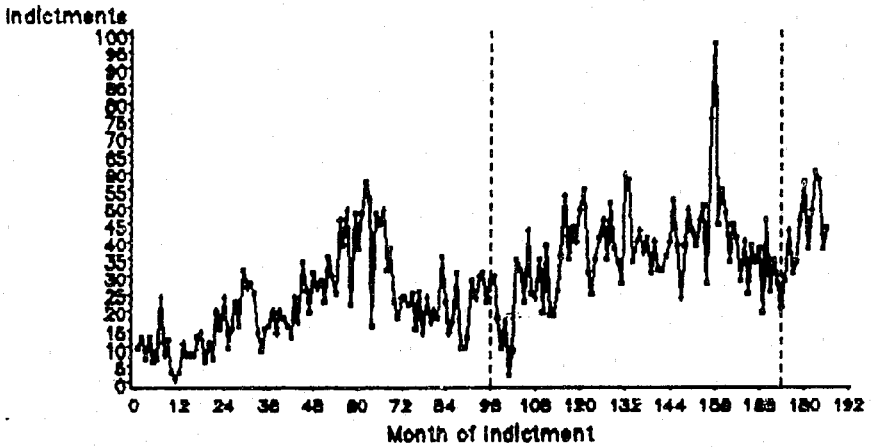
Broken line indicates date shield law implemented
*Through 6–31–84

FIGURE 2j
Monthly Data
Mean Prison Sentence--Defendants Incarcerated for Rape
Chicago, Illinois
1970–1984*



Mean prison sentence = maximum sentence in months
Broken line indicates date shield law implemented
*Through 6–31–84

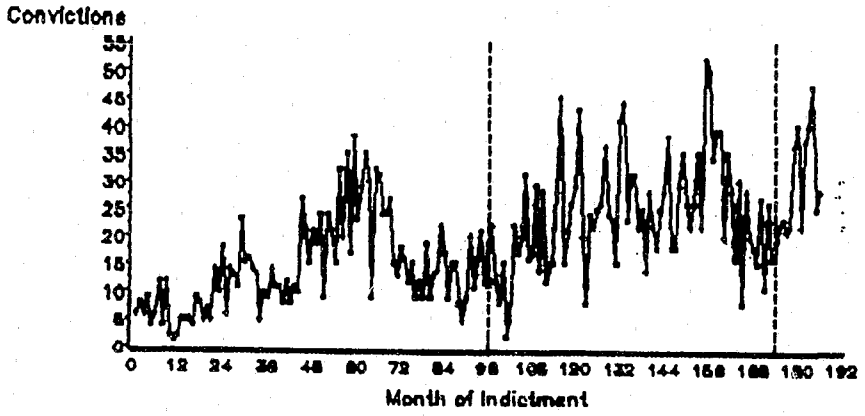
FIGURE 2k
Monthly Indictments for Sex Offenses
Chicago, Illinois
1970–1985*



Broken lines indicate dates reforms implemented
Rape shield law – month 96; definitional changes – month 174
*Through 6–31–85

FIGURE 21

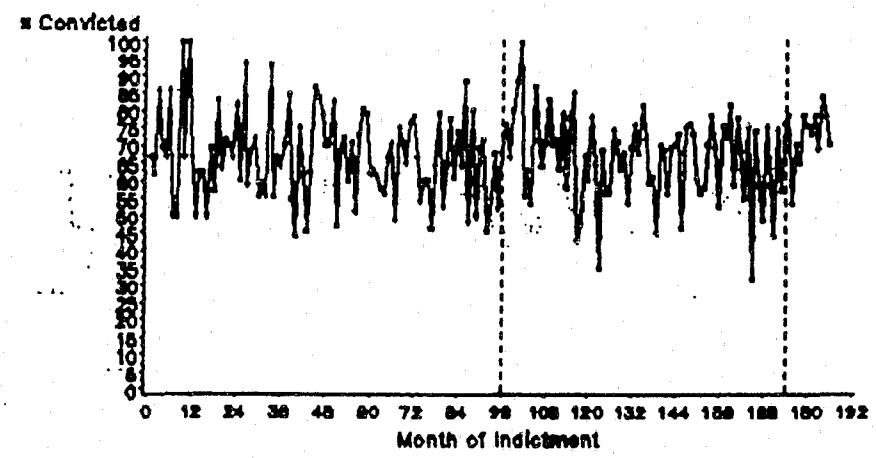
Monthly Convictions for Sex Offenses
Chicago, Illinois
1970–1985*



Broken lines indicate dates reforms implemented
Rape shield law – month 96; definitional changes – month 174
*Through 6–31–85

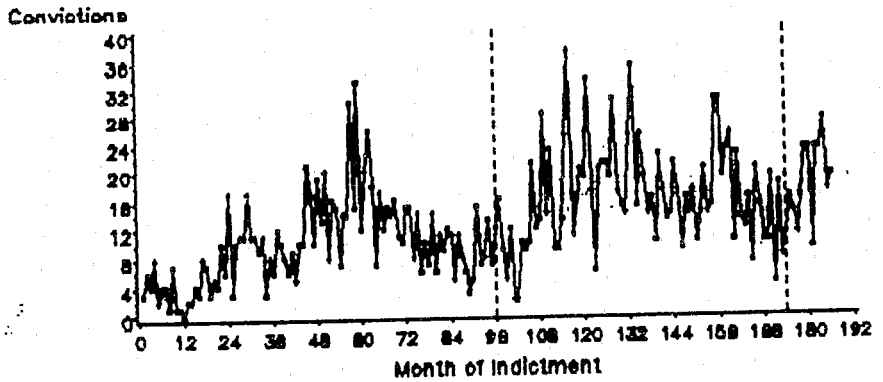
FIGURE 2m

Percent Convicted Monthly for Sex Offenses
Chicago, Illinois
1970–1985*



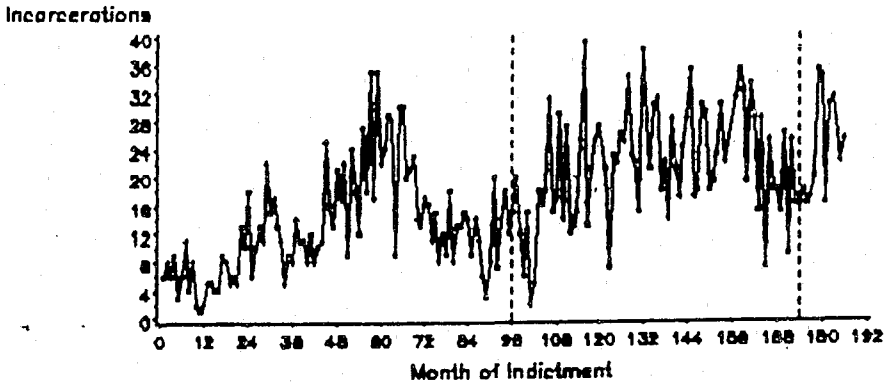
Broken lines indicate dates reforms implemented
Rape shield law – month 96; definitional changes – month 174
*Through 6–31–85

FIGURE 2n
Monthly Data
Defendants Charged with and Convicted of Same Sex Offense
Chicago, Illinois
1970–1985*



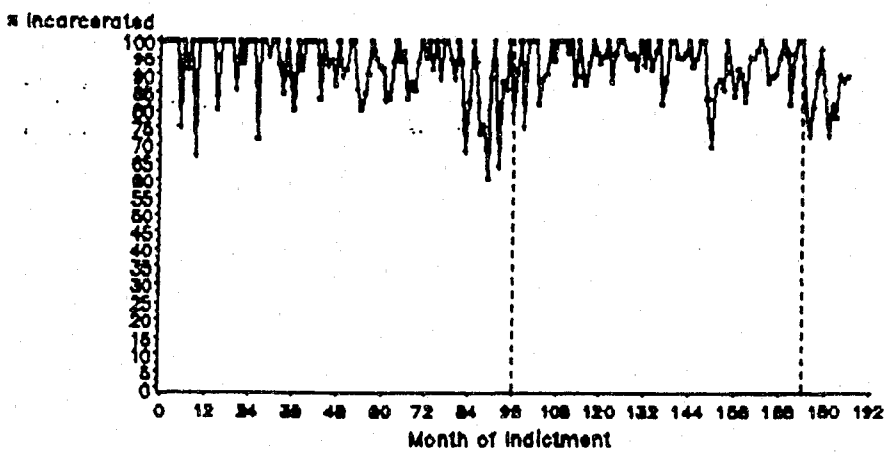
Broken lines indicate dates reforms implemented
Rape shield law – month 96; definitional changes – month 174
*Through 6–31–85

FIGURE 2o
Monthly Incarcerations for Sex Offenses
Chicago, Illinois
1970–1985*



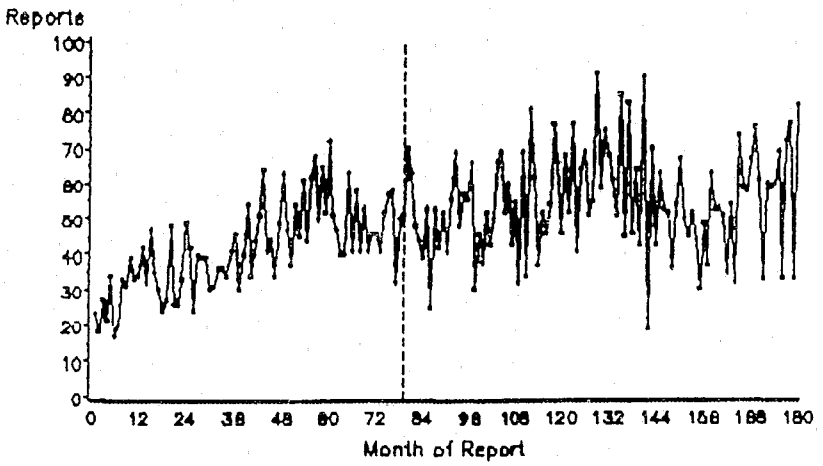
Broken lines indicate dates reforms implemented
Rape shield law – month 96; definitional changes – month 174
*Through 6–31–85

FIGURE 2p
Percent Incarcerated Monthly for Sex Offenses
Chicago, Illinois
1970–1985*



Broken lines indicate dates reforms implemented
Rape shield law – month 96; definitional changes – month 174
*Through 6–31–85

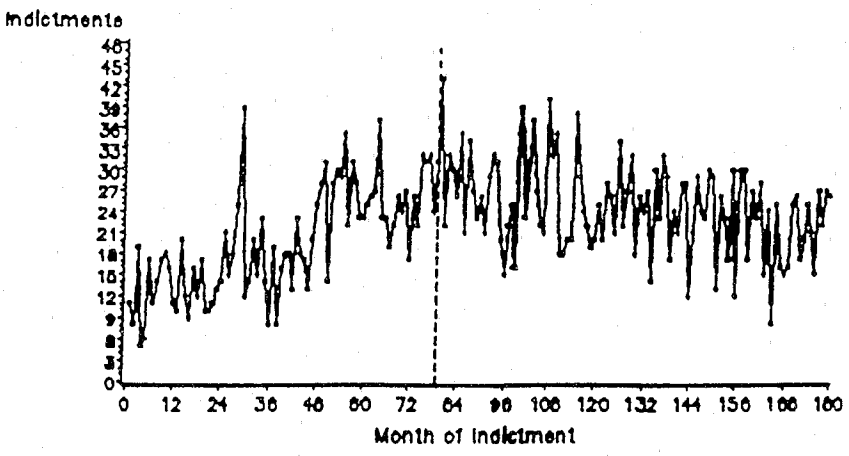
FIGURE 3a
Monthly Reports of Rape
Philadelphia, Pennsylvania
1970–1984



Broken line indicates date reforms implemented

FIGURE 3b

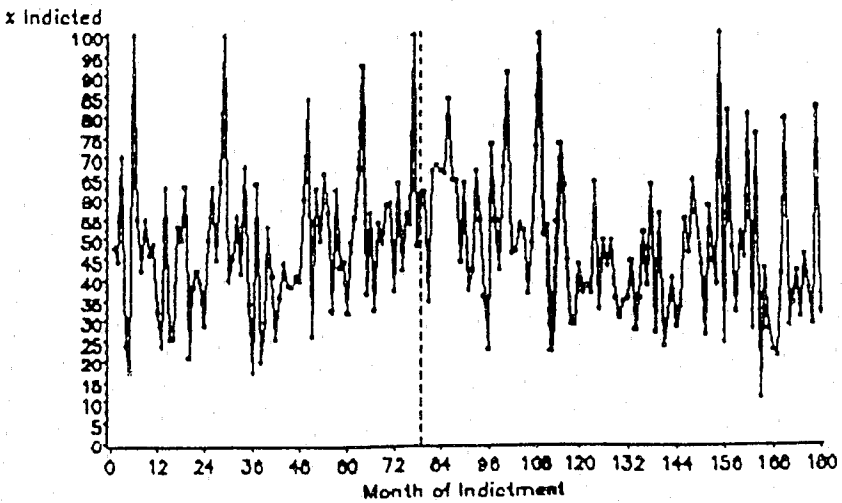
Monthly Indictments for Rape
Philadelphia, Pennsylvania
1970–1984



Broken line indicates date reforms implemented

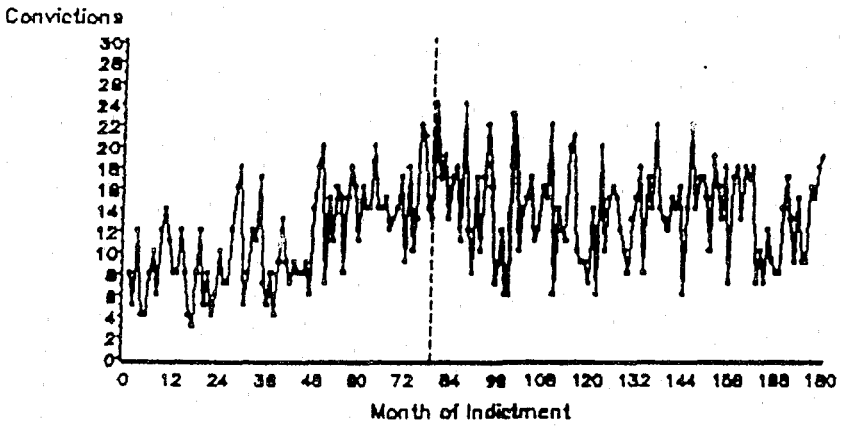
FIGURE 3c

Percent Indicted for Rape by Month
Philadelphia, Pennsylvania
1970–1984



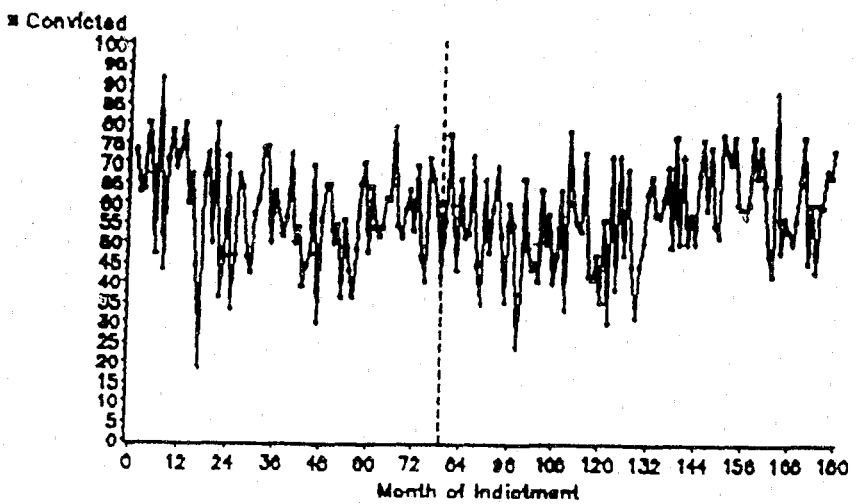
Broken line indicates date reforms implemented

FIGURE 3d
Monthly Convictions for Rape
Philadelphia, Pennsylvania
1970–1984



Broken line indicates date reforms implemented

FIGURE 3e
Percent Convicted for Rape by Month
Philadelphia, Pennsylvania
1970–1984



Broken line indicates date reforms implemented

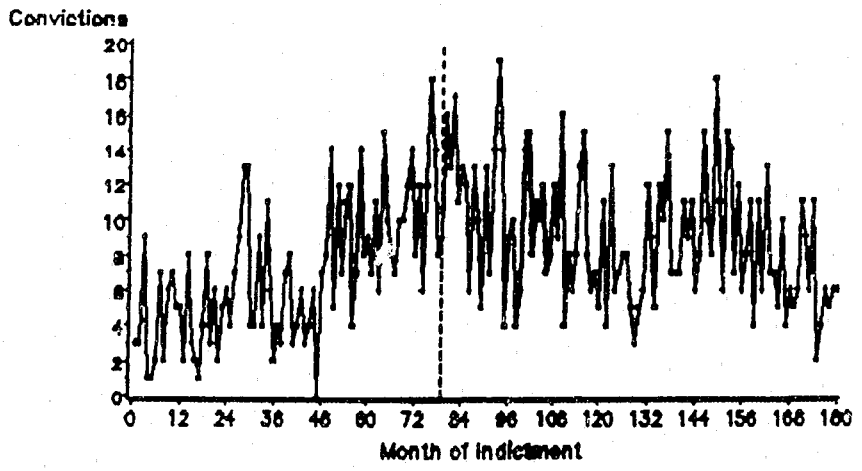
FIGURE 3f

Monthly Data

Defendants Charged with Rape, Convicted of Rape

Philadelphia, Pennsylvania

1970–1984



Broken line indicates date reforms implemented

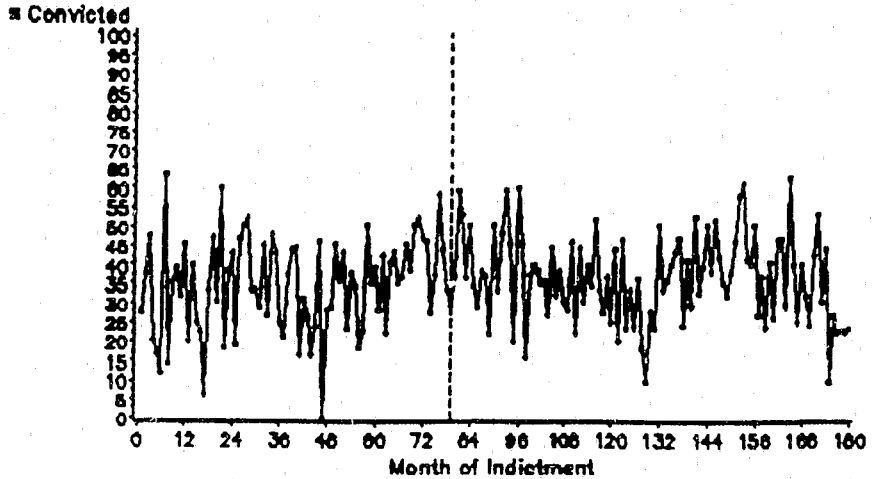
FIGURE 3g

Monthly Data

Percent Charged with Rape, Convicted of Rape

Philadelphia, Pennsylvania

1970–1984



Broken line indicates date reforms implemented

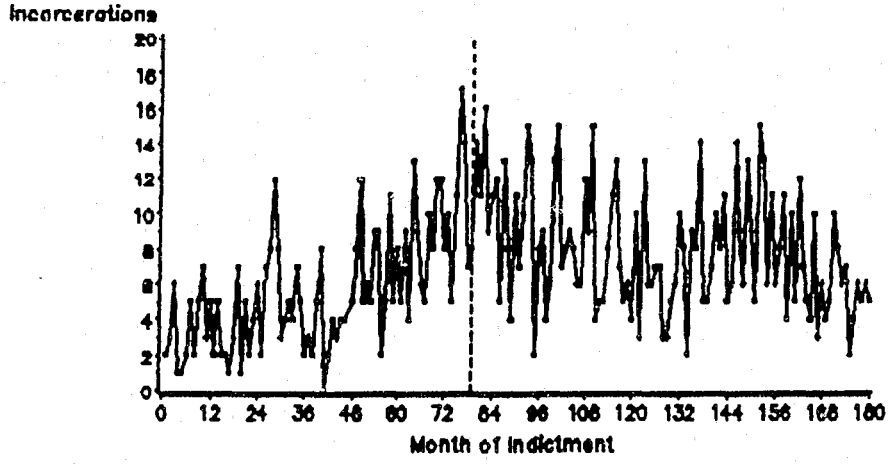
FIGURE 3h

Monthly Data

Defendants Incarcerated for Rape

Philadelphia, Pennsylvania

1970–1984



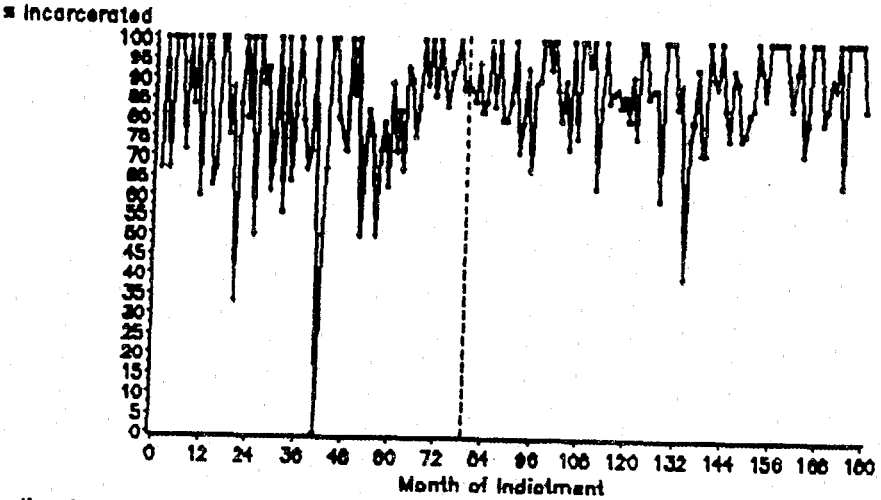
Broken line indicates date reforms implemented

FIGURE 3i

Percent Incarcerated for Rape by Month

Philadelphia, Pennsylvania

1970–1984



Broken line indicates date reforms implemented

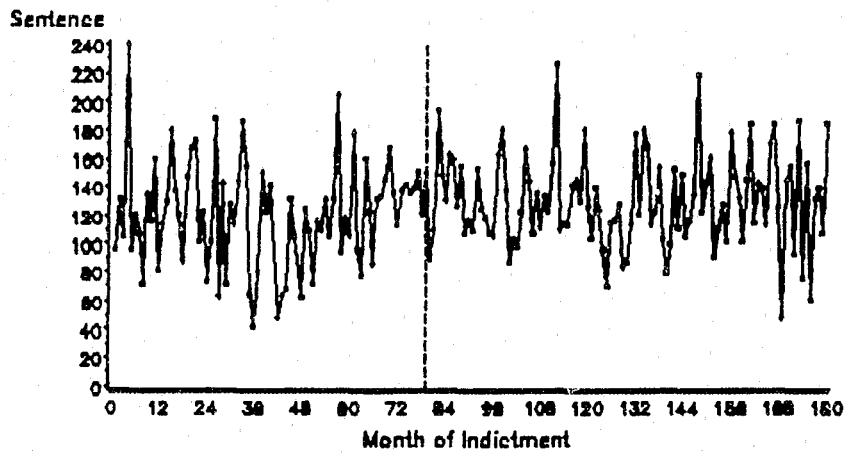
FIGURE 3j

Monthly Data

Mean Prison Sentence--Defendants Incarcerated for Rape

Philadelphia, Pennsylvania

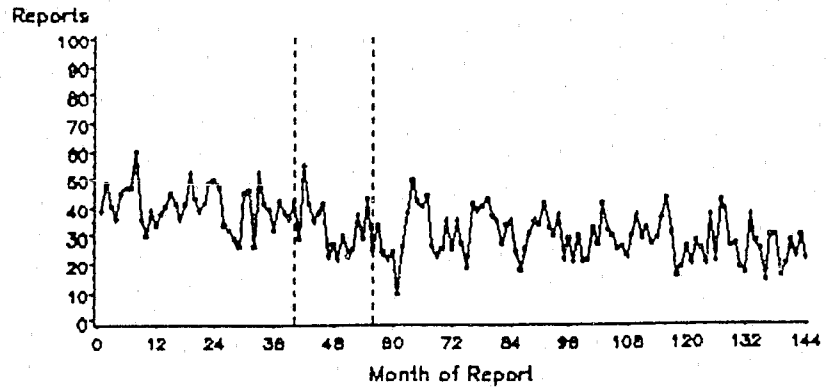
1970-1984



Mean prison sentence = maximum sentence in months
Broken line indicates date reforms implemented

FIGURE 4a

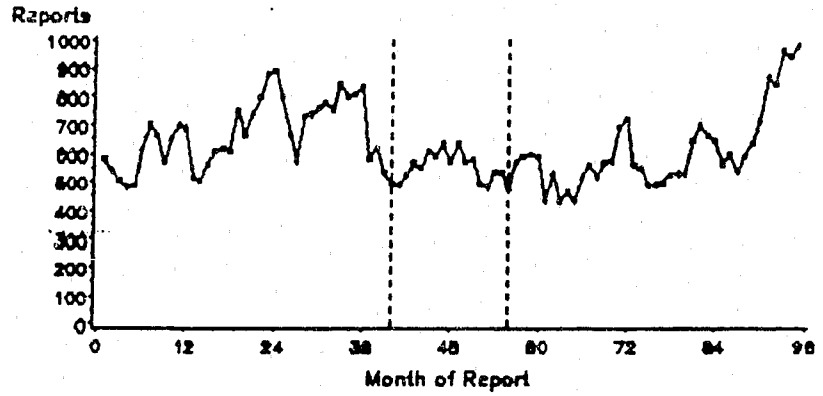
Monthly Reports of Rape
Washington, D.C.
1973–1984



Broken lines indicate dates of court rulings
Month 40 = Corroboration
Month 56 = Shield

FIGURE 4b

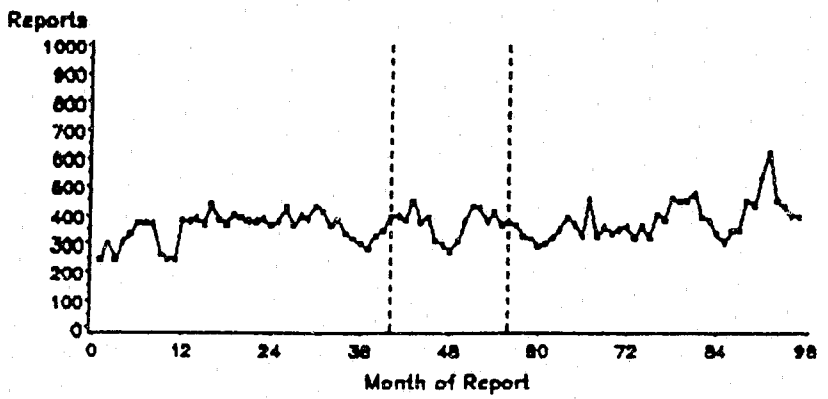
Monthly Reports of Robbery
Washington, D.C.
1973–1980



Broken lines indicate dates of court rulings
Month 40 = Corroboration
Month 56 = Shield

FIGURE 4c

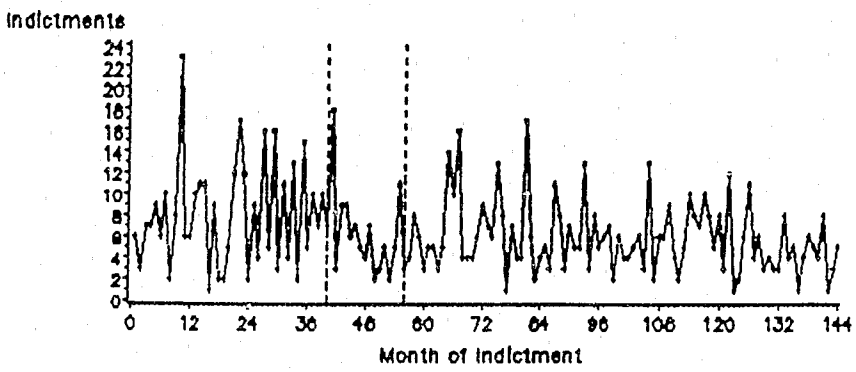
Monthly Reports of Assault
Washington, D.C.
1973–1980



Broken lines indicate dates of court rulings
Month 40 = Corroboration
Month 56 = Shield

FIGURE 4d

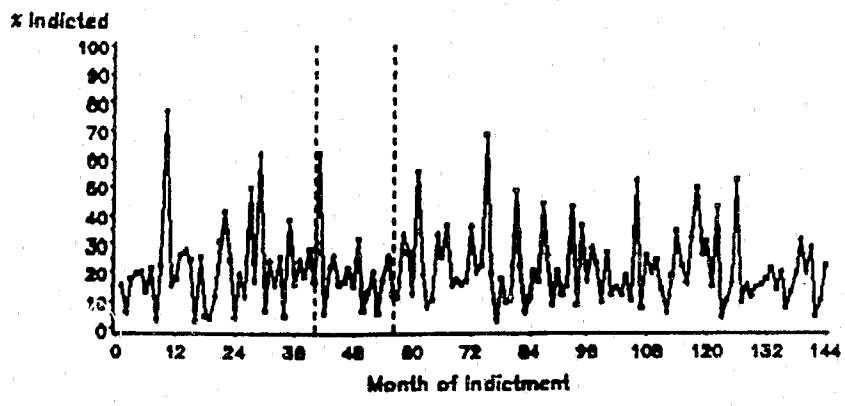
Monthly Indictments for Rape
Washington, D.C.
1973–1984



Broken lines indicate dates of court rulings
Month 40 = Corroboration
Month 56 = Shield

FIGURE 4e

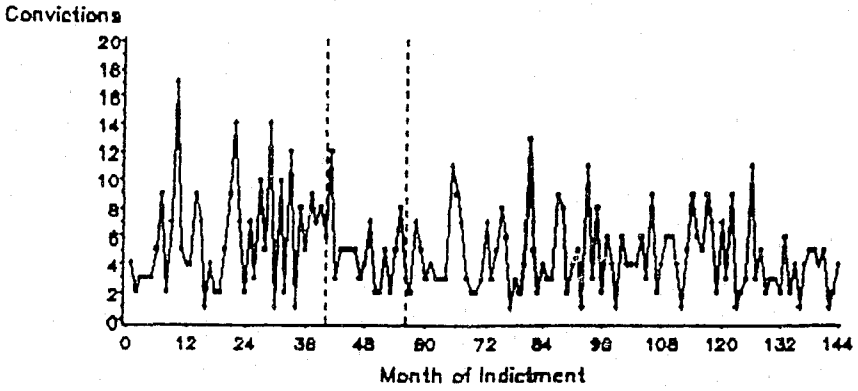
Percent Indicted for Rape by Month
Washington, D.C.
1973–1984



Broken lines indicate dates of court rulings
Month 40 = Corroboration
Month 56 = Shield

FIGURE 4f

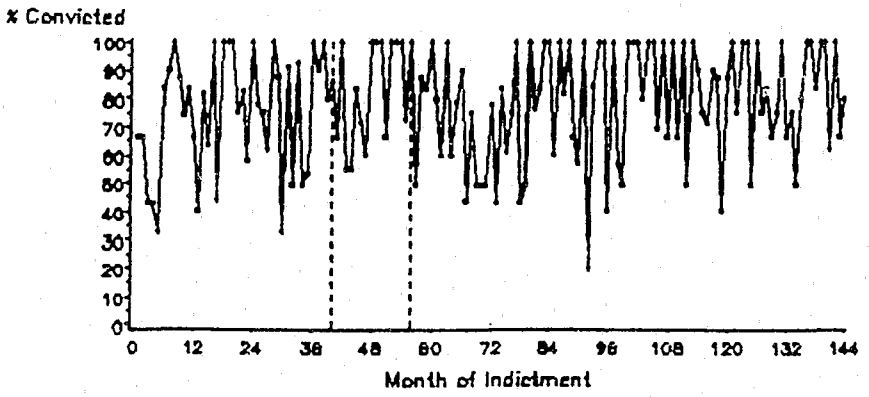
Monthly Convictions for Rape
Washington, D.C.
1973–1984



Broken lines indicate dates of court rulings
Month 40 = Corroboration
Month 56 = Shield

FIGURE 4g

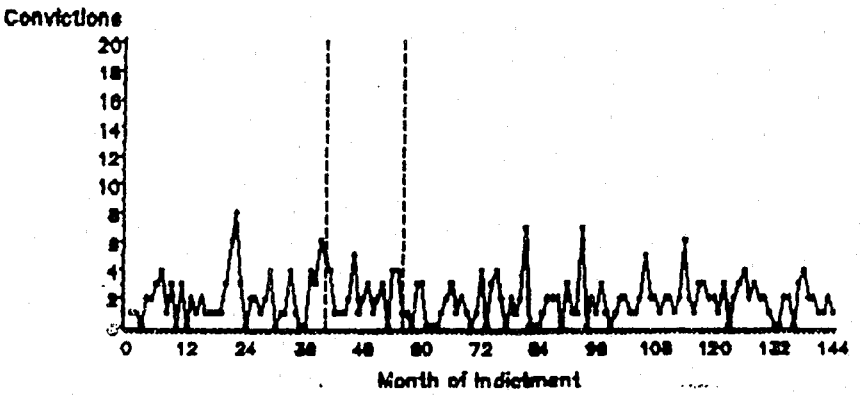
Percent Convicted for Rape by Month
Washington, D.C.
1973–1984



Broken lines indicate dates of court rulings
Month 40 = Corroboration
Month 56 = Shield

FIGURE 4h

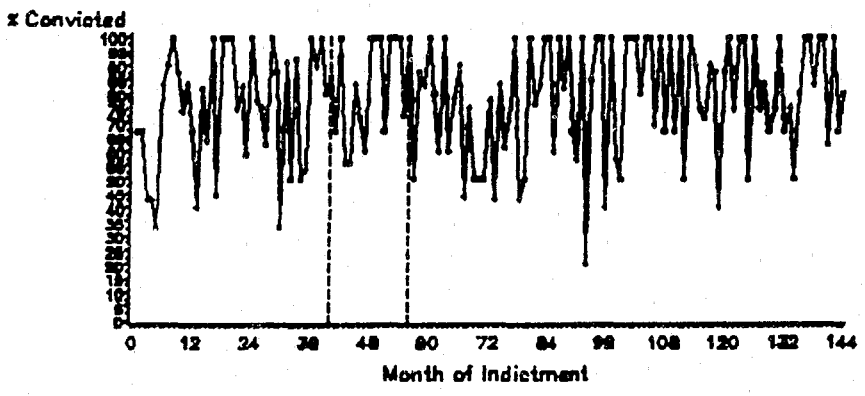
Monthly Data
Defendants Charged with and Convicted of Rape
Washington, D.C.
1973–1984



Broken lines indicate dates of court rulings
Month 40 = Corroboration
Month 56 = Shield

FIGURE 4i

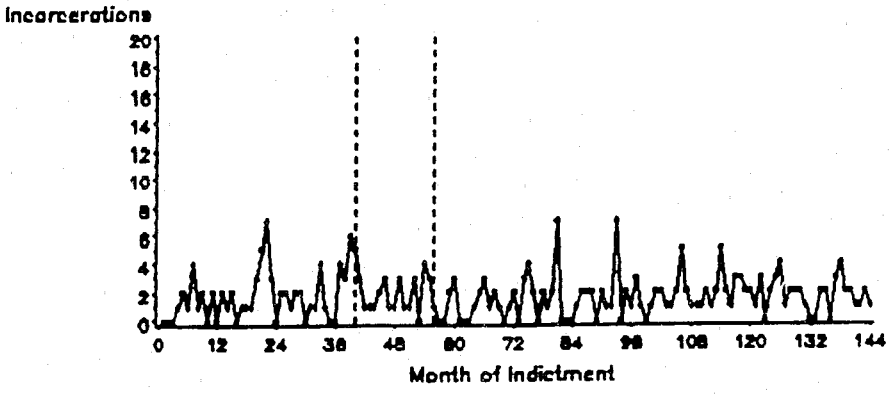
Monthly Data
Percent Charged with and Convicted of Rape
Washington, D.C.
1973–1984



Broken lines indicate dates of court rulings
Month 40 = Corroboration
Month 56 = Shield

FIGURE 4j

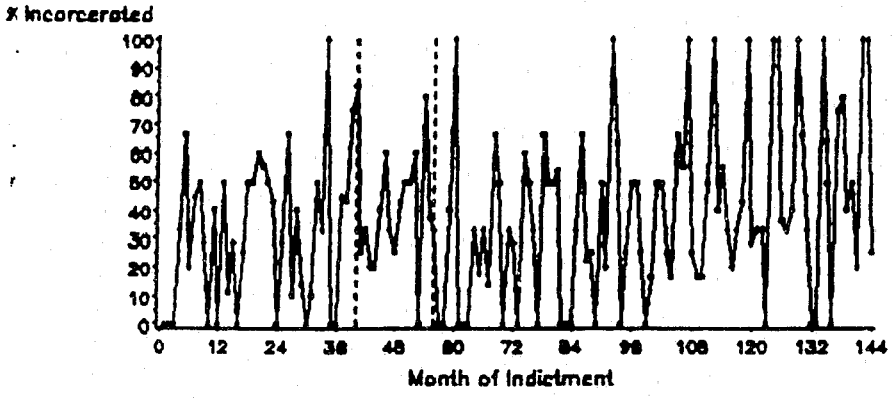
Monthly Incarcerations for Rape
Washington, D.C.
1973–1984



Broken lines indicate dates of court rulings
Month 40 = Corroboration
Month 56 = Shield

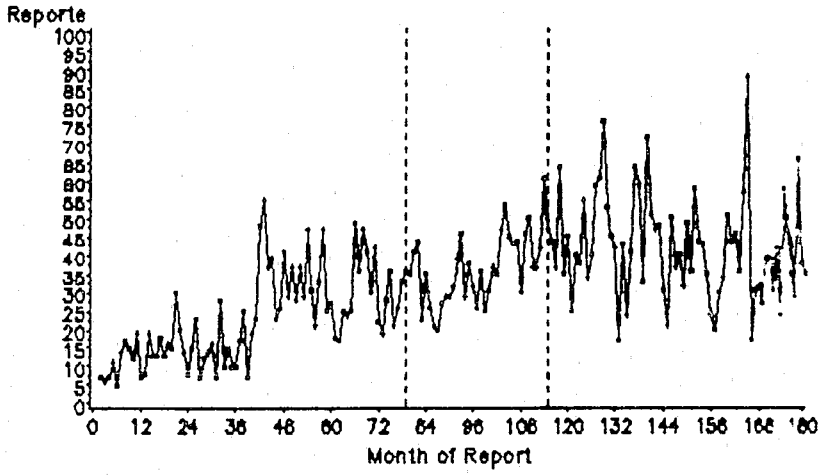
FIGURE 4k

Percent Incarcerated for Rape by Month
Washington, D.C.
1973–1984



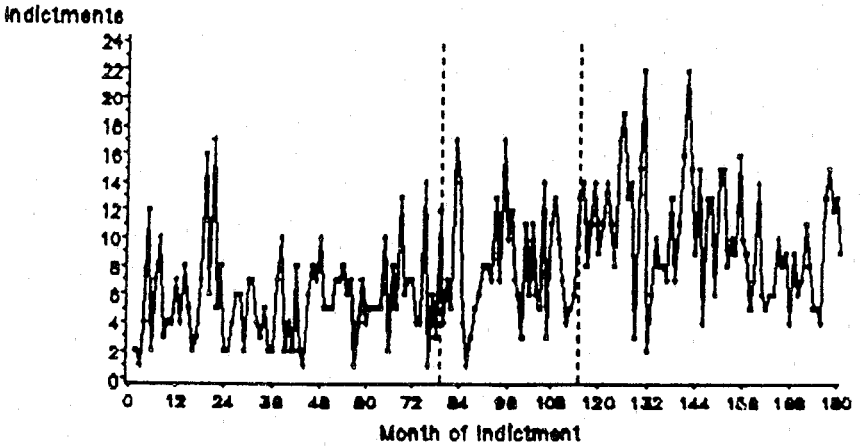
Broken lines indicate dates of court rulings
Month 40 = Corroboration
Month 56 = Shield

FIGURE 5a
Monthly Reports of Rape
Atlanta, Georgia
1970–1984



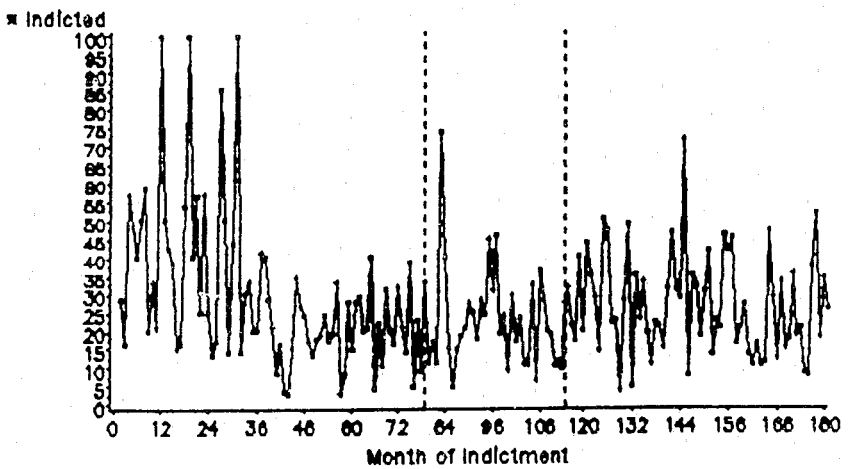
Broken lines indicate dates reforms implemented
Rape shield law = month 79; corroboration change = month 115

FIGURE 5b
Monthly Indictments for Rape
Atlanta, Georgia
1970–1984



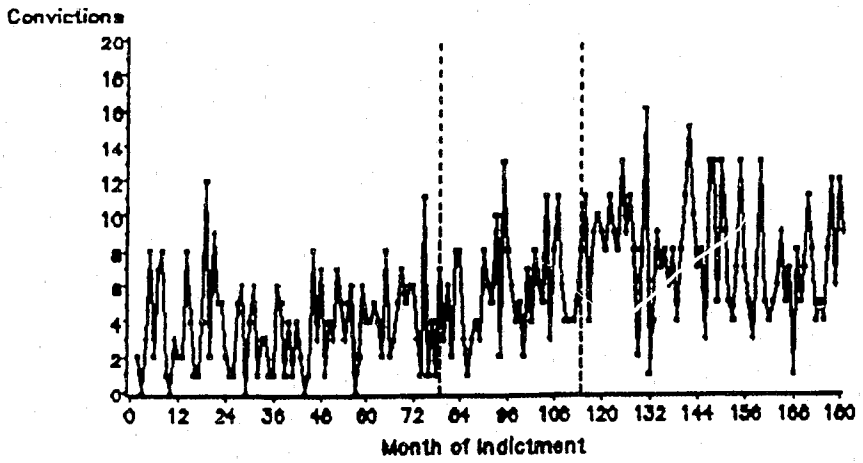
Broken lines indicate dates reforms implemented
Rape shield law – month 79; corroboration change – month 115

FIGURE 5c
Percent Indicted Monthly for Rape
Atlanta, Georgia
1970–1984



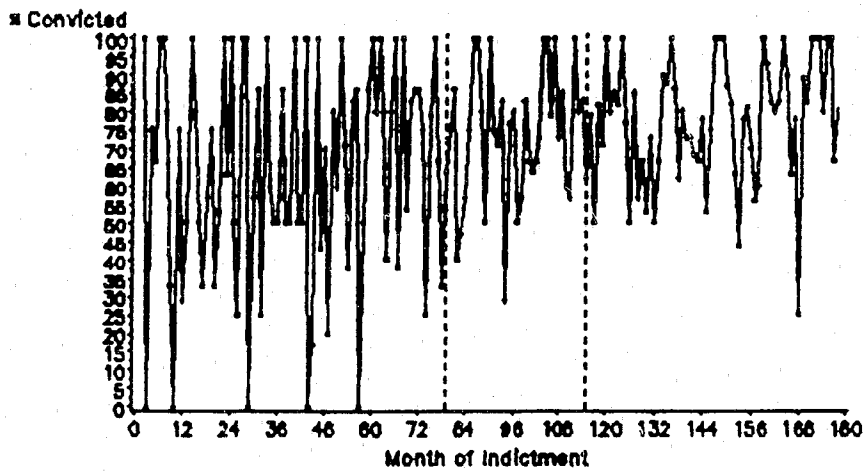
Broken lines indicate dates reforms implemented
Rape shield law – month 79; corroboration change – month 115

FIGURE 5d
Monthly Convictions for Rape
Atlanta, Georgia
1970–1984



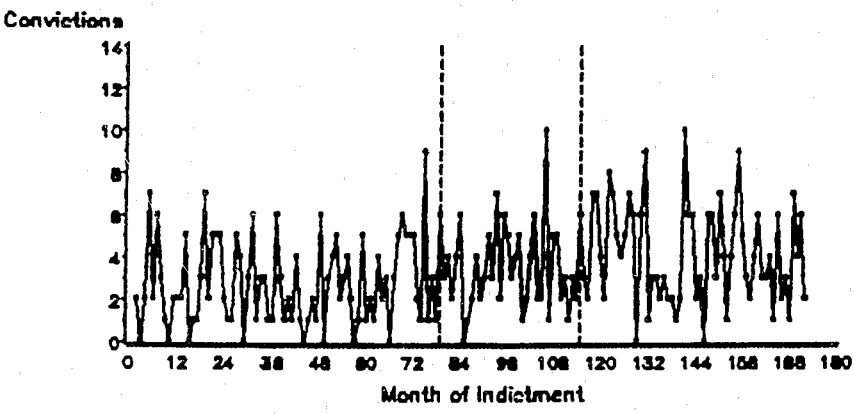
Broken lines indicate dates reforms implemented
Rape shield law – month 79; corroboration change – month 115

FIGURE 5e
Percent Convicted Monthly for Rape
Atlanta, Georgia
1970–1984



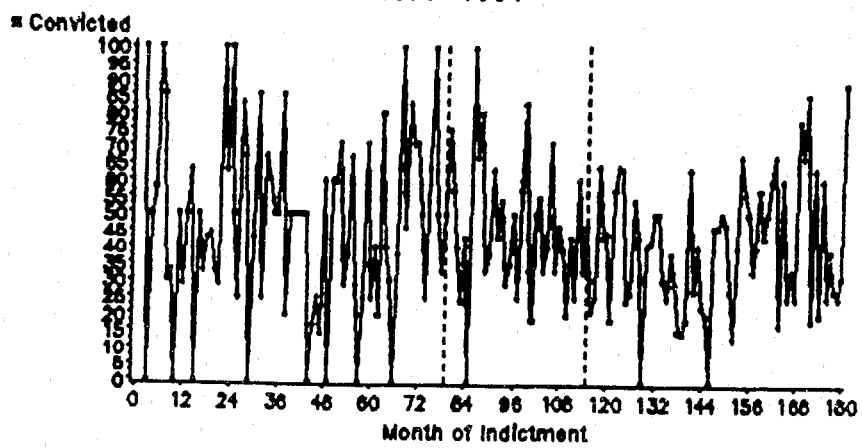
Broken lines indicate dates reforms implemented
Rape shield law – month 79; corroboration change – month 115

FIGURE 5f
Monthly Data
Defendants Charged with and Convicted of Rape
Atlanta, Georgia
1970–1984



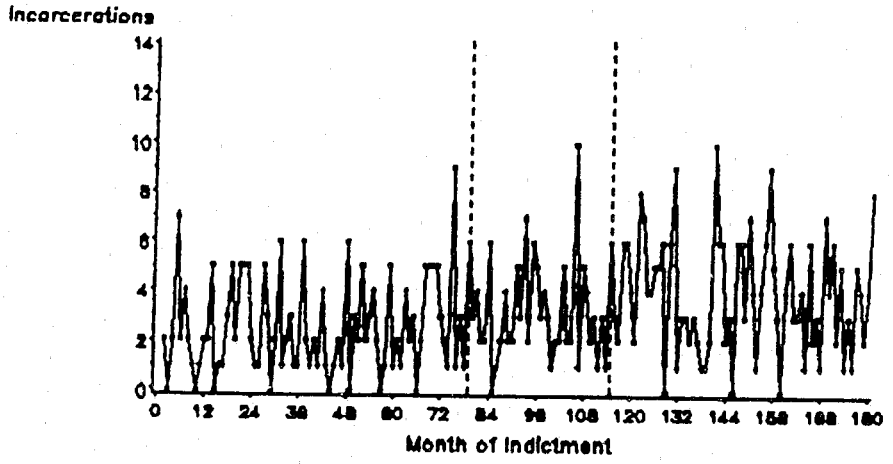
Broken lines indicate dates reforms implemented
Rape shield law – month 79; corroboration change – month 115

FIGURE 5g
Monthly Data
Percent Charged with and Convicted of Rape
Atlanta, Georgia
1970–1984



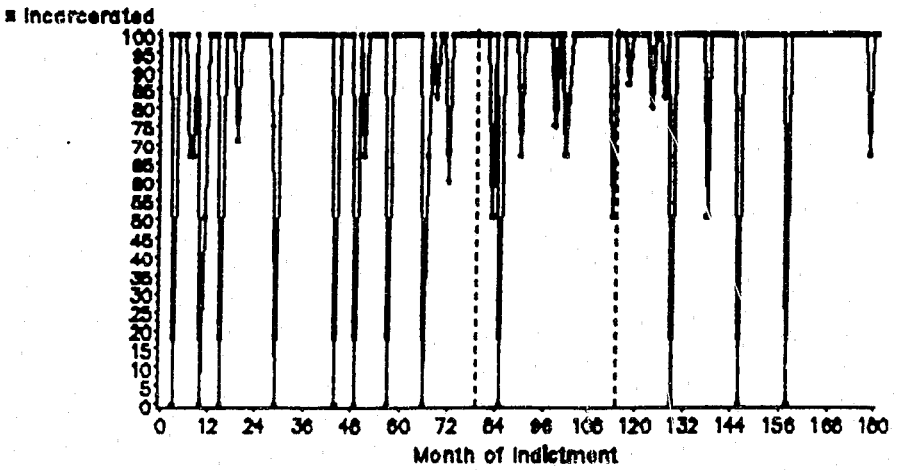
Broken lines indicate dates reforms implemented
Rape shield law – month 79; corroboration change – month 115

FIGURE 5h
Monthly Incarcerations for Rape
Atlanta, Georgia
1970–1984



Broken lines indicate dates reforms implemented
Rape shield law – month 79; corroboration change – month 115

FIGURE 5i
Percent Incarcerated Monthly for Rape
Atlanta, Georgia
1970–1984



Broken lines indicate dates reforms implemented
Rape shield law – month 79; corroboration change – month 115

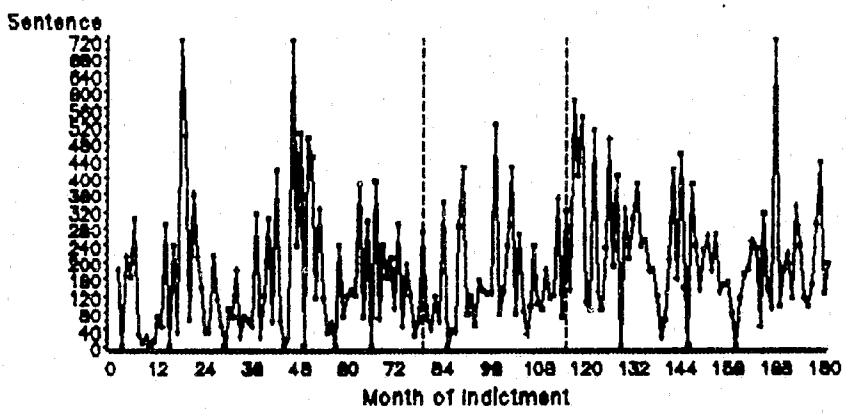
FIGURE 5j

Monthly Data

Mean Prison Sentence--Defendants Incarcerated for Rape

Atlanta, Georgia

1970–1984



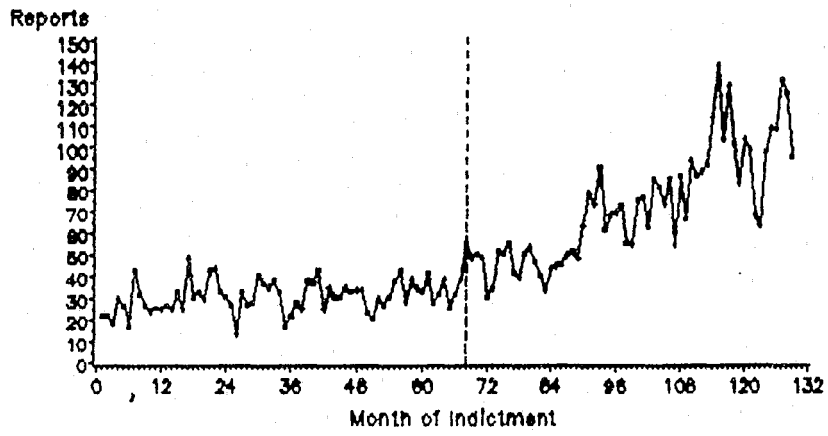
Mean prison sentence = maximum sentence in months

Broken lines indicate dates reforms implemented

Rape shield law = month 79; corroboration change = month 115

FIGURE 6a

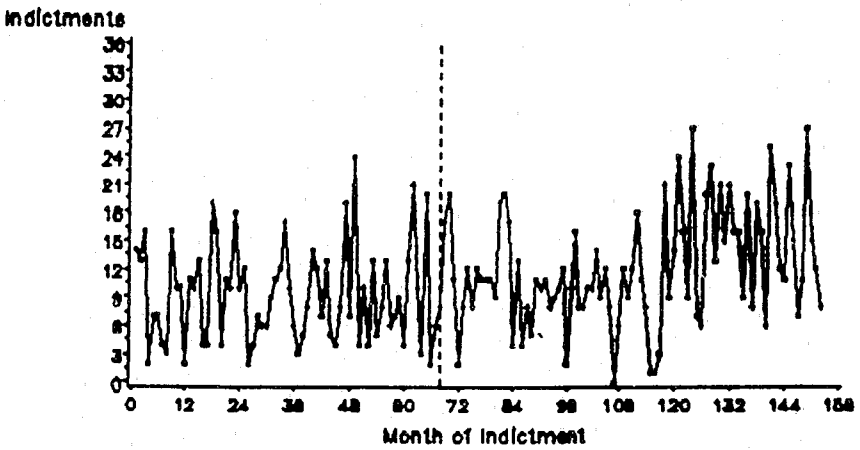
Monthly Reports of Rape
Houston, Texas
1970–1980*



Broken line indicates date shield law implemented
*Through 10–31–80

FIGURE 6b

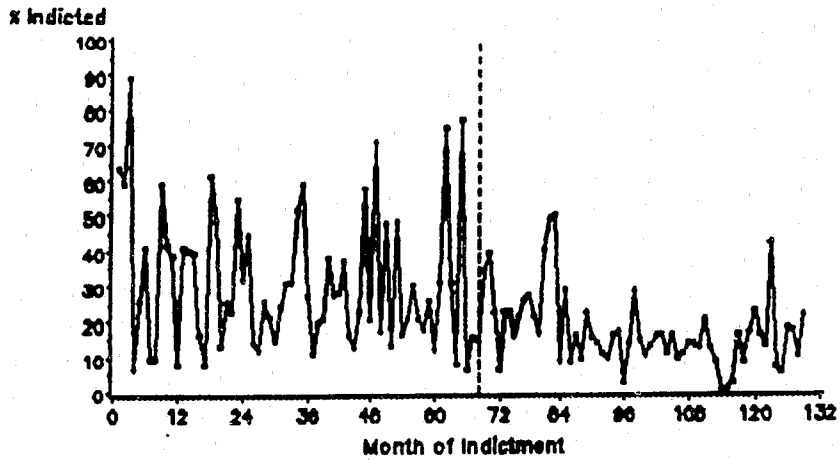
Monthly Indictments for Rape
Houston, Texas
1970–1982*



Broken line indicates date shield law implemented
*Through 8–31–82

FIGURE 6c

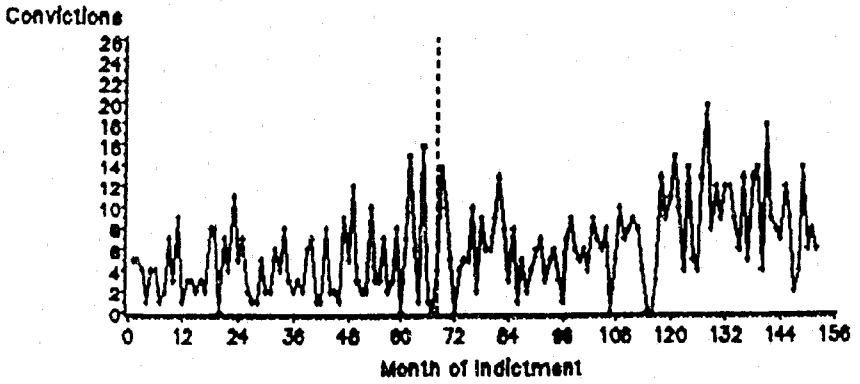
Percent Indicted Monthly for Rape
Houston, Texas
1970–1980*



Broken line indicates date shield law implemented
*Through 10–31–80

FIGURE 6d

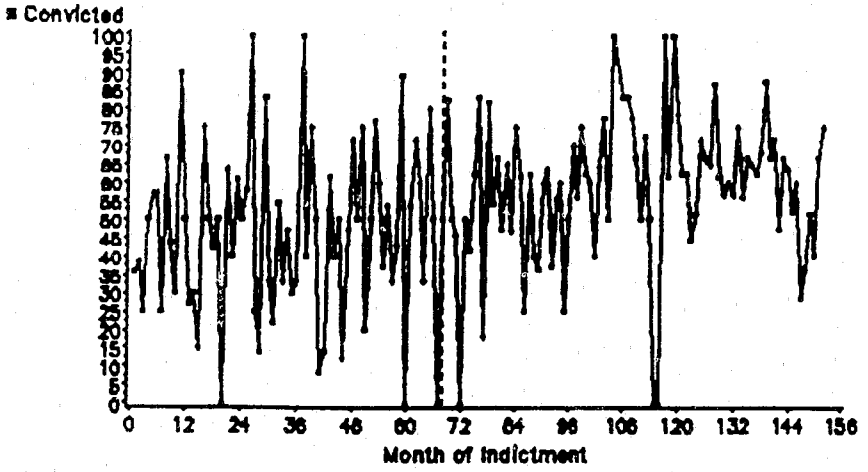
Monthly Convictions for Rape
Houston, Texas
1970–1982*



Broken line indicates date shield law implemented
*Through 8–31–82

FIGURE 6e

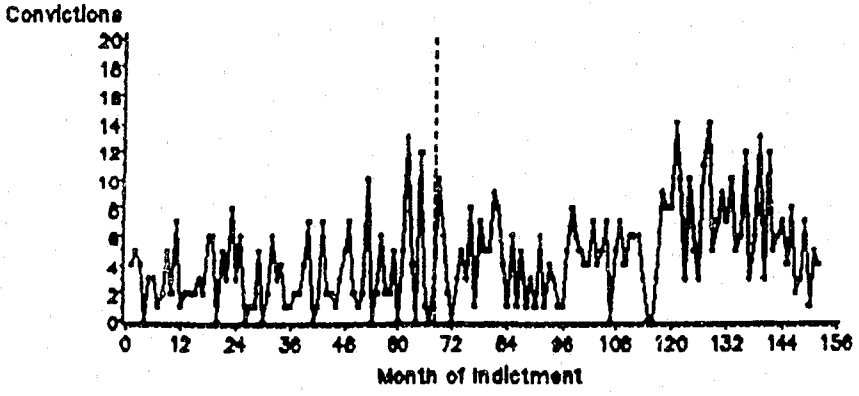
Percent Convicted Monthly for Rape
Houston, Texas
1970–1982*



Broken line indicates date shield law implemented
*Through 8–31–82

FIGURE 6f

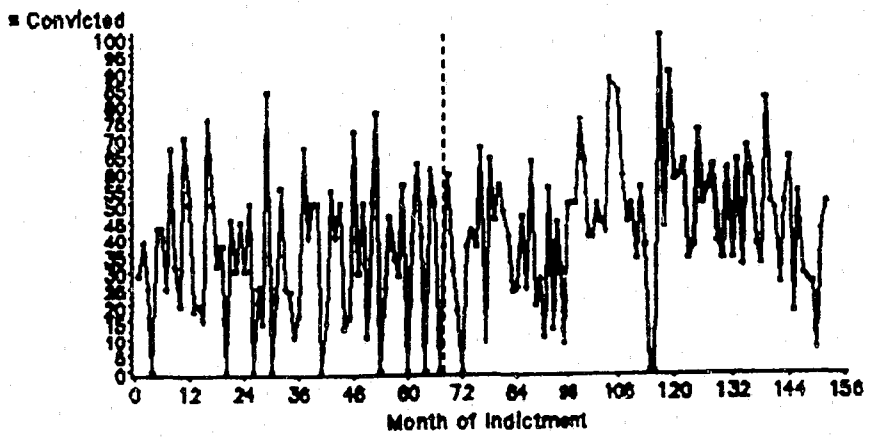
Monthly Data
Defendants Charged with and Convicted of Rape
Houston, Texas
1970–1982*



Broken line indicates date shield law implemented
*Through 8–31–82

FIGURE 6g

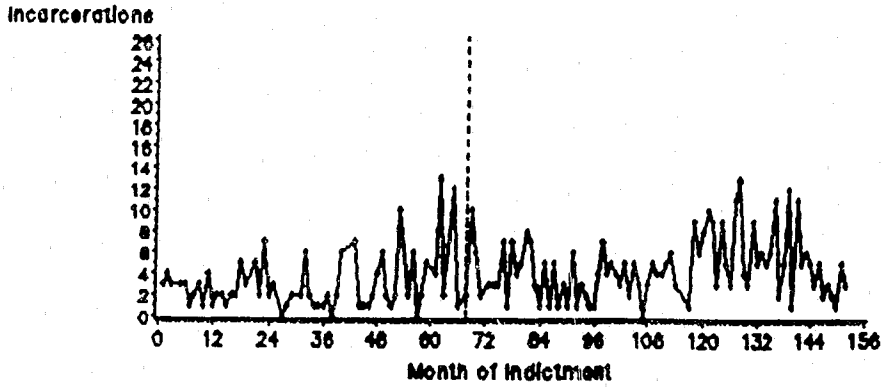
Monthly Data
Percent Charged with and Convicted of Rape
Houston, Texas
1970–1982*



Broken line indicates date shield law implemented
*Through 8–31–82

FIGURE 6h

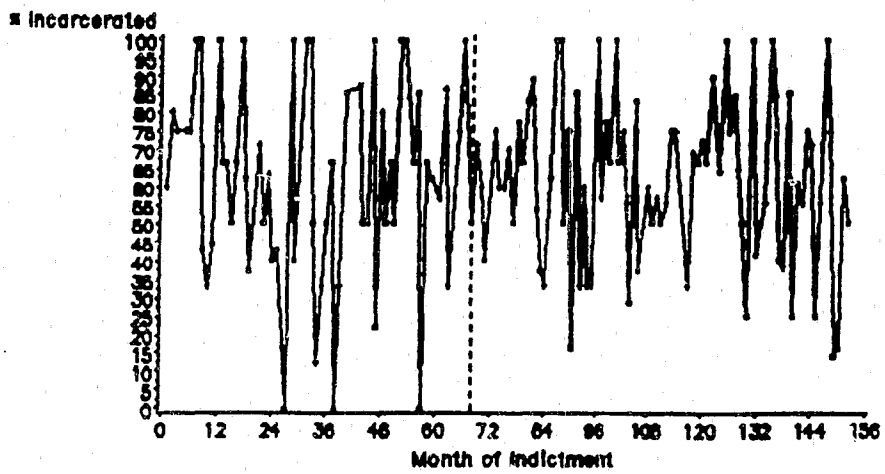
Monthly Incarcerations for Rape
Houston, Texas
1970–1982*



Broken line indicates date shield law implemented
*Through 8–31–82

FIGURE 6i

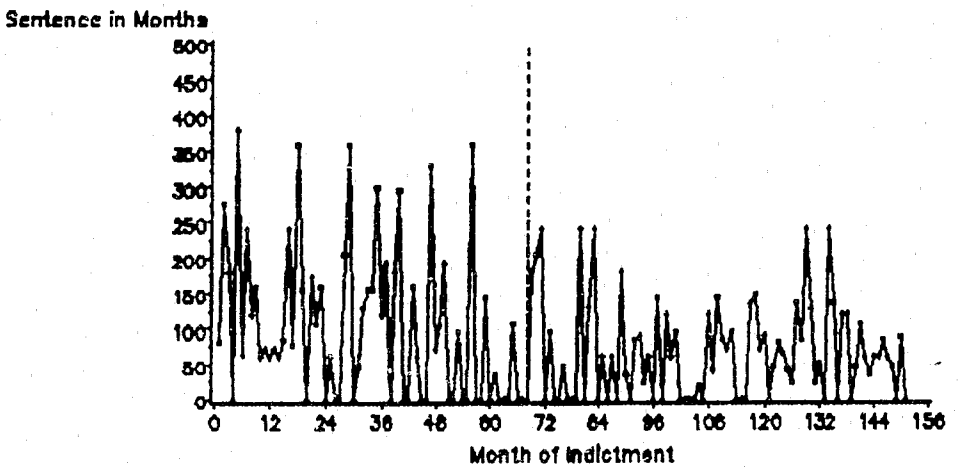
Percent Incarcerated Monthly for Rape
Houston, Texas
1970–1982*



Broken line indicates date shield law implemented
*Through 8–31–82

FIGURE 6j

Average Sentence for Rape by Month
Houston, Texas
1970–1982*



Broken line indicates date shield law implemented
*Through 8–31–82

CHAPTER 4

CRIMINAL JUSTICE OFFICIALS' ATTITUDES TOWARD EVIDENCE IN SEXUAL ASSAULT CASES

The overall goal of the rape reform movement was to treat rape like other crimes by shifting the legal inquiry from the behavior or reputation of the victim to the unlawful acts of the offender. Reformers hoped that the new laws would reduce both the skepticism of criminal justice officials toward the claims of rape victims and their reliance on extralegal considerations in decision making. They anticipated that the reforms ultimately would lead to an increase in the number of reports of rape, and would make arrest, prosecution and conviction for rape more likely.

In the previous chapter we examined the impact of the legal changes on the outcomes of rape cases. In this chapter we examine the effect of the reforms on the attitudes of criminal justice officials. Our purpose is to investigate the degree to which criminal justice officials use (or think jurors use) legally irrelevant assessments of the victim's character and behavior in making decisions in rape cases. Our purpose also is to examine these officials' attitudes toward restrictions on the use of evidence of the victim's past sexual conduct.

Our analysis is directed both toward broadening our knowledge of the impact of rape law reform and toward responding to critics of the rape shield laws who contend that the laws unconstitutionally infringe on the rights of criminal defendants. Of all the reforms enacted, the rape shield laws clearly have engendered the most controversy. Civil libertarians and legal scholars have harshly criticized the shield laws, especially the more restrictive ones, on the grounds that they

prevent the introduction of legally relevant evidence and thus infringe on the defendant's right to confront witnesses against him and to call witnesses in his own behalf (Berger, 1977; Haxton, 1985; Herman, 1976-77; Loftus, 1982; Rudstein, 1976; Tanford and Bocchino, 1980; Williams, S., 1984). The laws have produced a lively discussion in the legal literature concerning the conflict between the defendant's rights, the rights of the victim to privacy or to the equal protection of the laws, and the state's interest in securing reports of and arrests and convictions for rape.

Most legal scholars have concluded that while the defendant's right to present evidence is not unlimited, it is not likely that the Supreme Court would extend either the right to privacy or the equal protection clause so far that the exclusion of relevant sexual conduct evidence would be constitutionally justified (Berger, 1977; Haxton, 1985). On the other hand, some authors maintain that the state's interests in encouraging victims to report and prosecute might justify the exclusion of evidence, if it could be shown that the shield laws actually furthered this interest. As Haxton points out, however, the lack of empirical evidence on this point means that "there is not a sufficiently compelling governmental interest, nor any constitutional right of the complainant, that justifies the exclusion by rape shield statutes of highly probative evidence of the complainant's past sexual conduct" (Haxton, 1985: 1267-8).

These criticisms certainly are not without merit. The rights of criminal defendants, many of whom face long prison terms if convicted, should not be sacrificed to protect the privacy and emotional well being of the victim. But these criticisms assume that relevant evidence of past sexual conduct is excluded by the rape shield laws,

and particularly by the more restrictive laws. The criticisms assume, in other words, that prosecutors routinely challenge defense attorneys' attempts to introduce probative sexual history evidence and that judges routinely side with prosecutors. By examining judges', prosecutors' and defense attorneys' attitudes toward evidence in sexual assault cases, we hope to address the validity of these assumptions.

METHODOLOGY

These issues are examined using data gathered during interviews with criminal justice officials in the six jurisdictions included in the study. We conducted lengthy interviews with a purposive sample of judges, prosecutors and public defenders in each jurisdiction. Standardized interview schedules were used with the 162 respondents. We tried to interview as many individuals as possible who had worked in the system both before and after the legal changes. We tried to interview the individuals most experienced in handling rape cases and to interview both private and public defense attorneys. We also attempted to obtain a mix of male and female and of younger and older respondents. The characteristics of respondents are summarized in Table 4.1.

In each jurisdiction we also interviewed officials to learn about the organization and operation of the criminal justice system. We spoke with the chief judge or court administrator; a chief or deputy chief prosecutor or the supervisor of the trial division of the prosecutor's office; the chief or deputy chief public defender; the chief of the police department's sex crimes unit or a top supervisor of that unit; the director or assistant director of the local rape crisis center; and, for most jurisdictions, the director of a victim-witness

unit.

The questions used in our interviews are found in Appendix G. Part of the interview schedule was modeled after the form used by Marsh, et al. (1982) in Michigan. We asked respondents a number of open-ended questions concerning their attitudes toward the statutory changes. We also asked respondents to rate the importance of various types of evidence in sexual assault cases and to respond to a series of hypothetical cases in which evidence of the victim's past sexual behavior is at issue.

Open-Ended Questions

We asked criminal justice officials to describe the advantages and disadvantages of the reforms in their jurisdictions, focusing particularly on the rape shield laws, elimination of corroboration and resistance requirements and definitional changes. We asked respondents if they believed the rape shield laws were needed and how often past sexual history of the victim had been introduced prior to the reforms. We asked about the frequency of in camera hearings, whether there were ways to circumvent the requirements of the shield laws and whether the laws had affected plea bargaining. We also asked if the reforms had affected the outcomes of cases and whether respondents had personally won or lost cases because of the changes. In addition, we asked prosecutors and defense attorneys to describe the relationship between their offices, and we asked all respondents about perceived pressure from women's groups and the press.

Rating of Evidence

We asked prosecutors in each jurisdiction to rate the importance of various types of evidence to the decision to file charges in sexual assault cases. In addition, we asked all respondents to assess the

importance of the evidence to persuading juries to convict. Each respondent was given a list of factors and asked to check each as being either irrelevant, helpful, important or essential to the case.

Hypothetical Cases

We presented each respondent with a set of six hypothetical cases in which evidence of the victim's past sexual history is at issue. (The text of the hypothetical cases is found in Table 4.2.) Each hypothetical describes a scenario in which a woman alleges she was raped by a man. The first five involve some degree of previous contact with the man, who is claiming the sex was consensual; the sixth involves a stranger, who claims he was incorrectly identified. One hypothetical case describes a situation in which there had been previous sexual relations between the complainant and the defendant. This case seems to be at one end of a continuum in terms of the presumed relevance of the evidence; all of the rape shield laws make some provision for allowing this kind of evidence. However, the hypothetical case describes a single sexual experience separated by a considerable period of time from the present contact; thus, when judges are given discretion to determine relevance, some might determine that this evidence still should not be admitted.

At the other end of the continuum is a hypothetical case describing a situation which many people think the rape shield laws specifically target--the case of a woman meeting a man in a singles bar, accepting a ride home and then being assaulted. The defendant wants to bring out evidence that she previously had sexual relations with men she met in similar situations. Most rape shield laws either explicitly prohibit the use of this type of evidence or allow it to be admitted only if its probative value outweighs its prejudicial effect.

In between these two cases are four hypothetical cases that seem to raise more difficult questions about the relevance of prior sexual history. Two of these cases involve types of evidence which probably fall closer to the relevant than to the irrelevant end of the continuum. In one case the defendant claims he was incorrectly identified and wants to introduce evidence of a prior sexual encounter between the victim and a third person to show the source of semen. Many states permit the defendant to introduce this type of evidence to rebut the state's claim that the victim's testimony is corroborated by the presence of semen, pregnancy or veneral disease. A second case involves a defendant who wants to introduce sexual history evidence to prove that the complainant has a motive to lie about the alleged assault. In many states the shield law, case law or rules of evidence would permit the introduction of this type of evidence to impeach the victim's credibility.

The final two cases involve evidence of more questionable relevance. In both of them a defendant wants to introduce evidence of the complainant's prior sexual history in order to show a pattern of engaging in sexual relations in what Estrich (1987) has referred to as "inappropriate" situations. In one, the defendants in an alleged gang rape argue consent and want to show previous instances of the complainant engaging in group sex. In the other, a maintenance man in an exclusive apartment building wants to introduce evidence that the tenant who charged rape has had consensual sexual relations with other building employees. Herman (1976-77) argues that in cases like these there would be an unfair bias against the defendants because of jurors' assumptions that no woman would voluntarily engage in sex in these situations. Thus, this evidence might be relevant. As Berger

(177: 60) notes, ". . . where proof of prior sexual conduct pertains narrowly to acts evincing a pattern of voluntary encounters characterized by distinctive facts similar to the current charges, one cannot cavalierly assume that a woman's behavior on one occasion has no relationship at all to her conduct and state of mind on another."

We read respondents each hypothetical case description and then asked them to answer three questions. They were asked to estimate the likelihood that defense attorneys in their jurisdiction would attempt to have the evidence introduced. They also were asked whether they personally thought the evidence should be introduced (regardless of the law in their jurisdiction) and to estimate the likelihood that the evidence would be admitted under their current laws. They were asked to make their estimates with a five-point scale ranging from definitely would try (be admitted) to probably would try (be admitted), 50/50 chance, probably would not try (be admitted), and definitely would not try (be admitted).

As we noted in Chapter 2, the six cities selected for this study represent jurisdictions which enacted different types of rape law reforms. We categorized the reforms as strong, moderate or weak, depending on the types and strength of the changes adopted. The reforms enacted in the different jurisdictions, then, clearly have the potential to produce different effects on the disposition of rape cases and on the attitudes of criminal justice personnel. In fact, we expect to find attitudinal differences. We expect officials in the jurisdictions with strong laws to be more supportive of the laws and less willing to circumvent either the substantive or the procedural restrictions contained in them.

FINDINGS

Rating of Evidence

We asked prosecutors in each jurisdiction to rate the importance of various types of evidence to the decision to file charges in sexual assault cases. In addition, we asked all respondents to assess the importance of the evidence to persuading juries to convict. The types of evidence and the respondents' ratings are presented in Table 4.3, which categorizes the evidence as either legal or extralegal. We define legal evidence as evidence necessary or helpful to proving elements of the crime, extralegal evidence as evidence legally irrelevant to proving elements of the crime. The evidence is arrayed from most to least important, based on the respondents' beliefs about the degree to which the evidence influences the jury's decision to convict.

As expected, the types of evidence deemed most important are legal factors closely related to the elements of the crime which the prosecutor must prove. This applies both to the decision to file charges and the decision to convict. The victim's ability to identify the suspect, the fact that the victim reported the crime promptly, and the existence of physical evidence or of evidence the victim was physically injured all affect the likelihood that the prosecutor will be able to prove the identity of the suspect, lack of consent, and penetration. The various types of extralegal evidence, all of which concern legally irrelevant characteristics of the victim or of the relationship between the victim and the suspect, are seen as less important.

The data presented in Table 4.3 also reveal that each type of evidence was seen as more important to the jury's decision to convict

than to the prosecutor's decision to file charges. This is not surprising. At this early stage in the criminal justice process, prosecutors may be reluctant to reject the charge against the defendant simply, for example, on the basis of evidence that the victim used drugs or alcohol at the time of the incident or had a prior sexual relationship with the defendant. They may reason that evidentiary problems such as these will be taken into account at the preliminary hearing or trial. Respondents apparently believe that jurors, as the final arbiters in cases that go to trial, will be more influenced by the presence or absence of certain types of evidence.

It is interesting that the largest differences between the rated importance of the evidence to prosecutors and to jurors are found for evidence affected either directly or indirectly by rape law reforms. These criminal justice officials believe that jurors are much more likely than prosecutors to be swayed by evidence that the victim resisted (a difference of .59), that the suspect and victim were strangers (.50), and that the victim does not have a reputation for sexual promiscuity (.43). All of these types of evidence should be less probative, and therefore less persuasive, in the post-reform era.

Coupled with statements made during the interviews, these differences suggest that prosecutors believe reform legislation has affected <u>their</u> attitudes more than the attitudes of the general population from which jurors are chosen. As one prosecutor in Detroit noted, "Jurors still expect some resistance or some explanation as to why there was none, especially if it was a date gone sour." More to the point, a judge in Chicago commented that "Jurors are still looking for corroborating evidence--physical injury, a weapon, an hysterical phone call to the police. Old habits and old attitudes die hard. We

can change the law but we can't necessarily change attitudes."

Further evidence of the impact of rape law reform can be found by comparing the ratings in the six jurisdictions. Generally, the ratings either are fairly consistent from jurisdiction to jurisdiction or vary randomly among the jurisdictions. For the types of evidence directly affected by rape law reform, however, the ratings manifest clear patterns. For example, evidence that the victim resisted is seen as less persuasive to jurors in Detroit, Chicago and Philadelphia than to jurors in Houston, Atlanta and Washington, D.C. These differences clearly reflect differences in rape laws. Michigan, Illinois and Pennsylvania have statutorily eliminated the resistance requirement and judges there may instruct jurors that lack of resistance does not constitute consent; in Texas, Georgia and the District of Columbia, on the other hand, resistance still is implictly or explictly required.

Similar patterns are found for evidence of a prior sexual relationship between the victim and suspect and evidence of the victim's reputation for sexual promiscuity. Once again, the differences found among the jurisdictions reflect differences in rape laws. Michigan, Illinois and Pennslyvania all have strong rape shield laws; Texas, Georgia and Washington, D.C. have weak ones. In particular, shield laws in the former jurisdictions generally prohibit the introduction of evidence of the victim's reputation, while those in the latter jurisdictions permit it upon a showing of relevance. Given this, it is not surprising that evidence concerning the victim's sexual reputation is seen as more likely to influence juries in Houston, Atlanta and D.C. than in Detroit, Chicago and Philadelphia; if the evidence is seldom or never ruled admissible, its effect on jurors obviously will be negigible.

Hypothetical Cases

Additional evidence of the impact of the rape shield laws is found in Table 4.4, which summarizes the responses of judges, prosecutors and defense attorneys to the hypothetical cases. Respondents were asked to indicate whether they personally believed the sexual history evidence should be admitted and to assess the likelihood that the evidence would be admitted in their jurisdiction. Examination of the mean responses for all respondents reveals that criminal justice officials clearly do not attach the same probative weight to each of the six types of evidence. Most believe that accusations of prior sex with men the victim met at singles bar should not be admitted, but large majorities think that evidence of prior sexual behavior related to a motive to lie, evidence of sexual behavior to show the source of semen and prior sex with the defendant should be admitted. Respondents were more evenly split over the question of whether evidence of prior sexual experiences intended to show patterns of behavior (experiences with men similar to the alleged suspect or with groups of men) would be allowed.

To explain why they felt the latter two types of evidence should be admissible, even in the face of shield laws prohibiting the evidence, a number of respondents cited either the "unusual" nature of the behavior or the fact that the evidence revealed a distinctive pattern of behavior. One prosecutor in Chicago, for example, justified his belief that a gang rape victim's prior sexual experiences with groups of men should be introduced by noting the "bizarreness" of the behavior. On the same issue, a Philadelphia public defender stated that "This is the kind of thing the appellate courts have created an exception for--a common behavioral pattern. If this were true it obviously would be relevant and the defendant could not get a fair trial without it."

Assessments of the likelihood that the various types of evidence would be admitted also varied. Respondents were convinced that allegations of prior sex with men the victim met at singles bars would not be admitted, but that evidence of prior sex with the defendant would be. They were doubtful that accusations of prior sex with men similar to the defendant or with groups of men would be allowed in, but felt that testimony regarding threats or the results of semen tests probably would be permitted. Many respondents, particularly judges and prosecutors, labelled evidence of prior casual sex with men the victim met in bars "the classic example of the type of evidence the shield laws were designed to keep out." A number of defense attorneys, on the other hand, questioned the shield laws' impenetrability with respect to evidence of prior sex with men similar to the defendant or with groups of men. A public defender in Philadelphia stated that defense attorneys' chances of winning rape cases had diminished "as a result of using the rape shield law as a technical weapon to keep out probative testimony rather than as an instrument for protecting the victim."

If we compare the attitudes of criminal justice officials in the six jurisdictions, a number of interesting findings emerge. (We have arranged the jurisdictions to illustrate differences in officials' responses to the hypothetical cases. Officials in Detroit, Chicago and Philadelphia were more likely than officials in D.C., Atlanta or Houston to believe that the evidence should or would be admitted.) First, there is relatively little disagreement among the respondents that evidence of the victim's prior sexual encounters with men she met at singles bars should not and would not be admitted. Even in Atlanta and Houston, jurisdictions with weak shield laws, respondents believe that this type of testimony probably would not be permitted. And in

Washington, D.C., which has not enacted a shield law but which relies on case law to prohibit the introduction of this type of evidence, respondents are convinced that the evidence definitely would not be admitted. If this is indeed the classic example of the type of evidence shield laws were designed to prohibit, and if we assume this type of evidence was permitted in the pre-reform era, then the reforms clearly have been effective.

A second finding is that respondents in the various jurisdictions generally agreed that evidence of a prior sexual relationship with the defendant, as well as evidence of threats regarding prior sexual conduct, should and would be admitted. A number of officials noted that evidence of a past sexual relationship with the defendant was relevant to the issue of consent. Others said that evidence of prior threats was relevant to the question of whether the victim was biased against the defendant or had a motive to lie about the incident. Criminal justice officials, in other words, believe these types of evidence <u>are</u> probative and, consequently, would be admitted.

The data presented in Table 4.4 also reveal that reactions to the other three hypothetical situations were more variable. This is particularly true of responses to case #2 (prior sex with men similar to the defendant) and case #3 (prior sex with groups of men), which most respondents agreed were the "tough calls." These differences appear to be related to differences in the shield laws. Michigan and Illinois have the strongest shield laws, with absolute prohibitions against the introduction of evidence of the victim's prior sexual conduct with persons other than the defendant or evidence concerning the victim's sexual reputation. Respondents in these two jurisdictions reported that the victim's prior sexual encounters with men similar to

the defendant or with groups of men probably would not be admitted.

The other four jurisdictions have weaker shield laws. The Texas, Georgia and District of Columbia laws permit the introduction of testimony concerning the victim's past sexual behavior or sexual reputation if the evidence is found to be relevant; the law in Pennsylvania prohibits admitting such evidence, but appellate courts recently have carved out a number of exceptions to the prohibitions. Reflecting their laws, officials in these four cities, and particularly in Houston, Atlanta and Washington, D.C., are more likely to believe that the evidence cited in case #2 or #3 would be admitted.

Since slightly different proportions of judges, prosecutors and defense attorneys were interviewed in each jurisdiction and since attitudes toward the relevance of the victim's past sexual behavior obviously might vary among the three groups, we speculated that the results presented in Table 4.4 might reflect this disparity. Accordingly, we re-analyzed the data, controlling for jurisdiction, for the respondent's occupational group and for a number of other independent variables. We reasoned that respondents' attitudes might be affected by their gender, by the number of years they had been judges, prosecutors or defense attorneys and (for the analysis of their beliefs about whether the evidence would be admitted) by their beliefs about whether the evidence should be admitted. We then ran regressions on each of the dependent variables controlling for these independent variables. Using a technique analagous to the procedure used to compute adjusted means in multiple classification analysis or in analysis of covariance (see Andrews et al., 1973; Miller and Erickson, 1974), we computed the adjusted means for each of the various types of evidence. (See footnote a, Table 4.5 for a discussion of the

calculation of these means).

While controlling for the independent variables caused the mean responses to shift slightly in some jurisdictions, the data presented in Table 4.5 is not significantly different from the data presented in Table 4.4. The conclusions drawn earlier stand: first, there is little disagreement among respondents in the six jurisdictions concerning the irrelevance of evidence that the victim had prior sexual encounters with men she met at bars or the relevance of evidence that the victim had a prior sexual relationship with the defendant; and second, the responses to the tough cases reflect the strength or weakness of the rape shield law in each jurisdiction.

Despite the apparent correlation between the strength of the shield laws and officials' assessments of the likelihood that various types of evidence would be admitted, it is clear that the restrictions found in the shield laws can be circumvented. For example, given the absolute prohibition against introducing evidence of the victim's past sexual behavior with persons other than the defendant found in the Michigan and Illinois laws, it is surprising that <u>any</u> respondents in these jurisdictions believed the evidence at issue in case #2 or case #3 would be admitted. That some officials did feel the evidence might be admitted suggests that the impenetrable shield fashioned by legislators in these jurisdictions can be lowered by judges who believe the evidence is relevant.

It also is clear that procedural guidelines contained in the shield laws have been circumvented. All of the laws allow prior sexual conduct between the victim and the defendant to be introduced following a judicial finding of relevance in an <u>in camera</u> hearing. Interviews with judges, prosecutors and defense attorneys, however, revealed that

in camera hearings were rarely if ever held in these cases. This may be due at least in part to the fact that criminal justice officials themselves believe the evidence is relevant to the issue of consent. As shown in Table 4.5, large majorities of the respondents in each city believe that evidence of a prior sexual relationship between the victim and the defendant should be admitted.

In interview after interview, prosecutors in each jurisdiction admitted that they concede the relevance of this type of evidence. As a prosecutor in Detroit explained, "Most of the time I won't contest it if it's with the defendant, even though technically the judge is supposed to rule on the relevance of the information. I don't oppose it because I think it's relevant that they've had a prior sexual relationship." A prosecutor in Atlanta noted that there was no point in asking for a hearing since the judge will always let it in, adding "even I agree that this (conduct between the victim and defendant) is relevant and see no point in trying to keep it out." And a district attorney in Philadelphia somewhat cynically explained that if this type of evidence is offered "judges generally will admit it since they're afraid of being overruled on appeal."

These comments were echoed by both judges and defense attorneys. Judges in Chicago, Philadelphia and Houston readily admitted that evidence of a prior sexual relationship between the victim and the defendant is admitted without a hearing if the defense is consent, and defense attorneys in each jurisdiction cited instances where they were able to "get the evidence in" without a hearing on its relevance. It thus appears that the members of the courtroom workgroups in each jurisdiction have developed an informal policy to circumvent the formal requirements of the law.

DISCUSSION

Our examination of criminal justice officials' attitudes toward evidence in sexual assault cases yielded a number of findings that merit elaboration. First, the rape reform movement seems to have played a role in the socialization of criminal justice officials. Indirect evidence for this is seen in respondents' beliefs that extralegal factors, and particularly those explicitly affected by rape reform legislation, are more important to the jury's decision to convict than to the prosecutor's decision to charge. Direct evidence for this is found is respondents' personal beliefs about the relevance of testimony concerning the victim's past sexual conduct. Although some officials were unable or unwilling to untangle their own beliefs about whether the evidence should be admitted from beliefs about whether the evidence would be admitted under the law, most, when pressed, were able to do so. The differences in responses among the jurisdictions range from subtle (prior sex with the defendant) to dramatic (prior sex with groups of men).

These differences are particularly apparent between Detroit, the jurisdiction with the most restrictive law, and the three jurisdictions with the most permissive laws. For example, only 27 percent of the officials in Detroit believed that prior sex with groups of men should be admitted, compared to 77 percent of the respondents in Washington, D.C. Laws restricting the use of sexual history evidence, then, may have shaped or molded the attitudes of criminal justice officials toward victims of sexual assaults.

The data also indicate that the rape shield laws have the potential to influence the outcome of sexual assault cases. Although respondents

in the six cities agreed that three types of sexual history evidence generally would be admitted while one type usually would not be, they were not in complete agreement even in these cases. Evidence of prior sexual encounters with men the victim met in bars, for example, was given a greater chance of being admitted in Houston than in Detroit or Chicago. And in the tough cases--cases involving a pattern of sexual behavior with men similar to the defendant or unusual sexual behavior--the differences among the jurisdictions were much more pronounced. If the likelihood that evidence such as this will be admitted varies, and if it is true that the evidence, if admitted, would incline a judge or jury toward acquittal, then prohibiting or admitting the evidence obviously could affect the disposition of sexual assault cases.

This possibility goes to the heart of criticisms of the rape shield laws. Critics worry that highly probative evidence will be excluded in the interest of protecting the victim. Our data indicate, however, that the most probative types of evidence probably would be admitted in each jurisdiction. Evidence of threats against the defendant is relevant to the question of whether the victim has a motive to lie or is biased against the defendant, semen test results help establish the identity of the rapist, and prior sexual encounters between the victim and the defendant may be relevant to the issue of consent. In each city the probability of these types of evidence being admitted is high. This applies even in Detroit and Chicago. If these six jurisdictions are typical, "highly probative" evidence of the victim's past sexual history probably will not be excluded under the rape shield laws.

On the other hand, it is possible that potentially relevant evidence will be excluded under the shield statutes. Respondents in

each jurisdiction were troubled by the hypothetical cases involving sexual history evidence of more questionable relevance. In each of the cities except Detroit, for instance, either a large minority or a majority of the officials believed that testimony concerning the victim's prior sexual behavior with groups of men should be allowed, but admitted that the law probably would exclude it. An oft-heard comment was that if the allegations were true they should be heard by the judge or jury, but judges probably would not allow it. As one public defender said, "This prevents the defendant from having his day in court."

This allegation is tempered, however, by our finding that the restrictions contained in the rape shield laws can and will be ignored. This is possible at least in part because of the vast amount of discretion accorded officials in the criminal justice system. Prosecutors and judges troubled by the substantive or procedural restrictions found in the shield laws can simply disregard them. Prosecutors can concede the relevance of sexual history evidence and not challenge defense attorneys who either attempt to introduce admissible evidence without requesting an <u>in camera</u> hearing or attempt to use inadmissible evidence during the trial. Likewise, judges can use their discretion to overlook the <u>in camera</u> hearing requirement or to overrule prosecutor's objections to the introduction of the evidence. If these things occur with any regularity, and the data collected for this project indicate that they happen more than one would expect, then the shield laws may be considerably weaker in practice than they appear on paper. While this may appease critics of the statutes, it also may alarm proponets of the reform.

TABLE 4.1
Characteristics of Interview Respondents

	N	%
Jurisdiction		
Detroit	25	15.2%
Chicago	32	19.5
Philadelphia	26	15.9
Houston	29	17.7
Atlanta	26	15.9
Type of Respondent		
Judge	63	38.4%
Prosecutor	55	33.5
Defense Attorney	46	28.0
Gender		
Female	51	32.5%
Male	106	67.5
Race		
White	126	81.3%
Black	25	16.1
Hispanic	4	2.6
Age		
30-39	38	31.4%
40-49	53	43.8
50 and over	30	24.8
Years in Office		
1-5	38	23.4%
6-10	60	37.0
11-15	37	22.8
16-20	19	11.7
21 and over	8	4.9

TABLE 4.2
Text of the Hypothetical Cases

Case #1

The complainant testifies that she met the defendant at a singles bar, danced and drank with him, and accepted his offer to drive her home. She testifies that at the front door he refused to leave, forced his way into her apartment, and raped her. The defendant claims consent and wants to prove that the complainant previously had consented to intercourse with casual acquaintances she had met at singles bars.

Case #2

The complainant, a resident of a posh building, testifies that she was raped by a maintenance man who was working in her apartment. The defendant claims consent and wants to prove that the complainant previously had consented to intercourse with building employees whom she had invited into her apartment.

Case #3

The complainant testifies that she was gang-raped at a party by several men she had not met before. The defendants claim consent and want to prove that both before and after the alleged rape the complainant had consented to intercourse with groups of men.

Case #4

The complainant, a married woman, testifies that she was raped by her brother-in-law. The defendant claims consent and wants to prove that the complainant recently had consented to intercourse with other men; that she had been criticized for her conduct by her sister, who threatened to tell the complainant's husband; and that the complainant had responded by threatening to charge her brother-in-law with rape.

Case #5

The complainant testifies that she was raped by a stranger who entered her room through an open window in the middle of the night. The defendant claims he was incorrectly identified and wants to prove that the complainant, earlier that same night, had intercourse with a man she had just met at a party, and that this other man was the source of semen found during a medical exam.

Case #6

The complainant testifies that she went to a movie with the defendant, whom she had known for several years. She testifies that at her front door he refused to leave, forced his way into her apartment, and raped her. The defendant claims consent and wants to prove that the complainant had consented to intercourse with him once several months earlier.

TABLE 4.3
Assessments of the Importance of Evidence
In Sexual Assault Cases

	Prosecutors--File Charges[a] (N=51)	Influence on Jury's Decision to Convict: All Respondents[b] (N=152)	Detroit (N=25)	Chicago (N=32)	Philadelphia (N=26)	Houston (N=29)	Atlanta (N=26)	D.C. (N=25)
LEGAL EVIDENCE								
Victim can identify suspect	3.38	3.62	3.43	3.36	3.79	3.92	3.60	3.62
Victim reported promptly	2.88	3.23	3.17	3.13	3.33	3.15	3.56	3.04
Physical evidence	2.74	3.03	2.91	2.87	3.12	3.08	3.20	3.00
Documented physical injury	2.52	2.91	2.91	3.00	2.79	2.77	3.04	2.92
No inconsistencies in victim's story	2.61	2.89	2.87	2.86	3.00	2.85	2.88	2.88
Corroborating witnesses	2.44	2.70	2.87	2.73	2.38	2.50	3.00	2.71
Evidence that victim resisted	2.00	2.67	2.52	2.52	2.42	2.75	3.08	2.75
Suspect used dangerous weapon	2.18	2.54	2.65	2.57	2.29	2.50	2.84	2.38
EXTRALEGAL EVIDENCE								
Victim did not use alcohol or drugs at time of incident	2.12	2.51	2.56	2.50	2.46	2.35	2.60	2.58
Suspect and victim had no previous sexual relationship	2.18	2.46	2.35	2.34	2.38	2.65	2.56	2.46
Victim has no prior felony convictions	1.96	2.29	2.13	2.33	2.29	2.15	2.64	2.17
Suspect and victim were strangers	1.78	2.28	2.35	2.21	2.17	2.46	2.40	2.12
Victim does not have a reputation for sexual promiscuity	1.72	2.15	2.09	1.86	1.78	2.38	2.42	2.38

[a]Prosecutors only were asked to rate the importance of the various types of evidence to the decision to file charges.
[b]Includes 58 prosecuting attorneys, 50 defense attorneys and 44 judges.
[c]Mean responses where 1=irrelevant, 2=helpful, 3=important, and 4=essential.

TABLE 4.4

Attitudes Toward Introducing Evidence
Of the Victim's Past Sexual Behavior

	All Respondents (N=162)	Detroit (N=25)	Chicago (N=32)	Phila-delphia (N=26)	D.C. (N=25)	Atlanta (N=26)	Houston (N=28)
Case #1							
Prior sex with men victim met at singles bars							
Should be admitted[a]	.11	.05	.10	.17	.15	.13	.12
Would be admitted[b]	1.55	1.36	1.31	1.54	1.19	1.84	2.07
Case #2							
Prior sex with men similar to the defendant							
Should be admitted	.34	.05	.32	.35	.46	.48	.33*[c]
Would be admitted	2.26	1.68	1.91	2.23	2.21	2.73	2.82**
Case #3							
Prior sex with groups of men							
Should be admitted	.49	.22	.50	.42	.73	.50	.56**
Would be admitted	2.55	2.00	2.48	2.44	2.71	2.77	2.89
Case #4							
Threat against brother-in-law							
Should be admitted	.74	.67	.66	.75	.88	.78	.67
Would be admitted	3.50	3.25	3.12	3.83	3.80	3.32	3.82
Case #5							
Semen test results							
Should be admitted	.76	.79	.59	.72	.96	.78	.71
Would be admitted	3.77	3.74	3.34	4.05	4.50	3.16	4.00**
Case #6							
Prior sex with defendant							
Should be admitted	.79	.73	.72	.69	.88	.88	.89
Would be admitted	4.16	3.68	4.28	4.23	4.36	4.23	4.14

[a]Respondents were asked whether they personally believed that the evidence should be admitted. Yes=1 and no=0.

[b]Respondents were asked how likely it was that the evidence would be admitted. 1=definitely would not be admitted, 2=probably would not be admitted, 3=50/50 chance, 4=probably would be admitted, and 5=definitely would be admitted.

[c]* $p < .05$; ** $p < .01$ for differences among the six jurisdictions.

TABLE 4.5

Adjusted Means[a]--Attitudes Toward Introducing Evidence Of the Victim's Past Sexual Behavior

	Detroit (N=25)	Chicago (N=32)	Phila-delphia (N=26)	D.C. (N=25)	Atlanta (N=26)	Houston (N=28)
Case #1						
Prior sex with men victim met at singles bars						
Should be admitted[b]	.13	.15	.16	.22	.18	.19
Would be admitted[c]	0.91	0.89	1.14	0.81	1.39	1.60
Case #2						
Prior sex with men similar to defendant						
Should be admitted	.14	.32	.29	.46	.46	.37*[b]
Would be admitted	1.81	1.92	2.44	2.18	2.59	2.64*
Case #3						
Prior sex with groups of men						
Should be admitted	.27	.49	.37	.77	.47	.55**
Would be admitted	2.16	2.48	2.70	2.54	2.81	2.73
Case #4						
Threat against brother-in-law						
Should be admitted	.70	.65	.73	.90	.77	.72
Would be admitted	3.19	3.24	3.94	3.63	3.31	3.72
Case #5						
Semen test results						
Should be admitted	.78	.71	.72	1.00	.78	.73
Would be admitted	3.61	3.67	4.15	4.12	3.10	3.98**
Case #6						
Prior sex with defendant						
Should be admitted	.73	.71	.68	.87	.90	.86
Would be admitted	3.72	4.41	4.44	4.22	4.09	4.02

[a]These adjusted figures were computed in the following way. We created dummy variables for five of the six jurisdictions (Atlanta, Chicago, Detroit, D.C. and Philadelphia), for males,and for two of the three occupational groups (prosecutors and defense attorneys). We then ran regressions on each of the dependent variables controlling for these dummy variables and for the number of years the respondent had been a prosecutor, defense attorney, or judge in the jurisdiction. For the analysis of the respondent's belief that the evidence would be admitted we also controlled for the respondent's belief about whether or not the evidence should be admitted. The adjusted figures were calculated using the following formulas:

$b_1 = -[(b_2)(prop_2) + (b_3 prop_3) + (b_4)(prop_4) + (b_5)(prop_5) + (b_6)(prop_6)]$

$adjmean_1 = M + b_1$

$adjmean_2 = adjmean^1 + b_2$ . . . $adjmean_6 = adjmean^1 + b_6$

Where:

b_1 =the adjusted unstandardized regression weight (b weight) for the omitted category (Houston);

b_2, b_3, b_4, b_5, b_6 = the b weights for the dummy jurisdictional variables in the regression;

$prop_2$, $prop_3$, $prop_4$, $prop_5$, $prop_6$ = the means of the dummy variables (or the proportion of respondents scoring 1 on the dummy variable;

M= the mean of the dependent variables;

$adjmean_1$, $adjmean_2$, $adjmean_3$, $adjmean_4$, $adjmean_5$, $adjmean_6$ = the adjusted means for each jurisdiction.

[b]* $p \leq .05$; ** $p \leq .01$ for differences among the jurisdictions.

CHAPTER 5

DISCUSSION OF RESULTS

Criticisms of the treatment of rape victims and the processing of rape cases prompted states to reform their rape laws. By the mid-1980s most states had modified the rules of evidence relevant to rape and many states had redefined the crime of rape. The overall purpose of these reforms was to treat rape like other crimes by focusing, not on the behavior or reputation of the victim, but on the unlawful acts of the offender. Reformers expected that the legal changes would reduce both the skepticism of criminal justice officials toward the claims of rape victims and their reliance on extralegal considerations in decisionmaking. They anticipated that the reforms ultimately would lead to an increase in the number of reports of rape and would make arrest, prosecution and conviction for rape more likely.

Reformers expected that the rape reform statutes would have both indirect and direct effects on the processing and disposition of rape cases. The statutes would affect rape cases indirectly by altering attitudes toward the crime of rape and toward rape victims. Redefining rape, modifying or eliminating the resistance and corroboration requirements, and placing restrictions on the use of evidence of the victim's prior sexual conduct, in other words, would alter criminal justice officials' and jurors' perceptions of "real rapes" with "genuine victims." Rather than focusing on whether the victim was black or white, married or single, chaste or promiscuous, decision makers would focus on whether the offender used a weapon, injured the victim, or had an accomplice. In short, the changes were

expected to counteract the assumption that when men force you to have sex against your will "it isn't rape so long as they know you and don't beat you nearly to death in the process" (Estrich, 1987: 4).

Reformers also anticipated that the changes would directly affect the processing of rape cases. Replacing the crime of rape with a series of graded offenses with commensurate penalties, for example, was expected to produce an increase in convictions. The availability of appropriate lesser charges would enhance the prosecutor's ability to achieve convictions through plea bargaining and would reduce the likelihood of jury nullification in cases where the charge of rape did not seem to fit the circumstances of the crime. Changing the resistance and corroboration requirements would make it easier to prove that the victim was raped, thus increasing the likelihood of arrest, prosecution and conviction. And restricting the use of evidence of the victim's past sexual conduct would prompt more vicitms to report, would encourage police and prosecutors to proceed with cases with sexually promiscuous victims, and would reduce the likelihood of an acquittal based on the victim's sexual reputation.

SUMMARY OF RESULTS

In evaluating the rape reform statutes, we examined both the indirect and direct effects of the changes. Interviews in the six jurisdictions revealed that criminal justice personnel are aware of and support most of the changes in their states' rape laws. Most of those interviewed said they approve of the evidentiary changes, which they believe have resulted in more appropriate treatment of men accused of rape, as well as more humane treatment of the victims of rape. Respondents agreed that rape victims in the post-reform era

should not and would not be subject to overt harassment by the defense attorney. They also agreed that evidence which the new laws deem irrelevant should not be taken into consideration during the decisionmaking process. Officials in each jurisdiction spoke approvingly of these revised attitudes toward rape cases and rape victims. The standard line, which we heard over and over again, was that "even a prostitute can be raped."

Despite this general acceptance of the changes, however, there were clear inter-jurisdictional variations in attitudes and in compliance with the substantive and procedural restrictions contained in the laws, and these differences are related to the type of law reform enacted. This is especially true of compliance with restrictions on the introduction of evidence of the victim's past sexual conduct. When questioned about a series of hypothetical cases where evidence of the complainant's past sexual history was at issue, officials in Detroit and Chicago, the two cities with the most restrictive shield laws, consistently reported that the more questionable types of evidence should not and would not be admitted. In Atlanta and Houston, the two cities with the weakest shield laws, on the other hand, respondents were less convinced that these types of evidence should or would be excluded.

These findings suggest that the rape reform laws have had indirect effects on the processing of rape cases. They indicate that the reforms have shaped or molded the attitudes of criminal justice officials toward victims of sexual assaults. The findings also suggest, however, that even these indirect effects are associated with the type of law reform enacted. The stronger reforms seem to have played a greater role in the socialization of criminal justice

officials than the weaker reforms.

We also examined the direct effects of the legal changes. We used an interrupted time series design to assess the impact of the changes on reports of rape, and on indictments, convictions, and sentences for rape. We found that the changes produced few significant effects in the four jurisdictions which enacted moderate or weak reforms--Pennsylvania, Texas, Georgia, and Washington, D.C. Our analysis also revealed few changes in the jurisdiction which enacted strong reforms at two different points in time. We found that passage of the 1978 Illinois rape shield law resulted in a statistically significant increase in the average sentence, but had no effect on any of the other dependent variables; similarly, definitional changes implemented in 1984 produced no effects in the predicted direction. On the other hand, the legal changes in the jurisdiction (Michigan) with the strongest and most comprehensive reforms produced a number of significant effects; there were increases in the number of reports, indictments, convictions, and incarcerations, and in the indictment rate and average sentence.

The types of direct effects anticipated by the reformers, then, were found only in Detroit. This, coupled with the fact that criminal justice officials in Detroit expressed more support for the evidentiary changes than officials in any of the other jurisdictions, suggests that the impact of rape reform statutes will be confined primarily to jurisdictions which enact strong and comprehensive changes. The reasons for this are explored below. We first discuss why the weak evidentiary changes enacted in Texas, Georgia and Washington, D.C. failed to produce significant results. We then explain why the strong evidentiary changes enacted in Illinois and

Pennsylvania did not produce the expected results, while the comprehensive changes implemented in Michigan did.

REFORM IN TEXAS, GEORGIA, AND WASHINGTON, D.C.

The lack of impact in Houston, Atlanta and Washington, D.C. can be explained by the weak nature of the reforms enacted in these jurisdictions. Georgia and Washington, D.C. retain traditional carnal knowledge statutes and Texas until 1983 defined rape and sexual abuse in terms of the female's absence of consent and degree of resistance. While all of the jurisdictions have repealed or modified the corroboration requirement, none of them has explicitly repealed the resistance requirement.

All three jurisdictions also have very weak restrictions on the use of sexual history evidence. The Texas law is often cited as an example of the most permissive type of law (Berger, 1977; Galvin, 1986). Texas does not categorically exclude any sexual conduct evidence; rather, such evidence can be admitted only if the judge finds that the evidence is relevant. As a shield, then, the Texas law is fairly permeable.

The statute enacted in Georgia is more restrictive than the one adopted in Texas, but still gives judges considerable discretion to admit sexual conduct evidence. The Georgia law states that evidence of the victim's past sexual conduct is inadmissible unless the court finds that the evidence concerns behavior with the accused or supports an inference that the accused reasonably could have believed the victim consented. Prosecutors in Atlanta suggested that the shield law actually was weaker than case law in effect prior to the law's passage.

While Washington, D.C. has not enacted a shield law, case law does limit the admission of sexual conduct evidence. According to a 1977 case, the victim's prior sexual conduct with third persons is inadmissible, the victim's reputation for chastity should not be admitted except where its probative value outweighs its prejudicial effect, and the victim's prior sexual conduct with the defendant is admissible to rebut the government's evidence that the victim did not consent. The law in Washington, D.C., then, is somewhat more restrictive than the law in Texas or Georgia. As case law, on the other hand, it may not have the same potential for impact as a major legislative reform.

Given the weak nature of the reforms enacted in these three jurisdictions, then, it is not surprising that they produced no direct effects on the processing and disposition of rape cases. All three states enacted some evidentiary changes but retained traditional defintions of rape and assumptions about the importance of resistance by the victim. The shield laws adopted in each state continue to allow judges nearly unfettered discretion in deciding whether or not to admit sexual history evidence. Since the reforms did not substantially alter the "rules" for handling rape cases, they have little potential to directly affect the outcomes of these cases. They can be viewed as " . . . largely symbolic reassurance that needs are being attended to, problems are being solved, help is on the way . . . " (Casper and Brereton, 1984: 124).

REFORM IN ILLINOIS, PENNSYLVANIA, AND MICHIGAN

While it is fairly easy to explain the lack of impact in the three jurisdictions which enacted weak reforms, it is more difficult to explain the results in the three jurisdictions which adopted stronger reforms. We noted earlier that we found the types of direct effects anticipated by the reformers only in Detroit. This result is somewhat puzzling. We felt the restrictive rape shield laws enacted in Illinois, Pennsylvania and Michigan had the potential to produce similar results. Reformers predicted the rape shield laws would have a greater impact on the processing and disposition of sexual assault cases than would the other reforms (Feild and Bienen, 1980). And Marsh and her colleagues (1982) found that criminal justice officials cited restrictions on the introduction of sexual history evidence as the most significant aspect of the reforms adopted in Michigan.

The shield laws in all three states generally prohibit the introduction of evidence of the victim's past sexual conduct. The prohibition includes evidence of specific instances of sexual activity, reputation evidence and opinion evidence. There are only very narrow exceptions to the shield. All three jurisdictions permit introduction of the victim's past sexual conduct with the defendant, but only if the judge determines that the evidence is relevant. The shield laws enacted in these states, then, sent a strong message to defense attorneys, prosecutors and judges. They clearly stated that certain types of sexual history evidence is irrelevant and therefore inadmissible. Unlike the laws enacted in Texas, Georgia and Washington, D.C., they also limited the discretion of judges to admit certain types of evidence.

Contrary to our expectations, these similar laws did not produce similar results. Perhaps this is because the reform packages adopted in each jurisdiction are very different. Illinois implemented the shield law in 1978 but did not adopt definitional changes or repeal the resistance requirement until 1984. The Pennsylvania reform included a number of evidentiary changes; a shield law was adopted and the corroboration, prompt complaint and resistance requirements were repealed in 1976. The Michigan reform included both evidentiary and definitional changes; the comprehensive statute enacted in 1975 redefined rape and established four degrees of gender-neutral criminal sexual conduct, eliminated the corroboration and resistance requirements, and placed restrictions on the use of sexual history evidence. By comparing the effect of the rape reform statutes in these three jurisdictions, then, we can assess the effects of three different types of changes: a rape shield law only; a rape shield law and other evidentiary changes; and a comprehensive overhaul of the rape laws.

The Effect of the Rape Shield Laws

Our findings indicate that while a rape shield law may be the most important component of a comprehensive reform package, it cannot by itself affect the processing and disposition of rape cases. In fact, our results strongly suggest that evidentiary changes alone will not alter the outcomes of rape cases.

There are a number of reasons why the rape shield laws cannot produce the types of changes envisioned by reformers. First, the shield laws are designed to prevent the admission of sexual history evidence at trial. Although there may be spillover effects on

arresting and charging decisions, the shield laws will primarily affect cases which go to trial and, particularly, the small percentage of cases tried before a jury. This is complicated by the fact that sexual history evidence is only relevant in cases where the defense is consent. Since it is unlikely that consent will be the defense when a woman is raped by a total stranger, this means that sexual history evidence will be relevant only when the victim and the defendant are acquainted. The shield laws, then, have the potential to directly affect only the relatively few rape cases in which the victim and the defendant are acquainted, the defendant claims the victim consented and the defendant insists upon a trial.

Even if we assume that these types of cases are fairly common, it does not necessarily follow that the passage of a shield law will result in significant changes in the processing of rape cases overall. Although respondents in each jurisdiction stated that the law prevents blatant attempts by the defense attorney to harass or embarrass the rape victim, most could not recall many pre-reform cases in which defense attorneys used this tactic. If there weren't many of these egregious cases before, elimination of some, or even all, of them wouldn't show up in a statistical analysis designed to measure the impact of the law on the outcomes of all rape cases.

The effect of the rape shield law might also be tempered by prior case law. If court rulings had begun to restrict the use of sexual history evidence, the effect of the statutory change would not be as noticeable. Respondents in Chicago and Detroit stated that case law provided some protection for the victim prior to passage of the shield law. They also noted, however, that the shield law contained a stronger message than case law. One judge in Detroit offered the

opinion that it may have taken the law to foster "a stronger judicial no-nonsense attitude."

The situation is further complicated by the fact that the procedural requirements of the shield laws can be circumvented. All of the statutes allow prior sexual conduct between the victim and the defendant to be introduced following a judicial finding of relevance in an in camera hearing. Interviews with judges, prosecutors and defense attorneys, however, revealed that in camera hearings were rarely if ever held in these cases. Instead, prosecutors concede the relevance of evidence of a prior sexual relationship between the victim and the defendant and do not challenge defense attorneys who attempt to introduce the evidence without requesting a hearing. In the three jurisdictions which permit the introduction of other types of sexual history evidence, prosecutors also use the motion in limine to prevent the defendant from introducing irrelevant evidence, thus precluding the need for the in camera hearing. Similarly, judges use their discretion to overlook the in camera requirement or to overrule prosecutor's objections to the introduction of the evidence.

It is not surprising that criminal justice officials have found ways to circumvent the formal procedural requirements of the shield laws. As Casper and Brereton (1984: 123) note, "implementors often engage in adaptive behavior designed to serve their own goals and institutional or personal needs." The overriding goal of the courtroom workgroup is to process cases as quickly and as efficiently as possible. In camera hearings are time consuming and would be a waste of time if judges routinely rule that evidence of a prior relationship between the victim and the defendant is relevant. Rather than going through the motions of challenging the evidence, and

perhaps alienating other members of the courtroom workgroup, prosecutors concede the point.

This lack of compliance can also be explained by the fact that judges and prosecutors have few, if any, incentives to comply. While the laws mandate hearings in certain situations and clearly specify the procedures to be followed, they do not provide for review or sanction of judges who fail to follow the law. Moreover, if a defendant is acquitted because the judge violated the law and either admitted potentially relevant evidence without a hearing or allowed the defense attorney to use legally inadmissible evidence, the victim cannot appeal the acquittal or the judge's decisions. If, on the other hand, the judge followed the law and refused to admit seemingly irrelevant sexual history evidence, the defendant can appeal his conviction. All of the consequences, in other words, would lead judges and prosecutors to err in favor of the defendant.

Finally, noncompliance might also be attributed to prosecutor's and judge's beliefs that evidence of a prior sexual relationship between the victim and the defendant is, the law notwithstanding, relevant to the issue of consent. Respondents in each jurisdiction admitted that this type of evidence generally is regarded as probative. If those who are to enforce the law disagree with it, the likelihood of the law being effectively implemented if obviously reduced. This is particularly true in a system, like the criminal justice system, where participants have vast amounts of discretion. Reformers should not assume that judges and prosecutors will comply with the formal requirements of the law. As Nimmer (1978: 179) notes, "compliance is preceded by interpretation, which permits injection of the judge's preferences." A judge in Chicago put it more succinctly

when he said, "Well, the law's the law, but fair is fair."

Reformers hoped that the rape shield laws would significantly affect the processing and disposition of rape cases. It seems clear, however, that this was an unrealistic expectation. The effect of the shield laws is limited by the types of cases they apply to and by noncompliance with their substantive and procedural requirements. Even a strong shield law like the one adopted in Illinois apparently cannot by itself affect the outcomes of rape cases.

The Effect of Other Evidentiary Changes

Pennsylvania's restrictive rape shield law was accompanied by elimination of the resistance, prompt complaint and corroboration requirments. The Pennsylvania reform, in other words, was broader than the Illinois reform. As such, it had greater potential to affect the outcomes of rape cases. This package of evidentiary changes, however, did not have an impact on the processing of rape cases in Philadelphia.

There are a number of reasons why eliminating the resistance and corroboration requirements might not produce the types of results anticipated. Reformers felt these changes would make it easier to prove that the victim was raped, thus increasing the likelihood of arrest and prosecution. However, court decisions in most jurisdictions, including Pennsylvania, already had loosened these requirements. Courts had ruled that the victim is not required to put her life in jeorpardy by resisting and that evidence of force on the part of the offender is tantamount to proof of nonconsent by the victim. Court rulings also had loosened the corroboration requirement; a prompt complaint or physical evidence of intercourse,

for example, could corroborate the victim's testimony. It is possible, then, that neither of these requirements was a significant hurdle in the pre-reform era. Consequently, their elimination would not result in significant changes in decisionmaking.

Reformers also anticipated that eliminating the resistance and corroboration requirements would increase the likelihood of conviction; they felt that jurors would be more likely to convict if these evidentiary hurdles were removed. Many respondents stated that these reforms were important and may have had an impact on jury verdicts. They explained that under the new laws it was possible to include in the jury instructions statements that the victim need not resist and that her testimony need not be corroborated. They felt it was important that jurors hear this from the judge. As one prosecutor in Philadelphia explained, "When the judge says it explicitly to the jury, the jury listens and takes it more seriously." If this is true, then it is essential that these statements routinely be included in jury instructions. From our interviews, however, it is clear that this is not the case. In some jurisdictions all judges routinely instruct jurors that resistance and corroboration are not required. In other jurisdictions, however, some judges always include these instructions while others do so only if requested to by the prosecutor. This type of discretion obviously can mitigate the effect of the reforms.

The effect of the reforms also will be limited if jurors, in spite of the law, continue to expect resistance and corroboration. We noted earlier that criminal justice officials believe reform legislation has affected their attitudes more than the attitudes of the general population from which jurors are chosen. They believe that many

jurors are suspicious of a rape case in which the victim did not resist or cannot offer corroborating testimony. As one judge in Chicago said, "Jurors are still looking for corroborating evidence--physical injury, a weapon, an hysterical phone call to the police. Old habits and old attitudes die hard. We can change the law but we can't necessarily change attitudes."

All of these factors help explain why eliminating the resistance and corroboration requirements, even in combination with a strong rape shield law, did not significantly affect the processing of rape cases in Philadelphia. Prior court rulings, judicial discretion in instructing the jury, and juror resistance to change all serve to dampen the effect of the reforms.

The Effect of Comprehensive Changes

In 1975 Michigan implemented a comprehensive rape reform statute. The reform included a strong rape shield law and elmination of the corroboration and resistance requirements. It also established four degrees of gender-neutral criminal sexual conduct defined by the seriousness of the offense, the amount of force or coercion used, the degree of injury inflicted, and the age and incapacitation of the victim. The statute extends the reach of the sexual assault laws to acts (sexual penetration with an object) and persons (men and married persons who are legally separated) not covered by the old laws. Clearly, the Michigan law is broader than either the Illinois or the Pennsylvania laws.

We noted above that reformers expected the legal changes to affect both the attitudes of criminal justice officials toward rape victims and the actual processing and disposition of rape cases. It seems

clear that the Michigan reforms produced both types of effects.

Our interviews revealed strong support for the reforms among criminal justice officials in Detroit. They also revealed a greater level of compliance with the substantive and procedural requirements of the rape shield law in Detroit than in the other five jurisdictions. When questioned about a series of hypothetical cases where evidence of the complainant's past sexual history was at issue, officials in Detroit consistently reported that the more questionable types of evidence should not and would not be admitted. For example, only 27 percent of the officials in Detroit believed the victim's prior sexual activities with groups of men should be admitted, compared to 77 percent of the respondents in Washington, D.C.

Nimmer (1978) maintains that criminal justice officials will be more likely to comply with legal changes of which they approve. Our study provides support for this. Officials in Detroit strongly support the changes and are inclined to comply with them. This may provide a partial explanation for the impact of reform legislation in Detroit. That is, the comprehensive legal changes engendered attitude change which led to compliance.

The Michigan reform also had more direct effects. It produced a statistically significant increase in reports of rape and in indictments, convictions and incarcerations for rape. It also resulted in a significant increase in the indictment rate and the average sentence. We feel these results can be attributed both to the comprehensiveness of the Michigan reform and to the professionalism of the Detroit criminal justice system.

Unlike the changes in either Illinois or Pennsylvania, the Michigan reform broadened the acts which could be charged as rape and

brought additional groups under the protection of the law. The new statute also clearly spelled out the circumstances defining each crime. Increases in numbers of reports, indictments, convictions, and incarcerations probably relect this greater inclusiveness. We tried to limit our analysis to equivalent crimes by comparing rape, sodomy and gross indecency cases (before the reform) with first and third degree criminal sexual conduct cases (after the reform). Nevertheless, the crimes we examine are not perfectly equivalent; for example, some crimes with child victims would not be charged as "rape" prior to the reform, but might be charged as first or third degree criminal sexual conduct after the reform. Our results suggest, then, that the Michigan reform resulted in more crimes being charged and prosecuted as forcible rape.

We also found that the reforms resulted in a significant increase in the indictment rate. This is an important finding. We noted above that reports of rape increased in the post-reform era. While we can only speculate, presumably some of these additional cases were the types of cases victims were reluctant to report prior to the passage of reform legislation: cases involving acquaintances, cases involving sexually promiscuous women or men, cases with little or no corroborating evidence, and so on. Given this assumption, we might have expected the indictment rate to decrease. The fact that it increased suggests that prosecutors are more willing to file charges in borderline cases.

This greater willingness to file charges can be attributed both to the evidentiary reforms and to the fact that the definitions of the various degrees of criminal sexual conduct are much clearer than the old definition of rape. The new Michigan law provides clear

guidelines for prosecutors to follow in screening rape cases. It carefully defines the elements of each offense, specifies the circumstances which constitute coercion, and lists the situations in which no showing of force is required. The judges, prosecutors and defense attorneys we interviewed in Detroit all spoke approvingly of the clarity and precision of the new statute. One prosecutor commented that "the elements of force and coercion are clearly spelled out." Another explained that the law "sets out with greater particularity what the elements of the offense are." By spelling out the acts which constitute sexual assault, the circumstances which imply coercion and nonconsent and the types of evidence which are unnecessary or irrelevant, the Michigan law may have dissuaded police from unfounding complaints and prosecutors from rejecting charges.

Contrary to reformers' expectations, the Michigan law did not result in an increase in the conviction rate. However, given that the indictment rate increased, the fact that the conviction rate did not decline following the changes is an important finding. If we assume that at least some of the cases charged following the reform would have been rejected before the reform, we might have expected the conviction rate to fall. It is particularly interesting that the rate of conviction for the <u>original charge</u> not only did not decline but increased substantially following the reform; 35.6 percent of the defendants were convicted of the original charge after the legal changes, compared to only 19.5 percent before the changes. Although these differences did not show up as a statistically significant effect of the reform legislation, they suggest that there is less plea bargaining in the post-reform period. Other data confirm this. Guilty pleas declined from 50.5 percent to 43.1 percent and the

percent of guilty pleas where the severity of the charge was reduced declined from 84.4 percent to 51.6 percent. Since plea bargaining tends to produce more lenient sentences, these results also provide an explanation for the increase in the average sentence following the reform; as guilty pleas declined, sentences increased.

In the post-reform period, then, a greater percentage of rape defendants are being charged, fewer of them are pleading guilty, more of them are being convicted of the original charge and sentences are more severe. These clearly are significant results. They indicate that the reform legislation enacted in Michigan produced the types of results hoped for by reformers.

Although we feel that the effect of the Michigan reform can be attributed primarily to the comprehensiveness of the legal changes, we also believe it was affected by the professionalism of the Detroit court system. Detroit differs from the other five jurisdictions in a number of important ways. First, both the chief judge of Detroit's Recorder's Court and the docket control center of the State Court Administrative Office exercise administrative control over the judges. Although the system is designed to monitor case processing, there appear to be spillover effects on the overall operation of the court system. We suspect that compliance with the rape shield laws is higher in Detroit in part because of this administrative oversight. Second, Detroit does not have a public defender system; instead, criminal cases are assigned to a private defender corporation or to private attorneys. In addition, defense attorneys are not assigned to courtrooms, as they are in other jurisdictions. The major actors in the Detroit courtroom workgroup, then, are judges and prosecutors; defense attorneys play a less important role. This

arrangement can have obvious effects on case processing.

The results discussed thus far indicate that reformers had unrealistic expectations about the ability of rape reform legislation to affect the outcomes of rape cases. Given the nature of the criminal justice system, in fact, it is somewhat surprising that the reforms produced results in any of the jurisdictions. The criminal justice system is dominated by a courtroom workgroup composed of autonomous decision makers who possess large amounts of discretion and who are primarily motivated by a desire to process cases as quickly and as efficiently as possible. In a system like this, "formal rules, evidence requirements, statutory definitions of offenses, and jury instructions may be largely irrelevant to the way decisions are made" (Feild and Bienen, 1980: 183). In order to affect this system, a reform must limit officials' discretion and/or provide incentives sufficient to overcome their motivations. As we have demonstrated, the reforms in five of the six jurisdictions were not strong or comprehensive enough to accomplish this.

IMPLICATIONS OF THE RESULTS

We have shown that the ability of rape reform legislation to affect case processing is limited. Evidentiary reforms alone cannot produce the types of results anticpated by reformers. Only in Detroit, with its comprehensive legal changes and professional court system, did we find consistent significant effects on the processing and disposition of rape cases.

This is not to say, however, that the rape reform laws have produced no effects in the other five jurisdictions. We indicated that the laws have had an important impact on the attitudes of

criminal justice officials. Judges, prosecutors and defense attorneys in each jurisdiction stressed that rape cases are taken more seriously and that rape victims are treated more humanely as a result of the legal changes. As reformers had hoped, the laws appear to have altered officials' perceptions of rape cases and rape victims.

These educative effects clearly are important. Under the old laws it was assumed that chastity is relevant to consent and credibility, that corroboration is required because women tend to lie about being raped and that resistance is required to demonstrate nonconsent. The rape reform movement sought to refute these offensive common law principles and thus to dissuade officials from making decisions based on the victim's character or behavior. Interviews in six very different jurisdictions indicate that the reforms have achieved these goals. Criminal justice officials in all of the jurisdictions, and particularly in the jurisdictions with the stronger evidentiary changes, are convinced that the outcomes of sexual assault cases should depend, not on the behavior or reputation of the victim, but on the unlawful behavior of the offender.

Our findings suggest that the rape shield laws have had an especially important effect on the attitudes and behavior of criminal justice officials. The purpose of the rape shield law was to prevent harassment of the rape victim by a defense attorney bent on proving that her past sexual conduct is indicative of consent. Our interviews revealed that the shield laws do protect the rape victim by precluding the use of irrelevant sexual history evidence. A defense attorney in Houston, for example, described the situation before the adoption of the Texas rape shield law as "a nightmare," explaining that "a lot of women were worked over and made to feel like whores because they were

assaulted. This just doesn't happen anymore." One Detroit judge commented that before the legal change "I wouldn't have let my daughter report and testify."

Criminal justice officials in all six jurisdictions agreed that evidence of the victim's prior sexual encounters with men she met at singles bars should not and would not be admitted. If this is indeed the classic example of the type of evidence shield laws were designed to prohibit, and if we assume this type of evidence was admitted at least occasionally in the pre-reform era, then the reforms obviously have been effective. As a judge in Houston noted, "The days when rape victims are blasted by defense attorneys are gone."

There is additional evidence that the shield laws have been effective. Judges in every jurisdiction stated that defense attorneys don't even attempt to introduce the more questionable types of sexual history evidence. As one judge in Chicago explained, "Attorneys are warned that I will interpret the law strictly and they don't even try to bring it up unless it concerns the victim and the defendant." Even in Houston, with its weak rape shield law, the consensus among judges was that defense attorneys don't request <u>in camera</u> hearings to determine the relevance of sexual history evidence because "they realize it just wouldn't do any good."

The shield laws also prevent the jury from inadvertently hearing irrelevant sexual history evidence. In the pre-reform period a defense attorney could prejudice the jury by simply asking a question about the victim's prior sexual conduct. Even if the prosecutor objected and the judge sustained the objection, the damage was done. The existence of the shield law apparently discoruages defense attorneys from using this tactic. According to one judge, "The mere

availability of the rule heads off the damages."

These conclusions should please advocates of rape reform legislation. They indicate that the legal changes have had important effects on the attitudes of criminal justice officials. They suggest that in the post-reform era rape victims will be treated like other victims of crime. They will not be forced to prove they are deserving of protection under the law. They will not themselves be placed on trial.

REFERENCES

Andrews, F., J. Morgan, J. Sonquist, and L. Klein. 1973. Multiple Classification Analysis (Ann Arbor: Institute for Social Research).

Adler, Zsuzsanna. 1982. "The Reality of Rape Trials," New Society 59 (February 4): 190-191.

_____. 1985. "The Relevance of Sexual History Evidence in Rape: Problems of Subjective Interpretation." Criminal Law Review 1985 (December): 769-780.

Aitken, J. 1974. "Rape Prosecutions." Women Lawyers Journal 60: 192-198.

Amir, Menachem. 1971. Patterns in Forcible Rape. Chicago: University of Chicago Press.

Battelle Memorial Institute Law and Justice Study Center. 1978a. Forcible Rape: An Analysis of Legal Issues. National Institute on Law Enforcement and Criminal Justice. Washington, DC: U. S. Government Printing Office.

_____. 1978b. Forcible Rape: Final Project Report. National Institute on Law Enforcement and Criminal Justice. Washington, DC: U.S. Government Printing Office.

_____. 1977. Forcible Rape: A National Survey of the Response by Prosecutors. National Institute on Law Enforcement and Criminal Justice. Washington, DC: U.S. Government Printing Office.

BenDor, Jan. 1976. "Justice After Rape: Legal Reform in Michigan," pp. 149-160 in Marcia J. Walker and Stanley L. Brodsky, Sexual Assault. Lexington, MA: Lexington Books.

Berger, Ronald J., Patricia Searles, and W. Lawrence Neuman. 1988. "The Dimensions of Rape Reform Legislation." Law & Society Review 22 (No. 2): 329-358.

Berger, Vivian. 1977. "Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom." Columbia Law Review 77 (January): 1-103.

Bessmer, Sue. 1984. The Laws of Rape. New York: Praeger.

Bienen, Leigh B. 1980. "Rape III--National Developments in Rape Reform Legislation." Women's Rights Law Reporter 6: 170-213.

Bohmer, Carol. 1974. "Judicial Attitudes Toward Rape Victims." Judicature 57 (February): 303-307.

Bohmer, Carol and Audrey Blumberg. 1975. "Twice Traumatized: The Rape Victim and the Court." Judicature 58 (March): 391-399.

Brown, Nancy J. 1981. "The Illinois Rape Shield Statute: Will It Withstand Constitutional Attack?" University of Illinois Law Review 1981 (No. 1): 211-240.

Brownmiller, Susan. 1975. Against Our Will: Men, Women and Rape. New York: Simon and Schuster.

Campbell, Donald T. and Julian C. Stanley. 1966. Experimental and Quasi-Experimental Designs for Research. Chicago: Rand McNally.

Caringella-MacDonald, Susan. 1984. "Sexual Assault Prosecution: An Examination of Model Rape Legislation in Michigan." Women and Politics 4 (Fall): 65-82.

Casper, Jonathan D. and David Brereton. 1984. "Evaluating Criminal Justice Reforms." Law & Society Review 18: 121-144.

Chappell, Duncan. 1976. "Forcible Rape and the Criminal Justice System: Surveying Present Practices and Projecting Future Trends." Crime and Delinquency 22: 125-136.

Chappell, Duncan. 1984. "The Impact of Rape Reform Legislation Reform: Some Comparative Trends." International Journal of Women's Studies 7: 70-80.

Chappell, Duncan, Gilbert Geis, Stephen Schafer and Larry Siegel. 1977. "Forcible Rape: A Comparative Study of Offenses Known to the Police in Boston and Los Angeles." In Chappell, Duncan, Robley Geis and Gilbert Geis (eds.) Forcible Rape: The Crime, the Victim and the Offender. New York: Columbia University Press.

Chappell, Duncan, Robley Geis and Gilbert Geis. 1977. Forcible Rape: The Crime, the Victim and the Offender. New York: Columbia Univ. Press.

Child, Barbara. 1975. "Ohio's New Rape Law: Does It Protect the Complainant at the Expense of the Rights of the Accused?" Akron Law Review 9 (Fall): 337-359.

Cobb, Kenneth A. and Nancy R. Schauer. 1974. "Legislative Note: Michigan's Criminal Sexual Assault Law." University of Michigan Journal of Law Reform 8: 217-235.

Curtis, Lynn A. 1976. "Present and Future Measures of Victimization in Forcible Rape." In Walker, Marcia J. and Stanley L. Brodsky (eds.) Sexual Assault. Lexington, MA: Lexington Books.

Davis, Elizabeth M. 1984. "Rape Shield Statutues: Legislative Responses to Probative Dangers." Journal of Urban and Contemporary Law 27: 271-294.

Dean, Charles W. and Mary deBruyn-Kops. 1982. The Crime and the Consequences of Rape. Springfield, IL: Charles C. Thomas.

Deitz, Sheila R., Madeleine Littman, and Brenda J. Bentley. 1984. "Attribution of Responsibility for Rape: The Influence of Observer Empathy, Victim Resistance, and Victim Attractiveness. Sex Roles 10 (Feb.): 261-280.

District of Columbia Task Force on Rape. 1975. "Report." In Schultz, LeRoy (ed.), Rape Victimology. Springfield, IL: 339-373.

Dworkin, Roger B. 1966. "The Resistance Standard in Rape Legislation." Stanford Law Review 18: 680-689.

Edwards, Susan. 1981. Female Sexuality and the Law. Oxford: Martin Robertson.

"Evidence--Admissibility--In a Trial for Rape, Prosecutrix May Not Be Cross-Examined As To Specific Acts of Prior Sexual Conduct With Men Other Than Defendant, Whether the Purpose of Such Cross-Examination Is To Establish Her Consent as an Affirmative Defense or to Impeach Her Credibility as a Witness." 1974. Georgia Law Review 8 (Summer): 873-983.

Eisenbud, Frederick. 1975. "Limitations on the Right To Introduce Evidence Pertaining to the Prior Sexual History of the Complaining Witness in Cases of Forcible Rape: Reflection of Reality or Denial of Due Process?: Hofstra Law Review 3: 403-426.

Estrich, Susan. 1987. Real Rape. Cambridge, MA: Harvard University Press.

Feild, Hubert S. and Leigh B. Bienen. 1980. Jurors and Rape: A Study in Psychology and Law. Lexington, MA.: Lexington Books.

Feldman-Summers, Shirley and Karen Lindner. 1976. "Perceptions of Victims and Defendants in Criminal Assault Cases." Criminal Justice and Behavior 3 (June): 135-150.

Gager, Nancy and Schurr, Cathleen 1976. Sexual Assault: Confronting Rape in America. New York: Grosset and Dunlap.

Galton, Eric R. 1976. "Police Processing of Rape Complaints: A Case Study." American Journal of Criminal Law 4: 15-30.

Galvin, Harriett R. 1986. "Shielding Rape Victims in the State and Federal Courts: A Proposal for the 2nd Decade." Minnesota Law Review 70 (4): 763-916.

Galvin, Jim. 1985. "Rape: A Decade of Reform." Crime & Delinquency 31 (April): 163-168.

Galvin, Jim and Kenneth Polk. 1983. "Attrition in Case Processing: Is Rape Unique?" Journal of Research in Crime and Delinquency 20: 126-156.

Gilchrist, Karen and Julie Horney. 1980. "Assessing the Impact of Changes in the Nebraska Rape Statutes: Effect on Prosecution." Paper presented at the annual meeting of the Western Society of Criminology, Newport Beach, California.

Giles, Linda E. 1976. "The Admissibility of a Rape Complainants Previous Sexual Conduct: The Need for Legislative Reform." New England Law Review 11 (Spring): 497-507.

Goldfarb, Ronald. 1973. "Rape and Law Reform." Washington Post, p. A-24, August 2, 1973.

Goldner, N. 1972. "Rape as a Heinous but Understudied Offense." Journal of Criminal Law, Criminology and Police Science 63: 402-407.

Griffin, Susan. 1977. "Rape: The All-American Crime," pp. 46-77 in Duncan Chappell, Robley Geis and Gilbert Geis (eds.), Forcible Rape: The Crime, the Victim and the Offender. New York: Columbia University Press.

Guttmacher, Manfred and H. Weihofen. 1952. Psychiatry and the Law.

Haines, E.L. 1975. "The Character of the Rape Victim." Chitty's Law Journal 23: 57-59.

Hale, Sir Matthew. 1971 (originally published in 1646). The History of the Pleas of the Crown, I. London: Professional Books.

Handler, Joel F. 1978. Social Movements and the Legal System: A Theory of Law Reform and Social Change. New York: Academic Press.

Haxton, David. 1985. "Rape Shield Statutes: Constitutional Despite Unconstitutional Exclusions of Evidence." Wisconsin Law Review 1985 (No. 5): 1219-1272.

Hayman, C.R., C. Lanza, R. Fuentes and K. Algor. 1972. "Rape in the District of Columbia." American Journal of Obstetrics and Gynecology 113 (May): 91-97.

Heinz, G. 1974. "Time for a Change in This Nation's Rape Laws." Congressional Record 120 (May 2): E2709.

Herman, Lawrence. 1976-77. "What's Wrong with the Rape Reform Laws?" The Civil Liberties Review (December/January): 60-73.

Hibey, Richard A. 1973. "The Trial of a Rape Case: An Advocate's Analysis of Corroboration, Consent, and Character." American Criminal Law Review 11: 309-334.

Hindelang, Michael J. and Bruce J. Davis. 1977. "Forcible Rape in the United States: A Statistical Profile," pp. 87-114 in Duncan Chappell, Robley Geis and Gilbert Geis (eds.), Forcible Rape: The Crime, the Victim and the Offender. New York: Columbia University Press.

Holmstrom, Lynda Lytle and Ann Wolbert Burgess. 1975. "Rape: The Victim and the Criminal Justice System." International Journal of Criminology and Penology 3 (May): 101-110.

_____. 1978. The Victim of Rape: Institutional Reactions. New York: Wiley-Interscience.

Horney, Julie and Cassia Spohn. 1987. "The Impact of Rape Reform Legislation." Paper presented at the annual meeting of the American Society of Criminology, Montreal, Quebec, Canada.

"If She Consented Once, She Consented Again--A Legal Fallacy in Forcible Rape Cases." 1976. Valparaiso University Law Review 10: 127-167.

Ireland, Marilyn J. 1978. "Rape Reform Legislation: A New Standard of Sexual Responsibility." University of Colorado Law Review 49: 185-204.

Johnson, Edwinna G. 1975. "Evidence--Rape Trials--Victim's Prior Sexual History." Baylor Law Review 27 (Spring): 362-369.

Kalven, Harry and Hans Zeisel. 1966. The American Jury. Boston: Little-Brown.

Katz, Sedelle and Mazur, Mary Ann. 1979. Understanding the Rape Victim: A Synthesis of Research Findings. New York and Oxford: John Wiley.

Kemmer, Elizabeth Jane. 1977. Rape and Rape-Related Issues: An Annotated Bibliography. New York: Garland Publishing.

LaFree, Gary D. 1980. "The Effect of Sexual Stratification by Race on Official Reacations to Rape." American Sociological Review 45: 842-854.

_____. 1980. "Variables Affecting Guilty Pleas and Convictions in Rape Cases: Toward a Social Theory of Rape Processing." Social Forces 58 (March): 833-850.

_____. 1981. "Official Reactions to Social Problems: Police Decisions in Sexual Assault Cases." Social Problems 28 (June): 582-594.

_____. 1989. Rape and Criminal Justice: The Social Construction of Sexual Assault. Belmont, CA: Wadsworth.

Largen, Mary Ann. 1976. "History of Women's Movement in Changing Attitudes, Laws, and Treatment Toward Rape Victims," pp. 69-75 in Marcia J. Waslker and Stanley L. Brodsky (eds.), Sexual Assault. Lexington, MA: Lexington Books.

LeDoux, John C. and Robert P. Hazelwood. 1985. "Police Attitudes and Beliefs Toward Rape." Journal of Police Science and Administration 13 (3): 211-220.

LeGrand, Camille E. 1973. "Rape and Rape Laws: Sexism in Society and Law." California Law Review 63: 919-941.

Lizotte, Alan J. 1985. "The Uniqueness of Rape: Reporting Assaultive Violence to the Police." Crime & Delinquency 31 (April): 169-190.

Loftus, Colleen M. 1982. "The Illinois Rape Shield Statute: Privacy at Any Cost?" The John Marshall Journal of Practice and Procedure 15 (Winter): 211-240.

Loh, Wallace D. 1980. "The Impact of Common Law and Reform Rape Statutes on Prosecution: An Empirical Study." Washington Law Review 55: 543-625.

MacDonald, John. 1971. Rape Offenders and Their Victims. Springfield, IL: Charles C. Thomas.

Maloney, Sharon. 1975. "Rape in Illinois: A Denial of Equal Protection." The John Marshall Journal of Practice and Procedure 8 (Spring): 457-496.

Marsh, Jeanne C., Alison Geist and Nathan Caplan. 1982. Rape and the Limits of Law Reform. Boston: Auburn House.

Mathiasen, Sally. 1974. "The Rape Victim: A Victim of Society and the Law." Wilamette Law Journal 11: 36-55.

McCahill, Thomas W., Linda C. Meyer and Arthur M. Fischman. 1979. The Aftermath of Rape. Lexington, MA.: Lexington Books.

McCleary, Richard and Richard A. Hay. 1980. Applied Time Series Analysis for the Social Sciences. Beverly Hills, CA: Sage.

McDermott, M. Joan. 1979. Rape Victimization in 26 American Cities. Washington, D.C.: U.S. Government Printing Office.

McDermott, Thomas E. 1975. "California Rape Evidence Reform: An Analysis of Senate Bill 1678." The Hastings Law Journal 26 (May): 1551-1573.

Meyers, Martha and Gary D. LaFree. 1982. "Sexual Assault and Its Prosecution: A Comparison with Other Crime." Journal of Criminal Law and Criminology 73: 1282-1305.

Miller, J. and M. Erickson. 1974. "On Doing Dummy Variable Regression Analysis: A Description and Illustration of the Method." Sociological Methods and Research 2: 409-430.

Nelson, Steve and Menachem Amir. 1975. "The Hitchhike Victim of Rape: A Research Report." In I. Drapkin and E. Viano (eds.) Victimology: A New Focus, Vol. III. Lexington, MA: Lexington Books.

Nimmer, Raymond T. 1978. The Nature of System Change: Reform Impact in the Criminal Courts. Chicago: American Bar Foundation.

Note. 1968. "Police Discretion and the Judgment That a Crime Has Been Committed--Rape in Philadelphia." University of Pennsylvania Law Review 117 (December): 277-322.

Note. 1972. "The Rape Corroboration Requirement: Repeal Not Reform." Yale Law Journal 81: 1365, 1373-1384.

Oestreicher, David. 1971. "Evidence--Criminal Law--Prior Sexual Offenses Against a Person Other than the Prosecutrix." Tulane Law Review 46 (December): 336-343.

Polk, Kenneth. 1985. "Rape Reform and Criminal Justice Processing." Crime & Delinquency 31 (April): 191-205.

Protess, David L. et. al. 1985. "Uncovering Rape: The Watchdog Press and the Limits of Agenda Setting." Public Opinion Quarterly 49: 19-37.

"Recent Statutory Developments in the Definition of Forcible Rape." 1975. Virginia Law Review 61 (November): 1500-1543.

Reskin, Barbara F. and Christy A. Visher. 1986. "The Impact of Evidence and Extralegal Factors in Jurors' Decisions." Law & Society Review 20(3): 427-438.

Resick, Patricia A. 1984. "The Trauma of Rape and the Criminal Justice System." The Justice System Journal 9: 52-61.

Robin, Gerald D. 1982. "Forcible Rape: Institutionalized Sexism in the Criminal Justice System," pp. 241-261 in Barbara Raffel Price and Natalie J. Sokoloff, eds., The Criminal Justice System and Women: Offenders, Victims, Workers. New York: Clark Boardman.

Rodabaugh, Barbara J. and Melanie Austin. 1981. Sexual Assault: A Guide for Community Action. New York: Garland.

Rudstein, David S. 1976. "Rape Shield Laws: Some Constitutional Problems. William and Mary Law Review 18 (Fall): 1-46.

Sasko, Helene and Deboarah Sesek. 1975. "Rape Reform Legislation: Is It the Solution?" Cleveland State Law Review 24 (3): 463-503.

Schwartz, Barry. 1968. "The Effect in Philadelphia of Pennsylvania's Increased Penalties for Rape and Attempted Rape." The Journal of Criminal Law, Criminology and Police Science 59 (4): 509-515.

Schwartz, Martin D. and Todd R. Clear. 1980. "Toward a New Law on Rape." Crime & Delinquency 26 (April): 129-151.

Schwendinger, Julia and Herman Schwendinger. 1983. Rape and Inequality. Beverly Hills, CA.: Sage Publications.

_____. 1974. "Rape Myths: In Legal, Theoretical, and Everyday Practice." Crime and Social Justice 1: 18-26.

Searles, Patricia and Ronald J. Berger. 1987. "The Current Status of Rape Reform Legislation: An Examination of State Statutes." Women's Rights Law Reporter 10 (Spring): 25-43.

Sebba, Leslie and Sorel Cohen. 1975. Sex Offenses: The Genuine and the Doubted Victim," pp. 29-46 in I. Drapkin and E. Viano (eds.), Victimology: A New Focus, Vol. V. Lexington, MA: Lexington Books.

Skelton, Carol A. and Barry Burkhart. 1980. "Sexual Assault: Determinants of Victim Disclosure." Criminal Justice and Behavior 7 (June): 229-236.

Smith, N. Dwayne and Nathan Bennett. 1985. "Poverty, Inequality and Theories of Forcible Rape." Crime & Delinquency 31 (April): 295-305.

Snider, Laureen. 1985. "Legal Reform and Social Control: The Dangers of Abolishing Rape." International Journal of the Sociology of Law 13(4): 337-356.

Soshnick, Andrew. 1987. "Comment--The Rape Shield Paradox: Complainant Protection Amidst Oscillating Trends of State Judicial Interpretation." The Journal of Criminal Law & Criminology 87 (No. 3): 644-698.

Sutherlin, Jerrilee. 1976. "Indiana's Rape Shield Law: Conflict with the Confrontation Clause?" Indiana Law Review 9 (January): 418-440.

Tanford, J. Alexander and Anthony T. Bocchino. 1980. "Rape Victim Shield Laws and the Sixth Amendment." University of Pennsylvania Law Review 128 (Jan.): 544-602.

Tchen, Christina M. 1983. "Rape Reform and a Statutory Consent Defense." Journal of Criminal Law and Criminology 74 (No. 4): 1518-1555.

U. S. Department of Justice, Federal Bureau of Investigation. 1976. Uniform Crime Reports for the United States, 1975. Washington, DC: U.S. Government Printing Office.

U. S. House, Committee on the Judiciary. Subcommittee on Criminal Justice. 1986. Federal Rape Law Reform. Hearings August 31 and September 12, 1984. Washington, D.C.: U.S. Government Printing Office.

Vera Institute of Justice. 1981. Felony Arrests: Their Prosecution and Disposition in New York City's Courts. New York: Longman.

Weddington, Sarah. 1975-76. "Rape Law in Texas: H.B. 284 and the Road to Reform." American Journal of Criminal Law 4 (Winter): 1-14.

Wesolowski, James J. 1976. "Indicia of Consent: A Proposal for Change to the Common Law Rule Admitting Evidence of a Rape Victim's Character for Chastity." Loyola University Law Journal 7 (Winter): 118-140.

Williams, Joyce E. and Karen A. Holmes. 1981. The Second Assault: Rape and Public Attitudes. Westport, CN: Greenwood Press, 1981.

Williams, Kristen M. 1976. "The Effect of Victim Characteristics on the Disposition of Violent Crimes," pp. 177-213 in William F. McDonald (ed.), Criminal Justice and the Victim. Beverly Hills, CA: Sage.

_____. 1978, "The Prosection of Sexual Assaults." Washington, D.C.: Institute for Law and Social Research.

Williams, Linda S. 1984. "The Classic Rape: When Do Victims Report?" Social Problems 31 (April): 459-467.

APPENDIX A--ATLANTA

Legal Changes

The definition of rape in Georgia has been unchanged since 1861. According the the statute, "a person commits rape when he has carnal knowledge of a female, forcibly and aginst her will. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ" [Georgia Penal Code 26-2001 (1978) (Supp.1979)] Other changes in the law of rape have occurred however. In 1978 the corroboration requirement that no conviction shall be had on the unsupported testimony of the female was eliminated, and in 1976 a rape shield law was enacted.

The Georgia rape shield law states that evidence of the victim's past sexual behavior is inadmissible unless the court finds that the evidence concerns behavior with the accused or supports an inference that the accused reasonably could have believed that the victim consented. When the shield law was introduced in the Georgia legislature, the wording was that such evidence was admissible only if it concerned sexual conduct with the accused and supported an inference that the accused reasonably could have believed the victim consented. Prosecutors in Atlanta reported that the change from "and" to "or" considerably weakened the law and made prosecution of cases more difficult than under the old case law.

The ruling case prior to the adoption of the shield law was Lynn v. State [(231 Ga. 559, 203 SE2d 221 (1974)]. In this case the Georgia Supreme Court ruled that a rape victim may not be questioned about her prior sexual relations with men other than the defendant. That this ruling no longer prevailed after passage of the rape shield law was pointed out dramatically in a highly publicized case in Atlanta in which three students and members of the varsity football team at Morris Brown College were indicted for the rape of a woman who was a student at the same college. Because of the rape shield clause allowing evidence supporting an inference that the accused reasonably could have believed the complainant consented, the trial court, even though the case involved physical injuries to the victim, allowed considerable evidence concerning the woman's reputation for lack of chastity. After twice announcing that they were hung, the jury returned a verdict of guilty of simple battery. The defendants appealed the verdict, challenging the jury instruction on simple battery and the overruling of a motion for judgment of acquittal. In their ruling on the appeal (which was denied), the Georgia Court of Appeals commented on the rape shield law. They noted that under the new law:

> "in the present case the jury was allowed to scrutinize in intimate detail not just the matter of previous sexual intercourse on the part of the prosecutrix, but her use of birth control, her past dates and boyfriends, and the number and circumstances of her prior sexual experiences....(t)he appellants, on the other hand, had only to reiterate their versions of the events that occurred at the time of the alleged crime, bolstered by testimony from their teammates, fraternity

> brothers, coaches and their mothers as to their diligence in academic pursuits and regular church attendance. We note only that under the law as it now exists, despite the attempted reforms, our review of this trial record convinces us that a jury may still acquit or convict a defendant accused of rape upon spurious assessments of the complainant's character which are simply not relevant to present day consent. (Hardy et al. vs. State, 159 Ga.App. 854 (1981).

Criminal Justice Officials' Attitudes toward the Changes

Attitudes toward the Rape Shield Law. Most respondents felt that the shield law was fairly effective in keeping evidence of the complainant's prior sexual history out of court in cases involving an attack by a stranger in which the main issue is identification of the perpetrator. Even though previous case law had similarly restricted evidence, prosecutors felt that having the rule codified made it easier to argue if a defense attorney tried to introduce such evidence, and made it more likely that a judge would deal harshly with an attorney who tried to introduce it improperly. Most respondents agreed with the proposition that general attacks on a victim's chastity are inappropriate.

A number of prosecutors did feel that the rape shield law made trying cases more difficult than under old case law because of the clause allowing evidence that supports an inference that the accused reasonably believed that the complainnt consented. Thus in cases involving acquaintances the law opened up the possibility of introducing evidence of a victim's prior sexual activities with parties other than the defendant. The Morris Brown case described above was frequently cited as an example.

Although some respondents reported that the in camera hearings required by the law were being held, most did not recall any such hearings or said that they had been held initially after the passage of the law, but were rarely held any longer. Some said they were not held because defense attorney knew the law and did not even bother raising the issue in inappropriate cases, and in cases involving prior sex with the defendant, everyone knew the evidence would be admitted, and so they did not need to waste time with a hearing. As one prosecutor said, "even I agree that this is relevant and see no point in trying to keep it out." One judge thought that hearings were rarely, if ever, held because the only cases that make it to trial are the cases involving strangers; another felt that editing of evidence in advance of the trial makes judges a little nervous, and that they would prefer ruling during the trial.

Many prosecutors reported that instead of relying on the in camera hearing, they would make a motion in limine at the beginning of the trial to get the judge to restrict such evidence of prior sexual history when they had reason to believe it might come up. Defense attorneys varied in their reported strategies for dealing with the shield law. A number said they had never asked for the in camera hearing because they never had prior sex history that they thought was relevant. But one defense attorney said he never asked for the hearing. He reported that "rather than ask for a hearing I tiptoe to the edge of the rules as much as I can and maybe even go over the line." Others described

strategies such as the "how fast can you talk rule," whereby a defendant is primed to blurt out something about the complainant's sexual history or reputation, or getting information before the jury through implication. One judge described the indirect ways of getting prior sexual history in such as in asking an unmarried woman about her child. One defense attorney reported:

> "if the judge rules that evidence can't be admitted you can still always blurt something out in court and then say you didn't understand the order; if I didn't agree with the order, I might possibly try it. For example, if the victim says she's a virgin and I know she's not I might challenge her on it while she's on the stand.

Most defense attorneys, however, reported that, although defenders might be able to get away with these strategies with some judges, other judges might send a defense attorney to jail, or at least the "judge would dismiss the jury and chew you out royally."

Most of the respondents felt that the shield law gives some advantage to the prosecution in plea bargaining negotiations, and some felt that an important factor was the victim's being less fearful of going to trial. It was apparent, however, that the pressure is still on the prosecution to negotiate in acquaintance cases where consent is being argued.

One reported weakness in the rape shield law is that it does little to protect the victim at the preliminary hearing. According to one respondent the judges at that level do not

understand the shield law, and a defense attorney can go to the preliminary hearing and grill a victim with impunity.

Attitudes toward Elimination of Corroboration Requirement. Respondents' assessments of the importance of the elimination of the corroboration requirement varied. Some felt that elimination was very important because so many cases involve just the complainant's word against the defendant's. One judge felt the change resulted in more cases going to juries because previously judges had to direct acquittal in cases without corroboration. Another respondent felt the main effect had been at the appellate level, because there had previously been many reversals due to lack of corroboration. Some prosecutors felt that the corroboration charge to the jury in itself had been very damaging.

Most of the respondents, however, felt that the elimination of the corroboration requirement had mostly symbolic value. Under previous case law, the courts had been very lenient in what counted as corroboration, so it was not often a total bar to prosecution. And the main reason for seeing the effect of the change as negligible is that "you still win or lose on your corroboration," or as one prosecutor stated, "if she's beaten and bloody and runs out in the street nude you have a better chance." Juries still want some corroboration of a complainant's testimony, and prosecutors are reluctant to go to trial in a case that is totally uncorroborated. (Some defense attorneys, however, reported that a complainant's uncorroborated testimony

was likely to be believed by a jury if she had been "prepped" by the rape crisis center. According to one respondent, "they show her how to walk, how to talk and cry on the stand, and how to dress for court.")

Attitudes toward Definitional Changes. The definition of rape in Georgia is the traditional carnal knowledge definition. Respondents were asked whether they saw any advantages to a change to graded sexual assault offenses. Many respondents thought it would be better to have some other itermediate offenses since currently the main option to a charge of rape is simple battery. "Assault with intent to rape" is sometimes used, but it can be difficult to prove the intent. Some respondents thought plea bargaining would be facilitated with graded offenses, and others felt that convictions would be more likely if jurors had an alternative to finding guilty of rape or acquitting. Date rapes were given as examples of cases in which jurors are very reluctant to convict with a charge as severe as rape; many of the attorneys also felt some cases are just different and should be distinguished from rape. The opposite attitude expressed by one prosecutor who saw no need for definitional changes was "either it's a rape or it isn't a rape." Another view expressed was that there is already enough flexibilty in charging with "three degrees of rape: rape, aggravated assault with intent to rape, and simple battery."

Description of the Fulton County Criminal Justice System

The Fulton County Superior Court. In 1987 there were 12 judges serving on the Superior Court. All judges hear all types of cases--general civil, domestic relations, capital felony and plain felony. Cases are assigned to judges by computer based on type. When a capital felony case is indicted, for example, it is automatically assigned to the judge with the least number of capital felonies that year to date, along with any related cases. An individual calendar system is used, with each judge assigned his or her own calendar clerk, law clerk, bailiff, and court reporter. Assistant district attorneys and public defenders are also assigned to individual judges.

Judges in Georgia are elected to four-year terms on a non-partisan ballot. Before 1983 Georgia had partisan elections for eight-year terms. The Chief Judge is the administrative judge and is selected by a vote of the other judges for a two-year term. Although the Chief Judge does not make case assignments and would not interfere with them, he or she does check workload statistics and would talk to a judge who is getting behind.

Sentencing in Georgia is determinate; judges would often give a fixed term like ten years to serve two, meaning that the balance would be served on probation. Although the legislature established sentences within ranges, the Pardons and Parole Board

can release inmates at any time. They use a grid system for their decisions, but the details of the system are not public.

Office of the District Attorney. Out of 35 attorneys in the District Attorney's Office who handle civil and criminal matters, five or six are assigned to the intake division, and 18 are assigned to the 12 Superior Court judges. One assistant district attorney is assigned to each judge on a more-or-less permanent basis, and six assistants are apprentices who are "floaters" in terms of courtroom assignments. Although assistant district attorneys may be moved rather quickly if there is a problem getting along with a particular judge, many stay with the same judge for many years.

In Georgia, after arrest a case is taken by the police to a preliminary hearing (a probable cause hearing in the city court), and if it survives the preliminary hearing, it goes to the intake division of the District Attorney's Office. If the intake attorneys decide to file charges (not necessarily the same charges as at the preliminary hearing), the case is then taken to the grand jury. All felony cases in Georgia must go to the grand jury to be prosecuted. If a judge should rule at the preliminary hearing that there is not probable cause to prosecute the case, the investigating police officer can still take the case to the intake division of the District Attorney's office, and they could file charges anyway.

Assistant district attorneys' decisions are not formally reviewed, and there is no formal training program. Rather, new

assistants learn through their apprenticeship as they "float" among the different courtrooms. Assistants are often sent to specialized seminars run by the Prosecuting Attorney's Council, and the Bar Association mandates continuing legal education.

In rape cases, the District Attorney's Office's first contact with the victim is after the case has been bound over and an indictment has been issued. The intake division has a statement from the victim, but she is not interviewed at that early stage.

Office of the Public Defender. The Public Defender for Fulton County is appointed by the county manager and has 20 assistants in the office. Because the City of Atlanta has a public defender that handles cases at the preliminary hearing the Fulton County Public Defender's Office is not involved in a case until it reaches arraignment, which may be 30 to 90 days after the preliminary hearing.

One assistant public defender is assigned to each of the 12 Superior Court judges, with an extra assistant assigned to busy courtrooms. Some assistants stay in the same courtroom two years or so, but there is a policy of a three-year maximum. There is no formal training of new assistants, but they do progress in order from working in the juvenile division, to appeals to the trial division, and assistants are given some supervision by the attorneys they will be replacing. The county pays for one seminar per year, and the public defenders are sent to the national criminal defense college. There is no formal review of assistant

defenders' decisions, but office policies are discussed at monthly staff meetings.

The public defender's office has no particular policies on sexual assault cases, and also has no formal policies on plea bargaining. Plea bargaining is usually for a sentence, and occasionally for the offense--sometimes for a lesser included offense. The Superior Court judges are seldom involved in the plea bargaining process, although in certain courtrooms the assistant D.A. and the assistant P.D. go together to the judge to arrange a plea bargain.

Relationship between Prosecution and Defense. Both district attorneys and public defenders described acceptable cooperation between their offices, with, of course, individual variation in how well the assistants in particular courtrooms get along. The attorneys in the two offices do not socialize outside of work however. Prosecutors did note that public defenders generally are not afraid to go to trial, and the public defenders felt they get better deals from the prosecutors than do private defense attorneys.

Police Department. The Atlanta Police Department has a special sex crimes unit that has been in existence since about 1975. The unit consists of a commander, two sergeants (one daytime, one nighttime), 14 investigators, and two clerical staff. Recruitment for the unit is by self-selection. When someone asks to come onto the unit, the unit commander (a lieutenant), the major and the deputy chief look at the person's

background and talk with his or her present supervisor. They then make subjective judgments about whether the person has the appropriate personality to work on the unit. In 1987 there were two female officers in the unit.

Uniformed officers respond immediately to reported crimes; they find out just the basic facts, and then in cases involving rape, attempted rape, and chile molestation they call for a detective (investigator) from the sex crimes unit. The detectives are available 24 hours a day to respond to these calls, and they then go to the scene of the crime.

The members of the sex crimes unit receive special training in sex crimes investigations, interviewing and interrogation. The Georgia Police Academy has a sex crimes school that they attend, and then new recruits are assigned to an experienced detective. They spend one week learning how to deal with sexual assault victims. The unit also has various specialized programs throughout the year.

The sex crimes unit has no formal policy on interviewing sexual assault victims; they depend instead on the training each officer in the unit receives. The unit commander did report that detectives never ask victims about past sexual history except in some cases when they might ask women with boyfriends or husbands when they last had sex voluntarily. Even that question would not be a standard question.

The police in Atlanta reported having an excellent relationship with the local rape crisis center and with area

hospitals. The rape evidence kit that is collected at the hospital goes to the rape crisis center to be held until it is needed. The police also have a victim assistance unit that sends someone to meet with sexual assault victims at the hospital.

There appears to be good cooperation between the police and the prosecutors. The police take cases forward to the preliminary hearings, and if a case is bound over then the police send the District Attorney the package with everything they know about the case. The police reported that it would be rare for the DA not to charge in a case they take forward. If a prosecutor did refuse to file there is no route of appeal for the police. They cannot take a case to the grand jury without the prosecutor.

For unfounding cases the Atlanta police report following UCR guidelines. A case might be unfounded, for example, if the crime lab indicated no evidence of a rape, if the person who reported the crime refuses to go the hospital and refuses to come in and talk with the police, and if there is no other physical evidence of a rape. Still, however, it was reported that the case would not be unfounded if the woman insisted that the crime occurred. Then the case would go into inactive status, meaning they really don't know what happened. Any unfounding decisions are reviewed by a sergeant and ultimately by the unit commander.

The Atlanta police sex crimes unit reported that the use of a polygraph with a sexual assault victim would be extremely rare. It might be used, for example, in the case of a complainant who

changes her story several times when the alleged perpetrator tells a very consistent story. The unit commander reported not being able to remember more than three or four such cases in an eight year period. If the polygraph were used, it would be used only as an investigative too, and not as the basis for concluding what actually happened. A complainant might be told that she showed deception in several areas, and asked to explain that finding.

Atlanta Rape Crisis Center. The Atlanta Rape Crisis Center is run out of Grady Hospital, the hospital to which most rape victims would be brought. It serves both Fulton and DeKalb Counties. The Center has a staff of five--a director, assistant director, counselor, legal liaison, and secretary--and approximately 150 volunteers who answer the hotline and go to the hospital emergency room. Approximately 50% of their clients are brought in by the police, and approximately 50% come on their own.

The major focus of the legal liaison--a program only started in 1985--is on going to court with victims. The Crisis Center is often called on for help by the District Attorney's Office or a police detective to help a victim through the court processes.

The Rape Crisis Center has a good relationship with the Atlanta police, but it was noted that in DeKalb County there is greater suspicion towards rape victims and even jokes about rape made in front of victims and rape counselors. The Atlanta police detectives are described however as quite sensitive to the victim

and understanding of the nature of the crime. The victim-witness unit of the Atlanta police department works well with the Crisis Center. If the preliminary hearing in a case occurs before the Crisis Center has been notified about the case (for example, an assault occurs at night and the preliminary hearing is held the next morning, a victim-witness staff member attends the preliminary hearing and refers the victim to the Crisis Center for counseling.

The relationship between the Crisis Center and the District Attorney's Office is also apparently good. The respondent reported that prosecutors often talk with victims before making decisions about plea bargains; judges may also talk with the victim in chambers before accepting a plea. It was felt that the prosecutors needed more contact with the victim before trial, however.

The Crisis Center respondent felt that the hardest part of the court process for the victim is the preliminary hearing, and that it is very important for someone to be there with the victim. It is held very close in time to the assault (within one or two days) in a courtroom filled with 20 to 40 other people, and the victim is required to stand in front of the judge and tell what happened. A defendant is allowed to question the victim himself if he is not represented by counsel. By law, all testimony could be by the detective at this level, but the judges have decided to have the victim testify. In DeKalb County there is no solicitor present at preliminary hearings, and so there is

no one besides the judge to object to questions the victim is asked. The Crisis Center respondent reported that victims there may be asked about prior sex or the way they were dressed, etc.

Victims also appear before the grand jury unless the evidence is really strong against the defendant. Sometimes the detective testifies for the victim, and the proceeding is easier because the defedant and his attorney are not present, and the proceeding is closed to the public.

Pressure on the System. Respondents were asked whether they perceived much pressure either from women's groups or the media on judges and prosecutors to be tough with rape cases. Most reported that they were not aware of much pressure except in unusual cases such as a spousal rape case that received widespread publicity. Some felt there had been more pressure at the time of the changes in the law, but that the attention to rape cases had subsided. Many people did mention the role of the rape crisis center in accompanying victims to court, but their presence did not seem to be perceived as pressure, except by defense attorneys, who viewed it as pressure on the prosecution and who also often commented on their "prepping" of complainants for court appearances.

Disposition of Sex Offense Cases

Data summarizing the disposition of sex offense cases in Atlanta from 1970 through 1984 are presented in Tables A1 to A4. Included in the category "all sex offenses" are all cases where

the most serious charge against the defendant was rape, aggravated sodomy and aggravated assault with intent to rape. Because indictments for sodomy might include indictments against consenting homosexuals, sodomy was excluded from this category.

The data in Table A1 summarize the outcomes of these cases. The data reveal that:

--For all sex offenses defendants were charged with an average of 1.99 crimes, and convicted of 1.71. The figures are similar for defendants charged with each of the crime types.

--Conviction rates for the different crimes were very similar--around 75%--with the exception of sodomy which had an overall conviction rate of 93%, with most of the sodomy convictions under the First Offender Act. The other sex crimes were also equally likely to be convicted of the original charge.

--Over half of all cases were settled through guilty pleas, and fewer than 25% of the cases went to trial. The dismissal rate was constant at about 20% for all the crimes except sodomy, to which 92% of defendants pleaded guilty.

--The incarceration rate was highest for those defendants convicted of rape (75%), then for those convicted of aggravated sodomy (70%), then aggravated assault with intent to rape (54%), and lowest for sodomy (12%). The median prison term for those incarcerated decreased across those crimes in a similar manner. The higher rate of probation (47%) for aggravated assault with intent to rape is probably related to the higher rate of guilty

pleas for that offense, since plea bargaining in Atlanta is usually for the sentence.

Table A2 summarizes the outcomes of sex offense cases before and after evidentiary changes were implemented on July 1, 1976. On this data the rape shield law went into effect. A number of changes can be seen, such as an increase in convictions for all crimes, a decrease in dismissals, and longer prison terms. Tables A3 and A4, which give yearly breakdowns indicate, however, that these seem to represent long-term trends rather than changes due directly to the new laws. Results of the time-series analyses confirm this conclusion.

TABLE A.1
DESCRIPTIVE DATA--DEFENDANTS CHARGED WITH SEX OFFENSES
ATLANTA, GEORGIA
1970-1984

	All Sex Offenses[a] (N=1841)	Rape (N=1413)	Aggravated Sodomy (N=160)	Aggravated Assault With Intent To Rape (N=268)	Sodomy (N=498)
Mean # of charges on indictment	1.99	2.14	1.79	1.26	1.11
Mean # of conviction charges	1.71	1.83	1.62	1.18	1.10
Outcome of case					
Convicted of orginal charge	42.7%	43.4%	38.0%	40.4%	25.9%
Convicted of another charge	18.7	18.1	24.7	18.0	6.1
Convicted under First Offender Act[b]	12.0	11.0	13.3	16.5	61.1
Not convicted	26.8	27.5	24.1	25.1	6.9
Type of Disposition					
Guilty plea	45.2%	44.1%	43.3%	52.1%	30.8%
Guilty plea under First Offender Act	12.0	11.1	13.4	15.7	61.3
Guilty--judge or jury[c]	16.0	17.2	19.1	8.2	1.0
Not guilty--judge or jury	6.2	6.8	3.8	4.1	0.2
Dismissed	20.6	20.8	20.4	19.9	6.7
Type of Sentence, for those convicted					
Probation	12.1%	9.3%	12.6%	25.6%	22.4%
Probation under First Offender Act	16.4	15.4	17.6	20.7	66.1
Jail	3.5	2.6	5.0	6.9	5.4
Prison	68.1	72.7	64.7	46.8	6.1
Median prison sentence in months					
For those convicted of original charge	120.0	120.0	96.0	48.0	12.0
For those convicted of another charge	12.0	12.0	12.0	12.0	12.0
% guilty pleas where severity of charges reduced	36.0%	35.7%	48.5%	30.9%	19.1%
% guilty pleas where number of charges reduced	20.6	23.5	23.4	6.5	0.0

[a]Includes rape, aggravated sodomy and aggravated assault with intent to rape. Because indictments for sodomy might include indictments against consenting homosexuals, sodomy was excluded.

[b]A defendant sentenced under Georgia's First Offender Act is given a probation sentence after a guilty plea. At the end of the probationary period, provided the defendant has not violated the terms of probation, the charges are expunged from the defendant's record. While the defendant at that time is judged to be "not convicted" of the charges, for our purposes the disposition is a conviction. Because the disposition and sentence are confidential, we do not know if the defendant was convicted of the original charge or of some lesser charge. We also do not know the length of the probation sentence.

[c]The Fulton County Superior Court records did not indicate if the trial was a jury trial or a bench trial.

TABLE A.2
DESCRIPTIVE STATISTICS--DEFENDANTS CHARGED WITH SEX OFFENSES:
BEFORE AND AFTER RAPE SHIELD LAW IMPLEMENTED*
ATLANTA, GEORGIA

	All Sex Offenses		Rape		Aggravated Sodomy		Aggravated Assault With Intent To Rape		Sodomy	
	Before (614)	After (1224)	Before (444)	After (966)	Before (61)	After (99)	Before (109)	After (159)	Before (157)	After (341)
Mean # of charges on indictment	1.76	2.10	1.90	2.26	1.46	2.00	1.34	1.21	1.11	1.11
Mean # of conviction charges	1.58	1.76	1.72	1.88	1.28	1.79	1.25	1.34	1.12	1.10
Outcome of case										
Convicted of orginal charge	46.5%	40.6%	48.2%	41.3%	40.0%	36.7%	42.7%	38.8%	25.5%	26.1%
Convicted of another charge	12.5	21.8	11.3	21.3	18.3	28.6	14.6	20.4	3.8	7.1
Convicted under First Offender Act	7.4	14.3	7.5	12.7	6.7	17.3	7.8	22.4	59.2	62.0
Not convicted	33.5	23.3	33.0	24.7	35.0	17.3	35.0	18.4	11.5	4.7
Type of Disposition										
Guilty plea	41.7%	47.1%	39.0%	46.6%	40.0%	45.4%	53.2%	51.3%	25.9%	32.6%
Guilty plea under First Offender Act	7.4	14.3	7.5	12.8	6.7	17.5	7.3	21.5	59.6	62.0
Guilty--judge or jury	17.5	15.4	20.1	15.9	18.3	19.6	6.4	9.5	1.9	0.6
Not guilty--judge or jury	5.1	6.5	5.5	7.2	5.0	3.1	3.7	4.4	0.0	0.3
Dismissed	28.3	16.8	27.9	17.6	30.0	14.4	29.4	13.3	11.5	4.5
Type of Sentence, for those convicted										
Probation	17.2%	9.8%	11.2%	8.5%	25.6%	6.3%	37.0%	19,2%	17.3%	24.6%
Probation under First Offender Act	11.3	18.6	11.5	16.9	10.3	21.3	11.0	26.2	67.6	65.4
Jail	3.2	3.6	2.0	2.8	2.6	6.3	8.2	6.2	8.6	4.0
Prison	68.3	68.0	75.3	71.7	61.5	66.3	43.8	48.5	6.5	5.9
Median prison sentence in months										
For those convicted of original charge	96	120	105	120	84	96	54	48	12	12
For those convicted of another charge	12	12	12	12	12	12	12	12	12	12
% guilty pleas where severity of charges reduced	25.7%	40.6%	24.0%	40.3%	41.7%	52.3%	24.1%	35.8%	14.3%	20.9%
% guilty pleas where number of charges reduced	10.9	24.7	12.6	27.4	13.6	28.6	5.2	7.5	0.0	0.0

*Before=all cases indicted from January of 1970 through June of 1976; after=all cases indicted from July of 1976 through December of 1984.

TABLE A.3
YEARLY DATA--DEFENDANTS INDICTED FOR RAPE
ATLANTA, GEORGIA
1970-1984

Year Indicted	Number of Indictments	Convicted of Rape	Convicted of Other Charge	Convicted under FOA	Total Convicted	Not Convicted	Guilty Plea Entered*	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison for Rape	Sentenced to Prison for Other Charge	Mean Sent. for Rape (Months
1970	60	40.3%	11.7%	3.3%	63.5%	36.6%	55.0%	31.7%	6.6%	86.2%	57.1%	118.0
1971	81	45.7	12.4	8.8	66.7	33.3	46.2	30.0	3.8	94.6	55.6	297.4
1972	55	60.0	3.7	3.9	68.5	31.5	38.5	25.0	7.7	96.9	100.0	127.7
1973	65	32.3	13.8	10.9	56.9	43.1	39.1	37.5	6.2	100.0	44.4	345.7
1974	66	47.0	12.1	15.2	74.2	25.8	56.1	21.2	4.6	96.8	75.0	171.6
1975	77	53.2	15.6	3.9	72.7	27.3	44.2	22.1	5.2	90.2	50.0	209.0
1976	91	44.0	12.2	4.4	61.1	38.9	46.7	34.4	4.4	95.0	54.6	169.6
1977	97	44.3	19.8	7.3	71.9	28.1	50.0	20.8	7.3	97.7	79.0	174.0
1978	96	47.9	20.8	8.3	77.1	22.9	57.3	18.8	5.2	93.2	70.0	135.5
1979	112	36.6	21.6	15.3	73.9	26.1	48.6	15.3	10.8	95.1	83.3	299.4
1980	144	42.4	14.8	13.4	70.4	29.6	54.2	21.8	8.4	96.7	70.0	297.8
1981	141	29.8	26.1	16.8	73.2	26.8	61.3	19.7	7.3	97.7	86.1	225.1
1982	128	42.2	22.9	12.3	79.5	20.5	65.6	13.1	7.4	100.0	78.6	205.0
1983	89	47.2	21.4	13.5	82.0	18.0	66.3	11.1	6.7	95.2	89.5	189.9
1984	104	42.6	25.7	17.1	86.7	13.3	70.1	7.6	5.7	97.8	63.0	208.5
102.0												

*Includes defendants who plead guilty under the First Offender Act.

TABLE A.4

YEARLY DATA--DEFENDANTS INDICTED FOR SEX OFFENSES[a]

ATLANTA, GEORGIA

1970-1984

Year Indicted	Number of Indictments	Convicted of Original Charge	Convicted of Other Charge	Convicted under FOA	Total Convicted	Not Convicted	Guilty Plea Entered[b]	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison[c]	Mean Prison Sentence (Months
1970	82	48.8%	10.0%	3.66%	63.8%	36.2%	56.1%	30.5%	4.9%	76.0%	87.2
1971	124	44.4	12.9	8.1	65.5	34.7	46.3	30.9	4.1	84.3	244.0
1972	78	46.2	6.7	9.5	64.0	36.0	41.9	20.4	8.1	90.2	118.1
1973	96	35.4	19.0	7.4	62.1	37.9	44.2	32.6	5.3	71.7	222.4
1974	81	46.9	11.2	13.6	72.5	27.5	58.0	23.5	3.7	85.4	140.6
1975	100	53.0	16.2	4.0	73.7	26.3	50.0	21.0	5.0	72.9	159.7
1976	119	42.9	12.7	5.1	61.0	39.0	48.3	35.6	3.4	87.9	132.3
1977	138	42.8	22.2	11.0	77.0	23.0	59.8	15.3	7.3	86.8	111.4
1978	131	44.3	20,8	9.9	75.6	24.6	58.0	19.8	5.3	84.5	105.4
1979	139	38.1	22.5	15.2	76.1	23.9	53.6	15.2	8.7	91.7	101.2
1980	175	41.1	17.9	12.1	71.7	28.3	56.6	19.6	9.2	84.3	217.0
1981	170	28.9	27.9	15.7	73.5	26.7	62.6	20.5	6.0	91.8	126.4
1982	157	42.7	21.2	15.2	80.8	19.2	62.9	12.6	6.6	91.9	156.0
1983	107	43.9	22.4	15.9	82.2	17.8	68.2	12.2	5.6	90.0	138.1
1984	141	41.1	21.5	24.4	88.9	11.1	77.8	6.7	4.4	84.1	165.3

[a]Defendants indicted for rape, aggravated sodomy, or aggravated assault with intent to rape.

[b]Includes defendants who pled guilty under the First Offender Act.

[c]The percentage is based on defendants convicted of the original charge or some other charge. It does not take into account defendants convicted under the First Offender Act.

APPENDIX B--CHICAGO

Legal Changes

There have been two major reforms of the Illinois rape laws. A rape shield law was implemented on July 1, 1978, and definitional changes went into effect on January 4, 1984.

The Illinois rape shield law states that the prior sexual activity or reputation of the victim is inadmissible as evidence. The only exception to this blanket prohibition is evidence concerning prior sexual conduct between the victim and the defendant. The law further specifies that the defense cannot inquire about prior sexual activity between the victim and the defendant unless the court finds, in an in camera hearing, that the defense has evidence to impeach the victim in the event that past sexual conduct with the defendant is denied. On its face, then, the Illinois shield law is a very restrictive law; it allows only a single narrow exception to the shield and permits this evidence to be admitted only after a judicial finding of relevance.

The 1984 reform includes a number of substantive changes. The Illinois Criminal Code of 1961 specified that "A male person of the age of 14 years and upwards who has sexual intercourse with a female, not his wife, by force and against her will, commits rape." With the passage of the Illinois Criminal Sexual Assault Act, that definition became obsolete. The new law eliminates seven crimes (rape, deviate sexual assault, indecent

liberties with a child, aggravated indecent liberties with a child, contributing to the sexual delinquency of a child, aggravated incest, and sexual abuse by a family member) from the "Sex Offenses" section of the criminal code and adds four (aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, and criminal sexual abuse) to the "Bodily Harm" section.

The 1984 law defines sexual assault as forcible sexual penetration and sexual abuse as forcible sexual contact; if specified aggravating factors are present (for example, the defendant used a dangerous weapon or seriously injured the victim), the assault or abuse becomes the more serious (i.e., aggravated) offense. Unlike the old law, the new law allows prosecution for aggravated criminal sexual assault by a spouse, provided that the incident is reported within 30 days.

The Illinois statute specifically provides for a consent defense. However, the law also eliminates the resistance requirement by deleting the phrase "against her will" from the defintion of sexual assault and by stating that lack of resistance resulting from the use of force or threat of force does not constitute consent.

Criminal Justice Officials' Attitudes Toward the Changes

Attitudes Toward the Rape Shield Law--We interviewed 32 judges, state's attorneys and public defenders in Cook County to determine attitudes toward the Illinois reforms. Respondents agreed that the effect of the shield law was mitigated somewhat

by the fact that case law already had begun to restrict the introduction of evidence of the victim's past sexual conduct. Several officials stressed, however, that the passage of the statute made it more likely that judges would interpret the law consistently. One state's attorney put it more bluntly, noting that the law gives them "something to shove down the judge's throat if he decides to admit something he shouldn't."

On the negative side, a number of respondents, prosecutors as well as defense attorneys, cited the restrictiveness of the shield law. Especially troublesome to some was the lack of an exception for evidence of past sexual conduct between the victim and a third party to show the source of semen, pregnancy or disease. Other officials noted that the law prohibits the introduction of evidence that the victim is a prostitute, which many felt might be relevant. As one state's attorney explained, "The shield law is a two-edged sword and you have to consider the defendant's point of view; there may be a pattern of behavior that might be relevant."

When asked about the frequency of in camera hearings to determine the relevance of evidence of past sexual conduct between the victim and the defendant, almost all of the respondents said these hearings, which according to the statute are required prior to admission of the evidence, were rarely or never held. The reasons given, however, varied. Some officials explained that the absence of hearings was due primarily to the fact that cases in which the defense is consent are relatively infrequent and that those which do occur seldom go to trial. Other respondents admitted that the evidence often gets in

without a hearing. They noted that since judges in Cook County almost always rule that evidence of prior sexual conduct between the victim and defendant is relevant, it is a waste of time to ask for a hearing and present an offer of proof. Several respondents noted that it is much more likely that the state's attorney will file a motion in limine to restrict evidence they suspect the defense will attempt to introduce. The formal procedural strictures contained in the Illinois shield law, in other words, are sometimes circumvented by informal agreements among judges, state's attorneys, and public defenders.

The restrictiveness of the statute is also mitigated through the plea bargaining process. Judges in Cook County actively participate in plea bargaining, holding pre-trial conferences with the purpose of negotiating a guilty plea. Most respondents agreed that evidence of prior sexual history that would be inadmissible at trial would be brought out at the pre-trial conference and taken into consideration by the judge at sentencing. Since the majority of sexual assault cases are settled through a guilty plea rather than a bench or jury trial, this clearly has the potential to affect the disposition of these cases.

Attitudes Toward the Definitional Changes--When asked about the positive features of the more recent definitional changes, most respondents cited the inclusiveness of the new law. As one prosecutor noted, the law includes "crimes that before fell between the cracks"--touching, penetration with an object, aggravated sexual assault by a spouse, and assaults with male victims. A number of officials also commented favorably upon the

expanded range of available crimes. They explained that separating rape into aggravated and non-aggravated sexual assault provides more options for charging, convicting and sentencing.

When asked to comment on the disadvantages of the definitional changes, Chicago officials mentioned the complexity of the new law; terms such as "sexual penetration," "sexual conduct," and "force or threat of force," are precisely defined and the conditions which must exist to convict a defendant of aggravated criminal sexual assault or criminal sexual abuse are specified in detail. They noted that the legal verbiage is confusing to jurors. As one prosecutor said, "I may have to spend 15 minutes of a 30-minute closing argument explaining the law." A number of prosecutors also criticized use of the term "criminal sexual assault" rather than "rape," arguing that the former term is confusing to jurors, who sometimes wonder why the defendant wasn't just charged with rape. And defense attorneys criticized the "over-inclusiveness" of the statute. As one public defender charged, under the new law you "can't bathe the baby without breaking the law."

Several of respondents also felt that the new law had had the unintentional consequence of increasing the number of counts on the indictment or information. Because of the wider range of options available at charging, in other words, prosecutors tend to "charge the case every possible way" to ensure that they include the correct charge and to protect themselves. State's attorneys contend that this has increased the paperwork associated with the case; since they obviously can't go to trial on 30 or 40 counts, they must dismiss most of the counts prior to

trial. Public defenders also criticize the expanded range of options, arguing that the new statute makes it easier to convict the defendant of something.

Description of the Cook County Criminal Justice System

Office of the State's Attorney--The Criminal Division of the Office of the State's Attorney includes over 400 attorneys who handle misdemeanors, felonies and criminal appeals. Charging decisions are made by attorneys assigned to the felony review unit and felony cases are prosecuted by attorneys assigned to the felony trial division. Three trial attorneys are assigned to each of the circuit court courtrooms and handle all of the cases assigned to the judge in that courtroom. Within each courtroom, there is a hierarchical system, with a senior attorney assisted by two less experienced attorneys.

As noted above, charging decisions are made by attorneys assigned to the felony review unit, which can either approve the felony charged by the police, charge some other felony, or reject the felony charge. If the felony charge is rejected, the police have the option of filing the case as a misdemeanor or appealing the decision to reject the felony. While there are no written policies to guide charging decisions, it is an unwritten policy that the case must be a proveable case; that is, a case which could be taken before a judge or jury.

In Illinois formal screening of the charges is accomplished either through a preliminary hearing or by a grand jury. (Until 1975 Illinois law required that felony defendants be

indicted by a grand jury before they could be brought to trial; now the decision to use a grand jury or a preliminary hearing is at the discretion of the state's attorney's office.) In Cook County, homicides and sex offenses are assigned to Branch 66 of the State's Attorney's Office. Attorneys assigned to this unit decide whether to take the case to a preliminary hearing or to the grand jury. They also identify "sensitive" or "difficult" cases which will be handled by one of the senior trial attorneys and prosecuted vertically. All other homicides and sex offenses are prosecuted horizontally.

The Cook County State's Attorney's Office does not have a special prosecutorial unit for sexual assault cases. Instead, these cases are randomly assigned to courtrooms by the presiding judge of the criminal division and are prosecuted by the trial attorneys assigned to the courtroom. According to unwritten policy, all plea negotiations must be approved by the senior attorney in the courtroom. In addition, all plea bargains in sexual assault cases must be discussed with the victim.

The Cook County Circuit Court--In Cook County felony cases are assigned to the criminal division of the Cook County Circuit Court. There are 187 circuit court judges in Cook County, with 42 in the criminal division in the first district, which includes the city of Chicago. Candidates for circuit court judgeships are nominated by one of the two political parties. Once elected they run for retention every six years. Circuit court judges are assisted by associate judges, who are nominated by a commission and elected and reconfirmed every four years by the circuit

court judges. Unlike circuit court judges, associate judges do not have jurisdiction over felony cases unless it is specifically granted by the Illinois Supreme Court. In 1986 only 25 of the 260 associate judges had been granted felony jurisdiction.

Felony cases, including sexual assaults, are randomly assigned to circuit court judges by the presiding judge of the criminal division. Each judge retains control over his or her own calendar and is responsible for the expeditious disposition of cases. Judges are not prohibited from participating in plea bargaining and may take an active role in negotiations during the pre-trial conference.

Illinois has had determinate sentencing since 1978. The judge imposes a minimum and a maximum term; the statutory maximum term can be doubled if there are aggravating circumstances. Since 1980 a life sentence has meant a life sentence without the possibility of parole; prior to that time a defendant who received a life sentence was eligible for parole after 21 years.

The Cook County Public Defender's Office--There are 363 attorneys in the Cook County Public Defender's Office. Two attorneys are assigned to each courtroom, with one supervisor for every four courtrooms. Cases are randomly distributed to courtrooms and handled by the attorneys assigned to the courtrooms.

The Public Defender's Office has no written policies for handling sexual assault cases or for plea negotiations. There is an unwritten policy, however, against "blind pleas"; that is, there are to be no guilty pleas without a negotiated sentence.

The Violent Crimes Unit of the Chicago Police Department--The city of Chicago is divided into six areas and each area has a property crimes unit and a violent crimes unit. Each violent crimes unit has a sex crimes coordinator and six to eight detectives.

Officers assigned to the sex crimes unit receive no formal training on handling sexual assault cases but do attend periodic seminars on topics such as investigating sex crimes or interviewing victims of sex crimes. The Sex Crimes Oversight Committee also has sponsored training programs on topics such as rape trauma syndrome and delayed reports of rape. The committee, whose purpose is to insure fair treatment of the victims of sex crimes, is composed of the six supervisors of the sex crimes units and leaders of local rape victim advocacy groups.

All sexual assaults are investigated by the sex crimes unit. The initial investigation is the responsibility of the patrol officer who responds to the call. As soon as that officer determines that a sexual assault has taken place, he/she notifies the sex crimes unit and a detective is sent to the scene to investigate and to interview the victim. Generally the responding officer will call the sex crimes unit even if he/she believes that the charge is unfounded. The Chicago police department will not unfound a charge unless the victim recants.

If the state's attorney's office refuses to file a felony charge, the police can file a misdemeanor without the approval of the state's attorney. They also can appeal the felonly rejection to the deputy superintendent of felony review, who can override the decision.

Disposition of Sex Offense Cases

Data summarizing the disposition of sex offense cases in Chicago from 1970 to 1985 is displayed in Tables B.1 to B.5. Included are all cases in which the most serious charge against the defendant was rape or deviate sexual assault (prior to 1984) or aggravated criminal sexual assault or criminal sexual assault (1984 and 1985).

Table B.1 depicts the outcomes of these cases. The data reveals that:

--Defendants were charged with an average of 6.3 crimes, convicted of 2.36. The figures are similar for all categories of crime except aggravated criminal sexual assault (ACSA); defendants charged with ACSA had an average of 16.67 charges on the information. (Interviews with criminal justice personnel revealed that this was due to the wider range of options available at charging under the 1984 law. State's attorneys "charge the case every possible way" to insure that they include the correct charge.) Even defendants charged with ACSA, however, were convicted of only two crimes. Consistent with this is the fact that 96.8 percent of the guilty pleas in ACSA cases involved a reduction in the number of charges against the defendant.

--With the exception of criminal sexual assault, the case outcomes were similar for the various categories of crime. About 40 percent of the defendants were convicted of the original (most serious) charge, 20 to 30

percent were convicted of some other charge, and about 30 percent were not convicted. Nearly three-fourths of the defendants charged with the less serious crime of criminal sexual assault (CSA), on the other hand, were convicted of that crime.

--The type of disposition also was similar for the various categories of crime. About half of the cases were settled by a guilty plea, about a third were settled by a bench trial and less than ten percent were settled by a jury trial. Defendants charged with either ACSA or CSA opted for a jury trial less often than defendants charged with rape or deviate sexual assault (DSA).

--Nearly all defendants convicted of rape, DSA or ACSA were sentenced to prison. Only 48 percent of those convicted of CSA were incarcerated. The median maximum prison sentence ranged from 36 months for CSA to 120 months for rape.

Table B.2 compares the outcome of rape and deviate sexual assault cases before and after the rape shield law was implemented in April of 1978. The data reveal very few differences in the disposition of these cases. Those differences which do appear do not seem to be related to the implementation of the shield law. For example, there was a decrease in the percentage of rape cases settled by a guilty plea, an increase in the percentage of cases tried by a judge. If anything, one would expect the rape shield law, which prohibits the introduction of evidence which could help the defendant's case, to produce an increase in guilty pleas. Similarly, there is no reason to expect the shield law to produce an increase in the number of

charges against the defendant.

Yearly data summarizing the disposition of rape and ACSA cases is presented in Tables B.3 and B.4, respectively. Yearly data summarizing the disposition of all sex offenses is presented in Table B.5. Since most of the sex offense cases in Table B.5 are either rape or ACSA cases, only Table B.5 will be discussed here. The data presented in Table B.5 reveals that:

--There was a fairly steady increase in the number of indictments for sex offenses from 1970 through 1985. A disruption of the trend occurred in 1974 and 1975, when the number of indictments increased dramatically, only to return to "normalcy" in 1976. There were other large increases in 1979, 1982 and 1985. Conceivably, the 1979 increase could be due to the passage of the rape shield law, the 1985 increase to the definitional changes implemented in 1984.

--There also was a fairly steady increase in the number of charges against the defendant, at least from 1970, when the mean was 2.36, to 1983, when the mean was 7.21. Then there was a dramatic increase, to 11.3, in 1984 and another large increase, to 15.65, in 1985. As noted earlier, this sudden change can be attributed to the 1984 reform, which gives prosecutors many more charging options.

--While the percentages of defendants convicted of the original charge or of some other charge varied over the 15-year period, the variations appear to be random and not related to changes in the rape laws. The percentage of defendants not convicted remained fairly stable at about 30

to 35 percent over the period.

TABLE B.1

DESCRIPTIVE DATA--DEFENDANTS CHARGED WITH SEX OFFENSES
CHICAGO, ILLINOIS
1970-1985

	All Sex Offenses[a] (N=5815)	Rape (N=4628)	Deviate Sexual Assault (N=405)	Aggravated Criminal Sexual Assault (N=745)	Criminal Sexual Assault[b] (N=37)
Mean # of charges on indictment	6.30	4.75	5.20	16.67	3.68
Mean # of conviction charges	2.36	2.41	2.38	2.07	1.50
Outcome of case					
Convicted of orginal charge	44.8%	45.7%	40.9%	39.0%	71.9%
Convicted of another charge	22.2	20.0	32.1	32.0	6.3
Not convicted	33.1	34.3	27.1	29.0	21.9
Type of Disposition					
Guilty plea	43.7%	43.0%	47.1%	46.5%	54.5%
Guilty--judge	16.2	15.5	17.6	20.2	21.2
Guilty--jury	6.9	7.2	8.4	4.3	3.0
Not guilty--judge	14.5	14.9	11.4	14.2	9.1
Not guilty--jury	1.8	1.9	1.5	1.5	0.0
Dismissed	16.8	17.4	13.9	13.3	12.1
Bench trial	30.7	30.4	29.0	34.4	30.3
Jury trial	8.7	9.1	9.9	5.8	3.0
Type of sentence, for those convicted of original charge					
Probation	1.0%	0.1%	4.9%	1.1%	47.8%
Jail	0.8	0.3	1.8	1.5	26.1
Prison	98.0	99.3	93.3	96.9	26.1
Other	0.2	0.2	0.0	0.4	0.0
Median prison sentence in months					
For those convicted of original charge	120.0	120.0	96.0	108.0	36.0
For those convicted of another charge	36.0	36.0	36.0	48.0	NA[c]
% guilty pleas where severity of charges reduced	33.3%	31.3%	43.2%	41.2%	5.6%
% guilty pleas where number of charges reduced	72.0%	67.3%	79.1	96.8%	77.8

[a]Includes rape, deviate sexual assault, aggravated criminal sexual assault, and criminal sexual assault.

[b]Because of the small number of cases, the percentages for criminal sexual assault should be interpreted with caution.

[c]There was only one defendant who was indicted for criminal sexual assault, but convicted of and sentenced to prison for another charge.

TABLE B.2

DESCRIPTIVE DATA--DEFENDANTS CHARGED WITH RAPE AND DEVIATE SEXUAL ASSAULT BEFORE AND AFTER RAPE SHIELD LAW IMPLEMENTED[a]

CHICAGO, ILLINOIS

	RAPE		DEVIATE SEXUAL ASSAULT	
	Before (N=2252)	After (N=2369)	Before (N=138)	After (N=266)
Mean # of charges on indictment/information	3.09	6.33	3.00	6.36
Mean # of conviction charges	1.94	2.87	2.07	2.52
Outcome of case				
Convicted of orginal charge	45.8%	45.5%	48.5%	36.7%
Convicted of another charge	20.6	19.4	17.9	39.4
Not convicted	33.6	35.1	33.6	23.9
Type of Disposition				
Guilty plea	48.5%	37.7%	47.8%	47.0%
Guilty--judge	11.6	19.1	9.6	21.4
Guilty--jury	6.3	8.1	9.6	7.9
Not guilty--judge	12.2	17.4	8.1	13.2
Not guilty--jury	2.2	1.5	2.2	1.1
Dismissed	19.2	16.2	22.8	9.4
Bench trial	23.8	36.5	17.7	34.6
Jury trial	8.5	9.6	11.8	9.0
Type of sentence, for those convicted of original charge				
Probation	0.3%	0.0	12.3	0.0
Jail	0.7	0.0	4.6	0.0
Prison	98.7	99.9	83.1	100.0
Other	0.3	0.1	0.0	0.0
Median prison sentence in months				
For those convicted of original charge	96.0	144.0	84.0	120.0
For those convicted of another charge	36.0	36.0	36.0	36.0
% guilty pleas where severity of charges reduced	33.1%	29.3%	26.2%	52.0%
% guilty pleas where number of charges reduced	55.5	81.8	61.5	88.5

[a]Before=cases where indictment or information filed from January, 1970 through March, 1978. After=cases where indictment or information filed from April, 1978 through December, 1985.

TABLE B.3

YEARLY DATA--DEFENDANTS CHARGED WITH RAPE

CHICAGO, ILLINOIS

1970-1985

Year Indicted*	Number of Indictments	Mean # of Charges Indicted	Convicted of Rape	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison for Rape	Sentenced to Prison for Other Charge	Mean Sent. for Rape (Months)
1970	100	2.35	38.0%	29.3%	32.3%	49.5%	25.2%	7.1%	92.1%	90.0%	119
1971	133	2.59	48.9	17.7	32.3	43.8	21.5	10.8	100.0	87.0	171
1972	218	2.57	48.6	16.7	34.0	45.4	16.7	17.1	99.1	75.0	153
1973	241	2.48	54.8	12.8	31.1	51.7	18.6	12.3	100.0	83.3	139
1974	385	2.82	47.3	20.0	31.6	49.3	14.8	16.7	99.4	77.3	131
1975	437	3.68	40.3	23.6	35.6	50.5	22.0	13.7	100.0	72.6	118
1976	236	3.30	45.8	18.2	36.0	50.4	17.4	18.6	100.0	72.1	150
1977	246	3.44	37.8	23.9	37.9	46.1	20.2	17.7	98.9	62.1	153
1978	256	3.49	45.7	23.9	30.2	46.5	20.5	9.8	100.0	82.0	157
1979	393	4.81	55.0	11.5	33.2	39.6	16.9	16.6	100.0	80.0	184
1980	448	4.81	50.0	14.2	35.2	39.0	18.5	16.7	100.0	82.5	187
1981	431	6.96	47.6	19.1	33.1	35.6	14.2	18.8	100.0	86.6	199
1982	490	7.49	35.5	24.9	39.3	35.8	15.6	23.5	99.4	75.2	189
1983	419	7.44	41.5	24.0	34.1	37.9	16.1	18.0	100.0	83.8	233
1984	173	6.28	43.6	20.1	35.7	39.8	15.2	20.5	100.0	88.6	215
1985	15	5.40	(2)	(7)	(3)	There were too few cases to calculate percentages for 1985					

*The year in which the indictment or information was filed.

TABLE B.4
YEARLY DATA--DEFENDANTS CHARGED WITH AGGRAVATED CRIMINAL SEXUAL ASSAULT
CHICAGO, ILLINOIS
1984-1985[a]

Year Indicted[b]	Number of Indict-ments	Mean # of Charges Indicted	Convicted of ACSA	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison for ACSA	Sentenced to Prison for Other Charge	Mean Sent. for ACSA (Months)
1984	202	16.82	40.1%	28.0%	31.0%	40.1%	9.6%	21.3%	98.8%	70.4%	169
1985	541	16.61	33.1	33.8	28.2	49.0	14.9	13.4	98.3	68.8	150

[a]In 1984 Illinois replaced the crimes of rape and deviate sexual assault with aggravated criminal sexual assault and criminal sexual assault.

[b]Year in which the indictment or information was filed.

TABLE B.5

YEARLY DATA--DEFENDANTS CHARGED WITH SEXUAL OFFENSES[a]

CHICAGO, ILLINOIS

1970-1985

Year Indicted[b]	Number of Indictments	Mean # of Charges Indicted	Convicted of Original Charge	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison	Mean Sentence (Months)
1970	107	2.36	38.3%	29.2%	32.1%	50.0%	25.5%	6.6%	91.7%	92
1971	145	2.56	49.0	16.9	33.1	42.2	23.2	9.9	96.8	143
1972	230	2.59	48.3	16.8	34.1	45.2	17.1	16.7	92.7	129
1973	253	2.53	54.2	13.1	31.0	50.8	18.7	12.2	95.2	125
1974	412	2.86	47.8	20.0	31.1	50.7	14.6	16.3	91.8	112
1975	450	3.64	40.2	23.8	35.5	50.8	22.0	13.5	89.9	94
1976	264	3.26	46.6	16.7	36.7	50.0	18.2	18.6	91.0	128
1977	261	3.46	38.3	23.3	38.0	45.7	20.2	17.8	85.6	122
1978	268	3.44	45.2	24.7	30.0	45.9	20.7	9.4	93.1	125
1979	415	4.75	54.0	12.8	32.9	39.2	16.7	16.5	94.2	161
1980	478	4.70	49.8	14.6	35.0	38.9	18.8	16.1	95.8	156
1981	464	6.83	47.6	19.5	32.7	35.2	14.2	18.4	95.8	166
1982	581	7.76	35.5	28.6	35.6	38.6	14.4	21.0	88.8	139
1983	473	7.21	40.6	26.2	33.0	39.3	14.6	18.3	91.8	175
1984	416	11.30	41.6	24.9	32.8	41.6	11.0	21.8	90.2	144
1985	588	15.65	33.3	33.5	28.0	49.1	15.1	12.9	83.3	108

[a]Includes rape, deviate sexual assault, aggravated criminal sexual assault, and criminal sexual assault.

[b]Year in which the indictment or information was filed.

APPENDIX C--DETROIT

Legal Changes

In 1975, the most comprehensive of rape legislation reforms went into effect in Michigan. The reform included new definitions of sexual assaults as a series of graded offenses, rape shield provisions, and explicit statements of the lack of need for corroboration or resistance by the victim.

The new law defined four degrees of criminal sexual conduct which can involve and actor and victim of either sex. First and third degree criminal sexual conduct (CSC) involve sexual penetration, which 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. The crime is in the first degree if any of the following circumstances exists:

1. The victim is under 13 years of age.

2. The victim is between 13 and 16 years old and the actor is a member of the same household as the victim, is related by blood or affinity to the fourth degree, or is in a position of authority and used that authority to coerce submission by the victim.

3. The commission of another felony is involved.

4. The actor is aided or abetted by one or more other persons and the actor uses force or coercion or the actor knows the victim

is mentally defective, mentally incapacitated, or physically helpless.

5. The actor is armed with a weapon or something used so as to lead a victim to reasonably believe it is a weapon.

6. The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration.

7. The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

The statute states that force and coercion in the above descriptions include but are not limited to any of the following circumstances:

a. The actor overcomes the victim through the actual application of physical force of physical violence.

b. 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 these threats.

c. When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. "To retaliate" includes threats of physical punishment, kidnapping, or extortion.

d. 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.

e. When the actor, through concealment or by the element of surprise, is able to overcome the victim.

Sexual penetration is third degree criminal sexual conduct if any of these circumstances exists:

1. The victim is between 13 and 16 years old

2. Force or coercion (as illustrated above) is used to accomplish the penetration.

3. The actor knows that the victim is mentally defective, mentally incapacitated, or physically helpless.

Second and fourth degree criminal sexual conduct involve sexual contact, which "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. Intimate parts "includes the primary genital area, groin, inner thigh, buttock, or breast of a human being." The offense is defined as second degree CSC if any of the circumstances that define sexual penetration as first degree CSC exist. Similarly, fourth degree CSC is sexual contact with any of the circumstances that define penetration as third degree CSC, with the exception of the circumstance that the victim is between 13 and 16 years old. This does not make sexual contact criminal if none of the other circumstances is present.

Two other crimes defined under the new statutes are assault with intent to commit criminal sexual conduct involving sexual penetration and assault with intent to commit criminal sexual conduct in the second degree.

The new law states explicitly that the testimony of a victim need not be corroborated in prosecutions under the CSC provisions, and that there is no need for a victim to resist the actor.

The rape shield law passed as part of Michigan's comprehensive changes states that evidence of specific instances of the victim's sexual conduct and opinion or reputation evidence of the victim's sexual conduct shall not be admitted except in two situations. These situations occur when evidence of the victim's past sexual conduct is with the defendant or when evidence of specific instances of sexual activity are to show the source or origin of semen, pregnancy, or disease. In these situations evidence may be admitted but only to the extent that the judge finds that the evidence is material to a fact at issue and only if the inflammatory or prejudicial nature does not outweigh its probative value. If the defendant wants to offer evidence that is allowed under the exceptions, the defendant must file a written motion and offer of proof within 10 days after the arraignment on the information. The judge may order an in camera hearing to determine whether the evidence is admissible. The judge may order an in camera hearing during the trial if new information is discovered during the course of the trial that would make such evidence admissible.

The Michigan law has a specific spousal exception that states that a person does not commit a sexual assault if the victim is his or her legal spouse unless the couple are living apart and one has filed for separate maintenance or divorce.

Criminal Justice Officials' Attitudes toward the Changes

Attitudes toward the Graded Offenses and New Definitions.

Most respondents felt that the new definitions and graded offenses were much fairer than the old common law. The commensurate penalties allow appropriately different punishments for very different behaviors. Prosecutors felt that the new definitions are much clearer, and that they are particularly helpful on appeal when there are questions about the sufficiency of the evidence. Some also felt that the changes give prosecutors more discretion in plea bargaining. Another factor considered important was the inclusion of some kinds of sexual conduct that were not covered under the old law.

Some respondents expressed concern with the mandatory jail term associated with CSC in the third degree. One judge reported having had 10-15 cases that are really statutory rape, such as voluntary sexual relations between a 17 year old boy and a 14 year old girl who are dating. Under the new law this is defined as third degree CSC because the girl is between 13 and 16 years old and consent is not a defense in that case. The judge felt he needed more discretion in these cases.

One other concern expressed with the new definitions was with the complexity of instructions to be given to the jury, especially when the attorneys ask for lesser included offenses. Some respondents felt that juries would be hopelessly confused if given definitions for criminal sexual assault in the first, second, third, and fourth degrees, but others felt that with careful instructions there was no more problem than with other offenses.

Attitudes toward Statements that Victims Need Not Resist. Although many respondents felt the specific statement in the new law that resistance by a victim is not necessary had not really had much impact, others felt it was a very significant change. Those who felt that its impact was negligible noted that resistance had never been required by the law and that juries would use common sense anyway in evaluating the presence or absence of resistance. One prosecutor stated that "juries still expect some resistance or some explanation as to why there was none. This is especially true if it was a date gone sour; if we can't show some resistance in this case we're in a lot of trouble".

Those who felt the statement was significant focused primarily on the instruction to the jury explicitly stating that the victim need not resist for criminal sexual conduct to have occurred. Some judges give the instruction routinely while others do so only if requested by the prosecutor. It is clear, however, that if resistance becomes an issue in the case, the instruction will be given to the jury. Several respondents noted that lack of resistance had been the major focus of the defense in trials before

the changes in the law; they felt that the explicit statement to the jury that resistance is not required by the law makes that defense strategy more difficult. Not only will the judge give the instruction to the jury at the end of the case, but the prosecutor will use the statement in the law as a basis for objecting as soon as the defense raises that issue.

Attitudes toward Statement that Testimony Need Not Be Corroborated. As with the statement that the victim need not resist, many respondents felt that the statement in the law that a victim's testimony need not be corroborated had little impact because the law basically had not changed. Michigan never had a corroboration requirement, so the statement made no difference in the elements of the crime to be proved. Others agreed with the prosecutor who said, "If you're talking about consent defenses, jurors are still looking for corroborating evidence--physical injury, a weapon, an hysterical call to the police; old habits and old attitudes die hard and we can change the law but we can't necessarily change attitudes."

On the other hand, some respondents felt that having the statement and the instruction to the jury are important for the prosecution in convincing a jury that if they believe a victim's story they don't need anything else in order to convict. One prosecutor described a case she had tried in which the only evidence was identification of the defendant's voice. When the prosecutor first started questioning jurors during the voir dire as to whether they could convict the man with no other evidence, they

all answered no. The judge then took over the voir dire and stressed what the law required for conviction. He explained that a completed sex act is not required for the offense to be rape and asked what kind of evidence would be expected with acts of fellatio, for example. In the end the defendant was convicted by the jury.

As with the statement on resistance, some judges routinely give the jury an instruction on corroboration; others instruct only if requested by the prosecutor. Reports were contradictory as to how frequently prosecutors ask for the instruction; one judge reported that they never do, while another said the prosecutors always make the request.

Attitudes toward the Rape Shield Law. Respondents in Detroit were extremely positive in their evaluation of the rape shield law. Most expressed the attitude that the law makes the trial focus on the real issues of the case instead of on irrelevant issues. As one judge stated, the victim's prior sexual history "has nothing to do with the acts of the victim with this defendant...prostitutes can be raped; if it's not a voluntary act, it's not a voluntary act." Many respondents echoed the statement that prostitutes can be raped, and noted that men were being tried in Michigan for raping prostitutes.

Respondents also focused on the benefits of the shield law in producing less anxiety for victims and therefore making them more likely to report rapes and follow through with prosecution. One judge felt that apprehension about public embarrassment had been a

major reason why many rapes were not reported, and stated that before the law changed, "I wouldn't have let my daughter report and testify."

Most respondents agreed that in camera hearings on the admissibility of prior sexual history evidence are rarely held. Defense attorneys know that sexual history with parties other than the defendant will not be admitted, and they apparently do not even try to raise the issue. Attorneys feel that they run the risk of alienating the judge by asking for a hearing if the evidence is not relevant. When prior sexual history involving the defendant is the issue, hearings are still rarely held. Prosecutors are unlikely to object if the evidence seems relevant, and so the admissibility issue is handled informally. Many respondents noted that the issue does not come up often because most cases do not involve acquaintances; one prosecutor said, "I suspect these other types of cases are filtered out before they get to us." One defense attorney reported that it is still sometimes possible to get the evidence in partially through careful phrasing of questions; he stated, however, that such a strategy was always risky, depending on who the judge was.

Many respondents recalled that before the shield law was introduced, prior sexual history of the victim was a major thrust of the defense. Although the evidence was not often admitted, the ability to ask the question was viewed as damaging to the prosecution's case. One judge offered the opinion that it may have taken the law to foster "a stronger judicial no-nonsense attitude."

Most prosecutors felt that their position in plea bargaining was strengthened by the presence of the rape shield law. The law takes away one defense tactic and thus results in a different analysis of the defense's ability to win the case. One prosecutor offered an example: "Let's say the victim is a hooker with a long history and we know we can keep that out; it tends to put her past in its proper perspective and force us to make a decision about a plea on the relevant facts."

Description of the Detroit Criminal Justice System

Detroit Recorder's Court. The Detroit Recorder's Court handles all criminal cases for Detroit, and only criminal cases. Before 1981 all phases of misdemeanor and felony cases were in the Recorder's Court; since 1981 the lower court handles the initial phases of these cases. There are 29 judges on the Recorder's Court bench, although until 1978 there were only 13 judges. Judges are elected on a non-partisan ballot.

Cases first go by blind draw to one of five floor executive judges. These judges, appointed to the position by the chief judge, are known not to be the harshest sentencers. Their role is to try to work out plea negotiations or to encourage a waiver trial (trial by judge), and they do not take any jury trials. If a plea or waiver trial is not agreed to with the floor executive judge, then the case goes by blind draw to one of the other judges on the floor.

Prosecutors are assigned to a particular judge for four months. The district attorney tries to assign a prosecutor known for working out plea bargains to the floor executive judge. Defenders are not assigned to judges, but follow cases through the system instead.

In the 1970's the Supreme Court of Michigan ruled that judges could not reduce charges. After that ruling judges began to participate in sentence bargaining. But in 1983 the Supreme Court ruled that judges could not be involved in bargaining for sentences either. That year there was a 52% increase in waiver trials, probably indicating the practice of a "slow plea of guilty." Currently, 75% of the trials in Detroit Recorder's Court are waiver trials.

Wayne County Prosecutor's Office.

There are 120 attorneys in the criminal division of the Wayne County Prosecutor's Office. Ten years ago that office decided to vertically prosecute rape cases by having the same attorney handle the warrant, the preliminary exam, and the trial. They found that the system did not work well, and that the strong local rape crisis center was providing continuity for a victim, so they changed back to the current system with three levels of attorneys. When a case first comes to the prosecutor, it goes to the warrant section, where three attorneys are assigned. The prosecutor interviews every victim at that stage unless the victim is in the hospital. These warrant attorneys decide whether to prosecute the case, and they refer victims to the victim-witness unit that operates out of

the Prosecutor's Office. Very few warrants are denied in criminal sexual conduct cases; if a warrant is denied there is a route of appeal for either the detective or the complainant. An appeal would go to the chief warrant attorney, then to the criminal division chief, and then to the Prosecutor's chief of operations.

The next stage for a case is the preliminary exam, which occurs within 12 days after arraignment; a prosecutor is assigned to the preliminary exam courtroom. About 40% of defendants waive the preliminary exam, but only 10-15% of cases fail to meet the probable cause standards for proceeding with prosecution. Most of the ones that fail are because a complainant does not show up or admits to having lied in the complaint. Most of the contested cases are bound over to Recorder's Court where they are assigned to a docket attorney who handles motions, plea bargains, and any pre-trial procedures. The docket attorneys work with to the floor executive judges, with four-month rotations. Eight to ten prosecutors are assigned to the other five or six judges on a floor, also with four month rotations (which started in about 1984). The best, most experienced trial attorney is a floater, who can assist or try cases in any courtroom.

The Prosecutor has a policy on plea bargaining in CSC cases. First, there is no plea bargain unless the docket attorney talks with the complainant and obtains her approval. Further, a CSC1 case can only be negotiated down to CSC3, unless the case is totally falling apart, and a CSC3 case can not be negotiated down to another charge. There is oversight of every case by the

criminal division chief who supervises the trial attorneys. The prosecutor who handles a case must fill out a synopsis, and these reports are routinely reviewed.

New assistant prosecutors receive one week of training, then they spend two weeks sitting in on warrants and preliminary exams, and then they go to a court room and work on waiver trials with the executive floor judges.

Detroit Legal Aid and Defenders Association. In Detroit only 25% of the indigent cases are handled by the public defender's office. All cases with appointed counsel are assigned by the executive floor judge. There is a volunteer system for private appointed counsel, but in order to be on the list for appointments the attorney must complete a course on criminal advocacy.

Detroit Police Department. The Detroit Police Department has a specialized sex crimes unit, which is commanded by an inspector who also heads the robbery unit. The unit was formed in 1927 as the women's division, which handled rape complaints, child abuse cases, and cases involving delinquency and teenage girls. There were no men in the unit until 1972 or 1973. Four lieutenants are in charge of four squads with a total of 35 officers. One squad deals with child sexual abuse cases, a second squad handles cases with known perpetrators (acquaintance cases), and two squads handle cases with unknown perpetrators.

Recruitment to the unit is by self-selection. Officers put in transfer requests, a lieutenant investigates the officers, and the Inspector approves assignments. There are no special requirements

for the unit. The supervisors look for reliability and dependability, service ratings, any citations, commendations, letters, special classes, etc. Officers are trained in the unit. New officers are assigned to an experienced officer for one month to be taught how to obtain information, etc. After that the supervisors take over to answer questions. New recruits go the the training academy for an eight-hour class on interrogations and interviews. Some special seminars on rape are held, and rape counselors come for presentations. There is no regular sequence of seminars or classes, however.

When a report of a sex crime is received, the 911 dispatcher sends a scout car to the house. The patrol officers who respond then call the sex crimes unit from the house and report on the situation. The supervisor determines what happens next. For all breaking and entering rapes two officers from the unit are sent out to the house along with the canine unit; they will collect fingerprints and other evidence. For rapes that occur on the street, investigators are sent to the scene. In cases where the perpetrator is known, the action taken depends on the circumstances. If someone reports a case of incest that occurred three months earlier, for example, they would have the complainant come to the station to make a statement. If a woman was raped by a man she had just met, they would send investigators to canvass the area.

Both male and female officers conduct interviews with complainants. If a victim requests a female officer, that request is honored.

Unfounding of a case depends on the judgment of the officer, whether the complainant's story is believed, and the objective facts. An officer may challenge a complainant if he does not believe her and try to convince her to tell the truth. An officer might, for example use a polygraph test with the alleged perpetrator, and if he passes, let the complainant know about the test results. But for a case to be unfounded the victim has to change her story. If she is adamant about the charges, the police go forward with the case, although they might recommend that the prosecutor refuse to issue the warrant. In Michigan the law prohibits use of the polygraph with a sexual offense victim. The police and the prosecutor cannot even offer a polygraph test, even if the victim should ask to take one.

The police reported very good cooperation with the prosecutor. The police respondents noted that the prosecutor's office used to refuse warrants in a lot of rape cases, but that since the women's movement began to put on pressure, they refuse very few. They also reported good cooperation with area hospitals, and excellent cooperation with the rape crisis center. The rape crisis center has a counselor at the police station during the midnight to 7a.m. shift.

Detroit Rape Counseling Center. The Detroit Rape Counseling Center was started in 1975 as part of the Southeast Michigan

Anti-Rape Group, which was a coalition of agencies and individuals. The Center is run through the sex crimes unit of the Detroit Police Department. Most of their work is done through the emergency department of the Detroit Receiving Hospital. There they have a counselor seven days a week, 24 hours a day. Ninety percent of their cases are brought to the hospital by the police. Sometimes victims go to other hospitals, but usually the police bring them to Detroit Receiving; those at other hospitals are referred to the Counseling Center. If the offense is CSC in the first or third degree (involving penetration) victims are brought to the hospital. If the offense is CSC in the second or fourth degree the victim probably does not need medical attention, but they may be brought to the triage desk at the hospital to meet with the rape crisis center counselor, or they may just call in. The Counseling Center also has one staff member who accompanies victims to court.

The respondent from the Counseling Center felt that the rape shield law was working well in Michigan. Her main concern with the justice system was in the punishment given to offenders; she felt that too many offenders are given probation.

The Rape Counseling Center has good relations with the prosecutor's office and excellent relations with the hospital and its medical staff. Although they are part of the police department, they would still like to be more involved in training police officers in the sex-crimes unit.

Detroit Victim-Witness Assistance Program. The victim-witness assistance program of the Wayne County Prosecutor's Office was

started in 1977. They get notice of every felony victim at the warrant stage, and they meet with every victim who is present when a warrant is issued. At this point they discuss the basic rights of victims. The victim assistance part of the unit focuses on three groups: rape victims, senior citizens, and victims of domestic violence. When anyone from one of these groups comes in, they are seen by the victim assistance staff member who covers the warrants division before they see a prosecutor. The staff of the unit do counseling and referrals. They have a good working relationship with the Rape Counseling Center; the rape counselor gets docket sheets from the victim-witness unit, and the two groups divide rape counseling since neither has enough staff to deal with all victims.

The victim assistance staff have a good relationship with the prosecutors; they seldom have conflicts over CSC cases. The victim assistance respondent noted that a number of cases have been prosecuted that involved prostitutes as victims; she also stated that although they were tough cases, date rapes were getting into the system and being prosecuted. In the date rape cases she said the staff try not to give false assurance to the victim; they stress to the victim that it will not be easy, and they try to prepare her for a not guilty verdict. At the same time, however, they try to encourage the prosecutors to take these cases and fully prosecute them. In one case in which a defendant was found guilty but received a term of nine days in jail, they gave the victim the

names of the judicial tenure commissioners and encouraged her to write letters.

Pressure on the System. Reports of pressure by women's groups or the press on judges and prosecutors were mixed. Some respondents felt that women's groups had been quite active earlier but not recently. Others noted the presence of rape counseling center staff and victim advocates in the courtroom, and felt that cases were always being monitored. Still other respondents gave more specific examples. One judge stated that victim assistance personnel and rape crisis center staff send letters, ask to talk to judges, sometimes stage demonstrations, and put out publications with statistics on rape and scenarios of "outrageous" judicial behavior. Another judge reported, "They sit in my courtroom, and they know me," and still another described a case that received extensive publicity when a defense attorney laughed about the crime and the judge laughed at a joke in court. Some prosecutors felt there was careful monitoring of warrants that are denied.

Disposition of Sex Offense Cases

Data summarizing the disposition of sex offense cases in Detroit from 1970 through 1984 are presented in Tables C.1 to C.4. Included in the category "all sex offenses" are all cases where the most serious charge against the defendant was rape, sodomy, first degree criminal sexual conduct, second degree criminal sexual conduct, third degree criminal sexual conduct, assault with intent to commit rape or sodomy, assault with intent to commit criminal

sexual conduct, attempted first or second degree sexual conduct, gross indecency, attempted gross indecency, and fourth degree criminal sexual conduct.

The data in Table C.1 summarize the outcomes of these cases. The data reveal that:

--For all sex offenses defendants were charged with an average of 2.55 crimes, and convicted of 1.48. With the exception of CSC 1, the individual offenses shown had lower numbers of charges on indictment (all around 1.7) and on conviction (all around 1.2). Those with CSC 1 as the most serious charge, however, had a much higher number of charges on indictment (3.12) and on conviction (1.7).

--Conviction rates for the different crimes were very similar--around 66%--with the exception of CSC 3 with a lower conviction rate of 60%. Those charged with rape were less likely than the others to be convicted on the original charge (20% as opposed to around 33%).

--The rate of guilty plea dispositions ranged from 40 to 50% across the different offenses. The trial rate was lowest for those charged with rape (27%) and highest for those charged with CSC 3 (40%). The rate of dismissals was roughly constant across the different crimes, although slightly higher for rape cases.

--The incarceration rate was highest for those defendants convicted of CSC 1 (86%), then for those convicted of rape (78%), then CSC 3 (then 61%), and lowest for those convicted of CSC 2 (52%).

Table C.3 summarizes the outcomes of sex offense cases before and after the legal changes were implemented in April, 1975; Tables C.4 and C.5 present yearly data for rape cases and for all sex offenses. Many changes can be seen. The number of charges on indictment and on conviction increased with the reforms. The total conviction rate did not change, but the rate of conviction on original charges increased, as convictions for other charges decreased. This results is in accord with the results of Marsh, et al. (1982), but our time-series analysis did not show the change in percent convicted on original charge to be statistically significant.

The proportion of cases going to trial increased substantially after the legal reforms, while guilty pleas decreased and dismissals decreased slightly. The increase in trials was almost totally accounted for by an increase in bench trials. This change may be accounted for by the two Michigan Supreme Court rulings that disallowed plea bargaining by judges. Court administrators reported to us that there was a 52% increase in waiver trials after the 1983 ruling.

There were no large changes in incarceration rates with the legal changes, but there were increases in median prison sentences for all the sex offenses together and for the more serious offenses when convictions were on lesser charges.

TABLE C.1
DESCRIPTIVE DATA--DEFENDANTS CHARGED WITH SEX OFFENSES
DETROIT, MICHIGAN
1978-1984

	All Sex Offenses* (N=4764)	Rape (N=599)	First Degree CSC (N=2838)	Second Degree CSC (N=452)	Third Degree CSC (N=588)
Mean # of charges on indictment	2.55	1.69	3.12	1.79	1.73
Mean # of conviction charges	1.48	1.16	1.71	1.16	1.13
Outcome of case					
Convicted of orginal charge	32.8%	20.9%	36.1%	33.8%	32.0%
Convicted of another charge	34.0	45.1	31.3	36.0	27.9
Not convicted	33.2	34.0	32.6	30.2	40.1
Type of Disposition					
Guilty plea	45.7%	50.3%	43.7%	51.1%	39.8
Guilty--judge	12.3	5.7	13.7	14.2	14.8
Guilty--jury	8.8	9.8	10.0	4.6	5.8
Not guilty--judge	6.7	4.7	6.8	6.0	11.6
Not guilty--jury	8.1	7.3	8.6	6.2	8.2
Dismissed	18.4	22.2	17.3	17.9	19.9
Bench trial	19.0%	10.4%	20.5%	20.2%	26.4%
Jury trial	16.9	17.1	18.6	10.8	14.0
Type of sentence, for those convicted of original charge					
Probation	21.5%	21.6%	13.8%	47.4%	38.5%
Jail	3.5	1.6	1.8	9.2	8.6
Prison	74.6	76.8	84.1	42.8	52.4
Other	0.4	0.0	0.4	0.7	0.5
Median prison sentence in months					
For those convicted of original charge	180.0	180.0	180.0	180.0	180.0
For those convicted of another charge	120.0	120.0	180.0	60.0	60.0
% guilty pleas where severity of charges reduced	57.5%	80.7%	51.3%	0.0%	0.0%
% guilty pleas where number of charges reduced	63.7	42.6	74.2	32.7	35.0

*Includes rape, sodomy, first degree criminal sexual conduct, second degree criminal sexual conduct, third degree criminal sexual conduct, assault with intent to commit rape or sodomy, assault with intent to commit criminal sexual conduct, attempted rape, attempted first or second degree criminal sexual conduct, gross indecency, attempted gross indecency, and fourth degree criminal sexual conduct.

TABLE C.2

DESCRIPTIVE DATA--DEFENDANTS CHARGED WITH SEX OFFENSES
BEFORE AND AFTER REFORMS IMPLEMENTED[a]
DETROIT, MICHIGAN

	All Sex Offenses[b]		Rape, Sodomy, Gross Indecency	1st, 3rd CSC
	Before (N=749)	After (N=4002)	Before (N=680)	After (N=3420)
Mean # of charges on indictment	1.42	2.76	1.64	2.90
Mean # of conviction charges	1.12	1.55	1.14	1.62
Outcome of case				
Convicted of orginal charge	19.3%	35.4%	20.9%	35.6%
Convicted of another charge	48.3	31.3	46.7	30.7
Not convicted	32.4	33.3	32.4	33.8
Type of Disposition				
Guilty plea	52.5%	44.5%	52.6%	43.1%
Guilty--judge	5.6	13.6	5.9	13.8
Guilty--jury	9.6	8.6	9.0	9.3
Not guilty--judge	3.7	7.3	4.1	7.6
Not guilty--jury	7.7	8.1	6.8	8.6
Dismissed	20.8	17.8	21.6	17.7
Bench trial	9.3%	20.9%	10.0%	21.4%
Jury trial	17.3	16.7	15.8	17.9
Type of sentence, for those convicted of original charge				
Probation	19.3%	21.7%	24.5%	17.6%
Jail	2.9	3.6	1.4	2.8
Prison	77.9	74.2	74.1	79.1
Other	0.0	0.4	0.0	0.4
Median prison sentence in months				
For those convicted of original charge	120.0	180.0	180.0	180.0
For those convicted of another charge	60.0	180.0	120.0	180.0
% guilty pleas where severity of charges reduced	82.9%	51.8%	80.1%	51.6%
% guilty pleas where number of charges reduced	31.5	70.9	38.3	73.0

[a]Before=cases where information filed from January, 1970 to March, 1975. After=cases where information filed from April, 1975 to December, 1984.

[b]Includes rape, sodomy, first degree criminal sexual conduct, second degree criminal sexual conduct, third degree criminal sexual conduct, assault with intent to commit rape or sodomy, assault with intent to commit criminal sexual conduct, attempted rape, attempted first or second degree criminal sexual conduct, gross indecency, attempted gross indecency, and fourth degree criminal sexual conduct.

TABLE C.3
YEARLY DATA--DEFENDANTS CHARGED WITH RAPE, SODOMY, GROSS INDECENCY, CSC1 OR CSC3
DETROIT, MICHIGAN
1970-1984

Year Indicted	Number of Indict-ments	Mean # of Charges Indicted	Convicted of Original Charge	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison for Original Charge	Sentenced to Prison for Other Charge	Mean Sent. Orig. Chg. (Months)
1970	73	1.20	13.7%	55.6%	30.6%	56.2%	21.9%	8.2%	80.0%	72.5%	310
1971	98	1.26	6.1	57.3	36.5	57.1	27.6	8.2	100.0	53.7	260
1972	93	1.38	15.0	51.6	33.0	50.5	16.1	16.1	78.6	65.1	277
1973	111	1.43	17.1	56.8	26.1	55.0	15.3	10.8	88.9	64.5	261
1974	166	1.65	26.1	35.8	38.2	47.0	24.1	13.9	83.7	70.7	193
1975	265	2.31	39.7	27.8	31.4	52.1	20.0	10.2	67.3	63.4	227
1976	326	3.03	48.3	17.6	33.2	51.2	19.0	13.8	75.6	76.8	214
1977	375	2.98	45.7	16.4	37.8	37.6	22.9	14.7	69.6	49.2	198
1978	324	3.06	36.5	34.2	29.2	51.0	13.9	15.4	78.4	49.5	234
1979	463	3.36	33.7	36.7	29.4	54.4	16.6	12.5	71.8	41.9	247
1980	401	3.57	25.9	43.4	30.6	49.6	15.5	14.0	86.5	54.3	213
1981	361	3.03	24.9	39.4	35.6	45.2	20.5	15.0	90.0	59.9	202
1982	291	2.49	38.1	28.2	33.4	40.2	12.7	20.3	91.8	48.7	263
1983	320	2.38	32.6	30.9	36.0	27.5	12.2	23.4	93.3	73.7	242
1984	411	2.50	32.5	25.6	41.8	26.3	21.4	20.2	99.2	86.0	311

TABLE C.4

YEARLY DATA--DEFENDANTS CHARGED WITH SEX OFFENSES*

DETROIT, MICHIGAN

1970-1984

Year Indicted	Number of Indict-ments	Mean # of Charges Indicted	Convicted of Original Charge	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison for Original Charge	Sentenced to Prison for Other Charge	Mean Sent. Orig. Chg. (Months)
1970	94	1.20	16.0%	53.3%	30.4%	52.1%	21.3%	7.4%	86.7%	69.4%	237
1971	127	1.24	9.4	55.2	35.2	56.7	26.0	8.7	100.0	55.9	176
1972	113	1.34	16.1	50.0	33.6	49.1	17.0	16.1	77.8	60.8	235
1973	156	1.38	13.6	58.8	27.4	56.1	16.8	10.3	85.0	58.4	252
1974	210	1.58	26.7	34.2	39.0	46.9	23.7	14.0	78.2	66.7	180
1975	325	2.20	38.2	27.5	33.2	51.1	20.9	10.8	61.8	64.0	214
1976	379	2.85	46.0	20.5	32.2	53.9	19.2	12.2	75.0	68.0	202
1977	441	2.79	46.9	16.9	36.1	38.2	22.3	13.4	63.1	44.6	194
1978	364	2.92	35.8	34.9	29.1	51.1	14.0	15.1	74.2	46.4	229
1979	600	3.09	28.4	34.3	37.1	49.5	14.8	11.4	70.6	38.6	240
1980	465	3.42	24.2	44.0	31.7	49.2	16.8	12.8	84.8	51.7	207
1981	432	2.80	25.2	39.2	35.3	46.5	19.9	14.6	84.4	56.3	192
1982	341	2.37	38.0	27.3	34.4	40.0	12.6	20.9	88.4	49.4	246
1983	351	2.30	33.7	30.3	35.3	27.9	12.5	22.2	90.7	69.7	224
1984	453	2.18	33.8	25.1	40.9	28.5	20.7	19.6	95.9	82.2	292

*Includes rape, sodomy, first degree criminal sexual conduct, second degree criminal sexual conduct, third degree criminal sexual conduct, assault with intent to commit rape or sodomy, assault with intent to commit criminal sexual conduct, attempted rape, attempted first or second degree criminal sexual conduct, gross indecency, attempted gross indecency, and fourth degree criminal sexual conduct.

APPENDIX D--HOUSTON

Legal Changes

There have been two major rape law reforms in Texas. A weak rape shield law was implemented on September 1, 1975, and definitional changes went into effect on September 1, 1983.

The Texas rape shield law does not categorically exclude any evidence of the victim's past sexual conduct. Instead, it states that evidence of specific instances of the victim's sexual activity, opinion evidence, and reputation evidence can be admitted only if the judge finds that the evidence is material and that its inflammatory or prejudicial nature does not outweigh its probative value. The law further stipulates that the defendant must inform the judge that he intends to introduce evidence of the victim's past sexual history. The judge then must conduct an in camera hearing to determine what evidence is admissible and to specify the questions which can be asked.

Texas adopted a number of definitional changes in 1983. The four crimes of rape, aggravated rape, sexual abuse, and aggravated sexual abuse were deleted from the "Sexual Offenses" section of the penal code and sexual assault and aggravated sexual assault were added to the "Assaultive Offenses" section.

The old laws defined rape (penile-vaginal intercourse) and sexual abuse (oral or anal sex) in terms of the woman's absence of consent and lack of resistance. For example, rape was defined as sexual intercourse without the female's consent and nonconsent

was inferred if the accused compelled the victim to submit "by force that overcomes such earnest resistance as might reasonably be expected under the circumstances" or by any threat "that would prevent resistance by a woman of ordinary resolution . . ." [Texas Penal Code 21.02 (1974)(Supp. 1980)]. If the accused seriously injured the victim, attempted to kill her, or threatened to injure or kill her, the crime became aggravated rape. The definitions of sexual abuse and aggravated sexual abuse were similar. Aggravated rape and aggravated sexual abuse were first degree felonies with penalties of life or 5 to 99 years. Rape and sexual abuse were second degree felonies with penalties of 2 to 20 years.

The new gender-neutral laws cover a broader range of sexual acts than the old laws. Under the old laws rape included only penile-vaginal intercourse and sexual abuse included only oral or anal intercourse. The new crime of sexual assault includes penile-vaginal, oral, and anal intercourse, as well as penetration with an object. The new laws retain the emphasis on consent, but the definition of consent focuses more on the accused's assaultive behavior than on the victim's lack of resistance. For example, the law states that the assault is without the victim's consent if the offender compells submission by using force or violence or by threatening to use force or violence. It appears that resistance still is required, however, since the law includes within the definition of nonconsent situations where the victim is mentally or physically unable to resist. The 1983 statute eliminates the marital exemption for spouses who are living apart or legally

separated. It also states that corroboration is not required if the victim informed anyone of the assault within six months; under the old law a defendant could be convicted on the uncorroborated testimony of the victim only if the victim made an immediate or prompt outcry.

Criminal Justice Officials' Attitudes Toward the Changes

Shield Law--While there were some dissenting opinions, Houston criminal justice officials agreed that evidence of the victim's past sexual history was introduced "frequently" before the rape shield law went into effect. A judge commented that the absence of case law to prevent use of this type of evidence meant "it was admissible in every case." Prosecutors noted that attacking the victim was the "most common type of defense" and that defense attorneys used this tactic whenever "they had something or could make something up." Even defense attorneys admitted that irrelevant sexual history evidence was admitted. As one said, "It was a nightmare . . . a lot of women were worked over and made to feel like whores because they were assaulted."

Given these perceptions, it is not surprising that Houston respondents generally believe the Texas rape shield law has resulted in more humane treatment of rape victims. One judge commented, for example, that "the days when a victim was blasted by defense attorneys are gone," while a district attorney stated that the law "has contributed to a feeling among people in the system that no matter who she is or what her past is like, she deserves to be treated with respect." Several respondents

speculated that victims now are more likely to report the crime to the police.

A number of respondents, defense attorneys as well as judges and prosecutors, spoke approvingly of the "flexibility" of the Texas rape shield law. They noted that the law keeps out extraneous matters, but "is flexible enough to allow the introduction of pertinent, relevant evidence." One prosecutor, on the other hand, was critical of judges who "still feel free to periodically make exceptions where we think they shouldn't."

When asked about the frequency of in camera hearings to determine the relevance of sexual history evidence, officials agreed the hearings were rarely or never held. The reasons given, however, varied. Judges explained that defense attorneys don't request the hearings because "they realize it wouldn't do any good"; they realize, according to several judges, that most judges believe the victim's prior sexual history is irrelevant and thus won't admit it. Prosecutors attributed the lack of hearings both to "more enlightened attitudes among criminal justice officials" and to the frequent use of the pretrial motion in limine to prevent the defense attorney from inquiring about the victim's past sexual conduct.

The infrequent use of the in camera procedure also can be explained by the fact that defense attorneys (and some judges and prosecutors) believe that evidence of a prior relationship between the victim and defendant can and will be admitted without a hearing. A number of defense attorneys noted that judges will admit the evidence without a hearing to determine its relevance, and one stated (incorrectly) that this type of evidence "is not

subject to the shield law."

Definitional Changes--Criminal justice officials in Houston had mixed reactions to the definitional changes enacted in 1983. While some respondents asserted the new law simply changed the names of the offenses, others stated that it significantly broadened their definitions. One judge noted that the law "lessened the state's burden as far as penetration is concerned" and another said the district attorney "no longer has to worry about whether it was a vaginal, oral or anal asault." Prosecutors also spoke approvingly of the changes in definition, noting that the new law is gender-neutral and allows a woman to file against her husband if they are separated or living apart.

Changing the name of the offense from rape to sexual assault received mixed reviews. Respondents generally agreed that rape is a more "serious," "powerful," and "inflammatory" term than sexual assault. Defense attorneys approved of the change, noting that their clients had been helped by use of the more "antiseptic" term. Judges and prosecutors, on the other hand, were overwhelmingly opposed to the change. Judges commented that referring to the crime as sexual assault confuses the jury and "sugarcoats" the offense. One prosecutor, who stated that he was very opposed to the name change, explained that he "could legitimately be stopped from using the word `rape' in the courtroom because there is no such crime in Texas anymore."

Description of the Harris County Criminal Justice System

Office of the District Attorney--The District Attorney's Office is staffed by 180 assistant district attorneys. These attorneys handle misdemeanor cases in the 14 county courts and felony cases in the 22 district courts.

Movement of district attorneys from county court to district court and to supervisory positions in each system is very structured. Three prosecutors are assigned to each of the county and district courts: an experienced chief prosecutor, a prosecutor with a moderate amount of experience, and a prosecutor with little experience. Attorneys rotate from one system to the other to gain experience in handling different kinds of cases. They progress from the number three prosecutor in county court to the number two prosecutor in county court, and then to the number three prosecutor in district court, the chief prosecutor in county court, the number three prosecutor in district court, the number two prosecutor in district court, and the chief prosecutor in district court. Most of the less violent sexual assaults are handled by the number two prosecutor in district court; the more violent sexual assaults are handled by the chief prosecutor in district court.

Felony defendants are entitled to a preliminary appearance within 24 hours of arrest. The case then goes to the intake division of the District Attorney's Office, where a decision to file charges and take the case to the grand jury is made. Occasionally the District Attorney's Office will ask the grand jury to decide whether to file charges or not. If the intake division refuses to file charges, they detail their reasons in a

written report to the Houston Police Department. If the police department disagrees with the decision not to file, it can take the case to the grand jury itself.

If the intake division decides to file charges, it presents the case to the grand jury within seven days of the initial appearance. The grand jury is composed of 12 members, nine of whom must vote to indict the defendant. The defendant, in open court and on advice of counsel, can waive the grand jury indictment; if this happens, an information is filed automatically. The defendant is arraigned in district court within seven days of indictment.

In Texas defendants are charged using "counts," which are separate crimes committed during a single incident. If, for example, an offender rapes two roommates at knifepoint, he would be charged with two counts of aggravated sexual assault. Both counts would be included in a single indictment, but each would have a separate docket number and each would have to be tried separately. This is because Texas' joinder law does not allow the District Attorney to try a defendant for more than one count at a time unless the defendant consents. (There are a few exceptions to this, but primarily for property crimes.)

While the District Attorney's Office does not have written policies for plea negotiations, it does have a number of unwritten rules. The office cannot recommend probation in a murder case. If the charge is aggravated robbery or delivery of a controlled substance, the attorney handling the case must get the approval of the chief prosecutor prior to recommending probation. And the victim of a sexual assault must be contacted

before a plea is negotiated.

The Harris County District Court--The criminal division of the Harris County District Court is staffed by 22 district court judges. They are elected on a partisan ballot and serve four-year terms. Once elected, judges are required to complete 16 hours of continuing legal education per year; they attend seminars at the Texas Center for the Judiciary, at the state bar convention, or at accredited law schools.

Criminal cases are randomly assigned to the district court judges. According to John Hughes, administrative judge for the criminal division, they use 22 numbered ping pong balls in assigning cases. When a case comes up, a ball is selected and the case is assigned to the courtroom corresponding to the number on the ball. The only exception to this is that all cases for the same defendant are assigned to the same courtroom.

Harris County does not have a public defender system. Instead, defense attorneys for indigent defendants are assigned from the local bar. Each judge has his or her own system for determining indigency and for assigning cases to defense attorneys. Some judges assign cases to attorneys who express interest in getting a case that day (usually by leaving a business card in the judge's chambers). Some assign cases only to a small group of attorneys. Others maintain lists of up to 200 lawyers and work through the list systematically.

Attorneys assigned to defend indigents are paid a daily fee. For example, a lawyer who meets with an indigent defendant on three separate occasions and then pleads him guilty will receive

$100 per day. If the case goes to trial, she usually will receive $275 per day, more for capital cases.

Texas is one of the few states in which the jury may impose the sentence. Except for capital cases, which require jury sentencing, a convicted defendant can elect to be sentenced by a judge or jury. If the sentence is to be imposed by the jury, there is a bifurcated trial. At the sentencing trial the jury is informed of the defendant's prior criminal record (assuming this did not come out during the trial). The sentence imposed will be an indeterminate sentence. Defendants sentenced to life in prison are required to served 20 calendar years before they are eligible for parole.

The Sex Crimes Unit of the Houston Police Department--The sex crimes unit was added to the Houston Police Department in 1977. It is staffed by 16 sergeants and supervised by one lieutenant. Both male and female officers are recruited to the unit.

A patrol officer initially responds to a report of a sexual assault. This officer secures evidence, interviews victims, and ensures that the victim gets a medical exam. The officer also writes a report, which is forwarded to the sex crimes unit. The case then is assigned to one of the sergeants, who will handle the case from start to finish. The sergeant will evaluate the case and call the victim in for a sworn statement. If the officer has questions about the credibility of the victim, he may ask her to take a polygraph exam. If the victim refuses to take the exam or fails the exam, the department will unfound the complaint. If the victim still insists that she was raped, she

is told that her only option is to take the case to the grand jury herself.

Sgt. Ralph Yarborough estimated that half of the reported sexual assault cases involve acquaintances and that more acquaintance than stranger cases go forward because it is easier to make an arrest if the victim knows the offender. He also speculated that 19 of 20 sexual assault cases are plea bargained and said that the cases which do go to trial are generally not consent cases.

Disposition of Sex Offense Cases

Data summarizing the disposition of sex offense cases in Harris County from 1970 through August of 1982 is displayed in Tables D.1 to D.5. (We were not able to obtain data on all sex offense cases disposed of after August 1982.) The category "all sex offenses" includes aggravated rape, rape, aggravated sexual abuse, sexual abuse, sodomy, attempted aggravated rape, assault with intent to rape, and burglary with intent to rape.

Descriptive data summarizing the outcome of sex offense cases is presented in Table D.1. The data reveals that:

--Defendants charged with sex offenses were indicted for an average of 1.4 crimes, convicted of 1.12. The small number of charges is consistent with the fact that in Texas defendants generally cannot be tried for more than one crime at a time.

--Nearly half of those charged with aggravated rape were convicted of the original charge, compared to just over a

third of those charged with rape. Conversely, over half of those charged with rape, but only a third of those charged with aggravated rape, were not convicted of any crime. The large percentage of rape cases without a conviction of any kind appears to be due to a high rate of dismissals (45.7%). In fact, the dismissal rate is higher in Houston than in any of the other six jurisdictions.

--A large proportion of the defendants charged with sex offenses, and particularly with aggravated rape, pled guilty. Very few defendants elected a bench trial and almost all of those who did were convicted.

--Very few of the defendants convicted of aggravated rape received probation, compared to over a fourth of those convicted of rape. For those defendants who were incarcerated, the median prison sentence was much longer for aggravated rape (240 months) than for rape (96 months).

Table D.2 compares the disposition of sex offense cases before and after the rape shield law went into effect in September of 1975. The data reveal a few before-and-after differences. There was a decline in guilty pleas and an increase in bench trials for defendants charged with aggravated rape, but it is difficult to see how this would result from the enactment of the rape shield law. Intuitively one would expect the opposite result; that is, one would expect the evidentiary restrictions of the rape shield law to produce an increase in guilty pleas.

There also were before-and-after differences among defendants

charged with rape. There was a large increase in the proportion of defendants convicted of the original charge and a concomitant decrease in the proportion not convicted. These shifts appear to be due primarily to a decrease, from 50.4 percent to 42.5 percent, in dismissals. This change might be attributable to the rape shield law. Defendants charged with rape are more likely than those charged with aggravated rape to claim that the victim consented. If the defense is consent, the prosecutor will be more inclined to dismiss the case if it appears that the character or credibility of the victim will be an issue at trial. By precluding the use of irrelevant sexual history evidence, then, the shield law makes dismissal less likely.

Yearly data summarizing the disposition of Houston sex offense cases is presented in Tables D.3, D.4 and D.5. Tables D.4 and D.5 will be discussed here.

As shown in Table D.4, there was a dramatic increase in the number of defendants indicted for aggravated rape or aggravated sexual abuse over the 12-year period. During the first four years, there were a total of only 54 indictments for these aggravated sex offenses; during the last four there were 436, an eightfold increase. On the other hand, the number of defendants indicted for rape or sexual abuse declined over the period. There were 388 indictments during the first four years, only 250 during the last four. The increase in indictments for aggravated sex offenses may reflect an actual increase in violent sexual assaults, more liberal judicial interpretations of the provisions of the aggravated rape statute, or a "get tough"

charging policy in the district attorney's office.

Because of the small number of cases, the percentages presented in Table D.4 for 1970, 1971, 1972 and 1973 should be interpreted with caution. The data for 1974 through 1981 reveal some yearly shifts, but none that could be attributed to the rape shield law. For example, the percentage of defendants convicted of the original charge varies from about 40 percent to about 54 percent, but the changes appear to be random. Similar patterns are found for the other measures in Tables D.4 and D.5. The only exception is the dismissal rate for defendants charged with non-aggravated sex offenses, which has declined steadily since 1977. The implications of this relative to the rape shield law were discussed above.

TABLE D.1
DESCRIPTIVE DATA--DEFENDANTS CHARGED WITH SEX OFFENSES
HOUSTON, TEXAS
1970-1982

	All Sex Offenses* (N=2201)	Aggravated Rape (N=807)	Rape (N=846)
Mean # of charges on indictment	1.40	1.63	1.28
Mean # of conviction charges	1.12	1.17	1.08
Outcome of case			
Convicted of orginal charge	41.8%	47.7%	35.0%
Convicted of another charge	15.7	19.1	11.6
Not convicted	42.4	33.2	53.4
Type of Disposition			
Guilty plea	40.0%	41.7%	34.9%
Guilty--judge	5.0	5.2	5.0
Guilty--jury	12.6	20.1	7.8
Not guilty--judge	0.5	0.5	0.9
Not guilty--jury	3.6	2.5	5.6
Dismissed	37.8	30.0	45.7
Bench trial	5.5%	5.7%	5.9%
Jury trial	16.2	20.6	13.4
Type of sentence, for those convicted of original charge			
Probation	18.4%	5.1%	28.4%
Jail	0.5	0.3	0.7
Prison	80.6	93.9	70.5
Other	0.5	0.8	0.4
Median prison sentence in months			
For those convicted of original charge	156	240	96
For those convicted of another charge	24	60	6
% cases where severity of charges reduced	30.4%	31.9%	27.6%
% cases where number of charges reduced	22.7	33.8	17.3

*Includes aggravated rape, rape, aggravated sexual abuse, sexual abuse, sodomy, attempted aggravated rape, assault with intent to rape, and burglary with intent to rape.

TABLE D.2

DESCRIPTIVE DATA--DEFENDANTS CHARGED WITH SEX OFFENSES BEFORE AND AFTER RAPE SHIELD LAW IMPLEMENTED[a] HOUSTON, TEXAS

	All Sex Offenses[b]		Aggravated Rape		Rape	
	Before (N=890)	After (N=1311)	Before (N=159)	After (N=648)	Before (N=472)	After (N=394)
Mean # of charges on indictment	1.43	1.38	1.70	1.61	1.40	1.14
Mean # of conviction charges	1.16	1.10	1.29	1.14	1.12	1.06
Outcome of case						
Convicted of orginal charge	36.0%	45.7%	51.9%	46.7%	30.7%	40.3%
Convicted of another charge	13.1	17.5	14.3	20.3	11.7	11.4
Not convicted	50.9	36.8	33.8	33.0	57.6	48.2
Type of Disposition						
Guilty plea	39.2%	41.3%	47.5%	40.3%	35.0%	34.8%
Guilty--judge	2.4	6.7	1.3	6.2	3.0	7.5
Guilty--jury	8.9	15.1	18.4	20.5	6.4	9.6
Not guilty--judge	0.5	0.6	0.6	0.5	0.6	1.3
Not guilty--jury	4.6	2.9	3.2	2.3	6.6	4.3
Dismissed	46.5	33.4	30.1	30.2	50.4	42.5
Bench trial	2.9%	7.3%	1.9%	6.7%	3.6%	8.8%
Jury trial	13.5	18.0	21.6	22.5	13.0	13.9
Type of sentence, for those convicted of original charge						
Probation	23.9%	15.5%	5.1%	5.1%	26.1%	30.6%
Jail	0.4	0.6	1.3	0.0	0.0	1.4
Prison	75.4	83.3	92.4	94.2	73.9	67.3
Other	0.4	0.6	1.3	0.7	0.0	0.7
Median prison sentence in months						
For those convicted of original charge	120	180	180	240	120	84
For those convicted of another charge	12	36	60	60	6	12
% cases where severity of charges reduced	29.8%	30.8%	23.6%	34.2%	30.1%	24.6%
% cases where number of charges reduced	22.5	22.9	27.4	35.7	22.6	10.4

[a]Rape shield law effective Sept. 1, 1975. Before=cases where indictment or information filed from January of 1970 through August of 1975. After=cases where indictment or information filed from September of 1975 through Aug st of 1982.

[b]Includes aggravated rape, rape, aggravated sexual abuse, sexual abuse, sodomy, attempted aggravated rape, assault with intent to rape, and burglary with intent to rape.

TABLE D.3
YEARLY DATA--DEFENDANTS CHARGED WITH SEX OFFENSES*
HOUSTON, TEXAS
1970-1981

Year Indicted	Number of Indict-ments	Mean # of Charges Indicted	Convicted of Original Charge	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison for Original Charge	Sentenced to Prison for Other Charge	Mean Sent. Orig. Chg. (Months)
1970	158	1.22	36.3%	12.0%	49.6%	31.0%	44.9%	4.4%	61.7%	82.4%	160.2
1971	164	1.49	31.1	12.1	55.9	42.1	47.6	4.3	75.6	55.6	188.4
1972	123	1.42	29.5	15.0	54.9	37.0	43.3	11.8	65.6	66.7	130.8
1973	188	1.41	36.1	13.4	50.9	42.0	44.2	3.7	67.2	72.7	142.2
1974	148	1.45	37.5	14.9	46.7	36.5	42.6	3.4	90.2	76.2	204.6
1975	161	1.58	40.3	17.8	40.4	47.9	38.8	2.4	93.3	89.3	225.0
1976	177	1.31	41.6	16.1	43.0	46.1	38.2	3.4	90.5	68.0	295.3
1977	118	1.21	32.4	21.0	46.8	37.3	41.5	2.5	88.6	83.3	226.2
1978	142	1.37	52.5	16.7	33.1	43.7	31.7	1.4	77.0	57.1	298.7
1979	148	1.30	48.2	20.0	31.6	47.3	27.7	4.0	84.4	89.3	250.8
1980	245	1.42	50.7	14.8	35.3	40.8	27.8	5.3	85.6	79.4	204.0
1981	257	1.43	50.1	18.4	31.0	41.2	26.1	4.3	82.9	78.6	273.2

*Includes aggravated rape, rape, aggravated sexual abuse, sexual abuse, sodomy, attempted aggravated rape, assault with intent to rape, and burglary with intent to rape.

TABLE D.4

YEARLY DATA--DEFENDANTS CHARGED WITH AGGRAVATED SEX OFFENSES*

HOUSTON, TEXAS

1970-1981

Year Indicted	Number of Indict-ments	Mean # of Charges Indicted	Convicted of Original Charge	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison for Original Charge	Sentenced to Prison for Other Charge	Mean Sent. Orig. Chg. (Months)
1970	16	2.12	37.5	13.3%	46.7%	18.8%	37.5%	6.2%	83.3%	100.0%	196.0
1971	12	2.08	33.3	8.3	58.3	33.3	58.3	0.0	100.0	100.0	240.7
1972	7	1.57	42.9	42.9	14.3	85.7	14.3	0.0	33.3	66.7	36.0
1973	19	1.26	36.8	5.3	57.9	31.6	47.4	10.5	85.7	0.0	69.6
1974	60	1.75	50.0	15.8	31.6	45.0	25.0	3.3	100.0	88.9	247.3
1975	94	1.63	53.6	16.8	28.4	57.7	27.8	1.0	96.0	87.5	242.5
1976	106	1.44	47.2	14.2	38.7	47.2	34.9	3.8	100.0	78.6	328.1
1977	53	1.36	39.6	23.1	36.5	37.8	34.0	1.9	100.0	84.6	301.3
1978	86	1.55	53.5	11.6	34.9	39.5	32.6	2.3	86.4	70.0	356.7
1979	76	1.53	44.7	28.0	26.7	46.0	22.4	4.0	97.0	90.5	366.4
1980	136	1.63	53.7	17.6	28.7	41.2	23.5	5.2	93.2	83.3	249.8
1981	138	1.67	50.7	22.5	26.8	43.5	23.2	1.4	95.7	77.4	331.7

*Includes aggravated rape and aggravated sexual abuse.

TABLE D.5
YEARLY DATA--DEFENDANTS CHARGED WITH NON-AGGRAVATED SEX OFFENSES*
HOUSTON, TEXAS
1970-1981

Year Indicted	Number of Indict-ments	Mean # of Charges Indicted	Convicted of Original Charge	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison for Original Charge	Sentenced to Prison for Other Charge	Mean Sent. Orig. Chg. (Months)
1970	88	1.15	35.2%	8.9%	51.9%	30.9%	43.2%	4.6%	76.7%	80.0%	158.2
1971	118	1.51	32.2	11.7	54.0	42.4	44.9	5.9	76.3	52.6	183.3
1972	95	1.39	28.4	10.6	60.6	32.6	45.3	15.8	69.2	72.7	144.0
1973	87	1.45	33.3	11.6	54.6	37.9	48.3	2.3	71.4	80.0	198.9
1974	72	1.24	23.6	12.7	63.4	27.8	58.3	4.2	70.6	77.8	141.8
1975	53	1.65	15.1	21.2	33.5	34.0	56.6	5.7	87.5	83.3	133.7
1976	55	1.15	30.9	14.6	54.6	34.6	50.9	3.6	62.5	42.9	151.2
1977	55	1.09	25.4	14.6	60.0	32.9	50.9	3.6	71.4	75.0	76.0
1978	34	1.03	50.0	12.1	36.4	44.1	35.3	0.0	52.9	40.0	67.0
1979	59	1.07	52.5	8.5	39.0	45.8	33.9	5.1	71.0	80.0	103.6
1980	88	1,17	43.2	7.1	47.6	37.5	35.2	6.8	71.0	70.0	102.2
1981	69	1.22	50.7	7.2	42.0	30.4	33.3	8.7	57.1	80.0	94.8

*Includes rape and sexual abuse.

APPENDIX E--PHILADELPHIA

Legal Changes

Pennsylvania has enacted three major rape law reforms. Definitional changes were implemented on June 6, 1973; a number of evidentiary changes, including a rape shield law, took effect on June 17, 1976; and a spousal sexual assault law went into effect on February 19, 1985.

In 1973 Pennsylvania's carnal knowledge statute was replaced with Model Penal Code-type definitions of rape and involuntary deviate sexual intercourse (IDSI--oral and/or anal intercourse). While the new law clearly was an improvement over the old, it retained a very traditional perspective, one which focuses primarily on the behavior of the victim. Both rape and IDSI are defined in terms of circumstances which imply nonconsent on the part of the victim: forcible compulsion, threat of forcible compulsion that would prevent resistance; or an unconscious or mentally deranged victim. Neither definition includes penetration with an object. And both crimes are first degree felonies with identical penalties.

Pennsylvania enacted a number of evidentiary changes in 1976. The new sections of the criminal code state that the victim is not required to report the crime promptly, offer corroboration of testimony, or offer evidence of resistance. The law also stipulates, however, that the defendant can offer evidence that the victim failed to make a prompt complaint or that the victim

consented to the conduct in question.

The Pennsylvania rape shield law also went into effect in 1976. On its face the law is a strong law which generally prohibits the introduction of evidence of the victim's past sexual history. The prohibition includes evidence of specific instances of sexual conduct, opinion evidence, and reputation evidence. In fact, the only statutory exception to the shield in Pennslyvania is evidence of past sexual conduct with the defendant where consent is an issue. Recent appellate court decisions, however, have carved out additional exceptions; evidence of the victim's prior sexual conduct with third persons can be admitted to show that the victim was biased against the defendant and therefore had a motive to lie [Commonwealth v. Black, 487 A.2d 396 (Pa. Super. 1985)] or to show the source of semen, pregnancy or disease [Commonwealth v. Majorana, 503 Pa. 602, 470 A.2d 80 (1983)].

The shield law also specifies that if the defense attorney intends to offer evidence of the victim's prior sexual history, he/she must file a written motion and offer of proof at the time of trial. And the evidence cannot be admitted unless the judge finds, in an in camera hearing, that it is relevant.

In 1985 a provision concerning spousal sexual assault was added to the Pennsylvania criminal code. Spousal sexual assault is a felony of the second degree (rape and IDSI are first degree felonies) with a 90-day reporting requirement.

Criminal Justice Officials' Attitudes Toward the Changes

Shield Law--Judges and prosecutors generally supported the Pennsylvania rape shield law. Many of them noted that before the shield law was passed, defense attorneys "always" attempted to introduce evidence of the victim's past sexual history and two judges stated that the "horror stories" of defense attorneys' abusive questioning of victims were true. Most judges and prosecutors stated that the shield law prevents the introduction of irrelevant evidence concerning the victim's sexual experiences and thus encourages victims to report the crime to the police. As one prosecutor noted, "this is especially important since most of our cases involve a victim and defendant who know each other."

Defense attorneys, on the other hand, saw few advantages to the shield law. Several public defenders challenged the notion that sexual history evidence was always introduced prior to the law's enactment. As one public defender said, "While there were attorneys who were particularly offensive and probing with regard to victims in rape cases and who got away with it, how often it happened has been exaggerated. What people fail to appreciate is that these questions were only asked when there was a credibility or consent issue. They never came up in cases involving strangers."

Public defenders also stated that the law, by prohibiting the introduction of evidence concerning the victim's sexual reputation or prior acts between the victim and third parties, prevents the defendant from "having his day in court." One charged that defense attorneys' "chances of winning rape cases

have diminished as a result of using the rape shield law as a technical weapon to keep out probative testimony rather than as an instrument for protecting the victim." Another commented that most of his clients are now seen as guilty, but added "I don't think it's due to the laws but to the tenor of the times; jurors are much more sympathetic to victims now than they were in the past."

As noted above, recent appellate court rulings interpreting the Pennsylvania rape shield law have expanded the exceptions to the shield. As might be expected, criminal justice officials had mixed reactions to these decisions; judges and prosecutors generally criticized the rulings, while defense attorneys overwhelmingly approved of them. One judge characterized the new exceptions as "loopholes that don't make any sense" and a prosecutor suggested that the rulings may encourage defense attorneys to "test the limits of the shield law." Public defenders, on the other hand, spoke approvingly of the appellate court rulings. As one attorney noted, "When it first came down the pike, the shield law was very scary. It was written without taking into account the victim's willingness to lie and without deference to the defendant's due process rights." According to these public defenders, the exceptions recently carved out by the appellate courts enable defense attorneys to "circumvent" the shield law and thereby give the defendant his day in court.

When asked how often <u>in camera</u> hearings to determine the relevance of sexual history evidence were held, most respondents said they were always or almost always held, at least in cases involving strangers. On the other hand, most agreed that the

hearings were rarely or never held in cases involving acquaintances. Both prosecutors and defense attorneys stated that evidence of a sexual relationship between the victim and the defendant is not challenged and even judges admitted that such evidence "just comes in without a hearing."

These comments are interesting in light of the fact that the only statutory exception to the rape shield law in Pennsylvania is evidence of the victim's past sexual conduct with the defendant and the law requires an in camera hearing to determine the relevance of this evidence. As in other jurisdictions included in this study, criminal justice officials in Philadelphia have reached an informal agreement that prior sexual conduct between the victim and the defendant is relevant and therefore admissible. If the evidence falls under one of the exceptions carved out by appellate court rulings, on the other hand, there is a strong likelihood that an in camera hearing will be held.

Respondents also explained that even when hearings are held, they are very informal. The requirement of a written motion and offer of proof at the time of trial is "routinely ignored". Instead, the defense attorney simply makes an oral motion on the day of trial and the judge rules on the relevance of the evidence based on the motion and the prosecutor's response. A number of officials noted, however, that the formality of the proceeding depends upon whether the defendant opts for a bench or jury trial and also on the judge hearing the case. More formal hearings, with testimony by the defendant and/or victim, are held when the case is to be tried before a jury or before a judge who

interprets the requirements more strictly.

In sum, the Pennsyvlania rape shield law has been modified not only by appellate court rulings expanding the exceptions to the shield but also by informal agreements among members of the courtroom workgroup. The law notwithstanding, criminal justice officials in Philadelphia have decided to admit evidence of a prior sexual relationship between the victim and defendant without a hearing and to substitute an informal oral request for the written motion and formal in camera hearing.

Other Changes--Judges, prosecutors and defense attorneys had mixed reactions to the elimination of the corroboration and resistance requirements. A number of respondents, particularly defense attorneys, felt the changes had had no effect on the disposition of rape cases; they felt that neither corroboration nor resistance had been legally required before 1976. Others felt that the changes had had a positive effect. They explained that jury instructions now routinely include statements that corroboration and resistance are not required. As one prosecutor noted, "When the jury hears that the victim did not resist in any way it tends to raise doubts in their minds, so it's important to remind them--via the jury instructions--that resistance is not necessary." Another prosecutor added that "when the judge says it explicitly to the jury, the jury listens and takes it more seriously."

Respondents were asked if they thought the definition of rape should be changed in any way. While most judges and prosecutors said they were satisfied with the current definition, several

defense attorneys suggested changes. A number of public defenders suggested that there should be a distinction between aggravated rapes and other rapes, with a reduction in penalty for nonaggravated rape.

Description of the Philadelphia Criminal Justice System

Office of the District Attorney--Unlike the other jurisdictions included in this study, Philadelphia has a special rape unit within the District Attorney's Office. This unit was formed in 1978. The nine attorneys assigned to the unit handle all rape and IDSI cases from the preliminary hearing through sentencing. Each attorney is assigned to two or three courtrooms and handles all of the cases assigned to those courtrooms.

Rape and IDSI cases are transfered from the sex crimes unit of the Philadelphia Police Department to the charging unit of the District Attorney's Office, which performs the initial screening function. Cases which survive screening are sent to the rape unit for prosecution. The rape unit can reject the case prior to the preliminary hearing or dispose of the case with a plea to a misdemeanor (but this is rare). The preliminary hearing is held within three to ten days of arrest, the arraignment three weeks later. At arraignment the case will be assigned to a judge for trial and the rape unit attorney assigned to that courtroom will handle the case.

The rape unit does not have formal, written policies for filing charges or for plea bargaining. However, an informal policy stipulates that vaginal intercourse will be filed as rape, oral or anal intercourse as IDSI (the two crimes of rape and IDSI

have overlapping definitions, so that oral or anal intercourse could be charged as either rape or IDSI). Similarly, informal policies guide plea bargaining. Since 1978 the District Attorney has discouraged plea bargaining and has required supervisors to approve all negotiations. According to Michael Clarke, chief of the rape unit, attorneys seldom reduce the severity of the charge against the defendant, but occasionally will negotiate a sentence within the sentencing guidelines. As he explained, "We would rather try rape cases than plead them down to indecent assault and get a sissy sentence. We lose our share of cases because of this philosophy . . ." He added that there is a higher incidence of jury trials for rape than for any other category of crime.

Court of Common Pleas--There are 85 active judges and 18 senior judges (judges age 70 and over) on the Philadelphia Court of Common Pleas. A Judge initially is elected on a partisan ballot for a ten-year term. At the end of the ten-year term, the judge runs for retention on a nonpartisan ballot. Vacancies are filled by gubernatorial appointment, with confirmation by the Senate.

Felony cases are assigned to one of three criminal programs within the Trial Division of the Court. All murder cases are assigned to the Homicide Program. A calendar judge oversees these cases as they approach trial readiness and assigns them to one of the judges in the program. Other felonies are assigned either to the Major Felony Program or to the Waiver Program. If the defendant has requested a jury trial or if it appears that the trial will last longer than half a day, the case is assigned

to the Major Felony Program. A calendar judge distributes these cases to judges in the program. If the defendant has not requested a jury trial and if seems likely that the case can be tried in less than half a day, the case is assigned to the Waiver Program. Each judge in this program is randomly assigned from eight to ten cases each day.

Sentencing guidelines went into effect in Pennsylvania in July of 1982. Under the guidelines sentences are determined by the seriousness of the offense and the seriousness of the defendant's prior criminal record. There is a standard range, an aggravated range and a mitigated range for each combination of offense score and prior record score. From 12 to 24 months must be added to the sentence if the defendant possessed a deadly weapon. A sentence of five to ten years is mandatory for crimes committed in or near public transportation; crimes committed with a gun; robbery, kidnapping, homicide, or aggravated assault if there was serious bodily injury or arson; and crimes committed against children and the elderly. Other than these exceptions, the guidelines control. A judge can go outside the guidelines only if she explicitly states her reasons on the record in open court. The Pennsylvania Superior Court then will evaluate the sentence.

A defendant sentenced to prison does not receive good time credit toward his sentence, but can be released from six months to a year before serving the minimum time. While a defendant can be required to serve the maximum sentence, this is rare; most are released after serving the minimum.

For rape and IDSI the minimum sentence is from 27 months (the

lower end of the mitigated range for crimes with an offense gravity score of nine and a prior record score of zero) to 120 months (the upper end of the aggravated range for crimes with an offense score of nine and a prior record score of six). The maximum sentence must be at least twice the minimum. Defendants convicted of rape or IDSI may not be sentenced to life in prison.

A number of respondents commented that both the media and Women Organized Against Rape (WOAR) exert pressure on judges to impose severe sentences on defendants convicted of sex offenses. A prosecutor explained that Philadelphia women's groups are powerful because they can attract media attention to judges who sentence too leniently. One judge said that the newspapers "screamed" when a fellow judge sentenced two teenage boys convicted of IDSI to six months work release, even though the guidelines specify a minimum sentence of three years. A defense attorney speculated that the media's criticism will cause judges to "think twice before suspending sentences in the future."

Office of the Public Defender--Rape and IDSI cases are handled by public defenders assigned to the felony trial division of the Office of the Public Defender. These attorneys are responsible for all major felonies except homicides, which are assigned to private attorneys. There are approximately 20 attorneys in the division. Each is assigned to one of the Court of Common Pleas courtrooms and handles all of the cases assigned to that courtroom.

Sex Crimes Unit of the Philadelphia Police Department--All sexual assault and child abuse cases are investigated by officers in the Sex Crimes Unit of the Philadelphia Police Department. The unit, which is part of the Juvenile Aid Division, has 50 investigators (detectives) and several supervisors. An officer recruited to the Juvenile Aid Division attends a one-week, in-house training program and then is placed with a veteran investigator for a one-year apprenticeship. Following this apprenticeship, the officer can request to be transfered to the sex crimes unit.

The unit investigates about 5,000 cases, including approximately 1,000 cases of child abuse, annually. The uniformed officer who responds to the report of a sexual assault interviews the victim to obtain basic information about the crime and to facilitate apprehension of the offender. If the victim needs immediate medical treatment, she is taken to the nearest hospital; if there is no need for immediate treatment, she is taken to one of the three hospitals which have contracts for examining rape victims. At the hospital, the officer contacts the sex crimes unit. An investigator from the unit then obtains a detailed statement from the victim.

According to Captain Clifford Barcliff, rape victims occasionally are asked to take polygraph examinations. He explained that the victim's refusal to take the exam or failure of the exam is "one piece of information which can be used when we decide whether or not to go forward with the case." He also stated that the department unfounds only about eight to eleven percent of all rape complaints.

Women Organized Against Rape--Criminal justice officials reported that Women Organized Against Rape (WOAR) plays an important and visible victim advocate role in Philadelphia. The group provides support to rape victims from the preliminary hearing through sentencing and attempts to make the criminal justice system more accessible and understandable to these victims. WOAR also makes counseling referrals, serves as a liaison between victims and prosecutors, and holds periodic training seminars for criminal justice officials.

WOAR officials expressed overall satisfaction with the treatment of rape victims in Philadelphia. They stated that most judges adhere to the evidentiary restrictions in the rape shield law, which they referred to as "a landmark piece of legislation." But they also were concerned that recent appellate court rulings expanding the number of exceptions to the shield would encourage judges to admit irrelevant sexual history evidence. They stated that while they have a good working relationship with the sex crimes unit of the police department, they feel that the police administer too many polygraph examinations to rape victims.

Disposition of Sex Offense Cases

Data summarizing the disposition of sex offense cases in Philadelphia from 1970 through 1984 is presented in Tables E.1 to E.4. Included are all cases where the most serious charge against the defendant was rape or IDSI. The category "all sex offenses" includes rape, IDSI, attempted rape, attempted IDSI, aggravated rape, assault with intent to ravish, and assault with intent to commit sodomy.

The data in Table E.1 summarizes the outcomes of these cases. The data reveals that:

--For all sex offenses defendants were charged with an average of 6.68 crimes, convicted of 3.27. The figures are similar for defendants charged with either rape or IDSI.

--Defendants charged with rape were less likely than those charged with IDSI to be convicted of the original charge but were convicted of another charge at about the same rate. This discrepancy is reflected in the "not convicted" rates for the two crimes. The rate was 44 percent for rape but only 33 percent for IDSI. This is understandable, given the district attorney's reluctance to plea bargain rape cases. As the chief of the rape unit noted, this policy results in a higher trial rate for rape cases and causes them to lose a larger percentage of cases than they otherwise would.

--The percentage of cases settled through a guilty plea was low, particularly for rape cases (22.2 percent). Conversely, the percentage of cases which went to trial

(61.5 percent for rape) was high. (In fact, this is the lowest guilty plea rate and the highest trial rate of any of the six jurisdictions included in this study.) Once again, this is consistent with the district attorney's policy against reducing rape charges. If the defense attorney cannot successfully negotiate a reduction in the charge, the case is much more likely to go to trial.

--Related to the above is the fact that only 45 percent of the guilty pleas in rape cases involved a reduction in the severity of the charges. Since only 22.2 percent of the rape cases were settled through a guilty plea, this means that charge reductions were offered to only 413 of the 4,138 defendants charged with rape over the 15-year period [(4,138 x .222) x .45) = 413].

--The incarceration rate was much higher for defendants convicted of rape (85.6 percent) than for defendants convicted of IDSI (59.3 percent). Similarly, the median prison term for those incarcerated for rape was 120 months, compared to only 84 months for those incarcerated for IDSI. This is interesting in light of the fact that rape and IDSI are both first degree felonies with identical penalties. It suggests that judges regard IDSI as a less serious crime than rape.

Table E.2 summarizes the outcomes of sex offense cases before and after evidentiary changes were implemented on June 17, 1976. On this date the rape shield law, the repeal of the corroboration requirement, and the repeal of the resistance requirement went into effect.

The data presented in Table E.2 reveal few before-and-after differences for some of the measures. For example, there were few differences in type of sentence, median prison sentence, or charge reductions. For other measures there were changes, but it is not clear that the changes are related to the new evidentiary rules. It seems more plausible that the increase in the number of charges and in the number of conviction charges is due either to the definitional changes enacted in 1973 or to a change in policy regarding filing than to the evidentiary changes.

On the other hand, there were some changes which might be attributed to the new evidentiary rules. There were some fairly dramatic shifts in type of disposition for defendants charged with rape (but not for defendants charged with IDSI). There was a slight increase in guilty pleas and dismissals and a substantial decrease in bench trials. If we leave dismissals out of the calculations (on the grounds that defendants cannot choose this option), we find that for the remaining cases guilty pleas went from 21.9 percent to 29.5 percent, bench trials from 57.3 percent to 46.2 percent, and jury trials from 20.8 percent to 24.2 percent. This seems consistent with the evidentiary changes. One would expect guilty pleas to increase if defendants cannot use sexual history evidence, lack of corroboration, or lack or resistance to exonerate themselves. The decrease in bench trials also is understandable; defendants may assume that judges, unlike jurors, understand the reasons for the changes and abide by them in ruling on guilt or innocence.

The data presented in Table E.2, then, suggest that the evidentiary rules enacted in 1976 may have had an impact on the

disposition of rape cases, but not on the disposition of ISDI cases. Why the rules would affect one type of crime and not the other is not clear.

Yearly data on the disposition of rape and sexual offense cases is presented in Tables E.3 and E.4 respectively. Since the patterns found in the two tables are similar, only Table E.3 will be discussed. For most of the measures, the data appear to fluctuate almost randomly, the numbers going up one year, down the next. For example, the proportion of defendants convicted of the original charge has hovered around 30 to 40 percent, with the numbers fluctuating up and down in no discernible pattern. Similar results are found for convictions for another charge, no convictions, dismissals, and acquittals.

For other measures the changes, while more consistent, do not seem to be related to rape reform legislation. The number of charges filed has more than doubled from 1970 to 1984, but the increase has been fairly steady, with no larger-than-expected jumps in either 1973-74 or 1976-77. A similar pattern is found for the incarceration rate (for the original charge), which has edged up over the 15-year period.

Changes in the number of defendants charged with rape, on the other hand, may be related to the enactment of rape law reforms. While the number charged has gone up and down, there were large increases in 1974 (from 208 to 322, an increase of 55 percent) and 1976 (from 296 to 351, an increase of 19 percent).

TABLE E.1
DESCRIPTIVE DATA--DEFENDANTS CHARGED WITH SEX OFFENSES
PHILADELPHIA, PENNSYLVANIA
1970-1984

	All Sex Offenses* (N=5746)	Rape (N=4138)	Deviate Sexual Intercourse (N=675)
Mean # of charges	6.68	6.92	6.88
Mean # of conviction charges	3.27	3.38	3.39
Outcome of case			
Convicted of orginal charge	36.6%	35.6%	45.8%
Convicted of another charge	23.0	20.2	21.3
Not convicted	40.4	44.2	32.9
Type of Disposition			
Guilty plea	25.9%	22.2%	38.8%
Guilty--judge	23.2	21.5	22.3
Guilty--jury	10.5	12.2	6.1
Not guilty--judge	18.8	20.8	15.9
Not guilty--jury	6.1	7.0	4.5
Dismissed	15.5	16.5	12.4
Bench trial	42.0%	42.3%	38.2%
Jury trial	16.6	19.2	10.6
Type of sentence, for those convicted of original charge			
Probation	17.5%	12.1%	37.7%
Jail	0.5	0.3	1.0
Prison	80.0	85.6	59.3
Other	2.0	2.0	2.0
Median prison sentence in months			
For those convicted of original charge	120.0	120.0	84.0
For those convicted of another charge	24.0	24.0	24.0
% guilty pleas where severity of charges reduced	43.9%	45.0%	32.9%
% guilty pleas where number of charges reduced	92.2	93.3	90.3

*Includes rape, involuntary deviate sexual intercourse, attempted rape, attempted involuntary deviate sexual intercourse, aggravated rape, assault with intent to ravish and assault with intent to commit sodomy.

TABLE E.2
DESCRIPTIVE DATA--DEFENDANTS CHARGED WITH SEX OFFENSES
BEFORE AND AFTER REFORMS IMPLEMENTED[a]
PHILADELPHIA, PENNSYLVANIA

	All Sex Offenses[b]		Rape		Deviate Sexual Intercourse	
	Before (N=2026)	After (N=3718)	Before (N=1524)	After (N=2612)	Before (N=155)	After (N=520)
Mean # of charges	5.12	7.54	5.21	7.92	5.76	7.22
Mean # of conviction charges	2.79	3.52	2.89	3.67	3.07	3.47
Outcome of case						
Convicted of orginal charge	34.4%	37.8%	35.7%	35.6%	37.1%	48.3%
Convicted of another charge	24.0	22.5	21.0	19.7	24.5	20.4
Not convicted	41.6	39.7	43.3	44.8	38.4	31.3
Type of Disposition						
Guilty plea	21.9%	28.1%	19.3%	23.9%	36.2%	39.5%
Guilty--judge	26.5	21.4	26.0	18.8	17.8	23.6
Guilty--jury	10.0	10.7	11.6	12.5	7.9	5.6
Not guilty--judge	22.8	16.6	24.4	18.7	17.1	15.5
Not guilty--jury	5.6	6.3	6.7	7.1	2.6	5.0
Dismissed	13.2	16.8	12.1	18.9	18.5	10.7
Bench trial	49.3%	38.0%	50.4%	37.5%	34.9%	39.1%
Jury trial	15.6	17.0	18.3	19.6	10.5	10.6
Type of sentence, for those convicted of original charge						
Probation	17.6%	17.5%	13.4%	11.3%	33.9%	38.6%
Jail	0.7	0.4	0.6	0.2	0.0	1.2
Prison	76.4	81.7	81.3	88.1	57.1	59.8
Other	5.2	0.4	4.7	0.4	8.9	0.4
Median prison sentence in months						
For those convicted of original charge	120.0	120.0	120.0	120.0	84.0	84.0
For those convicted of another charge	24.0	24.0	24.0	24.0	24.0	24.0
% guiltypleas where severity of charges reduced	48.4%	42.0%	47.2%	43.9%	46.3%	29.4%
% guilty pleas where number of charges reduced	87.7	94.1	88.7	95.5	87.3	91.2

[a]Before=cases where information filed from January 1970 through June 1976. After=cases where information filed from July 1976 through December 1984. The rape shield law, repeal of the corroboration requirement and repeal of the resistance requirement were effective on June 17, 1976.

[b]Includes rape, involuntary deviate sexual intercourse, attempted rape, attempted involuntary deviate sexual intercourse, aggravated rape, assault with intent to ravish and assault with intent to commit sodomy.

TABLE E.3
YEARLY DATA--DEFENDANTS CHARGED WITH RAPE
PHILADELPHIA, PENNSYLVANIA
1970-1984

Year Information Filed	# of Defendants Charged	Mean # of Charges Filed	Convicted of Original Charge	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison for Original Charge	Sentenced to Prison for Other Charge	Mean Sent. Orig. Chg. (Months)
1970	153	4.45	33.3%	33.3%	33.3%	29.4%	9.8%	23.5%	82.4%	56.9%	116
1971	154	4.86	32.4	24.8	42.5	19.0	16.3	26.1	80.0	39.5	128
1972	224	4.50	38.4	17.6	43.4	14.5	10.4	33.5	77.9	51.3	121
1973	208	4.65	26.4	23.8	49.5	15.0	7.3	42.7	74.1	38.8	102
1974	322	5.42	34.5	18.5	46.7	19.6	13.0	33.2	76.6	49.2	116
1975	296	6.24	39.9	18.4	41.5	20.8	16.3	25.2	87.8	64.8	133
1976	351	5.28	42.4	14.9	42.2	19.0	11.8	30.5	89.9	48.1	138
1977	314	6.16	40.1	14.4	45.4	22.7	12.5	32.9	86.4	54.6	130
1978	338	7.40	34.6	13.0	52.4	17.2	24.6	28.1	90.4	47.7	124
1979	295	8.28	35.6	17.4	46.9	21.8	21.1	25.2	87.6	52.9	137
1980	303	7.57	29.0	21.8	49.2	20.5	25.1	24.1	89.8	36.4	116
1981	285	7.76	38.2	21.1	40.5	28.9	15.1	25.7	84.4	43.3	125
1982	304	9.94	42.8	21.7	35.5	24.7	13.5	22.0	88.3	43.9	126
1983	258	8.61	35.7	24.1	40.1	31.5	17.9	22.2	93.4	54.8	141
1984	267	9.68	28.8	31.8	39.3	31.6	21.0	18.0	88.3	71.8	124

TABLE E.4
YEARLY DATA--DEFENDANTS CHARGED WITH SEX OFFENSES*
PHILADELPHIA, PENNSYLVANIA
1970-1984

Year Information Filed	# of Defendants Charged	Mean # of Charges Filed	Convicted of Original Charge	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison for Original Charge	Sentenced to Prison for Other Charge	Mean Sent. Orig. Chg. (Months)
1970	193	4.14	34.2%	31.1%	34.7%	28.5%	10.9%	23.8%	75.8%	53.3%	109
1971	185	4.75	33.2	25.5	41.3	21.2	15.8	25.5	75.4	44.7	119
1972	288	4.43	37.3	20.1	42.6	16.2	11.6	31.0	72.6	47.4	111
1973	270	4.79	28.1	25.1	46.8	16.8	7.5	39.3	70.7	37.3	89
1974	439	5.18	31.0	24.8	44.1	22.3	15.3	28.0	73.3	45.4	110
1975	404	6.08	35.9	23.4	40.6	23.9	16.7	23.9	84.4	53.2	127
1976	504	5.20	43.0	18.5	38.5	24.5	11.8	26.8	80.1	42.9	134
1977	455	6.04	39.9	19.2	41.0	24.9	12.3	28.6	85.0	51.2	118
1978	444	7.13	37.4	15.5	47.1	23.0	21.4	25.7	87.1	50.7	113
1979	410	7.77	37.9	19.3	42.8	25.4	18.8	23.2	81.3	54.4	125
1980	417	7.19	32.4	23.5	44.1	26.1	22.3	21.8	85.2	33.7	108
1981	411	7.16	37.8	24.2	38.0	32.7	15.4	22.7	74.2	40.4	116
1982	433	9.24	45.2	22.9	31.9	29.8	12.7	19.1	83.0	48.5	119
1983	379	8.29	38.2	27.3	34.5	36.1	15.9	18.6	84.0	61.2	127
1984	404	9.10	33.4	33.2	33.4	31.5	16.9	16.4	81.5	64.2	110

*Includes rape, involuntary deviate sexual intercourse, attempted rape, attempted involuntary deviate sexual intercourse, aggravated rape, assault with intent to ravish and assault with intent to commit sodomy.

APPENDIX F--DISTRICT OF COLUMBIA

Legal Changes

There have been no statutory changes in rape laws in Washington, D.C. since 1901. The traditional carnal knowledge statute defines rape as carnal knowledge of a woman by force and against her will. In 1976 the District of Columbia Court of Appeals abrogated the corroboration requirement and associated jury instruction that had been judicially imposed in 1912 [Kidwell v. United States, 38 App.D.C. 566, 573 (1912)]. In the 1976 ruling the Court stated:

> We reject, therefore, the notion given currency so long in this jurisdiction, that the victim of rape and other sex related offenses is so presumptively lacking in credence that corroboration of her testimony is required to withstand a motion for a judgment of acquittal. Accordingly, we mandate that in the future no instruction directed specifically to the credibility of any mature female victim of rape or its lesser included offenses and the necessity for corroboration of her testimony shall be required or given in the trial of any such case in the District of Columbia court system. [Arnold v. United States 358 A.2d 335 (D.C. 1976)]

The Court of Appeals followed this ruling with another in 1985 that abolished the corroboration requirement entirely, regardless of sex or age of victim or perpetrator [Gary v. United States, 499 A.2d 815 (D.C.App. 1985)].

In 1976 a ruling by the District of Columbia Court of Appeals imposed restrictions on the introduction of evidence of the victim's prior sexual history similar to those imposed by the rape shield statutes of other jurisdictions [McLean v. United

States, 377 A.2d 74 (D.C. App. 1977)]. In that case the Court ruled that the trial court properly excluded evidence of the victim's prior sexual conduct with persons other than the accused and held that counsel may not ask about sexual relations with others and may not attempt to impeach the complainant's credibility by examining other witnesses concerning their knowledge of specific instances of sexual activity in her past. In a footnote, however, the Court noted that "(t)here can be unusual circumstances where the defense may inquire into specific sexual acts by the prosecutrix when the probative value of the evidence is clearly demonstrated and is shown to outweigh its prejudicial effect" (377 A.2d at 78 n.6). As examples of such circumstances they mentioned evidence that "directly refutes physical or scientific evidence, such as the victim's alleged loss of virginity, the origin of semen, disease or pregnancy" (377 A.2d at 78 n.6). The Court ruled similarly that reputation testimony should not be admitted except in unusual cases where the probative value outweighs the prejudicial effect. The Court clearly stated that the victim's prior sexual conduct with the defendant is admissible to rebut the prosecution's evidence that the complainant did not consent to sexual intercourse or when there is an issue of identity at trial.

Criminal Justice Officials' Attitudes toward the Changes

Attitudes toward McLean v. United States. Most respondents felt that the McLean ruling was appropriate in making a

complainant's prior sex with parties other than the accused inadmissible and in allowing prior sexual relations with the accused. Many prosecutors reported that the law made working with victims much easier because they no longer had to inquire into past sexual history, and because they could reassure the victims who feared that kind of probing of their personal lives. Several prosecutors indicated that many victims raise the issue because of programs they have seen on television, and they are very concerned about what kinds of questions will be asked. Many defense attorneys felt the law had not hurt their cases because they would only seek to introduce such evidence when relevant anyway, and that it was usually only relevant when it involved prior relations with the defendant.

A number of respondents were concerned that under the McLean ruling it might be impossible to get evidence of prostitution admitted in cases where the defense was sex for money. Some felt such evidence should be allowed under the McLean exceptions, but that some judges are reluctant to find exceptions and would not admit the evidence. One defense attorney described the purpose of the McLean ruling as "to prohibit a fishing expedition and character assasination," but stated, "I would try like crazy to get prostitution in."

Prosecutors generally felt the McLean ruling had made defendants more willing to plead guilty, but it was also evident that prosecutors were more willing to engage in plea negotiations when sexual evidence information was involved. Some of the cases

that are plea bargained may be cases that would not have been prosecuted at all, however, were the prior sex evidence admissible. One prosecutor stated, "we take into consideration a lot of values," going on to say that they may take a lesser plea if the complainant is a prostitute or a drug addict. Another said, "if a case strikes me wrong, if something is not right with it, I usually call the defense attorney and say "Give me something, and we can work it out.'" One defense attorney said, referring to the prosecutors, "If a lot of things are fishy they will deal... they don't do much unless there is a real problem. Something is really wrong if they offer you simple assault." Although one example was given of a case with a prostitute as victim going to trial, it was a case that involved considerable violence and physical injury.

The McLean ruling did not prescribe a specific procedure for introducing evidence of prior sexual history. Most respondents reported that when the issue was evidence of sexual relations with parties other than the accused, the defense would make a pretrial motion to the judge. Many felt that defense attorneys would risk the wrath of the judge if they did not make a motion pre-trial. There was almost unanimous agreement, however, that no motion was needed if the evidence involved sexual relations with the defendant. It was also clear that motions are not often made because there are few attempts to introduce this kind of evidence. The attorneys know the law and assume that most evidence involving parties other than the accused will not be

allowed. The cases in which they do attempt introduction are those with allegations that the complainant is a prostitute or agreed to engage in sex in return for drugs. One respondent did report a case in which a defense attorney simply said in the opening statement, "She sleeps with everybody." The judge would not allow evidence on that subject, but the statement was out. Some judges do not allow objections during opening statement, thus making that situation especially bad for the prosecutor. These kinds of strategies appear to be quite rare, however, and the public defenders interviewed generally did not approve of them.

Some respondents did note that there are often other ways of getting across the information that the defense wants before the jury. Asking a married woman who was going to meet another man when she was raped "Where were you going?" gets the idea across to the jury. If a defense attorney can elicit testimony that the victim was coming from a methadone clinic when she was allegedly raped, he or she does not have to ask if she is a drug addict. Getting a woman to describe that she was wearing shorts on 14th Street in the winter means the defense does not have to ask directly if she is a prostitute.

Attitudes toward Arnold v. United States. Most respondents agreed that Arnold v. United States, which eliminated the District's corroboration requirement had not had a large impact on rape cases for two reasons: 1. the corroboration requirement

was never a serious burden because of the lenient interpretations of what counted as corroboration, and 2. prosecutors and juries still want corroboration in a case. Because such factors as prompt reporting of a rape were counted as corroboration, it was almost always possible to get past a motion for judgment of acquittal; as one judge stated, "the case law was so broadly interpreted that a scintilla of corroboration was satisfying." Many respondents stated that the prosecutor's office would not take a case to trial without any corroboration, and defense attorneys certainly still argue a lack of corroboration when presenting a case to a jury.

One change that many respondents did feel was important was the elimination of the corroboraion instruction to the jury. As one prosecutor noted, the corroboration instruction "gave a jury looking for a reason to acquit something to hang its hat on." Defense attorneys were able to make even stronger arguments about lack of corroboration when the judge was also giving the jury this instruction. As one defense attorney described the impact, "Common sense arguments still work for the jury, but you don't have that final word from the judge to help you."

General Treatment of Rape Cases. Most respondents in D.C. reported that most of their cases were cases involving acquaintances. One defense attorney felt that this represented a shift since she had been in the office, and that the U.S. Attorney was charging more often in acquaintance cases. Others felt that it reflected police work, and the fact that it was

easier to make arrests in cases with acquaintances. A number of people reported that "date rape" cases, however, were not being prosecuted very often. One reason given was the legal requirement that the perpetrator accomplished the rape either through force or by threat of great bodily injury or death. Because non-consenting sex might not meet the threshhold of force or serious threats, the date rapes are difficult to prosecute. Some prosecutors noted that they would almost never prosecute for rape in the case of common-law marriages unless there was serious physical injury involved. One respondent felt that more of these cases might be prosecuted if there were several degrees of sexual assault to charge with. Under the current law, they are reluctant to charge a date rape as misdemeanor simple assault, partly because the misdemeanor prosecutors are not very experienced, and partly because it would be hard to answer if the defense on cross-examination asked why the case was not prosecuted as a rape.

Prosecutors reported that their conviction rates in rape cases are much lower than for other crimes. And a number of respondents reported that it is almost impossible to obtain a conviction in the District in a case with a white complainant and a black defendant where the defense is consent. They felt that in a jurisdiction in which almost all jurors are black there is a strong reaction to what many believe was years of injustice in the convictions of black men for raping white women.

Description of the District of Columbia Criminal Justice System

The D.C. Superior Court. The Superior Court of the District of Columbia took jurisdiction over serious felony cases in August of 1972. Before that those cases were part of the federal court's jurisdiction. Out of 51 judges on the entire Superior Court, plus eight senior judges, 24 judges serve on the criminal bench. Judges are appointed by the President after a nominating commission presents three names, and they are affirmed by the Senate Committee on the District of Columbia. Appointments are for a 15-year term. At the end of a term, judges are rated by a tenure commission as well qualified, qualified, or unqualified. Those given well qualified ratings are automatically reappointed, those rated as qualified are reappointed at the discretion of the President, and those who are deemed unqualified are terminated.

Judges rotate through the various divisions with assignments lasting generally nine months to one year. In the criminal division two judges (the number may vary) are given a special assignment to hear Felony I cases--murder, rape, child sex abuse, kidnapping, and defendants with four or more offenses. These judges serve one year to 15 months at this assignment. The criminal division also includes five commissioners who hold non-jury trials, sentence offenders to less than 90 days, hold arraignments and preliminary hearings.

A Chief Judge of the Superior Court is selected by the nominating commission; this judge is the chief operational

officer who deals with budget and personnel matters. The Chief Judge selects a presiding judge and deputy presiding judge of the criminal division to deal with day to day operation of the division.

Cases are assigned randomly to judges after the grand jury indictment, and there appears to be little opportunity, if any, for judge shopping. Prosecutors are assigned in teams to calendars (judges), but they rotate even more frequently than do the judges. Public Defenders are not assigned to specific calendars.

Sentencing in the District of Columbia is indeterminate; the judge must impose a minimum and a maximum, and the minimum cannot exceed one-third of the maximum. Sentencing councils consisting of groups of four to five judges meet to discuss difficult sentences.

U.S. Attorney's Office. The U.S. Attorney for the District of Columbia has a Division of Superior Court Operations that handles non-federal criminal cases for D.C. Within that division there is a Felony I unit with 12 assistant U.S. Attorneys that handles the most serious felony cases and a Chronic Offender Unit that handles the felony cases involving defendants with previous violent crimes whose current offense is violent. While most felony cases are processed horizontally, the Felony I and Chronic Offender Units use vertical processing, with the Felony I cases being screened by the Chronic Offender Unit assistant. Attorneys

assigned to the Felony I Unit average about 15 months in that unit.

Public Defender's Office. The Public Defender's Office of the District of Columbia is an independent agency that handles about 10 to 15% of all indigent cases, and about 60% of the more serious indigent cases. There are 61 attorneys in the office and 35 of those serve in the trial division, which is divided into a family division for representing juveniles and an adult division. Twelve to 15 attorneys serve in the adult division.

Defenders are assigned to cases, not to particular courtrooms, and they follow a case through the system from the day after arrest to disposition.

New defenders are hired in classes, and they are immediately given six weeks of training. The senior lawyers are instructors for this training, and they give demonstrations. A one-week training session is held at the end of the first year. Most attorneys after they are hired are assigned to the family division, and then they rotate to the adult division, where they start off with misdemeanor cases and then move from less serious to more serious felonies. Every attorney who has been with the office for less than four years has a supervisor assigned; these assignments are rotated every six months. A chief and deputy chief of the trial division report to the director or deputy director of the Public Defender's Office, and they informally review decisions of staff attorneys.

The chief of the trial division keeps a calendar for each month on which the staff attorneys indicate which days they are available. Then every day the chief submits two or three names to the presiding judge of the criminal division who makes appointments of attorneys for indigent defendants. Although there is no formal rule, judges traditionally assign most of the more serious felonies to the Public Defender's Office.

The Public Defender's Office is an extremely professional office, and the staff attorneys come from the nation's top law schools. They publish a criminal trial manual, and every year they hold a criminal practice institute with their senior attorneys acting as instructors. This institute is open to the private bar.

Relationship between Prosecution and Defense. Prosecutors, defense attorneys and judges all described the relationship between the prosecutors and public defenders as extremely adversarial. There is very little socializing between people in the two groups, and it would be extremely rare for an attorney to switch from one office to the other. With prosecutors describing public defenders as "a pain in the neck" and "a little abrasive sometimes" they also described the public defenders as extrmely professional, as the toughest defense attorneys, as "the best representation in town," and as generally much better than appointed attorneys. Judges also referred to the excellent reputation of the public defender's office. Defense attorneys

described the prosecutors as very adversarial, especially in the area of pretrial discovery.

D.C. Police Department. The District of Columbia Police Department has had a special sex crimes unit since 1942. The unit has 32 people and two Spanish speaking officers detailed from other units. There is one captain, one lieutenant, and four sergeants in charge of the unit which handles all sexual assaults excluding consensual sodomy and prostitution. Seventy percent of the unit are males and 30% females. The unit operates 24 hours a day, and at least one female officer is assigned to each shift.

Officers are not specially recruited for the unit; rather officer in the field apply to become detectives, and the deputy chief decides which unit they are assigned to. If officers come into the unit as investigators, they serve a one or two year apprenticeship before being promoted to detective.

When reports of sexual assaults are received, patrol units in the field respond initially. They give first aid and preserve the crime scene. They only ask enough questions to determine if the case should be referred to the sex crimes branch. They do no investigation of the crime but call the sex crimes unit immediately. Depending on the situation, the special unit either responds to the scene or has the complainant brought in to the office. At the scene they would get a preliminary report from the victim, but probably would not get a formal statement that day. They would take the victim to D.C. General Hospital (where the District would pay the costs) or to any other doctor in D.C.

that the victim may choose. If she chooses to go outside the District she must go on her own. The victim can choose to have another person present during any of the investigation. If a victim requests to speak with a female officer that request is honored; if the unit has no females available at that time, they would go to other districts to get a female officer.

New recruits to the unit are given a manual on the operations of the sex crimes branch, and they are put with an experienced investigator for six to eight months. Every two years the branch sponsors a sex investigators' school, and they also train all sex investigators in the area--in Virginia, Maryland, for the park service and the military. They bring in lecturers from the FBI, and they bring in the local rape crisis center for special seminars.

The police reported that they unfound crime reports if they can clearly show the offense did not happen. The captain reviews all cases personally. If there is any deviation from policy, then the cases would need even higher approval. They indicated that they would use the polygraph with a complainant only as a last resort, as an investigative aid, and only if the person consents to its use.

The police work closely with the prosecutor on their cases and reported that the prosecutor seldom refuses to prosecute. If the prosecutor did refuse there would be informal negotiations; the investigating detective would go to the captain who would check with his sergeant and lieutenant and then with the

prosecutor. If there were still a problem then the unit captain might go to the deputy chief of police.

D.C. Rape Crisis Center. The District of Columbia Rape Crisis Center was started in 1972. In 1986 they first started their companions program, in which a volunteer accompanies a rape victim in all stages of the case processing--from the forensic exam through the court system. The crisis center is dependent on self or agency referrals for their cases; they have no automatic contact with every rape victim who reports an assault. Some area hospitals are active in referring victims to the crisis center, and the police and U.S. Attorney sometimes call them in on cases. Their representative indicated that they tend to get calls from the police when there is a victim who has children who need care, a victim on drugs, a victim the police do not believe, or a complainant who is very upset and not responding to the investigating detective.

The crisis center is now involved in training the police. Their trainers are helping in producing video tapes to be used with new recruits in the sex crimes branch. An arrangement that had been made for them to train judges and prosecutors fell through. In general, it was reported that they work more closely with the police than with other agencies. They have no coordination with the victim-witness unit in the prosecutor's office, although that unit seems primarily geared toward processing victim restitution funds.

The crisis center representative reported a seeming improvement in sensitivity in police treatment of rape victims, and offered the opinion that male detectives seem to be most sympathetic. She had concerns about the sensitivity of prosecutors in questioning victims and mentioned two specific recent examples of problems. In one case a prosecutor had a need to know about unexplained pubic hair and probed into the victim's sexual relations in a tactless and insensitive manner. Another case that had recently received a great deal of publicity involved a woman who was abducted from the street, beaten and dumped into the Potomac River; the defendant in the case offered a defense of consent. The prosecutor in that case probed into the victim's sexual history even though it was a rape by a stranger with violence and injuries. The opinion from the crisis center was that this case had definitely had a dampening effect of the reporting of rapes. These situations are very difficult for crisis center counselors who tell victims about the rape shield laws in encouraging them to report or pursue prosecution.

The crisis center representative also felt that cases generally were not going forward if there was any connection between victim and defendant, and she did not know of any date rape cases that had been prosecuted. She stated that a lot of cases never make it past the initial investigation of the police. The police report to the crisis center that there is a lack of evidence or inconsistencies in complainants' statements.

Pressure on the System. Respondents were asked whether they perceived much pressure either from women's groups or the media on judges and prosecutors to be tough with rape cases. Most respondents in D.C. reported that they were not aware of any real pressure. Several people mentioned the role of the rape crisis center, but that group was described as primarily supportive of victims in providing services, and not as putting pressure on the courts.

Disposition of Sex Offense Cases

Data summarizing the disposition of sex offense cases indicted in the District of Columbia from 1973 through 1984 are presented in Tables F.1 to F.4. Data are presented separately for the charges "rape" and "armed rape," and the category "all sex offenses" includes cases with charges of armed rape, rape, armed assault with intent to rape, armed assault with intent to commit sodomy, assault with intent to rape and sodomy.

The data in Table F.1 summarize the outcomes of these cases, and the data reveal that:

--defendants charged with armed rape are indicted for more charges (average 8.6) than are those charged with rape (average number of charges = 4.16), and the mean number of conviction charges in armed rape cases (2.89) is also higher than for rape cases (1.76).

--the overall conviction rate is quite high, and defendants are more likely to be convicted when charged with armed rape (82%

conviction rate) than when charged with rape (conviction rate = 72%). A fairly low proportion of cases are convicted on original charge, but conviction on original charge is more likely for armed rape (37%) than for rape (24%).

--a fairly large number of cases go to trial. Of the defendants charged with armed rape, approximately 40% went to trial, while approximately 37% of those charged with rape went to trial. Trials were mostly jury trials, with very few bench trials (no more than 3.5% of the cases). About half the cases result in guilty pleas, and the dismissal rate ranges from 9% for armed rape to 16% for rape with all sex offenses in between at 13%.

--incarceration rates for those convicted are quite high (95.2% in armed rape cases and 85.8% in rape cases), and median prison sentences are very long.

Tables F.2, F.3, and F.4 present yearly data for armed rape, rape and all sex offenses.

TABLE F.1
DESCRIPTIVE DATA--DEFENDANTS CHARGED WITH SEX OFFENSES
WASHINGTON, D.C., 1973-1985

	All Sex Offenses* (N=1166)	Armed Rape (N=394)	Rape (N=567)
Mean # of charges on indictment	5.41	8.60	4.16
Mean # of conviction charges	2.11	2.89	1.76
Outcome of case			
Convicted of orginal charge	30.0%	37.2%	23.6%
Convicted of another charge	45.4	44.5	47.6
Not convicted	24.6	18.3	28.8
Type of Disposition			
Guilty plea	49.5%	51.0%	46.6%
Guilty--judge	0.7	0.0	1.1
Guilty--jury	25.3	30.7	23.8
Not guilty--judge	1.4	0.3	2.3
Not guilty--jury	9.9	8.6	9.9
Dismissed	13.2	9.4	16.2
Type of sentence, for those convicted of original charge			
Probation	5.0%	0.7%	9.0%
Jail	2.6	0.0	4.5
Prison	87.1	95.2	81.3
Other	5.3	4.1	5.2
Median prison sentence in months			
For those convicted of original charge	252	360	252
For those convicted of another charge	144	180	120
% cases where severity of charges reduced	76.9%	74.5%	82.2%
% cases where number of charges reduced	83.8	95.4	84.4
Relationship of Victim and Defendant			
Strangers	43.1%	55.1%	35.4%
Friends/Relatives	31.6	17.8	39.1
Unknown	25.2	27.1	25.4
Defendant Used a Weapon			
Yes	37.9%	75.9%	15.3%
No	40.7	6.9	58.7
Unknown	21.4	17.3	25.9
Victim Injured			
No	34.0%	27.7%	37.9%
Minor	38.3	38.3	37.9
Hospitalized	4.6	6.1	4.2
Unknown	22.3	27.9	20.0

*Includes defendants charged with armed rape, rape, armed assault with intent to rape, armed assault with intent to commit sodomy, assault with intent to rape and sodomy.

TABLE F.2
YEARLY DATA--DEFENDANTS CHARGED WITH ARMED RAPE
WASHINGTON, D.C.
1973-1985

Year Indicted	Number of Indictments	Mean # of Charges Indicted	Convicted of Armed Rape	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison for Armed Rape	Sentenced to Prison for Other Charge	Mean Sent. Armed Rape (Months)
1973	6	9.67	(5)*	(0)	(1)	---	---	---	---	---	---
1974	9	20.56	(6)	(2)	(1)	---	---	---	---	---	---
1975	46	10.48	15.2% (7)	73.9% (34)	10.9% (5)	67.4%	4.4%	6.5%	71.4%	94.1%	639.0
1976	51	13.94	49.0 (25)	37.2 (19)	13.7 (7)	51.0	5.9	5.9	92.0	100.0	366.0
1977	22	10.04	45.4 (10)	40.9 (9)	13.6 (3)	31.8	0.0	13.6	80.0	66.7	525.6
1978	33	4.30	21.2 (7)	48.5 (16)	30.3 (10)	45.4	24.2	6.1	100.0	87.5	329.1
1979	40	5.2	37.5 (15)	37.5 (15)	25.0 (10)	30.0	20.0	5.0	100.0	73.3	305.1
1980	40	5.2	27.5 (11)	50.0 (20)	22.5 (9)	40.0	2.5	20.0	100.0	100.0	248.6
1981	34	6.2	38.2 (13)	41.2 (14)	20.6 (7)	44.1	2.9	17.6	100.0	92.9	470.7
1982	41	9.0	41.5 (17)	43.9 (18)	14.6 (6)	61.0	4.9	9.8	94.1	100.0	517.0
1983	35	6.9	45.7 (16)	42.9 (15)	11.4 (4)	62.9	5.7	5.7	100.0	93.3	446.4
1984	23	8.0	47.8 (11)	31.8 (7)	18.2 (4)	65.2	8.7	8.7	100.0	100.0	320.0
1985	14	6.4	21.4 (3)	42.9 (6)	35.7 (5)	64.3	35.7	0.0	100.0	66.7	636.0

*There were too few indictments for armed rape in 1973 or 1974 to calculate percentages.

TABLE F.3
YEARLY DATA--DEFENDANTS CHARGED WITH RAPE
WASHINGTON, D.C.
1973-1985

Year Indicted	Number of Indictments	Mean # of Charges Indicted	Convicted of Rape	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison for Rape	Sentenced to Prison for Other Charge	Mean Sent. for Rape (Months)
1973	81	4.22	18.5%	50.0%	31.2%	48.2%	21.0%	9.9	53.3%	57.5%	207.0
1974	88	5.11	25.0	42.5	32.2	43.2	23.9	9.1	90.9	61.1	272.1
1975	54	4.13	20.4	43.4	35.9	44.4	18.5	16.7	100.0	81.8	173.3
1976	45	2.64	17.8	47.7	34.1	40.0	22.2	11.1	87.5	57.1	132.6
1977	38	2.76	36.8	50.0	13.2	56.0	5.3	0.1	78.6	52.6	312.0
1978	46	3.40	15.2	50.0	34.8	45.6	13.0	21.7	100.0	52.2	292.8
1979	43	3.44	23.3	41.9	34.9	37.2	18.6	16.3	80.0	83.3	344.0
1980	35	4.26	28.6	57.1	14.3	57.1	2.9	11.4	90.0	65.0	310.0
1981	29	5.07	25.6	55.2	17.2	58.6	10.3	6.9	100.0	81.2	426.0
1982	39	3.97	25.6	48.7	25.6	46.2	5.1	20.5	80.9	63.2	437.1
1983	28	4.57	32.1	42.9	25.0	42.9	17.9	7.1	77.8	91.7	221.1
1984	28	5.86	28.6	50.0	21.4	57.1	17.9	3.6	100.0	71.4	429.0
1985	13	5.38	23.1	46.2	30.8	46.2	15.4	15.4	100.0	83.3	448.0

TABLE F.4

YEARLY DATA--DEFENDANTS CHARGED WITH SEXUAL OFFENSES[A]

WASHINGTON, D.C.

1973-1985

Year Indicted	Number of Indict-ments	Mean # of Charges Indicted	Convicted of Original Charge	Convicted of Other Charge	Not Convicted	Guilty Plea Entered	All Charges Dismissed	Acquitted of all Charges	Sentenced to Prison	Mean Sentence (Months)
1973	105	4.36	28.6%	45.2%	26.0%	47.6%	17.1%	8.6	56.4%	131.26
1974	111	6.68	27.9	41.8	30.0	46.0	22.5	7.2	75.6	175.65
1975	119	6.31	21.0	53.4	25.4	53.8	12.6	12.6	89.9	200.12
1976	114	7.62	34.2	39.0	26.6	45.6	14.9	10.5	82.1	260.0
1977	70	4.89	35.7	45.7	18.6	42.9	5.7	11.6	67.8	247.5
1978	96	3.58	20.8	48.4	30.5	49.0	15.6	14.6	74.6	227.2
1979	109	3.79	29.4	41.7	28.7	38.5	18.4	10.1	79.5	240.9
1980	89	4.70	25.8	53.4	20.4	51.7	2.25	18.0	81.7	192.5
1981	77	5.44	31.2	50.6	18.2	54.6	6.5	11.7	87.3	261.1
1982	91	6.09	33.0	46.2	20.9	55.0	5.5	25.4	86.1	304.8
1983	79	5.23	36.7	41.8	21.5	53.2	12.7	8.9	87.3	269.3
1984	74	5.57	37.0	43.1	19.4	59.5	12.2	6.8	88.3	271.7
1985	32	5.59	25.0	40.6	34.4	53.1	25.0	9.4	81.0	294.4

[A]Includes defendants charged with armed rape, rape, armed assault with intent to rape, armed assault with intent to commit sodomy, assault with intent to rape, and sodomy.

APPENDIX G
SAMPLE OF INTERVIEW SCHEDULE

Respondent #_____

PROSECUTORS
DETROIT, MICHIGAN

Before we begin the interview, I would like briefly to explain the purpose of the study. The study is being conducted for the National Institute of Justice and the National Science Foundation under a grant to the University of Nebraska at Omaha. We are trying to determine the possible effects of recent changes in Michigan's sexual assault laws. For the past nine months we have been collecting data on the dispostion of sexual assault cases in Detroit since 1970. To help us understand and interpret our findings, we are interviewing police officers, prosecutors, public defenders, and judges.

The interview will take about an hour. While we may use some quotes from the interview in our report, all responses will be anonymous and all of your answers will be treated confidentially.

PART I
QUESTIONS ABOUT RESPONDENT

1. Title_____

2. Sex
_____female (0) _____male (1)

3. Race
_____white (1) _____black (2) _____Hispanic (3) _____other (4)

4. Age_____years

5. How long have you been a prosecutor in this jurisdiction?_____years

6. Have you handled sexual assault cases both before and after 1975?

_____before only (1)
_____after only (2)
_____both before and after (3)

PART II

STATUTORY CHANGES--ALL RESPONDENTS

Now I'd like to ask you a few questions about recent changes in Michigan's sexual assault laws.

Provision--Graded Offenses

In 1975 Michigan changed the definition of and penalty structure for sexual offenses. The old crimes of rape and sodomy were replaced by four degrees of criminal sexual conduct.

[NOTE: Rape and sodomy were replaced by 1st, 2nd, 3rd, and 4th degree criminal sexual conduct. 1st degree csc is a felony punishable by life or any term of years; it is defined as penetration with the presence of at least one aggravating circumstance. 2nd degree csc is a felony punishable by 15 yrs. max. It is defined as sexual contact with at least one aggravating circumstance. 3rd dgree csc is a felony punishable by 15 yrs. max. It is defined as penetration. 4th degree csc is a misdemeanor and is defined as sexual contact.]

1. Do you see any advantages to these changes?_____

2. Do you see any disadvantages to these changes?_____

3. The criminal sexual conduct statute includes a statement that the victim need not resist the actor. Do you feel the inclusion of this statement has had any effect?_____

4. The statute also includes a statement that the testimony of the victim need not be corroborated. Has the inclusion of this statement had any effect?_____

Provision--Shield Law

In 1975, Michigan's sexual assault laws were changed to limit the admissibility of evidence concerning the victim's prior sexual conduct (the shield law). I would like to ask you about the impact of the shield law on the prosecution of sexual assault cases.

[NOTE: Law prohibits admission of evidence of prior sexual activity, opinion evidence or reputation evidence for any purpose. Law presumes evidence of v's relationship with defendant and evidence of sexual activity to show the source of semen, pregnancy, or disease irrelevant. In camera hearing required to rebut presumption of irrelevance.]

1. Do you see any advantages to this law?_____
_____
_____
_____
_____

2. Do you see any disadvantages to this law?_____
_____
_____
_____
_____

3. Have there been any legal challenges to Michigan's shield law?
_____yes _____no _____DK
1 0 9

Explanation (type of challenge, outcome of challenge)
_____
_____
_____
_____

4. Do you think the existence of the shield law alters either party's strategic position during plea negotiations?
_____yes _____no _____DK
1 0 9

Explanation_____
_____
_____
_____
_____

[NOTE: Ask #5 only if responses interesting.]

5. If the judge rules that the evidence is irrelevant and therefore cannot be admitted, are there other ways the defense attorney can get it in?

_____yes (1) _____no (0) _____DK (9)

Explanation_____

_____

_____

_____

6a. How often have in camera hearings to determine the relevance of evidence of prior sexual history been used in the sexual assault cases you've tried?

____always (5) ____frequently (4) ____occasionally (3) ____rarely (2) ____never (1)

6b. How often did these hearings result in a ruling by the judge that the evidence was relevant and thus could be admitted?

____always (5) ____frequently (4) ____occasionally (3) ____rarely (2) ____never (1)

6c. If the evidence is admitted, is it generally admitted to prove consent, to impeach credibility, or both?

_____prove consent _____impeach credibility _____both

If both, estimate of the % of time admitted on each issue.

_____prove consent _____impeach credibility

Notes for question #6_____

_____

_____

_____

_____

_____

[NOTE: ASK #7 OF PRE-1975 RESPONDENTS ONLY.]

7. Before the shield law was passed, how often was evidence of the victim's prior sexual history introduced in a sexual assault case--always, frequently, occasionally, rarely or never?

____always (5) ____frequently (4) ____occasionally (3) ____rarely (2) ____never (1)

Explanation_____

_____

_____

PART II
HYPOTHETICAL CASES

Now I'd like to ask you about a series of hypothetical cases where evidence of prior sexual history is at issue. There are six cases. I'll read a description of each case and then ask you several questions about the case.

CASE #1

The complainant testifies that she was gang-raped at a party by several men she had not met before. The defendants claim consent and want to prove that both before and after the alleged rape the complainant had consented to intercourse with groups of men.

1. Do you believe the evidence should be admitted at trial? (Disregard the statutues that apply in your state.)

yes.....1
no.....0

2. What is the likelihood that defense attorneys in this jurisdiction would try to get the evidence admitted?

definitely would try.....5
probably would try.....4
50/50 chance.....3
probably would not try.....2
definitely would not try.....1

3. What is the likelihood that the evidence would be admitted at trial in this jurisdiction?

definitely would be admitted.....5
probably would be admitted.....4
50/50 chance.....3
probably would not be admitted.....2
definitely would not be admitted.....1

CASE #2

The complainant testifies that she went to a movie with the defendant, whom she had known for several years. She testifies that at her front door he refused to leave, forced his way into her apartment, and raped her. The defendant claims consent and wants to prove that the complainant had consented to intercourse with him once several months earlier.

1. Do you believe the evidence should be admitted at trial? (Disregard the statutues that apply in your state.)

yes.....1
no.....0

2. What is the likelihood that defense attorneys in this jurisdiction would try to get the evidence admitted?

definitely would try.....5
probably would try.....4
50/50 chance.....3
probably would not try.....2
definitely would not try.....1

3. What is the likelihood that the evidence would be admitted at trial in this jurisdiction?

definitely would be admitted.....5
probably would be admitted.....4
50/50 chance.....3
probably would not be admitted.....2
definitely would not be admitted.....1

CASE #3

The complainant, a resident of a posh building, testifies that she was raped by a maintenance man who was working in her apartment. The defendant claims consent and wants to prove that the complainant previously had consented to intercourse with building employees whom she had invited into her apartment.

1. Do you believe the evidence should be admitted at trial? (Disregard the statutues that apply in your state.)

yes.....1
no.....0

2. What is the likelihood that defense attorneys in this jurisdiction would try to get the evidence admitted?

definitely would try.....5
probably would try.....4
50/50 chance.....3
probably would not try.....2
definitely would not try.....1

3. What is the likelihood that the evidence would be admitted at trial in this jurisdiction?

definitely would be admitted.....5
probably would be admitted.....4
50/50 chance.....3
probably would not be admitted.....2
definitely would not be admitted.....1

CASE #4

The complainant testifies that she met the defendant at a singles bar, danced and drank with him, and accepted his offer to drive her home. She testifies that at the front door he refused to leave, forced his way into her apartment, and raped her. The defendant claims consent and wants to prove that the complainant previously had consented to intercourse with casual acquaintances she had met at singles bars.

1. Do you believe the evidence should be admitted at trial? (Disregard the statutues that apply in your state.)

yes.....1
no.....0

2. What is the likelihood that defense attorneys in this jurisdiction would try to get the evidence admitted?

definitely would try.....5
probably would try.....4
50/50 chance.....3
probably would not try.....2
definitely would not try.....1

3. What is the likelihood that the evidence would be admitted at trial in this jurisdiction?

definitely would be admitted.....5
probably would be admitted.....4
50/50 chance.....3
probably would not be admitted.....2
definitely would not be admitted.....1

CASE #5

The complainant, a married woman, testifies that she was raped by her brother-in-law. The defendant claims consent and wants to prove that the complainant recently had consented to intercourse with other men; that she had been criticized for her conduct by her sister, who threatened to tell the complainant's husband; and that the complainant had responded by threatening to charge her brother-in-law with rape.

1. Do you believe the evidence should be admitted at trial? (Disregard the statutues that apply in your state.)

yes.....1
no.....0

2. What is the likelihood that defense attorneys in this jurisdiction would try to get the evidence admitted?

definitely would try.....5
probably would try.....4
50/50 chance.....3
probably would not try.....2
definitely would not try.....1

3. What is the likelihood that the evidence would be admitted at trial in this jurisdiction?

definitely would be admitted.....5
probably would be admitted.....4
50/50 chance.....3
probably would not be admitted.....2
definitely would not be admitted.....1

CASE #6

The complainant testifies that she was raped by a stranger who entered her room through an open window in the middle of the night. The defendant claims he was incorrectly identified and wants to prove that the complainant, earlier that same night, had intercourse with a man she had just met at a party, and that this other man was the source of semen found during a medical exam.

1. Do you believe the evidence should be admitted at trial? (Disregard the statutues that apply in your state.)

yes.....1
no.....0

2. What is the likelihood that defense attorneys in this jurisdiction would try to get the evidence admitted?

definitely would try.....5
probably would try.....4
50/50 chance.....3
probably would not try.....2
definitely would not try.....1

3. What is the likelihood that the evidence would be admitted at trial in this jurisdiction?

definitely would be admitted.....5
probably would be admitted.....4
50/50 chance.....3
probably would not be admitted.....2
definitely would not be admitted.....1

PART IV
STATUTORY CHANGES--PROSECUTORS WITH PRE-1975 EXPERIENCE ONLY

1. In general, how have prosecutors' chances of winning sexual assault cases changed as a result of the new laws? Would you say your chances have greatly improved, improved, stayed about the same, diminished, or greatly diminished?

_____greatly improved (5) _____improved (4) _____stayed same (3)
_____diminished (2) _____greatly diminished (1) _____DK (9)

What's the single most important reason for that change?
_____
_____
_____
_____

2. Have you ever won a case under the reform laws which you do not think you would have won under the previous law?
_____yes (1) _____no (0) _____DK (9)

Please briefly describe these cases and explain why:
_____
_____
_____
_____
_____

3. Have you ever lost a case under the reform laws which you do not think you would have lost under the previous law?
_____yes (1) _____no (0) _____DK (9)

Please briefly describe these cases and explain why:
_____
_____
_____
_____
_____

4. Have you changed your courtroom tactics or strategies for prosecuting individuals charged with sexual assault since the reform laws went into effect?
_____yes (1) _____no (0) _____DK (9)

Please explain why and how_____
_____
_____
_____

PART V
ATTITUDES TOWARD SEXUAL ASSAULT CASES

1a. First, I'd like to ask you about factors that might influence your decision to file charges in sexual assault cases. On the sheet which I've given you, please check how important each of the factors is to your decision to file charges.

	Essential 4	Important, but not essential 3	Helpful 2	Irrelevant 1
(a) documented physical injury				
(b) corroborating witnesses				
(c) physical evidence				
(d) evidence that victim resisted				
(e) suspect has no alibi				
(f) suspect used dangerous weapon				
(g) victim reported promptly				
(h) victim can identify suspect				
(i) victim passed a polygraph				
(j) suspect failed a polygraph				
(k) no inconsistencies in victim's story				
(l) victim did not use alcohol or drugs at time of incident				
(m) suspect and victim were strangers				
(n) suspect and victim had no previous sexual relationship				
(o) victim does not have reputation for sexual promiscuity				
(p) victim has no previous felony convictions				

1b. Do you feel that any of these types of evidence have become more or less important since the implementation of reform legislation in 1975? (List each type of evidence mentioned, whether respondent feels it is more or less important, why respondent feels it is more or less important.)

_____

_____

_____

_____

_____

_____

_____

1c. Assume you decide not to file a sexual assault charge but to file some lesser charge. What are the lesser offenses that are charged most frequently?_____

_____

_____

2a. Now, I'd like to ask you about elements of sexual assaults that can influence the outcome of jury trials. On the second sheet, please check how important the following types of evidence are for persuading a jury to convict in sexual assault cases tried under current law.

	Essential 4	Important, but not essential 3	Helpful 2	Irrelevant 1
(a) documented physical injury				
(b) corroborating witnesses				
(c) physical evidence				
(d) evidence that victim resisted				
(e) suspect has no alibi				
(f) suspect used dangerous weapon				
(g) victim reported promptly				
(h) victim can identify suspect				
(i) no inconsistencies in victim's story				
(j) victim did not use alcohol or drugs at time of incident				
(k) suspect and victim were strangers				
(l) suspect and victim had no previous sexual relationship				
(m) victim does not have reputation for sexual promiscuity				
(n) victim has no previous felony convictions				

2b. Do you feel that any of these types of evidence have become more or less important since implementation of reform legislation in 1975? (List each type of evidence mentioned, whether respondent feels it is more or less important, why respondent feels it is more or less important.)

_____
_____
_____
_____
_____
_____
_____

3. On a scale ranging from 1, which is extremely adversarial, to 5, which is extremely cooperative, how would you rate the degree of cooperation between your office and the public defender's office in dealing with sexual assault cases?

Extremely adversarial				Extremely cooperative
1	2	3	4	5

Could you explain? [probe--discovery, plea negotiation, continuances.]_____

_____

_____

_____

4. Do you think any outside groups exert pressure on prosecutors to file charges in sexual assault cases--for example, women's groups or the media?

_____

_____

_____

_____

_____

5. Do you think any outside groups exert pressure on judges to convict or to impose severe sentences in sexual assault cases?

_____

_____

_____

_____

_____

6. Do you think there has been an increase, decrease, or no change in the rate of sexual assault in Michigan in the past few years.

_____increase	_____decrease	_____no change	_____DK
3	2	1	9

What do you think is responsible for this change?_____

_____

_____

_____

7. In your opinion, what percent of rape victims provoke the attack by their appearance or behavior?_____%

8. What percent of rape complaints are fabrications?_____%

9. What percent of complaints of other serious crimes are fabrications?_____%